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ENERGY POLICY ACT OF 2003

APRIL 8, 2003.—Ordered to be printed

Mr. TAUZIN, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

DISSENTING AND ADDITIONAL DISSENTING VIEWS

[To accompany H.R. 1644]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1644) to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Energy Policy Act of 2003".
(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ENERGY CONSERVATION

Subtitle A—Federal Leadership in Energy Conservation

Sec. 1001. Energy and water saving measures in congressional buildings.
Sec. 1002. Energy management requirements.
Sec. 1003. Energy use measurement and accountability.
Sec. 1004. Federal building performance standards.
Sec. 1005. Procurement of energy efficient products.
Sec. 1006. Energy savings performance contracts.
Sec. 1007. Voluntary commitments to reduce industrial energy intensity.
Sec. 1008. Federal agency participation in demand reduction programs.
Sec. 1009. Advanced Building Efficiency Testbed.
Sec. 1010. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.

Subtitle B—Energy Assistance and State Programs

Sec. 1021. LIHEAP and weatherization assistance.
Sec. 1022. State energy programs.
Sec. 1023. Energy efficient appliance rebate programs.
Sec. 1024. Energy efficient public buildings.
Sec. 1025. Low income community energy efficiency pilot program.

Subtitle C—Energy Efficient Products

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

TITLE II—OIL AND GAS

Subtitle A—Alaska Natural Gas Pipeline

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

Subtitle B—Strategic Petroleum Reserve

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

Subtitle C—Hydraulic Fracturing

Sec. 2201. Hydraulic fracturing.

Subtitle D—Unproven Oil and Natural Gas Reserves Recovery Program

Sec. 2301. Program.
Sec. 2302. Eligible reservoirs.
Sec. 2303. Focus areas.
Sec. 2304. Limitation on location of activities.
Sec. 2305. Program administration.
Sec. 2306. Advisory Committee.
Sec. 2307. Limits on participation.
Sec. 2308. Payments to Federal Government.
Sec. 2309. Authorization of appropriations.
Sec. 2310. Public availability of project results and methodologies.

Sec. 2311. Sunset.
Sec. 2312. Definitions.

Subtitle E—Miscellaneous

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

TITLE III—HYDROELECTRIC RELICENSING

Subtitle A—Alternative Conditions

Sec. 3001. Alternative conditions and fishways.

Subtitle B—Additional Hydropower

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

TITLE IV—NUCLEAR MATTERS

Subtitle A—Price-Anderson Act Amendments

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

Subtitle B—Miscellaneous Matters

Sec. 4021. Licenses.
Sec. 4022. Nuclear Regulatory Commission meetings.
Sec. 4023. NRC training program.
Sec. 4024. Cost recovery from Government agencies.
Sec. 4025. Elimination of pension offset.
Sec. 4026. Carrying of firearms by licensee employees.
Sec. 4027. Unauthorized introduction of dangerous weapons.
Sec. 4028. Sabotage of nuclear facilities or fuel.
Sec. 4029. Cooperative research and development and special demonstration projects for the uranium mining industry.
Sec. 4030. Uranium sales.
Sec. 4031. Medical isotope production.
Sec. 4032. Highly enriched uranium diversion threat report.
Sec. 4033. Whistleblower protection.

TITLE V—VEHICLES AND FUELS

Subtitle A—Energy Policy Act Amendments

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

Subtitle B—FreedomCAR and Hydrogen Fuel Program

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

Subtitle C—Clean School Buses

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

Subtitle D—Advanced Vehicles

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

Subtitle E—Hydrogen Fuel Cell Heavy-Duty Vehicles

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

Subtitle F—Miscellaneous

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

TITLE VI—DOE PROGRAMS

Sec. 6001. Purposes.
Sec. 6002. Definitions.

Subtitle A—Energy Efficiency

PART 1—AUTHORIZATION OF APPROPRIATIONS

Sec. 6011. Energy efficiency.

PART 2—LIGHTING SYSTEMS

Sec. 6021. Next Generation Lighting Initiative.

PART 3—VEHICLES

Sec. 6031. Definitions.
Sec. 6032. Establishment of secondary electric vehicle battery use program.

Subtitle B—Distributed Energy and Electric Energy Systems

PART 1—AUTHORIZATION OF APPROPRIATIONS

Sec. 6201. Distributed energy and electric energy systems.

PART 2—DISTRIBUTED POWER

Sec. 6221. Strategy.
Sec. 6222. High power density industry program.
Sec. 6223. Micro-cogeneration energy technology.

PART 3—TRANSMISSION SYSTEMS

Sec. 6231. Transmission infrastructure systems.

Subtitle C—Renewable Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

Sec. 6301. Renewable energy.

PART 2—BIOENERGY

Sec. 6321. Bioenergy programs.

Subtitle D—Nuclear Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

Sec. 6411. Nuclear energy.

PART 2—NUCLEAR ENERGY RESEARCH PROGRAMS

Sec. 6421. Nuclear energy research programs.

PART 3—ADVANCED FUEL RECYCLING

Sec. 6431. Advanced fuel recycling program.

PART 4—UNIVERSITY PROGRAMS

Sec. 6441. University nuclear science and engineering support.

Subtitle E—Fossil Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

Sec. 6501. Fossil energy.

PART 2—ULTRA-DEEPWATER AND UNCONVENTIONAL NATURAL GAS AND OTHER PETROLEUM RESOURCES

Sec. 6521. Program authority.
Sec. 6522. Ultra-deepwater program.
Sec. 6523. Unconventional natural gas and other petroleum resources program.
Sec. 6524. Additional requirements for awards.
Sec. 6525. Advisory committees.
Sec. 6526. Limits on participation.
Sec. 6527. Fund.
Sec. 6528. Sunset.
Sec. 6529. Definitions.

Subtitle F—Miscellaneous

Sec. 6601. Waste reduction and use of alternatives.
Sec. 6602. Coal gasification.
Sec. 6603. Petroleum coke gasification.
Sec. 6604. Other biopower and bioenergy.
Sec. 6605. Technology transfer.
Sec. 6606. Limitation on legal fee reimbursement.
Sec. 6607. Complex well technology testing facility.
Sec. 6608. Total integrated thermal systems.
Sec. 6609. Oil bypass filtration technology.

TITLE VII—ELECTRICITY

Subtitle A—Transmission Capacity

Sec. 7011. Transmission infrastructure improvement rulemaking.
Sec. 7012. Siting of interstate electrical transmission facilities.

Subtitle B—Transmission Operation

Sec. 7021. Open access transmission by certain utilities.
Sec. 7022. Regional transmission organizations.
Sec. 7023. Native load.

Subtitle C—Reliability

Sec. 7031. Electric reliability standards.

Subtitle D—PUHCA Amendments

Sec. 7041. Short title.
Sec. 7042. Definitions.
Sec. 7043. Repeal of the Public Utility Holding Company Act of 1935.
Sec. 7044. Federal access to books and records.
Sec. 7045. State access to books and records.
Sec. 7046. Exemption authority.
Sec. 7047. Affiliate transactions.
Sec. 7048. Applicability.
Sec. 7049. Effect on other regulations.
Sec. 7050. Enforcement.
Sec. 7051. Savings provisions.
Sec. 7052. Implementation.
Sec. 7053. Transfer of resources.
Sec. 7054. Effective date.
Sec. 7055. Authorization of appropriations.
Sec. 7056. Conforming amendments to the Federal Power Act.

Subtitle E—PURPA Amendments

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

Subtitle F—Renewable Energy

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

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

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

Subtitle H—Consumer Protections

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

Subtitle I—Merger Review Reform and Accountability

Sec. 7101. Merger review reform and accountability.

Subtitle J—Study of Economic Dispatch

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

TITLE VIII—COAL

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

TITLE IX—MOTOR FUELS

Subtitle A—General Provisions

Sec. 9101. Renewable content of motor vehicle fuel.
Sec. 9102. Fuels safe harbor.

Sec. 9103. Findings and MTBE transition assistance.
Sec. 9104. Elimination of oxygen content requirement for reformulated gasoline.
Sec. 9105. Analyses of motor vehicle fuel changes.
Sec. 9106. Data collection.
Sec. 9107. Fuel system requirements harmonization study.

Subtitle B—MTBE Cleanup

Sec. 9201. Funding for MTBE contamination.

TITLE X—AUTOMOBILE EFFICIENCY

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

TITLE XI—PREVENTING THE MISUSE OF NUCLEAR MATERIALS AND TECHNOLOGY

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

TITLE XII—ADDITIONAL PROVISIONS

Sec. 12001. Transmission technologies.

TITLE I—ENERGY CONSERVATION

Subtitle A—Federal Leadership in Energy Conservation

SEC. 1001. ENERGY AND WATER SAVING MEASURES IN CONGRESSIONAL BUILDINGS.

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

"SEC. 552. ENERGY AND WATER SAVINGS MEASURES IN CONGRESSIONAL BUILDINGS.

"(a) IN GENERAL.—The Architect of the Capitol—

"(1) shall develop, update, and implement a cost-effective energy conservation and management plan (referred to in this section as the 'plan') for all facilities administered by the Congress (referred to in this section as 'congressional buildings') to meet the energy performance requirements for Federal buildings established under section 543(a)(1); and

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

"(b) PLAN REQUIREMENTS.—The plan shall include—

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

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

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

"(4) the results of a study of the costs and benefits of installation of submetering in congressional buildings; and

"(5) information packages and 'how-to' guides for each Member and employing authority of Congress that detail simple, cost-effective methods to save energy and taxpayer dollars in the workplace.

"(c) ANNUAL REPORT.—The Architect shall submit to Congress annually a report on congressional energy management and conservation programs required under this section that describes in detail—

"(1) energy expenditures and savings estimates for each facility;

"(2) energy management and conservation projects; and

"(3) future priorities to ensure compliance with this section.".

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

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

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

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

(e) AUTHORIZATION.—There are authorized to be appropriated to the Architect of the Capitol to carry out subsection (d), not more than $2,000,000 for fiscal years after the enactment of this Act.

SEC. 1002. ENERGY MANAGEMENT REQUIREMENTS.

(a) ENERGY REDUCTION GOALS.—

(1) AMENDMENT.—Section 543(a)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)(1)) is amended by striking "its Federal buildings so that" and all that follows through the end and inserting "the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in fiscal years 2004 through 2013 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in fiscal year 2001, by the percentage specified in the following table:

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

(2) REPORTING BASELINE.—The energy reduction goals and baseline established in paragraph (1) of section 543(a) of the National Energy Conservation Policy Act, as amended by paragraph (1) of this subsection, supersede all previous goals and baselines under such paragraph, and related reporting requirements.

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

"(3) Not later than December 31, 2012, the Secretary shall review the results of the implementation of the energy performance requirement established under paragraph (1) and submit to Congress recommendations concerning energy performance requirements for fiscal years 2014 through 2023.".

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

"(i) compliance with those requirements would be impracticable;

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

"(iii) the agency has achieved compliance with the energy efficiency requirements of this Act, the Energy Policy Act of 1992, Executive Orders, and other Federal law; and

"(iv) the agency has implemented all practicable, life cycle cost-effective projects with respect to the Federal building or collection of Federal buildings to be excluded.

"(B) A finding of impracticability under subparagraph (A)(i) shall be based on—

"(i) the energy intensiveness of activities carried out in the Federal building or collection of Federal buildings; or

"(ii) the fact that the Federal building or collection of Federal buildings is used in the performance of a national security function.".

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

(1) by striking "impracticability standards" and inserting "standards for exclusion"; and

(2) by striking "a finding of impracticability" and inserting "the exclusion".

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

"(3) Not later than 180 days after the date of enactment of this paragraph, the Secretary shall issue guidelines that establish criteria for exclusions under paragraph (1).".

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

"(e) RETENTION OF ENERGY SAVINGS.—An agency may retain any funds appropriated to that agency for energy expenditures, at buildings subject to the requirements of section 543(a) and (b), that are not made because of energy savings. Except as otherwise provided by law, such funds may be used only for energy efficiency or unconventional and renewable energy resources projects.".

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

(1) in the subsection heading, by inserting "THE PRESIDENT AND" before "CONGRESS"; and

(2) by inserting "President and" before "Congress".

(h) CONFORMING AMENDMENT.—Section 550(d) of the National Energy Conservation Policy Act (42 U.S.C. 8258b(d)) is amended in the second sentence by striking "the 20 percent reduction goal established under section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a))." and inserting "each of the energy reduction goals established under section 543(a).".

SEC. 1003. ENERGY USE MEASUREMENT AND ACCOUNTABILITY.

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

"(e) METERING OF ENERGY USE.—

"(1) DEADLINE.—By October 1, 2010, in accordance with guidelines established by the Secretary under paragraph (2), all Federal buildings shall, for the purposes of efficient use of energy and reduction in the cost of electricity used in such buildings, be metered or submetered. Each agency shall use, to the maximum extent practicable, advanced meters or advanced metering devices that provide data at least daily and that measure at least hourly consumption of electricity in the Federal buildings of the agency. Such data shall be incorporated into existing Federal energy tracking systems and made available to Federal facility energy managers.

"(2) GUIDELINES.—

"(A) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary, in consultation with the Department of Defense, the General Services Administration, representatives from the metering industry, utility industry, energy services industry, energy efficiency industry, national laboratories, universities, and Federal facility energy managers, shall establish guidelines for agencies to carry out paragraph (1).

"(B) REQUIREMENTS FOR GUIDELINES.—The guidelines shall—

"(i) take into consideration—

"(I) the cost of metering and submetering and the reduced cost of operation and maintenance expected to result from metering and submetering;

"(II) the extent to which metering and submetering are expected to result in increased potential for energy management, increased potential for energy savings and energy efficiency improvement, and cost and energy savings due to utility contract aggregation; and

"(III) the measurement and verification protocols of the Department of Energy;

"(ii) include recommendations concerning the amount of funds and the number of trained personnel necessary to gather and use the metering information to track and reduce energy use;

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

"(iv) establish exclusions from the requirements specified in paragraph (1) based on the de minimis quantity of energy use of a Federal building, industrial process, or structure.

"(3) PLAN.—No later than 6 months after the date guidelines are established under paragraph (2), in a report submitted by the agency under section 548(a), each agency shall submit to the Secretary a plan describing how the agency will implement the requirements of paragraph (1), including (A) how the agency will designate personnel primarily responsible for achieving the requirements and (B) demonstration by the agency, complete with documentation, of any finding

that advanced meters or advanced metering devices, as defined in paragraph (1), are not practicable.".

SEC. 1004. FEDERAL BUILDING PERFORMANCE STANDARDS.

Section 305(a) of the Energy Conservation and Production Act (42 U.S.C. 6834(a)) is amended—

(1) in paragraph (2)(A), by striking "CABO Model Energy Code, 1992" and inserting "the 2000 International Energy Conservation Code"; and

(2) by adding at the end the following:

"(3) REVISED FEDERAL BUILDING ENERGY EFFICIENCY PERFORMANCE STANDARDS.—

"(A) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Secretary of Energy shall establish, by rule, revised Federal building energy efficiency performance standards that require that, if cost-effective, for new Federal buildings—

"(i) such buildings be designed so as to achieve energy consumption levels at least 30 percent below those of the most recent ASHRAE Standard 90.1 or the most recent version of the International Energy Conservation Code, as appropriate; and

"(ii) sustainable design principles are applied to the siting, design, and construction of all new and replacement buildings.

"(B) ADDITIONAL REVISIONS.—Not later than 1 year after the date of approval of amendments to ASHRAE Standard 90.1 or the 2000 International Energy Conservation Code, the Secretary of Energy shall determine, based on the cost-effectiveness of the requirements under the amendments, whether the revised standards established under this paragraph should be updated to reflect the amendments.

"(C) STATEMENT ON COMPLIANCE OF NEW BUILDINGS.—In the budget request of the Federal agency for each fiscal year and each report submitted by the Federal agency under section 548(a) of the National Energy Conservation Policy Act (42 U.S.C. 8258(a)), the head of each Federal agency shall include—

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

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

SEC. 1005. PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

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

"SEC. 553. FEDERAL PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

"(a) DEFINITIONS.—In this section:

"(1) ENERGY STAR PRODUCT.—The term 'Energy Star product' means a product that is rated for energy efficiency under an Energy Star program.

"(2) ENERGY STAR PROGRAM.—The term 'Energy Star program' means the program established by section 324A of the Energy Policy and Conservation Act.

"(3) EXECUTIVE AGENCY.—The term 'executive agency' has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

"(4) FEMP DESIGNATED PRODUCT.—The term 'FEMP designated product' means a product that is designated under the Federal Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

"(b) PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.—

"(1) REQUIREMENT.—To meet the requirements of an executive agency for an energy consuming product, the head of the executive agency shall, except as provided in paragraph (2), procure—

"(A) an Energy Star product; or

"(B) a FEMP designated product.

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

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

"(B) no Energy Star product or FEMP designated product is reasonably available that meets the functional requirements of the executive agency.

"(3) PROCUREMENT PLANNING.—The head of an executive agency shall incorporate into the specifications for all procurements involving energy consuming products and systems, including guide specifications, project specifications, and construction, renovation, and services contracts that include provision of energy

consuming products and systems, and into the factors for the evaluation of offers received for the procurement, criteria for energy efficiency that are consistent with the criteria used for rating Energy Star products and for rating FEMP designated products.

"(c) LISTING OF ENERGY EFFICIENT PRODUCTS IN FEDERAL CATALOGS.—Energy Star products and FEMP designated products shall be clearly identified and prominently displayed in any inventory or listing of products by the General Services Administration or the Defense Logistics Agency. The General Services Administration or the Defense Logistics Agency shall supply only Energy Star products or FEMP designated products for all product categories covered by the Energy Star program or the Federal Energy Management Program, except in cases where the agency ordering a product specifies in writing that no Energy Star product or FEMP designated product is available to meet the buyer's functional requirements, or that no Energy Star product or FEMP designated product is cost-effective for the intended application over the life of the product, taking energy cost savings into account.

"(d) DESIGNATION OF ELECTRIC MOTORS.—In the case of electric motors of 1 to 500 horsepower, agencies shall select only premium efficient motors that meet a standard designated by the Secretary. The Secretary shall designate such a standard within 120 days after the date of the enactment of this section, after considering the recommendations of associated electric motor manufacturers and energy efficiency groups.

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

(b) CONFORMING AMENDMENT.—The table of contents in section 101(b) of the National Energy Conservation Policy Act (42 U.S.C. 8201 note), as amended by section 1001(b) of this Act, is further amended by inserting after the item relating to section 552 the following:

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

SEC. 1006. ENERGY SAVINGS PERFORMANCE CONTRACTS.

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

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

"(3)(A) In the case of an energy savings contract or energy savings performance contract providing for energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities, benefits ancillary to the purpose of such contract under paragraph (1) may include savings resulting from reduced costs of operation and maintenance at such replacement buildings or facilities when compared with costs of operation and maintenance at the buildings or facilities being replaced, established through a methodology set forth in the contract.

"(B) Notwithstanding paragraph (2)(B), aggregate annual payments by an agency under an energy savings contract or energy savings performance contract referred to in subparagraph (A) may take into account (through the procedures developed pursuant to this section) savings resulting from reduced costs of operation and maintenance as described in that subparagraph.".

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

"(2) The term 'energy savings' means—

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

"(i) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

"(ii) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities; or

"(iii) the increased efficient use of existing water sources; or

"(B) in the case of a replacement building or facility described in section 801(a)(3), a reduction in the cost of energy, from a base cost established through a methodology set forth in the contract, that would otherwise be utilized in one or more existing federally owned buildings or other federally owned facilities by reason of the construction and operation of the replacement building or facility.".

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

"(3) The terms 'energy savings contract' and 'energy savings performance contract' mean a contract which provides for—

"(A) the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy or water conservation measure or series of measures at one or more locations; or

"(B) energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities.

Such contracts shall, with respect to an agency facility that is a public building as such term is defined in section 13(1) of the Public Buildings Act of 1959 (40 U.S.C. 3301), be in compliance with the prospectus requirements and procedures of section 7 of the Public Buildings Act of 1959 (40 U.S.C. 3307).".

(e) ENERGY OR WATER CONSERVATION MEASURE.—Section 804(4) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(4)) is amended to read as follows:

"(4) The term 'energy or water conservation measure' means—

"(A) an energy conservation measure, as defined in section 551(4) (42 U.S.C. 8259(4)); or

"(B) a water conservation measure that improves water efficiency, is life cycle cost-effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities, or other related activities, not at a Federal hydroelectric facility.".

(f) REVIEW.—Within 180 days after the date of the enactment of this section, the Secretary of Energy shall complete a review of the Energy Savings Performance Contract program to identify statutory, regulatory, and administrative obstacles that prevent Federal agencies from fully utilizing the program. In addition, this review shall identify all areas for increasing program flexibility and effectiveness, including audit and measurement verification requirements, accounting for energy use in determining savings, contracting requirements, and energy efficiency services covered. The Secretary shall report these findings to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, and shall implement identified administrative and regulatory changes to increase program flexibility and effectiveness to the extent that such changes are consistent with statutory authority.

SEC. 1007. VOLUNTARY COMMITMENTS TO REDUCE INDUSTRIAL ENERGY INTENSITY.

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

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

(c) RECOGNITION.—The Secretary of Energy, in cooperation with the Administrator of the Environmental Protection Agency and other appropriate Federal agencies, shall develop mechanisms to recognize and publicize the achievements of participants in voluntary agreements under this section.

(d) DEFINITION.—In this section, the term "energy intensity" means the primary energy consumed per unit of physical output in an industrial process.

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

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

SEC. 1008. FEDERAL AGENCY PARTICIPATION IN DEMAND REDUCTION PROGRAMS.

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

"(6) Federal agencies are encouraged to participate in State or regional demand side reduction programs. The availability of such programs, including measures employing onsite generation, and the savings resulting from such participation, should be included in the evaluation of energy options for Federal facilities.".

SEC. 1009. ADVANCED BUILDING EFFICIENCY TESTBED.

(a) ESTABLISHMENT.—The Secretary of Energy, in consultation with the Administrator of the General Services Administration, shall establish an Advanced Building Efficiency Testbed program for the development, testing, and demonstration of advanced engineering systems, components, and materials to enable innovations in building technologies. The program shall evaluate efficiency concepts for government and industry buildings, and demonstrate the ability of next generation buildings to support individual and organizational productivity and health as well as flexibility and technological change to improve environmental sustainability. Such program shall complement and not duplicate existing national programs.

(b) PARTICIPANTS.—The program established under subsection (a) shall be led by a university with the ability to combine the expertise from numerous academic fields including, at a minimum, intelligent workplaces and advanced building systems and engineering, electrical and computer engineering, computer science, architecture, urban design, and environmental and mechanical engineering. Such university shall partner with other universities and entities who have established programs and the capability of advancing innovative building efficiency technologies.

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

SEC. 1010. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

(a) AMENDMENT.—Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) is amended by adding at the end the following new section:

"INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE

"SEC. 6005. (a) DEFINITIONS.—In this section:

"(1) AGENCY HEAD.—The term 'agency head' means—

"(A) the Secretary of Transportation; and

"(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

"(2) CEMENT OR CONCRETE PROJECT.—The term 'cement or concrete project' means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

"(A) involves the procurement of cement or concrete; and

"(B) is carried out in whole or in part using Federal funds.

"(3) RECOVERED MINERAL COMPONENT.—The term 'recovered mineral component' means—

"(A) ground granulated blast furnace slag;

"(B) coal combustion fly ash; and

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

"(b) IMPLEMENTATION OF REQUIREMENTS.—

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this section (including guidelines under section 6002) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

"(2) PRIORITY.—In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

"(3) CONFORMANCE.—The Administrator and each agency head shall carry out this subsection in accordance with section 6002.

"(c) FULL IMPLEMENTATION STUDY.—

"(1) IN GENERAL.—The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine

the extent to which current procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

"(2) MATTERS TO BE ADDRESSED.—The study shall—

"(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution;

"(B) identify all barriers in procurement requirements to fuller realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

"(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

"(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

"(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

"(3) REPORT.—Not later than 30 months after the date of enactment of this section, the Administrator shall submit to the Committee on Appropriations and Committee on Environment and Public Works of the Senate and the Committee on Appropriations, Committee on Energy and Commerce, and Committee on Transportation and Infrastructure of the House of Representatives a report on the study.

"(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, within 1 year of the release of the report in accordance with subsection (c)(3), take additional actions authorized under this Act to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—

"(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and

"(2) eliminate barriers identified under subsection (c).

"(e) EFFECT OF SECTION.—Nothing in this section affects the requirements of section 6002 (including the guidelines and specifications for implementing those requirements).".

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

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

Subtitle B—Energy Assistance and State Programs

SEC. 1021. LIHEAP AND WEATHERIZATION ASSISTANCE.

(a) LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM.—Section 2602(b) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621(b)) is amended by striking "each of fiscal years 2002 through 2004" and inserting "each of fiscal years 2002 and 2003, and $3,400,000,000 for each of fiscal years 2004 through 2006".

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

(c) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall transmit to the Congress a report on how the Low-Income Home Energy Assistance Program could be used more effectively to prevent loss of life from extreme temperatures. In preparing

such report, the Secretary shall consult with appropriate officials in all 50 States and the District of Columbia.

SEC. 1022. STATE ENERGY PROGRAMS.

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

"(g) The Secretary shall, at least once every 3 years, invite the Governor of each State to review and, if necessary, revise the energy conservation plan of such State submitted under subsection (b) or (e). Such reviews should consider the energy conservation plans of other States within the region, and identify opportunities and actions carried out in pursuit of common energy conservation goals.".

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

"STATE ENERGY EFFICIENCY GOALS

"SEC. 364. Each State energy conservation plan with respect to which assistance is made available under this part on or after the date of enactment of the Energy Policy Act of 2003 shall contain a goal, consisting of an improvement of 25 percent or more in the efficiency of use of energy in the State concerned in calendar year 2010 as compared to calendar year 1990, and may contain interim goals.".

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

SEC. 1023. ENERGY EFFICIENT APPLIANCE REBATE PROGRAMS.

(a) DEFINITIONS.—In this section:

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

(2) ENERGY STAR PROGRAM.—The term "Energy Star program" means the program established by section 324A of the Energy Policy and Conservation Act.

(3) RESIDENTIAL ENERGY STAR PRODUCT.—The term "residential Energy Star product" means a product for a residence that is rated for energy efficiency under the Energy Star program.

(4) STATE ENERGY OFFICE.—The term "State energy office" means the State agency responsible for developing State energy conservation plans under section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322).

(5) STATE PROGRAM.—The term "State program" means a State energy efficient appliance rebate program described in subsection (b)(1).

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

(1) establishes (or has established) a State energy efficient appliance rebate program to provide rebates to residential consumers for the purchase of residential Energy Star products to replace used appliances of the same type;

(2) submits an application for the allocation at such time, in such form, and containing such information as the Secretary may require; and

(3) provides assurances satisfactory to the Secretary that the State will use the allocation to supplement, but not supplant, funds made available to carry out the State program.

(c) AMOUNT OF ALLOCATIONS.—

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

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

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

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

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

(2) the amount of any Federal or State tax incentive available for the purchase of the residential Energy Star product; and

(3) the difference between the cost of the residential Energy Star product and the cost of an appliance that is not a residential Energy Star product, but is of the same type as, and is the nearest capacity, performance, and other relevant characteristics (as determined by the State energy office) to the residential Energy Star product.

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

SEC. 1024. ENERGY EFFICIENT PUBLIC BUILDINGS.

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

(1) through construction of new energy efficient public buildings that use at least 30 percent less energy than a comparable public building constructed in compliance with standards prescribed in chapter 8 of the 2000 International Energy Conservation Code, or a similar State code intended to achieve substantially equivalent efficiency levels; or

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

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

(1) maintain such records and evidence of compliance as the Secretary may require; and

(2) develop and distribute information and materials and conduct programs to provide technical services and assistance to encourage planning, financing, and design of energy efficient public buildings by units of local government.

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

SEC. 1025. LOW INCOME COMMUNITY ENERGY EFFICIENCY PILOT PROGRAM.

(a) GRANTS.—The Secretary of Energy is authorized to make grants to units of local government, private, non-profit community development organizations, and Indian tribe economic development entities to improve energy efficiency, identify and develop alternative renewable and distributed energy supplies, and increase energy conservation in low income rural and urban communities.

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

(1) investments that develop alternative renewable and distributed energy supplies;

(2) energy efficiency projects and energy conservation programs;

(3) studies and other activities that improve energy efficiency in low income rural and urban communities;

(4) planning and development assistance for increasing the energy efficiency of buildings and facilities; and

(5) technical and financial assistance to local government and private entities on developing new renewable and distributed sources of power or combined heat and power generation.

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

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section there are authorized to be appropriated to the Secretary of Energy $20,000,000 for fiscal year 2004 and each fiscal year thereafter through fiscal year 2006.

Subtitle C—Energy Efficient Products

SEC. 1041. ENERGY STAR PROGRAM.

(a) AMENDMENT.—The Energy Policy and Conservation Act (42 U.S.C. 6201 and following) is amended by inserting the following after section 324:

"SEC. 324A. ENERGY STAR PROGRAM.

"There is established at the Department of Energy and the Environmental Protection Agency a program to identify and promote energy-efficient products and buildings in order to reduce energy consumption, improve energy security, and reduce pollution through labeling of and other forms of communication about products and buildings that meet the highest energy efficiency standards. Responsibilities under the program shall be divided between the Department of Energy and the Environmental Protection Agency consistent with the terms of agreements between the two agencies. The Administrator and the Secretary shall—

"(1) promote Energy Star compliant technologies as the preferred technologies in the marketplace for achieving energy efficiency and to reduce pollution;

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

"(3) preserve the integrity of the Energy Star label; and

"(4) solicit the comments of interested parties in establishing a new Energy Star product category or in revising a product category, and upon adoption of a new or revised product category provide an explanation of the decision that responds to significant public comments.".

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

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

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

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

"(c) HVAC MAINTENANCE.—(1) For the purpose of ensuring that installed air conditioning and heating systems operate at their maximum rated efficiency levels, the Secretary shall, within 180 days of the date of enactment of this subsection, carry out a program to educate homeowners and small business owners concerning the energy savings resulting from properly conducted maintenance of air conditioning, heating, and ventilating systems.

"(2) The Secretary shall carry out the program in cooperation with the Administrator of the Environmental Protection Agency and such other entities as the Secretary considers appropriate, including industry trade associations, industry members, and energy efficiency organizations.

"(d) SMALL BUSINESS EDUCATION AND ASSISTANCE.—The Administrator of the Small Business Administration, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall develop and coordinate a Government-wide program, building on the existing Energy Star for Small Business Program, to assist small business to become more energy efficient, understand the cost savings obtainable through efficiencies, and identify financing options for energy efficiency upgrades. The Secretary and the Administrator shall make the program information available directly to small businesses and through other Federal agencies, including the Federal Emergency Management Agency, and the Department of Agriculture.".

SEC. 1043. ADDITIONAL DEFINITIONS.

Section 321 of the Energy Policy and Conservation Act (42 U.S.C. 6291) is amended by adding at the end the following:

"(32) The term 'battery charger' means a device that charges batteries for consumer products.

"(33) The term 'commercial refrigerator, freezer and refrigerator-freezer' means a refrigerator, freezer or refrigerator-freezer that—

"(A) is not a consumer product regulated under this Act; and

"(B) incorporates most components involved in the vapor-compression cycle and the refrigerated compartment in a single package.

"(34) The term 'external power supply' means an external power supply circuit that is used to convert household electric current into either DC current or lower-voltage AC current to operate a consumer product.

"(35) The term 'illuminated exit sign' means a sign that—

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

"(B) consists of—

"(i) an electrically powered integral light source that illuminates the legend 'EXIT' and any directional indicators; and

"(ii) provides contrast between the legend, any directional indicators, and the background.

"(36)(A) Except as provided in subparagraph (B), the term 'low-voltage dry-type transformer' means a transformer that—

"(i) has an input voltage of 600 volts or less;

"(ii) is air-cooled;

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

"(iv) is rated for operation at a frequency of 60 Hertz.

"(B) The term 'low-voltage dry-type transformer' does not include—

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

"(ii) transformers that are designed to be used in a special purpose application, such as transformers commonly known as drive transformers, rectifier transformers, autotransformers, Uninterruptible Power System transformers, impedance transformers, harmonic transformers, regulating transformers, sealed and nonventilating transformers, machine tool transformers, welding transformers, grounding transformers, or testing transformers; or

"(iii) any transformer not listed in clause (ii) that is excluded by the Secretary by rule because the transformer is designed for a special application and the application of standards to the transformer would not result in significant energy savings.

"(37) The term 'standby mode' means the lowest amount of electric power used by a household appliance when not performing its active functions, as defined on an individual product basis by the Secretary.

"(38) The term 'torchiere' means a portable electric lamp with a reflector bowl that directs light upward so as to give indirect illumination.

"(39) The term 'transformer' means a device consisting of two or more coils of insulated wire that transfers alternating current by electromagnetic induction from one coil to another to change the original voltage or current value.

"(40) The term 'unit heater' means a self-contained fan-type heater designed to be installed within the heated space, except that such term does not include a warm air furnace.

"(41) The term 'traffic signal module' means a standard 8-inch (200mm) or 12-inch (300mm) traffic signal indication, consisting of a light source, a lens, and all other parts necessary for operation, that communicates movement messages to drivers through red, amber, and green colors.".

SEC. 1044. ADDITIONAL TEST PROCEDURES.

(a) EXIT SIGNS.—Section 323(b) of the Energy Policy and Conservation Act (42 U.S.C. 6293) is amended by adding at the end the following:

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

"(10) Test procedures for low voltage dry-type distribution transformers shall be based on the 'Standard Test Method for Measuring the Energy Consumption of Distribution Transformers' prescribed by the National Electrical Manufacturers Association (NEMA TP 2–1998). The Secretary may review and revise this test procedure based on future revisions to such standard test method.

"(11) Test procedures for traffic signal modules shall be based on the test method used under the Energy Star program of the Environmental Protection Agency for traffic signal modules, as in effect on the date of enactment of this paragraph.".

(b) ADDITIONAL CONSUMER AND COMMERCIAL PRODUCTS.—Section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293) is further amended by adding at the end the following:

"(f) ADDITIONAL CONSUMER AND COMMERCIAL PRODUCTS.—The Secretary shall within 24 months after the date of enactment of this subsection prescribe testing requirements for suspended ceiling fans, refrigerated bottled or canned beverage vending machines, commercial unit heaters, and commercial refrigerators, freezers and refrigerator-freezers. Such testing requirements shall be based on existing test procedures used in industry to the extent practical and reasonable. In the case of suspended ceiling fans, such test procedures shall include efficiency at both maximum output and at an output no more than 50 percent of the maximum output.".

SEC. 1045. ENERGY CONSERVATION STANDARDS FOR ADDITIONAL CONSUMER AND COMMERCIAL PRODUCTS.

Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295) is amended by adding at the end the following:

"(u) STANDBY MODE ELECTRIC ENERGY CONSUMPTION.—

"(1) INITIAL RULEMAKING.—(A) The Secretary shall, within 18 months after the date of enactment of this subsection, prescribe by notice and comment, definitions of standby mode and test procedures for the standby mode power use of battery chargers and external power supplies. In establishing these test procedures, the Secretary shall consider, among other factors, existing test procedures used for measuring energy consumption in standby mode and assess the current and projected future market for battery chargers and external power supplies. This assessment shall include estimates of the significance of potential energy savings from technical improvements to these products and suggested product classes for standards. Prior to the end of this time period, the Secretary shall hold a scoping workshop to discuss and receive comments on plans for developing energy conservation standards for standby mode energy use for these products.

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

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

"(ii) will result in significant overall annual energy savings, considering both standby mode and other operating modes.

"(2) DESIGNATION OF ADDITIONAL COVERED PRODUCTS.—(A) Not later than 180 days after the date of enactment of this subsection, the Secretary shall publish for public comment and public hearing a notice to determine whether any non-covered products should be designated as covered products for the purpose of instituting a rulemaking under this section to determine whether an energy conservation standard restricting standby mode energy consumption, should be promulgated; except that any restriction on standby mode energy consumption shall be limited to major sources of such consumption.

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

"(i) standby mode power consumption compared to overall product energy consumption; and

"(ii) the priority and energy savings potential of standards which may be promulgated under this subsection compared to other required rulemakings under this section and the available resources of the Department to conduct such rulemakings.

"(C) Not later than 1 year after the date of enactment of this subsection, the Secretary shall issue a determination of any new covered products for which he intends to institute rulemakings on standby mode pursuant to this section and he shall state the dates by which he intends to initiate those rulemakings.

"(3) REVIEW OF STANDBY ENERGY USE IN COVERED PRODUCTS.—In determining pursuant to section 323 whether test procedures and energy conservation standards pursuant to this section should be revised, the Secretary shall consider for covered products which are major sources of standby mode energy consumption whether to incorporate standby mode into such test procedures and energy conservation standards, taking into account, among other relevant factors, the criteria for non-covered products in subparagraph (B) of paragraph (2) of this subsection.

"(4) RULEMAKING FOR STANDBY MODE.—(A) Any rulemaking instituted under this subsection or for covered products under this section which restricts standby mode power consumption shall be subject to the criteria and procedures for issuing energy conservation standards set forth in this section and the criteria set forth in subparagraph (B) of paragraph (2) of this subsection.

"(B) No standard can be proposed for new covered products or covered products in a standby mode unless the Secretary has promulgated applicable test procedures for each product pursuant to section 323.

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

"(5) EFFECTIVE DATE.—Any standard promulgated under this subsection shall be applicable to products manufactured or imported 3 years after the date of promulgation.

"(6) VOLUNTARY PROGRAMS TO REDUCE STANDBY MODE ENERGY USE.—The Secretary and the Administrator shall collaborate and develop programs, including programs pursuant to section 324A (relating to Energy Star Programs) and other voluntary industry agreements or codes of conduct, which are designed to reduce standby mode energy use.

"(v) SUSPENDED CEILING FANS, VENDING MACHINES, UNIT HEATERS, AND COMMERCIAL REFRIGERATORS, FREEZERS AND REFRIGERATOR-FREEZERS.—The Secretary shall within 24 months after the date on which testing requirements are prescribed by the Secretary pursuant to section 323(f), prescribe, by rule, energy conservation standards for suspended ceiling fans, refrigerated bottled or canned beverage vending machines, unit heaters, and commercial refrigerators, freezers and refrigerator-freezers. In establishing standards under this subsection, the Secretary shall use the criteria and procedures contained in subsections (l) and (m). Any standard prescribed under this subsection shall apply to products manufactured 3 years after the date of publication of a final rule establishing such standard.

"(w) ILLUMINATED EXIT SIGNS.—Illuminated exit signs manufactured on or after January 1, 2005 shall meet the Version 2.0 Energy Star Program performance requirements for illuminated exit signs prescribed by the Environmental Protection Agency.

"(x) TORCHIERES.—Torchieres manufactured on or after January 1, 2005—

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

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

"(y) LOW VOLTAGE DRY-TYPE TRANSFORMERS.—The efficiency of low voltage dry-type transformers manufactured on or after January 1, 2005 shall be the Class I Efficiency Levels for low voltage dry-type transformers specified in Table 4–2 of the 'Guide for Determining Energy Efficiency for Distribution Transformers' published by the National Electrical Manufacturers Association (NEMA TP–1–1996).

"(z) TRAFFIC SIGNAL MODULES.—Traffic signal modules manufactured on or after January 1, 2006 shall meet the performance requirements used under the Energy Star program of the Environmental Protection Agency for traffic signals, as in effect on the date of enactment of this paragraph, and shall be installed with compatible, electrically-connected signal control interface devices and conflict monitoring systems.

"(aa) EFFECTIVE DATE OF SECTION 327.—The provisions of section 327 shall apply to products for which standards are set in subsections (v) through (z) of this section after the effective date for such standards.".

SEC. 1046. ENERGY LABELING.

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

"(F) Not later than 3 months after the date of enactment of this subparagraph, the Commission shall initiate a rulemaking to consider the effectiveness of the current consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency and to consider changes to the labeling rules that would improve the effectiveness of consumer product labels. Such rulemaking shall be completed within 2 years after the date of enactment of this subparagraph.".

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

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

SEC. 1047. STUDY OF ENERGY EFFICIENCY STANDARDS.

The Secretary of Energy shall contract with the National Academy of Sciences for a study, to be completed within 1 year of enactment of this Act, to examine whether the goals of energy efficiency standards are best served by measurement of energy consumed, and efficiency improvements, at the actual site of energy consumption, or through the full fuel cycle, beginning at the source of energy production. The Secretary shall submit the report to the Congress.

TITLE II—OIL AND GAS

Subtitle A—Alaska Natural Gas Pipeline

SEC. 2001. SHORT TITLE.

This subtitle may be cited as the "Alaska Natural Gas Pipeline Act of 2003".

SEC. 2002. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Construction of a natural gas pipeline system from the Alaskan North Slope to United States markets is in the national interest and will enhance national energy security by providing access to the significant gas reserves in Alaska needed to meet the anticipated demand for natural gas.

(2) The Commission issued a conditional certificate of public convenience and necessity for the Alaska natural gas transportation system, which remains in effect.

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

(1) To provide a statutory framework for the expedited approval, construction, and initial operation of an Alaska natural gas transportation project, as an alternative to the framework provided in the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), which remains in effect.

(2) To establish a process for providing access to such transportation project in order to promote competition in the exploration, development, and production of Alaska natural gas.

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

SEC. 2003. DEFINITIONS.

In this subtitle, the following definitions apply:

(1) ALASKA NATURAL GAS.—The term "Alaska natural gas" means natural gas derived from the area of the State of Alaska lying north of 64 degrees North latitude.

(2) ALASKA NATURAL GAS TRANSPORTATION PROJECT.—The term "Alaska natural gas transportation project" means any natural gas pipeline system that carries Alaska natural gas to the border between Alaska and Canada (including related facilities subject to the jurisdiction of the Commission) that is authorized under either—

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

(B) section 2004.

(3) ALASKA NATURAL GAS TRANSPORTATION SYSTEM.—The term "Alaska natural gas transportation system" means the Alaska natural gas transportation project authorized under the Alaska Natural Gas Transportation Act of 1976 and designated and described in section 2 of the President's decision.

(4) COMMISSION.—The term "Commission" means the Federal Energy Regulatory Commission.

(5) PRESIDENT'S DECISION.—The term "President's decision" means the decision and report to Congress on the Alaska natural gas transportation system issued by the President on September 22, 1977, pursuant to section 7 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719e) and approved by Public Law 95–158 (91 Stat. 1268).

SEC. 2004. ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

(a) AUTHORITY OF THE COMMISSION.—Notwithstanding the provisions of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), the Commission may, pursuant to section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)), consider and act on an application for the issuance of a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project other than the Alaska natural gas transportation system.

(b) ISSUANCE OF CERTIFICATE.—

(1) IN GENERAL.—The Commission shall issue a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project under this section if the applicant has satisfied the requirements of section 7(e) of the Natural Gas Act (15 U.S.C. 717f(e)).

(2) CONSIDERATIONS.—In considering an application under this section, the Commission shall presume that—

(A) a public need exists to construct and operate the proposed Alaska natural gas transportation project; and

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

(c) EXPEDITED APPROVAL PROCESS.—The Commission shall issue a final order granting or denying any application for a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) and this section not more than 60 days after the issuance of the final environmental impact statement for that project pursuant to section 2005.

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

(1) the submerged lands (as defined by the Submerged Lands Act) beneath, or the adjacent shoreline of, the Beaufort Sea; and

(2) enters Canada at any point north of 68 degrees North latitude.

(e) OPEN SEASON.—Except where an expansion is ordered pursuant to section 2006, initial or expansion capacity on any Alaska natural gas transportation project shall be allocated in accordance with procedures to be established by the Commission in regulations governing the conduct of open seasons for such project. Such procedures shall include the criteria for and timing of any open seasons, be consistent with the purposes set forth in section 2002(b)(2), and, for any open season for capacity beyond the initial capacity, provide the opportunity for the transportation of natural gas other than from the Prudhoe Bay and Point Thompson units. The Commission shall issue such regulations not later than 120 days after the date of enactment of this Act.

(f) PROJECTS IN THE CONTIGUOUS UNITED STATES.—Applications for additional or expanded pipeline facilities that may be required to transport Alaska natural gas from Canada to markets in the contiguous United States may be made pursuant to the Natural Gas Act. To the extent such pipeline facilities include the expansion of any facility constructed pursuant to the Alaska Natural Gas Transportation Act of 1976, the provisions of that Act shall continue to apply.

(g) STUDY OF IN-STATE NEEDS.—The holder of the certificate of public convenience and necessity issued, modified, or amended by the Commission for an Alaska natural gas transportation project shall demonstrate that it has conducted a study of Alaska in-State needs, including tie-in points along the Alaska natural gas transportation project for in-State access.

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

(i) REGULATIONS.—The Commission may issue regulations to carry out the provisions of this section.

SEC. 2005. ENVIRONMENTAL REVIEWS.

(a) COMPLIANCE WITH NEPA.—The issuance of a certificate of public convenience and necessity authorizing the construction and operation of any Alaska natural gas transportation project under section 2004 shall be treated as a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(b) DESIGNATION OF LEAD AGENCY.—The Commission shall be the lead agency for purposes of complying with the National Environmental Policy Act of 1969, and shall be responsible for preparing the statement required by section 102(2)(c) of that Act (42 U.S.C. 4332(2)(c)) with respect to an Alaska natural gas transportation project under section 2004. The Commission shall prepare a single environmental statement under this section, which shall consolidate the environmental reviews of all Federal agencies considering any aspect of the project.

(c) OTHER AGENCIES.—All Federal agencies considering aspects of the construction and operation of an Alaska natural gas transportation project under section 2004 shall cooperate with the Commission, and shall comply with deadlines established by the Commission in the preparation of the statement under this section. The statement prepared under this section shall be used by all such agencies to satisfy their responsibilities under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) with respect to such project.

(d) EXPEDITED PROCESS.—The Commission shall issue a draft statement under this section not later than 12 months after the Commission determines the applica-

tion to be complete and shall issue the final statement not later than 6 months after the Commission issues the draft statement, unless the Commission for good cause finds that additional time is needed.

SEC. 2006. PIPELINE EXPANSION.

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

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

(1) approve or establish rates for the expansion service that are designed to ensure the recovery, on an incremental or rolled-in basis, of the cost associated with the expansion (including a reasonable rate of return on investment);

(2) ensure that the rates as established do not require existing shippers on the Alaska natural gas transportation project to subsidize expansion shippers;

(3) find that the proposed shipper will comply with, and the proposed expansion and the expansion of service will be undertaken and implemented based on, terms and conditions consistent with the then-effective tariff of the Alaska natural gas transportation project;

(4) find that the proposed facilities will not adversely affect the financial or economic viability of the Alaska natural gas transportation project;

(5) find that the proposed facilities will not adversely affect the overall operations of the Alaska natural gas transportation project;

(6) find that the proposed facilities will not diminish the contract rights of existing shippers to previously subscribed certificated capacity;

(7) ensure that all necessary environmental reviews have been completed; and

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

(c) REQUIREMENT FOR A FIRM TRANSPORTATION AGREEMENT.—Any order of the Commission issued pursuant to this section shall be null and void unless the person or persons requesting the order executes a firm transportation agreement with the Alaska natural gas transportation project within a reasonable period of time as specified in such order.

(d) LIMITATION.—Nothing in this section shall be construed to expand or otherwise affect any authorities of the Commission with respect to any natural gas pipeline located outside the State of Alaska.

(e) REGULATIONS.—The Commission may issue regulations to carry out the provisions of this section.

SEC. 2007. FEDERAL COORDINATOR.

(a) ESTABLISHMENT.—There is established, as an independent office in the executive branch, the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects.

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

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

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

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

(c) DUTIES.—The Federal Coordinator shall be responsible for—

(1) coordinating the expeditious discharge of all activities by Federal agencies with respect to an Alaska natural gas transportation project; and

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

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

(1) EXPEDITED REVIEWS AND ACTIONS.—All reviews conducted and actions taken by any Federal officer or agency relating to an Alaska natural gas transportation project authorized under this section shall be expedited, in a manner consistent with completion of the necessary reviews and approvals by the deadlines set forth in this subtitle.

(2) PROHIBITION ON CERTAIN TERMS AND CONDITIONS.—Except with respect to Commission actions under sections 2004, 2005, and 2006, no Federal officer or agency shall have the authority to include terms and conditions that are permitted, but not required, by law on any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project if the Federal Coordinator determines that the terms and conditions would prevent or impair in any significant respect the expeditious construction and operation of the project.

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

(e) STATE COORDINATION.—The Federal Coordinator shall enter into a Joint Surveillance and Monitoring Agreement, approved by the President and the Governor of Alaska, with the State of Alaska similar to that in effect during construction of the Trans-Alaska Oil Pipeline to monitor the construction of the Alaska natural gas transportation project. The Federal Government shall have primary surveillance and monitoring responsibility where the Alaska natural gas transportation project crosses Federal lands and private lands, and the State government shall have primary surveillance and monitoring responsibility where the Alaska natural gas transportation project crosses State lands.

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

SEC. 2008. JUDICIAL REVIEW.

(a) EXCLUSIVE JURISDICTION.—Except for review by the Supreme Court of the United States on writ of certiorari, the United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction to determine—

(1) the validity of any final order or action (including a failure to act) of any Federal agency or officer under this subtitle;

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

(3) the adequacy of any environmental impact statement prepared under the National Environmental Policy Act of 1969 with respect to any action under this subtitle.

(b) DEADLINE FOR FILING CLAIM.—Claims arising under this subtitle may be brought not later than 60 days after the date of the decision or action giving rise to the claim.

(c) EXPEDITED CONSIDERATION.—The United States Court of Appeals for the District of Columbia Circuit shall set any action brought under subsection (a) for expedited consideration, taking into account the national interest as described in section 2002(a).

(d) AMENDMENT TO ANGTA.—Section 10(c) of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719h) is amended by inserting after paragraph (1) the following:

"(2) The United States Court of Appeals for the District of Columbia Circuit shall set any action brought under this section for expedited consideration, taking into account the national interest described in section 2.".

SEC. 2009. STATE JURISDICTION OVER IN-STATE DELIVERY OF NATURAL GAS.

(a) LOCAL DISTRIBUTION.—Any facility receiving natural gas from the Alaska natural gas transportation project for delivery to consumers within the State of Alaska shall be deemed to be a local distribution facility within the meaning of section 1(b) of the Natural Gas Act (15 U.S.C. 717(b)), and therefore not subject to the jurisdiction of the Commission.

(b) ADDITIONAL PIPELINES.—Nothing in this subtitle, except as provided in section 2004(d), shall preclude or affect a future gas pipeline that may be constructed to deliver natural gas to Fairbanks, Anchorage, Matanuska-Susitna Valley, or the Kenai peninsula or Valdez or any other site in the State of Alaska for consumption within or distribution outside the State of Alaska.

(c) RATE COORDINATION.—Pursuant to the Natural Gas Act, the Commission shall establish rates for the transportation of natural gas on the Alaska natural gas transportation project. In exercising such authority, the Commission, pursuant to section 17(b) of the Natural Gas Act (15 U.S.C. 717p(b)), shall confer with the State of Alaska regarding rates (including rate settlements) applicable to natural gas transported on and delivered from the Alaska natural gas transportation project for use within the State of Alaska.

SEC. 2010. STUDY OF ALTERNATIVE MEANS OF CONSTRUCTION.

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

(b) SCOPE OF STUDY.—The study shall consider the feasibility of establishing a Government corporation to construct an Alaska natural gas transportation project, and alternative means of providing Federal financing and ownership (including alternative combinations of Government and private corporate ownership) of the project.

(c) CONSULTATION.—In conducting the study, the Secretary of Energy shall consult with the Secretary of the Treasury and the Secretary of the Army (acting through the Commanding General of the Corps of Engineers).

(d) REPORT.—If the Secretary of Energy is required to conduct a study under subsection (a), the Secretary shall submit a report containing the results of the study, the Secretary's recommendations, and any proposals for legislation to implement the Secretary's recommendations to Congress.

SEC. 2011. CLARIFICATION OF ANGTA STATUS AND AUTHORITIES.

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

(b) CLARIFICATION OF AUTHORITY TO AMEND TERMS AND CONDITIONS TO MEET CURRENT PROJECT REQUIREMENTS.—Any Federal officer or agency responsible for granting or issuing any certificate, permit, right-of-way, lease, or other authorization under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) may add to, amend, or abrogate any term or condition included in such certificate, permit, right-of-way, lease, or other authorization to meet current project requirements (including the physical design, facilities, and tariff specifications), so long as such action does not compel a change in the basic nature and general route of the Alaska natural gas transportation system as designated and described in section 2 of the President's decision, or would otherwise prevent or impair in any significant respect the expeditious construction and initial operation of such transportation system.

(c) UPDATED ENVIRONMENTAL REVIEWS.—The Secretary of Energy shall require the sponsor of the Alaska natural gas transportation system to submit such updated environmental data, reports, permits, and impact analyses as the Secretary determines are necessary to develop detailed terms, conditions, and compliance plans required by section 5 of the President's decision.

SEC. 2012. SENSE OF CONGRESS.

It is the sense of Congress that an Alaska natural gas transportation project will provide significant economic benefits to the United States and Canada. In order to maximize those benefits, Congress urges the sponsors of the pipeline project to make every effort to use steel that is manufactured or produced in North America and to negotiate a project labor agreement to expedite construction of the pipeline.

SEC. 2013. PARTICIPATION OF SMALL BUSINESS CONCERNS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that an Alaska natural gas transportation project will provide significant economic benefits to the United States and Canada. In order to maximize those benefits, Congress urges the sponsors of the pipeline project to maximize the participation of small business concerns in contracts and subcontracts awarded in carrying out the project.

(b) STUDY.—

(1) IN GENERAL.—The Comptroller General shall conduct a study on the extent to which small business concerns participate in the construction of oil and gas pipelines in the United States.

(2) REPORT.—Not later that 1 year after the date of enactment of this Act, the Comptroller General shall transmit to Congress a report containing the results of the study.

(3) UPDATES.—The Comptroller General shall update the study at least once every 5 years and transmit to Congress a report containing the results of the update.

(4) APPLICABILITY.—After the date of completion of the construction of an Alaska natural gas transportation project, this subsection shall no longer apply.

(c) SMALL BUSINESS CONCERN DEFINED.—In this section, the term "small business concern" has the meaning given such term in section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

SEC. 2014. ALASKA PIPELINE CONSTRUCTION TRAINING PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Labor (in this section referred to as the "Secretary") may make grants to the Alaska Department of Labor and Workforce Development to—

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

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

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

(1) the Governor of Alaska certifies in writing to the Secretary that there is a reasonable expectation that construction of an Alaska gas pipeline will commence within 3 years after the date of such certification; and

(2) the Secretary of the Interior concurs in writing to the Secretary with the certification made under paragraph (1).

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

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

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

(3) the Secretary of the Interior concurs in writing to the Secretary with the certification made under paragraph (2) after considering—

(A) the status of necessary State and Federal permits;

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

(C) other relevant factors and circumstances.

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

Subtitle B—Strategic Petroleum Reserve

SEC. 2101. FULL CAPACITY OF STRATEGIC PETROLEUM RESERVE.

The President shall—

(1) fill the Strategic Petroleum Reserve established pursuant to part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231 et seq.) to full capacity as soon as practicable;

(2) acquire petroleum for the Strategic Petroleum Reserve by the most practicable and cost-effective means, with consideration being given to domestically produced petroleum, including the acquisition of crude oil the United States is entitled to receive in kind as royalties from production on Federal lands; and

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

SEC. 2102. STRATEGIC PETROLEUM RESERVE EXPANSION.

(a) PLAN.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Energy shall transmit to the Congress a plan for the expansion of the Strategic Petroleum Reserve to 1,000,000,000 barrels, including—

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

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

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

(4) a schedule and procedures for site selection; and

(5) anticipated annual budget requests.

(b) CONSTRUCTION OF ADDITIONAL CAPACITY.—The Secretary of Energy shall acquire property and complete construction for the expansion of the Strategic Petroleum Reserve in accordance with the plan transmitted under subsection (a).

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

SEC. 2103. PERMANENT AUTHORITY TO OPERATE THE STRATEGIC PETROLEUM RESERVE AND OTHER ENERGY PROGRAMS.

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

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

"AUTHORIZATION OF APPROPRIATIONS

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

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

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

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

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

"PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS";

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

(3) by striking part D (42 U.S.C. 6285; relating to the expiration of title II of the Act).

(c) TECHNICAL AMENDMENTS.—The table of contents for the Energy Policy and Conservation Act is amended—

(1) by inserting after the items relating to part C of title I the following:

"PART D—NORTHEAST HOME HEATING OIL RESERVE

"Sec. 181. Establishment.
"Sec. 182. Authority.
"Sec. 183. Conditions for release; plan.
"Sec. 184. Northeast Home Heating Oil Reserve Account.
"Sec. 185. Exemptions.";

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

"PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS

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

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

(d) AMENDMENT TO THE ENERGY POLICY AND CONSERVATION ACT.—Section 183(b)(1) of the Energy Policy and Conservation Act (42 U.S.C. 6250b(b)(1)) is amended by inserting "(considered as a heating season average)" after "mid-October through March".

Subtitle C—Hydraulic Fracturing

SEC. 2201. HYDRAULIC FRACTURING.

Paragraph (1) of section 1421(d) of the Safe Drinking Water Act (42 U.S.C. 300h(d)) is amended to read as follows:

"(1) The term 'underground injection'—

"(A) means the subsurface emplacement of fluids by well injection; and

"(B) excludes—

"(i) the underground injection of natural gas for purposes of storage; and

"(ii) the underground injection of fluids or propping agents pursuant to hydraulic fracturing operations related to oil or gas production activities.".

Subtitle D—Unproven Oil and Natural Gas Reserves Recovery Program

SEC. 2301. PROGRAM.

The Secretary shall carry out a program to demonstrate technologies for the recovery of oil and natural gas reserves from reservoirs described in section 2302.

SEC. 2302. ELIGIBLE RESERVOIRS.

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

(1) Complex geology involving rapid changes in the type and quality of the oil reservoir across the reservoir.

(2) Low reservoir pressure.

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

SEC. 2303. FOCUS AREAS.

The program under this subtitle may focus on areas including coal-bed methane, deep drilling, natural gas production from tight sands, natural gas production from gas shales, innovative production techniques (including horizontal drilling, fracture detection methodologies, and three-dimensional seismic), and enhanced recovery techniques.

SEC. 2304. LIMITATION ON LOCATION OF ACTIVITIES.

Activities under this subtitle shall be carried out only—

(1) in—

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

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

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

SEC. 2305. PROGRAM ADMINISTRATION.

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

(b) ROLE OF THE PROGRAM CONSORTIUM.—

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

(A) manage awards pursuant to subsection (e)(4);

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

(C) disburse funds awarded under subsection (e) as directed by the Secretary in accordance with the annual plan under subsection (d); and

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

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

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

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

(ii) to require any board member, officer, or employee with a financial relationship or interest disclosed under clause (i) to recuse himself or herself from any review under subsection (e)(3) or oversight under subsection (e)(4) with respect to such applicant or recipient.

(B) The Secretary may disqualify an application or revoke an award under this section if a board member, officer, or employee has failed to comply with procedures required under subparagraph (A)(ii).

(c) SELECTION OF THE PROGRAM CONSORTIUM.—

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

(2) MEMBERS.—The program consortium may include corporations and institutions of higher education. The Secretary shall give preference in the selection of the program consortium to applicants with broad representation from the various major oil and natural gas basins in the United States. After submitting a proposal under paragraph (4), the program consortium may not add members without the consent of the Secretary.

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

(4) SCHEDULE.—Not later than 90 days after the date of enactment of this Act, the Secretary shall solicit proposals for the creation of the program consortium, which must be submitted not less than 180 days after the date of enactment of this Act. The Secretary shall select the program consortium not later than 240 days after such date of enactment.

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

(A) list all members of the consortium;

(B) fully describe the structure of the consortium, including any provisions relating to intellectual property; and

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

(6) ELIGIBILITY.—To be eligible to be selected as the program consortium, an applicant must be an entity whose members collectively have demonstrated capabilities in planning and managing programs for the production of oil or natural gas.

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

(d) ANNUAL PLAN.—

(1) IN GENERAL.—The program under this subtitle shall be carried out pursuant to an annual plan prepared by the Secretary in accordance with paragraph (2).

(2) DEVELOPMENT.—(A) Before drafting an annual plan under this subsection, the Secretary shall solicit specific written recommendations from the program consortium for each element to be addressed in the plan, including those described in paragraph (4). The Secretary may request that the program consortium submit its recommendations in the form of a draft annual plan.

(B) The Secretary shall submit the recommendations of the program consortium under subparagraph (A) to the Advisory Committee for review, and the Advisory Committee shall provide to the Secretary written comments by a date determined by the Secretary. The Secretary may also solicit comments from any other experts.

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

(3) PUBLICATION.—The Secretary shall transmit to the Congress and publish in the Federal Register the annual plan, along with any written comments received under paragraph (2)(A) and (B). The annual plan shall be transmitted and published not later than 60 days after the date of enactment of an Act making appropriations for a fiscal year for the program under this subtitle.

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

(A) a list of any solicitations for awards that the Secretary plans to issue to carry out activities, including the topics for such work, who would be eligible to apply, selection criteria, and the duration of awards; and

(B) a description of the activities expected of the program consortium to carry out subsection (e)(4).

(e) AWARDS.—

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

(2) PROPOSALS.—

(A) SOLICITATION.—The Secretary shall solicit proposals for awards under this subsection in such manner and at such time as the Secretary may prescribe, in consultation with the program consortium.

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

(i) An estimate of the potential unproven reserves in the reservoir, established by a registered petroleum engineer.

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

(iii) A detailed project plan.

(iv) A detailed analysis of the costs associated with the project.

(v) A time frame for project completion.

(vi) Evidence that any lienholder on the project will subordinate its interests to the extent necessary to ensure that the Federal government receives its portion of any revenues pursuant to section 2308.

(vii) Such other matters as the Secretary considers appropriate.

(3) REVIEW.—The Secretary shall make awards under this subsection through a competitive process, which shall include a review by individuals selected by the Secretary. Such individuals shall include, for each application, Federal officials, the program consortium, and non-Federal experts who are not board members, officers, or employees of the program consortium or of a member of the program consortium.

(4) OVERSIGHT.—(A) The program consortium shall oversee the implementation of awards under this subsection, consistent with the annual plan under subsection (d), including disbursing funds and monitoring activities carried out under such awards for compliance with the terms and conditions of the awards.

(B) Nothing in subparagraph (A) shall limit the authority or responsibility of the Secretary to oversee awards, or limit the authority of the Secretary to review or revoke awards.

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

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

(g) DISALLOWED EXPENSES.—No portion of any award shall be used by a recipient for general or administrative expenses of any kind.

(h) AUDIT.—The Secretary shall retain an independent, commercial auditor to determine the extent to which funds provided to the program consortium, and funds provided under awards made under subsection (e), have been expended in a manner consistent with the purposes and requirements of this subtitle. The auditor shall transmit a report annually to the Secretary, who shall transmit the report to Congress, along with a plan to remedy any deficiencies cited in the report.

SEC. 2306. ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—Not later than 270 days after the date of enactment of this Act, the Secretary shall establish an Advisory Committee.

(b) MEMBERSHIP.—The Advisory Committee shall be composed of members appointed by the Secretary and including—

(1) individuals with extensive experience or operational knowledge of oil and natural gas production, including independent oil and gas producers;

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

(3) no individuals who are Federal employees.

(c) DUTIES.—The Advisory Committee shall advise the Secretary on the development and implementation of activities under this subtitle.

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

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

SEC. 2307. LIMITS ON PARTICIPATION.

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

(1) that the entity's participation in the program under this subtitle would be in the economic interest of the United States;

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

(3) that the entity has demonstrated that nongovernmental third party sources of financing are not available for the proposal project.

SEC. 2308. PAYMENTS TO FEDERAL GOVERNMENT.

(a) INITIAL RATE.—Until the amount of a grant under this subtitle has been fully repaid to the Federal Government under this subsection, 95 percent of all revenues derived from increased incremental production attributable to participation in the program under this subtitle shall be paid to the Secretary by the purchaser of such increased production.

(b) RATE AFTER REPAYMENT.—After the Federal Government has been fully repaid under subsection (a), 5 percent of all revenues derived from increased incremental production attributable to participation in the program under this subtitle shall be paid to the Secretary by the purchaser of such increased production.

SEC. 2309. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary for carrying out this subtitle $100,000,000, to remain available until expended.

SEC. 2310. PUBLIC AVAILABILITY OF PROJECT RESULTS AND METHODOLOGIES.

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

SEC. 2311. SUNSET.

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

SEC. 2312. DEFINITIONS.

In this subtitle:

(1) PROGRAM CONSORTIUM.—The term "program consortium" means the consortium selected under section 2305(c).

(2) REMOTE OR INCONSEQUENTIAL.—The term "remote or inconsequential" has the meaning given that term in regulations issued by the Office of Government Ethics under section 208(b)(2) of title 18, United States Code.

(3) SECRETARY.—The term "Secretary" means the Secretary of Energy.

Subtitle E—Miscellaneous

SEC. 2401. APPEALS RELATING TO PIPELINE CONSTRUCTION PROJECTS.

(a) AGENCY OF RECORD.—Any Federal administrative agency proceeding that is an appeal or review of Federal authority for an interstate natural gas pipeline construction project, including construction of natural gas storage and liquefied natural gas facilities, shall use as its exclusive record for all purposes the record compiled by the Federal Energy Regulatory Commission pursuant to such Commission's proceeding under section 7 of the Natural Gas Act.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that all Federal and State agencies with jurisdiction over interstate natural gas pipeline construction activities should coordinate their proceedings within the time frames established by the Federal Energy Regulatory Commission while it is acting pursuant to section 7 of the Natural Gas Act to determine whether a proposed interstate natural gas pipeline is in the public convenience and necessity.

SEC. 2402. NATURAL GAS MARKET DATA TRANSPARENCY.

(a) ESTABLISHMENT OF SYSTEM.—Not later than 180 days after the date of enactment of this Act, the Federal Energy Regulatory Commission shall issue rules authorizing or establishing an electronic information system to provide the Commission and the public with timely access to such information as is necessary or appropriate to facilitate price transparency and participation in natural gas markets. Such system shall provide information about the market price of natural gas sold in interstate commerce.

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

(1) aggregate data; and

(2) transaction-specific data that is otherwise required by the Federal Energy Regulatory Commission to be made public.

(c) CIVIL PENALTY.—Any person who violates any provision of a rule issued under subsection (a) shall be subject to a civil penalty of not more than $1,000,000 for each day that such violation continues. Such penalty shall be assessed by the Federal Energy Regulatory Commission, after notice and opportunity for public hearing. In determining the amount of a proposed penalty, the Commission shall take into consideration the seriousness of the violation and the efforts of such person to remedy the violation in a timely manner.

SEC. 2403. OIL AND GAS EXPLORATION AND PRODUCTION DEFINED.

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

"(24) The term 'oil and gas exploration and production' means all field operations necessary for both exploration and production of oil and gas, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such activities may be considered construction activities.".

TITLE III—HYDROELECTRIC RELICENSING

Subtitle A—Alternative Conditions

SEC. 3001. ALTERNATIVE CONDITIONS AND FISHWAYS.

(a) FEDERAL RESERVATIONS.—Section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) is amended by inserting after "adequate protection and utilization of such reservation." at the end of the first proviso the following: "The license applicant shall be entitled to a determination on the record, after opportunity for an agency trial-type hearing of any disputed issues of material fact, with respect to such conditions.".

(b) FISHWAYS.—Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by inserting after "and such fishways as may be prescribed by the Secretary of Commerce." the following: "The license applicant shall be entitled to a determination on the record, after opportunity for an agency trial-type hearing of any disputed issues of material fact, with respect to such fishways.".

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

"SEC. 33. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.

"(a) ALTERNATIVE CONDITIONS.—(1) Whenever any person applies for a license for any project works within any reservation of the United States, and the Secretary of the department under whose supervision such reservation falls (referred to in this subsection as 'the Secretary') deems a condition to such license to be necessary under the first proviso of section 4(e), the license applicant may propose an alternative condition.

"(2) Notwithstanding the first proviso of section 4(e), the Secretary shall accept the proposed alternative condition referred to in paragraph (1), and the Commission shall include in the license such alternative condition, if the Secretary determines, based on substantial evidence provided by the license applicant or otherwise available to the Secretary, that such alternative condition—

"(A) provides for the adequate protection and utilization of the reservation; and

"(B) will either—

"(i) cost less to implement; or

"(ii) result in improved operation of the project works for electricity production,

as compared to the condition initially deemed necessary by the Secretary.

"(3) The Secretary shall submit into the public record of the Commission proceeding with any condition under section 4(e) or alternative condition it accepts under this section, a written statement explaining the basis for such condition, and reason for not accepting any alternative condition under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the condition adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality); based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary's decision.

"(4) Nothing in this section shall prohibit other interested parties from proposing alternative conditions.

"(5) If the Secretary does not accept an applicant's alternative condition under this section, and the Commission finds that the Secretary's condition would be inconsistent with the purposes of this part, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a non-binding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will not adequately protect the reservation. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.

"(b) ALTERNATIVE PRESCRIPTIONS.—(1) Whenever the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under section 18, the license applicant or licensee may propose an alternative to such prescription to construct, main-

tain, or operate a fishway. The alternative may include a fishway or an alternative to a fishway.

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

"(A) will be no less protective of the fish resources than the fishway initially prescribed by the Secretary; and

"(B) will either—

"(i) cost less to implement; or

"(ii) result in improved operation of the project works for electricity production,

as compared to the fishway initially deemed necessary by the Secretary.

"(3) The Secretary concerned shall submit into the public record of the Commission proceeding with any prescription under section 18 or alternative prescription it accepts under this section, a written statement explaining the basis for such prescription, and reason for not accepting any alternative prescription under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the condition adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality); based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary's decision.

"(4) Nothing in this section shall prohibit other interested parties from proposing alternative prescriptions.

"(5) If the Secretary concerned does not accept an applicant's alternative prescription under this section, and the Commission finds that the Secretary's prescription would be inconsistent with the purposes of this part, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a non-binding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will not adequately protect the fish resources. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.".

Subtitle B—Additional Hydropower

SEC. 3201. HYDROELECTRIC PRODUCTION INCENTIVES.

(a) INCENTIVE PAYMENTS.—For electric energy generated and sold by a qualified hydroelectric facility during the incentive period, the Secretary of Energy (referred to in this section as the "Secretary") shall make, subject to the availability of appropriations, incentive payments to the owner or operator of such facility. The amount of such payment made to any such owner or operator shall be as determined under subsection (e) of this section. Payments under this section may only be made upon receipt by the Secretary of an incentive payment application which establishes that the applicant is eligible to receive such payment and which satisfies such other requirements as the Secretary deems necessary. Such application shall be in such form, and shall be submitted at such time, as the Secretary shall establish.

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

(1) QUALIFIED HYDROELECTRIC FACILITY.—The term "qualified hydroelectric facility" means a turbine or other generating device owned or solely operated by a non-Federal entity which generates hydroelectric energy for sale and which is added to an existing dam or conduit.

(2) EXISTING DAM OR CONDUIT.—The term "existing dam or conduit" means any dam or conduit the construction of which was completed before the date of the enactment of this section and which does not require any construction or enlargement of impoundment or diversion structures (other than repair or reconstruction) in connection with the installation of a turbine or other generating device.

(3) CONDUIT.—The term "conduit" has the same meaning as when used in section 30(a)(2) of the Federal Power Act.

The terms defined in this subsection shall apply without regard to the hydroelectric kilowatt capacity of the facility concerned, without regard to whether the facility

uses a dam owned by a governmental or nongovernmental entity, and without regard to whether the facility begins operation on or after the date of the enactment of this section.

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

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

(e) AMOUNT OF PAYMENT.—

(1) IN GENERAL.—Payments made by the Secretary under this section to the owner or operator of a qualified hydroelectric facility shall be based on the number of kilowatt hours of hydroelectric energy generated by the facility during the incentive period. For any such facility, the amount of such payment shall be 1.8 cents per kilowatt hour (adjusted as provided in paragraph (2)), subject to the availability of appropriations under subsection (g), except that no facility may receive more than $750,000 in one calendar year.

(2) ADJUSTMENTS.—The amount of the payment made to any person under this section as provided in paragraph (1) shall be adjusted for inflation for each fiscal year beginning after calendar year 2003 in the same manner as provided in the provisions of section 29(d)(2)(B) of the Internal Revenue Code of 1986, except that in applying such provisions the calendar year 2003 shall be substituted for calendar year 1979.

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

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

SEC. 3202. HYDROELECTRIC EFFICIENCY IMPROVEMENT.

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

(b) LIMITATIONS.—Incentive payments under this section shall not exceed 10 percent of the costs of the capital improvement concerned and not more than one payment may be made with respect to improvements at a single facility. No payment in excess of $750,000 may be made with respect to improvements at a single facility.

(c) AUTHORIZATION.—There is authorized to be appropriated to carry out this section not more than $10,000,000 for each of the fiscal years 2004 through 2013.

SEC. 3203. SMALL HYDROELECTRIC POWER PROJECTS.

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

SEC. 3204. INCREASED HYDROELECTRIC GENERATION AT EXISTING FEDERAL FACILITIES.

(a) IN GENERAL.—The Secretary of Energy, in consultation with the Secretary of the Interior and Secretary of the Army, shall conduct studies of the cost-effective opportunities to increase hydropower generation at existing federally-owned or operated water regulation, storage, and conveyance facilities. Such studies shall be completed within two years after the date of enactment of this subtitle and transmitted to the Committee on Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. An individual study shall be prepared for each of the Nation's principal river basins. Each such study shall identify and describe with specificity the following matters:

(1) Opportunities to improve the efficiency of hydropower generation at such facilities through, but not limited to, mechanical, structural, or operational changes.

(2) Opportunities to improve the efficiency of the use of water supplied or regulated by Federal projects where such improvement could, in the absence of legal or administrative constraints, make additional water supplies available for hydropower generation or reduce project energy use.

(3) Opportunities to create additional hydropower generating capacity at existing facilities through, but not limited to, the construction of additional gener-

ating facilities, the uprating of generators and turbines, and the construction of pumped storage facilities.

(4) Preliminary assessment of the costs and the economic and environmental consequences of such measures.

(b) PREVIOUS STUDIES.—If studies of the type required by subsection (a) have been prepared by any agency of the United States and published within the five years prior to the date of enactment of this subtitle, the Secretary of Energy may choose not to perform new studies and incorporate the information in such studies into the studies required by subsection (a).

(c) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

TITLE IV—NUCLEAR MATTERS

Subtitle A—Price-Anderson Act Amendments

SEC. 4001. SHORT TITLE.

This subtitle may be cited as the "Price-Anderson Amendments Act of 2003".

SEC. 4002. EXTENSION OF INDEMNIFICATION AUTHORITY.

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

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

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

(b) INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.—Section 170 d.(1)(A) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by striking "December 31, 2004" and inserting "August 1, 2017".

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

SEC. 4003. MAXIMUM ASSESSMENT.

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

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

(A) by striking "$63,000,000" and inserting "$94,000,000"; and

(B) by striking "$10,000,000 in any 1 year" and inserting "$15,000,000 in any 1 year (subject to adjustment for inflation under subsection t.)"; and

(2) in subsection t.—

(A) by inserting "total and annual" after "amount of the maximum";

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

(C) by striking "such date of enactment" and inserting "July 1, 2002".

SEC. 4004. DEPARTMENT OF ENERGY LIABILITY LIMIT.

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

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

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

"(B) shall indemnify the persons indemnified against such liability above the amount of the financial protection required, in the amount of $10,000,000,000 (subject to adjustment for inflation under subsection t.), in the aggregate, for all persons indemnified in connection with the contract and for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.".

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

"(3) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person under this section shall be deemed to be amended, on the date of enactment of the Price-Anderson Amendments Act of 2003, to reflect the amount of indemnity for public liability and

any applicable financial protection required of the contractor under this subsection.".

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

(1) by striking "the maximum amount of financial protection required under subsection b. or"; and

(2) by striking "paragraph (3) of subsection d., whichever amount is more" and inserting "paragraph (2) of subsection d.".

SEC. 4005. INCIDENTS OUTSIDE THE UNITED STATES.

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

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

SEC. 4006. REPORTS.

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

SEC. 4007. INFLATION ADJUSTMENT.

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

(1) by redesignating paragraph (2) as paragraph (3); and

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

"(2) The Secretary shall adjust the amount of indemnification provided under an agreement of indemnification under subsection d. not less than once during each 5-year period following July 1, 2002, in accordance with the aggregate percentage change in the Consumer Price Index since—

"(A) that date, in the case of the first adjustment under this paragraph; or

"(B) the previous adjustment under this paragraph.".

SEC. 4008. PRICE-ANDERSON TREATMENT OF MODULAR REACTORS.

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

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

"(B) A combination of facilities referred to in subparagraph (A) is 2 or more facilities located at a single site, each of which has a rated capacity of 100,000 electrical kilowatts or more but not more than 300,000 electrical kilowatts, with a combined rated capacity of not more than 1,300,000 electrical kilowatts.".

SEC. 4009. APPLICABILITY.

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

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

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

"u. PROHIBITION ON ASSUMPTION OF LIABILITY FOR CERTAIN FOREIGN ACCIDENTS.—Notwithstanding this section or any other provision of law, no officer of the United States or of any department, agency, or instrumentality of the United States Government may enter into any contract or other arrangement, or into any amendment or modification of a contract or other arrangement, the purpose or effect of which would be to directly or indirectly impose liability on the United States Government, or any department, agency, or instrumentality of the United States Government, or to otherwise directly or indirectly require an indemnity by the United States Government, for nuclear accidents occurring in connection with the design, construction, or operation of a production facility or utilization facility in any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which, as of September 11, 2001, had been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961, section 6(j)(1) of the Export Administration Act of 1979, or section 40(d) of the Arms Export Control Act to have repeatedly provided support for acts of international terrorism).".

SEC. 4011. SECURE TRANSFER OF NUCLEAR MATERIALS.

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

"SEC. 170C. SECURE TRANSFER OF NUCLEAR MATERIALS.—

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

"(1) materials described in subsection b., when transferred or received in the United States—

"(A) from a facility licensed by the Nuclear Regulatory Commission;

"(B) from a facility licensed by an agreement State; or

"(C) from a country with whom the United States has an agreement for cooperation under section 123,

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

"(2) each individual transferring or accompanying the transfer of such materials has been subject to a security background check by appropriate Federal entities; and

"(3) such materials are not transferred to or received at a destination other than a facility licensed by the Nuclear Regulatory Commission or an agreement State under this Act or other appropriate Federal facility, or a destination outside the United States in a country with whom the United States has an agreement for cooperation under section 123.

"b. Except as otherwise provided by the Commission by regulation, the materials referred to in subsection a. are byproduct materials, source materials, special nuclear materials, high-level radioactive waste, spent nuclear fuel, transuranic waste, and low-level radioactive waste (as defined in section 2(16) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(16))).".

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

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect upon the issuance of regulations under subsection (b).

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

(e) TABLE OF SECTIONS AMENDMENT.—The table of sections for chapter 14 of the Atomic Energy Act of 1954 is amended by adding at the end the following new item:

"Sec. 170C. Secure transfer of nuclear materials.".

SEC. 4012. NUCLEAR FACILITY THREATS.

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

(1) the events of September 11, 2001;

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

(3) the potential for attack on facilities by multiple coordinated teams of a large number of individuals;

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

(5) the potential for suicide attacks;

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

(7) the potential use of explosive devices of considerable size and other modern weaponry;

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

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

(10) the potential for attacks on spent fuel shipments by multiple coordinated teams of a large number of individuals.

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

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

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

(A) involving attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign

government or other person, or otherwise falling under the responsibilities of the Federal Government; or

(B) involving the type of risks that Nuclear Regulatory Commission licensees should be responsible for guarding against.

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

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

(e) PHYSICAL SECURITY PROGRAM.—The Nuclear Regulatory Commission shall establish an operational safeguards response evaluation program that ensures that the physical protection capability and operational safeguards response for sensitive nuclear facilities, as determined by the Commission consistent with the protection of public health and the common defense and security, shall be tested periodically through Commission approved or designed, observed, and evaluated force-on-force exercises to determine whether the ability to defeat the design basis threat is being maintained. For purposes of this subsection, the term "sensitive nuclear facilities" includes at a minimum commercial nuclear power plants, including associated spent fuel storage facilities, spent fuel storage pools and dry cask storage at closed reactors, independent spent fuel storage facilities and geologic repository operations areas, category I fuel cycle facilities, and gaseous diffusion plants.

(f) CONTROL OF INFORMATION.—In carrying out this section, the President and the Nuclear Regulatory Commission shall control the dissemination of restricted data, safeguards information, and other classified national security information in a manner so as to ensure the common defense and security, consistent with chapter 12 of the Atomic Energy Act of 1954.

SEC. 4013. UNREASONABLE RISK CONSULTATION.

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

"v. UNREASONABLE RISK CONSULTATION.—(1) Before entering into an agreement of indemnification under this section with respect to a utilization facility, the Nuclear Regulatory Commission shall consult with the Assistant to the President for Homeland Security (or any successor official) concerning whether the location of the proposed facility and the design of that type of facility ensure that the facility provides for adequate protection of public health and safety if subject to a terrorist attack.

"(2) Before issuing a license or a license renewal for a sensitive nuclear facility, the Nuclear Regulatory Commission shall consult with the Secretary of Homeland Security or his designee concerning the emergency evacuation plan for the communities living near the sensitive nuclear facility. For purposes of this paragraph, the term 'sensitive nuclear facility' has the meaning given that term in section 4012 of the Energy Policy Act of 2003.".

SEC. 4014. FINANCIAL ACCOUNTABILITY.

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

"w. FINANCIAL ACCOUNTABILITY.—(1) Notwithstanding subsection d., the Attorney General may bring an action in the appropriate United States district court to recover from a contractor of the Secretary (or subcontractor or supplier of such contractor) amounts paid by the Federal Government under an agreement of indemnification under subsection d. for public liability resulting from conduct which constitutes intentional misconduct of any corporate officer, manager, or superintendent of such contractor (or subcontractor or supplier of such contractor).

"(2) The Attorney General may recover under paragraph (1) an amount not to exceed the amount of the profit derived by the defendant from the contract.

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

"(4) Paragraph (1) shall not apply to any nonprofit entity conducting activities under contract for the Secretary.

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

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

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

SEC. 4015. CIVIL PENALTIES.

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

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

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

"(1) described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; or

"(2) identified by the Secretary by rule as appropriate to be treated the same under this subsection as an entity described in paragraph (1), consistent with the purposes of this section.".

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

(d) RULEMAKING.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Energy shall issue a rule for the implementation of the amendment made by subsection (b).

Subtitle B—Miscellaneous Matters

SEC. 4021. LICENSES.

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

SEC. 4022. NUCLEAR REGULATORY COMMISSION MEETINGS.

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

SEC. 4023. NRC TRAINING PROGRAM.

(a) IN GENERAL.—In order to maintain the human resource investment and infrastructure of the United States in the nuclear sciences, health physics, and engineering fields, in accordance with the statutory authorities of the Commission relating to the civilian nuclear energy program, the Nuclear Regulatory Commission shall carry out a training and fellowship program to address shortages of individuals with critical nuclear safety regulatory skills.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section $1,000,000 for each of fiscal years 2004 through 2007.

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

SEC. 4024. COST RECOVERY FROM GOVERNMENT AGENCIES.

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

(1) by striking "for or is issued" and all that follows through "1702" and inserting "to the Commission for, or is issued by the Commission, a license or certificate";

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

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

SEC. 4025. ELIMINATION OF PENSION OFFSET.

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

"y. exempt from the application of sections 8344 and 8468 of title 5, United States Code, an annuitant who was formerly an employee of the Commission who is hired by the Commission as a consultant, if the Commission finds that the annuitant has a skill that is critical to the performance of the duties of the Commission.".

SEC. 4026. CARRYING OF FIREARMS BY LICENSEE EMPLOYEES.

Section 161 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(k)) is amended to read as follows:

"k. authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize—

"(1) such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States located at facilities owned by or contracted to the United States or being transported to or from such facilities as it deems necessary in the interests of the common defense and security; and

"(2) such of those employees of persons licensed or certified by the Commission (including employees of contractors of licensees or certificate holders) engaged in the protection of property of (A) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission, or (B) property of significance to the common defense and security located at facilities owned or operated by a Commission licensee or certificate holder or being transported to or from such facilities;

to carry firearms while in the discharge of their official duties. A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor or of a Commission licensee or certificate holder (or a contractor of a licensee or certificate holder) authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission or of a licensee or certificate holder of the Commission, laws applicable to facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission pursuant to this subsection and property of significance to the common defense and security that is in the custody of a licensee or certificate holder or a contractor of a licensee or certificate holder of the Commission, or any provision of this Act that may subject an offender to a fine, imprisonment, or both. The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary and the Commission, with the approval of the Attorney General, shall issue guidelines to implement this subsection;".

SEC. 4027. UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS.

Section 229 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended by adding after "custody of the Commission" the following: "or subject to its licensing authority or to certification by the Commission under this Act or any other Act".

SEC. 4028. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.

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

"a. Any person who intentionally and willfully destroys or causes physical damage to, or who intentionally and willfully attempts to destroy or cause physical damage to—

"(1) any production facility or utilization facility licensed under this Act;

"(2) any nuclear waste storage, treatment, or disposal facility licensed under this Act;

"(3) any nuclear fuel for a utilization facility licensed under this Act or any spent nuclear fuel from such a facility;

"(4) any uranium enrichment or nuclear fuel fabrication facility licensed or certified by the Nuclear Regulatory Commission; or

"(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, or nuclear fuel fabrication facility subject to licensing or certification under this Act during its construction where the destruction or damage caused or attempted to be caused could affect public health and safety during the operation of the facility,

shall be fined not more than $1,000,000 or imprisoned for up to life in prison without parole, or both.".

SEC. 4029. COOPERATIVE RESEARCH AND DEVELOPMENT AND SPECIAL DEMONSTRATION PROJECTS FOR THE URANIUM MINING INDUSTRY.

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

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

(2) funding for competitively selected demonstration projects with domestic uranium producers relating to—

(A) enhanced production with minimal environmental impacts;

(B) restoration of well fields; and

(C) decommissioning and decontamination activities.

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

SEC. 4030. URANIUM SALES.

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

"(d) INVENTORY SALES.—(1) In addition to the transfers and sales authorized under subsections (b), (c), and (e), the Secretary of Energy or the Secretary of the Army may transfer or sell uranium subject to paragraph (2).

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

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

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

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

"(3) The Secretary of Energy shall not make any transfer or sale of uranium under this subsection that would cause the total amount of uranium transferred or sold pursuant to this subsection that is delivered for consumption by end users to exceed—

"(A) 3 million pounds of U_3O_8 equivalent in fiscal year 2004, 2005, 2006, 2007, 2008, or 2009;

"(B) 5 million pounds of U_3O_8 equivalent in fiscal year 2010 or 2011;

"(C) 7 million pounds of U_3O_8 equivalent in fiscal year 2012; and

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

"(4) For the purposes of this subsection, the recovery of uranium from uranium bearing materials transferred or sold by the Secretary of Energy or the Secretary of the Army to the domestic uranium industry shall be the preferred method of making uranium available. The recovered uranium shall be counted against the annual maximum deliveries set for in this section, when such uranium is sold to end users.".

(b) TRANSFERS TO CORPORATION.—Section 3112 of the USEC Privatization Act (42 U.S.C. 2297h–10) is further amended by adding at the end the following new subsection:

"(g) TRANSFERS TO CORPORATION.—Notwithstanding subsection (b)(2) and subsection (d)(2), the Secretary may transfer up to 9,550 metric tons of uranium to the Corporation to replace uranium that the Secretary transferred to the Corporation on or about June 30, 1993, April 20, 1998, and May 18, 1998, and that does not meet commercial specifications.".

(c) SERVICES.—Section 3112 of the USEC Privatization Act (42 U.S.C. 2297h–10) is further amended by adding at the end the following new subsection:

"(h) SERVICES.—(1) Notwithstanding any other provision of this section, if the Secretary determines that if the Corporation has failed, or may fail, to perform any obligation under the Agreement between the Department of Energy and the Corporation dated June 17, 2002, and as amended thereafter, which failure could result in termination of the Agreement, the Secretary shall notify the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, in such a manner that affords the Committees an opportunity to comment, prior to a determination by the Secretary whether termi-

nation, waiver, or modification of the Agreement is required. The Secretary is authorized to take such action as he determines necessary under the Agreement to terminate, waive, or modify provisions of the Agreement to achieve its purposes.

"(2) Notwithstanding any other provision of this section, if the Secretary determines in accordance with Article 2D of the Agreement between the Department of Energy and the Corporation dated June 17, 2002, and as amended thereafter, to transition operation of the Paducah gaseous diffusion plant, the Secretary may provide uranium enrichment services in a manner consistent with Article 2D of such Agreement.".

(d) REPORT.—Within 3 years after the date of enactment of this Act, the Secretary shall report to the Congress on the implementation of this section. The report shall include a discussion of available excess uranium inventories, all sales or transfers made by the Secretary of Energy or the Secretary of the Army, the impact of such sales or transfers on the domestic uranium industry, the spot market uranium price, and the national security interests of the United States, and any steps taken to remediate any adverse impacts of such sales or transfers.

SEC. 4031. MEDICAL ISOTOPE PRODUCTION.

Section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) is amended—

(1) by redesignating subsection b. as subsection f.;

(2) by inserting after subsection a. the following:

"b. The Commission may issue a license authorizing the export (including shipment to and use at intermediate and ultimate consignees specified in the license) to a Recipient Country of highly enriched uranium for medical isotope production if, in addition to any other requirements of this Act, the Commission determines that—

"(1) a Recipient Country that supplies an assurance letter to the United States Government in connection with the Commission's consideration of the export license application has informed the United States Government that any intermediate consignees and the ultimate consignee specified in the application are required to use such highly enriched uranium solely to produce medical isotopes; and

"(2) the highly enriched uranium for medical isotope production will be irradiated only in a reactor in a Recipient Country that—

"(A) uses an alternative nuclear reactor fuel; or

"(B) is the subject of an agreement with the United States Government to convert to an alternative nuclear reactor fuel when such fuel can be used in that reactor.

"c. Applications to the Commission for licenses authorizing the export to a Recipient Country of highly enriched uranium for medical isotope production shall be subject to subsection b., and subsection a. shall not be applicable to such exports.

"d. The Commission is authorized to specify, by rulemaking or decision in connection with an export license application, that a country other than a Recipient Country may receive exports of highly enriched uranium for medical isotope production in accordance with the same criteria established by subsection b. for exports to a Recipient Country, upon the Commission's finding that such additional country is a party to the Treaty on the Nonproliferation of Nuclear Weapons and the Convention on the Physical Protection of Nuclear Material and will receive such highly enriched uranium pursuant to an agreement with the United States concerning peaceful uses of nuclear energy.

"e. The Commission shall review the adequacy of physical protection requirements that are currently applicable to the transportation of highly enriched uranium for medical isotope production. If it determines that additional physical protection measures are necessary, including any limits that the Commission finds are necessary on the quantity of highly enriched uranium contained in a single shipment for medical isotope production, the Commission shall impose such requirements, as license conditions or through other appropriate means."; and

(3) in subsection f., as so redesignated by paragraph (1) of this section—

(A) by striking "and" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3)(B) and inserting a semicolon; and

(C) by adding at the end the following:

"(4) the term 'medical isotopes' means radioactive isotopes, including Molybdenum 99, Iodine 131, and Xenon 133, that are used to produce radiopharmaceuticals for diagnostic or therapeutic procedures on patients, or in connection with research and development of radiopharmaceuticals;

"(5) the term 'highly enriched uranium for medical isotope production' means highly enriched uranium contained in, or for use in, targets to be irradiated for the sole purpose of producing medical isotopes; –

"(6) the term 'radiopharmaceuticals' means radioactive isotopes containing byproduct material combined with chemical or biological material that are designed to accumulate temporarily in a part of the body, for therapeutic purposes or for enabling the production of a useful image of the appropriate body organ or function for use in diagnosis of medical conditions; and

"(7) the term 'Recipient Country' means Canada, Belgium, France, Germany, and the Netherlands.".

SEC. 4032. HIGHLY ENRICHED URANIUM DIVERSION THREAT REPORT.

Section 307 of the Energy Reorganization Act of 1974 (42 U.S.C. 5877) is amended by adding at the end the following new subsection:

"(d) Not later than 6 months after the date of the enactment of this Act, the Secretary of Energy shall transmit to the Congress a report with recommendations on reducing the threat resulting from the theft or diversion of highly enriched uranium. Such report shall address—

"(1) monitoring of highly enriched uranium supplies at any commercial companies who have access to substantial amounts of highly enriched uranium;

"(2) assistance to companies described in paragraph (1) with security and personnel checks;

"(3) acceleration of the process of blending down excess highly enriched uranium into low-enriched uranium;

"(4) purchasing highly enriched uranium (except for production of medical isotopes);

"(5) paying the cost of shipping highly enriched uranium;

"(6) accelerating the conversion of commercial research reactors and energy reactors to the use of low-enriched uranium fuel where they now use highly enriched uranium fuel; and

"(7) minimizing, and encouraging transparency in, the further enrichment of low-enriched uranium to highly enriched uranium.".

SEC. 4033. WHISTLEBLOWER PROTECTION.

(a) DEFINITION OF EMPLOYER.—Section 211(a)(2) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (C);

(2) in subparagraph (D), by striking "that is indemnified" and all that follows through "12344." and inserting "or the Commission; and"; and

(3) by adding at the end the following new subparagraph:

"(E) the Department of Energy and the Commission.".

(b) DE NOVO REVIEW.—Subsection (b) of such section 211 is amended by adding at the end the following new paragraph:

"(4) If the Secretary has not issued a final decision within 180 days after the filing of a complaint under paragraph (1), and there is no showing that such delay is due to the bad faith of the claimant, the claimant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.".

TITLE V—VEHICLES AND FUELS

Subtitle A—Energy Policy Act Amendments

SEC. 5011. CREDIT FOR SUBSTANTIAL CONTRIBUTION TOWARD NONCOVERED FLEETS.

Section 508 of the Energy Policy Act of 1992 (42 U.S.C. 13258) is amended by adding at the end the following new subsection:

"(e) CREDIT FOR SUBSTANTIAL CONTRIBUTION TOWARD USE OF DEDICATED VEHICLES IN NONCOVERED FLEETS.—

"(1) DEFINITIONS.—In this subsection:

"(A) MEDIUM OR HEAVY DUTY VEHICLE.—The term 'medium or heavy duty vehicle' means a dedicated vehicle that—

"(i) in the case of a medium duty vehicle, has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds; or

"(ii) in the case of a heavy duty vehicle, has a gross vehicle weight rating of more than 14,000 pounds.

"(B) SUBSTANTIAL CONTRIBUTION.—The term 'substantial contribution' means not less than $15,000 in cash or in kind services, as determined by the Secretary.

"(2) ALLOCATION OF CREDITS.—The Secretary shall allocate a credit to a fleet or covered person under this section if the fleet or person makes a substantial contribution toward the acquisition and use of dedicated vehicles or neighbor-

hood electric vehicles by a person that owns, operates, leases, or otherwise controls a fleet that is not covered by this title.

"(3) MULTIPLE CREDITS FOR MEDIUM AND HEAVY DUTY VEHICLES.—The Secretary shall issue 2 full credits to a fleet or covered person under this section if the fleet or person makes a substantial contribution toward the acquisition and use of a medium or heavy duty vehicle.

"(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the acquisition of the dedicated vehicle or neighborhood electric vehicle is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.

"(5) LIMITATION.—Except as provided in paragraph (3), no more than 1 credit shall be allocated under this subsection for each vehicle.".

SEC. 5012. CREDIT FOR ALTERNATIVE FUEL INFRASTRUCTURE.

Section 508 of the Energy Policy Act of 1992 (42 U.S.C. 13258), as amended by this Act, is further amended by adding at the end the following new subsection:

"(f) CREDIT FOR INVESTMENT IN ALTERNATIVE FUEL INFRASTRUCTURE.—

"(1) DEFINITION.—In this subsection, the term 'qualifying infrastructure' means—

"(A) equipment required to refuel or recharge alternative fueled vehicles;

"(B) facilities or equipment required to maintain, repair, or operate alternative fueled vehicles;

"(C) training programs, educational materials, or other activities necessary to provide information regarding the operation, maintenance, or benefits associated with alternative fueled vehicles; and

"(D) such other activities the Secretary considers to constitute an appropriate expenditure in support of the operation, maintenance, or further widespread adoption of or utilization of alternative fueled vehicles.

"(2) ALLOCATION OF CREDITS.—The Secretary shall allocate a credit to a fleet or covered person under this section for investment in qualifying infrastructure if the qualifying infrastructure is open to the general public during regular business hours.

"(3) AMOUNT.—For the purposes of credits under this subsection—

"(A) 1 credit shall be equal to a minimum investment of $25,000 in cash or in kind services, as determined by the Secretary; and

"(B) except in the case of a Federal or State fleet, no part of the investment may be provided by Federal or State funds.

"(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the investment is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.".

SEC. 5013. ALTERNATIVE FUELED VEHICLE REPORT.

(a) DEFINITIONS.—In this section:

(1) ALTERNATIVE FUEL.—The term "alternative fuel" has the meaning given the term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(2) ALTERNATIVE FUELED VEHICLE.—The term "alternative fueled vehicle" has the meaning given the term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(3) LIGHT DUTY MOTOR VEHICLE.—The term "light duty motor vehicle" has the meaning given the term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(4) SECRETARY.—The term "Secretary" means the Secretary of Energy.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report on the effect that titles III, IV, and V of the Energy Policy Act of 1992 have had on the development of alternative fueled vehicle technology, the availability of alternative fueled vehicles in the market, the cost of light duty motor vehicles that are alternative fueled vehicles, and the availability, cost, and use of alternative fuels and biodiesel. Such report shall include any recommendations of the Secretary for legislation concerning the alternative fueled vehicle requirements under the Energy Policy Act of 1992, and shall examine, discuss, and determine the following:

(1) The number of alternative fueled vehicles acquired by fleets or covered persons required to acquire alternative fueled vehicles.

(2) The extent to which fleets subject to alternative fueled vehicle acquisition requirements have met those requirements through the use of fuel mixtures that contain at least 20 percent biodiesel pursuant to section 312 of the Energy Policy Act of 1992 (42 U.S.C. 13220).

(3) The amount of alternative fuel used in alternative fueled vehicles acquired by fleets required to acquire alternative fueled vehicles under the Energy Policy Act of 1992.

(4) The amount of petroleum displaced by the use of alternative fueled vehicles acquired by fleets or covered persons.

(5) The cost of compliance with vehicle acquisition requirements under the Energy Policy Act of 1992, and the benefits of using such fuel and vehicles.

(6) Projections of the amount of biodiesel, the number of alternative fueled vehicles, and the amount of alternative fuel that will be used over the next decade by fleets required to acquire alternative fueled vehicles under the Energy Policy Act of 1992.

(7) The existence of any obstacles to increased use of alternative fuel and biodiesel in vehicles acquired or maintained by fleets required to acquire alternative fueled vehicles under the Energy Policy Act of 1992, and the benefits of using such fuel and vehicles.

SEC. 5014. ALLOCATION OF INCREMENTAL COSTS.

Section 303(c) of the Energy Policy Act of 1992 (42 U.S.C. 13212(c)) is amended by striking "may" and inserting "shall".

Subtitle B—FreedomCAR and Hydrogen Fuel Program

SEC. 5021. SHORT TITLE.

This subtitle may be cited as the "FreedomCAR and Hydrogen Fuel Act of 2003" or "Freedom Act".

SEC. 5022. FINDINGS, PURPOSE, AND DEFINITIONS.

(a) FINDINGS.—Congress finds that—

(1) the United States is currently dependent on foreign sources for a majority of its petroleum supply;

(2) the Nation's dependence on foreign petroleum is expected to increase in the decades ahead;

(3) it is in the national interest to reduce dependence on imported petroleum by accelerating Federal efforts to partner with the private sector by deploying hydrogen fuel cell vehicles and the refueling infrastructure to support those vehicles;

(4) it is in the national interest to develop a light duty vehicle fleet that substantially reduces dependence on foreign petroleum, assists the Nation in meeting its requirements under the Clean Air Act and reduces greenhouse gas emissions in a manner that maintains the freedom of consumers to purchase the kinds of vehicles they wish to drive and the freedom to refuel those vehicles safely, affordably, and conveniently;

(5) hydrogen fuel cell vehicles and supporting infrastructure have the potential to accelerate the parallel advancement of fuel cells for stationary power that will enhance the resiliency, reliability, and environmental performance of the Nation's electricity infrastructure;

(6) ancillary benefits for the Nation, including the acceleration of fuel cell technology for consumer electronics and portable power, are likely to result from the advancement of hydrogen fuel cell vehicles and supporting infrastructure;

(7) there is a need for deployment of bridging technologies including gasoline electric and diesel electric hybrid drive systems, advanced combustion engines including clean diesel, electric battery, and power electronics, and alternative fuels and other technology that can contribute to reducing petroleum demand and decreasing air emissions;

(8) low-cost hydrogen production, storage, and delivery facilities are essential to the success of the FreedomCAR Vehicle Programs; and

(9) work should be performed in a manner that is cognizant of consumer acceptance, passenger safety, and marketplace success.

(b) PURPOSE.—The purpose of this subtitle is to reduce significantly the Nation's dependence on imported petroleum, enhance the production and conservation of energy, and reduce air emissions through support of the following Department of Energy actions:

(1) Programs and activities leading to—

(A) a commitment by automakers and hydrogen energy and energy infrastructure providers no later than year 2015 to offer safe, affordable, and technically viable hydrogen fuel cell vehicles and refueling infrastructure in the mass consumer market; and

(B) a commitment by the automakers and hydrogen energy and energy infrastructure providers to the deployment of hydrogen fuel cell vehicles and affordable and convenient refueling infrastructure no later than year 2020.

(2) A program to establish international codes, standards, and safety protocols for the use and manufacture of domestic and foreign products.

(3) Interagency, intergovernmental, and international programs and activities for education, information exchange, and cooperation.

(c) DEFINITIONS.—In this subtitle:

(1) The term "Advisory Committee" means the Hydrogen Technical and Fuel Cell Advisory Committee established under section 5028 of this Act.

(2) The term "Department" means the Department of Energy.

(3) The term "FreedomCAR" is the acronym for a Department initiative in automotive research and development entitled "Freedom Cooperative Automotive Research".

(4) The term "fuel cell" means a device that directly converts the chemical energy of a fuel and an oxidant into electricity by an electrochemical process taking place at separate electrodes in the device.

(5) The term "infrastructure" means the equipment, systems, or facilities used to produce, distribute, deliver, or store hydrogen and other advanced clean fuels.

(6) The term "light duty vehicle" means a car or truck, classified by the Department of Transportation as a Class I or IIA vehicle.

(7) The term "Secretary" means the Secretary of Energy.

SEC. 5023. PLAN; REPORT.

(a) PLAN.—The Secretary, in consultation with other appropriate Federal agencies, shall prepare a comprehensive interagency coordination plan for activities under this subtitle. This plan may be provided as part of the President's annual budget submission to Congress.

(b) REPORT.—Not later than one year after the date of enactment of this subtitle, and biennially thereafter, the Secretary shall transmit to the Congress a report on the status of programs and activities under this subtitle. This report may be provided as part of the President's annual budget submission to Congress. This report may include, in addition to any views and recommendations of the Secretary—

(1) an assessment of the effectiveness of the programs and activities under this subtitle and the extent to which the purposes in section 5022(b) have been met; and

(2) the potential for interagency, intergovernmental, international, or private sector collaboration opportunities and activities under this subtitle.

SEC. 5024. PUBLIC-PRIVATE PARTNERSHIP.

(a) PROGRAM.—In partnership with the private sector, the Secretary shall conduct a program designed to facilitate the production and conservation of energy and the deployment of energy infrastructure, including all of the following:

(1) Hydrogen energy.

(2) Fuel cells.

(3) Advanced vehicle technologies.

(4) Clean fuels in addition to hydrogen.

(5) Codes, standards, and safety protocols.

(b) PROGRAM GOALS.—

(1) AUTOMAKERS.—For automakers the goals of the program are—

(A) to enable a commitment by automakers no later than year 2015 to offer safe, affordable, and technically viable hydrogen fuel cell vehicles into commerce; and

(B) to enable production, delivery, and acceptance by consumers of model year 2020 hydrogen fuel cell and other vehicles that will have—

(i) a range of at least three hundred miles;

(ii) improved performance and ease of driving;

(iii) met all light duty safety regulations created under section 30111 of title 49, United States Code; and

(iv) when compared to light duty vehicles in model year 2003—

(I) a fuel economy that is two and one half times the equivalent fuel economy of these vehicles as regulated under the Motor Vehicle Information and Cost Savings Act, or about 70 miles per gallon, and

(II) near zero emissions of air pollutants regulated under the Clean Air Act.

(2) HYDROGEN ENERGY AND ENERGY INFRASTRUCTURE.—For hydrogen energy and energy infrastructure the goals of the program include, but are not limited

to, a commitment not later than 2015 that will enable the deployment by 2020 of infrastructure to provide—

(A) safe and convenient refueling;

(B) activities leading to widespread availability of hydrogen from domestic energy sources through—

(i) production, including consideration of cost-effective production from domestic energy sources;

(ii) delivery, including transmission by pipeline and other distribution methods for hydrogen; and

(iii) storage, including storage in surface transportation vehicles;

(C) hydrogen for fuel cells, internal combustion engines, and other energy conversion devices for portable, stationary, and transportation applications; and

(D) other technologies consistent with the Department's plan.

(3) FUEL CELLS.—The program for fuel cells and their portable, stationary, and transportation applications may include, but is not limited to—

(A) a safe, economical, and environmentally sound hydrogen fuel cell;

(B) a fuel cell for light duty and other vehicles; and

(C) other technologies consistent with the Department's plan.

(4) ADVANCED VEHICLE TECHNOLOGIES.—The program for advanced vehicle technologies may include, but is not limited to—

(A) advanced combustion;

(B) materials;

(C) energy storage;

(D) control systems; and

(E) other technologies consistent with the Department's plan.

(5) CODES, STANDARDS, AND SAFETY PROTOCOLS.—(A) The Department's program for codes, standards, and safety protocols shall strive towards establishment of international codes, standards, and safety protocols for the use and manufacture of domestic and foreign products.

(B) The Secretary may represent the United States interests with respect to activities and programs under this subsection, collaborating with the Secretary of Transportation, and in consultation with other appropriate governments and nongovernmental organizations including the following:

(i) Other Federal, State, regional, and local governments and their representatives.

(ii) Industry and its representatives, including members of the energy and transportation industries.

(iii) Foreign governments and their representatives including international organizations.

(c) FEDERAL FUNDING.—(1) The Secretary shall carry out the programs and activities under this section consistent with the generally applicable Federal laws and regulations governing awards of financial assistance, contracts, or other agreements, and may include funding to nationally recognized university-based research centers.

(2) The Secretary shall endeavor to avoid duplication or displacement of other research and development programs and activities.

(d) COST SHARING.—(1) The Secretary shall require a commitment from non-Federal sources of at least 20 percent of the cost of proposed programs under this section.

(2) The Secretary may reduce or eliminate the cost sharing requirement under paragraph (1)—

(A) if the Secretary determines that the activity is of a basic or fundamental nature which is vital to the success of the program and unlikely to occur in a timely manner without reduction or elimination of the cost-sharing requirement; or

(B) for technical analyses, outreach programs, and other activities including educational programs under section 5027 of this subtitle that the Secretary does not expect to result in a marketable product.

SEC. 5025. DEPLOYMENT.

(a) DEPLOYMENT PROGRAM.—In partnership with the private sector, the Secretary shall conduct a program to facilitate the deployment of—

(1) hydrogen energy and energy infrastructure;

(2) fuel cells;

(3) advanced vehicle technologies;

(4) clean fuels in addition to hydrogen; and

(5) codes, standards, and safety protocols.

(b) PROGRAM GOALS.—(1) For automakers, the goals of the program are—

(A) to enable a decision by automakers no later than year 2015 to offer safe, affordable, and technically viable hydrogen fuel cell vehicles into commerce; and

(B) to enable production and delivery to, and acceptance by, consumers of model year 2020 hydrogen fuel cell and other vehicles that will have—

(i) a range of at least 300 miles;

(ii) improved performance and ease of driving;

(iii) met all light duty safety regulations created under section 30111 of title 49, United States Code; and

(iv) when compared to light duty vehicles in model year 2003—

(I) a fuel economy that is two and one half times the equivalent fuel economy of these vehicles under the Motor Vehicle Information and Cost Savings Act, or about 70 miles per gallon; and

(II) near zero emissions of air pollutants regulated under the Clean Air Act.

(2) For hydrogen energy and energy infrastructure the goals of the program include, but are not limited to, a commitment not later than 2015 that will enable the deployment by 2020 of infrastructure to provide—

(A) safe, convenient, and affordable refueling;

(B) widespread availability of hydrogen from domestic energy sources through—

(i) production, including consideration of cost-effective production from domestic energy sources;

(ii) delivery, including transmission by pipeline and other distribution methods, for hydrogen in its gaseous, liquid, and solid states; and

(iii) storage, including storage in surface transportation vehicles;

(C) hydrogen for fuel cells, internal combustion engines, and other energy conversion devices for portable, stationary, and transportation applications; and

(D) other technologies consistent with the Department's plan.

(c) FUEL CELLS.—The program for fuel cells and their portable, stationary, and transportation applications may include but is not limited to—

(1) a safe, economical, and environmentally sound hydrogen fuel cell;

(2) a fuel cell for light duty and other vehicles; and

(3) other technologies consistent with the Department's plan.

(d) ADVANCED VEHICLE TECHNOLOGIES.—The program for advanced vehicle technologies may include, but is not limited to—

(1) advanced combustion;

(2) materials;

(3) energy storage;

(4) control systems; and

(5) other technologies consistent with the Department's plan.

(e) FEDERAL FUNDING.—The Secretary shall carry out the program and activities under this section consistent with laws and regulations governing awards of financial assistance, contracts or other agreements, and may include funding to nationally recognized university-based research centers. The Secretary shall endeavor to avoid duplication or displacement of other programs.

(f) COST SHARING.—

(1) IN GENERAL.—The Secretary shall require a commitment from non-Federal sources of at least 50 percent of the costs directly relating to a demonstration under this section.

(2) REDUCTION.—The Secretary may reduce the non-Federal requirement under paragraph (1) if the Secretary determines that—

(A) the reduction is appropriate considering the technological risks involved; and

(B) the terms and conditions are consistent with the Agreement on Subsidies and Countervailing Measures.

(3) COOPERATIVE AGREEMENTS WITH GOVERNMENTS.—The Secretary may enter into cooperative and cost sharing agreements with Federal, State, or local governments to deploy vehicles, vehicle systems, and refueling infrastructure using hydrogen, fuel cells, or other advanced technologies in government facilities or fleet transportation systems.

SEC. 5026. ASSESSMENT AND TRANSFER.

(a) PROGRAM.—The Secretary may conduct a program to transfer technology to the private sector under this subtitle.

(b) DISCLOSURE.—The Secretary may protect from disclosure, for up to 5 years after the information was developed, any information developed pursuant to a cost shared transaction, or subagreement thereunder, entered into under this subtitle to advance the goals of the programs, which developed information is of a character that it would be protected from disclosure under section 552(b)(4) of title 5, United

States Code, if this developed information had been obtained from a person other than a Federal agency.

SEC. 5027. INTERAGENCY TASK FORCE.

(a) ESTABLISHMENT.—Not later than 120 days after the date of enactment of this Act, the President shall establish an interagency task force chaired by the Secretary or his designee with representatives from each of the following:

(1) The Office of Science and Technology Policy within the Executive Office of the President.

(2) The Department of Transportation.

(3) The Department of Defense.

(4) The Department of Commerce (including the National Institute of Standards and Technology).

(5) The Environmental Protection Agency.

(6) The National Aeronautics and Space Administration.

(7) Other Federal agencies as the Secretary determines appropriate.

(b) DUTIES OF THE INTERAGENCY TASK FORCE.—

(1) PLANNING.—The task force shall coordinate the implementation of the interagency plan in section 5023(a), and work towards deployment of—

(A) a safe, economical, and environmentally sound fuel infrastructure, including an infrastructure that supports buses and other fleet transportation;

(B) fuel cells in government and other applications, including portable, stationary, and transportation applications; and

(C) distributed power generation, including the generation of combined heat, power, and clean fuels including hydrogen.

(2) INFORMATION EXCHANGE.—(A) The interagency task force shall coordinate interagency programs and activities including the exchange of information.

(B) The heads of all agencies, including those whose agencies are not represented on the interagency task force, shall cooperate with and furnish information to the interagency task force, the Advisory Committee, and the Department.

(C) The information exchange may consist of workshops, publications, conferences, and a database for use by the public and private sectors. The interagency task force is expected to—

(i) foster the exchange of generic, nonproprietary information and technology among industry, academia, and government;

(ii) update the inventory and assessment of hydrogen, fuel cells, and other advanced technologies, including their commercial capability for the economic and environmentally safe production, distribution, delivery, storage, and use of clean fuels including hydrogen;

(iii) integrate technical and other information made available as a result of the programs and activities under this subtitle;

(iv) promote the marketplace introduction of infrastructure for hydrogen and other clean fuel vehicles; and

(v) conduct an education program to provide FreedomCAR and hydrogen fuel information to potential end-users.

SEC. 5028. ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Hydrogen Technical and Fuel Cell Advisory Committee is established to advise the Secretary on the programs and activities under this subtitle.

(b) MEMBERSHIP.—

(1) MEMBERS.—The Advisory Committee is comprised of not fewer than 12 nor more than 25 members. These members shall be appointed by the Secretary to represent domestic industry, academia, professional societies, government agencies, and financial, environmental, and other appropriate organizations based on the Department's assessment of the technical and other qualifications of committee members and the needs of the Advisory Committee.

(2) TERMS.—The term of a member of the Advisory Committee shall not be more than 3 years. The Secretary may appoint members of the Advisory Committee in a manner that allows the terms of the members serving at any time to expire at spaced intervals so as to ensure continuity in the functioning of the Advisory Committee. A member of the Advisory Committee whose term is expiring may be reappointed.

(3) CHAIRPERSON.—The Advisory Committee shall have a chairperson, who is elected by the members from among their number.

(c) REVIEW.—The Advisory Committee shall review and make recommendations to the Secretary on—

(1) the implementation of programs and activities under this subtitle;

(2) the safety, economical, and environmental consequences of technologies for the production, distribution, delivery, storage, or use of hydrogen energy and fuel cells; and

(3) the interagency coordination plan under section 5023(a) of this Act.

(d) RESPONSE TO RECOMMENDATIONS.—The Secretary shall consider, but need not adopt, any recommendations of the Advisory Committee under subsection (c).

(e) ADVISORY COMMITTEE SUPPORT.—The Secretary shall provide resources necessary in the judgment of the Secretary for the Advisory Committee to carry out its responsibilities under this subtitle.

SEC. 5029. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out the purposes of this subtitle including programs for light duty vehicles, in addition to any amounts made available for these purposes under other Acts—

(1) $273,500,000 for fiscal year 2004;

(2) $325,000,000 for fiscal year 2005;

(3) $375,000,000 for fiscal year 2006;

(4) $400,000,000 for fiscal year 2007; and

(5) $425,000,000 for fiscal year 2008.

SEC. 5030. FUEL CELL PROGRAM AT NATIONAL PARKS.

The Secretary of Energy, in cooperation with the Secretary of Interior and the National Park Service, is authorized to establish a program to provide matching funds to assist in the deployment of fuel cells at one or more prominent National Parks. The Secretary of Energy shall transmit to Congress within 1 year, and annually thereafter, a report describing any activities taken pursuant to such program. The report shall address whether activities taken pursuant to such program reduce the environmental impacts of energy use at National Parks. There are authorized to be appropriated $2,000,000 for each of fiscal years 2004 through 2010 to carry out the purposes of this section.

SEC. 5030A. ADVANCED POWER SYSTEM TECHNOLOGY INCENTIVE PROGRAM.

(a) PROGRAM.—The Secretary of Energy is authorized to establish an Advanced Power System Technology Incentive Program to support the deployment of certain advanced power system technologies and to improve and protect certain critical governmental, industrial, and commercial processes. Funds provided under this section shall be used by the Secretary to make incentive payments to eligible owners or operators of advanced power system technologies to increase power generation through enhanced operational, economic, and environmental performance. Payments under this section may only be made upon receipt by the Secretary of an incentive payment application establishing an applicant as either—

(1) a qualifying advanced power system technology facility; or

(2) a qualifying security and assured power facility.

(b) INCENTIVES.—Subject to availability of funds, a payment of 1.8 cents per kilowatt-hour shall be paid to the owner or operator of a qualifying advanced power system technology facility under this section for electricity generated at such facility. An additional 0.7 cents per kilowatt-hour shall be paid to the owner or operator of a qualifying security and assured power facility for electricity generated at such facility. Any facility qualifying under this section shall be eligible for an incentive payment for up to, but not more than, the first 10,000,000 kilowatt-hours produced in any fiscal year.

(c) ELIGIBILITY.—For purposes of this section—

(1) the term "qualifying advanced power system technology facility" means a facility using an advanced fuel cell, turbine, or hybrid power system or power storage system to generate or store electric energy; and

(2) the term "qualifying security and assured power facility" means a qualifying advanced power system technology facility determined by the Secretary of Energy, in consultation with the Secretary of Homeland Security, to be in critical need of secure, reliable, rapidly available, high-quality power for critical governmental, industrial, or commercial applications.

(d) AUTHORIZATION.—There are authorized to be appropriated to the Secretary of Energy for the purposes of this section, $10,000,000 for each of the fiscal years 2004 through 2010.

Subtitle C—Clean School Buses

SEC. 5031. ESTABLISHMENT OF PILOT PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Energy, in consultation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency,

shall establish a pilot program for awarding grants on a competitive basis to eligible entities for the acquisition of alternative fuel school buses and ultra-low sulfur diesel school buses.

(b) REQUIREMENTS.—Not later than 3 months after the date of the enactment of this Act, the Secretary shall establish and publish in the Federal register grant requirements on eligibility for assistance, and on implementation of the program established under subsection (a), including certification requirements to ensure compliance with this subtitle.

(c) SOLICITATION.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall solicit proposals for grants under this section.

(d) ELIGIBLE RECIPIENTS.—A grant shall be awarded under this section only—

(1) to a local or State governmental entity responsible for providing school bus service to one or more public school systems or responsible for the purchase of school buses; or

(2) to a contracting entity that provides school bus service to one or more public school systems, if the grant application is submitted jointly with the school system or systems which the buses will serve.

(e) TYPES OF GRANTS.—

(1) IN GENERAL.—Grants under this section shall promote the conservation of energy and improvement of public health and the environment by facilitating the acquisition of alternative fuel school buses and ultra-low sulfur diesel school buses in lieu of buses manufactured before model year 1977 and diesel-powered buses manufactured before model year 1991.

(2) NO ECONOMIC BENEFIT.—Other than the receipt of the grant, a recipient of a grant under this section may not receive any economic benefit in connection with the receipt of the grant.

(3) PRIORITY OF GRANT APPLICATIONS.—The Secretary shall give priority to awarding grants to applicants who will utilize grants to replace buses manufactured before model year 1977.

(f) CONDITIONS OF GRANT.—A grant provided under this section shall include the following conditions:

(1) All buses acquired with funds provided under the grant shall be operated as part of the school bus fleet for which the grant was made for a minimum of 5 years.

(2) Funds provided under the grant may only be used—

(A) to pay the cost, except as provided in paragraph (3), of new alternative fuel school buses or ultra-low sulfur diesel school buses, including State taxes and contract fees; and

(B) to provide—

(i) up to 10 percent of the price of the alternative fuel buses acquired, for necessary alternative fuel infrastructure if the infrastructure will only be available to the grant recipient; and

(ii) up to 15 percent of the price of the alternative fuel buses acquired, for necessary alternative fuel infrastructure if the infrastructure will be available to the grant recipient and to other bus fleets.

(3) The grant recipient shall be required to provide at least the lesser of 15 percent of the total cost of each bus received or $15,000 per bus.

(4) In the case of a grant recipient receiving a grant to demonstrate ultra-low sulfur diesel school buses, the grant recipient shall be required to provide documentation to the satisfaction of the Secretary that diesel fuel containing sulfur at not more than 15 parts per million is available for carrying out the purposes of the grant, and a commitment by the applicant to use such fuel in carrying out the purposes of the grant.

(g) BUSES.—Funding under a grant made under this section may be used to facilitate the use only of new alternative fuel school buses or ultra-low sulfur diesel school buses—

(1) with a gross vehicle weight of greater than 14,000 pounds;

(2) that are powered by a heavy duty engine;

(3) that, in the case of alternative fuel school buses, emit not more than—

(A) for buses manufactured in model year 2002, 2.5 grams per brake horsepower-hour of nonmethane hydrocarbons and oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; and

(B) for buses manufactured in model years 2003 through 2006, 1.8 grams per brake horsepower-hour of nonmethane hydrocarbons and oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; and

(4) that, in the case of ultra-low sulfur diesel school buses, emit not more than—

(A) for buses manufactured in model years 2002 through 2003, 3.0 grams per brake horsepower-hour of oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; and

(B) for buses manufactured in model years 2004 through 2006, 2.5 grams per brake horsepower-hour of nonmethane hydrocarbons and oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter,

except that under no circumstances shall buses be acquired under this section that emit nonmethane hydrocarbons, oxides of nitrogen, or particulate matter at a rate greater than the best performing technology of the same class of ultra-low sulfur diesel school buses commercially available at the time the grant is made.

(h) DEPLOYMENT AND DISTRIBUTION.—The Secretary shall seek to the maximum extent practicable to achieve nationwide deployment of alternative fuel school buses and ultra-low sulfur diesel school buses through the program under this section, and shall ensure a broad geographic distribution of grant awards, with a goal of no State receiving more than 10 percent of the grant funding made available under this section for a fiscal year.

(i) LIMIT ON FUNDING.—The Secretary shall provide not less than 20 percent and not more than 25 percent of the grant funding made available under this section for any fiscal year for the acquisition of ultra-low sulfur diesel school buses.

(j) REDUCTION OF SCHOOL BUS IDLING.—Each local educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) that receives Federal funds under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) is encouraged to develop a policy, consistent with the health, safety, and welfare of students and the proper operation and maintenance of school buses, to reduce the incidence of unnecessary school bus idling at schools when picking up and unloading students.

(k) ANNUAL REPORT.—Not later than January 31 of each year, the Secretary of Energy shall provide a report evaluating implementation of the program under this section to the Congress. Such report shall include the total number of grant applications received, the number and types of alternative fuel school buses and ultra-low sulfur diesel school buses requested in grant applications, a list of grants awarded and the criteria used to select the grant recipients, certified engine emission levels of all buses purchased under the program, and any other information the Secretary considers appropriate.

(l) DEFINITIONS.—For purposes of this section—

(1) the term "alternative fuel school bus" means a school bus powered substantially by electricity (including electricity supplied by a fuel cell), or by liquefied natural gas, compressed natural gas, liquefied petroleum gas, hydrogen, propane, or methanol or ethanol at no less than 85 percent by volume;

(2) the term "idling" means operating an engine while remaining stationary for more than approximately 3 minutes, except that such term does not apply to routine stoppages associated with traffic movement or congestion; and

(3) the term "ultra-low sulfur diesel school bus" means a school bus powered by diesel fuel which contains sulfur at not more than 15 parts per million.

SEC. 5032. FUEL CELL BUS DEVELOPMENT AND DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program for entering into cooperative agreements with private sector fuel cell bus developers for the acquisition of fuel cell-powered school buses, and subsequently with not less than 2 units of local government using natural gas-powered school buses and such private sector fuel cell bus developers to facilitate the use of fuel cell-powered school buses.

(b) COST SHARING.—The non-Federal contribution for activities funded under this section shall be not less than 20 percent for fuel infrastructure development activities.

(c) FUNDING.—No more than $25,000,000 of the amounts authorized under section 5033 may be used for carrying out this section for the period encompassing fiscal years 2003 through 2006.

(d) REPORTS TO CONGRESS.—Not later than 3 years after the date of the enactment of this Act, and not later than October 1, 2006, the Secretary shall transmit to the Congress a report that—

(1) evaluates the process of converting natural gas infrastructure to accommodate fuel cell-powered school buses; and

(2) assesses the overall impact on energy conservation, public health, and the environment as a result of this program under this section.

SEC. 5033. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary for carrying out this subtitle, to remain available until expended—

(1) $60,000,000 for fiscal year 2004;
(2) $70,000,000 for fiscal year 2005; and
(3) $80,000,000 for fiscal year 2006.

Subtitle D—Advanced Vehicles

SEC. 5041. DEFINITIONS.

For the purposes of this subtitle, the following definitions apply:

(1) ALTERNATIVE FUELED VEHICLE..—The term "alternative fueled vehicle" means a vehicle propelled solely on an alternative fuel as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211), except the term does not include any vehicle that the Secretary determines, by rule, does not yield substantial environmental benefits over a vehicle operating solely on gasoline or diesel derived from fossil fuels.

(2) FUEL CELL VEHICLE.—The term "fuel cell vehicle" means a vehicle propelled by one or more cells that convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use.

(3) HYBRID VEHICLE.—The term "hybrid vehicle" means a medium or heavy duty vehicle propelled by an internal combustion engine using any combustible fuel and an onboard rechargeable battery storage system.

(4) NEIGHBORHOOD ELECTRIC VEHICLE.—The term "neighborhood electric vehicle" means a motor vehicle that qualifies as both—

(A) a low-speed vehicle, as such term is defined in section 571.3(b) of title 49, Code of Federal Regulations; and

(B) a zero-emission vehicle, as such term is defined in section 86.1702–99 of title 40, Code of Federal Regulations.

(5) PILOT PROGRAM.—The term "pilot program" means the competitive grant program established under section 5042.

(6) ULTRA-LOW SULFUR DIESEL VEHICLE.—The term "ultra-low sulfur diesel vehicle" means a vehicle manufactured in model years 2002 through 2006 powered by a heavy-duty diesel engine that—

(A) is fueled by diesel fuel which contains sulfur at not more than 15 parts per million; and

(B) emits not more than the lesser of—

(i) for vehicles manufactured in—

(I) model years 2002 and 2003, 3.0 grams per brake horsepower-hour of oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; and

(II) model years 2004 through 2006, 2.5 grams per brake horsepower-hour of nonmethane hydrocarbons and oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; or

(ii) the emissions of nonmethane hydrocarbons, oxides of nitrogen, and particulate matter of the best performing technology of ultra-low sulfur diesel vehicles of the same class and application that are commercially available.

SEC. 5042. PILOT PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish a competitive grant pilot program, to be administered through the Clean Cities Program of the Department of Energy, to provide not more than 10 geographically dispersed project grants to State governments, local governments, or metropolitan transportation authorities to carry out a project or projects for the purposes described in subsection (b).

(b) GRANT PURPOSES.—Grants under this section may be used for the following purposes:

(1) The acquisition of alternative fueled vehicles or fuel cell vehicles, including—

(A) passenger vehicles including neighborhood electric vehicles; and

(B) motorized two-wheel bicycles, scooters, or other vehicles for use by law enforcement personnel or other State or local government or metropolitan transportation authority employees.

(2) The acquisition of alternative fueled vehicles, hybrid vehicles, or fuel cell vehicles, including—

(A) buses used for public transportation or transportation to and from schools;

(B) delivery vehicles for goods or services; and

(C) ground support vehicles at public airports, including vehicles to carry baggage or push airplanes away from terminal gates.

(3) The acquisition of ultra-low sulfur diesel vehicles.

(4) Infrastructure necessary to directly support an alternative fueled vehicle, fuel cell vehicle, or hybrid vehicle project funded by the grant, including fueling and other support equipment.

(5) Operation and maintenance of vehicles, infrastructure, and equipment acquired as part of a project funded by the grant.

(c) APPLICATIONS.—

(1) REQUIREMENTS.—The Secretary shall issue requirements for applying for grants under the pilot program. At a minimum, the Secretary shall require that applications be submitted by the head of a State or local government or a metropolitan transportation authority, or any combination thereof, and a registered participant in the Clean Cities Program of the Department of Energy, and shall include—

(A) a description of the projects proposed in the application, including how they meet the requirements of this subtitle;

(B) an estimate of the ridership or degree of use of the projects proposed in the application;

(C) an estimate of the air pollution emissions reduced and fossil fuel displaced as a result of the projects proposed in the application, and a plan to collect and disseminate environmental data, related to the projects to be funded under the grant, over the life of the projects;

(D) a description of how the projects proposed in the application will be sustainable without Federal assistance after the completion of the term of the grant;

(E) a complete description of the costs of each project proposed in the application, including acquisition, construction, operation, and maintenance costs over the expected life of the project;

(F) a description of which costs of the projects proposed in the application will be supported by Federal assistance under this subtitle; and

(G) documentation to the satisfaction of the Secretary that diesel fuel containing sulfur at not more than 15 parts per million is available for carrying out the projects, and a commitment by the applicant to use such fuel in carrying out the projects.

(2) PARTNERS.—An applicant under paragraph (1) may carry out projects under the pilot program in partnership with public and private entities.

(d) SELECTION CRITERIA.—In evaluating applications under the pilot program, the Secretary shall consider each applicant's previous experience with similar projects and shall give priority consideration to applications that—

(1) are most likely to maximize protection of the environment;

(2) demonstrate the greatest commitment on the part of the applicant to ensure funding for the proposed projects and the greatest likelihood that each project proposed in the application will be maintained or expanded after Federal assistance under this subtitle is completed; and

(3) exceed the minimum requirements of subsection (c)(1)(A).

(e) PILOT PROJECT REQUIREMENTS.—

(1) MAXIMUM AMOUNT.—The Secretary shall not provide more than $20,000,000 in Federal assistance under the pilot program to any applicant.

(2) COST SHARING.—The Secretary shall not provide more than 50 percent of the cost, incurred during the period of the grant, of any project under the pilot program.

(3) MAXIMUM PERIOD OF GRANTS.—The Secretary shall not fund any applicant under the pilot program for more than 5 years.

(4) DEPLOYMENT AND DISTRIBUTION.—The Secretary shall seek to the maximum extent practicable to ensure a broad geographic distribution of project sites.

(5) TRANSFER OF INFORMATION AND KNOWLEDGE.—The Secretary shall establish mechanisms to ensure that the information and knowledge gained by participants in the pilot program are transferred among the pilot program participants and to other interested parties, including other applicants that submitted applications.

(f) SCHEDULE.—

(1) PUBLICATION.—Not later than 3 months after the date of the enactment of this Act, the Secretary shall publish in the Federal Register, Commerce Business Daily, and elsewhere as appropriate, a request for applications to undertake projects under the pilot program. Applications shall be due within 6 months of the publication of the notice.

(2) SELECTION.—Not later than 6 months after the date by which applications for grants are due, the Secretary shall select by competitive, peer review all applications for projects to be awarded a grant under the pilot program.

(g) LIMIT ON FUNDING.—The Secretary shall provide not less than 20 percent and not more than 25 percent of the grant funding made available under this section for the acquisition of ultra-low sulfur diesel vehicles.

SEC. 5043. REPORTS TO CONGRESS.

(a) INITIAL REPORT.—Not later than 2 months after the date grants are awarded under this subtitle, the Secretary shall transmit to the Congress a report containing—

(1) an identification of the grant recipients and a description of the projects to be funded;

(2) an identification of other applicants that submitted applications for the pilot program; and

(3) a description of the mechanisms used by the Secretary to ensure that the information and knowledge gained by participants in the pilot program are transferred among the pilot program participants and to other interested parties, including other applicants that submitted applications.

(b) EVALUATION.—Not later than 3 years after the date of the enactment of this Act, and annually thereafter until the pilot program ends, the Secretary shall transmit to the Congress a report containing an evaluation of the effectiveness of the pilot program, including an assessment of the benefits to the environment derived from the projects included in the pilot program as well as an estimate of the potential benefits to the environment to be derived from widespread application of alternative fueled vehicles and ultra-low sulfur diesel vehicles.

SEC. 5044. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary $200,000,000 to carry out this subtitle, to remain available until expended.

Subtitle E—Hydrogen Fuel Cell Heavy-Duty Vehicles

SEC. 5051. DEFINITION.

For the purposes of this subtitle, the term "advanced vehicle technologies program" means the program created pursuant to section 5506 of title 49, United States Code.

SEC. 5052. FINDINGS.

The Congress makes the following findings:

(1) The Department of Energy and the Department of Transportation jointly developed the consortium-based advanced vehicle technologies program to develop energy efficient and clean heavy-duty vehicles in 1998.

(2) The majority of clean fuel vehicles in operation today are transit buses.

(3) Hydrogen fuel cell heavy-duty vehicle bus deployments can most appropriately advance hydrogen fuel cell technology development due to centralized refueling, stable duty cycles, and fixed routes.

(4) Hydrogen fuel cell heavy-duty vehicle bus deployments are the most effective manner in which to advance technology developments for public awareness, consumption, and acceptance.

SEC. 5053. HYDROGEN FUEL CELL BUSES.

The Secretary of Energy, through the advanced vehicle technologies program, in coordination with the Secretary of Transportation, shall advance the development of fuel cell bus technologies by providing funding for 4 demonstration sites that—

(1) have or will soon have hydrogen infrastructure for fuel cell bus operation; and

(2) are operated by entities with experience in the development of fuel cell bus technologies,

to enable the widespread utilization of fuel cell buses. Such demonstrations shall address the reliability of fuel cell heavy-duty vehicles, expense, infrastructure, containment, storage, safety, training, and other issues.

SEC. 5054. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Energy $10,000,000 for each of the fiscal years 2004 through 2008 for carrying out this subtitle.

Subtitle F—Miscellaneous

SEC. 5061. RAILROAD EFFICIENCY.

(a) ESTABLISHMENT.—The Secretary shall, in conjunction with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, establish a public-private research partnership involving the Federal Government, the railroad industry, locomotive manufacturers and equipment suppliers, and the research facility owned by the Federal Railroad Administration and operated by contract. The goal of the research partnership shall include developing and demonstrating locomotive technologies that increase fuel economy, reduce emissions, and lower costs.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the requirements of this section $25,000,000 for fiscal year 2004, $30,000,000 for fiscal year 2005, and $35,000,000 for fiscal year 2006.

SEC. 5062. MOBILE EMISSION REDUCTIONS TRADING AND CREDITING.

Within 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall provide a report to the Congress on the Environmental Protection Agency's experience with the trading of mobile source emission reduction credits for use by owners and operators of stationary source emission sources to meet emission offset requirements within a nonattainment area. The report shall describe—

(1) projects approved by the Environmental Protection Agency that include the trading of mobile source emission reduction credits for use by stationary sources in complying with offset requirements, including project and stationary sources location, volumes of emissions offset and traded, a description of the sources of mobile emission reduction credits, and, if available, the cost of the credits;

(2) the significant issues identified by the Environmental Protection Agency in its consideration and approval of trading in such projects;

(3) the requirements for monitoring and assessing the air quality benefits of any approved project;

(4) the statutory authority upon which the Environmental Protection Agency has based approval of such projects;

(5) an evaluation of how the resolution of issues in approved projects could be utilized in other projects; and

(6) any other issues the Environmental Protection Agency considers relevant to the trading and generation of mobile source emission reduction credits for use by stationary sources or for other purposes.

SEC. 5063. IDLE REDUCTION TECHNOLOGIES.

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

(1) IDLE REDUCTION TECHNOLOGY.—The term "idle reduction technology" means a device or system of devices utilized to reduce long-duration idling of a heavy-duty vehicle.

(2) HEAVY-DUTY VEHICLE.—The term "heavy-duty vehicle" means a vehicle that has a gross vehicle weight rating greater than 26,000 pounds and is powered by a diesel engine.

(3) LONG-DURATION IDLING.—The term "long-duration idling" means the operation of a main drive engine, for a period greater than 15 consecutive minutes, where the main drive engine is not engaged in gear. Such term does not apply to routine stoppages associated with traffic movement or congestion.

(b) STUDIES OF THE BENEFITS OF IDLE REDUCTION TECHNOLOGIES.—

(1) POTENTIAL FUEL SAVINGS.—Not later than 90 days after the date of enactment of this section, the Secretary of Energy shall, in consultation with the Secretary of Transportation, commence a study to analyze the potential fuel savings resulting from use of idle reduction technologies.

(2) RECOGNITION OF BENEFITS OF ADVANCED IDLE REDUCTION TECHNOLOGIES.—Within 90 days after the date of enactment of this section, the Administrator of the Environmental Protection Agency is directed to commence a review of the Agency's mobile source air emissions models used under the Clean Air Act to determine whether such models accurately reflect the emissions resulting from long-duration idling of heavy-duty trucks and other vehicles and engines, and shall update those models as the Administrator deems appropriate. Additionally, within 90 days after the date of enactment of this section, the Administrator shall commence a review as to the appropriate emissions reductions credit that should be allotted under the Clean Air Act for the use of advanced idle reduction technologies, and whether such credits should be sub-

ject to an emissions trading system, and shall revise Agency regulations and guidance as the Administrator deems appropriate.

(3) IDLING TECHNOLOGIES.—Not later than 180 days after the date of the enactment of this section, the Secretary of Energy, in consultation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall commence a study to analyze where heavy duty and other vehicles stop for long duration idling.

(c) VEHICLE WEIGHT EXEMPTION.—Section 127(a) of title 23, United States Code, is amended by adding at the end the following: "In instances where an idle reduction technology is installed onboard a motor vehicle, the maximum gross vehicle weight limit and the axle weight limit for any motor vehicle equipped with an idling reduction system may be increased by an amount necessary to compensate for the additional weight of the idling reduction system, except that the weight limit increase shall be no greater than 400 pounds.".

SEC. 5064. STUDY OF AVIATION FUEL CONSERVATION AND EMISSIONS.

The Administrator of the Federal Aviation Administration and the Administrator of the Environmental Protection Agency shall jointly commence a study within 60 days after the date of enactment of this Act to identify the impact of aircraft emissions on air quality in nonattainment areas and to identify ways to promote fuel conservation measures for aviation, enhance fuel efficiency, and reduce emissions. As part of this study, the Administrator of the Federal Aviation Administration and the Administrator of the Environmental Protection Agency shall focus on how air traffic management inefficiencies, such as aircraft idling at airports, result in unnecessary fuel burn and air emissions. Within 180 days after the commencement of the study, the Administrator of the Federal Aviation Administration and the Administrator of the Environmental Protection Agency shall submit a report to the Committees on Energy and Commerce and Transportation and Infrastructure of the House of Representatives and the Committees on Environment and Public Works and Commerce, Science, and Transportation of the Senate containing the results of the study and recommendations as to how unnecessary fuel use and emissions affecting air quality may be reduced, without impacting safety and security, increasing individual aircraft noise, and taking into account all aircraft emissions and their relative impact on human health.

SEC. 5065. DIESEL FUELED VEHICLES.

(a) DIESEL COMBUSTION AND AFTER TREATMENT TECHNOLOGIES.—The Secretary of Energy shall accelerate efforts to improve diesel combustion and after-treatment technologies for use in diesel fueled motor vehicles.

(b) GOAL.—

(1) COMPLIANCE WITH TIER 2 EMISSION STANDARDS BY 2010.—The Secretary shall carry out subsection (a) with a view to developing and demonstrating diesel technology meeting tier 2 emission standards not later than 2010.

(2) TIER 2 EMISSION STANDARDS DEFINED.—In this subsection, the term "tier 2 emission standards" means the motor vehicle emission standards promulgated by the Administrator of the Environmental Protection Agency on February 10, 2000, under sections 202 and 211 of the Clean Air Act to apply to passenger cars, light trucks, and larger passenger vehicles of model years after the 2003 vehicle model year.

SEC. 5066. HYBRID VEHICLES.

(a) IN GENERAL.—Notwithstanding section 102(a)(1) of title 23, United States Code, a State may, for the purpose of promoting energy conservation, permit a hybrid vehicle which is either a passenger automobile or light duty truck with fewer than 2 occupants to operate in high occupancy vehicle lanes.

(b) DEFINITION.—In this section, the term "hybrid vehicle" means a motor vehicle which draws propulsion energy from both—

(1) an internal combustion or heat engine using combustible fuel; and

(2) an onboard rechargeable energy storage system.

SEC. 5067. WAIVERS OF ALTERNATIVE FUELED VEHICLE FUELING REQUIREMENT.

Section 400AA(a)(3)(E) of the Energy Policy and Conservation Act (42 U.S.C. 6374(a)(3)(E)) is amended to read as follows:

"(E)(i) Dual fueled vehicles acquired pursuant to this section shall be operated on alternative fuels unless the Secretary determines that an agency needs a waiver of such requirement for vehicles in the fleet of the agency in a particular geographic area where—

"(I) the alternative fuel otherwise required to be used in the vehicle is not reasonably available to retail purchasers of the fuel, as certified to the Secretary by the head of the agency; or

"(II) the cost of the alternative fuel otherwise required to be used in the vehicle is unreasonably more expensive compared to gasoline, as certified by the head of the agency.

"(ii) The Secretary shall monitor compliance with this subparagraph by all such fleets and shall report annually to the Congress on the extent to which the requirements of this subparagraph are being achieved. The report shall include information on annual reductions achieved of petroleum-based fuels and the problems, if any, encountered in acquiring alternative fuels.".

TITLE VI—DOE PROGRAMS

SEC. 6001. PURPOSES.

The purposes of this title are to—

(1) contribute to a national energy strategy through Department of Energy programs that promote the production and conservation of energy in partnership with industry;

(2) protect and strengthen the Nation's economy, standard of living, and national security by reducing dependence on imported energy;

(3) meet future needs for energy services at the lowest total cost to the Nation, giving balanced and comprehensive consideration to technologies that improve the efficiency of energy end uses and that enhance energy supply;

(4) reduce the environmental impacts of energy production, distribution, transportation, and use;

(5) help increase domestic production of energy, increase the availability of hydrocarbon reserves, and lower energy prices; and

(6) stimulate economic growth and enhance the ability of United States companies to compete in future markets for advanced energy technologies.

SEC. 6002. DEFINITIONS.

For purposes of this title:

(1) DEPARTMENT.—The term "Department" means the Department of Energy.

(2) DEPARTMENTAL MISSION.—The term "departmental mission" means any of the functions vested in the Secretary of Energy by the Department of Energy Organization Act (42 U.S.C. 7101 et seq.) or other law.

(3) INSTITUTION OF HIGHER EDUCATION.—The term "institution of higher education" has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(4) JOINT VENTURE.—The term "joint venture" has the meaning given that term under section 2 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4301).

(5) NATIONAL LABORATORY.—The term "National Laboratory" means any of the following laboratories owned by the Department:

(A) Ames National Laboratory.
(B) Argonne National Laboratory.
(C) Brookhaven National Laboratory.
(D) Fermi National Laboratory.
(E) Idaho National Engineering and Environmental Laboratory.
(F) Lawrence Berkeley National Laboratory.
(G) Lawrence Livermore National Laboratory.
(H) Los Alamos National Laboratory.
(I) National Energy Technology Laboratory.
(J) National Renewable Energy Laboratory.
(K) Oak Ridge National Laboratory.
(L) Pacific Northwest National Laboratory.
(M) Princeton Plasma Physics Laboratory.
(N) Sandia National Laboratories.
(O) Thomas Jefferson National Accelerator Facility.

(6) NONMILITARY ENERGY LABORATORY.—The term "nonmilitary energy laboratory" means any of the following laboratories of the Department:

(A) Ames National Laboratory.
(B) Argonne National Laboratory.
(C) Brookhaven National Laboratory.
(D) Fermi National Laboratory.
(E) Lawrence Berkeley National Laboratory.
(F) Oak Ridge National Laboratory.
(G) Pacific Northwest National Laboratory.
(H) Princeton Plasma Physics Laboratory.
(I) Stanford Linear Accelerator Center.

(J) Thomas Jefferson National Accelerator Facility.

(7) SECRETARY.—The term "Secretary" means the Secretary of Energy.

Subtitle A—Energy Efficiency

PART 1—AUTHORIZATION OF APPROPRIATIONS

SEC. 6011. ENERGY EFFICIENCY.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for energy efficiency and conservation activities, including activities authorized under this subtitle:

(1) For fiscal year 2003, $560,000,000.

(2) For fiscal year 2004, $616,000,000.

(3) For fiscal year 2005, $695,000,000.

(4) For fiscal year 2006, $772,000,000.

(5) For fiscal year 2007, $865,000,000.

(b) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) LIGHTING SYSTEMS.—For activities under section 6021, $10,000,000 for fiscal year 2003 and $50,000,000 for each of fiscal years 2004 through 2007.

(2) SECONDARY ELECTRIC VEHICLE BATTERY USE PROGRAM.—For activities under section 6032—

(A) for fiscal year 2003, $1,000,000;

(B) for fiscal year 2004, $4,000,000;

(C) for fiscal year 2005, $7,000,000;

(D) for fiscal year 2006, $7,000,000; and

(E) for fiscal year 2007, $7,000,000.

(c) EXTENDED AUTHORIZATION.—There are authorized to be appropriated to the Secretary for activities under section 6021, $50,000,000 for each of fiscal years 2008 through 2012.

(d) LIMITS ON USE OF FUNDS.—None of the funds authorized to be appropriated under this section may be used for—

(1) the promulgation and implementation of energy efficiency regulations;

(2) the Weatherization Assistance Program under part A of title IV of the Energy Conservation and Production Act;

(3) the State Energy Program under part D of title III of the Energy Policy and Conservation Act; or

(4) the Federal Energy Management Program under part 3 of title V of the National Energy Conservation Policy Act.

PART 2—LIGHTING SYSTEMS

SEC. 6021. NEXT GENERATION LIGHTING INITIATIVE.

(a) IN GENERAL.—The Secretary shall carry out a Next Generation Lighting Initiative in accordance with this section to support activities related to advanced solid-state lighting technologies based on white light emitting diodes.

(b) OBJECTIVES.—The objectives of the initiative shall be—

(1) to develop, by 2012, advanced solid-state lighting technologies based on white light emitting diodes that, compared to incandescent and fluorescent lighting technologies, are—

(A) longer lasting;

(B) more energy-efficient; and

(C) cost-competitive;

(2) to develop an inorganic white light emitting diode that has an efficiency of 160 lumens per watt and a 10-year lifetime; and

(3) to develop an organic white light emitting diode with an efficiency of 100 lumens per watt with a 5-year lifetime that—

(A) illuminates over a full color spectrum;

(B) covers large areas over flexible surfaces; and

(C) does not contain harmful pollutants, such as mercury, typical of fluorescent lamps.

(c) CONSORTIUM.—

(1) IN GENERAL.—The Secretary shall establish the Next Generation Lighting Initiative through a private consortium (which may include private firms, trade associations and institutions of higher education), which the Secretary shall select through a competitive process. Each proposed consortium shall submit to

the Secretary such information as the Secretary may require, including a program plan agreed to by all participants of the consortium.

(2) JOINT VENTURE.—The consortium shall be structured as a joint venture among the participants of the consortium. The Secretary shall serve on the governing council of the consortium.

(3) ELIGIBILITY.—To be eligible to be selected as the consortium under paragraph (1), an applicant must be broadly representative of United States solid-state lighting research, development, and manufacturing expertise as a whole.

(4) GRANTS.—(A) The Secretary shall award grants to the consortium, which the consortium may disburse to researchers, including those who are not participants of the consortium.

(B) To receive a grant, the consortium must provide a description to the Secretary of the proposed activities and list the parties that will receive funding.

(5) NATIONAL LABORATORIES.—National Laboratories may participate in the activities described in this section, and may receive funds from the consortium.

(6) INTELLECTUAL PROPERTY.—Participants in the consortium and the Federal Government shall have royalty-free nonexclusive rights to use intellectual property derived from activities funded pursuant to this subsection.

(d) DEVELOPMENT, DEMONSTRATION, AND COMMERCIAL APPLICATION.—The Secretary shall carry out the development, demonstration, and commercial application activities of the Next Generation Lighting Initiative through awards to private firms, trade associations, and institutions of higher education. In selecting awardees, the Secretary may give preference to members of the consortium selected pursuant to subsection (c).

(e) PLANS AND ASSESSMENTS.—(1) The consortium shall formulate an annual operating plan which shall include priorities, technical milestones, and plans for technology transfer, and which shall be subject to approval by the Secretary.

(2) The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct periodic reviews of the Next Generation Lighting Initiative. The Academy shall review the priorities, technical milestones, and plans for technology transfer established under paragraph (1) and evaluate the progress toward achieving them. The Secretary shall consider the results of such reviews in evaluating the plans submitted under paragraph (1).

(f) AUDIT.—The Secretary shall retain an independent, commercial auditor to perform an audit of the consortium to determine the extent to which the funds authorized by this section have been expended in a manner consistent with the purposes of this section. The auditor shall transmit a report annually to the Secretary, who shall transmit the report to the Congress, along with a plan to remedy any deficiencies cited in the report.

(g) SUNSET.—The Next Generation Lighting Initiative shall terminate no later than September 30, 2013.

(h) DEFINITIONS.—As used in this section:

(1) ADVANCED SOLID-STATE LIGHTING.—The term "advanced solid-state lighting" means a semiconducting device package and delivery system that produces white light using externally applied voltage.

(2) INORGANIC WHITE LIGHT EMITTING DIODE.—The term "inorganic white light emitting diode" means an inorganic semiconducting package that produces white light using externally applied voltage.

(3) ORGANIC WHITE LIGHT EMITTING DIODE.—The term "organic white light emitting diode" means an organic semiconducting compound that produces white light using externally applied voltage.

PART 3—VEHICLES

SEC. 6031. DEFINITIONS.

For purposes of this part, the term—

(1) "battery" means an energy storage device that previously has been used to provide motive power in a vehicle powered in whole or in part by electricity; and

(2) "associated equipment" means equipment located where the batteries will be used that is necessary to enable the use of the energy stored in the batteries.

SEC. 6032. ESTABLISHMENT OF SECONDARY ELECTRIC VEHICLE BATTERY USE PROGRAM.

(a) PROGRAM.—The Secretary shall establish and conduct a program for the secondary use of batteries. Such program shall be—

(1) designed to demonstrate the use of batteries in secondary application, including utility and commercial power storage and power quality;

(2) structured to evaluate the performance, including useful service life and costs, of such batteries in field operations, and evaluate the necessary supporting infrastructure, including reuse and disposal of batteries; and

(3) coordinated with ongoing secondary battery use programs at the National Laboratories and in industry.

(b) SOLICITATION.—(1) Not later than 6 months after the date of the enactment of this Act, the Secretary shall solicit proposals to demonstrate the secondary use of batteries and associated equipment and supporting infrastructure in geographic locations throughout the United States. The Secretary may make additional solicitations for proposals if the Secretary determines that such solicitations are necessary to carry out this section.

(2)(A) Proposals submitted in response to a solicitation under this section shall include—

(i) a description of the project, including the batteries to be used in the project, the proposed locations and applications for the batteries, the number of batteries to be demonstrated, and the type, characteristics, and estimated lifecycle costs of the batteries compared to other energy storage devices currently used;

(ii) the contribution, if any, of State or local governments and other persons to the demonstration project;

(iii) the type of associated equipment and supporting infrastructure to be demonstrated; and

(iv) any other information the Secretary considers appropriate.

(B) If the proposal includes a lease arrangement, the proposal shall indicate the terms of such lease arrangement for the batteries and associated equipment.

(c) SELECTION OF PROPOSALS.—(1)(A) The Secretary, in cooperation with affected Federal Regulatory agencies, shall, not later than 3 months after the closing date established by the Secretary for receipt of proposals under subsection (b), select at least 5 proposals to receive financial assistance under this section.

(B) No one project selected under this section shall receive more than 25 percent of the funds authorized under this section. No more than 3 projects selected under this section shall demonstrate the same battery type.

(2) In selecting a proposal under this section, the Secretary shall consider—

(A) the ability of the proposer to acquire the batteries and associated equipment and to successfully manage and conduct the demonstration project, including satisfying the reporting requirements set forth in paragraph (3)(B);

(B) the geographic and climatic diversity of the projects selected;

(C) the long-term technical and competitive viability of the batteries to be used in the project and of the original manufacturer of such batteries;

(D) the suitability of the batteries for their intended uses;

(E) the technical performance of the batteries, including the expected additional useful life and the batteries' ability to retain energy;

(F) the environmental effects of the use of and disposal of the batteries proposed to be used in the project selected;

(G) the extent of involvement of State or local government and other persons in the demonstration project and whether such involvement will—

(i) permit a reduction of the Federal cost share per project; or

(ii) otherwise be used to allow the Federal contribution to be provided to demonstrate a greater number of batteries; and

(H) such other criteria as the Secretary considers appropriate.

(3) CONDITIONS.—The Secretary shall require that—

(A) as a part of a demonstration project, the users of the batteries provide to the proposer information regarding the operation, maintenance, performance, and use of the batteries, and the proposer provide such information to the battery manufacturer, for 3 years after the beginning of the demonstration project;

(B) the proposer provide to the Secretary and the Administrator of the United States Environmental Protection Agency such information regarding the operation, maintenance, performance, and use of the batteries as the Secretary or the Administrator may request;

(C) the proposer provide to the Secretary such information regarding the disposal of the batteries as the Secretary may require to ensure that the proposer disposes of the batteries in accordance with applicable law; and

(D) the proposer provide at least 50 percent of the costs associated with the proposal.

Subtitle B—Distributed Energy and Electric Energy Systems

PART 1—AUTHORIZATION OF APPROPRIATIONS

SEC. 6201. DISTRIBUTED ENERGY AND ELECTRIC ENERGY SYSTEMS.

The following sums are authorized to be appropriated to the Secretary for distributed energy and electric energy systems activities, including activities authorized under this subtitle:

(1) For fiscal year 2004, $190,000,000.
(2) For fiscal year 2005, $200,000,000.
(3) For fiscal year 2006, $220,000,000.
(4) For fiscal year 2007, $240,000,000.

PART 2—DISTRIBUTED POWER

SEC. 6221. STRATEGY.

(a) REQUIREMENT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall develop and transmit to the Congress a strategy for a comprehensive program to develop hybrid distributed power systems that combine—

(1) one or more renewable electric power generation technologies of 10 megawatts or less located near the site of electric energy use; and

(2) nonintermittent electric power generation technologies suitable for use in a distributed power system.

(b) CONTENTS.—The strategy shall—

(1) identify the needs best met with such hybrid distributed power systems and the technological barriers to the use of such systems;

(2) provide for the development of methods to design, test, integrate into systems, and operate such hybrid distributed power systems;

(3) include, as appropriate, activities needed for the adoption of such hybrid distributed power systems, including energy storage devices and environmental control technologies; and

(4) describe how activities under the strategy will be integrated with other activities supported by the Department of Energy related to electric power technologies.

SEC. 6222. HIGH POWER DENSITY INDUSTRY PROGRAM.

The Secretary shall establish a comprehensive program to improve energy efficiency of high power density facilities, including data centers, server farms, and telecommunications facilities. Such program shall consider technologies that provide significant improvement in thermal controls, metering, load management, peak load reduction, or the efficient cooling of electronics.

SEC. 6223. MICRO-COGENERATION ENERGY TECHNOLOGY.

The Secretary shall make competitive, merit-based grants to consortia for the development of micro-cogeneration energy technology. The consortia shall explore the use of small-scale combined heat and power in residential heating appliances.

PART 3—TRANSMISSION SYSTEMS

SEC. 6231. TRANSMISSION INFRASTRUCTURE SYSTEMS.

(a) PROGRAM AUTHORIZED.—The Secretary shall develop a program to promote improved reliability and efficiency of electrical transmission systems. Such program may include—

(1) advanced energy technologies, materials, and systems;
(2) advanced grid reliability and efficiency technology development;
(3) technologies contributing to significant load reductions;
(4) advanced metering, load management, and control technologies;
(5) technologies to enhance existing grid components;
(6) the development and use of high-temperature superconductors to—

(A) enhance the reliability, operational flexibility, or power-carrying capability of electric transmission or distribution systems; or

(B) increase the efficiency of electric energy generation, transmission, distribution, or storage systems;

(7) integration of power systems, including systems to deliver high-quality electric power, electric power reliability, and combined heat and power;

(8) any other infrastructure technologies, as appropriate; and
(9) technology transfer and education.

(b) PROGRAM PLAN.—Not later than 1 year after the date of the enactment of this Act, the Secretary, in consultation with other appropriate Federal agencies, shall prepare and transmit to Congress a 5-year program plan to guide activities under this section. In preparing the program plan, the Secretary shall consult with utilities, energy services providers, manufacturers, institutions of higher education, other appropriate State and local agencies, environmental organizations, professional and technical societies, and any other persons the Secretary considers appropriate.

(c) REPORT.—Not later than 2 years after the transmittal of the plan under subsection (b), the Secretary shall transmit a report to Congress describing the progress made under this section and identifying any additional resources needed to continue the development and commercial application of transmission infrastructure technologies.

Subtitle C—Renewable Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

SEC. 6301. RENEWABLE ENERGY.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for renewable energy activities, including activities authorized under this subtitle:
(1) For fiscal year 2004, $460,000,000.
(2) For fiscal year 2005, $510,000,000.
(3) For fiscal year 2006, $560,000,000.
(4) For fiscal year 2007, $609,000,000.

(b) BIOENERGY.—From the amounts authorized under subsection (a), the following sums are authorized to be appropriated to carry out section 6321 and other bioenergy activities:
(1) For fiscal year 2004, $135,425,000.
(2) For fiscal year 2005, $155,600,000.
(3) For fiscal year 2006, $167,650,000.
(4) For fiscal year 2007, $180,000,000.

(c) USE OF FUNDS.—
(1) BIOENERGY.—Of the funds authorized under subsection (b), not less than $5,000,000 for each fiscal year shall be made available for grants to Historically Black Colleges and Universities, Tribal Colleges, and Hispanic-Serving Institutions.
(2) RURAL AND REMOTE LOCATIONS.—In carrying out this section, the Secretary, in consultation with the Secretary of Agriculture, shall demonstrate the production and use of energy from advanced wind power technology, biomass, geothermal energy systems, and other renewable energy technologies in order to assist in delivering electricity to rural and remote locations.
(3) HYDROPOWER.—Of the funds authorized under subsection (a), not less than $5,000,000 for each fiscal year shall be made available for demonstration projects of off-stream pumped storage hydropower.

PART 2—BIOENERGY

SEC. 6321. BIOENERGY PROGRAMS.

(a) PROGRAM.—The Secretary shall conduct a program to facilitate the production of bioenergy, including—
(1) biopower energy systems;
(2) biofuels;
(3) integrated applications of both biopower and biofuels;
(4) feedstocks; and
(5) economic analysis.

(b) DEFINITION.—For purposes of this section, the term "bioenergy" includes energy produced from animal waste and agricultural crops.

Subtitle D—Nuclear Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

SEC. 6411. NUCLEAR ENERGY.

(a) CORE PROGRAMS.—The following sums are authorized to be appropriated to the Secretary for nuclear energy activities, regulation of research and development activities and nuclear regulatory research, including activities authorized under this subtitle, other than those described in subsection (b):

(1) For fiscal year 2004, $200,000,000.
(2) For fiscal year 2005, $233,000,000.
(3) For fiscal year 2006, $266,000,000.
(4) For fiscal year 2007, $300,000,000.

(b) NUCLEAR INFRASTRUCTURE SUPPORT.—The following sums are authorized to be appropriated to the Secretary for activities under section 6421(f):

(1) For fiscal year 2004, $120,000,000.
(2) For fiscal year 2005, $125,000,000.
(3) For fiscal year 2006, $130,000,000.
(4) For fiscal year 2007, $135,000,000.

(c) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) ADVANCED FUEL RECYCLING PROGRAM.—For activities under section 6431—
(A) for fiscal year 2004, $80,000,000;
(B) for fiscal year 2005, $93,000,000;
(C) for fiscal year 2006, $106,000,000; and
(D) for fiscal year 2007, $120,000,000.

(2) UNIVERSITY PROGRAMS.—For activities under section 6441—
(A) for fiscal year 2004, $25,000,000;
(B) for fiscal year 2005, $33,900,000;
(C) for fiscal year 2006, $37,900,000; and
(D) for fiscal year 2007, $43,600,000.

(d) LIMIT ON USE OF FUNDS.—None of the funds authorized under this section may be used for decommissioning the Fast Flux Test Facility.

PART 2—NUCLEAR ENERGY RESEARCH PROGRAMS

SEC. 6421. NUCLEAR ENERGY RESEARCH PROGRAMS.

(a) NUCLEAR ENERGY RESEARCH INITIATIVE.—The Secretary shall carry out a Nuclear Energy Research Initiative for research and development related to nuclear energy.

(b) NUCLEAR ENERGY PLANT OPTIMIZATION PROGRAM.—The Secretary shall carry out a Nuclear Energy Plant Optimization Program to support research and development activities addressing reliability, availability, productivity, and component aging in existing nuclear power plants.

(c) NUCLEAR POWER 2010 PROGRAM.—The Secretary shall carry out a Nuclear Power 2010 Program, consistent with recommendations in the October 2001 report entitled "A Roadmap to Deploy New Nuclear Power Plants in the United States by 2010" issued by the Nuclear Energy Research Advisory Committee of the Department. The Program shall—

(1) rely on the expertise and capabilities of the National Laboratories in the areas of advanced nuclear fuels cycles and fuels testing;
(2) pursue an approach that considers a variety of reactor designs;
(3) include participation of international collaborators in research, development, and design efforts as appropriate; and
(4) encourage industry participation.

(d) GENERATION IV NUCLEAR ENERGY SYSTEMS INITIATIVE.—The Secretary shall carry out a Generation IV Nuclear Energy Systems Initiative to develop an overall technology plan and to support research and development necessary to make an informed technical decision about the most promising candidates for eventual commercial application. The Initiative shall examine advanced proliferation-resistant and passively safe reactor designs, including designs that—

(1) are economically competitive with other electric power generation plants;
(2) have higher efficiency, lower cost, and improved safety compared to reactors in operation on the date of enactment of this Act;
(3) use fuels that are proliferation resistant and have substantially reduced production of high-level waste per unit of output; and
(4) utilize improved instrumentation.

(e) REACTOR PRODUCTION OF HYDROGEN.—The Secretary shall carry out research to examine designs for high-temperature reactors capable of producing large-scale quantities of hydrogen using thermochemical processes.

(f) NUCLEAR INFRASTRUCTURE SUPPORT.—The Secretary shall develop and implement a strategy for the facilities of the Office of Nuclear Energy, Science, and Technology and shall transmit a report containing the strategy along with the President's budget request to the Congress for fiscal year 2005. Such strategy shall provide a cost-effective means for—

(1) maintaining existing facilities and infrastructure, as needed;

(2) closing unneeded facilities;

(3) making facility upgrades and modifications; and

(4) building new facilities.

PART 3—ADVANCED FUEL RECYCLING

SEC. 6431. ADVANCED FUEL RECYCLING PROGRAM.

(a) IN GENERAL.—The Secretary, through the Director of the Office of Nuclear Energy, Science and Technology, shall conduct an advanced fuel recycling technology research and development program to evaluate proliferation-resistant fuel recycling and transmutation technologies which minimize environmental or public health and safety impacts as an alternative to aqueous reprocessing technologies deployed as of the date of enactment of this Act in support of evaluation of alternative national strategies for spent nuclear fuel and the Generation IV advanced reactor concepts, subject to annual review by the Secretary's Nuclear Energy Research Advisory Committee or other independent entity, as appropriate. Opportunities to enhance progress of this program through international cooperation should be sought.

(b) REPORTS.—The Secretary shall report on the activities of the advanced fuel recycling technology research and development program, as part of the Department's annual budget submission.

PART 4—UNIVERSITY PROGRAMS

SEC. 6441. UNIVERSITY NUCLEAR SCIENCE AND ENGINEERING SUPPORT.

(a) ESTABLISHMENT.—The Secretary shall support a program to invest in human resources and infrastructure in the nuclear sciences and engineering and related fields (including health physics and nuclear and radiochemistry), consistent with departmental missions related to civilian nuclear research and development.

(b) DUTIES.—In carrying out the program under this section, the Secretary shall—

(1) establish a graduate and undergraduate fellowship program to attract new and talented students;

(2) establish a Junior Faculty Research Initiation Grant Program to assist institutions of higher education in recruiting and retaining new faculty in the nuclear sciences and engineering;

(3) support fundamental nuclear sciences and engineering research through the Nuclear Engineering Education Research Program;

(4) encourage collaborative nuclear research among industry, National Laboratories, and institutions of higher education through the Nuclear Energy Research Initiative; and

(5) support communication and outreach related to nuclear science and engineering.

(c) MAINTAINING UNIVERSITY RESEARCH AND TRAINING REACTORS AND ASSOCIATED INFRASTRUCTURE.—Activities under this section may include—

(1) converting research reactors currently using high-enrichment fuels to low-enrichment fuels, upgrading operational instrumentation, and sharing of reactors among institutions of higher education;

(2) providing technical assistance, in collaboration with the United States nuclear industry, in relicensing and upgrading training reactors as part of a student training program; and

(3) providing funding for reactor improvements as part of a focused effort that emphasizes research, training, and education.

(d) UNIVERSITY-NATIONAL LABORATORY INTERACTIONS.—The Secretary shall develop—

(1) a sabbatical fellowship program for professors at institutions of higher education to spend extended periods of time at National Laboratories in the areas of nuclear science and technology; and

(2) a visiting scientist program in which National Laboratory staff can spend time in academic nuclear science and engineering departments.

The Secretary may provide fellowships for students to spend time at National Laboratories in the area of nuclear science with a member of the Laboratory staff acting as a mentor.

(e) OPERATING AND MAINTENANCE COSTS.—Funding for a research project provided under this section may be used to offset a portion of the operating and maintenance costs of a research reactor at an institution of higher education used in the research project.

Subtitle E—Fossil Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

SEC. 6501. FOSSIL ENERGY.

There are authorized to be appropriated to the Secretary for fossil energy activities, including activities authorized under this subtitle—

(1) $523,000,000 for fiscal year 2004;
(2) $542,000,000 for fiscal year 2005;
(3) $558,000,000 for fiscal year 2006; and
(4) $585,000,000 for fiscal year 2007.

PART 2—ULTRA-DEEPWATER AND UNCONVENTIONAL NATURAL GAS AND OTHER PETROLEUM RESOURCES

SEC. 6521. PROGRAM AUTHORITY.

(a) IN GENERAL.—The Secretary shall carry out a program under this part for ultra-deepwater and unconventional natural gas and other petroleum resource exploration and production, including safe operations and environmental mitigation.

(b) PROGRAM ELEMENTS.—The program under this part shall address the following areas, including improving safety and minimizing environmental impacts of activities within each area:

(1) Ultra-deepwater technology.
(2) Ultra-deepwater architecture.
(3) Unconventional natural gas and other petroleum resource exploration and production technology.

(c) LIMITATION ON LOCATION OF FIELD ACTIVITIES.—Field activities under the program under this part shall be carried out only—

(1) in—
(A) areas in the territorial waters of the United States not under any Outer Continental Shelf moratorium as of September 30, 2002;
(B) areas onshore in the United States on public land administered by the Secretary of the Interior available for oil and gas leasing, where consistent with applicable law and land use plans; and
(C) areas onshore in the United States on State or private land, subject to applicable law; and
(2) with the approval of the appropriate Federal or State land management agency or private land owner.

(d) NATIONAL ENERGY TECHNOLOGY LABORATORY.—The Secretary, through the National Energy Technology Laboratory, shall carry out activities complementary to activities under subsection (b)(1).

(e) CONSULTATION WITH SECRETARY OF THE INTERIOR.—In carrying out this part, the Secretary shall consult regularly with the Secretary of the Interior.

SEC. 6522. ULTRA-DEEPWATER PROGRAM.

(a) IN GENERAL.—The Secretary shall carry out the activities under paragraphs (1) and (2) of section 6521(b), to maximize the value of the ultra-deepwater natural gas and other petroleum resources of the United States by increasing the supply of such resources and by reducing the cost and increasing the efficiency of exploration for and production of such resources, while improving safety and minimizing environmental impacts.

(b) ROLE OF THE SECRETARY.—The Secretary shall have ultimate responsibility for, and oversight of, all aspects of the program under this section.

(c) ROLE OF THE PROGRAM CONSORTIUM.—

(1) IN GENERAL.—The Secretary shall contract with a consortium to—
(A) manage awards pursuant to subsection (f)(4);
(B) make recommendations to the Secretary for project solicitations;

(C) disburse funds awarded under subsection (f) as directed by the Secretary in accordance with the annual plan under subsection (e); and

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

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

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

(i) to ensure that each board member, officer, or employee of the program consortium who is in a decisionmaking capacity under subsection (f)(3) or (4) shall disclose to the Secretary any financial interests in, or financial relationships with, applicants for or recipients of awards under this section, including those of his or her spouse or minor child, unless such relationships or interests would be considered to be remote or inconsequential; and

(ii) to require any board member, officer, or employee with a financial relationship or interest disclosed under clause (i) to recuse himself or herself from any review under subsection (f)(3) or oversight under subsection (f)(4) with respect to such applicant or recipient.

(B) The Secretary may disqualify an application or revoke an award under this section if a board member, officer, or employee has failed to comply with procedures required under subparagraph (A)(ii).

(d) SELECTION OF THE PROGRAM CONSORTIUM.—

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

(2) MEMBERS.—The program consortium may include corporations, institutions of higher education, National Laboratories, or other research institutions. After submitting a proposal under paragraph (4), the program consortium may not add members without the consent of the Secretary.

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

(4) SCHEDULE.—Not later than 90 days after the date of enactment of this Act, the Secretary shall solicit proposals for the creation of the program consortium, which must be submitted not less than 180 days after the date of enactment of this Act. The Secretary shall select the program consortium not later than 240 days after such date of enactment.

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

(A) list all members of the consortium;

(B) fully describe the structure of the consortium, including any provisions relating to intellectual property; and –

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

(6) ELIGIBILITY.—To be eligible to be selected as the program consortium, an applicant must be an entity whose members collectively have demonstrated capabilities in planning and managing programs in natural gas or other petroleum exploration or production.

(7) CRITERION.—The Secretary may consider the amount of the fee an applicant proposes to receive under subsection (g) in selecting a consortium under this section.

(e) ANNUAL PLAN.—

(1) IN GENERAL.—The program under this section shall be carried out pursuant to an annual plan prepared by the Secretary in accordance with paragraph (2).

(2) DEVELOPMENT.—(A) Before drafting an annual plan under this subsection, the Secretary shall solicit specific written recommendations from the program consortium for each element to be addressed in the plan, including those described in paragraph (4). The Secretary may request that the program consortium submit its recommendations in the form of a draft annual plan.

(B) The Secretary shall submit the recommendations of the program consortium under subparagraph (A) to the Ultra-Deepwater Advisory Committee established under section 6525(a) for review, and such Advisory Committee shall provide to the Secretary written comments by a date determined by the Secretary. The Secretary may also solicit comments from any other experts.

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

(3) PUBLICATION.—The Secretary shall transmit to the Congress and publish in the Federal Register the annual plan, along with any written comments received under paragraph (2)(A) and (B). The annual plan shall be transmitted and published not later than 60 days after the date of enactment of an Act making appropriations for a fiscal year for the program under this section.

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

(A) a list of any solicitations for awards that the Secretary plans to issue to carry out activities, including the topics for such work, who would be eligible to apply, selection criteria, and the duration of awards; and

(B) a description of the activities expected of the program consortium to carry out subsection (f)(4).

(f) AWARDS.—

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

(2) PROPOSALS.—The Secretary shall solicit proposals for awards under this subsection in such manner and at such time as the Secretary may prescribe, in consultation with the program consortium.

(3) REVIEW.—The Secretary shall make awards under this subsection through a competitive process, which shall include a review by individuals selected by the Secretary. Such individuals shall include, for each application, Federal officials, the program consortium, and non-Federal experts who are not board members, officers, or employees of the program consortium or of a member of the program consortium.

(4) OVERSIGHT.—(A) The program consortium shall oversee the implementation of awards under this subsection, consistent with the annual plan under subsection (e), including disbursing funds and monitoring activities carried out under such awards for compliance with the terms and conditions of the awards.

(B) Nothing in subparagraph (A) shall limit the authority or responsibility of the Secretary to oversee awards, or limit the authority of the Secretary to review or revoke awards.

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

(g) FEE.—

(1) IN GENERAL.—To compensate the program consortium for carrying out its activities under this section, the Secretary shall provide to the program consortium a fee in an amount not to exceed 7.5 percent of the amounts awarded under subsection (f) for each fiscal year.

(2) ADVANCE.—The Secretary shall advance funds to the program consortium upon selection of the consortium, which shall be deducted from amounts to be provided under paragraph (1).

(h) AUDIT.—The Secretary shall retain an independent, commercial auditor to determine the extent to which funds provided to the program consortium, and funds provided under awards made under subsection (f), have been expended in a manner consistent with the purposes and requirements of this part. The auditor shall transmit a report annually to the Secretary, who shall transmit the report to Congress, along with a plan to remedy any deficiencies cited in the report.

SEC. 6523. UNCONVENTIONAL NATURAL GAS AND OTHER PETROLEUM RESOURCES PROGRAM.

(a) IN GENERAL.—The Secretary, after consulting with appropriate Federal regulatory agencies, shall carry out activities under section 6521(b)(3), to maximize the value of the onshore unconventional natural gas and other petroleum resources of the United States by increasing the supply of such resources and by reducing the cost and increasing the efficiency of exploration for and production of such resources, while improving safety and minimizing environmental impacts.

(b) AWARDS.—

(1) IN GENERAL.—The Secretary shall carry out this section through awards made through an open, competitive process.

(2) CONSORTIA.—In carrying out paragraph (1), the Secretary shall give preference to making awards to consortia.

(c) AUDIT.—The Secretary shall retain an independent, commercial auditor to determine the extent to which funds provided under awards made under this section have been expended in a manner consistent with the purposes and requirements of this part. The auditor shall transmit a report annually to the Secretary, who shall transmit the report to Congress, along with a plan to remedy any deficiencies cited in the report.

(d) FOCUS AREAS.—Awards under this section may focus on areas including advanced coal-bed methane, deep drilling, natural gas production from tight sands, natural gas production from gas shales, innovative exploration and production techniques, enhanced recovery techniques, and environmental mitigation of unconventional natural gas and other petroleum resources exploration and production.

(e) ACTIVITIES BY THE UNITED STATES GEOLOGICAL SURVEY.—The Secretary of the Interior, through the United States Geological Survey, shall, where appropriate, carry out programs to complement the programs under this section.

SEC. 6524. ADDITIONAL REQUIREMENTS FOR AWARDS.

(a) DEMONSTRATION PROJECTS.—An application for an award under this part for a demonstration project shall describe with specificity the intended commercial use of the technology to be demonstrated.

(b) FLEXIBILITY IN LOCATING DEMONSTRATION PROJECTS.—Subject to the limitation in section 6521(c), a demonstration project under this part relating to an ultra-deepwater technology or an ultra-deepwater architecture may be conducted in deep-water depths.

(c) INTELLECTUAL PROPERTY AGREEMENTS.—If an award under this part is made to a consortium (other than the program consortium), the consortium shall provide to the Secretary a signed contract agreed to by all members of the consortium describing the rights of each member to intellectual property used or developed under the award.

(d) TECHNOLOGY TRANSFER.—Each recipient of an award under this part shall conduct technology transfer activities, as appropriate.

SEC. 6525. ADVISORY COMMITTEES.

(a) ULTRA-DEEPWATER ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 270 days after the date of enactment of this section, the Secretary shall establish an advisory committee to be known as the Ultra-Deepwater Advisory Committee.

(2) MEMBERSHIP.—The advisory committee under this subsection shall be composed of members appointed by the Secretary and including—

(A) individuals with extensive experience or operational knowledge of offshore natural gas and other petroleum exploration and production;

(B) individuals broadly representative of the affected interests in ultra-deepwater natural gas and other petroleum production, including interests in environmental protection and safe operations;

(C) no individuals who are Federal employees; and

(D) no individuals who are board members, officers, or employees of the program consortium.

(3) DUTIES.—The advisory committee under this subsection shall—

(A) advise the Secretary on the development and implementation of programs under this part related to ultra-deepwater natural gas and other petroleum resources; and

(B) carry out section 6522(e)(2)(B).

(4) COMPENSATION.—A member of the advisory committee under this subsection shall serve without compensation but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(b) UNCONVENTIONAL RESOURCES TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 270 days after the date of enactment of this section, the Secretary shall establish an advisory committee to be known as the Unconventional Resources Technology Advisory Committee.

(2) MEMBERSHIP.—The advisory committee under this subsection shall be composed of members appointed by the Secretary and including—

(A) individuals with extensive experience or operational knowledge of unconventional natural gas and other petroleum resource exploration and production, including independent oil and gas producers;

(B) individuals broadly representative of the affected interests in unconventional natural gas and other petroleum resource exploration and production, including interests in environmental protection and safe operations; and

(C) no individuals who are Federal employees.

(3) DUTIES.—The advisory committee under this subsection shall advise the Secretary on the development and implementation of activities under this part related to unconventional natural gas and other petroleum resources.

(4) COMPENSATION.—A member of the advisory committee under this subsection shall serve without compensation but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(c) PROHIBITION.—No advisory committee established under this section shall make recommendations on funding awards to consortia or for specific projects.

SEC. 6526. LIMITS ON PARTICIPATION.

(a) IN GENERAL.—An entity shall be eligible to receive an award under this part only if the Secretary finds—

(1) that the entity's participation in the program under this part would be in the economic interest of the United States; and

(2) that either—

(A) the entity is a United States-owned entity organized under the laws of the United States; or

(B) the entity is organized under the laws of the United States and has a parent entity organized under the laws of a country which affords—

(i) to United States-owned entities opportunities, comparable to those afforded to any other entity, to participate in any cooperative venture similar to those authorized under this part;

(ii) to United States-owned entities local investment opportunities comparable to those afforded to any other entity; and

(iii) adequate and effective protection for the intellectual property rights of United States-owned entities.

(b) SENSE OF CONGRESS AND REPORT.—It is the Sense of the Congress that ultra-deepwater technology developed under this part is to be developed primarily for production of ultra-deepwater natural gas and other petroleum resources of the United States, and that this priority is to be reflected in the terms of grants, contracts, and cooperative agreements entered under this part. As part of the annual Departmental budget submission, the Secretary shall report on all steps taken to implement the policy described in this subsection.

SEC. 6527. FUND.

There is hereby established in the Treasury of the United States a separate fund to be known as the "Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Products Fund".

SEC. 6528. SUNSET.

The authority provided by this part shall terminate on September 30, 2010.

SEC. 6529. DEFINITIONS.

In this part:

(1) DEEPWATER.—The term "deepwater" means a water depth that is greater than 200 but less than 1,500 meters.

(2) PROGRAM CONSORTIUM.—The term "program consortium" means the consortium selected under section 6522(d).

(3) REMOTE OR INCONSEQUENTIAL.—The term "remote or inconsequential" has the meaning given that term in regulations issued by the Office of Government Ethics under section 208(b)(2) of title 18, United States Code.

(4) ULTRA-DEEPWATER.—The term "ultra-deepwater" means a water depth that is equal to or greater than 1,500 meters.

(5) ULTRA-DEEPWATER ARCHITECTURE.—The term "ultra-deepwater architecture" means the integration of technologies for the exploration for, or production of, natural gas or other petroleum resources located at ultra-deepwater depths.

(6) ULTRA-DEEPWATER TECHNOLOGY.—The term "ultra-deepwater technology" means a discrete technology that is specially suited to address one or more challenges associated with the exploration for, or production of, natural gas or other petroleum resources located at ultra-deepwater depths.

(7) UNCONVENTIONAL NATURAL GAS AND OTHER PETROLEUM RESOURCE.—The term "unconventional natural gas and other petroleum resource" means natural gas and other petroleum resource located onshore in an economically inaccessible geological formation.

Subtitle F—Miscellaneous

SEC. 6601. WASTE REDUCTION AND USE OF ALTERNATIVES.

(a) GRANT AUTHORITY.—The Secretary is authorized to make a single grant to a qualified institution to examine and develop the feasibility of burning post-consumer carpet in cement kilns as an alternative energy source. The purposes of the grant shall include determining—

(1) how post-consumer carpet can be burned without disrupting kiln operations;

(2) the extent to which overall kiln emissions may be reduced;

(3) the emissions of air pollutants and other relevant environmental impacts; and

(4) how this process provides benefits to both cement kiln operations and carpet suppliers.

(b) QUALIFIED INSTITUTION.—For the purposes of subsection (a), a qualified institution is a research-intensive institution of higher education with demonstrated expertise in the fields of fiber recycling and logistical modeling of carpet waste collection and preparation.

(c) WASTE REDUCTION AND USE OF ALTERNATIVES.—There are authorized to be appropriated to the Secretary to carry out activities under this section $500,000 for fiscal year 2004.

SEC. 6602. COAL GASIFICATION.

The Secretary is authorized to provide loan guarantees for a project to produce energy from a plant using integrated gasification combined cycle technology of at least 400 megawatts in capacity that produces power at competitive rates in deregulated energy generation markets and that does not receive any subsidy (direct or indirect) from ratepayers.

SEC. 6603. PETROLEUM COKE GASIFICATION.

The Secretary is authorized to provide loan guarantees for at least one petroleum coke gasification polygeneration project.

SEC. 6604. OTHER BIOPOWER AND BIOENERGY.

The Secretary shall conduct a program to assist in the planning, design, and implementation of projects to convert rice straw, rice hulls, sugarcane bagasse, forest thinnings, and barley grain into biopower and biofuels.

SEC. 6605. TECHNOLOGY TRANSFER.

There are authorized to be appropriated to the Secretary $1,000,000 for a competitively awarded contract, to an entity with offshore oil and gas management experience, for the transfer of technologies relating to ultra-deepwater research and development developed at the Naval Surface Warfare Center, Carderock Division.

SEC. 6606. LIMITATION ON LEGAL FEE REIMBURSEMENT.

The Department of Energy shall not, except as required under a contract entered into before the date of enactment of this Act, reimburse any contractor or subcontractor of the Department for any legal fees or expenses incurred with respect to a complaint subsequent to—

(1) an adverse determination on the merits with respect to such complaint against the contractor or subcontractor by the Director of the Department of Energy's Office of Hearings and Appeals pursuant to section 708 of title 10, Code of Federal Regulations, or by a Department of Labor Administrative Law Judge pursuant to section 211 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851); or

(2) an adverse final judgment by any State or Federal court with respect to such complaint against the contractor or subcontractor for wrongful termination or retaliation due to the making of disclosures protected under chapter 12 of title 5, United States Code, section 211 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851), or any comparable State law,

unless the adverse determination or final judgment is reversed upon further administrative or judicial review.

SEC. 6607. COMPLEX WELL TECHNOLOGY TESTING FACILITY.

The Secretary, in coordination with industry leaders in extended reach drilling technology, shall establish a Complex Well Technology Testing Facility at the Rocky Mountain Oilfield Testing Center to increase the range of extended drilling technology to 50,000 feet, so that more energy resources can be realized with fewer drilling facilities.

SEC. 6608. TOTAL INTEGRATED THERMAL SYSTEMS.

The Secretary shall—

(1) conduct a study of the benefits of total integrated thermal systems in reducing demand for oil and protecting the environment; and

(2) examine the feasibility of using total integrated thermal systems in Department of Defense and other Federal motor vehicle fleets.

SEC. 6609. OIL BYPASS FILTRATION TECHNOLOGY.

The Secretary of Energy and the Administrator of the Environmental Protection Agency shall—

(1) conduct a joint study of the benefits of oil bypass filtration technology in reducing demand for oil and protecting the environment; and

(2) examine the feasibility of using oil bypass filtration technology in Federal motor vehicle fleets.

TITLE VII—ELECTRICITY

Subtitle A—Transmission Capacity

SEC. 7011. TRANSMISSION INFRASTRUCTURE IMPROVEMENT RULEMAKING.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding the following new section at the end thereof:

"SEC. 215. TRANSMISSION INFRASTRUCTURE IMPROVEMENT RULEMAKING.

"(a) RULEMAKING REQUIREMENT.—Within 1 year after the enactment of this section, the Commission shall establish, by rule, incentive-based (including but not limited to performance-based) transmission rate treatments to promote capital investment in the enlargement and improvement of facilities for the transmission of electric energy in interstate commerce as appropriate to—

"(1) promote economically efficient transmission and generation of electricity;

"(2) provide a return on equity that attracts new investment in transmission facilities and reasonably reflects the risks taken by public utilities in restructuring control of transmission assets; and

"(3) encourage deployment of transmission technologies and other measures to increase the capacity and efficiency of existing transmission facilities and improve the operation of such facilities.

The Commission may, from time to time, revise such rule.

"(b) FUNDING OF CERTAIN FACILITIES.—The rule promulgated pursuant to this section shall provide that, upon the request of a regional transmission organization or other Commission-approved transmission organization, new transmission facilities that increase the transfer capability of the transmission system shall be participant funded. In such rules, the Commission shall also provide guidance as to what types of facilities may be participant funded.

"(c) JUST AND REASONABLE RATES.—With respect to any transmission rate filed with the Commission on or after the effective date of the rule promulgated under this section, the Commission shall, in its review of such rate under sections 205 and 206, apply the rules adopted pursuant to this section, including any revisions thereto. Nothing in this section shall be construed to override, weaken, or conflict with the procedural and other requirements of this part, including the requirement of sections 205 and 206 that all rates, charges, terms, and conditions be just and reasonable and not unduly discriminatory or preferential.".

SEC. 7012. SITING OF INTERSTATE ELECTRICAL TRANSMISSION FACILITIES.

(a) AMENDMENT OF FEDERAL POWER ACT.—Part II of the Federal Power Act is amended by adding at the end the following:

"SEC. 216. SITING OF INTERSTATE ELECTRICAL TRANSMISSION FACILITIES

"(a) TRANSMISSION STUDIES.—Within one year after the enactment of this section, and every 3 years thereafter, the Secretary of Energy shall conduct a study of electric transmission congestion. After considering alternatives and recommendations from interested parties the Secretary shall issue a report, based on such study, which may designate one or more geographic areas experiencing electric energy transmission congestion as 'interstate congestion areas'.

"(b) CONSTRUCTION PERMIT.—The Commission is authorized, after notice and an opportunity for hearing, to issue permits for the construction or modification of electric transmission facilities in interstate congestion areas designated by the Secretary under subsection (a) if the Commission makes each of the following findings:

"(1) A finding that—

"(A) the State in which the transmission facilities are to be constructed or modified is without authority to approve the siting of the facilities, or

"(B) a State commission or body in the State in which the transmission facilities are to be constructed or modified that has authority to approve the siting of the facilities has withheld approval, conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission congestion in interstate commerce and is otherwise not economically feasible, or delayed final approval for more than one year after the filing of an application seeking approval or one year after the designation of the relevant interstate congestion area, whichever is later.

"(2) A finding that the facilities to be authorized by the permit will be used for the transmission of electric energy in interstate commerce.

"(3) A finding that the proposed construction or modification is consistent with the public interest.

"(4) A finding that the proposed construction or modification will significantly reduce transmission congestion in interstate commerce.

The Commission may include in a permit issued under this section conditions consistent with the public interest.

"(c) PERMIT APPLICATIONS.—Permit applications under subsection (b) shall be made in writing to the Commission and verified under oath. The Commission shall issue rules setting forth the form of the application, the information it is to contain, and the manner of service of notice of the permit application upon interested persons.

"(d) COMMENTS.—In any proceeding before the Commission under subsection (b), the Commission shall afford each State in which a transmission facility covered by the permit is or will be located, each affected Federal agency and Indian tribe, private property owners, and other interested persons, a reasonable opportunity to present their views and recommendations with respect to the need for and impact of a facility covered by the permit.

"(e) RIGHTS-OF-WAY.—In the case of a permit under subsection (b) for electric transmission facilities to be located on property other than property owned by the United States or a State, if the permit holder cannot acquire by contract, or is unable to agree with the owner of the property to the compensation to be paid for, the necessary right-of-way to construct or modify such transmission facilities, the permit holder may acquire the right-of-way by the exercise of the right of eminent domain in the district court of the United States for the district in which the property concerned is located, or in the appropriate court of the State in which the property is located. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated.

"(f) STATE LAW.—Nothing in this section shall preclude any person from constructing any transmission facilities pursuant to State law.

"(g) COMPLIANCE WITH OTHER LAWS.—Commission action under this section shall be subject to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all other applicable Federal laws.

"(h) COMPENSATION.—Any exercise of eminent domain authority pursuant to this section shall be considered a taking of private property for which just compensation is due. Just compensation shall be an amount equal to the full fair market value of the property taken on the date of the exercise of eminent domain authority, except that the compensation shall exceed fair market value if necessary to make the landowner whole for decreases in the value of any portion of the land not subject to eminent domain. Any parcel of land acquired by eminent domain under this subsection shall be transferred back to the owner from whom it was acquired (or his heirs or assigns) if the land is not used for power line construction or modification within a reasonable period of time after the acquisition. Property acquired under this subsection may not be used for any heritage area, recreational trail, or park, or for any other purpose (other than power line construction or modification, and for power line operation and maintenance) without the consent of the owner of the parcel from whom the property was acquired (or his heirs or assigns).

"(i) ERCOT.—Nothing in this section shall be construed to authorize any interconnection with any facility owned or operated by an entity referred to in section 212(k)(2)(B).

"(j) RIGHTS-OF-WAY ON FEDERAL LANDS.—

"(1) LEAD AGENCY.—If an applicant, or prospective applicant, for Federal authorization related to an electricity transmission or distribution facility so requests, the Department of Energy (DOE) shall act as the lead agency for purposes of coordinating all applicable Federal authorization and related environmental review of the facility. The term 'Federal authorization' shall mean any authorization required under Federal law in order to site a transmission or distribution facility, including but not limited to such permits, special use authorizations, certifications, opinions, or other approvals as may be required, whether issued by a Federal or a State agency. To the maximum extent practicable under applicable Federal law, the Secretary of Energy shall coordinate this Federal authorization and review process with any Indian tribes, multi-State entities, and State agencies that are responsible for conducting any separate permitting and environmental reviews of the facility, to ensure timely and efficient review and permit decisions.

"(2) AUTHORITY TO SET DEADLINES.—As lead agency, the Department of Energy, in consultation with other Federal and, as appropriate, with Indian tribes, multi-State entities, and State agencies that are willing to coordinate their own separate permitting and environmental reviews with the Federal authorization and environmental reviews, shall establish prompt and binding intermediate

milestones and ultimate deadlines for the review of and Federal authorization decisions relating to the proposed facility. The Secretary of Energy shall ensure that once an application has been submitted with such data as the Secretary deems necessary, all permit decisions and related environmental reviews under all applicable Federal laws shall be completed within 1 year or, if a requirement of another provision of Federal law makes this impossible, as soon thereafter as is practicable. The Secretary of Energy also shall provide an expeditious pre-application mechanism for prospective applicants to confer with the agencies involved to have each such agency determine and communicate to the prospective applicant within 60 days of when the prospective applicant submits a request for such information concerning—

"(A) the likelihood of approval for a potential facility; and

"(B) key issues of concern to the agencies and public.

"(3) CONSOLIDATED ENVIRONMENTAL REVIEW AND RECORD OF DECISION.—The Secretary of Energy, in consultation with the affected agencies, shall prepare a single environmental review document, which shall be used as the basis for all decisions on the proposed project under Federal law. The document may be an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969 if warranted, or such other form of analysis as may be warranted. DOE and other agencies shall streamline the review and permitting of transmission and distribution facilities within corridors designated under section 503 of the Federal Land Policy and Management Act (43 U.S.C. 1763) by fully taking into account prior analyses and decisions as to the corridors. The document under this section may consist of or include an environmental assessment, if allowed by law, or an environmental impact statement, if warranted or required by law, or such other form of analysis as warranted, consistent with any requirement of the National Environmental Policy Act, the Federal Land Policy and Management Act, or any other applicable law. Such document shall include consideration by the relevant agencies of any applicable criteria or other matters as required under applicable laws.

"(4) APPEALS.—In the event that any agency has denied a Federal authorization required for a transmission or distribution facility, or has failed to act by the deadline established by the Secretary pursuant to this section for deciding whether to issue the authorization, the applicant or any State in which the facility would be located may file an appeal with the Secretary of Energy, who shall, in consultation with the affected agency, review the denial or take action on the pending application. Based on the overall record and in consultation with the affected agency, the Secretary may then either issue the necessary authorization with any appropriate conditions, or deny the application. The Secretary shall issue a decision within 90 days of the filing of the appeal. In making a decision under this paragraph, the Secretary shall comply with all applicable requirements of Federal law, including any requirements of the Endangered Species Act, the Clean Water Act, the National Forest Management Act, the National Environmental Policy Act, and the Federal Land Management and Policy Act.

"(5) CONFORMING REGULATIONS AND MEMORANDA OF AGREEMENT.—Not later than 18 months after the date of enactment of this section, the Secretary of Energy shall issue any regulations necessary to implement the foregoing provisions. Not later than 1 year after the date of enactment of this section, the Secretary and the heads of all relevant Federal departments and non-departmental agencies shall, and interested Indian tribes, multi-State entities, and State agencies may enter into Memoranda of Agreement to ensure the timely and coordinated review and permitting of electricity transmission and distribution facilities. The head of each Federal department or non-departmental agency with approval authority shall designate a senior responsible official and dedicate sufficient other staff and resources to ensure that the DOE regulations and any Memoranda are fully implemented.

"(6) MISCELLANEOUS.—Each Federal authorization for an electricity transmission or distribution facility shall be issued for a duration, as determined by the Secretary of Energy, commensurate with the anticipated use of the facility and with appropriate authority to manage the right-of-way for reliability and environmental protection. Further, when such authorizations expire, they shall be reviewed for renewal taking fully into account reliance on such electricity infrastructure, recognizing its importance for public health, safety and economic welfare and as a legitimate use of Federal lands.

"(7) MAINTAINING AND ENHANCING THE TRANSMISSION INFRASTRUCTURE.—In exercising the responsibilities under this section, the Secretary of Energy shall consult regularly with the Federal Energy Regulatory Commission (FERC) and

FERC-approved Regional Transmission Organizations and Independent System Operators.

"(k) INTERSTATE COMPACTS.—The consent of Congress is hereby given for States to enter into interstate compacts establishing regional transmission siting agencies to facilitate coordination among the States within such areas for purposes of siting future electric energy transmission facilities and to carry out State electric energy transmission siting responsibilities. The Secretary of Energy may provide technical assistance to regional transmission siting agencies established under this subsection.

"(l) SAVINGS CLAUSE.—Nothing in this section shall be construed to affect any requirement of the environmental laws of the United States, including, but not limited to, the National Environmental Policy Act of 1969. This section shall not apply to any component of the National Wilderness Preservation System, the National Wild and Scenic Rivers System, or the National Park system (including National Monuments therein).".

(b) FEDERAL CORRIDORS.—The Secretary of the Interior, the Secretary of Energy, the Secretary of Agriculture, and the Chairman of the Council on Environmental Quality shall, within 90 days of the date of enactment of this subsection, submit a joint report to Congress identifying the following:

(1) all existing designated transmission and distribution corridors on Federal land and the status of work related to proposed transmission and distribution corridor designations, the schedule for completing such work, any impediments to completing the work, and steps that Congress could take to expedite the process;

(2) the number of pending applications to locate transmission and distribution facilities on Federal lands, key information relating to each such facility, how long each application has been pending, the schedule for issuing a timely decision as to each facility, and progress in incorporating existing and new such rights-of-way into relevant land use and resource management plans or their equivalent; and

(3) the number of existing transmission and distribution rights-of-way on Federal lands that will come up for renewal within the following 5, 10, and 15 year periods, and a description of how the Secretaries plan to manage such renewals.

Subtitle B—Transmission Operation

SEC. 7021. OPEN ACCESS TRANSMISSION BY CERTAIN UTILITIES.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting after section 211 the following:

"SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES.

"(a) IN GENERAL.—Subject to section 212(h), the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

"(1) at rates that are comparable to those that the unregulated transmitting utility charges itself, and

"(2) on terms and conditions (not relating to rates) that are comparable to those under which such unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential.

"(b) EXEMPTIONS.—

"(1) IN GENERAL.—The Commission shall exempt from any rule or order under this subsection any unregulated transmitting utility that—

"(A)(i) sells no more than 4,000,000 megawatt hours of electricity per year; and

"(ii) is a distribution utility; or

"(B) does not own or operate any transmission facilities that are necessary for operating an interconnected transmission system (or any portion thereof); or

"(C) meets other criteria the Commission determines to be in the public interest.

"(2) LOCAL DISTRIBUTION.— The requirements of subsection (a) shall not apply to facilities used in local distribution.

"(c) RATE CHANGING PROCEDURES.—The rate changing procedures applicable to public utilities under subsections (c) and (d) of section 205 are applicable to unregulated transmitting utilities for purposes of this section.

"(d) REMAND.—In exercising its authority under paragraph (1), the Commission may remand transmission rates to an unregulated transmitting utility for review and revision where necessary to meet the requirements of subsection (a).

"(e) SECTION 211 REQUESTS.—The provision of transmission services under subsection (a) does not preclude a request for transmission services under section 211.

"(f) DEFINITIONS.—For purposes of this section—

"(1) The term 'unregulated transmitting utility' means an entity that—

"(A) owns or operates facilities used for the transmission of electric energy in interstate commerce, and

"(B) is either an entity described in section 201(f) or a rural electric cooperative.

"(2) The term 'distribution utility' means an unregulated transmitting utility that serves at least ninety percent of its electric customers at retail.".

SEC. 7022. REGIONAL TRANSMISSION ORGANIZATIONS.

(a) SENSE OF THE CONGRESS ON RTOS.—It is the sense of Congress that, in order to promote fair, open access to electric transmission service, benefit retail consumers, facilitate wholesale competition, improve efficiencies in transmission grid management, promote grid reliability, remove opportunities for unduly discriminatory or preferential transmission practices, and provide for the efficient development of transmission infrastructure needed to meet the growing demands of competitive wholesale power markets, all transmitting utilities in interstate commerce should voluntarily become members of independently administered regional transmission organizations that have operational control of interstate transmission facilities and do not own or control generation facilities used to supply electric energy for sale at wholesale.

(b) SENSE OF THE CONGRESS ON CAPITAL INVESTMENT.—It is the sense of the Congress that the Federal Energy Regulatory Commission should provide to any transmitting utility that becomes a member of an operational regional transmitting organization approved by the Commission a return on equity sufficient to attract new investment capital for expansion of transmission capacity, in accordance with sections 205 and 206 of the Federal Power Act (16 U.S.C. 824d and 824e), including the requirement that rates be just and reasonable.

(c) REPORT ON PENDING APPLICATIONS.—Not later than 120 days after the date of enactment of this section, the Federal Energy Regulatory Commission shall submit to the Committee on Energy and Commerce of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report containing the following:

(1) A list of all regional transmission organization applications filed at the Commission pursuant to the Commission's Order No. 2000, including an identification of each public utility and other entity included within the proposed membership of the regional transmission organization.

(2) A table showing the date each such application was filed, the date of any revised filings of such application, the date of each preliminary or final Commission order regarding such application, and a statement of whether the application has been rejected, preliminarily approved, finally approved, or has some other status (including a description of that status).

(3) For any application that has not been finally approved by the Commission, a detailed description of every aspect of the application that the Commission has determined does not conform to the requirements of Order No. 2000.

(4) For any application that has not been finally approved by the Commission, an explanation by the Commission of why the items described pursuant to paragraph (3) constitute material noncompliance with the requirements of the Commission's Order No. 2000 sufficient to justify denial of approval by the Commission.

(5) For all regional transmission organization applications filed pursuant to the Commission's Order No. 2000, whether finally approved or not—

(A) a discussion of that regional transmission organization's efforts to minimize rate seams between itself and—

(i) other regional transmission organizations; and

(ii) entities not participating in a regional transmission organization; and

(B) a discussion of the impact of such seams on consumers and wholesale competition; and

(C) a discussion of minimizing cost-shifting on consumers.

(d) FEDERAL UTILITY PARTICIPATION IN RTOS.—

(1) DEFINITIONS.—For purposes of this section—

(A) The term "appropriate Federal regulatory authority" means—

(i) with respect to a Federal power marketing agency, the Secretary of Energy, except that the Secretary may designate the Administrator of a Federal power marketing agency to act as the appropriate Federal

regulatory authority with respect to the transmission system of that Federal power marketing agency; and

(ii) with respect to the Tennessee Valley Authority, the Board of Directors of the Tennessee Valley Authority.

(B) The term "Federal utility" means a Federal power marketing agency or the Tennessee Valley Authority.

(C) The term "transmission system" means electric transmission facilities owned, leased, or contracted for by the United States and operated by a Federal utility.

(2) TRANSFER.—The appropriate Federal regulatory authority is authorized to enter into a contract, agreement or other arrangement transferring control and use of all or part of the Federal utility's transmission system to a regional transmission organization approved by the Federal Energy Regulatory Commission. Such contract, agreement or arrangement shall include—

(A) performance standards for operation and use of the transmission system that the head of the Federal utility determines necessary or appropriate, including standards that assure recovery of all the Federal utility's costs and expenses related to the transmission facilities that are the subject of the contract, agreement or other arrangement, consistency with existing contracts and third-party financing arrangements, and consistency with said Federal utility's statutory authorities, obligations, and limitations;

(B) provisions for monitoring and oversight by the Federal utility of the regional transmission organization's fulfillment of the terms and conditions of the contract, agreement or other arrangement, including a provision that may provide for the resolution of disputes through arbitration or other means with the regional transmission organization or with other participants, notwithstanding the obligations and limitations of any other law regarding arbitration; and

(C) a provision that allows the Federal utility to withdraw from the regional transmission organization and terminate the contract, agreement or other arrangement in accordance with its terms.

Neither this section, actions taken pursuant to it, nor any other transaction of a Federal utility using a regional transmission organization shall serve to confer upon the Federal Energy Regulatory Commission jurisdiction or authority over the Federal utility's electric generation assets, electric capacity or energy that the Federal utility is authorized by law to market, or the Federal utility's power sales activities.

(3) EXISTING STATUTORY AND OTHER OBLIGATIONS.—

(A) SYSTEM OPERATION REQUIREMENTS.—Any statutory provision requiring or authorizing a Federal utility to transmit electric power or to construct, operate or maintain its transmission system shall not be construed to prohibit a transfer of control and use of its transmission system pursuant to, and subject to all requirements of paragraph (2).

(B) OTHER OBLIGATIONS.—This subsection shall not be construed to—

(i) suspend, or exempt any Federal utility from, any provision of existing Federal law, including but not limited to any requirement or direction relating to the use of the Federal utility's transmission system, environmental protection, fish and wildlife protection, flood control, navigation, water delivery, or recreation; or

(ii) authorize abrogation of any contract or treaty obligation.

SEC. 7023. NATIVE LOAD.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding the following new section at the end thereof:

"SEC. 217. SERVICE OBLIGATIONS OF LOAD-SERVING ENTITIES.

"(a) IN GENERAL.—In exercising authority under this Act, the Commission shall ensure that any load-serving entity that either—

"(1) owns transmission facilities for the transmission of electric energy in interstate commerce used to purchase or deliver electric energy to meet—

"(A) a service obligation to customers; or

"(B) an existing wholesale contractual obligation; or

"(2) holds a contract or service agreement for firm transmission service used to purchase or deliver electric energy to meet—

"(A) a service obligation to customers; or

"(B) an existing wholesale contractual obligation

shall be entitled to use such transmission facilities or equivalent transmission rights to meet such obligations before transmission capacity is made available for other uses.

"(b) USE BY SUCCESSOR IN INTEREST.—To the extent that all or a portion of the service obligation or contractual obligation covered by subsection (a) is transferred to another load serving entity, the successor shall be entitled to use such transmission facilities or firm transmission rights associated with the transferred service obligation consistent with subsection (a). Subsequent transfers to another load serving entity, or back to the original load-serving entity, shall be entitled to the same rights.

"(c) OTHER ENTITIES.—The Commission may exercise authority under this Act to make transmission rights not used to meet an obligation covered by subsection (a) available to other entities in a manner determined by the Commission to be not unduly discriminatory or preferential.

"(d) DEFINITIONS.—For the purposes of this section:

"(1) The term 'load-serving entity' means an electric utility, transmitting utility or Federal power marketing agency that has an obligation under Federal, State, or local law, or under long-term contracts, to provide electric service to either—

"(A) electric consumers (as defined in section 3(5) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(5)); or

"(B) an electric utility as defined in section 3(4) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(5)) that has an obligation to provide electric service to electric consumers.

Such obligations shall be deemed 'service obligations'.

"(2) The term 'existing wholesale contractual obligation' means an obligation under a firm long-term wholesale contract that was in effect on March 28, 2003. A contract modification after March 28, 2003 (other than one that increases the quantity of electric energy sold under the contract) shall not affect the status of such contract as an existing wholesale contractual obligation.

"(e) RELATIONSHIP TO OTHER PROVISIONS.—To the extent that a transmitting utility reserves transmission capacity (or reserves the equivalent amount of tradable transmission rights) to provide firm transmission service to meet service obligations or firm long-term wholesale contractual obligations pursuant to subsection (a), that transmitting utility shall not be considered as engaging in undue discrimination or preference under this Act.

"(f) JURISDICTION.—This section shall not apply to an entity located in an area referred to in section 212(k)(2)(A).

"(g) SAVINGS CLAUSE.—Nothing in this section shall affect any allocation of transmission rights by the PJM Interconnection, the New York Independent System Operator, the New England Independent System Operator, the Midwest Independent System Operator, or the California Independent System Operator. Nothing in this section shall provide a basis for abrogating any contract for firm transmission service or rights in effect as of the date of enactment of this section.".

Subtitle C—Reliability

SEC. 7031. ELECTRIC RELIABILITY STANDARDS.

Part II of the Federal Power Act (16 U.S.C 824 et seq.) is amended by inserting the following new section at the end thereof:

"SEC. 218. ELECTRIC RELIABILITY.

"(a) DEFINITIONS.—For purposes of this section—

"(1) The term 'bulk-power system' means—

"(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and

"(B) electric energy from generation facilities needed to maintain transmission system reliability.

The term does not include facilities used in the local distribution of electric energy.

"(2) The terms 'Electric Reliability Organization' and 'ERO' mean the organization certified by the Commission under subsection (c) the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to Commission review.

"(3) The term 'reliability standard' means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to en-

large such facilities or to construct new transmission capacity or generation capacity.

"(4) The term 'reliable operation' means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance or unanticipated failure of system elements.

"(5) The term 'Interconnection' means a geographic area in which the operation of bulk-power system components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain reliable operation of the facilities within their control.

"(6) The term 'transmission organization' means a regional transmission organization, independent system operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.

"(7) The term 'regional entity' means an entity having enforcement authority pursuant to subsection (e)(4).

"(b) JURISDICTION AND APPLICABILITY.—(1) The Commission shall have jurisdiction, within the United States, over the ERO certified by the Commission under subsection (c), any regional entities, and all users, owners and operators of the bulk-power system, including but not limited to the entities described in section 201(f), for purposes of approving reliability standards established under this section and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.

"(2) The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.

"(c) CERTIFICATION.—Following the issuance of a Commission rule under subsection (b)(2), any person may submit an application to the Commission for certification as the Electric Reliability Organization (ERO). The Commission may certify one such ERO if the Commission determines that such ERO—

"(1) has the ability to develop and enforce, subject to subsection (e)(2), reliability standards that provide for an adequate level of reliability of the bulk-power system;

"(2) has established rules that—

"(A) assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decisionmaking in any ERO committee or subordinate organizational structure;

"(B) allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section;

"(C) provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties in accordance with subsection (e) (including limitations on activities, functions, or operations, or other appropriate sanctions);

"(D) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties; and

"(E) provide for taking, after certification, appropriate steps to gain recognition in Canada and Mexico.

"(d) RELIABILITY STANDARDS.—(1) The Electric Reliability Organization shall file each reliability standard or modification to a reliability standard that it proposes to be made effective under this section with the Commission.

"(2) The Commission may approve, by rule or order, a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed standard or modification to a reliability standard and to the technical expertise of a regional entity organized on an Interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall not defer with respect to the effect of a standard on competition. A proposed standard or modification shall take effect upon approval by the Commission.

"(3) The Electric Reliability Organization shall rebuttably presume that a proposal from a regional entity organized on an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

"(4) The Commission shall remand to the Electric Reliability Organization for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

"(5) The Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

"(6) The final rule adopted under subsection (b)(2) shall include fair processes for the identification and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a transmission organization. Such transmission organization shall continue to comply with such function, rule, order, tariff, rate schedule or agreement accepted approved, or ordered by the Commission until—

"(A) the Commission finds a conflict exists between a reliability standard and any such provision;

"(B) the Commission orders a change to such provision pursuant to section 206 of this part; and

"(C) the ordered change becomes effective under this part.

If the Commission determines that a reliability standard needs to be changed as a result of such a conflict, it shall order the ERO to develop and file with the Commission a modified reliability standard under paragraph (4) or (5) of this subsection.

"(e) ENFORCEMENT.—(1) The ERO may impose, subject to paragraph (2), a penalty on a user or owner or operator of the bulk-power system for a violation of a reliability standard approved by the Commission under subsection (d) if the ERO, after notice and an opportunity for a hearing—

"(A) finds that the user or owner or operator has violated a reliability standard approved by the Commission under subsection (d); and

"(B) files notice and the record of the proceeding with the Commission.

"(2) A penalty imposed under paragraph (1) may take effect not earlier than the 31st day after the electric reliability organization files with the Commission notice of the penalty and the record of proceedings. Such penalty shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with the Commission. Application to the Commission for review, or the initiation of review by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty. In any proceeding to review a penalty imposed under paragraph (1), the Commission, after notice and opportunity for hearing (which hearing may consist solely of the record before the electric reliability organization and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), shall by order affirm, set aside, reinstate, or modify the penalty, and, if appropriate, remand to the electric reliability organization for further proceedings. The Commission shall implement expedited procedures for such hearings.

"(3) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk-power system, if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk-power system has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a reliability standard.

"(4) The Commission shall establish regulations authorizing the ERO to enter into an agreement to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards under paragraph (1) if—

"(A) the regional entity is governed by—

"(i) an independent board;

"(ii) a balanced stakeholder board; or

"(iii) a combination independent and balanced stakeholder board.

"(B) the regional entity otherwise satisfies the provisions of subsection (c)(1) and (2); and

"(C) the agreement promotes effective and efficient administration of bulk-power system reliability.

The Commission may modify such delegation. The ERO and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power system reliability and should be approved. Such regulation may provide that the Commission may assign the ERO's authority to enforce reliability stand-

ards under paragraph (1) directly to a regional entity consistent with the requirements of this paragraph.

"(5) The Commission may take such action as is necessary or appropriate against the ERO or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the ERO or a regional entity.

"(6) Any penalty imposed under this section shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner.

"(f) CHANGES IN ELECTRICITY RELIABILITY ORGANIZATION RULES.—The Electric Reliability Organization shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or complaint, may propose a change to the rules of the Electric Reliability Organization. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (c).

"(g) RELIABILITY REPORTS.—The Electric Reliability Organization shall conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America.

"(h) COORDINATION WITH CANADA AND MEXICO.—The President is urged to negotiate international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the Electric Reliability Organization in the United States and Canada or Mexico.

"(i) SAVINGS PROVISIONS.—(1) The Electric Reliability Organization shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system.

"(2) This section does not authorize the Electric Reliability Organization or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

"(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard, except that the State of New York may establish rules that result in greater reliability within that State, as long as such action does not result in lesser reliability outside the State than that provided by the reliability standards.

"(4) Within 90 days of the application of the Electric Reliability Organization or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a State action is inconsistent with a reliability standard, taking into consideration any recommendation of the Electric Reliability Organization.

"(5) The Commission, after consultation with the Electric Reliability Organization and the State taking action, may stay the effectiveness of any State action, pending the Commission's issuance of a final order.

"(j) REGIONAL ADVISORY BODIES.—The Commission shall establish a regional advisory body on the petition of at least two-thirds of the States within a region that have more than one-half of their electric load served within the region. A regional advisory body shall be composed or of one member from each participating State in the region, appointed by the Governor of each State, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the Electric Reliability Organization, a regional entity, or the Commission regarding the governance of an existing or proposed regional entity within the same region, whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest, whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.

"(k) APPLICATION TO ALASKA AND HAWAII.—The provisions of this section do not apply to Alaska or Hawaii.".

Subtitle D—PUHCA Amendments

SEC. 7041. SHORT TITLE.

This subtitle may be cited as the "Public Utility Holding Company Act of 2003".

SEC. 7042. DEFINITIONS.

For purposes of this subtitle:

(1) The term "affiliate" of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) The term "associate company" of a company means any company in the same holding company system with such company.

(3) The term "Commission" means the Federal Energy Regulatory Commission.

(4) The term "company" means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) The term "electric utility company" means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) The terms "exempt wholesale generator" and "foreign utility company" have the same meanings as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(7) The term "gas utility company" means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) The term "holding company" means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(9) The term "holding company system" means a holding company, together with its subsidiary companies.

(10) The term "jurisdictional rates" means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) The term "natural gas company" means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) The term "person" means an individual or company.

(13) The term "public utility" means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) The term "public utility company" means an electric utility company or a gas utility company.

(15) The term "State commission" means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) The term "subsidiary company" of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obliga-

tions, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) The term "voting security" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 7043. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is repealed.

SEC. 7044. FEDERAL ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(b) AFFILIATE COMPANIES.—Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) HOLDING COMPANY SYSTEMS.—The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission deems to be relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) CONFIDENTIALITY.—No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

SEC. 7045. STATE ACCESS TO BOOKS AND RECORDS.

(a) In GENERAL.—Upon the written request of a State commission having jurisdiction to regulate a public utility company in a holding company system, the holding company or any associate company or affiliate thereof, other than such public utility company, wherever located, shall produce for inspection books, accounts, memoranda, and other records that—

(1) have been identified in reasonable detail by the State commission;

(2) the State commission deems are relevant to costs incurred by such public utility company; and

(3) are necessary for the effective discharge of the responsibilities of the State commission with respect to such proceeding.

(b) LIMITATION.—Subsection (a) does not apply to any person that is a holding company solely by reason of ownership of one or more qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.).

(c) CONFIDENTIALITY OF INFORMATION.—The production of books, accounts, memoranda, and other records under subsection (a) shall be subject to such terms and conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of any trade secrets or sensitive commercial information.

(d) EFFECT ON STATE LAW.—Nothing in this section shall preempt applicable State law concerning the provision of books, accounts, memoranda, and other records, or in any way limit the rights of any State to obtain books, accounts, memoranda, and other records under any other Federal law, contract, or otherwise.

(e) COURT JURISDICTION.—Any United States district court located in the State in which the State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance with this section.

SEC. 7046. EXEMPTION AUTHORITY.

(a) RULEMAKING.—Not later than 90 days after the effective date of this subtitle, the Commission shall promulgate a final rule to exempt from the requirements of section 7044 (relating to Federal access to books and records) any person that is a holding company, solely with respect to one or more—

(1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.);

(2) exempt wholesale generators; or

(3) foreign utility companies.

(b) OTHER AUTHORITY.—The Commission shall exempt a person or transaction from the requirements of section 7044 (relating to Federal access to books and records) if, upon application or upon the motion of the Commission—

(1) the Commission finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility or natural gas company; or

(2) the Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company.

SEC. 7047. AFFILIATE TRANSACTIONS.

(a) COMMISSION AUTHORITY UNAFFECTED.—Nothing in this subtitle shall limit the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) to require that jurisdictional rates are just and reasonable, including the ability to deny or approve the pass through of costs, the prevention of cross-subsidization, and the promulgation of such rules and regulations as are necessary or appropriate for the protection of utility consumers.

(b) RECOVERY OF COSTS.—Nothing in this subtitle shall preclude the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public utility company, public utility, or natural gas company may recover in rates any costs of an activity performed by an associate company, or any costs of goods or services acquired by such public utility company from an associate company.

SEC. 7048. APPLICABILITY.

Except as otherwise specifically provided in this subtitle, no provision of this subtitle shall apply to, or be deemed to include—

(1) the United States;

(2) a State or any political subdivision of a State;

(3) any foreign governmental authority not operating in the United States;

(4) any agency, authority, or instrumentality of any entity referred to in paragraph (1), (2), or (3); or

(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), or (3) acting as such in the course of his or her official duty.

SEC. 7049. EFFECT ON OTHER REGULATIONS.

Nothing in this subtitle precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility customers.

SEC. 7050. ENFORCEMENT.

The Commission shall have the same powers as set forth in sections 306 through 317 of the Federal Power Act (16 U.S.C. 825e–825p) to enforce the provisions of this subtitle.

SEC. 7051. SAVINGS PROVISIONS.

(a) IN GENERAL.—Nothing in this subtitle prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on the date of enactment of this Act, so long as that person continues to comply with the terms of any such authorization, whether by rule or by order.

(b) EFFECT ON OTHER COMMISSION AUTHORITY.—Nothing in this subtitle limits the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) (including section 301 of that Act) or the Natural Gas Act (15 U.S.C. 717 et seq.) (including section 8 of that Act).

SEC. 7052. IMPLEMENTATION.

Not later than 12 months after the date of enactment of this subtitle, the Commission shall—

(1) promulgate such regulations as may be necessary or appropriate to implement this subtitle (other than section 7045, relating to State access to books and records); and

(2) submit to the Congress detailed recommendations on technical and conforming amendments to Federal law necessary to carry out this subtitle and the amendments made by this subtitle.

SEC. 7053. TRANSFER OF RESOURCES.

All books and records that relate primarily to the functions transferred to the Commission under this subtitle shall be transferred from the Securities and Exchange Commission to the Commission.

SEC. 7054. EFFECTIVE DATE.

This subtitle shall take effect 12 months after the date of enactment of this subtitle.

SEC. 7055. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such funds as may be necessary to carry out this subtitle.

SEC. 7056. CONFORMING AMENDMENTS TO THE FEDERAL POWER ACT.

(a) CONFLICT OF JURISDICTION.—Section 318 of the Federal Power Act (16 U.S.C. 825q) is repealed.

(b) DEFINITIONS.—(1) Section 201(g)(5) of the Federal Power Act (16 U.S.C. 824(g)(5)) is amended by striking "1935" and inserting "2003".

(2) Section 214 of the Federal Power Act (16 U.S.C. 824m) is amended by striking "1935" and inserting "2003".

Subtitle E—PURPA Amendments

SEC. 7061. REAL-TIME PRICING AND TIME-OF-USE METERING STANDARDS.

(a) ADOPTION OF STANDARDS.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

"(11) REAL-TIME PRICING.—(A) Each electric utility shall, at the request of an electric consumer, provide electric service under a real-time rate schedule, under which the rate charged by the electric utility varies by the hour (or smaller time interval) according to changes in the electric utility's wholesale power cost. The real-time pricing service shall enable the electric consumer to manage energy use and cost through real-time metering and communications technology.

"(B) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

"(C) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standard set out in subparagraph (A) not later than 1 year after the date of enactment of this paragraph.

"(12) TIME-OF-USE METERING.—(A) Each electric utility shall, at the request of an electric consumer, provide electric service under a time-of-use rate schedule which enables the electric consumer to manage energy use and cost through time-of-use metering and technology.

"(B) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

"(C) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standards set out in subparagraph (A) not later than 1 year after the date of enactment of this paragraph.".

(b) SPECIAL RULES.—Section 115 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended by adding at the end the following:

"(i) REAL-TIME PRICING.—In a State that permits third-party marketers to sell electric energy to retail electric consumers, the electric consumer shall be entitled to receive the same real-time metering and communication service as a direct retail electric consumer of the electric utility.

"(j) TIME-OF-USE METERING.—In a State that permits third-party marketers to sell electric energy to retail electric consumers, the electric consumer shall be entitled to receive the same time-of-use metering and communication service as a direct retail electric consumer of the electric utility.".

SEC. 7062. COGENERATION AND SMALL POWER PRODUCTION PURCHASE AND SALE REQUIREMENTS.

(a) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—Section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is amended by adding at the end the following:

"(m) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—

"(1) OBLIGATION TO PURCHASE.—After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that—

"(A) the qualifying cogeneration facility or qualifying small power production facility has access to

"(i) independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy, and

"(ii) long-term wholesale markets for the sale of capacity and electric energy;

"(B) the qualifying cogeneration facility or qualifying small power production facility has access to a competitive wholesale market for the sale of electric energy that provides such qualifying cogeneration facility or qualifying small power production facility with opportunities to sell electric energy that, at a minimum, are comparable to the opportunities provided by the markets, or some minimum combination thereof, described in subparagraph (A); or

"(C) the qualifying cogeneration facility does not meet criteria established by the Commission pursuant to the rulemaking set forth in subparagraph (n) and has not filed with the Commission a notice of self-certification or an application for Commission certification under 18 C.F.R. 292.207 prior to the date of enactment of this subsection.

"(2) COMMISSION REVIEW.—(A) Any electric utility may file an application with the Commission for relief from the mandatory purchase obligation pursuant to this subsection on a utility-wide basis. Such application shall set forth the reasons why such relief is appropriate and describe how the conditions set forth in subparagraphs (A) and (B) of paragraph (1) of this subsection have been met.

"(B) After notice, including sufficient notice to potentially affected qualifying facilities, and an opportunity for comment, and within 90 days of the filing of an application under subparagraph (A), the Commission shall make a final determination as to whether the conditions set forth in subparagraphs (A) and (B) of paragraph (1) have been met. The Commission shall not be authorized to issue a tolling order regarding such application or otherwise delay a final decision regarding such application.

"(3) REINSTATEMENT OF OBLIGATION TO PURCHASE.—(A) At any time after the Commission makes a finding under paragraph (2) relieving an electric utility of its obligation to purchase electric energy, a qualifying cogeneration facility or a qualifying small power production facility may apply to the Commission for an order reinstating the electric utility's obligation to purchase electric energy under this section. Such application shall set forth the reasons why such relief is no longer appropriate and describe how the tests set forth in subparagraphs (A) and (B) of paragraph (1) of this subsection are no longer met.

"(B) After notice, including sufficient notice to potentially affected utilities, and opportunity for comment, and within 90 days of the filing of an application under subparagraph (A), the Commission shall issue an order reinstating the electric utility's obligation to purchase electric energy under this section if the Commission finds that the condition in paragraph (1), which relieved the obligation to purchase, is no longer met. The Commission shall not be authorized to issue a tolling order regarding such application or otherwise delay a final decision regarding such application.

"(4) OBLIGATION TO SELL.—After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to sell electric energy to a qualifying cogeneration facility or a qualifying small power production facility if—

"(A) competing retail electric suppliers are willing and able to provide electric energy to the qualifying cogeneration facility or qualifying small power production facility, and

"(B) the electric utility is not required by State law to sell electric energy in its service territory.

"(5) NO EFFECT ON EXISTING RIGHTS AND REMEDIES.—Nothing in this subsection affects the rights or remedies of any party under any contract or obligation, in effect or pending approval before the appropriate State regulatory authority or nonregulated electric utility on the date of enactment of this subsection, to purchase electric energy or capacity from or to sell electric energy or capacity to a facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

"(6) RECOVERY OF COSTS.—

"(A) REGULATION.—To ensure recovery by an electric utility that purchases electric energy or capacity from a qualifying facility pursuant to any legally enforceable obligation entered into or imposed under this section of all prudently incurred costs associated with the purchases, the Commission shall issue and enforce such regulations as may be required to ensure that the electric utility shall recover the prudently incurred costs associated with such purchases.

"(B) ENFORCEMENT.—A regulation under subparagraph (A) shall be enforceable in accordance with the provisions of law applicable to enforcement of regulations under the Federal Power Act (16 U.S.C. 791a et seq.).

"(n) RULEMAKING FOR NEW FACILITIES.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Commission shall issue a rule revising the criteria for qualifying cogeneration facilities in 18 C.F.R. 292.205. In particular, the Commission shall evaluate the rules regarding qualifying facility criteria and revise such rules, as necessary, to ensure—

"(A) that the thermal energy output of a new qualifying cogeneration facility is used in a productive and beneficial manner;

"(B) the electrical and thermal output of the cogeneration facility is used predominantly for commercial or industrial processes and not intended predominantly for sale to an electric utility; and–

"(C) continuing progress in the development of efficient electric energy generating technology.

"(2) APPLICABILITY.—Any revisions made to operating and efficiency standards shall be applicable only to a cogeneration facility that—

"(A) was not a qualifying cogeneration facility, or–

"(B) had not filed with the Commission a notice of self-certification or an application for Commission certification under 18 C.F.R. 292.207

prior to the date of enactment of this subsection.

"(3) DEFINITION.—For purposes of this subsection, the term 'commercial processes' includes uses of thermal and electric energy for educational and healthcare facilities.

"(o) RULES FOR EXISTING FACILITIES.— Notwithstanding rule revisions under subsection (n), the Commission's rules in effect prior to the effective date of any revised rules prescribed under subsection (n) shall continue to apply to any cogeneration facility or small power production facility that—

"(1) was a qualifying cogeneration facility or a qualifying small power production facility, or

"(2) had filed with the Commission a notice of self-certification or an application for Commission certification under 18 C.F.R. 292.207

prior to the date of enactment of subsections (m) and (n).".

(b) ELIMINATION OF OWNERSHIP LIMITATIONS.—(1) Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) is amended to read as follows:

"(C) 'qualifying small power production facility' means a small power production facility that the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe.".

(2) Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)) is amended to read as follows:

"(B) 'qualifying cogeneration facility' means a cogeneration facility that the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe.".

SEC. 7063. SMART METERING.

(a) IN GENERAL.—Section 111(d) of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

"(13) TIME-BASED METERING AND COMMUNICATIONS.—(A) Not later than eighteen (18) months after the date of enactment of this paragraph, each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance in the costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

"(B) The types of time-based rate schedules that may be offered under the schedule referred to in subparagraph (A) include, among others, each the following:

"(i) Time-Of-Use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year. Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall.

"(ii) Critical Peak Pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy consumption.

"(iii) Real-Time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis and may change as often as hourly.

"(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

"(D) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

"(E) In a State that permits third-party marketers to sell electric energy to retail electric consumers, such consumers shall be entitled to receive that same time-based metering and communications device and service as a retail electric consumer of the electric utility.

"(F) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall, not later than twelve (12) months after enactment of this paragraph conduct an investigation in accordance with section 115(i) and issue a decision whether it is appropriate to implement the standards set out in subparagraphs (A) and (C).".

(b) STATE INVESTIGATION OF DEMAND RESPONSE AND TIME-BASED METERING.—Section 115 of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended by adding the at the end the following:

"(k) TIME-BASED METERING AND COMMUNICATIONS.—Each State regulatory authority shall, not later than twelve (12) months after enactment of this subsection, conduct an investigation and issue a decision whether or not it is appropriate for electric utilities to provide and install time-based meters and communications devices for each of their customers which enable such customers to participate in time-based pricing rate schedules and other demand response programs.".

(c) FEDERAL ASSISTANCE ON DEMAND RESPONSE.—Section 132(a) of the Public Utility Regulatory Polices Act of 1978 (16 U.S.C. 2642(a)) is amended by striking "and" at the end of paragraph (3), striking the period at the end of paragraph (4) and inserting "; and", and by adding the following at the end thereof:

"(5) technologies, techniques and rate-making methods related to advanced metering and communications and the use of these technologies, techniques and methods in demand response programs.".

(d) FEDERAL GUIDANCE.—Section 132 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2643) is amended by adding the following at the end thereof:

"(d) DEMAND RESPONSE.—The Secretary shall be responsible for each of the following:

"(1) Educating consumers on the availability, advantages and benefits of advanced metering and communications technologies including the funding of demonstration or pilot projects.

"(2) Working with States, utilities, other energy providers and advanced metering and communications experts to identify and address barriers to the adoption of demand response programs, and

"(3) Within 6 months of enactment, provide the Congress with a report that identifies and quantifies the national benefits of demand response and provides policy recommendations as to how to achieve specific levels of such benefits by January 1, 2005.".

(e) DEMAND RESPONSE AND REGIONAL COORDINATION.—

(1) POLICY.—It is the policy of the United States to encourage States to coordinate, on a regional basis, State energy policies to provide reliable and affordable demand response services to the public.

(2) TECHNICAL ASSISTANCE.—The Secretary of Energy shall provide technical assistance to States and regional organizations formed by two or more States to assist them in—

(A) identifying the areas with the greatest demand response potential;

(B) identifying and resolving problems in transmission and distribution networks, including through the use of demand response; and

(C) developing plans and programs to use demand response to respond to peak demand or emergency needs.

(3) REPORT.—The Federal Energy Regulatory Commission shall prepare and publish an annual report, by appropriate region, that assesses demand response resources, including those available from all consumer classes, and which identifies and reviews each of the following:

(A) Saturation and penetration rate of advanced meters and communications technologies, devices and systems.

(B) Existing demand response programs and time-based rate programs.

(C) The annual resource contribution of demand resources, including the prior year and following years.

(D) The potential for demand response as a quantifiable, reliable resource for regional planning purposes.

(E) Steps taken to ensure that, in regional transmission planning and operations, that demand resources are provided equitable treatment as a quantifiable, reliable resource relative to the resource obligations of any load-serving entity, transmission provider or transmitting party.

(f) COST RECOVERY OF DEMAND RESPONSE DEVICES.—It is the policy of the United States that time-based pricing and other forms of demand response, whereby electricity customers are provided with electricity price signals and the ability to benefit by responding to them, shall be encouraged and the deployment of such technology and devices that enable electricity customers to participate in such pricing and demand response systems shall be facilitated. It is further the policy of the United States that the benefits of such demand response that accrue to those not deploying such technology and devices, but who are part of the same regional electricity entity, shall be recognized.

Subtitle F—Renewable Energy

SEC. 7071. NET METERING.

(a) ADOPTION OF STANDARD.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

"(14) NET METERING.—(A) Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves.

"(B) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

"(C) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standard set out in subparagraph (A) not later than 1 year after the date of enactment of this paragraph.".

(b) SPECIAL RULES FOR NET METERING.—Section 115 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended by adding at the end the following:

"(l) NET METERING.—In undertaking the consideration and making the determination under section 111 with respect to the standard concerning net metering established by section 111(d)(14), the term 'net metering service' shall mean a service provided in accordance with the following standards:

"(1) RATES AND CHARGES.—An electric utility—

"(A) shall charge the owner or operator of an on-site generating facility rates and charges that are identical to those that would be charged other electric consumers of the electric utility in the same rate class; and

"(B) shall not charge the owner or operator of an on-site generating facility any additional standby, capacity, interconnection, or other rate or charge.

"(2) MEASUREMENT.—An electric utility that sells electric energy to the owner or operator of an on-site generating facility shall measure the quantity of electric energy produced by the on-site facility and the quantity of electric energy consumed by the owner or operator of an on-site generating facility during a billing period in accordance with normal metering practices.

"(3) ELECTRIC ENERGY SUPPLIED EXCEEDING ELECTRIC ENERGY GENERATED.—If the quantity of electric energy sold by the electric utility to an on-site generating facility exceeds the quantity of electric energy supplied by the on-site generating facility to the electric utility during the billing period, the electric utility may bill the owner or operator for the net quantity of electric energy sold, in accordance with normal metering practices.

"(4) ELECTRIC ENERGY GENERATED EXCEEDING ELECTRIC ENERGY SUPPLIED.—If the quantity of electric energy supplied by the on-site generating facility to the electric utility exceeds the quantity of electric energy sold by the electric utility to the on-site generating facility during the billing period—

"(A) the electric utility may bill the owner or operator of the on-site generating facility for the appropriate charges for the billing period in accordance with paragraph (2); and

"(B) the owner or operator of the on-site generating facility shall be credited for the excess kilowatt-hours generated during the billing period, with the kilowatt-hour credit appearing on the bill for the following billing period.

"(5) SAFETY AND PERFORMANCE STANDARDS.—An eligible on-site generating facility and net metering system used by an electric consumer shall meet all applicable safety, performance, reliability, and interconnection standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and Underwriters Laboratories.

"(6) ADDITIONAL CONTROL AND TESTING REQUIREMENTS.—The Commission, after consultation with State regulatory authorities and nonregulated electric utilities and after notice and opportunity for comment, may adopt, by rule, additional control and testing requirements for on-site generating facilities and net metering systems that the Commission determines are necessary to protect public safety and system reliability.

"(7) DEFINITIONS.—For purposes of this subsection:

"(A) The term 'eligible on-site generating facility' means—

"(i) a facility on the site of a residential electric consumer with a maximum generating capacity of 10 kilowatts or less that is fueled by solar energy, wind energy, or fuel cells; or

"(ii) a facility on the site of a commercial electric consumer with a maximum generating capacity of 500 kilowatts or less that is fueled solely by a renewable energy resource, landfill gas, or a high efficiency system.

"(B) The term 'renewable energy resource' means solar, wind, biomass, or geothermal energy.

"(C) The term 'high efficiency system' means service fuel cells or combined heat and power.

"(D) The term 'net metering' means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period."

SEC. 7072. RENEWABLE ENERGY PRODUCTION INCENTIVE.

(a) INCENTIVE PAYMENTS.—Section 1212(a) of the Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is amended by striking "and which satisfies" and all that follows through "Secretary shall establish." and inserting ". If there are insufficient appropriations to make full payments for electric production from all qualified renewable energy facilities in any given year, the Secretary shall assign 60 percent of appropriated funds for that year to facilities that use solar, wind, geothermal, or closed-loop (dedicated energy crops) biomass technologies to generate electricity, and assign the remaining 40 percent to other projects. The Secretary may, after transmitting to the Congress an explanation of the reasons therefor, alter the percentage requirements of the preceding sentence.".

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

(1) by striking "a State or any political" and all that follows through "nonprofit electrical cooperative" and inserting "a not-for-profit electric cooperative, a public utility described in section 115 of the Internal Revenue Code of 1986, a State, Commonwealth, territory, or possession of the United States or the District of Columbia, or a political subdivision thereof, or an Indian tribal government of subdivision thereof,"; and

(2) by inserting "landfill gas," after "wind, biomass,".

(c) ELIGIBILITY WINDOW.—Section 1212(c) of the Energy Policy Act of 1992 (42 U.S.C. 13317(c)) is amended by striking "during the 10-fiscal year period beginning with the first full fiscal year occurring after the enactment of this section" and inserting "after October 1, 2003, and before October 1, 2013".

(d) AMOUNT OF PAYMENT.—Section 1212(e)(1) of the Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1)) is amended by inserting "landfill gas," after "wind, biomass,".

(e) SUNSET.—Section 1212(f) of the Energy Policy Act of 1992 (42 U.S.C. 13317(f)) is amended by striking "the expiration of" and all that follows through "of this section" and inserting "September 30, 2023".

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

"(g) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—Subject to paragraph (2), there are authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years 2003 through 2023.

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

SEC. 7073. RENEWABLE ENERGY ON FEDERAL LANDS.

(a) REPORT TO CONGRESS.—Within 24 months after the date of enactment of this section, the Secretary of the Interior, in cooperation with the Secretary of Agriculture, shall develop and report to the Congress recommendations on opportunities to develop renewable energy on public lands under the jurisdiction of the Secretary of the Interior and National Forest System lands under the jurisdiction of the Secretary of Agriculture. The report shall include—

(1) 5-year plans developed by the Secretary of the Interior and the Secretary of Agriculture, respectively, for encouraging the development of wind and solar energy consistent with applicable law and management plans; and

(2) an analysis of—

(A) the use of rights-of-ways, leases, or other methods to develop wind and solar energy on such lands;

(B) the anticipated benefits of grants, loans, tax credits, or other provisions to promote wind and solar energy development on such lands; and

(C) any issues that the Secretary of the Interior or the Secretary of Agriculture have encountered in managing wind or solar energy projects on such lands, or believe are likely to arise in relation to the development of wind or solar energy on such lands;

(3) a list, developed in consultation with the Secretary of Energy and the Secretary of Defense, of lands under the jurisdiction of the Department of Energy or Defense that would be suitable for development for wind or solar energy, and any recommended statutory and regulatory mechanisms for such development; and

(4) any recommendations pertaining to the issues addressed in the report.

(b) NATIONAL ACADEMY OF SCIENCES STUDY.—

(1) IN GENERAL.—Within 90 days after the date of the enactment of this Act, the Secretary of the Interior shall contract with the National Academy of Sciences to—

(A) study the potential for the development of wind, solar, and ocean energy on the Outer Continental Shelf;

(B) assess existing Federal authorities for the development of such resources; and

(C) recommend statutory and regulatory mechanisms for such development.

(2) TRANSMITTAL OF RESULTS.—The results of the study shall be transmitted to the Congress within 24 months after the date of the enactment of this Act.

SEC. 7074. ASSESSMENT OF RENEWABLE ENERGY RESOURCES.

(a) RESOURCE ASSESSMENT.—Not later than 3 months after the date of enactment of this Act, and each year thereafter, the Secretary of Energy shall review the available assessments of renewable energy resources available within the United States, including solar, wind, biomass, ocean, geothermal, and hydroelectric energy resources, and undertake new assessments as necessary, taking into account changes in market conditions, available technologies, and other relevant factors.

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

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

(2) such other information as the Secretary believes would be useful in developing such renewable energy resources, including descriptions of surrounding terrain, population and load centers, nearby energy infrastructure, location of energy and water resources, and available estimates of the costs needed to develop each resource, together with an identification of any barriers to providing adequate transmission for remote sources of renewable energy resources to current and emerging markets, recommendations for removing or addressing such barriers, and ways to provide access to the grid that do not unfairly disadvantage renewable or other energy producers.

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

SEC. 7081. MARKET TRANSPARENCY RULES.

Part II of the Federal Power Act is amended by adding the following new section at the end thereof:

"SEC. 219. MARKET TRANSPARENCY RULES.

"(a) COMMISSION RULES.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules establishing an electronic information system to provide the Commission and the public with access to such information as is necessary or appropriate to facilitate price transparency and participation in markets subject to the Commission's jurisdiction. Such systems shall provide information about the availability and market price of sales of electric energy at wholesale in interstate commerce and transmission of electric energy in interstate commerce to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public on a timely basis. The Commission shall have authority to obtain such information from any person, and any entity described in section 201(f), who sells electric energy at wholesale in interstate commerce or provides transmission services in interstate commerce.

"(b) EXEMPTIONS.—The Commission shall exempt from disclosure information it determines would, if disclosed, (1) be detrimental to the operation of an effective market; or (2) jeopardize system security. This section shall not apply to an entity described in section 212(k)(2)(B) with respect to transactions for the purchase or sale of wholesale electric energy and transmission services within the area described in section 212(k)(2)(A).".

SEC. 7082. PROHIBITION ON ROUND TRIP TRADING.

Part II of the Federal Power Act is amended by adding the following new section at the end thereof:

"SEC. 220. PROHIBITION ON ROUND TRIP TRADING.

"(a) PROHIBITION.—It shall be a violation of this Act for any person, and any entity described in section 201(f), willfully and knowingly to enter into any contract or other arrangement to execute a round-trip trade for the purchase or sale of electric energy at wholesale.

"(b) DEFINITION OF ROUND-TRIP TRADE.—For the purposes of this section, the term 'round-trip trade' means a transaction, or combination of transactions, in which a person or other entity—

"(1) enters into a contract or other arrangement to purchase from, or sell to, any other person or other entity electric energy at wholesale;

"(2) simultaneously with entering into the contract described in paragraph (1), arranges a financially offsetting trade with such other person or entity for the same quantity of electric energy so that, collectively, the purchase and sale transactions in themselves result in no financial gain or loss; and

"(3) has a specific intent to distort reported revenues, trading volumes, or prices.".

SEC. 7083. CONFORMING CHANGES.

Section 201(e) of the Federal Power Act is amended by striking "or 212" and inserting "212, 215, 216, 217, 218, 219, or 220". Section 201(b)(2) of such Act is amended by striking "and 212" and inserting "212, 215, 216, 217, 218, 219, and 220".

SEC. 7084. ENFORCEMENT.

(a) COMPLAINTS.—Section 306 of the Federal Power Act (16 U.S.C. 825e) is amended by—

(1) inserting "electric utility," after "Any person,"; and

(2) inserting ", transmitting utility," after "licensee" each place it appears.

(b) REVIEW OF COMMISSION ORDERS.—Section 313(a) of the Federal Power Act (16 U.S.C. 8251) is amended by inserting "electric utility," after "person," in the first place it appears and by striking "any person unless such person" and inserting "any entity unless such entity".

(c) CRIMINAL PENALTIES.—Section 316 of the Federal Power Act (16 U.S.C. 825o) is amended—

(1) in subsection (a), by striking "$5,000" and inserting "$1,000,000", and by striking "two years" and inserting "five years";

(2) in subsection (b), by striking "$500" and inserting "$25,000"; and

(3) by striking subsection (c).

(d) CIVIL PENALTIES.—Section 316A of the Federal Power Act (16 U.S.C. 825–1) is amended—

(1) in subsections (a) and (b), by striking "section 211, 212, 213, or 214" each place it appears and inserting "Part II"; and

(2) in subsection (b), by striking "$10,000" and inserting "$1,000,000".

Subtitle H—Consumer Protections

SEC. 7091. REFUND EFFECTIVE DATE.

Section 206(b) of the Federal Power Act (16 U.S.C. 824e(b)) is amended by—

(1) striking "the date 60 days after the filing of such complaint nor later than 5 months after the expiration of such 60-day period" in the second sentence and inserting "the date of the filing of such complaint nor later than 5 months after the filing of such complaint";

(2) striking "60 days after" in the third sentence and inserting "of";

(3) striking "expiration of such 60-day period" in the third sentence and inserting "publication date"; and

(4) in the fifth sentence after "rendered by the" insert "date 60 days after the".

SEC. 7092. JURISDICTION OVER INTERSTATE SALES.

(a) SCOPE OF AUTHORITY.—Section 206 of the Federal Power Act (16 U.S.C. 824e) is amended by adding the following new subsection at the end thereof:

"(e)(1) If an entity that is not a public utility (including an entity referred to in section 201(f)) voluntarily makes a spot market sale of electric energy and such sale violates Commission rules in effect at the time of such sale, such entity shall be subject to the Commission's refund authority under this section with respect to such violation.

"(2) This section shall not apply to any entity that is either—

"(A) an entity described in section 201(f); or

"(B) a rural electric cooperative

that does not sell more than 4,000,000 megawatt hours of electricity per year.

"(3) For purposes of this subsection, the term 'spot market sale' means an agreement for the sale of electric energy at wholesale in interstate commerce that is for 24 hours or less and that is entered into the day of, or the day prior to, delivery.".

(b) CONFORMING AMENDMENTS.—(1) Section 206 of the Federal Power Act (16 U.S.C. 824e) is amended as follows:

(A) In subsection (b), in the seventh sentence, by striking "the public utility to make".

(B) In the first sentence of subsection (a), by striking "hearing had" and inserting "hearing held".

(2) Section 201(b)(2) of such Act (16 U.S.C. 824(b)(2)) is amended as follows:

(A) In the first sentence by striking "sections 210" and inserting "sections 206(f), 210".

(B) In the second sentence by striking "section 210" and inserting "section 206(f), 210,".

(3) Section 201(e) of the Federal Power Act is amended by striking "section 210" and inserting "section 206(f), 210".

(c) UNIFORM INVESTIGATION AUTHORITY.—Section 307(a) of the Federal Power Act (16 U.S.C. 825f(a)) is amended as follows:

(1) By inserting ", electric utility, transmitting utility, or other entity" after "person" each time it appears.

(2) By striking the period at the end of the first sentence and inserting the following: "or in obtaining information about the sale of electric energy at wholesale in interstate commerce and the transmission of electric energy in interstate commerce.".

(d) SANCTITY OF CONTRACT.—(1) The Federal Energy Regulatory Commission shall have no authority to abrogate or modify any provision of a contract, except upon a finding, after notice and opportunity for a hearing, that such action is necessary to protect the public interest, unless such contract expressly provides for a different standard of review.

(2) For purposes of this subsection, a contract is any agreement, in effect and subject to the jurisdiction of the Commission—

(A) under section 4 of the Natural Gas Act or section 205 of the Federal Power Act; and

(B) that is not for sales in an organized exchange or auction spot market.

(3) This subsection shall not apply to any contract executed before the date of enactment of this section unless such contract is an interconnection agreement, nor

shall this subsection affect the outcome in any proceeding regarding any contract for sales of electric power executed before the date of enactment of this section.

SEC. 7093. CONSUMER PRIVACY.

(a) IN GENERAL.—The Federal Trade Commission shall issue rules protecting the privacy of electric consumers from the disclosure of consumer information obtained in connection with the sale or delivery of electric energy to electric consumers. The Federal Trade Commission shall proceed in accordance with section 553 of title 5, United States Code, when prescribing a rule under this section.

(b) STATE AUTHORITY.—If the Federal Trade Commission determines that a State's regulations provide equivalent or greater protection than the provisions of this section, such State regulations shall apply in that State in lieu of the regulations issued by the Commission under this section.

SEC. 7094. UNFAIR TRADE PRACTICES.

(a) SLAMMING.—The Federal Trade Commission shall issue rules prohibiting the change of selection of an electric utility except with the informed consent of the electric consumer or if approved by the appropriate State regulatory authority.

(b) CRAMMING.—The Federal Trade Commission shall issue rules prohibiting the sale of goods and services to an electric consumer unless expressly authorized by law or the electric consumer.

(c) RULEMAKING.—The Federal Trade Commission shall proceed in accordance with section 553 of title 5, United States Code, when prescribing a rule under this section.

(d) STATE AUTHORITY.—If the Federal Trade Commission determines that a State's regulations provide equivalent or greater protection than the provisions of this section, such State regulations shall apply in that State in lieu of the regulations issued by the Commission under this section.

Subtitle I—Merger Review Reform and Accountability

SEC. 7101. MERGER REVIEW REFORM AND ACCOUNTABILITY.

(a) MERGER REVIEW REFORM.—Within 180 days after the date of enactment of this Act, the Secretary of Energy, in consultation with the Federal Energy Regulatory Commission and the Department of Justice, shall prepare, and transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate each of the following:

(1) A study of the extent to which the authorities vested in the Federal Energy Regulatory Commission under section 203 of the Federal Power Act are duplicative of authorities vested in—

(A) other agencies of Federal and State government; and

(B) the Federal Energy Regulatory Commission, including under sections 205 and 206 of the Federal Power Act.

(2) Recommendations on reforms to the Federal Power Act that would eliminate any unnecessary duplication in the exercise of regulatory authority or unnecessary delays in the approval (or disapproval) of applications for the sale, lease, or other disposition of public utility facilities.

(b) MERGER REVIEW ACCOUNTABILITY.—Not later than 1 year after the date of enactment of this Act and annually thereafter, with respect to all orders issued within the preceding year that impose a condition on a sale, lease, or other disposition of public utility facilities under section 203(b) of the Federal Power Act, the Federal Energy Regulatory Commission shall transmit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate explaining each of the following:

(1) The condition imposed.

(2) Whether the Commission could have imposed such condition by exercising its authority under any provision of the Federal Power Act other than under section 203(b).

(3) If the Commission could not have imposed such condition other than under section 203(b), why the Commission determined that such condition was consistent with the public interest.

Subtitle J—Study of Economic Dispatch

SEC. 7111. STUDY ON THE BENEFITS OF ECONOMIC DISPATCH.

(a) STUDY.—The Secretary of Energy, in coordination and consultation with the States, shall conduct a study on—

(1) the procedures currently used by electric utilities to perform economic dispatch,

(2) identifying possible revisions to those procedures to improve the ability of nonutility generation resources to offer their output for sale for the purpose of inclusion in economic dispatch; and

(3) the potential benefits to residential, commercial, and industrial electricity consumers nationally and in each state if economic dispatch procedures were revised to improve the ability of nonutility generation resources to offer their output for inclusion in economic dispatch.

(b) DEFINITION.—The term "economic dispatch" when used in this section means the operation of generation facilities to produce energy at the lowest cost to reliably serve consumers, recognizing any operational limits of generation and transmission facilities.

(c) REPORT TO CONGRESS AND THE STATES.—Not later than 90 days after the date of enactment of this Act, and on a yearly basis following, the Secretary of Energy shall submit a report to the Congress and the States on the results of the study conducted under subsection (a), including recommendations to the Congress and the States for any suggested legislative or regulatory changes.

TITLE VIII—COAL

SEC. 8001. AUTHORIZATION OF APPROPRIATIONS.

(a) CLEAN COAL POWER INITIATIVE.—Except as provided in subsection (b), there are authorized to be appropriated to the Secretary to carry out the activities authorized by this title $200,000,000 for each of the fiscal years 2005 through 2013, to remain available until expended.

(b) LIMIT ON USE OF FUNDS.—The Secretary shall transmit to the Congress the report required by this subsection not later than September 30, 2004. Notwithstanding subsection (a), no funds may be used to carry out the activities authorized by this title after September 30, 2004, unless the report has been transmitted. The report shall include, with respect to subsection (a), a 10-year plan containing—

(1) a detailed assessment of whether the aggregate funding levels provided under subsection (a) are the appropriate funding levels for that program;

(2) a detailed description of how proposals will be solicited and evaluated, including a list of all activities expected to be undertaken;

(3) a detailed list of technical milestones for each coal and related technology that will be pursued; and

(4) a detailed description of how the program will avoid problems enumerated in General Accounting Office reports on the Clean Coal Technology Program, including problems that have resulted in unspent funds and projects that failed either financially or scientifically.

(c) APPLICABILITY.—Subsection (b) shall not apply to any project begun before September 30, 2004.

SEC. 8002. PROJECT CRITERIA.

(a) IN GENERAL.—The Secretary shall not provide funding under this title for any project that does not advance efficiency, environmental performance, and cost competitiveness well beyond the level of technologies that on a full scale are in operation or have been demonstrated as of the date of the enactment of this Act.

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

(1) GASIFICATION.—(A) In allocating the funds made available under section 8001(a), the Secretary shall ensure that up to 80 percent of the funds are used only for coal-based gasification technologies, including gasification combined cycle, gasification fuel cells, gasification coproduction and hybrid gasification/combustion.

(B) The Secretary shall set technical milestones specifying emissions levels for projects funded under this paragraph. The milestones shall be designed to increasingly restrict emission levels through the life of the program. The milestones shall be designed to achieve by 2020 coal gasification projects able—

(i) to remove 99 percent of sulfur dioxide;

(ii) to emit no more than .05 lbs of NOx per million BTU;

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

(iv) to achieve a thermal efficiency of—

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

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

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

(2) OTHER PROJECTS.—For projects not described in paragraph (1), the Secretary shall set technical milestones specifying emissions levels. The milestones shall be designed to increasingly restrict emission levels through the life of the program. The milestones shall be designed to achieve by 2010 projects able—

(A) to remove 97 percent of sulfur dioxide;

(B) to emit no more than .08 lbs of NOx per million BTU;

(C) to achieve substantial reductions in mercury emissions; and

(D) except as provided in paragraph (4), to achieve a thermal efficiency of—

(i) 45 percent for coal of more than 9,000 Btu;

(ii) 44 percent for coal of 7,000 to 9,000 Btu; and

(iii) 42 percent for coal of less than 7,000 Btu.

(3) CONSULTATION.—Before setting the technical milestones under paragraphs (1)(B) and (2), the Secretary shall consult with the Administrator of the Environmental Protection Agency and interested entities, including coal producers, industries using coal, organizations to promote coal or advanced coal technologies, environmental organizations, and organizations representing workers.

(4) EXISTING UNITS.—In the case of projects at existing units, in lieu of the thermal efficiency requirements set forth in paragraph (1)(B)(iv) and (2)(D), the projects shall be designed to achieve an overall thermal design efficiency improvement compared to the efficiency of the unit as operated, of not less than—

(A) 7 percent for coal of more than 9,000 Btu;

(B) 6 percent for coal of 7,000 to 9,000 Btu; or

(C) 4 percent for coal of less than 7,000 Btu.

(5) PERMITTED USES.—In allocating funds made available under section 8001, the Secretary may fund projects that include, as part of the project, the separation and capture of carbon dioxide.

(c) FINANCIAL CRITERIA.—The Secretary shall not provide a funding award under this title unless the recipient has documented to the satisfaction of the Secretary that—

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

(2) the recipient will provide sufficient information to the Secretary for the Secretary to ensure that the award funds are spent efficiently and effectively; and

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

(d) FINANCIAL ASSISTANCE.—The Secretary shall provide financial assistance to projects that meet the requirements of subsections (a), (b), and (c) and are likely to—

(1) achieve overall cost reductions in the utilization of coal to generate useful forms of energy;

(2) improve the competitiveness of coal among various forms of energy in order to maintain a diversity of fuel choices in the United States to meet electricity generation requirements; and

(3) demonstrate methods and equipment that are applicable to 25 percent of the electricity generating facilities, utilizing different types of coal, that use coal as the primary feedstock as of the date of the enactment of this Act.

(e) FEDERAL SHARE.—The Federal share of the cost of a project funded by the Secretary under this title shall not exceed 50 percent.

(f) APPLICABILITY.—No technology, or level of emission reduction, shall be treated as adequately demonstrated for purposes of section 111 of the Clean Air Act, achievable for purposes of section 169 of that Act, or achievable in practice for purposes of section 171 of that Act solely by reason of the use of such technology, or the achievement of such emission reduction, by one or more facilities receiving assistance under this title.

SEC. 8003. REPORT.

Not later than 1 year after the date of the enactment of this Act, and once every 2 years thereafter for the following 8 years, the Secretary, in consultation with other appropriate Federal agencies, shall transmit to the Congress a report describing—

(1) the technical milestones set forth in section 8002 and how those milestones ensure progress toward meeting the requirements of subsections (b)(1)(B) and (b)(2) of section 8002; and

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

SEC. 8004. CLEAN COAL CENTERS OF EXCELLENCE.

As part of the program authorized in section 8001, the Secretary shall award competitive, merit-based grants to universities for the establishment of Centers of Excellence for Energy Systems of the Future. The Secretary shall provide grants to universities that can show the greatest potential for advancing new clean coal technologies.

TITLE IX—MOTOR FUELS

Subtitle A—General Provisions

SEC. 9101. RENEWABLE CONTENT OF MOTOR VEHICLE FUEL.

(a) IN GENERAL.—Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended—

(1) by redesignating subsection (o) as subsection (q); and

(2) by inserting after subsection (n) the following:

"(o) RENEWABLE FUEL PROGRAM.—

"(1) DEFINITIONS.—In this section:

"(A) CELLULOSIC BIOMASS ETHANOL.—The term 'cellulosic biomass ethanol' means ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, including—

"(i) dedicated energy crops and trees;

"(ii) wood and wood residues;

"(iii) plants;

"(iv) grasses;

"(v) agricultural residues;

"(vi) fibers;

"(vii) animal wastes and other waste materials; and

"(viii) municipal solid waste.

"(B) RENEWABLE FUEL.—

"(i) IN GENERAL.—The term 'renewable fuel' means motor vehicle fuel that—

"(I)(aa) is produced from grain, starch, oilseeds, or other biomass; or

"(bb) is natural gas produced from a biogas source, including a landfill, sewage waste treatment plant, feedlot, or other place where decaying organic material is found; and

"(II) is used to replace or reduce the quantity of fossil fuel present in a fuel mixture used to operate a motor vehicle.

"(ii) INCLUSION.—The term 'renewable fuel' includes cellulosic biomass ethanol and biodiesel (as defined in section 312(f) of the Energy Policy Act of 1992 (42 U.S.C. 13220(f)) and any blending components derived from renewable fuel (provided that only the renewable fuel portion of any such blending component shall be considered part of the applicable volume under the renewable fuel program established by this subsection).

"(C) SMALL REFINERY.—The term 'small refinery' means a refinery for which average aggregate daily crude oil throughput for the calendar year (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels.

"(2) RENEWABLE FUEL PROGRAM.—

"(A) IN GENERAL.—Not later than 1 year from enactment of this provision, the Administrator shall promulgate regulations ensuring that gasoline sold or dispensed to consumers in the contiguous United States, on an annual average basis, contains the applicable volume of renewable fuel as specified in subparagraph (B). Regardless of the date of promulgation, such regulations shall contain compliance provisions for refiners, blenders, and importers, as appropriate, to ensure that the requirements of this section are met, but shall not restrict where renewables can be used, or impose any per-gallon obligation for the use of renewables. If the Administrator does not promulgate such regulations, the applicable percentage, on a volume percentage of gasoline basis, shall be 1.62 in 2005.

"(B) APPLICABLE VOLUME.—

"(i) CALENDAR YEARS 2005 THROUGH 2015.—For the purpose of subparagraph (A), the applicable volume for any of calendar years 2005

through 2015 shall be determined in accordance with the following table:

Applicable volume of renewable fuel

"Calendar year:	(In billions of gallons)
2005	2.7
2006	2.7
2007	2.9
2008	2.9
2009	3.4
2010	3.4
2011	3.4
2012	4.2
2013	4.2
2014	4.2
2015	5.0.

"(ii) CALENDAR YEAR 2016 AND THEREAFTER.—For the purpose of subparagraph (A), the applicable volume for calendar year 2016 and each calendar year thereafter shall be equal to the product obtained by multiplying—

"(I) the number of gallons of gasoline that the Administrator estimates will be sold or introduced into commerce in the calendar year; and

"(II) the ratio that—

"(aa) 5.0 billion gallons of renewable fuels; bears to

"(bb) the number of gallons of gasoline sold or introduced into commerce in calendar year 2015.

"(3) APPLICABLE PERCENTAGES.—Not later than October 31 of each calendar year after 2002, the Administrator of the Energy Information Administration shall provide the Administrator an estimate of the volumes of gasoline sales in the United States for the coming calendar year. Based on such estimates, the Administrator shall, by November 30 of each calendar year after 2003, determine and publish in the Federal Register, the renewable fuel obligation, on a volume percentage of gasoline basis, applicable to refiners, blenders, and importers, as appropriate, for the coming calendar year, to ensure that the requirements of paragraph (2) are met. For each calendar year, the Administrator shall establish a single applicable percentage that applies to all parties, and make provision to avoid redundant obligations. In determining the applicable percentages, the Administrator shall make adjustments to account for the use of renewable fuels by exempt small refineries during the previous year.

"(4) CELLULOSIC BIOMASS ETHANOL.—For the purpose of paragraph (2), 1 gallon of cellulosic biomass ethanol shall be considered to be the equivalent of 1.5 gallon of renewable fuel.

"(5) CREDIT PROGRAM.—

"(A) IN GENERAL.—The regulations promulgated to carry out this subsection shall provide for the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2). Such regulations shall provide for the generation of an appropriate amount of credits for biodiesel fuel. If a small refinery notifies the Administrator that it waives the exemption provided by this Act, the regulations shall provide for the generation of credits by the small refinery beginning in the year following such notification.

"(B) USE OF CREDITS.—A person that generates credits under subparagraph (A) may use the credits, or transfer all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

"(C) LIFE OF CREDITS.—A credit generated under this paragraph shall be valid to show compliance:

"(i) in the calendar year in which the credit was generated or the next calendar year, or

"(ii) in the calendar year in which the credit was generated or next two consecutive calendar years if the Administrator promulgates regulations under paragraph (6).

"(D) INABILITY TO PURCHASE SUFFICIENT CREDITS.—The regulations promulgated to carry out this subsection shall include provisions allowing any person that is unable to generate or purchase sufficient credits to meet the requirements under paragraph (2) to carry forward a renewables deficit provided that, in the calendar year following the year in which the renewables deficit is created, such person shall achieve compliance with the renewables requirement under paragraph (2), and shall generate or purchase additional renewables credits to offset the renewables deficit of the previous year.

"(6) SEASONAL VARIATIONS IN RENEWABLE FUEL USE.—

"(A) STUDY.—For each of calendar years 2005 through 2015, the Administrator of the Energy Information Administration, shall conduct a study of renewable fuels blending to determine whether there are excessive seasonal variations in the use of renewable fuels.

"(B) REGULATION OF EXCESSIVE SEASONAL VARIATIONS.—If, for any calendar year, the Administrator of the Energy Information Administration, based on the study under subparagraph (A), makes the determinations specified in subparagraph (C), the Administrator shall promulgate regulations to ensure that 35 percent or more of the quantity of renewable fuels necessary to meet the requirement of paragraph (2) is used during each of the periods specified in subparagraph (D) of each subsequent calendar year.

"(C) DETERMINATIONS.—The determinations referred to in subparagraph (B) are that—

"(i) less than 35 percent of the quantity of renewable fuels necessary to meet the requirement of paragraph (2) has been used during one of the periods specified in subparagraph (D) of the calendar year;

"(ii) a pattern of excessive seasonal variation described in clause (i) will continue in subsequent calendar years; and

"(iii) promulgating regulations or other requirements to impose a 35% or more seasonal use of renewable fuels will not prevent or interfere with the attainment of national ambient air quality standards or significantly increase the price of motor fuels to the consumer.

"(D) PERIODS.—The two periods referred to in this paragraph are—

"(i) April through September; and

"(ii) January through March and October through December.

"(E) EXCLUSIONS.—Renewable fuels blended or consumed in 2005 in a State which has received a waiver under section 209(b) shall not be included in the study in subparagraph (A).

"(7) WAIVERS.—

"(A) IN GENERAL.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the requirement of paragraph (2) in whole or in part on petition by one or more States by reducing the national quantity of renewable fuel required under this subsection—

"(i) based on a determination by the Administrator, after public notice and opportunity for comment, that implementation of the requirement would have a significant and meaningful adverse impact on the economy or environment of a State, a region, or the United States, or will prevent or interfere with the attainment of a national ambient air quality standard in any area of a State; or

"(ii) based on a determination by the Administrator, after public notice and opportunity for comment, that there is an inadequate domestic supply or distribution capacity to meet the requirement.

"(B) PETITIONS FOR WAIVERS.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a State petition for a waiver of the requirement of paragraph (2) within 90 days after the date on which the petition is received by the Administrator. If the Administrator does not act to approve or disapprove a State petition for a waiver within 90 days, the Administrator shall publish a notice setting forth the reasons for not acting within the required 90-day period.

"(C) TERMINATION OF WAIVERS.—A waiver granted under subparagraph (A) shall terminate after 1 year, but may be renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy.

"(8) STUDY AND WAIVER FOR INITIAL YEAR OF PROGRAM.—Not later than 180 days from enactment, the Secretary of Energy shall complete for the Administrator a study assessing whether the renewable fuels requirement under paragraph (2) will likely result in significant adverse consumer impacts in 2005, on a national, regional or State basis. Such study shall evaluate renewable fuel supplies and prices, blendstock supplies, and supply and distribution system capabilities. Based on such study, the Secretary shall make specific recommendations to the Administrator regarding waiver of the requirements of paragraph (2), in whole or in part, to avoid any such adverse impacts. Within 270 days from enactment, the Administrator shall, consistent with the recommendations of the Secretary waive, in whole or in part, the renewable fuels requirement under paragraph (2) by reducing the national quantity of renewable fuel required under this subsection in 2005. This provision shall not be interpreted as

limiting the Administrator's authority to waive the requirements of paragraph (2) in whole, or in part, under paragraph (7) or paragraph (9), pertaining to waivers.

"(9) ASSESSMENT AND WAIVER.—The Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of Agriculture on his own motion, or upon petition of any State shall evaluate the requirement of paragraph (2) and determine, prior to January 1, 2007, or prior to January 1 of any subsequent year in which the applicable volume of renewable fuel is increased under paragraph (2)(B), whether the requirement of paragraph (2), including the applicable volume of renewable fuel contained in paragraph (2)(B) should remain in effect, in whole or in part, during 2007 or any year or years subsequent to 2007. In evaluating the requirement of paragraph (2) and in making any determination under this section, the Secretary shall consider the best available information and data collected by accepted methods or best available means regarding—

"(A) the capacity of renewable fuel producers to supply an adequate amount of renewable fuel at competitive prices to fulfill the requirement in paragraph (2);

"(B) the potential of the requirement in paragraph (2) to significantly raise the price of gasoline, food or heating oil for consumers in any significant area or region of the country above the price that would otherwise apply to such commodities in the absence of the requirement;

"(C) the potential of the requirement in paragraph (2) to interfere with the supply of fuel in any significant gasoline market or region of the country, including interference with the efficient operation of refiners, blenders, importers, wholesale suppliers, and retail vendors of gasoline, and other motor fuels; and

"(D) the potential of the requirement to cause or promote exceedences of Federal, State, or local air quality standards.

If the Secretary determines, after public notice and the opportunity for comment, that the requirement of paragraph (2) would have significant and meaningful adverse impact on the supply of fuel and related infrastructure or on the economy, environment, public health or environment of any significant area or region of the country, the Secretary may waive, in whole or in part, the requirement of paragraph (2) in any one year or period of years as well as reduce the applicable volume of renewable fuel contained in paragraph (2)(B) in any one year or period of years.

"(10) SMALL REFINERIES.—

"(A) IN GENERAL.—The requirement of paragraph (2) shall not apply to small refineries until the first calendar year beginning more than 5 years after the first year set forth in the table in paragraph (2)(B)(i). Not later than December 31, 2006, the Secretary of Energy shall complete for the Administrator a study to determine whether the requirement of paragraph (2) would impose a disproportionate economic hardship on small refineries. For any small refinery that the Secretary of Energy determines would experience a disproportionate economic hardship, the Administrator shall extend the small refinery exemption for such small refinery for no less than two additional years.

"(B) ECONOMIC HARDSHIP.—

"(i) EXTENSION OF EXEMPTION.—A small refinery may at any time petition the Administrator for an extension of the exemption from the requirement of paragraph (2) for the reason of disproportionate economic hardship. In evaluating a hardship petition, the Administrator, in consultation with the Secretary of Energy, shall consider the findings of the study in addition to other economic factors.

"(ii) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the receipt of the petition.

"(C) CREDIT PROGRAM.—If a small refinery notifies the Administrator that it waives the exemption provided by this Act, the regulations shall provide for the generation of credits by the small refinery beginning in the year following such notification.

"(D) OPT-IN FOR SMALL REFINERS.—A small refinery shall be subject to the requirements of this section if it notifies the Administrator that it waives the exemption under subparagraph (A).".

(b) PENALTIES AND ENFORCEMENT.—Section 211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by striking "or (n)" each place it appears and inserting "(n) or (o)"; and

(B) in the second sentence, by striking "or (m)" and inserting "(m), or (o)"; and

(2) in the first sentence of paragraph (2), by striking "and (n)" each place it appears and inserting "(n), and (o)".

(c) SURVEY OF RENEWABLE FUEL MARKET.—

(1) SURVEY AND REPORT.—Not later than December 1, 2006, and annually thereafter, the Administrator of the Environmental Protection Agency (in consultation with the Secretary of Energy acting through the Administrator of the Energy Information Administration) shall—

(A) conduct, with respect to each conventional gasoline use area and each reformulated gasoline use area in each State, a survey to determine the market shares of—

(i) conventional gasoline containing ethanol;

(ii) reformulated gasoline containing ethanol;

(iii) conventional gasoline containing renewable fuel; and

(iv) reformulated gasoline containing renewable fuel; and

(B) submit to Congress, and make publicly available, a report on the results of the survey under subparagraph (A).

(2) RECORDKEEPING AND REPORTING REQUIREMENTS.—The Administrator may require any refiner, blender, or importer to keep such records and make such reports as are necessary to ensure that the survey conducted under paragraph (1) is accurate. The Administrator shall rely, to the extent practicable, on existing reporting and recordkeeping requirements to avoid duplicative requirements.

(3) APPLICABLE LAW.—Activities carried out under this subsection shall be conducted in a manner designed to protect confidentiality of individual responses.

(4) CALCULATION OF MARKET SHARES.—Market shares for conventional gasoline and reformulated gasoline use areas will be calculated on a statewide basis using information collected under paragraph (2) and other information available to the Administrator. Market share information may be based upon gasoline distribution patterns that include multistate use areas.

SEC. 9102. FUELS SAFE HARBOR.

(a) IN GENERAL.—Notwithstanding any other provision of Federal or State law, no renewable fuel, as defined by section 211(o)(1) of the Clean Air Act, or fuel containing MTBE, used or intended to be used as a motor vehicle fuel, nor any motor vehicle fuel containing such renewable fuel or MTBE, shall be deemed defective in design or manufacture by virtue of the fact that it is, or contains, such a renewable fuel or MTBE, if it does not violate a control or prohibition imposed by the Administrator under section 211 of such Act, and the manufacturer is in compliance with all requests for information under subsection (b) of such section 211(b) of the Clean Air Act. If the safe harbor provided by this section does not apply, the existence of a design defect or manufacturing defect shall be determined under otherwise applicable law. Nothing in this paragraph shall be construed to affect the liability of any person for environmental remediation costs, drinking water contamination, negligence, public nuisance or any other liability other than liability for a defect in design or manufacture of a motor vehicle fuel.

(b) EFFECTIVE DATE.—This section shall be effective as of the date of enactment and shall apply with respect to all claims filed on or after that date.

SEC. 9103. FINDINGS AND MTBE TRANSITION ASSISTANCE.

(a) FINDINGS.—Congress finds that—

(1) since 1979, methyl tertiary butyl ether (referred to in this section as "MTBE") has been used nationwide at low levels in gasoline to replace lead as an octane booster or anti-knocking agent;

(2) Public Law 101–549 (commonly known as the "Clean Air Act Amendments of 1990") (42 U.S.C. 7401 et seq.) established a fuel oxygenate standard under which reformulated gasoline must contain at least 2 percent oxygen by weight;

(3) at the time of the adoption of the fuel oxygen standard, Congress was aware that significant use of MTBE would result from the adoption of that standard, and that the use of MTBE would likely be important to the cost-effective implementation of that program;

(4) Congress was aware that gasoline and its component additives can and do leak from storage tanks;

(5) the fuel industry responded to the fuel oxygenate standard established by Public Law 101–549 by making substantial investments in—

(A) MTBE production capacity; and

(B) systems to deliver MTBE-containing gasoline to the marketplace;

(6) Congress has—

(A) reconsidered the relative value of the oxygenate requirement for reformulated gasoline; and

(B) decided to provide for the elimination of the oxygenate requirement for reformulated gasoline and to provide for a renewable content requirement for motor fuel; and

(7) it is appropriate for Congress to provide some limited transition assistance—

(A) to merchant producers of MTBE who produced MTBE in response to a market created by the oxygenate requirement contained in the Clean Air Act; and

(B) for the purpose of mitigating any fuel supply problems that may result from the elimination of the oxygenate requirement for reformulated gasoline.

(b) PURPOSES.—The purpose of this section is to provide assistance to merchant producers of MTBE in making the transition from producing MTBE to producing other fuel additives.

(c) MTBE MERCHANT PRODUCER CONVERSION ASSISTANCE.—Section 211(c) of the Clean Air Act (42 U.S.C. 7545(c)) is amended by adding at the end the following:

"(5) MTBE MERCHANT PRODUCER CONVERSION ASSISTANCE.—

"(A) IN GENERAL.—

"(i) GRANTS.—The Secretary of Energy, in consultation with the Administrator, may make grants to merchant producers of methyl tertiary butyl ether in the United States to assist the producers in the conversion of eligible production facilities described in subparagraph (C) to the production of iso-octane and alkylates.

"(ii) DETERMINATION.—The Administrator, in consultation with the Secretary of Energy, may determine that transition assistance for the production of iso-octane and alkylates is inconsistent with the provisions of subparagraph (B) and, on that basis, may deny applications for grants authorized by this provision.

"(B) FURTHER GRANTS.—The Secretary of Energy, in consultation with the Administrator, may also further make grants to merchant producers of MTBE in the United States to assist the producers in the conversion of eligible production facilities described in subparagraph (C) to the production of such other fuel additives that, consistent with this subsection—

"(i) unless the Administrator determines that such fuel additives may reasonably be anticipated to endanger public health or the environment;

"(ii) have been registered and have been tested or are being tested in accordance with the requirements of this section; and

"(iii) will contribute to replacing gasoline volumes lost as a result of paragraph (5).

"(C) ELIGIBLE PRODUCTION FACILITIES.—A production facility shall be eligible to receive a grant under this paragraph if the production facility—

"(i) is located in the United States; and

"(ii) produced methyl tertiary butyl ether for consumption before April 1, 2003 and ceased production at any time after the date of enactment.

"(D) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph $250,000,000 for each of fiscal years 2004 through 2006, to remain available until expended.".

(d) EFFECT ON STATE LAW.—The amendments made to the Clean Air Act by this title have no effect regarding any available authority of States to limit the use of methyl tertiary butyl ether in motor vehicle fuel.

SEC. 9104. ELIMINATION OF OXYGEN CONTENT REQUIREMENT FOR REFORMULATED GASOLINE.

(a) ELIMINATION.—

(1) IN GENERAL.—Section 211(k) of the Clean Air Act (42 U.S.C. 7545(k)) is amended—

(A) in paragraph (2)—

(i) in the second sentence of subparagraph (A), by striking "(including the oxygen content requirement contained in subparagraph (B))";

(ii) by striking subparagraph (B); and

(iii) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively;

(B) in paragraph (3)(A), by striking clause (v);

(C) in paragraph (7)—

(i) in subparagraph (A)—

(I) by striking clause (i); and

(II) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(ii) in subparagraph (C)—

(I) by striking clause (ii); and

(II) by redesignating clause (iii) as clause (ii); and

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) take effect 270 days after the date of enactment of this Act, except that such amendments shall take effect upon enactment in any State that has received a waiver under section 209(b) of the Clean Air Act.

(b) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSION REDUCTIONS.—Section 211(k)(1) of the Clean Air Act (42 U.S.C. 7545(k)(1)) is amended—

(1) by striking "Within 1 year after the enactment of the Clean Air Act Amendments of 1990," and inserting the following:

"(A) IN GENERAL.—Not later than November 15, 1991,"; and

(2) by adding at the end the following:

"(B) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSIONS REDUCTIONS FROM REFORMULATED GASOLINE.—

"(i) DEFINITIONS.—In this subparagraph the term 'PADD' means a Petroleum Administration for Defense District.

"(ii) REGULATIONS REGARDING EMISSIONS OF TOXIC AIR POLLUTANTS.—Not later than 270 days after the date of enactment of this subparagraph the Administrator shall establish, for each refinery or importer, standards for toxic air pollutants from use of the reformulated gasoline produced or distributed by the refinery or importer that maintain the reduction of the average annual aggregate emissions of toxic air pollutants for reformulated gasoline produced or distributed by the refinery or importer during calendar years 1999 and 2000, determined on the basis of data collected by the Administrator with respect to the refinery or importer.

"(iii) STANDARDS APPLICABLE TO SPECIFIC REFINERIES OR IMPORTERS.—

"(I) APPLICABILITY OF STANDARDS.—For any calendar year, the standards applicable to a refinery or importer under clause (ii) shall apply to the quantity of gasoline produced or distributed by the refinery or importer in the calendar year only to the extent that the quantity is less than or equal to the average annual quantity of reformulated gasoline produced or distributed by the refinery or importer during calendar years 1999 and 2000.

"(II) APPLICABILITY OF OTHER STANDARDS.—For any calendar year, the quantity of gasoline produced or distributed by a refinery or importer that is in excess of the quantity subject to subclause (I) shall be subject to standards for toxic air pollutants promulgated under subparagraph (A) and paragraph (3)(B).

"(iv) CREDIT PROGRAM.—The Administrator shall provide for the granting and use of credits for emissions of toxic air pollutants in the same manner as provided in paragraph (7).

"(v) REGIONAL PROTECTION OF TOXICS REDUCTION BASELINES.—

"(I) IN GENERAL.—Not later than 60 days after the date of enactment of this subparagraph, and not later than April 1 of each calendar year that begins after that date of enactment, the Administrator shall publish in the Federal Register a report that specifies, with respect to the previous calendar year—

"(aa) the quantity of reformulated gasoline produced that is in excess of the average annual quantity of reformulated gasoline produced in 1999 and 2000; and

"(bb) the reduction of the average annual aggregate emissions of toxic air pollutants in each PADD, based on retail survey data or data from other appropriate sources.

"(II) EFFECT OF FAILURE TO MAINTAIN AGGREGATE TOXICS REDUCTIONS.—If, in any calendar year, the reduction of the average annual aggregate emissions of toxic air pollutants in a PADD fails to meet or exceed the reduction of the average annual aggregate emissions of toxic air pollutants in the PADD in calendar years 1999 and 2000, the Administrator, not later than 90 days after the date of publication of the report for the calendar year under subclause (I), shall—

"(aa) identify, to the maximum extent practicable, the reasons for the failure, including the sources, volumes, and characteristics of reformulated gasoline that contributed to the failure; and

"(bb) promulgate revisions to the regulations promulgated under clause (ii), to take effect not earlier than 180 days but not later than 270 days after the date of promulgation, to provide that, notwithstanding clause (iii)(II), all reformulated gasoline produced or distributed at each refinery or importer shall meet the standards applicable under clause (ii) not later than April 1 of the year following the report in subclause (II) and for subsequent years.

"(vi) REGULATIONS TO CONTROL HAZARDOUS AIR POLLUTANTS FROM MOTOR VEHICLES AND MOTOR VEHICLE FUELS.—Not later than July 1, 2004, the Administrator shall promulgate final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels, as provided for in section 80.1045 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subparagraph).".

(c) CONSOLIDATION IN REFORMULATED GASOLINE REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Administrator shall revise the reformulated gasoline regulations under subpart D of part 80 of title 40, Code of Federal Regulations, to consolidate the regulations applicable to VOC-Control Regions 1 and 2 under section 80.41 of that title by eliminating the less stringent requirements applicable to gasoline designated for VOC-Control Region 2 and instead applying the more stringent requirements applicable to gasoline designated for VOC-Control Region 1.

(d) SAVINGS CLAUSE.—Nothing in this section is intended to affect or prejudice either any legal claims or actions with respect to regulations promulgated by the Administrator prior to enactment of this Act regarding emissions of toxic air pollutants from motor vehicles or the adjustment of standards applicable to a specific refinery or importer made under such prior regulations and the Administrator may apply such adjustments to the standards applicable to such refinery or importer under clause (iii)(I) of section 211(k)(1)(B) of the Clean Air Act, except that—

(1) the Administrator shall revise such adjustments to be based only on calendar years 1999–2000, and

(2) for adjustments based on toxic air pollutant emissions from reformulated gasoline significantly below the national annual average emissions of toxic air pollutants from all reformulated gasoline, the Administrator may revise such adjustments to take account of the scope of any lawful and enforceable Federal or State prohibition on methyl tertiary butyl ether imposed after the effective date of the enactment of this paragraph, except that any such adjustment shall require such refiner or importer, to the greatest extent practicable, to maintain the reduction achieved during calendar year 1999–2000 in the average annual aggregate emissions of toxic air pollutants from reformulated gasoline produced or distributed by the refinery or importer. Any such adjustment shall not be made at a level below the average percentage of reductions of emissions of toxic air pollutants for reformulated gasoline supplied to PADD I during calendar years 1999–2000.

SEC. 9105. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.

Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended by inserting after subsection (o) the following:

"(p) ANALYSES OF MOTOR VEHICLE FUEL CHANGES AND EMISSIONS MODEL.—

"(1) ANTI-BACKSLIDING ANALYSIS.—

"(A) DRAFT ANALYSIS.—Not later than 4 years after the date of enactment of this paragraph, the Administrator shall publish for public comment a draft analysis of the changes in emissions of air pollutants and air quality due to the use of motor vehicle fuel and fuel additives resulting from implementation of the amendments made by title IX of the Energy Policy Act of 2003.

"(B) FINAL ANALYSIS.—After providing a reasonable opportunity for comment but not later than 5 years after the date of enactment of this paragraph, the Administrator shall publish the analysis in final form.

"(2) EMISSIONS MODEL.—For the purposes of this subsection, as soon as the necessary data are available, the Administrator shall develop and finalize an emissions model that reasonably reflects the effects of gasoline characteristics or components on emissions from vehicles in the motor vehicle fleet during calendar year 2005.".

SEC. 9106. DATA COLLECTION.

Section 205 of the Department of Energy Organization Act (42 U.S.C. 7135) is amended by adding at the end the following:

"(m) RENEWABLE FUELS SURVEY.—(1) In order to improve the ability to evaluate the effectiveness of the Nation's renewable fuels mandate, the Administrator shall conduct and publish the results of a survey of renewable fuels demand in the motor vehicle fuels market in the United States monthly, and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information both on a national and regional basis, including—

"(A) the quantity of renewable fuels produced;

"(B) the quantity of renewable fuels blended;

"(C) the quantity of renewable fuels imported;

"(D) the quantity of renewable fuels demanded;

"(E) market price data; and

"(F) such other analyses or evaluations as the Administrator finds is necessary to achieve the purposes of this section.

"(2) The Administrator shall also collect or estimate information both on a national and regional basis, pursuant to subparagraphs (A) through (F) of paragraph (1), for the five years prior to implementation of this subsection.

"(3) This subsection does not affect the authority of the Administrator to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).".

SEC. 9107. FUEL SYSTEM REQUIREMENTS HARMONIZATION STUDY.

(a) STUDY.—

(1) IN GENERAL.—The Administrator of the Environmental Protection Agency and the Secretary of Energy shall jointly conduct a study of Federal, State, and local requirements concerning motor vehicle fuels, including—

(A) requirements relating to reformulated gasoline, volatility (measured in Reid vapor pressure), oxygenated fuel, and diesel fuel; and

(B) other requirements that vary from State to State, region to region, or locality to locality.

(2) REQUIRED ELEMENTS.—The study shall assess—

(A) the effect of the variety of requirements described in paragraph (1) on the supply, quality, and price of motor vehicle fuels available to consumers in various States and localities;

(B) the effect of the requirements described in paragraph (1) on achievement of—

(i) national, regional, and local air quality standards and goals; and

(ii) related environmental and public health protection standards and goals;

(C) the effect of Federal, State, and local motor vehicle fuel regulations, including multiple motor vehicle fuel requirements, on—

(i) domestic refineries;

(ii) the fuel distribution system; and

(iii) industry investment in new capacity;

(D) the effect of the requirements described in paragraph (1) on emissions from vehicles, refineries, and fuel handling facilities;

(E) the feasibility of developing national or regional motor vehicle fuel slates for the 48 contiguous States that, while improving air quality at the national, regional and local levels consistent with the attainment of national ambient air quality standards, could—

(i) enhance flexibility in the fuel distribution infrastructure and improve fuel fungibility;

(ii) reduce price volatility and costs to consumers and producers;

(iii) provide increased liquidity to the gasoline market; and

(iv) enhance fuel quality, consistency, and supply;

(F) the feasibility of providing incentives, to promote cleaner burning motor vehicle fuel; and

(G) the extent to which improvements in air quality and any increases or decreases in the price of motor fuel can be projected to result from the Environmental Protection Agency's Tier II requirements for conventional gasoline and vehicle emission systems, the reformulated gasoline program, the renewable content requirements established by this subtitle, State programs regarding gasoline volatility, and any other requirements imposed by States or localities affecting the composition of motor fuel.

(b) REPORT.—

(1) IN GENERAL.—Not later than December 31, 2006, the Administrator of the Environmental Protection Agency and the Secretary of Energy shall submit to Congress a report on the results of the study conducted under subsection (a).

(2) RECOMMENDATIONS.—

(A) IN GENERAL.—The report shall contain recommendations for legislative and administrative actions that may be taken—

(i) to improve air quality;

(ii) to reduce costs to consumers and producers; and

(iii) to increase supply liquidity.

(B) REQUIRED CONSIDERATIONS.—The recommendations under subparagraph (A) shall take into account the need to provide advance notice of required modifications to refinery and fuel distribution systems in order to ensure an adequate supply of motor vehicle fuel in all States.

(3) CONSULTATION.—In developing the report, the Administrator of the Environmental Protection Agency and the Secretary of Energy shall consult with—

(A) the Governors of the States;

(B) automobile manufacturers;

(C) motor vehicle fuel producers and distributors; and

(D) the public.

Subtitle B—MTBE Cleanup

SEC. 9201. FUNDING FOR MTBE CONTAMINATION.

Notwithstanding any other provision of law, there is authorized to be appropriated to the Administrator of the United States Environmental Protection Agency from the Leaking Underground Storage Tank Trust Fund not more than $850,000,000 to be used for taking such action limited to site assessment (including exposure assessment), corrective action, inspection of underground storage tank systems, and groundwater monitoring as the Administrator deems necessary to protect human health, welfare, and the environment from underground storage tank releases of fuel containing fuel oxygenates.

TITLE X—AUTOMOBILE EFFICIENCY

SEC. 10001. AUTHORIZATION OF APPROPRIATIONS FOR IMPLEMENTATION AND ENFORCEMENT OF FUEL ECONOMY STANDARDS.

In addition to any other funds authorized by law, there are authorized to be appropriated to the National Highway Traffic Safety Administration to implement and enforce average fuel economy standards $5,000,000 for fiscal years 2004 through 2006.

SEC. 10002. STUDY OF FEASIBILITY AND EFFECTS OF REDUCING USE OF FUEL FOR AUTOMOBILES.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Administrator of the National Highway Traffic Safety Administration shall study the feasibility and effects of reducing by model year 2012, by a significant percentage, the use of fuel for automobiles.

(b) SUBJECTS OF STUDY.—The study under this section shall include—

(1) examination of, and recommendation of alternatives to, the policy under current Federal law of establishing average fuel economy standards for automobiles and requiring each automobile manufacturer to comply with average fuel economy standards that apply to the automobiles it manufactures;

(2) examination of how automobile manufacturers could contribute toward achieving the reduction referred to in subsection (a);

(3) examination of the potential of fuel cell technology in motor vehicles in order to determine the extent to which such technology may contribute to achieving the reduction referred to in subsection (a); and

(4) examination of the effects of the reduction referred to in subsection (a) on—

(A) gasoline supplies;

(B) the automobile industry, including sales of automobiles manufactured in the United States;

(C) motor vehicle safety; and

(D) air quality.

(c) REPORT.—The Administrator shall submit to the Congress a report on the findings, conclusion, and recommendations of the study under this section by not later than 1 year after the date of the enactment of this Act.

TITLE XI—PREVENTING THE MISUSE OF NUCLEAR MATERIALS AND TECHNOLOGY

SEC. 11001. PREVENTING THE MISUSE OF NUCLEAR MATERIALS AND TECHNOLOGY.

(a) AMENDMENT.—Chapter 14 of the Atomic Energy Act of 1954 (42 U.S.C. 2201 et seq.) is amended by adding at the end the following new section:

"SEC. 170D. PREVENTING THE MISUSE OF NUCLEAR MATERIALS AND TECHNOLOGY.—

"a. In order to successfully promote the development of nuclear energy as a safe and reliable source of electrical energy, it is the policy of the United States to prevent any nuclear materials, technology, components, substances, technical information, or related goods or services from being misused or diverted from peaceful nuclear energy purposes.

"b. In order to further advance the policy set forth in subsection a., notwithstanding any other provision of law, no Federal agency shall issue any license, approval, or authorization for the export or reexport, or the transfer or retransfer, either directly or indirectly, to any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which, as of September 11, 2001, had been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961, section 6(j)(1) of the Export Administration Act of 1979, or section 40(d) of the Arms Export Control Act to have repeatedly provided support for acts of international terrorism) of—

"(1) any special nuclear material or byproduct material;

"(2) any nuclear production or utilization facilities; or

"(3) any components, technologies, substances, technical information, or related goods or services used (or which could be used) in a nuclear production or utilization facility.

"c. Any license, approval, or authorization described in subsection b. made prior to the date of enactment of this section is hereby revoked.".

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of such chapter 14 is amended by adding at the end the following item:

"Sec. 170D. Preventing the misuse of nuclear materials and technology.".

TITLE XII—ADDITIONAL PROVISIONS

SEC. 12001. TRANSMISSION TECHNOLOGIES.

The Federal Energy Regulatory Commission shall shall take affirmative steps in the exercise of its authorities under the Federal Power Act to encourage the deployment of transmission technologies that utilize real time monitoring and analytical software to increase and maximize the capacity and efficiency of transmission networks and to reduce line losses.

PURPOSE AND SUMMARY

The purpose of the Energy Policy Act of 2003 is to promote increased energy conservation and increase the availability of energy supplies nationwide. This bill is the first step toward ensuring our Nation's continued welfare and security by providing for our long-term energy needs.

Energy production and environmental protection are non-exclusive national goals. In recent decades, technological advances have made energy development and use more efficient and less environmentally harmful. Building on this trend, the Energy Policy Act of 2003 encourages energy production and demand reduction by promoting new technology, more efficient processes, and greater public awareness.

The Energy Policy Act of 2003 addresses a wide range of issues related to energy generation, transportation, and use. It provides for accelerated market penetration for clean coal technologies, incentives for the use of alternative transportation fuels and changes

to the reformulated gasoline program, and promotion of energy conservation and efficiency. The bill also provides for improvements in the hydropower licensing process and will remove barriers to expanded use of nuclear energy. Finally, the bill addresses the need for investment in electric transmission capacity, as well as improvements to competitive wholesale electricity markets, along with a number of other miscellaneous issues.

BACKGROUND AND NEED FOR LEGISLATION

According to the Energy Information Administration, over the next 20 years, growth in U.S. energy consumption will increasingly outpace energy production. Meeting this increased demand will require a combination of increased energy supplies and using existing supplies more efficiently. Total U.S. energy consumption is projected to grow 43% by 2025, from 97.3 quadrillion BTU to 139.1 quadrillion. Computers, electronic equipment, appliances, telecommunications, and transportation will account for the bulk of this growth.

Conservation and increased energy efficiency allow us to manage existing energy supplies better. Energy intensity, the amount of energy it takes to produce one dollar of gross domestic product, has steadily declined in the United States over the past three decades. Thus, while the economy has grown by 126% since 1970, energy consumption has only increased by 30%. These gains have largely been the result of advances in technology, along with better management practices and better application of these new technologies. Consumer choice is also a driver of energy efficiency, and Federal programs such as energy labels and Energy Star enable consumers to make energy-conscious purchasing decisions. Federal and state governments are large users of energy and promote energy efficiency by investing in research and procuring energy efficient products. A variety of Federal grant programs have spurred significant progress in energy efficiency at the state and local levels. These programs include funding for weatherization and state energy programs. The Department of Energy (DOE) establishes energy conservation standards for a variety of consumer, commercial, and industrial products, and these standards have resulted in substantial increases in energy efficiency. If our Nation is to meet its energy needs in the coming decades, it will be in part due to continued advances in energy efficiency and conservation.

Nuclear energy provides 20% of the nation's electricity. There are 103 operating commercial nuclear reactors in the United States, most of these located in the Midwest and East. It has been twenty years since the Nuclear Regulatory Commission (NRC) issued a license to construct a new nuclear power plant, and as recently as a few years ago, it was thought that most of the existing fleet of nuclear reactors would be closed over the next thirty years. However, several companies have recently expressed a renewed interest in extending the licenses of existing nuclear plants, as well as constructing a new generation of advanced nuclear plants that are smaller, cheaper to build, and easier to operate.

Over the next 15 years, more than half of our Nation's hydroelectric power projects (roughly 28,000 megawatts) must be relicensed. Current law gives states and the Federal resources agencies (U.S. Fish and Wildlife Service, U.S. Forest Service, and Na-

tional Marine Fisheries Service) authority to impose mandatory conditions on FERC-issued hydroelectric power licenses. One of the areas identified to improve the licensing process would be to require agencies to consider alternative conditions proposed by a licensee. Current law does not require resources agencies to consider alternative conditions that may be lest costly (in dollars or energy lost) while not diminishing environmental protection.

The United States presently generates just over half of its total electric power by burning coal, relying largely on domestic resources that constitute an estimated 25% of the world's total recoverable reserves of coal. Coal also represents over 94% of the nation's proven fossil energy reserves. Despite this abundance of recoverable resources and the nation's historical reliance on coal for electric power generation, however, few companies have current plans to build new coal-fired generation. A number of factors have contributed to this situation, including natural gas prices that, despite recent trends, have been relatively low over the last few years. In addition, high capital costs and high operating costs of currently available clean coal technology have also been a factor, along with uncertainty over future environmental requirements. The Clean Coal Technology Demonstration Program (CCT) has sought to address this situation and demonstrate the feasibility of new coal-generation technology and processes. As of 2001, 30 CCT projects had been completed and an additional 8 projects were in process. These projects included two integrated gasification combined cycle (IGCC) units and a third IGCC project in its design phase.

Investment in electric transmission expansion has not kept pace with electricity demand. The electricity sector, currently severely weakened by scandals, and legal and regulatory uncertainty, is facing its deepest financial crisis in 70 years. Between 2001 and 2002, the sector lost more than $200 billion (more than 80%) of its market capitalization. Legislation is needed to address the issues of transmission capacity, operation, and reliability. By some estimates, the sector has recently canceled as much as 53,000 megawatts (40%) of new generation planned over the past three years. Although wholesale electricity prices are relatively low, industry analysts now predict that the financial situation facing the industry could result in electricity shortages beginning in 2004, potentially hampering economic recovery. Measures proposed in the bill, such as repealing the Public Utility Holding Company Act, would facilitate needed investment in the sector.

HEARINGS

The Subcommittee on Energy and Air Quality held the first in a series of hearings on a comprehensive national energy policy on March 5, 2003. The Subcommittee received testimony from: The Honorable Kyle McSlarrow, Deputy Secretary, Department of Energy; The Honorable Richard Meserve, Chairman, Nuclear Regulatory Commission; The Honorable Patrick Wood, Chairman, Federal Energy Regulatory Commission; The Honorable Nora Mead-Brownell, Commissioner, Federal Energy Regulatory Commission; The Honorable William L. Massey, Commissioner, Federal Energy Regulatory Commission; Mr. Marvin Fertel, Senior Vice President of Business Operations, Nuclear Energy Institute; Ms. Anna

Aurilio, Legislative Director, U.S. Public Interest Research Group; Mr. Jeff Benjamin, Vice President, Licensing and Regulatory Affairs, Exelon Nuclear; Dr. Edwin Lyman, President, Nuclear Control Institute; Mr. Steven Nadel, Executive Director, American Council for an Energy-Efficient Economy; Dr. Malcolm O' Hagan, President, National Electrical Manufacturers Association; and, Mr. Alden Meyer, Director of Government Relations, Union of Concerned Scientists.

The Subcommittee on Energy and Air Quality held the second in a series of hearings on comprehensive national energy policy on March 12, 2003. The Subcommittee received testimony from: Mr. J. Mark Robinson, Director, Office of Energy Projects, Federal Energy Regulatory Commission; Ms. Julie Keil, Director of Hydro Licensing and Water Rights, Portland General Electric; Mr. Rob Masonis, American Rivers, Director, Northwest Regional Office; and, Mr. Leon Szeptycki, Eastern Conservation Director and General Counsel, Trout Unlimited.

The Subcommittee on Energy and Air Quality held the final hearing in the series of hearings on comprehensive national energy policy on March 13, 2003. The Subcommittee received testimony from: Mr. David K. Owens, Executive Vice-President, Business Operations Group, Edison Electric Institute; Ms. Jan Schori, Esq., General Manager and CEO, Sacramento Utility District, on behalf of: Large Public Power Council; Mr. John Twitty, General Manager, City Utilities of Springfield, MO, on behalf of: American Public Power Association; Mr. Glenn English, CEO, National Rural Electric Cooperative Association; Mr. Ron Walter, Executive Vice President, Calpine Corporation, on behalf of: Electric Power Supply Association; Mr. W. Henson Moore, President and CEO, American Forest & Paper Association, on behalf of: Electricity Consumers Resource Council and American Chemistry Council; The Honorable Sam J. Ervin, Commissioner, North Carolina Public Utility Commission; Mr. Michehl R. Gent, President and Chief Executive Officer, North American Electric Reliability Council; Mr. Gerald A. Norlander, Executive Director, Public Utility Law Project of New York, Chairman, National Association of State Utility Consumer Advocates; Ms. Christine Tezak, Electricity Analyst, Washington Research Group, Schwab Capital Markets, LP; Mr. Marty Kanner, Coordinator, Consumers for Fair Competition; Ms. Sharon Buccino, Senior Attorney, Natural Resources Defense Council; Mr. Edward Murphy, General Manager, Downstream, American Petroleum Institute; Mr. Bob Slaughter, President, National Petrochemical & Refiners Association; Mr. Bill Douglass, CEO, Douglass Distributing Company, on behalf of: The National Association of Convenience Stores and The Society of Independent Gasoline Marketers of America; Mr. A. Blakeman Early, Environmental Consultant, American Lung Association, on behalf of: Northeast States for Coordinated Air Use Management; Mr. Erik Olson, Senior Attorney, Natural Resources Defense Council; Mr. Bob Dinneen, President and CEO, Renewable Fuels Association; and, Mr. Scott Segal, Counsel, Oxygenated Fuels Association.

COMMITTEE CONSIDERATION

On Wednesday, March 19, 2003, the Subcommittee on Energy and Air Quality met in open markup session and approved a Com-

mittee Print for Full Committee consideration, as amended, by a record vote of 21 yeas and 9 nays. On Tuesday, April 1, 2002, Wednesday, April 2, 2003, and Thursday, April 3, 2003, the Full Committee met in open markup session and ordered a Committee Print reported to the House, as amended, by a record vote of 36 yeas and 17 nays. A request by Mr. Tauzin to allow a report to be filed on a bill to be introduced by Mr. Tauzin, and that the actions of the Committee be deemed as actions on that bill, was agreed to by unanimous consent.

COMMITTEE VOTES

Clause 3(b) of Rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following are the recorded votes taken on amendments offered to the measure, including the names of those Members voting for and against. A motion by Mr. Barton to order the Committee Print reported to the House, as amended, was agreed to by a record vote of 36 yeas and 17 nays.

COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 10

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mrs. Capps, No. 3, to strike section 2401.

DISPOSITION: NOT AGREED TO, by a roll call vote of 20 yeas to 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall		X	
Mr. Stearns		X		Mr. Boucher			
Mr. Gillmor				Mr. Towns			
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox		X		Mr. Brown	X		
Mr. Deal		X		Mr. Gordon	X		
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush	X		
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin	X			Mr. Stupak	X		
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn			
Mr. Shadegg		X		Mr. Green		X	
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt		X		Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. John		X	
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

4/01/2003

COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 11

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Dingell, No. 5, to strike section 2201 and insert a new section 2201 to (1) create a study on the effects of hydraulic fracturing in coalbeds by the Administrator of the Environmental Protection Agency and to set guidelines for the study; (2) to make a regulatory determination on the study; (3) to promulgate regulations if necessary based on the regulatory determination; and, (2) to authorize appropriations for the study.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 18 yeas to 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton				Mr. Hall		X	
Mr. Stearns				Mr. Boucher			
Mr. Gillmor				Mr. Towns			
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox		X		Mr. Brown	X		
Mr. Deal		X		Mr. Gordon	X		
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush	X		
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak	X		
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn	X		
Mr. Shadegg		X		Mr. Green		X	
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt		X		Ms. DeGette			
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich				Mr. Doyle		X	
Mr. Bass				Mr. John		X	
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

4/01/2003

COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 12

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Ms. Solis, No. 8, to prohibit the injection of diesel fuel into an underground source of drinking water.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 15 yeas to 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey			
Mr. Upton		X		Mr. Hall		X	
Mr. Stearns		X		Mr. Boucher			
Mr. Gillmor		X		Mr. Towns			
Mr. Greenwood		X		Mr. Pallone			
Mr. Cox				Mr. Brown	X		
Mr. Deal		X		Mr. Gordon			
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush	X		
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak		X	
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson				Mr. Wynn	X		
Mr. Shadegg		X		Mr. Green		X	
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps			
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. John		X	
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

4/01/2003

COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 13

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Waxman, No. 9, to require a reduction of at least 0.6 million barrels per day from the projected demand for oil in 2010 by Federal Departments and agencies as identified by the President.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 18 yeas to 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell		X	
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall		X	
Mr. Stearns				Mr. Boucher		X	
Mr. Gillmor		X		Mr. Towns			
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox				Mr. Brown	X		
Mr. Deal		X		Mr. Gordon	X		
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush	X		
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak	X		
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn	X		
Mr. Shadegg		X		Mr. Green	X		
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella				Mr. Strickland			
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle		X	
Mr. Bass		X		Mr. John		X	
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

4/01/2003

COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 14

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Dingell, No. 10, to strike title III and insert in lieu thereof, a requirement that the Secretary of the relevant agency, when imposing conditions or fishway requirements on a hydroelectric power license, to accept certain alternatives proposed by any party to the proceeding, and to require FERC to revise its data collection procedures for the consideration of hydroelectric licenses and report on its progress within 1 year after the date of enactment of the Act.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 23 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall		X	
Mr. Stearns				Mr. Boucher	X		
Mr. Gillmor		X		Mr. Towns			
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox		X		Mr. Brown	X		
Mr. Deal		X		Mr. Gordon	X		
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush	X		
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak			
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn	X		
Mr. Shadegg		X		Mr. Green	X		
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass	X			Mr. John	X		
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa							
Mr. Otter		X					

4/02/2003

COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 15

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Allen, No. 11, to strike section 3201 through 3203 and insert in lieu thereof, a feasibility study by the Secretary of Energy for establishing an incentive payment program for hydroelectric facilities that would not adversely impact the environment, or harm fish or wildlife, and to set requirements for the study.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 18 yeas to 30 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman			
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall		X	
Mr. Stearns				Mr. Boucher	X		
Mr. Gillmor		X		Mr. Towns			
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox		X		Mr. Brown	X		
Mr. Deal		X		Mr. Gordon			
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush	X		
Mr. Norwood				Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak			
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn		X	
Mr. Shadegg		X		Mr. Green	X		
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella				Mr. Strickland	X		
Mr. Blunt		X		Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle		X	
Mr. Bass	X			Mr. John		X	
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

4/02/2003

COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 16

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Markey, No. 21, to amend the authorization levels to eliminate funding for the advanced fuel recycling programs at the DOE.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 11 yeas to 33 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman			
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall			
Mr. Stearns		X		Mr. Boucher	X		
Mr. Gillmor		X		Mr. Towns			
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox				Mr. Brown	X		
Mr. Deal		X		Mr. Gordon		X	
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush			
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin				Mr. Stupak		X	
Mr. Shimkus		X		Mr. Engel			
Mrs. Wilson		X		Mr. Wynn		X	
Mr. Shadegg		X		Mr. Green			
Mr. Pickering				Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland		X	
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle		X	
Mr. Bass		X		Mr. John		X	
Mr. Pitts		X		Mr. Allen			
Ms. Bono		X		Mr. Davis		X	
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

4/02/2003

COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 17

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Dingell, No. 24, to strike title VII and insert in lieu thereof a new title VII (1) to prohibit certain fraudulent or manipulative practices; (2) to provide for a rulemaking on certain Federal Power Act (FPA) exemptions; (3) to provide for reporting of certain electric power sales and transmission transactions; (4) to provide for transparency in certain electricity and gas transactions; (5) to increase civil and criminal penalty limits under the FPA and provide for additional court-imposed sanctions for certain offenses under the FPA and the Natural Gas Act; (6) to provide for review of the Public Utility Holding Company Act (PUHCA) exemptions; (7) to provide for review of accounting for contracts involved in energy trading; (8) to provide for protection of FERC regulated subsidiaries; (9) to change the refund effective date under the FPA; (10) to modify the applicability of section 318 of the FPA, relating to regulation under PUHCA and FPA; and, (11) to provide for certain review of market-based rate authority.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 20 yeas to 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall			
Mr. Stearns		X		Mr. Boucher	X		
Mr. Gillmor		X		Mr. Towns	X		
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox		X		Mr. Brown			
Mr. Deal		X		Mr. Gordon	X		
Mr. Burr		X		Mr. Deutsch			
Mr. Whitfield		X		Mr. Rush	X		
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin				Mr. Stupak	X		
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn	X		
Mr. Shadegg		X		Mr. Green			
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. John		X	
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

4/02/2003

COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 18

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Markey, No. 25, to (1) prohibit certain fraudulent or manipulative practices affecting electricity markets; (2) to provide for reporting of certain electric power sales and transmission transactions; and (3) to increase civil and criminal penalty limits under the FPA and provide for additional court-imposed sanctions for certain offenses under the Federal Power Act and the Natural Gas Act.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 19 yeas to 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall			
Mr. Stearns		X		Mr. Boucher	X		
Mr. Gillmor		X		Mr. Towns	X		
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox		X		Mr. Brown			
Mr. Deal		X		Mr. Gordon			
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush	X		
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin				Mr. Stupak	X		
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn			
Mr. Shadegg		X		Mr. Green			
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer				Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. John			
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson							
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

4/02/2003

COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 19

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Boucher, No. 26, to strike subsection (j) in title VII concerning the rights of way on Federal lands for electricity transmission or distribution facilities.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 18 yeas to 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall			
Mr. Stearns		X		Mr. Boucher	X		
Mr. Gillmor		X		Mr. Towns			
Mr. Greenwood				Mr. Pallone	X		
Mr. Cox		X		Mr. Brown	X		
Mr. Deal		X		Mr. Gordon			
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush		X	
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak	X		
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn			
Mr. Shadegg		X		Mr. Green			
Mr. Pickering				Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland			
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. John	X		
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 20

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Boucher, No.30, to strike a portion of section 7012 concerning the rights of way on public lands for electricity transmission.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 23 yeas to 25 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall	X		
Mr. Stearns				Mr. Boucher	X		
Mr. Gillmor		X		Mr. Towns	X		
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox		X		Mr. Brown	X		
Mr. Deal	X			Mr. Gordon			
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush		X	
Mr. Norwood	X			Ms. Eshoo	X		
Mrs. Cubin				Mr. Stupak	X		
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn		X	
Mr. Shadegg		X		Mr. Green		X	
Mr. Pickering				Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. John	X		
Mr. Pitts				Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers							
Mr. Issa		X					
Mr. Otter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 21

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Barton, No. 31, to clarify the term "transmission rights," and add a savings clause clarifying that the provision shall not affect the allocation of transmission rights by certain transmission organizations or provide a basis for the abrogation of certain contracts.

DISPOSITION: **AGREED TO**, by a roll call vote of 31 yeas to 19 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin	X			Mr. Dingell		X	
Mr. Bilirakis	X			Mr. Waxman		X	
Mr. Barton	X			Mr. Markey		X	
Mr. Upton	X			Mr. Hall	X		
Mr. Stearns				Mr. Boucher		X	
Mr. Gillmor	X			Mr. Towns			
Mr. Greenwood	X			Mr. Pallone		X	
Mr. Cox	X			Mr. Brown		X	
Mr. Deal	X			Mr. Gordon	X		
Mr. Burr	X			Mr. Deutsch		X	
Mr. Whitfield	X			Mr. Rush		X	
Mr. Norwood	X			Ms. Eshoo		X	
Mrs. Cubin	X			Mr. Stupak		X	
Mr. Shimkus	X			Mr. Engel		X	
Mrs. Wilson	X			Mr. Wynn			
Mr. Shadegg	X			Mr. Green		X	
Mr. Pickering	X			Ms. McCarthy			
Mr. Fossella	X			Mr. Strickland		X	
Mr. Blunt				Ms. DeGette		X	
Mr. Buyer	X			Ms. Capps		X	
Mr. Radanovich	X			Mr. Doyle	X		
Mr. Bass		X		Mr. John	X		
Mr. Pitts	X			Mr. Allen			
Ms. Bono	X			Mr. Davis		X	
Mr. Walden				Ms. Schakowsky		X	
Mr. Terry	X			Ms. Solis		X	
Mr. Fletcher	X						
Mr. Ferguson	X						
Mr. Rogers	X						
Mr. Issa	X						
Mr. Otter	X						

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 22

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Pallone, No. 33, to establish a renewable energy portfolio standard requirement on certain retail electric suppliers.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 15 yeas to 37 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall		X	
Mr. Stearns				Mr. Boucher		X	
Mr. Gillmor		X		Mr. Towns		X	
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox		X		Mr. Brown	X		
Mr. Deal		X		Mr. Gordon	X		
Mr. Burr		X		Mr. Deutsch		X	
Mr. Whitfield		X		Mr. Rush	X		
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak	X		
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn			
Mr. Shadegg		X		Mr. Green		X	
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland		X	
Mr. Blunt		X		Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle		X	
Mr. Bass		X		Mr. John		X	
Mr. Pitts		X		Mr. Allen			
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 23

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Markey, No. 34, to strike section 7023 of title VII.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 17 yeas to 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall		X	
Mr. Stearns				Mr. Boucher		X	
Mr. Gillmor		X		Mr. Towns			
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox		X		Mr. Brown	X		
Mr. Deal		X		Mr. Gordon		X	
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush	X		
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak		X	
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn		X	
Mr. Shadegg		X		Mr. Green	X		
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer				Ms. Capps	X		
Mr. Radanovich				Mr. Doyle		X	
Mr. Bass	X			Mr. John		X	
Mr. Pitts		X		Mr. Allen			
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa							
Mr. Otter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE #24

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mrs. Capps, No. 35, to add a new section to title VII to provide that no final rule issued by the FERC regarding standard market design shall apply within a state that makes a determination that the application of the rule would harm consumers in that state.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 16 yeas to 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall		X	
Mr. Stearns				Mr. Boucher	X		
Mr. Gillmor		X		Mr. Towns			
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox		X		Mr. Brown			
Mr. Deal		X		Mr. Gordon	X		
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush	X		
Mr. Norwood				Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak	X		
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn			
Mr. Shadegg		X		Mr. Green		X	
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland			
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer				Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle			
Mr. Bass		X		Mr. John		X	
Mr. Pitts		X		Mr. Allen			
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 25

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Markey, No. 36, to strike section 7093 of title VII and replace with a section directing the Federal Trade Commission to issue rules prohibiting the disclosure of certain consumer information relating to retail electricity sales without the consumer's prior written consent.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 23 yeas to 24 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton	X			Mr. Markey	X		
Mr. Upton		X		Mr. Hall	X		
Mr. Steams		X		Mr. Boucher			X
Mr. Gillmor		X		Mr. Towns	X		
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox	X			Mr. Brown	X		
Mr. Deal		X		Mr. Gordon	X		
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush			
Mr. Norwood				Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak	X		
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson				Mr. Wynn	X		
Mr. Shadegg		X		Mr. Green	X		
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland			
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer				Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. John	X		
Mr. Pitts		X		Mr. Allen			
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 26

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Ms. Eshoo, No. 37, to require FERC to order the refund of unjust and unreasonable charges incurred by the California Department of Water Resources for certain purchases of electricity.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 21 yeas to 30 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall			
Mr. Stearns		X		Mr. Boucher	X		
Mr. Gillmor		X		Mr. Towns	X		
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox		X		Mr. Brown	X		
Mr. Deal		X		Mr. Gordon	X		
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush	X		
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak	X		
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson				Mr. Wynn	X		
Mr. Shadegg		X		Mr. Green		X	
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer				Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle		X	
Mr. Bass		X		Mr. John		X	
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 27

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Tauzin, No. 38, to clarify that (1) the provision applies only to contracts executed after enactment unless the contract was an interconnection agreement, and (2) the provision shall not affect the outcome of proceedings relating to certain contracts for power sales.

DISPOSITION: **AGREED TO**, by a roll call vote of 29 yeas to 20 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin	X			Mr. Dingell		X	
Mr. Bilirakis	X			Mr. Waxman		X	
Mr. Barton	X			Mr. Markey		X	
Mr. Upton	X			Mr. Hall			
Mr. Stearns	X			Mr. Boucher		X	
Mr. Gillmor	X			Mr. Towns		X	
Mr. Greenwood	X			Mr. Pallone		X	
Mr. Cox	X			Mr. Brown		X	
Mr. Deal	X			Mr. Gordon			
Mr. Burr				Mr. Deutsch		X	
Mr. Whitfield	X			Mr. Rush		X	
Mr. Norwood	X			Ms. Eshoo		X	
Mrs. Cubin	X			Mr. Stupak		X	
Mr. Shimkus	X			Mr. Engel		X	
Mrs. Wilson	X			Mr. Wynn		X	
Mr. Shadegg	X			Mr. Green	X		
Mr. Pickering	X			Ms. McCarthy			
Mr. Fossella	X			Mr. Strickland		X	
Mr. Blunt				Ms. DeGette		X	
Mr. Buyer	X			Ms. Capps		X	
Mr. Radanovich	X			Mr. Doyle			
Mr. Bass	X			Mr. John	X		
Mr. Pitts	X			Mr. Allen		X	
Ms. Bono	X			Mr. Davis		X	
Mr. Walden				Ms. Schakowsky		X	
Mr. Terry	X			Ms. Solis		X	
Mr. Fletcher	X						
Mr. Ferguson	X						
Mr. Rogers							
Mr. Issa	X						
Mr. Otter	X						

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 28

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Boucher, No. 39, to strike section 9101 which establishes a renewable content for motor vehicle fuel, and to provide definitions for certain terms used in section 9102.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 14 yeas to 34 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell		X	
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall			
Mr. Stearns		X		Mr. Boucher	X		
Mr. Gillmor		X		Mr. Towns	X		
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox				Mr. Brown		X	
Mr. Deal		X		Mr. Gordon			
Mr. Burr		X		Mr. Deutsch		X	
Mr. Whitfield		X		Mr. Rush		X	
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak		X	
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn	X		
Mr. Shadegg		X		Mr. Green		X	
Mr. Pickering				Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland		X	
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich				Mr. Doyle	X		
Mr. Bass		X		Mr. John		X	
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky		X	
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa							
Mr. Otter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 29

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mrs. Capps, No. 41, to (1) eliminate the oxygen content requirement for reformulated gasoline and, (2) to ban the use of methyl tertiary butyl ether (MTBE) in motor vehicle fuel within 4 years after the date of enactment, unless a State submits to the Administrator of the Environmental Protection Agency a notice that the state authorizes the use of MTBE.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 18 yeas to 32 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell		X	
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton				Mr. Hall			
Mr. Stearns				Mr. Boucher	X		
Mr. Gillmor		X		Mr. Towns		X	
Mr. Greenwood	X			Mr. Pallone	X		
Mr. Cox		X		Mr. Brown		X	
Mr. Deal		X		Mr. Gordon			
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush		X	
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak	X		
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn	X		
Mr. Shadegg		X		Mr. Green		X	
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella	X			Mr. Strickland		X	
Mr. Blunt		X		Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass	X			Mr. John		X	
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky		X	
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson							
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 30

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Engel, No. 42, to amend the effective date for the elimination of the oxygen content requirement for reformulated gasoline to make the prohibition effective on January 1, 2004, if a state has enacted a prohibition on the sale of gasoline containing MTBE on or before that date.

DISPOSITION: **NOT AGREED TO,** by a roll call vote of 17 yeas to 32 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell		X	
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall			
Mr. Stearns				Mr. Boucher			
Mr. Gillmor		X		Mr. Towns	X		
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox		X		Mr. Brown	X		
Mr. Deal		X		Mr. Gordon			
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush			
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak		X	
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn	X		
Mr. Shadegg		X		Mr. Green		X	
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella	X			Mr. Strickland		X	
Mr. Blunt		X		Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass	X			Mr. John		X	
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky		X	
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher							
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 31

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mrs. Capps, No. 45, to (1) prohibit the use of MTBE in motor vehicle fuel in a state, unless MTBE is authorized in a state that submits to the Administrator of the Environmental Protection Agency a notice of such authorization; (2) to require the Administrator to promulgate regulations to effect the prohibition of MTBE; and (3) to ensure that enactment of the title does not have an effect on state law already in effect with respect to a state's ability to ban MTBE.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 23 yeas to 25 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton			X	Mr. Hall			
Mr. Stearns				Mr. Boucher			
Mr. Gillmor		X		Mr. Towns			
Mr. Greenwood	X			Mr. Pallone	X		
Mr. Cox		X		Mr. Brown	X		
Mr. Deal		X		Mr. Gordon			
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush	X		
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak	X		
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn	X		
Mr. Shadegg		X		Mr. Green		X	
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella	X			Mr. Strickland	X		
Mr. Blunt		X		Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass	X			Mr. John			
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers	X						
Mr. Issa		X					
Mr. Otter		X					

4/02/2003

COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 32

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Engel, No. 47, to amend Section 211 of the Clean Air Act to authorize the Administrator of the Environmental Protection Agency to control or prohibit a fuel or fuel additive on the basis of water quality protection.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 20 yeas to 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall			
Mr. Stearns		X		Mr. Boucher			
Mr. Gillmor		X		Mr. Towns			
Mr. Greenwood	X			Mr. Pallone	X		
Mr. Cox				Mr. Brown	X		
Mr. Deal		X		Mr. Gordon			
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush	X		
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak	X		
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn			
Mr. Shadegg		X		Mr. Green		X	
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt		X		Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich				Mr. Doyle	X		
Mr. Bass	X			Mr. John		X	
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 33

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mrs. Capps, No. 48, to eliminate MTBE from the fuels safe harbor.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 19 yeas to 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall			
Mr. Stearns		X		Mr. Boucher			
Mr. Gillmor		X		Mr. Towns			
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox		X		Mr. Brown	X		
Mr. Deal		X		Mr. Gordon			
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush	X		
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak	X		
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn			
Mr. Shadegg		X		Mr. Green		X	
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt		X		Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass	X			Mr. John		X	
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 34

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Pallone, No. 49, to strike blending components derived from renewable fuel from the inclusion in the term renewable fuel.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 20 yeas to 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall			
Mr. Stearns		X		Mr. Boucher			
Mr. Gillmor		X		Mr. Towns			
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox		X		Mr. Brown	X		
Mr. Deal		X		Mr. Gordon			
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush	X		
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak	X		
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn	X		
Mr. Shadegg		X		Mr. Green		X	
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt		X		Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass	X			Mr. John		X	
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 35

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Davis, No. 50, to require the Secretary of Energy and the Administrator of the Environmental Protection Agency to determine the fuels that meet the definition of "renewable fuel," and to set requirements for the definition.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 14 yeas to 38 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell		X	
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall		X	
Mr. Stearns		X		Mr. Boucher			
Mr. Gillmor		X		Mr. Towns			
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox		X		Mr. Brown	X		
Mr. Deal		X		Mr. Gordon			
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush		X	
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak		X	
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn	X		
Mr. Shadegg		X		Mr. Green		X	
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland		X	
Mr. Blunt		X		Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. John		X	
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky		X	
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 36

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Engel, No. 51, to require the Federal Trade Commission to perform an annual market analysis of the ethanol production industry using the HHI methodology to determine the level of competition among industry participants.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 14 yeas to 38 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell		X	
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall		X	
Mr. Stearns		X		Mr. Boucher			
Mr. Gillmor		X		Mr. Towns			
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox		X		Mr. Brown		X	
Mr. Deal		X		Mr. Gordon			
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush		X	
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak		X	
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn	X		
Mr. Shadegg		X		Mr. Green		X	
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt		X		Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. John		X	
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky		X	
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 37

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Mr. Markey, No. 52, to add a new section to title IX to require the Secretary of Transportation to promulgate rules to require a reduction of 5% of the total amount of oil that will be required for fuel use for the years 2010 through 2014 for the average fuel economy standards, and an additional 5% in 2015 and each year thereafter.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 14 yeas to 38 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell		X	
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall		X	
Mr. Stearns		X		Mr. Boucher			
Mr. Gillmor		X		Mr. Towns			
Mr. Greenwood	X			Mr. Pallone	X		
Mr. Cox		X		Mr. Brown	X		
Mr. Deal		X		Mr. Gordon			
Mr. Burr		X		Mr. Deutsch		X	
Mr. Whitfield		X		Mr. Rush		X	
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak		X	
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn	X		
Mr. Shadegg		X		Mr. Green		X	
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland		X	
Mr. Blunt		X		Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle		X	
Mr. Bass		X		Mr. John		X	
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 38

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print, by Mr. Waxman No. 54, to add a new title to the bill to add a sense of Congress on climate change.

DISPOSITION: **NOT AGREED TO,** by a roll call vote of 18 yeas to 34 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell		X	
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall		X	
Mr. Stearns				Mr. Boucher		X	
Mr. Gillmor		X		Mr. Towns			
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox		X		Mr. Brown	X		
Mr. Deal		X		Mr. Gordon			
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush	X		
Mr. Norwood		X		Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak		X	
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn	X		
Mr. Shadegg		X		Mr. Green	X		
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt		X		Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. John		X	
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 39

BILL: Committee Print, the Energy Policy Act of 2003.

AMENDMENT: An amendment to the Committee Print by Ms. Schakowsky, No. 56, to add a new title to the bill to amend the Natural Gas Act to set the refund effective date.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 21 yeas to 32 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis	X			Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall		X	
Mr. Stearns		X		Mr. Boucher	X		
Mr. Gillmor		X		Mr. Towns			
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox		X		Mr. Brown	X		
Mr. Deal	X			Mr. Gordon			
Mr. Burr		X		Mr. Deutsch	X		
Mr. Whitfield	X			Mr. Rush	X		
Mr. Norwood	X			Ms. Eshoo	X		
Mrs. Cubin		X		Mr. Stupak	X		
Mr. Shimkus		X		Mr. Engel	X		
Mrs. Wilson		X		Mr. Wynn	X		
Mr. Shadegg		X		Mr. Green		X	
Mr. Pickering		X		Ms. McCarthy			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt		X		Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle		X	
Mr. Bass		X		Mr. John		X	
Mr. Pitts		X		Mr. Allen		X	
Ms. Bono		X		Mr. Davis		X	
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Fletcher		X					
Mr. Ferguson		X					
Mr. Rogers		X					
Mr. Issa		X					
Mr. Otter		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 40

BILL: Committee Print, the Energy Policy Act of 2003.

MOTION: A motion by Mr. Tauzin, to order the Committee Print reported to the House, amended.

DISPOSITION: **AGREED TO**, by a roll call vote of 36 yeas to 17 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin	X			Mr. Dingell		X	
Mr. Bilirakis	X			Mr. Waxman		X	
Mr. Barton	X			Mr. Markey		X	
Mr. Upton	X			Mr. Hall	X		
Mr. Stearns	X			Mr. Boucher	X		
Mr. Gillmor	X			Mr. Towns			
Mr. Greenwood	X			Mr. Pallone		X	
Mr. Cox	X			Mr. Brown		X	
Mr. Deal	X			Mr. Gordon			
Mr. Burr	X			Mr. Deutsch		X	
Mr. Whitfield	X			Mr. Rush	X		
Mr. Norwood	X			Ms. Eshoo		X	
Mrs. Cubin	X			Mr. Stupak		X	
Mr. Shimkus	X			Mr. Engel		X	
Mrs. Wilson	X			Mr. Wynn		X	
Mr. Shadegg	X			Mr. Green	X		
Mr. Pickering	X			Ms. McCarthy			
Mr. Fossella	X			Mr. Strickland		X	
Mr. Blunt	X			Ms. DeGette		X	
Mr. Buyer	X			Ms. Capps		X	
Mr. Radanovich	X			Mr. Doyle	X		
Mr. Bass	X			Mr. John	X		
Mr. Pitts	X			Mr. Allen		X	
Ms. Bono	X			Mr. Davis		X	
Mr. Walden				Ms. Schakowsky		X	
Mr. Terry	X			Ms. Solis		X	
Mr. Fletcher	X						
Mr. Ferguson	X						
Mr. Rogers	X						
Mr. Issa	X						
Mr. Otter	X						

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COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee oversight and hearings made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of the Energy Policy and Conservation Act is to enhance energy conservation and increase the supply of various energy sources for the American people.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1644, the Energy Policy Act of 2003, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE, CONGRESSIONAL BUDGET OFFICE ESTIMATE, AND FEDERAL MANDATES STATEMENT

The Congressional Budget Office estimate required pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives section 402 of the Congressional Budget Act of 1974, and the estimate of Federal mandates required pursuant to section 423 of the Unfunded Mandates Reform Act were requested from the Congressional Budget Office, but were not prepared as of the date of filing of this report. The Congressional Budget Office estimate and accompanying materials will be contained in a supplemental report.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

TITLE I—ENERGY CONSERVATION

Subtitle A—Federal Leadership in Energy Conservation

Section 1001. Energy and water saving measures in Congressional buildings

Section 1001 directs the Architect of the Capitol to develop a plan for Congressional buildings to comply with energy efficiency standards applicable to other Federal buildings. This section also requires the Architect to submit an annual report to Congress on energy conservation programs being implemented and to commission a study of Capitol Complex energy infrastructure to identify opportunities for energy efficiency gains and increased use of unconventional and renewable energy resources. Authorizes $2,000,000 to be appropriated to carry out the section.

Section 1002. Energy management requirements

Section 1002 amends current law, which requires federal agencies to consume 20 percent less energy per square foot in federal buildings in FY 2000 than in FY 1985, by requiring a 20 percent reduction in energy use from year 2001 levels by the year 2013. Energy performance requirements for 2014 to 2023 are to be recommended by the Secretary before 2013. The section further provides for exclusions from these requirements under specified conditions and directs the Secretary to issue guidelines that establish criteria for excluding buildings from these requirements. In addition, section 1002 authorizes agencies to retain funds appropriated for energy expenditures that are not spent because of energy savings in agency buildings and to use those retained funds for energy efficiency and unconventional and renewable energy projects.

Section 1003. Federal building performance standards

Section 1003 requires metering and sub-metering of Federal buildings by October 1, 2010 using advanced meters to the maximum extent practicable. The Secretary of Energy, in consultation with the Defense Department and the General Services Administration (GSA), shall establish guidelines for the implementation of this requirement. The guidelines shall consider the costs and benefits of metering and shall establish a prioritized schedule for the types and locations of buildings to be metered. The guidelines may also establish exclusions from the requirement where energy consumption is de minimis.

Section 1004. Federal building performance standards

Section 1004 directs the Secretary of Energy to establish new energy efficiency performance standards for new federal buildings. The standards shall require that new buildings achieve energy consumption levels at least 30 percent below specified building codes and incorporate sustainable design principles.

Section 1005. Procurement of energy efficient products

Section 1005 directs federal agencies to purchase, with specified exceptions, energy-consuming products that meet the energy effi-

ciency criteria of the Energy Star program or have been designated as energy efficient by the Federal Energy Management Program (FEMP). This section also directs the Secretary of Energy to designate a standard for certain premium efficient electric motors after considering the recommendations of associated electric motor manufacturers and energy efficiency groups. In purchasing energy efficient products under this section, agencies are directed to select motors designated by the Secretary as meeting certain criteria.

Section 1006. Energy savings performance contracts

Section 1006 makes the authority for federal agencies to enter into energy savings performance contracts (ESPCs), which sunsets at the end of FY 2003, permanent by repealing the sunset provision. In addition, this section provides that when an energy savings performance contract is used to replace one or more existing buildings or facilities, the benefits of the contract may include the reduced operations and maintenance costs of the replacement building compared to the replaced buildings or facilities. Section 1006 also: (1) expands the definition of energy savings (in the context of an ESPC) to include a reduction in the cost of water; (2) permits the use of ESPCs for replacement facilities; and, (3) defines "energy or water conservation measure." Section 1006 provides for a report to Congress identifying obstacles that prevent the full utilization of the ESPC program and opportunities to increase program flexibility and effectiveness.

Section 1007. Voluntary commitments to reduce industrial energy intensity

Section 1007 provides for voluntary commitments to improve industrial efficiency. This section authorizes the Secretary of Energy to enter into agreements with industry to improve energy intensity by a minimum of 2.5 percent per year for the years 2004 through 2014. Industry participants would be eligible for grants or technical assistance and would receive public recognition of their achievements. The Secretary shall also submit to Congress two reports evaluating the success of the program, the first before June 30, 2010 and the second before June 30, 2014.

Section 1008. Federal agency participation in demand reduction programs

Section 1008 encourages Federal agencies to participate in state or regional electricity demand side reduction programs.

Section 1009. Advanced building efficiency testbed

Section 1009 directs the Secretary of Energy to establish an Advanced Building Efficiency Testbed program for energy efficient buildings research. A qualifying university in partnership with other qualifying universities and entities shall lead the program. Funding is authorized at $6 million for each of fiscal years 2004 through 2006.

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

Section 1010 amends the Solid Waste Disposal Act (SWDA) to provide for increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete. It directs the Administrator of the Environmental Protection Agency, in cooperation with the Secretary of Transportation and the Secretary of Energy, to conduct a related implementation study and to submit a report on the study to specified committees of the Congress.

Subtitle B—Energy Assistance and State Programs

Section 1021. LIHEAP and weatherization assistance

Subsection (a) of section 1021 authorizes $3.4 billion for LIHEAP for each of fiscal years 2004 through 2006 (existing authorization: $2.0 billion). For weatherization assistance (to aid low-income families in improving energy efficiency of their homes), subsection (b) authorizes $325 million for fiscal year 2004, $400 million for 2005, and $500 million for 2006.

Subsection (c) directs the Secretary of Health and Human Services to report to Congress on how the LIHEAP program could be used more effectively to prevent loss of life. The Low Income Energy Assistance Act of 1981 places a special emphasis on assisting households with the "highest home energy needs," defined to include consideration of the needs of "vulnerable populations, including very young children, individuals with disabilities, and frail older individuals." (Section 2603(4)). Consistent with this statutory emphasis, the Committee expects that the report will assist the Secretary in developing a more accurate formula allocation methodology to protect such vulnerable members of society. In focusing on loss of life as a measure for equitable allocation of LIHEAP funds, the report shall include examination of how an allocation formula methodology can utilize (1) the latest, best-available statistical data and model currently available; (2) a simple, easy-to-understand, science-based mechanism using estimates of State expenditures for Btu requirements for low-income households for each fuel source contributing to home heating and cooling needs; and, (3) the latest available annually updated heating and cooling degree day and fuel price information available (for coal, electricity, fuel oil, petroleum gases, and natural gas) at the State level. The report shall also include a recommendation for the level of funding needed for the LIHEAP program to fully protect vulnerable populations in all regions of the country. In preparing the report, the Secretary is directed to consult with appropriate officials in all 50 States and the District of Columbia.

Section 1022. State energy programs

Section 1022 authorizes $100 million for each of fiscal years 2004 and 2005 and $125 million for fiscal year 2006 for state energy programs. Section 1022 provides for revised state energy conservation plans and goals.

Section 1023. Energy efficient appliance rebate programs

Section 1023 directs the Secretary of Energy to allocate funds to States with energy efficient appliance rebate programs that meet certain standards. $50,000,000 is authorized to be appropriated for such programs for each of fiscal years 2004 through 2008.

Section 1024. Energy efficient public buildings

Section 1024 authorizes the Secretary of Energy to make grants to States to assist local governments, including school districts, to improve the energy efficiency and environmental quality of public buildings. The grants are primarily intended for architectural, design and energy efficiency services that will result in new and renovated buildings that achieve energy efficiency results that exceed the requirements of the International Energy Conservation Code of 2000 or a similar state code intended to achieve substantially equivalent efficiency levels. Funding for the program is authorized for FY 2004 through FY 2013, with the qualification that not more than 30 percent of appropriated funds shall be used for administration of the program.

Section 1025. Low income community energy efficiency pilot program

Section 1025 authorizes the Secretary of Energy to make grants to local governments, community development organizations, and Indian tribes for energy efficiency, renewable energy and distributed energy projects in low-income urban and rural communities. This section authorizes $20,000,000 for each fiscal year 2004 through 2006.

Subtitle C—Energy Efficient Products

Section 1041. Energy Star Program

Section 1041 authorizes the Energy Star Program, which is a program previously established by administrative actions by the Department of Energy and the Environmental Protection Agency to identify and promote energy efficient products and buildings. The section establishes a statutory foundation for continued operation of the Energy Star Program and instructs the two agencies to further their partnership in promoting and designating Energy Star products. This section provides that responsibilities under the Energy Star Program, including responsibilities for particular product categories, shall be allocated consistent with agreements between the agencies, such as are currently in place but potentially including amendments to such agreements as may be necessary or appropriate to best carry out the purposes of the program.

Section 1042. Consumer education on energy efficiency benefits of air conditioning, heating, and ventilation maintenance

Section 1042 directs the Secretary of Energy to carry out a program to educate homeowners and small business owners on the energy savings benefits resulting from maintenance of air conditioning, heating and ventilating systems by professional or licensed contractors. The Secretary is directed to carry out the program in cooperation with the Administrator of the Environmental Protection Agency (EPA) and other appropriate entities including energy

efficiency organizations, industry trade associations, and industry members. This section also directs the Administrator of the Small Business Administration, in consultation with the Secretary of Energy and the Administrator of EPA to implement a program, building on the existing Energy Star for Small Business Program, to assist small businesses to become more energy efficient.

Section 1043. Additional definitions

Section 1043 defines terms used in provisions relating to energy conservation standards for the consumer and commercial products subject to section 1045 of this bill.

Section 1044. Additional test procedures

Section 1044 provides for test procedures for consumer and commercial products subjected to energy conservation standards under section 1045 of this bill.

Section 1045. Energy conservation standards for additional consumer and commercial products

Section 1045: (1) establishes minimum energy efficiency standards for four products (exit signs; torchiere lamps, low-voltage dry-type transformers, and traffic signals); (2) requires Department of Energy rulemakings to develop efficiency standards for four products (ceiling fans, vending machines, commercial refrigerators and freezers, and unit heaters); (3) requires an expedited rulemaking for standby energy use in battery chargers and external power supplies; and, (4) requires a process to determine whether efficiency standards should be established for the standby mode of other appliances.

Section 1046. Energy labeling

Section 1046 provides for Federal Trade Commission (FTC) rulemakings to determine effectiveness of the existing FTC labeling program and authorizes the Secretary of Energy or the FTC, as appropriate, to establish labels for products newly covered by the Department of Energy consumer products energy conservation program under the Energy Policy and Conservation Act, as amended by this Act.

Section 1047. Study of energy efficiency standards

Section 1047 requires the Secretary of Energy to contract with the National Academy of Sciences to study and report within one year on differences in efficiency standards measured at the site of energy consumption or at the source of energy production.

TITLE II—OIL AND GAS

Subtitle A—Alaska Natural Gas Pipeline

Section 2001. Short title

Section 2001 establishes the short title as the "Alaska Natural Gas Pipeline Act of 2002."

Section 2002. Findings and purposes

Section 2002 sets forth the findings of Congress to be that construction of a natural gas pipeline from the Alaskan North Slope to United States markets is in natural interest and will enhance national energy security.

This section also sets forth the purposes of this title, which are to provide a statutory framework for the expedited approval, construction, and initial operation of a pipeline in Alaska and to establish a process to promote competition in the exploration, development, and production of Alaska natural gas.

Section 2003. Definitions

Section 2003 sets forth definitions for the various terms used in the title.

Section 2004. Issuance of certificate of public convenience and necessity

Section 2004 provides that the Federal Energy Regulatory Commission (FERC) may consider an application for the issuance of a certificate of public convenience and necessity for an Alaska natural gas pipeline other than the Alaska natural gas transportation system established pursuant to the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.).

This section also provides that, in considering an application for the issuance of a certificate of public convenience and necessity, the FERC shall presume a public need exists and that there is sufficient downstream capacity to transport the natural gas to markets in the United States and that any such application shall be expedited.

In addition, this section places a prohibition on the so-called northern route.

Section 2005. Environmental reviews

Section 2005 provides for FERC to be the lead agency for compliance with the National Environmental Policy Act of 1969, which shall be an expedited process.

Section 2006. Pipeline expansion

Section 2006 provides that FERC may order an expansion of the pipeline capacity if FERC determines that such expansion is required by the present and future public convenience and necessity.

Section 2007. Federal Coordinator

Section 2007 establishes the Office of Federal Coordinator for Alaska Natural Gas Transportation Projects, whose duties shall be to coordinate the expeditious discharge of all activities by Federal agencies with respect to the project.

Section 2008. Judicial review

Section 2008 establishes that the court of original jurisdiction for all claims brought regarding this section shall be the United States Court of Appeals for the District of Columbia Circuit, with discretionary appeal to the Supreme Court of the United States.

Section 2009. State jurisdiction over in-State delivery of natural gas

Section 2009 provides that FERC shall not have jurisdiction over natural gas delivered for consumption in the Alaska.

Section 2010. Study of alternative means of construction

Section 2010 provides that the Secretary of Energy shall conduct a study to determine alternative approaches to the construction and operation of the project, if no application for the issuance of public convenience and necessity is filed with 18 months from the date of enactment.

Section 2011. Clarification of ANGTA status and authorities

Section 2011 clarifies no decision is affected concerning, certificate, permit, right-of-way, lease, or other authorization issued under the Alaska Natural Gas Transportation Act of 1976.

Section 2012. Sense of Congress

Section 2012 expresses the sense of Congress that the project will provide significant economic benefits to the United States and Canada. Therefore, Congress urges the sponsors to make every effort to use steel that is manufactured or produced in North America and to negotiate a project labor agreement to expedite construction of the pipeline.

Section 2013. Participation of small business concerns

Section 2013 expresses the sense of Congress that the project will provide significant economic benefits to the United States and Canada and urges the sponsors to maximize the participation of small business concerns in contracts and subcontracts awarded in carrying out the project.

Section 2014. Alaska pipeline construction training program

Section 2014 provides that the Secretary of Labor may make grants to the Alaska Department of Labor and Workforce Development to develop a training program for Alaskans so that they may acquire the skills necessary to construct and operate an Alaska gas pipeline system. This section also authorizes the appropriation of $20,000,000 to the Secretary of Labor to carry out this section.

Subtitle B—Strategic Petroleum Reserve

Section 2101. Full capacity of Strategic Petroleum Reserve

Section 2101 requires that the President fill the Strategic Petroleum Reserve to full capacity as soon as practicable, doing so in a manner that is cost-effective and minimizes impacts on petroleum markets, giving consideration to domestically produced petroleum and royalty in kind petroleum.

Section 2102. Strategic Petroleum Reserve expansion

Section 2102 requires the Secretary of Energy to submit a plan to the Congress within 180 days of enactment for the expansion of the Strategic Petroleum Reserve to one billion barrels, with specific criteria to be considered. This section also directs the Secretary of Energy to acquire property and complete construction for the ex-

pansion the accordance with the plan submitted to the Congress. The sum of $1.5 billion is authorized to be appropriated.

Section 2103. Permanent authority to operate the Strategic Petroleum Reserve and other energy programs

Section 2103 permanently authorizes the Strategic Petroleum Reserve and the Northeast Home Heating Oil Reserve and makes technical amendments.

Subtitle D—Hydraulic Fracturing

Section 2201. Hydraulic fracturing

Section 2201 excludes hydraulic fracturing from the definition of underground injection as set forth in the Safe Drinking Water Act.

Subtitle D—Unproven Oil and Natural Gas Reserves Recovery Program

Section 2301. Program

Section 2301 provides for a program to demonstrate technologies for the recovery of oil and natural gas reserves from reservoirs with certain characteristics.

Section 2302. Eligible reservoirs

Section 2302 sets forth the reservoir characteristics, any one of which are required for the program. The characteristics are complex geology, low reservoir pressure, or unconventional natural gas reservoirs in coalbeds, tight sands, or shales.

Section 2303. Focus areas

Section 2303 says that the program may focus on areas with unique attributes as set forth therein.

Section 2304. Limitation on location of activities

Section 2304 limits the activities of the program to onshore lands in the United States.

Section 2305. Program administration

Section 2305 establishes the roles of the Secretary of Energy and the Program Consortium. The Secretary shall contract with the consortium to manage awards and make recommendations to the Secretary, distribute funds, and carry out other activities assigned by the Secretary.

This section also provides for the selection of the consortium and provides for procedures to be used to prevent conflicts of interest. Applicants for recognition must disclose members of the consortium, fully describe the structure of the consortium, and describe how the activities would be implemented. This section sets forth requirements for an annual plan, to be prepared by the Secretary after soliciting written recommendations from the consortium.

Additionally, this section sets forth the parameters for award proposals, establishes a consortium fee, and requires an annual audit.

Section 2306. Advisory Committee

Section 2306 establishes an advisory committee composed of members appointed by the Secretary of Energy. The advisory committee shall advise the Secretary on the development and implementation of activities, but not on funding awards for specific projects.

Section 2307. Limits on participation

Section 2307 limits award eligibility if the entity's participation is in the economic interest of the United States, the entity in a United States-owned entity with production levels of less than 1,000 barrels per day of oil equivalent, and the entity has demonstrated that non-governmental third party sources of financing are not available for the proposed project.

Section 2308. Payments to Federal Government

Section 2308 provides that the Federal government shall receive 95 percent of all revenues derived from the increased incremental production attributable to participation in the program. After repayment, the Federal government's share drops to 5 percent.

Section 2309. Authorization of appropriations

Section 2309 authorizes to be appropriated the sum of $100 million, to remain until expended.

Section 2310. Public availability of project results and methodologies

Section 2310 requires the Secretary of Energy to make public the results and methodologies used by an award recipient.

Section 2311. Sunset

Section 2311 provides for the termination of this subtitle on September 30, 2010.

Section 2312. Definitions

Section 2312 provides certain definitions.

Subtitle E—Miscellaneous

Section 2401. Appeals relating to pipeline construction projects

Section 2401 provides that any Federal administrative agency proceeding that is an appeal or review of Federal authority for an interstate natural gas pipeline construction project, shall use the record developed by FERC.

Section 2402. Natural gas market data transparency

Section 2402 requires FERC to issue rules authorizing or establishing an electronic information system so that timely access to information to facilitate price transparency and participation in natural gas markets will be made available to the public. Violations of the rules issued pursuant to this section are subject to civil penalties of not more than $1,000,000 for each day that a violation continues.

Section 2403. Oil and gas exploration and production defined

Section 2403, in the context of the Federal Water Pollution Control Act, defines the term "oil and gas exploration and production" to include all field operations necessary, for exploration and production, including activities necessary to prepare a site for drilling.

TITLE III—HYDROELECTRIC RELICENSING

Subtitle A—Alternative Conditions

Section 3001. Alternative conditions and fishways

Section 3001 amends the Federal Power Act to give licensees the right to an agency trial-type hearing of any disputed issues of material fact whenever the Secretary of the resource agency determines a condition or fishway is required for a hydroelectric license.

This section also adds a new section 33 to the Federal Power Act, requiring the relevant Secretary to accept alternatives to conditions or fishways proposed by a licensee, if such alternatives meet the statutory standards. The section requires the Secretary to provide a written statement for the record containing specific information with respect to each condition, fishway, or alternative. The section allows the Commission to refer disputes regarding conditions, fishways, and alternatives to the Commission's Dispute Resolution Service, which may then issue non-binding advisory opinions.

Subtitle A—Additional Hydropower

Section 3201. Hydroelectric production incentives

Section 3201 authorizes the Secretary of Energy to make limited incentive payments to certain qualified hydroelectric facilities for the addition of turbines or other electricity generating devices to existing dams or conduits for a period of ten years. The section authorizes $10,000,000 for each of fiscal years 2004 through 2013.

Section 3202. Hydroelectric efficiency improvement

Section 3202 authorizes the Secretary of Energy to make limited incentive payments to owners or operators of existing hydroelectric facilities to improve the efficiency of such facilities by at least 3 percent.

Section 3203. Small hydroelectric power projects

Section 3203 amends the Public Utility Regulatory Policies Act of 1978 to make new small hydroelectric power projects eligible for low-interest Federal loans and other programs.

Section 3204. Increased hydroelectric generation at existing Federal facilities

Section 3204 directs the Secretary of Energy, in consultation with the Secretaries of Interior and the Army, to conduct studies of opportunities to increase hydropower production and operational efficiency at Federal dams.

TITLE IV—NUCLEAR MATTERS

Subtitle A—Price-Anderson Act Amendments

Section 4001. Short title

Section 4001 provides the short title of the legislation, the "Price-Anderson Reauthorization Act of 2003."

Section 4002. Extension of indemnification authority

Section 4002 authorizes an extension of Price-Anderson indemnification authority, to August 1, 2017, for Nuclear Regulatory Commission (NRC) licensees, Department of Energy (DOE) contractors, and DOE nonprofit educational institutions.

Section 4003. Maximum assessment

The 1988 Price Anderson Amendments Act established an inflation adjustment for the $63 million standard deferred premium. However, there was no inflation adjustment requirement for the annual maximum premium assessment, which was set at $10 million. Over time, the effect of not adjusting the $10 million maximum premium assessment for inflation results in a substantially longer payout period in the event of a nuclear accident. The last inflation adjustment on the standard deferred premium was in 1998, which adjusted it to $88 million. Section 4003 adjusts for inflation to July 1, 2001, both the standard deferred premium to $94 million, and the maximum premium assessment to $15 million, based on the Consumer Price Index for all urban consumers (CPI-U). Both will be adjusted for inflation from the July 1, 2001 baseline not less than once every five years.

Section 4004. Department of Energy liability limit

Section 4004 sets the limitation on aggregate public liability for DOE contractors for a single nuclear incident. Under current law, DOE contractor indemnity and liability provisions are linked to the amount of protection required of nuclear power reactor licensees by setting the amount of DOE contractor indemnity to the amount of protection which is available to nuclear power reactor licensees. This section de-links the DOE contractor provisions for liability and indemnification from the NRC licensee provisions, and establishes the amount of indemnification of DOE contractors at $10 billion, subject to adjustment for inflation, for all persons indemnified in connection with the contract, and for each nuclear incident.

Section 4005. Incidents outside the United States

Section 4005 increases the amount of indemnification and liability limit for incidents outside of the United States from $100,000,000 to $500,000,000 for DOE contractors.

Section 4006. Reports

Section 4006 requires the NRC and DOE, by August 1, 2013, to submit detailed reports to Congress concerning the Price-Anderson Act and related matters, such as the availability of private insurance.

Section 4007. Inflation adjustment

Section 4007 takes the new July 1, 2001 baseline established in section 4003 for the $94 million standard deferred premium and the $15 million maximum annual assessment, and requires an inflation adjustment for both not less than every five years following July 1, 2001.

Section 4008. Price-Anderson treatment of modular reactors

Section 4008 would allow a combination of two or more modular reactors each with a rated capacity between 100 and 300 megawatts, and built at the same site, to be considered one facility for purposes of indemnification under section 170. Thus, a combination of such reactors would be assessed only one standard deferred premium, with a cap on the combined rated capacity of 1,300 megawatts. For example, a site with ten 110 megawatt modular reactors, having a combined rated capacity of 1,100 megawatts, would be considered one facility under section 170. A site with five 300 megawatt reactors, with a combined rated capacity of 1,500 megawatts, would be considered two facilities. This new definition of "facility" in this section applies only for purposes of section 170 financial protection requirements.

This section is intended to encourage the development of a new generation of smaller or "modular" reactors. Several companies are developing modular reactors that may be deployed in groups of as many as ten, and operated from one central control room. The size of known modular reactors designs currently under development generally is expected to be less than 300 megawatts. General Atomics is developing a gas turbine modular helium reactor that will operate in the range of 250 to 300 megawatts.

Section 4009. Applicability

Section 4009 ensures that the amendments made by sections 4003, 4004, and 4005 do not apply to a nuclear incident that occurs before the date of enactment of the Act.

Section 4010. Prohibition on assumption by United States Government of liability for certain foreign accidents

Section 4010 prevents any instrumentality of the United States Government from entering into any arrangement that would impose liability on any instrumentality of the United States Government for nuclear accidents that occur in any country identified by the Secretary of State as a sponsor of terrorist activities, including countries known to have repeatedly provided support for acts of international terrorism.

Section 4011. Secure transfer of nuclear materials

Section 4011 directs the Nuclear Regulatory Commission (NRC) to establish a system to ensure that: (1) vehicles transporting certain radioactive materials carry a manifest describing the type and amount of materials being transported; (2) individuals driving or traveling with such vehicles are subject to background checks; and, (3) vehicles transporting such materials must travel to a NRC licensed facility, an appropriate Federal facility, or a country with whom the United States has an agreement for cooperation under section 123 of the Atomic Energy Act. The effective date of the sys-

tem is delayed until the NRC, not later than one year of enactment, issues regulations identifying, consistent with the protection of public health and safety and the common defense and security, radioactive materials that are appropriate exceptions to the system.

The Committee intends that the rulemaking in this section apply only to the potential for a particular material to be used in a terrorist attack or other destructive act. Accordingly, the Commission need not include within the scope of its rulemaking materials with small quantities of radioactivity that would have little or no impact on public health or safety. The NRC should focus particular attention on identifying radiopharmaceuticals and other medical materials for appropriate exemption from the new requirements, to assure the uninterrupted availability of these materials to patients that need them. Of course, the regulations promulgated pursuant to section 4011 are not intended to alter any other applicable rules relating to the proper use, handling, or disposal of any nuclear materials.

Section 4012. Nuclear facility threats

Section 4012 requires the President to conduct a study to identify the types of threats that pose an appreciable risk to the security of the various classes of NRC-licensed facilities. In preparing the study, the President is to consult with the NRC and other governmental and nongovernmental entities. The study must consider: the events of September 11, 2001; physical, cyber, biochemical, and other terrorist threats; the potential for attack on facilities and spent fuel shipments by multiple coordinated teams of a large number of individuals; the potential for assistance in an attack from several employees at the facility; the potential for suicide attacks; the potential for water-based and air-based threats; the potential use of explosive devices of considerable size and other modern weaponry, the potential for attacks by persons with a sophisticated knowledge of facility operations; and, the potential for fires, especially fires of long duration.

After the study is completed, and within 180 days after enactment, the President is to submit a report to Congress and the NRC. The Report must summarize the types of threats identified and must classify each type of threat as either involving attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States or otherwise falling under the responsibilities of the Federal Government, or involving the type of risks that the NRC licensees should be responsible for guarding against. Following submission of the report, the President is required to transmit a report to Congress within 90 days on actions taken, or to be taken, to address the types of threats identified in the President's report as involving attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States or otherwise falling under the responsibilities of the Federal Government. The NRC is required to promulgate regulations, including changes to the design basis threat, to ensure that licensees address the threats identified in the President's report as involving the type of risks that the NRC licensees should be responsible for guarding against. The NRC must promulgate such

regulations not later than 270 days after the President transmits his initial report to the Commission and Congress.

Section 4012(e) is intended to provide statutory direction to the Commission in implementing an operational safeguards response evaluation program. In doing so, the Committee is very concerned that the Commission conducts a rigorous program that will ensure accurate measurements of a facility's ability to defeat design basis threats. The Committee is deeply troubled about reports that terrorists may target domestic nuclear facilities, and envisions a fully developed program as being the first line of defense against any such attacks. To address these concerns, the language of section 4012(e) directs the Commission to take a dominant role in the implementation of force-on-force exercises. The Commission controls the three critical aspects for carrying out tests of operational safeguards: it must either design or approve the design for each force-on-force exercise; it must physically observe the exercises; and, it is the final arbiter on the results of the exercises. The Commission should not serve as a rubber stamp at any step of the way. For instance, to the extent a licensee has devised all or any part of an exercise design, the NRC should scrutinize the design rigorously to ensure that it will provide the information necessary to determine whether a licensee can defeat design basis threats. The Committee contemplates, in particular, that any design approval process would be an iterative, collaborative one, reflecting the work of both a licensee and Commission staff in composing a plan appropriate to the facility involved.

Section 4013. Unreasonable risk consultation

Section 4013 requires the NRC to consult with the Assistant to the President for Homeland Security (or any successor official) concerning whether the location and design of a proposed utilization facility provides for adequate protection of public health and safety if subject to a terrorist attack. The consultation is required before NRC enters into an agreement of indemnification with a utilization facility under section 170. This section also requires the NRC to consult with the Secretary of Homeland Security, or his designee, regarding the emergency evacuation plan for sensitive nuclear facilities required to maintain such plans before issuing an initial license or license renewal.

Section 4014. Financial accountability

Section 4014 authorizes the Attorney General to bring an action to recover from a DOE contractor, subcontractor, or supplies amounts paid by the Federal government under a section 170 indemnity agreement for public liability resulting from conduct which constitutes intentional misconduct of any corporate officer, manager, or superintendent of the DOE contractor, subcontractor, or supplier. The Attorney General, however, may not recover an amount exceeding the amount of profit derived by the defendant under the contract. DOE cannot reimburse the contractor of the amount recovered. This provision does not apply to any nonprofit entity conducting activities under the DOE contract. DOE is required to define the terms 'profit' and 'nonprofit entity' in a rulemaking to be completed within 180 days after enactment.

Section 4015. Civil penalties

Section 4015 ends the automatic remission of civil penalties for nonprofit institutions listed in section 234A(d). This section also ends the Secretary's authority to determine whether nonprofit educational institutions should receive automatic remission of any civil penalty issued under section 234A. It is the intent of this section to make all of DOE's nonprofit contractors, subcontractors, and suppliers subject to civil penalties for nuclear safety violations under 234A. Civil penalties are limited to the amount of the discretionary fee paid to the contractor under the contract under which the nuclear safety violation occurs. The term 'discretionary fee' refers to that portion of the contract fee which is paid, or not, at the discretion of the DOE contracting officer based on the contractor's performance.

Subtitle B—Miscellaneous Matters

Section 4021. Licenses

Section 4021 provides that the initial period of a combined construction and operating license for a production or utilization facility, as authorized by the Energy Policy Act of 1992 (P.L. 102–486, 106 Stat. 2776), may not exceed 40 years from the date on which the NRC finds that the acceptance criteria for such license required under section 185(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2235) have been met. The intent of this section is to align the beginning of the licensing period with the beginning of the facility's operation.

Section 4022. Nuclear Regulatory Commission meetings

Section 4022 is intended to make available to the public, upon request, a transcript of discussions involving a quorum of NRC Commissioners who gather to discuss official Commission business. This provision requires that NRC make a recording of such meetings, and provide notice to the public within 15 days after such meetings. NRC is required to promptly make a transcript available to the public, upon request, to the extent that public disclosure of the transcript is not subject to an exemption or prohibition under applicable law. A similar provision considered and reported by the Committee in H.R. 2531 in the 106th Congress would have codified the Commission's 1977 rule implementing the Sunshine Act that required the Commission open to the public any meeting of a quorum of the Commissioners involving official Commission business. This provision does not alter the Commission's new rule, implemented in 1999, which allows for certain discussions involving a quorum of Commissioners to be conducted outside of the Sunshine Act's definition of "meeting." Although this section does not impose a specific time limit for response by the Commission, the NRC should develop a process for the prompt response to any public request for a transcript.

Section 4023. NRC training program

Section 4023 establishes a training and fellowship program to address shortages of individuals with critical nuclear safety regulatory skills. For Fiscal Years 2004 through 2007, $1 million per year is authorized to be appropriated to carry out this program.

Section 4024. Cost recovery from Government agencies

Section 4024 authorizes the Commission to assess and collect fees from other Federal agencies in return for services rendered by the NRC, rather than recovering these costs through the annual fees assessed to all NRC licensees. Existing authority in section 161w of the Atomic Energy Act (42 U.S.C. 2235) provides for cost recovery only in limited situations. This section authorizes full cost recovery for the entire range of services that the NRC provides to other Federal agencies. The replacement of section 483a with section 9701 is a correction to the proper United State Code reference.

Section 4025. Elimination of pension offset

Section 4025 allows retired NRC employees with critical skills to receive full pay from NRC for any consulting services. Currently, retired NRC employees are reluctant to work for the NRC because the pay for such activities is reduced by the amount received from the Federal government in the form of pension payments. The consulting services of retired employees is essential as NRC trains the next generation of nuclear regulators.

Section 4026. Carrying of firearms by licensee employees

Section 4026 authorizes guards at certain facilities licensed or certified by the Commission to carry and use weapons where necessary to protect the facilities or prevent the theft of special nuclear materials. This section also permits guards so authorized to carry firearms to make arrests without warrant under certain specified circumstances. The language also prevents guards at such facilities from being prosecuted under state law for the discharge of firearms in the performance of official duties.

Current statute permits such authority only for DOE security forces, although several NRC-licensed or certified facilities also handle and store special nuclear materials. Under current law, guards at these facilities are constrained by the restrictions of state law, which may allow the use of weapons by guards only to protect their own lives or the lives of others, and not to prevent the theft or sabotage of radioactive materials. The section extends the same authorities and protections granted to DOE guards to guards at certain sites licensed or certified by the NRC.

This provision could be a valuable asset in protecting national security assets which could be subject to theft or sabotage. The Committee expects that the NRC, in issuing its regulations to implement this authority, will adopt regulations similar to those promulgated by the Department of Energy, and will limit its application to employees at those facilities engaged in the protection of property of significance to the common defense and security of the United States or being transported to and from such facilities. Such facilities include, but are not limited to, production facilities licensed by the Commission which utilize special nuclear materials, or gaseous diffusion plants, at which guards must protect significant quantities of radioactive materials and the gaseous diffusion technology utilized to enrich uranium.

Section 4027. Unauthorized introduction of dangerous weapons

Section 4027 expands current law authorizing the NRC to regulate the introduction of dangerous weapons onto its own facilities

to include facilities licensed or certified by the Commission. This change ensures that the full range of facilities regulated by the NRC are subject to the statutory provisions prohibiting the introduction of unauthorized weapons or other dangerous instruments, providing an additional measure of security for materials which could be subject to theft or sabotage.

Section 4028. Sabotage of nuclear facilities or fuel

Section 4028 expands current law prohibiting the sabotage or attempted sabotage of nuclear facilities to include nuclear waste treatment and disposal facilities and nuclear fuel fabrication facilities. This section also extends Federal criminal sanctions to the sabotage or attempted sabotage of NRC-licensed or certified facilities during the construction phase when public health and safety may be affected during subsequent facility operation. These changes ensure that the full range of NRC-licensed or certified facilities are covered under the statute's provisions. This section also establishes a fine of up to $1,000,000 for any person who intentionally and willfully destroys or causes damage to nuclear facilities or nuclear fuel, and a prison term up to life in prison without parole for the same offense.

Section 4029. Cooperative research and development and special demonstration projects for the uranium mining industry

Section 4029 authorizes $10,000,000 per year for three years beginning in 2004, for cooperative, cost-shared, agreements between DOE and domestic uranium producers to develop in site leaching mining technologies, and low cost environmental restoration technologies. The funding is also provided for competitively selected demonstration projects with domestic uranium producers for enhanced production, restoration of well fields, and decommissioning and decontamination activities. This provision applies to only those domestic uranium producers that have engaged in active production since July 30, 1998, in Colorado, Nebraska, Texas, Utah, or Wyoming.

Section 4030. Uranium sales

Section 14030 authorizes DOE to sell or transfer its uranium inventories, in any form owned by DOE, in amounts not to exceed 3 million pounds in fiscal years 2004 through 2009; 5 million pounds in fiscal year 2010 or 2011; 7 million pounds in fiscal year 2012; and 10 million pounds in fiscal year 2013 or thereafter. This section also authorizes DOE to transfer up to 9,550 metric tons of uranium to the United States Enrichment Corporation (USEC). The section also authorizes DOE to terminate, waive, or modify its June 17, 2002 Agreement with USEC.

Section 4031. Medical isotope production

Section 4031 sets out conditions under which the NRC can license the export of highly enriched uranium used in foreign reactors for medical isotope production. NRC is required to review the adequacy of physical security of the materials in transport, and impose additional security requirements if necessary.

Section 4032. Highly enriched uranium diversion threat report

Section 4032 requires the Secretary of Energy to provide a report with recommendations to Congress on reducing the threat of diversion of highly enriched uranium within 6 months.

Section 4033. Whistleblower protection

Section 4033 expands the definition of employer under section 211(a)(2) of the Energy Reorganization Act (ERA) to include all DOE and NRC Federal employees, and all contractor and subcontractor employees of DOE and NRC. Any such employees that experience an act of discrimination related to activities covered under 211(a)(1) of the ERA may file a complaint with the Secretary of Labor. This section also provides whistleblowers with the opportunity to bring the complaint directly to Federal district court if the Secretary of Labor has failed to issue a final order within 180 days from the date the complaint is filed. This is necessary to alleviate the extensive delays that have frustrated the purpose of whistleblower statutes. It is intended that this provision would cover acts of retaliation regardless of whether in whole or in part the source of retaliation comes from a government or contractor and subcontractor.

TITLE V—VEHICLES AND FUELS

Subtitle A—Energy Policy Act Amendments

Section 5011. Credit for substantial contribution toward noncovered fleets

Section 5011 provides credits under the Energy Policy Act of 1992 (EPACT) (42 U.S.C. 13258) for substantial contribution toward purchase and use of dedicated alternative fuel vehicles or neighborhood electric vehicles. "Substantial contribution" means not less than $154,000 in case or in kind services. The Secretary of Energy must allocate two credits or medium or heavy duty vehicles, and if requested by the fleet or covered person, such credits may use such credits for the year the alternative fuel vehicle is acquired.

Section 5012. Credit for alternative fuel infrastructure

Section 5012 provides EPACT credit for investment in alternative fuel infrastructure. The Secretary of Energy shall allocate one EPACT credit to a fleet or covered person for an investment of $25,000 in case or in kind services. One credit equals the acquisition of one alternative fueled vehicle under EPACT.

Section 5013. Alternative fueled vehicle report

Section 5013 requires the Secretary of Energy to complete an alternative fueled vehicle study to look at the effect EPACT has had on the development of alternative fueled vehicle technology, the availability in the market, the cost, and the availability, cost and use of alternative fuels. The report must include legislative recommendations.

Section 5014. Allocation of incremental costs

Section 5014 amends the EPACT to require the General Services Administration to allocate the incremental costs of the alternative fuel vehicles across the entire fleet of vehicles in order to incentivize the purchase of new alternative fueled vehicles in the federal fleet.

Subtitle B—FreedomCAR and Hydrogen Fuel Program

Section 5021. Short title

Section 5021 provides the short title of the "FreedomCAR and Hydrogen Fuel Act of 2003."

Section 5022. Findings, purpose, and definitions

Section 5022 includes the findings, purposes and definitions.

Section 5023. Plan; report

Section 5023(a) requires the Secretary of Energy to work with other federal agencies to prepare a comprehensive interagency coordination plan for activities under the subtitle. This plan may be provided as part of the President's annual budget submission. Section 5023(b) requires the Secretary of Energy to submit a report within one year of enactment, and biennially thereafter, on the status of the programs under this subtitle.

Section 5024. Public-private partnership

Section 5024 requires the Secretary of Energy to work with the private sector to conduct a program to facilitate the production and conservation of energy and the deployment of energy infrastructure for hydrogen and advanced vehicle technologies. The goals for automakers include; (1) a range of 300 miles; (2) improved performance and ease of driving; (3) meeting all light duty vehicle safety requirements; (4) fuel economy that is two and a half times the equivalent fuel economy, or about 70 mpg; and, (5) near zero emissions.

Hydrogen infrastructure goals must include a commitment by 2015 to enable the deployment by 2020 of infrastructure to provide; (1) safe and convenient refueling; (2) widespread availability of hydrogen through production, delivery, and storage; (3) hydrogen for fuel cells; and, (4) other technologies. There are additionally goals for fuel cells, advanced vehicle technologies and codes, standards, and safety protocols. The Secretary shall require a 20 percent financial commitment from the private sector.

Section 5025. Deployment

Section 5025 requires the Secretary of Energy to work with the private sector to conduct a program to facilitate deployment of hydrogen vehicles, energy infrastructure, advanced vehicle technologies, clean fuels, and codes and standards. The goals are the same as those goals outlined in section 5024. The Secretary shall require a 50 percent financial commitment from the private sector.

Section 5026. Assessment and transfer

Section 5026 allows the Secretary of Energy to conduct a program to transfer technology to the private sector, and provides dis-

closure procedures for protection of research. Section 5027 requires the Secretary to put together an interagency task force of all relevant agencies and administrations that will be responsible for planning and information exchange.

Section 5027. Interagency task force

Section 5027 requires the creation of an interagency task force, to be chaired by the Secretary, within 120 days after enactment. Other agencies represented on the task force shall include: the Office of Science and Technology Policy within the Executive Office of the President, Department of Transportation, Department of Defense, Department of Commerce, Environmental Protection Agency, National Aeronautics and Space Administration, and other federal agencies as are necessary. The duties of the task force shall include coordinating the implementation of the interagency plan and work towards deployment of safe, economical and environmentally sound infrastructure, fuel cells in government applications, and distributed power generation. The task force shall also coordinate interagency information sharing to further the development of hydrogen technologies.

Section 5028. Advisory Committee

Section 5028 requires the creation of an "Advisory Committee" to advise the Secretary of Energy on the programs and activities under the subtitle comprised of between 12–25 members from industry, academia, government, professional groups, and any other appropriate organizations. The Secretary shall consider but need not adopt the recommendations from the Advisory Committee.

Section 5029. Authorization of appropriations

Section 5029 authorizes appropriations as follows: $273,500,000 in fiscal year 2004; $325,000,000 in fiscal year 2005; $375,000,000 in fiscal year 2006; $400,000,000 in fiscal year 2007; and, $425,000,000 in fiscal year 2008.

Section 5030. Fuel cell program at National Parks

Section 5030 authorizes the Secretary of Energy, in cooperation with the Secretary of Interior and the National Park Service, to provide matching funds to assist the deployment of fuel cells at one or more National Parks. The program is intended to complement existing activities taking place at Yosemite National Park, and the Secretary must report to Congress on activities taken pursuant to this section. The section authorizes $2,000,000 per year for years 2004 through 2010 for such program.

Section 5030A. Advanced power system technology incentive program

Section 5030A authorizes a new program at the Department of Energy to provide incentive payments to qualifying facilities using certain advanced technologies. Additional payments may be made to such facilities if they produce electricity for critical governmental, industrial, or commercial processes as determined by the Secretary of Energy in consultation with the Secretary of Homeland Security. The section authorizes $10,000,000 per year for years 2004 through 2010 for such program.

Subtitle C—Clean School Buses

Section 5031. Establishment of pilot program

Section 5031 establishes a pilot program within the Department of Energy for awarding grants for the acquisition of alternative fuel and ultra-low sulfur school buses. Grants may be made to state or local governments or contract entities that provide bus service for public schools. Emission standards are specified for different types of buses qualified to participate in the program.

Section 5032. Fuel cell bus development and demonstration program

Section 5032 establishes a program for cooperative agreements with private sector fuel cell bus developers and local governments to facilitate the use of fuel-cell powered buses.

Section 5033. Authorization of appropriations

Section 5033 authorizes $60,000,000 in fiscal year 2004, $70,000,000 in fiscal year 2005 and, $80,000,000 in fiscal year 2006 to carry out the program.

Subtitle D—Advanced Vehicles

Section 5041. Definitions

Section 5041 provides definitions for purposes of the subtitle.

Section 5042. Pilot program

Section 5042 establishes a competitive grant program, administered by the Secretary of Energy, to provide not more than 10 geographically dispersed project grants to state and local governments or metropolitan transportation authorities. Grants are made available for the acquisition of alternative fueled, fuel cell or hybrid vehicles as well as ultra-low sulfur vehicles and necessary infrastructure and operation and maintenance expenses. The section provides various selection criteria and grant requirements.

Section 5043. Reports to Congress

Section 5043 requires a report to Congress identifying grant recipients, grant applicants and other information from the Secretary.

Section 5044. Authorization of appropriations

Section 5044 authorizes $200 million for this program to remain available until expended.

Subtitle E—Hydrogen Fuel Cell Heavy-Duty Vehicles

Section 5051. Definition

Section 5051 defines "advanced vehicle technologies program" for purpose of the subtitle.

Section 5052. Findings

Section 5052 makes various findings concerning ongoing efforts by the Department of Energy and Department of Transportation and hydrogen fuel cell heavy-duty vehicles.

Section 5053. Hydrogen fuel cell buses

Section 5053 authorizes the Secretary of Energy to provide funding for 4 demonstration sites to address the reliability of heavy-duty fuel cell vehicles, expense of such vehicles and infrastructure, safety, training and other issues.

Section 5054. Authorization of appropriations

Section 5054 authorizes $10,000,000 for each of the fiscal years 2004 through 2008.

Subtitle F—Miscellaneous

Section 5061. Railroad efficiency

Section 5061 directs the Secretary of Energy to establish a public-private research partnership and a research and test center. The goal of this partnership includes developing and demonstrating locomotive technologies that increase fuel economy, reduce emissions and lower costs. The section authorizes $25 million in fiscal year 2004, $30,000,000 in fiscal year 2005 and $35 million in fiscal year 2006 for this purpose.

Section 5062. Mobile emission reductions trading and crediting

Section 5062 requires the Environmental Protection Agency to report on the Agency's experience with the trading of mobile source emission reduction credits and evaluate how resolution of issues in mobile trading could be utilized in other projects.

Section 5063. Idle reduction technologies

Section 5063 requires the Secretary of Energy to analyze the potential fuel savings resulting from idle reduction technologies. The Section also requires the Environmental Protection Agency to review its mobile source emission models to determine whether such models accurately reflect emissions from long-duration idling. The Section additionally permits a vehicle weight exemption for on board idle reduction technology up to 400 pounds.

Section 5064. Study of aviation fuel conservation and emissions

Section 5064 requires the Environmental Protection Agency and the Federal Aviation Administration to jointly study the impact of aircraft emissions on air quality in nonattainment areas and to identify ways to promote fuel conservation measures for aviation as well as reduced air emissions.

Section 5065. Diesel fueled vehicles

Section 5065 requires the Secretary of Energy to accelerate efforts to improve diesel combustion and after-treatment technologies with a goal of compliance with "Tier 2" emission standards by 2010.

Section 5066. Hybrid vehicles

Section 5066 permits a state, for the purpose of promoting energy conservation, to permit hybrid vehicles with less than 2 passengers to operate in high occupancy vehicle lanes.

Section 5067. Waivers of alternative fueled vehicle fueling requirements

Section 5067 amends the Energy Policy and Conservation Act to require dual-fueled vehicles to operate on alternative fuels unless an agency needs a waiver of such requirement under certain specified conditions.

TITLE VI—DOE PROGRAMS

Section 6001. Purposes

Section 6001 sets forth the purposes of Title VI.

Section 6002. Definitions

Section 6002 defines certain terms used in Title VI.

Subtitle A—Energy Efficiency

PART 1—AUTHORIZATION OF APPROPRIATIONS

Section 6011. Energy efficiency

Section 6011 authorizes certain sums for Department of Energy programs and activities related to energy efficiency and conservation, allocates amounts from those sums for certain activities, and limits the use of funds authorized under this section.

PART 2—LIGHTING SYSTEMS

Section 6021. Next generation lighting initiative

Section 6021 directs the Secretary of Energy to carry out an initiative to support activities related to certain advanced lighting technologies through establishment of a private consortium. The Secretary is authorized to make grants the consortium for disbursement to researchers, and to make awards to private firms, trade associations, and institutions of higher learning. Section 6021 requires the Secretary retain an independent, commercial auditor to audit the activities of the consortium.

PART 3—VEHICLES

Section 6031. Definitions

Section 6031 defines certain terms used in Part 3.

Section 6032. Establishment of secondary electric vehicle battery use program

Section 6032 directs the Secretary to establish a program for the secondary use of batteries. The program shall include demonstration projects, which meet certain criteria and conditions.

Subtitle B—Distributed Energy and Electric Energy Systems

PART 1—AUTHORIZATION OF APPROPRIATIONS

Section 6201. Distributed energy and electric energy systems

Section 6201 authorizes certain sums for DOE activities related to distributed energy and electric energy systems.

PART 2—DISTRIBUTED POWER

Section 6221. Strategy

Section 6221 directs the Secretary of Energy to develop and transmit to Congress within one year a strategy for a comprehensive program to develop hybrid distributed power systems.

Section 6222. High power density industry program

Section 6222 directs the Secretary of Energy to establish a comprehensive program to improve the energy efficiency of high power density facilities.

Section 6223. Micro-cogeneration energy technology

Section 6223 directs the Secretary of Energy to make competitive, merit-based grants to consortia for the development of micro-cogeneration energy technologies.

PART 3—TRANSMISSION SYSTEMS

Section 6231. Transmission infrastructure systems

Section 6231 directs the Secretary of Energy to develop a program to promote improved reliability and efficiency of electrical transmission systems.

Subtitle C—Renewable Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

Section 6301. Renewable energy

Section 6301 authorizes certain sums for Department of Energy activities related to renewable energy and allocates amounts from those sums for certain institutions and projects.

PART 2—BIOENERGY

Section 6321. Bioenergy programs

Section 6321 directs the Secretary of Energy to establish a program to facilitate the production of bioenergy.

Subtitle D—Nuclear Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

Section 6411. Nuclear energy

Section 6411 authorizes certain sums for Department of Energy programs for nuclear energy activities, regulation of research and development activities, nuclear regulatory research, and nuclear infrastructure support. The section allocates amounts from the authorizations for certain programs and places limits on the use of funds.

PART 2—NUCLEAR ENERGY RESEARCH PROGRAMS

Section 6421. Nuclear energy research programs

Section 6421 authorizes the Secretary of Energy to carry out the nuclear energy research initiative, the nuclear energy plant optimi-

zation program, the nuclear power 2010 program, the generation IV nuclear energy systems initiative, a reactor production of hydrogen program, and nuclear infrastructure support.

PART 3—ADVANCED FUEL RECYCLING

Section 6431. Advanced fuel recycling program

Section 6431 authorizes the Secretary of Energy to conduct an advanced fuel recycling technology research and development program to evaluate proliferation-resistant fuel recycling and transmutation technologies which minimize environmental or public health and safety impacts.

PART 4—UNIVERSITY PROGRAMS

Section 6441. University nuclear science and engineering support

Section 6441 authorizes the Secretary of Energy to carry out a university nuclear science and engineering support program to invest in human resources and infrastructure in the nuclear science and engineering and related fields (including health physics and nuclear and radiochemistry), consistent with departmental missions related to civilian nuclear research and development.

Subtitle E—Fossil Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

Section 6501. Fossil energy

Section 6501 authorizes certain sums for Department of Energy activities related to fossil energy.

PART 2—ULTRA-DEEPWATER AND UNCONVENTIONAL NATURAL GAS AND OTHER PETROLEUM RESOURCES

Section 6521. Program authority

Section 6521 requires the Secretary of Energy to carry out a program for ultra-deepwater and unconventional natural gas and other petroleum resource exploration and production, including safe operations and environmental mitigation. This section sets forth the program elements, as well as the limitation on locations of field activities. Additionally, this section requires participation of the National Energy Technology Laboratory and requires consultation with the Secretary of the Interior on a regular basis.

Section 6522. Ultra-deepwater program

Section 6522 requires the Secretary of Energy to carry out the activities set forth in this part to maximize the value of the ultra-deepwater natural gas and other petroleum resources through cost reductions and increased efficiencies, while improving safety and minimizing environmental impacts. The Secretary shall be responsible for the program, but shall contract with a consortium to manage awards, make recommendations to the Secretary for project solicitations, and the disbursement of funds. The authority of the Secretary to assign activities to the consortium is limited to that specifically authorized. This section also provides for the selection of the consortium and provides for procedures to be used to prevent

conflicts of interest. Applicants for recognition must disclose members of the consortium, fully describe the structure of the consortium, and describe how the activities would be implemented.

This section sets forth requirements for an annual plan, to be prepared by the Secretary after soliciting written recommendations from the consortium. Additionally, this section sets forth the parameters for award proposals, establishes a consortium fee, and requires an annual audit.

Section 6523. Unconventional natural gas and other petroleum resources program

Section 6523 requires the Secretary to carry out activities set forth in this part to maximize the value of onshore unconventional natural gas and other petroleum resources by increasing supply, increasing cost reductions and efficiencies, while improving safety and minimizing environmental impacts. Additionally, this section sets forth the parameters for award proposals, requires an annual audit, and sets forth the focus areas that may be considered for this section. This section further requires the Secretary of the Interior, through the United States Geological Survey, where appropriate, to carry out programs to complement the programs established under this section.

Section 6524. Additional requirements for awards

Section 6524 requires that applications for an award under this part for a demonstration project set forth with specificity the intended commercial use of the technology to be demonstrated. This section requires the execution of a contract by consortium members describing the rights of each member to intellectual property used or developed under the award. Technology transfers are required where appropriate.

Section 6525. Advisory committees

Section 6525 establishes advisory committees composed of members appointed by the Secretary of Energy. The advisory committees shall advise the Secretary on the development and implementation of activities, but not on funding awards for specific projects.

Section 6526. Limits on participation

Section 6526 limits award eligibility if the entity's participation is in the economic interest of the United States, the entity in a United States-owned entity, or an entity organized under the laws of the United States whose parent entity is organized under the laws of a foreign country that affords similar opportunities and protections to United States-owned entities as are available in the United States.

This section also sets forth the sense of the Congress that ultra-deepwater technology developed under this part is to be developed primarily for production of ultra-deepwater natural gas and other petroleum resources, and this priority should be reflected in the terms of grants, contracts, and cooperative agreements entered under this part.

Section 6527. Fund

Section 6527 establishes a separate fund with the Treasury of the United States to be known as the "Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Products Fund."

Section 6528. Sunset

Section 6528 sets forth a termination date for the authority under this part as September 30, 2010.

Section 6529. Definitions

Section 6529 sets forth definitions for various terms set forth in this part.

Subtitle F—Miscellaneous

Section 6601. Waste reduction and use of alternatives

Section 6601 authorizes $500,000 for the Secretary of Energy to make grants to a qualified institution, such as the Georgia Institute of Technology, to examine and develop the feasibility of burning post-consumer carpet in cement kilns as an alternative energy source.

Section 6602. Coal gasification

Section 6602 authorizes the Secretary of Energy to provide loan guarantees for a project using integrated gasification combined cycle technology of at least 400 megawatts in capacity.

Section 6603. Petroleum coke gasification

Section 6603 authorizes the Secretary of Energy to provide loan guarantees for at least one petroleum coke gasification polygeneration project.

Section 6604. Other biopower and bioenergy

Section 6604 directs the Secretary of Energy to conduct a program to assist projects to convert rice straw, rice hulls, sugarcane bagasse, forest thinnings, and barley grain into biopower and biofuels.

Section 6605. Technology transfer

Section 6605 authorizes $1,000,000 for the Secretary of Energy to make a competitively awarded contract to an entity with offshore oil and gas management experience for the transfer of technologies relating to ultradeepwater research and development developed at the Naval Surface Warfare Center, Carderock Division.

Section 6606. Limitation on legal fee reimbursement

Section 6606 amends the Atomic Energy Act to conditionally limit reimbursement by the Department of Energy (DOE) of any legal fees or expenses of a contractor or subcontractor subsequent to an adverse administrative determination by DOE's Director of the Office of Hearings and Appeals, or an administrative law judge at the Department of Labor, or subsequent to a final judgment by any court against the contractor or subcontractor in whistleblower cases. If, for instance, an administrative law judge at the Department of Labor finds in favor of a whistleblower, then DOE is spe-

cifically barred from further legal fee reimbursement of a contractor related to that complaint, unless the contractor wins a subsequent ruling on appeal. It is the intent of this section to end the structural incentive for contractors to prolong reprisal disputes as long as possible, and end the delays experienced at DOL that can last over a decade in some instances due to repetitive appeals. DOE is also strongly encouraged to examine its policy of reimbursing legal fees and expenses to contractors or subcontractors in cases in which the contractor or subcontractor asserts a legal defense based upon state sovereign immunity, in order to determine whether this is an appropriate use of taxpayer funds.

Section 6607. Complex well technology testing facility

Section 6607 requires the Secretary of Energy to coordinate with industry leaders in extended reach drilling technology to establish a Complex Well Technology Testing Facility at the Rocky Mountain Oilfield Testing Center to increase the range of extended drilling technology to 50,000 feet.

Section 6608. Total integrated thermal systems

Section 6608 requires DOE to conduct a study of the benefits of advanced integrated thermal management systems in reducing demand for oil and protecting the environment and the use such technology can offer in the Department of Defense and federal fleets.

Section 6609. Oil bypass filtration technology

Section 6609 requires DOE and the EPA to conduct a joint study of the benefits of oil filtration bypass technology in reducing demand for oil and protecting the environment and the use such technology can offer in the federal fleets.

TITLE VII—ELECTRICITY

Subtitle A—Transmission Capacity

Section 7011. Transmission infrastructure improvement rulemaking

Section 7011 promotes needed investment in transmission by requiring the Federal Energy Regulatory Commission (FERC) to conduct a rulemaking on just and reasonable incentive-based and performance-based transmission rates and "participant funding" of certain transmission facilities.

Section 7012. Siting of interstate electrical transmission facilities

Section 7012 expedites the construction of critical transmission lines identified by the DOE. The section provides that for such lines, persons may obtain a permit from FERC and exercise eminent domain if, after one year, a State is unable or refuses to site the line. If such line crosses Federal land and an applicant so requests, DOE is designated as the lead agency for coordinating Federal review and permitting processes, including establishing deadlines, coordination with States and tribes, and consolidating environmental reviews into a single record to serve as the basis for decisions. If a Federal agency denies an application or fails to comply with a timeframe established by DOE, an applicant or State may appeal to DOE to review the denial and take action within 90 days.

States are authorized to form voluntary compacts to facilitate transmission siting. This section directs the Federal government to study the use of existing corridors on Federal land and the potential to establish new corridors and report to Congress. The Committee intends this report to go to the House Committees on Energy and Commerce and Resources. The section requires Federal land management agencies, DOE, and CEQ to develop a Memorandum of Understanding to coordinate permitting decisions and environmental reviews.

Subtitle B—Transmission Operation

Section 7021. Open access transmission by certain utilities

Section 7021 grants FERC partial jurisdiction over the interstate transmission of currently non-regulated utilities (municipally-owned utilities, rural electric cooperatives, and Federal utilities) to improve the operation of competitive wholesale markets in interstate commerce.

Section 7022. Regional transmission organizations

Section 7022 authorizes the Federal electric utilities (Bonneville Power Administration, other Power Marketing Administrations, and the Tennessee Valley Authority) to participate in regional transmission organizations (RTOs). In addition, this section expresses the Sense of Congress that all utilities should voluntarily participate in RTOs and that FERC should grant incentives for their participation. Section 7022 also requires FERC to report to Congress on review of pending applications to form RTOs.

Section 7023. Native load

Section 7023 requires FERC to ensure that utilities serving electricity consumers are entitled to use their transmission facilities or equivalent transmission rights to serve "native load," i.e., to meet certain service obligations and certain contractual obligations (only contracts in effect on March 28, 2003). This section clarifies that reservation of transmission capacity for native load shall not be considered discriminatory under the Federal Power Act. Section 7023 states that this section shall not affect the allocation of transmission rights by certain transmission organizations approved prior to enactment of the section. This section is intended to be consistent with the Commission's Order 888.

Subtitle C—Reliability

Section 7031. Electric reliability standards

Section 7031 amends the Federal Power Act by adding a new section to provide for the establishment of mandatory, enforceable electric reliability standards for the bulk-power system. The section provides that FERC shall have jurisdiction, within the United States, over an Electric Reliability Organization (ERO), certain regional entities, and all users, owners and operators of the bulk-power system for purposes of approving mandatory, enforceable reliability standards. FERC may certify an ERO that meets certain requirements. The certified ERO shall propose reliability standards for FERC approval. The section provides for a rebuttable presump-

tion that a proposal from a regional entity organized on an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest. The section provides for fair processes for resolution of any conflict between a reliability standard or implementation thereof and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by FERC applicable to a transmission organization. The section provides for enforcement of FERC-approved reliability standards. The President is urged to negotiate related international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the ERO in the United States and Canada or Mexico. The section also includes savings provisions relating to the scope of the provision and State authority. The section provides that FERC shall establish a regional advisory body to provide advice regarding certain matters. FERC may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.

Subtitle D—PUHCA Amendments

Section 7041. Short title

Section 7041 establishes the short title of subtitle D as "Public Utility Holding Company Act of 2003."

Section 7042. Definitions

Section 7042 defines certain terms used in this subtitle.

Section 7043. Repeal of the Public Utility Holding Company Act of 1935

Section 7043 repeals the Public Utility Holding Company Act of 1935 (PUHCA).

Section 7044. Federal access to books and records

Section 7044 directs holding companies and associate companies to maintain and make available to the Commission such books and other records as the Commission deems relevant to costs and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates. Subsection (b) directs affiliates and subsidiaries of holding companies to maintain and make available to the Commission books and other records with respect to transactions with other affiliates. Subsection (c) contains similar requirements with respect to books and other records for any company in a holding company system and affiliates thereof. Subsection (d) requires the Commission to protect the confidentiality of books and other records acquired under this section, except as may be directed by the Commission or a court of competent jurisdiction.

Section 7045. State access to books and records

Section 7045 gives State commissions access to certain books and other records if they meet specific requirements. Upon written request by the State commission with jurisdiction to regulate a public utility in a holding company system, the holding company, asso-

ciate or affiliate company is directed to produce for inspection books and other records that have been identified in reasonable detail by the State commission, deemed by the commission to be relevant to costs incurred by the public utility, and necessary for the effective discharge of the responsibilities of the State commission with respect to such proceedings. Subsection (b) exempts from this requirement any person that is a holding company solely by reason of ownership of one or more qualifying facilities under the Public Utility Regulatory Policies Act of 1978. Subsection (c) protects trade secrets and other sensitive commercial information from unwarranted disclosure to the public. Subsection (d) protects existing state law concerning books and other records, and provides that nothing in this section limits the existing rights of any state to obtain books and other records under Federal law, contract, or otherwise. Subsection (e) gives a United States district court in the State referred to in Subsection (a) jurisdiction to enforce this section.

Section 7046. Exemption authority

Section 7046 directs the Commission to exempt certain companies from the requirements of section 7044.

Section 7047. Affiliate transactions

Section 7047 provides that nothing in this subtitle shall limit the existing authority of the Commission under the Federal Power Act to ensure that rates are just and reasonable, and, to whatever extent the Commission already has authority, to approve or deny the pass through of costs and to prevent cross-subsidization. Subsection (b) provides that nothing in this subtitle shall preclude the Commission or a State commission under otherwise applicable law from allowing recovery of costs in jurisdictional rates.

Section 7048. Applicability

Section 7048 prohibits application of this subtitle to the Federal government, states, and foreign governments, except as otherwise specifically provided.

Section 7049. Effect on other regulations

Section 7049 provides that nothing in this subtitle precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility consumers.

Section 7050. Enforcement

Section 7050 specifies the powers available to the Commission to enforce this subtitle.

Section 7051. Savings provisions

Section 7051 provides that nothing in the subtitle prohibits a person from engaging in certain activities that were authorized prior to the date of enactment, so long as they continue comply with the terms of their authorization, nor limits the authority of the Commission under the Federal Power Act or the Natural Gas Act.

Section 7052. Implementation

Section 7052 directs the Commission, within 12 months, to promulgate regulations necessary to implement this subtitle and submit to Congress recommendations for technical or conforming amendments.

Section 7053. Transfer of resources

Section 7053 provides for the transfer of all books and records related to the functions of the Commission under this subtitle from the Securities and Exchange Commission to the FERC.

Section 7054. Effective date

Section 7054 provides that this section shall take effect 12 months after the date of enactment.

Section 7055. Authorization of appropriations

Section 7055 authorizes to be appropriated such sums as necessary to carry out this subtitle.

Section 7056. Conforming amendments to the Federal Power Act

Section 7056 makes conforming amendments to the Federal Power Act.

Subtitle E—PURPA Amendments

Section 7061. Real-time pricing and time-of-use metering standards

Section 7061 provides for state consideration of model Federal standards for real-time pricing and time-of-use metering services.

Section 7062. Cogeneration and small power production purchase and sale requirements

Section 7062 amends PURPA section 210 by adding at the end thereof new subsections (m), (n), and (o). New subsection (m) (1) specifies conditions under which the mandatory purchase obligation of utilities under section 210 may be relieved; (2) establishes procedures both for utilities to apply to the Commission for relief if such conditions are met, and for qualifying facilities to apply for reinstatement of the purchase obligation; (3) terminates a utility's obligation to sell electricity to qualifying facilities under certain conditions; (4) protects existing contracts or certain pending contracts; and, (5) directs the Commission to issue and enforce regulations to ensure that electric utilities collect the costs associated with contracts under section 210.

New subsection (n) directs the Commission to revise the rules for qualifying cogeneration facilities eligible for the purchase requirements of 210 until the conditions in new subsection (m) are met. Specifically, for new cogeneration facilities certified or filing for self certification after the date of enactment, the new rules must ensure the thermal energy output of the facility is used in a productive and beneficial manner, the total energy output of such facilities is used predominantly for commercial or industrial processes and not intended predominantly for sale to an electric utility, and continuing progress in the development of efficient electric energy generating technology.

New subsection (o) clarifies that the rule revisions required in subsection (n) do not apply to qualifying small power production facilities or existing qualifying cogeneration facilities. For those facilities, the purchase obligation continues, conditioned upon new subsection (m).

Finally, section 7062(b) eliminates existing ownership restrictions on qualifying small power production facilities and qualifying cogeneration facilities.

Section 7063. Smart metering

Section 7061 provides for state consideration of model Federal standards for smart metering service.

Subtitle F—Renewable Energy

Section 7071. Net metering

Section 7071 provides for state consideration of model Federal standards for "net metering" service.

Section 7072. Renewable energy production incentive

Section 7072 reauthorizes the Renewable Energy Production Incentive (REPI), which provides payments for production of certain renewables. The section expands the program to include landfill gas.

Section 7073. Renewable energy on Federal lands

Section 7073 requires the Secretary of the Interior, in cooperation with the Secretary of Agriculture, to report to Congress on opportunities to develop renewable energy on Federal lands.

Section 7074. Assessment of renewable energy resources

Section 7074 requires the Secretary of Energy to review available assessments of certain renewable energy resources in the United States, and to prepare an annual report on the same.

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

Section 7081. Market transparency rules

Section 7081 directs FERC to establish rules improving transparency in wholesale electric power markets.

Section 7082. Prohibition on round trip trading

Section 7082 prohibits round-trip (or "wash") trades of electric power with intent to distort prices.

Section 7083. Conforming changes

Section 7083 makes conforming changes to reflect the addition of new sections to the Federal Power Act.

Section 7084. Enforcement

Section 7084 increases criminal and civil penalties for violations of the Federal Power Act. The section extends the applicability of such penalties to violations of any provision of Part II of the Federal Power Act.

Subtitle H—Consumer Protection

Section 7091. Refund effective date

Section 7091 changes the effective date from 60 days after complaint to the date of complaint for FERC-ordered refunds under section 206 of the Federal Power Act.

Section 7092. Jurisdiction over interstate sales

Section 7092(a) and (b) provides that all spot market sales of wholesale power, including those by municipally-owned utilities and cooperatives, are subject to FERC-ordered refunds for sales above just and reasonable rates. Section 7092(c) clarifies that FERC's existing investigation authority under section 307 of the Federal Power Act applies with respect to electric utilities, transmitting utilities and other entities.

Section 7092(d) provides that FERC, before abrogating certain contracts, must meet a public interest standard, unless the contract expressly provides for a different standard. The Committee intends "expressly" to mean more than merely a clause authorizing Commission review. It must expressly state that the standard for reviewing the contract is not the public interest standard. This provision applies only prospectively (i.e., to contracts executed on or after the date of enactment), except that if the contract is an interconnection agreement the prospectivity limitation does not apply. The Committee recognizes that under existing judicial and FERC interpretations of the Federal Power Act and Natural Gas Act, the "public interest" standard applies to certain contracts, including, but not limited to, contracts that explicitly restrict the rights of parties unilaterally to seek changes to rates or terms, and to contracts that do not expressly address the issue but which establish a fixed rate. The language in subsection (d) is not intended to and does not, by negative implication mean that under existing law, the "public interest" standard did not or does not apply to such existing contracts.

Section 7093. Consumer privacy

Section 7093 directs the Federal Trade Commission to establish rules regarding consumer privacy.

Section 7094. Unfair trade practices

Section 7094 directs the Federal Trade Commission to establish rules prohibiting "slamming" and "cramming" in retail electricity markets.

Subtitle I—Merger Review Reform and Accountability

Section 7101. Merger review reform and accountability

Subsection (a) of section 7101 directs the Secretary of Energy, in consultation with the Federal Energy Regulatory Commission and the Department of Justice, to report to the House Committee on Energy and Commerce and the Senate Committee on Energy and Natural Resources on (1) duplicative authorities vested in the FERC under section 203 of the Federal Power Act; and (2) recommendations on reforms to the Federal Power Act to eliminate unnecessary duplication. Subsection (b) directs the FERC to report

annually to the same committees on conditions imposed on mergers and other dispositions of property reviewed under section 203.

Subtitle J—Study of Economic Dispatch

Section 7101. Study on the benefits of economic dispatch

Section 7011 directs the Secretary of Energy, in coordination and consultation with the states, to conduct a study on economic dispatch procedures and potential benefits of certain revisions to such procedures. The Secretary is directed to report the results of such study to the Congress and the States on a yearly basis.

TITLE VIII—COAL

Section 8001. Authorization of appropriations

Section 8001 authorizes $200 million for each fiscal year 2005 through 2013, subject to a limitation that the Secretary of Energy provide a report regarding an assessment of the Clean Coal Power Initiative, how proposals will be solicited and evaluated under the program and a list of technical milestones for the program.

Section 8002. Project criteria

Section 8002 establishes technical and financial criteria for the Clean Coal Power Initiative regarding gasification projects and other projects funded under the Initiative. The section also specifies the applicability of certain identified sections of the Clean Air Act.

Section 8003. Report

Section 8003 requires the Secretary of Energy to transmit regular reports to Congress concerning technical milestones established in the program and the status of projects funded under the program.

Section 8004. Clean coal centers of excellence

Section 8004 authorizes competitive, merit-based grants for the establishment of Centers of Excellence for Energy Systems of the Future.

TITLE IX—MOTOR FUELS

Subtitle A—General Provisions

Section 9101. Renewable content of motor vehicle fuel

Section 9101 establishes a renewable content requirement for gasoline sold or dispensed to consumers in the contiguous United States. Starting in 2005, the total volume of such gasoline must contain an "applicable volume" of renewable fuel, determined on a yearly basis. This volume is 2.7 billion gallons in 2005, rising in several steps to 5.0 billion gallons in 2015. After 2015, the amount of the requirement will be adjusted each year to account for growth in volume of gasoline sold or dispensed. Under this section, 1 gallon of cellulosic biomass ethanol is equivalent to 1.5 gallon of renewable fuel for purposes of meeting the renewable content requirement. A credit program, which allows for the transfer of renewable fuel credits, is also established.

Section 9101 allows for waivers of the renewable fuel requirement, in whole or in part, in any one year upon the petition of one or more states. The section also requires a study before the initiation of the renewable fuels program in 2005 and allows for a waiver in this year if there are significant adverse consumer impacts on a national, regional or state basis. In addition, the section requires the Secretary of Energy to determine, prior to increases in the renewable content requirement, whether there is sufficient renewable fuel production capacity, the potential for increases in the price of gasoline, food or heating oil, the potential for supply disruptions, and the potential for exceedances of air quality standards. The Secretary may waive, in whole or in part, the renewable fuel requirement if there is significant adverse impact. The section additionally provides for extension of the renewable fuel requirement for small refineries.

Section 9102. Fuels safe harbor

Section 9102 provides for a fuels safe harbor for renewable fuel and fuel containing MTBE. This safe harbor applies only to defects in design or manufacture by virtue of the fact that a fuel contains a renewable fuel or MTBE. This safe harbor does not apply to any other liability, including liability for environmental remediation costs, drinking water contamination, negligence or public nuisance.

Section 9103. Findings and MTBE transition assistance

Section 9103 contains findings and authorization for MTBE transition assistance. The purpose of this assistance to aid in the transition from MTBE production to the production of other fuel additives.

Section 9104. Elimination of oxygen content requirement for reformulated gasoline

Section 9104 eliminates the oxygenate requirement for reformulated gasoline. The requirement is eliminated upon date of enactment for the State of California and 270 days after enactment for all other states. This section also contains provisions providing for the maintenance of air quality standards in different areas of the country. No later than 270 days after enactment, the EPA must establish standards for each refinery or importer based on a baseline for calendar years 1999 and 2000.

Section 9105. Analyses of motor vehicle fuel changes

Section 9105 requires an "antibacksliding analysis" of the changes in air pollutants and air quality due to the use of motor fuel and fuel additives resulting from implementation of the amendments made by title IX.

Section 9106. Data collection

Section 9106 requires data collection in order to evaluate the effectiveness of the new renewable fuels requirement.

Section 9107. Fuel system requirements harmonization study

Section 9107 requires a study of federal, state and local requirements concerning motor fuels and the effect of these requirements on the supply, quality and price of motor fuels.

Subtitle B—MTBE Cleanup

Section 9201. Funding for cleanup of MTBE contamination

Section 9201 authorizes $850,000,000 from the Leaking Underground Storage Trust Fund for site assessments, corrective actions, inspections and monitoring activities with respect to remediation of releases of fuel containing fuel oxygenates from underground storage tanks.

TITLE X—AUTOMOBILE EFFICIENCY

Section 10001. Authorization of appropriations for implementation and enforcement of fuel economy standards

Section 10001 authorizes the National Highway Traffic Safety Administration (NHTSA) additional $5 million to implement and enforce fuel economy standards for fiscal years 2004 through 2006.

Section 10002. Study of feasibility and effects of reducing use of fuel for automobiles

Section 10002 directs the NHTSA to, within 30 days of the date of enactment of this bill, to study the feasibility and effects of reducing, by a significant percentage, fuel consumption by automobiles by model year 2012. This study must examine, and recommend alternatives to, the Corporate Average Fuel Economy (CAFE) program, examine how automobile makers can contribute toward achieving the fuel savings, examine the potential of fuel cell technology, and how fuel cell technology may contribute towards achieving the fuel consumption reduction discussed in this section. In addition, the study must examine the effects of fuel consumption reductions on gasoline supplies, the automobile industry, including sales of automobiles manufactured in the United States, vehicle safety, and air quality. The report must be completed not later than one year after enactment of this bill.

TITLE XI—PREVENTING THE MISUSE OF NUCLEAR MATERIALS AND TECHNOLOGY

Section 11001. Preventing the misuse of nuclear materials and technology

Section 11001 establishes a general policy of the U.S. to prevent any nuclear materials, technology, components, substances, technical information, or related goods or services from being misused or diverted from peaceful nuclear energy purposes. The section also specifically prevents any Federal agency from issuing any license or other authorization for the transfer or export of special nuclear material, nuclear production or utilization facilities, or components and other technology to any government identified by the Secretary of State as engaged in state sponsorship of terrorist activities.

TITLE XII—ADDITIONAL PROVISIONS

Section 12001. Transmission technologies

Section 12001 directs the Federal Energy Regulatory Commission to take affirmative steps in the exercise of its authorities under the Federal Power Act (including its review of incentive-based and performance-based transmission rates) to encourage the deployment of

transmission technologies that utilize real time monitoring and analytical software to increase and maximize the capacity and efficiency of transmission networks and to reduce line losses. Such analytical software for real time monitoring shall timely adjust line amperage for maximum output, efficiency and capacity.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

NATIONAL ENERGY CONSERVATION POLICY ACT

TITLE I—GENERAL PROVISIONS

SEC. 101. SHORT TITLE AND TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—

TITLE I—GENERAL PROVISIONS

Sec. 101. Short title and table of contents.

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TITLE V—FEDERAL ENERGY INITIATIVES

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PART 3—FEDERAL ENERGY MANAGEMENT

Sec. 541. Findings.

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Sec. 552. Energy and water savings measures in congressional buildings.
Sec. 553. Federal procurement of energy efficient products.

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TITLE V—FEDERAL ENERGY INITIATIVE

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PART 3—FEDERAL ENERGY MANAGEMENT

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SEC. 543. ENERGY MANAGEMENT REQUIREMENTS.

(a) ENERGY PERFORMANCE REQUIREMENT FOR FEDERAL BUILDINGS.—(1) Subject to paragraph (2), each agency shall apply energy conservation measures to, and shall improve the design for the construction of, [its Federal buildings so that the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 1995 is at least 10 percent less than the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 1985 and so that the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 2000 is at least 20 percent less than the energy consumption per gross square foot of its Federal buildings in use during fiscal year

1985.] *the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in fiscal years 2004 through 2013 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in fiscal year 2001, by the percentage specified in the following table:*

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

* * * * * * *

(3) Not later than December 31, 2012, the Secretary shall review the results of the implementation of the energy performance requirement established under paragraph (1) and submit to Congress recommendations concerning energy performance requirements for fiscal years 2014 through 2023.

* * * * * * *

(c) EXCLUSIONS.—(1) [An agency may exclude, from the energy consumption requirements for the year 2000 established under subsection (a) and the requirements of subsection (b)(1), any Federal building or collection of Federal buildings, and the associated energy consumption and gross square footage, if the head of such agency finds that compliance with such requirements would be impractical. A finding of impracticability shall be based on the energy intensiveness of activities carried out in such Federal buildings or collection of Federal buildings, the type and amount of energy consumed, the technical feasibility of making the desired changes, and, in the cases of the Departments of Defense and Energy, the unique character of certain facilities operated by such Departments.] *(A) An agency may exclude, from the energy performance requirement for a fiscal year established under subsection (a) and the energy management requirement established under subsection (b), any Federal building or collection of Federal buildings, if the head of the agency finds that—*

(i) compliance with those requirements would be impracticable;

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

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

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

(B) A finding of impracticability under subparagraph (A)(i) shall be based on—

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

(ii) the fact that the Federal building or collection of Federal buildings is used in the performance of a national security function.

(2) Each agency shall identify and list, in each report made under section 548(a), the Federal buildings designated by it for such exclusion. The Secretary shall review such findings for consistency with the [impracticability standards] *standards for exclusion* set forth in paragraph (1), and may within 90 days after receipt of the findings, reverse [a finding of impracticability] *the exclusion*. In the case of any such reversal, the agency shall comply with the energy consumption requirements for the building concerned.

(3) Not later than 180 days after the date of enactment of this paragraph, the Secretary shall issue guidelines that establish criteria for exclusions under paragraph (1).

* * * * * * *

(e) METERING OF ENERGY USE.—

(1) DEADLINE.—By October 1, 2010, in accordance with guidelines established by the Secretary under paragraph (2), all Federal buildings shall, for the purposes of efficient use of energy and reduction in the cost of electricity used in such buildings, be metered or submetered. Each agency shall use, to the maximum extent practicable, advanced meters or advanced metering devices that provide data at least daily and that measure at least hourly consumption of electricity in the Federal buildings of the agency. Such data shall be incorporated into existing Federal energy tracking systems and made available to Federal facility energy managers.

(2) GUIDELINES.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary, in consultation with the Department of Defense, the General Services Administration, representatives from the metering industry, utility industry, energy services industry, energy efficiency industry, national laboratories, universities, and Federal facility energy managers, shall establish guidelines for agencies to carry out paragraph (1).

(B) REQUIREMENTS FOR GUIDELINES.—The guidelines shall—

(i) take into consideration—

(I) the cost of metering and submetering and the reduced cost of operation and maintenance expected to result from metering and submetering;

(II) the extent to which metering and submetering are expected to result in increased potential for energy management, increased potential for energy savings and energy efficiency improvement, and cost and energy savings due to utility contract aggregation; and

(III) the measurement and verification protocols of the Department of Energy;

(ii) include recommendations concerning the amount of funds and the number of trained personnel necessary to gather and use the metering information to track and reduce energy use;

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

(iv) establish exclusions from the requirements specified in paragraph (1) based on the de minimis quantity of energy use of a Federal building, industrial process, or structure.

(3) PLAN.—No later than 6 months after the date guidelines are established under paragraph (2), in a report submitted by the agency under section 548(a), each agency shall submit to the Secretary a plan describing how the agency will implement the requirements of paragraph (1), including (A) how the agency will designate personnel primarily responsible for achieving the requirements and (B) demonstration by the agency, complete with documentation, of any finding that advanced meters or advanced metering devices, as defined in paragraph (1), are not practicable.

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SEC. 546. INCENTIVES FOR AGENCIES.

(a) * * *

* * * * * * *

(c) UTILITY INCENTIVE PROGRAMS.—(1) * * *

* * * * * * *

(6) Federal agencies are encouraged to participate in State or regional demand side reduction programs. The availability of such programs, including measures employing onsite generation, and the savings resulting from such participation, should be included in the evaluation of energy options for Federal facilities.

* * * * * * *

(e) RETENTION OF ENERGY SAVINGS.—An agency may retain any funds appropriated to that agency for energy expenditures, at buildings subject to the requirements of section 543(a) and (b), that are not made because of energy savings. Except as otherwise provided by law, such funds may be used only for energy efficiency or unconventional and renewable energy resources projects.

* * * * * * *

SEC. 548. REPORTS.

(a) * * *

(b) REPORTS TO *THE PRESIDENT AND* CONGRESS.—The Secretary shall report, not later than April 2 of each year, with respect to each fiscal year beginning after the date of the enactment of this subsection, to the *President and* Congress—

(1) * * *

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SEC. 550. SURVEY OF ENERGY SAVING POTENTIAL.

(a) * * *

* * * * * * *

(d) REPORT.—As soon as practicable after the completion of the project carried out under this section, the Secretary shall transmit a report of the findings and conclusions of the project to the Committee on Energy and Natural Resources and the Committee on Governmental Affairs of the Senate, the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives, and the agencies who own the buildings involved in such project. Such report shall include an analysis of the probability of each agency achieving [the 20 percent reduction goal established under section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)).] *each of the energy reduction goals established under section 543(a).*

* * * * * * *

SEC. 552. ENERGY AND WATER SAVINGS MEASURES IN CONGRESSIONAL BUILDINGS.

(a) IN GENERAL.—The Architect of the Capitol—

(1) shall develop, update, and implement a cost-effective energy conservation and management plan (referred to in this section as the "plan") for all facilities administered by the Congress (referred to in this section as "congressional buildings") to meet the energy performance requirements for Federal buildings established under section 543(a)(1); and

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

(b) PLAN REQUIREMENTS.—The plan shall include—

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

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

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

(4) the results of a study of the costs and benefits of installation of submetering in congressional buildings; and

(5) information packages and "how-to" guides for each Member and employing authority of Congress that detail simple, cost-effective methods to save energy and taxpayer dollars in the workplace.

(c) ANNUAL REPORT.—The Architect shall submit to Congress annually a report on congressional energy management and conservation programs required under this section that describes in detail—

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

(2) energy management and conservation projects; and

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

SEC. 553. FEDERAL PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

(a) DEFINITIONS.—In this section:

(1) ENERGY STAR PRODUCT.—The term "Energy Star product" means a product that is rated for energy efficiency under an Energy Star program.

(2) ENERGY STAR PROGRAM.—The term "Energy Star program" means the program established by section 324A of the Energy Policy and Conservation Act.

(3) EXECUTIVE AGENCY.—The term "executive agency" has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(4) FEMP DESIGNATED PRODUCT.—The term "FEMP designated product" means a product that is designated under the Federal Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

(b) PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.—

(1) REQUIREMENT.—To meet the requirements of an executive agency for an energy consuming product, the head of the executive agency shall, except as provided in paragraph (2), procure—

(A) an Energy Star product; or

(B) a FEMP designated product.

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

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

(B) no Energy Star product or FEMP designated product is reasonably available that meets the functional requirements of the executive agency.

(3) PROCUREMENT PLANNING.—The head of an executive agency shall incorporate into the specifications for all procurements involving energy consuming products and systems, including guide specifications, project specifications, and construction, renovation, and services contracts that include provision of energy consuming products and systems, and into the factors for the evaluation of offers received for the procurement, criteria for energy efficiency that are consistent with the criteria used for rating Energy Star products and for rating FEMP designated products.

(c) LISTING OF ENERGY EFFICIENT PRODUCTS IN FEDERAL CATALOGS.—Energy Star products and FEMP designated products shall be clearly identified and prominently displayed in any inventory or listing of products by the General Services Administration or the Defense Logistics Agency. The General Services Administration or the Defense Logistics Agency shall supply only Energy Star products or FEMP designated products for all product categories covered by the Energy Star program or the Federal Energy Management Program, except in cases where the agency ordering a product specifies in writing that no Energy Star product or FEMP designated product is available to meet the buyer's functional requirements, or that no Energy Star product or FEMP designated product is cost-effective for the intended application over the life of the product, taking energy cost savings into account.

(d) DESIGNATION OF ELECTRIC MOTORS.—In the case of electric motors of 1 to 500 horsepower, agencies shall select only premium efficient motors that meet a standard designated by the Secretary. The Secretary shall designate such a standard within 120 days after the date of the enactment of this section, after considering the

recommendations of associated electric motor manufacturers and energy efficiency groups.

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

* * * * * * *

TITLE VIII—ENERGY SAVINGS PERFORMANCE CONTRACTS

SEC. 801. AUTHORITY TO ENTER INTO CONTRACTS.

(a) IN GENERAL.—(1) * * *

* * * * * * *

(3)(A) In the case of an energy savings contract or energy savings performance contract providing for energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities, benefits ancillary to the purpose of such contract under paragraph (1) may include savings resulting from reduced costs of operation and maintenance at such replacement buildings or facilities when compared with costs of operation and maintenance at the buildings or facilities being replaced, established through a methodology set forth in the contract.

(B) Notwithstanding paragraph (2)(B), aggregate annual payments by an agency under an energy savings contract or energy savings performance contract referred to in subparagraph (A) may take into account (through the procedures developed pursuant to this section) savings resulting from reduced costs of operation and maintenance as described in that subparagraph.

* * * * * * *

[(c) SUNSET AND REPORTING REQUIREMENTS.—The authority to enter into new contracts under this section shall cease to be effective on October 1, 2003.]

* * * * * * *

SEC. 804. DEFINITIONS.

For purposes of this title, the following definitions apply:

(1) * * *

[(2) The term "energy savings" means a reduction in the cost of energy, from a base cost established through a methodology set forth in the contract, utilized in an existing federally owned building or buildings or other federally owned facilities as a result of—

[(A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services; or

[(B) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities.

[(3) The terms "energy savings contract" and "energy savings performance contract" mean a contract which provides for

the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy conservation measure or series of measures at one or more locations. Such contracts—

[(A) may provide for appropriate software licensing agreements; and

[(B) shall, with respect to an agency facility that is a public building as such term is defined in section 13(1) of the Public Buildings Act of 1959 (40 U.S.C. 612(1)), be in compliance with the prospectus requirements and procedures of section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606).

[(4) The term "energy conservation measures" has the meaning given such term in section 551(4).]

(2) The term "energy savings" means—

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

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

(ii) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities; or

(iii) the increased efficient use of existing water sources; or

(B) in the case of a replacement building or facility described in section 801(a)(3), a reduction in the cost of energy, from a base cost established through a methodology set forth in the contract, that would otherwise be utilized in one or more existing federally owned buildings or other federally owned facilities by reason of the construction and operation of the replacement building or facility.

(3) The terms "energy savings contract" and "energy savings performance contract" mean a contract which provides for—

(A) the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy or water conservation measure or series of measures at one or more locations; or

(B) energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities.

Such contracts shall, with respect to an agency facility that is a public building as such term is defined in section 13(1) of the Public Buildings Act of 1959 (40 U.S.C. 612(1)), be in compliance with the prospectus requirements and procedures of section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606).

(4) The term "energy or water conservation measure" means—

(A) an energy conservation measure, as defined in section 551(4) (42 U.S.C. 8259(4)); or

(B) a water conservation measure that improves water efficiency, is life cycle cost-effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities, or other related activities, not at a Federal hydroelectric facility.

SECTION 310 OF THE LEGISLATIVE BRANCH APPROPRIATIONS ACT, 1999

[SEC. 310. The Architect of the Capitol—

[(1) shall develop and implement a cost-effective energy conservation strategy for all facilities currently administered by Congress to achieve a net reduction of 20 percent in energy consumption on the congressional campus compared to fiscal year 1991 consumption levels on a Btu-per-gross-square-foot basis not later than 7 years after the enactment of this Act;

[(2) shall submit to Congress no later than 10 months after the enactment of this Act a comprehensive energy conservation and management plan which includes life cycle costs methods to determine the cost-effectiveness of proposed energy efficiency projects;

[(3) shall submit to the Committee on Appropriations in the Senate and the House of Representatives a request for the amount of appropriations necessary to carry out this section;

[(4) shall present to Congress annually a report on congressional energy management and conservation programs which details energy expenditures for each facility, energy management and conservation projects, and future priorities to ensure compliance with the requirements of this section;

[(5) shall perform energy surveys of all congressional buildings and update such surveys as needed;

[(6) shall use such surveys to determine the cost and payback period of energy and water conservation measures likely to achieve the required energy consumption levels;

[(7) shall install energy and water conservation measures that will achieve the requirements through previously determined life cycle cost methods and procedures;

[(8) may contract with nongovernmental entities and employ private sector capital to finance energy conservation projects and achieve energy consumption targets;

[(9) may develop innovative contracting methods that will attract private sector funding for the installation of energy-efficient and renewable energy technology to meet the requirements of this section;

[(10) may participate in the Department of Energy's Financing Renewable Energy and Efficiency (FREE Savings) contracts program for Federal Government facilities; and

[(11) shall produce information packages and "how-to" guides for each Member and employing authority of the Congress that detail simple, cost-effective methods to save energy and taxpayer dollars.]

ENERGY CONSERVATION AND PRODUCTION ACT

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TITLE III—ENERGY CONSERVATION STANDARDS FOR NEW BUILDINGS

* * * * * * *

SEC. 305. FEDERAL BUILDING ENERGY EFFICIENCY STANDARDS.

(a)(1) * * *

(2) The standards established under paragraph (1) shall—

(A) contain energy saving and renewable energy specifications that meet or exceed the energy saving and renewable energy specifications of [CABO Model Energy Code, 1992] *the 2000 International Energy Conservation Code* (in the case of residential buildings) or ASHRAE Standard 90.1–1989 (in the case of commercial buildings);

* * * * * * *

(3) REVISED FEDERAL BUILDING ENERGY EFFICIENCY PERFORMANCE STANDARDS.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Secretary of Energy shall establish, by rule, revised Federal building energy efficiency performance standards that require that, if cost-effective, for new Federal buildings—

(i) such buildings be designed so as to achieve energy consumption levels at least 30 percent below those of the most recent ASHRAE Standard 90.1 or the most recent version of the International Energy Conservation Code, as appropriate; and

(ii) sustainable design principles are applied to the siting, design, and construction of all new and replacement buildings.

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

(C) STATEMENT ON COMPLIANCE OF NEW BUILDINGS.—In the budget request of the Federal agency for each fiscal year and each report submitted by the Federal agency under section 548(a) of the National Energy Conservation Policy Act (42 U.S.C. 8258(a)), the head of each Federal agency shall include—

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

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

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TITLE IV—ENERGY CONSERVATION AND RENEWABLE-RESOURCE ASSISTANCE FOR EXISTING BUILDINGS

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PART A—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

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AUTHORIZATION OF APPROPRIATIONS

SEC. 422. For the purpose of carrying out the weatherization program under this part, there are authorized to be appropriated [for fiscal years 1999 through 2003 such sums as may be necessary] *$325,000,000 for fiscal year 2004, $400,000,000 for fiscal year 2005, and $500,000,000 for fiscal year 2006.*

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SOLID WASTE DISPOSAL ACT

TITLE II—SOLID WASTE DISPOSAL

Subtitle A—General Provisions

SHORT TITLE AND TABLE OF CONTENTS

SEC. 1001. This title (hereinafter in this title referred to as "this Act"), together with the following table of contents, may be cited as the "Solid Waste Disposal Act":

Subtitle A—General Provisions

Sec. 1001. Short title and table of contents.

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Subtitle F—Federal Responsibilities

Sec. 6001. Application of Federal, State, and local law to Federal facilities.

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

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Subtitle F—Federal Responsibilities

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INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE

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

(1) AGENCY HEAD.—The term "agency head" means—

(A) the Secretary of Transportation; and

(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

(2) CEMENT OR CONCRETE PROJECT.—The term "cement or concrete project" means a project for the construction or mainte-

nance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

(A) involves the procurement of cement or concrete; and

(B) is carried out in whole or in part using Federal funds.

(3) RECOVERED MINERAL COMPONENT.—The term "recovered mineral component" means—

(A) ground granulated blast furnace slag;

(B) coal combustion fly ash; and

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

(b) IMPLEMENTATION OF REQUIREMENTS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this section (including guidelines under section 6002) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

(2) PRIORITY.—In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

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

(c) FULL IMPLEMENTATION STUDY.—

(1) IN GENERAL.—The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

(2) MATTERS TO BE ADDRESSED.—The study shall—

(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution;

(B) identify all barriers in procurement requirements to fuller realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral com-

ponents historically have not been used or have been used only minimally;

(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

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

(3) REPORT.—Not later than 30 months after the date of enactment of this section, the Administrator shall submit to the Committee on Appropriations and Committee on Environment and Public Works of the Senate and the Committee on Appropriations, Committee on Energy and Commerce, and Committee on Transportation and Infrastructure of the House of Representatives a report on the study.

(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, within 1 year of the release of the report in accordance with subsection (c)(3), take additional actions authorized under this Act to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—

(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and

(2) eliminate barriers identified under subsection (c).

(e) EFFECT OF SECTION.—Nothing in this section affects the requirements of section 6002 (including the guidelines and specifications for implementing those requirements).

* * * * * * *

SECTION 2602 OF THE LOW-INCOME HOME ENERGY ASSISTANCE ACT OF 1981

HOME ENERGY GRANTS AUTHORIZED

SEC. 2602. (a) * * *

(b) There are authorized to be appropriated to carry out the provisions of this title (other than section 2607A), $2,000,000,000 for each of fiscal years 1995 through 1999, such sums as may be necessary for each of fiscal years 2000 and 2001, and $2,000,000,000 for [each of fiscal years 2002 through 2004] *each of fiscal years 2002 and 2003, and $3,400,000,000 for each of fiscal years 2004 through 2006*. The authorizations of appropriations contained in this subsection are subject to the program year provisions of subsection (c).

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ENERGY POLICY AND CONSERVATION ACT

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TITLE I—MATTERS RELATED TO DOMESTIC SUPPLY AVAILABILITY

* * * * * * *

PART B—STRATEGIC PETROLEUM RESERVE

* * * * * * *

[SEC. 166. There are authorized to be appropriated such sums as may be necessary to implement this part, to remain available until expended.]

AUTHORIZATION OF APPROPRIATIONS

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

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PART D—NORTHEAST HOME HEATING OIL RESERVE

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CONDITIONS FOR RELEASE; PLAN

SEC. 183. (a) * * *

(b) DEFINITION.—For purposes of this section a "dislocation in the heating oil market" shall be deemed to occur only when—

(1) The price differential between crude oil, as reflected in an industry daily publication such as "Platt's Oilgram Price Report" or "Oil Daily" and No. 2 heating oil, as reported in the Energy Information Administration's retail price data for the Northeast, increases by more tan 60 percent over its 5 year rolling average for the months of mid-October through March *(considered as a heating season average)*, and continues for 7 consecutive days; and

* * * * * * *

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 186. There are authorized to be appropriated such sums as may be necessary to implement this part.

[PART E—EXPIRATION

[EXPIRATION

[SEC. 191. Except as otherwise provided in title I, all authority under any provision of title I (other than a provision of such title amending another law) and any rule, regulation, or order issued pursuant to such authority, shall expire at midnight, September 30, 2008, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, September 30, 2008.]

TITLE II—STANDBY ENERGY AUTHORITIES

* * * * * * *

PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS

SEC. 273. SUMMER FILL AND FUEL BUDGETING PROGRAMS.

(a) * * *

* * * * * * *

[(e) INAPPLICABILITY OF EXPIRATION PROVISION.—Section 281 does not apply to this section.

[PART D—EXPIRATION

[SEC. 281. Except as otherwise provided in title II, all authority under any provision of title II (other than a provision of such title amending another law) and any rule, regulation, or order issued pursuant to such authority, shall expire at midnight, September 30, 2008, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, September 30, 2008.]

TITLE III—IMPROVING ENERGY EFFICIENCY

* * * * * * *

PART B—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS OTHER THAN AUTOMOBILES

DEFINITIONS

SEC. 321. For purposes of this part:

(1) * * *

* * * * * * *

(32) The term "battery charger" means a device that charges batteries for consumer products.

(33) The term "commercial refrigerator, freezer and refrigerator-freezer" means a refrigerator, freezer or refrigerator-freezer that—

(A) is not a consumer product regulated under this Act; and

(B) incorporates most components involved in the vapor-compression cycle and the refrigerated compartment in a single package.

(34) The term "external power supply" means an external power supply circuit that is used to convert household electric current into either DC current or lower-voltage AC current to operate a consumer product.

(35) The term "illuminated exit sign" means a sign that—

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

(B) consists of—

(i) an electrically powered integral light source that illuminates the legend "EXIT" and any directional indicators; and

(ii) provides contrast between the legend, any directional indicators, and the background.

(36)(A) Except as provided in subparagraph (B), the term "low-voltage dry-type transformer" means a transformer that—

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

(ii) is air-cooled;

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

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

(B) The term "low-voltage dry-type transformer" does not include—

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

(ii) transformers that are designed to be used in a special purpose application, such as transformers commonly known as drive transformers, rectifier transformers, autotransformers, Uninterruptible Power System transformers, impedance transformers, harmonic transformers, regulating transformers, sealed and nonventilating transformers, machine tool transformers, welding transformers, grounding transformers, or testing transformers; or

(iii) any transformer not listed in clause (ii) that is excluded by the Secretary by rule because the transformer is designed for a special application and the application of standards to the transformer would not result in significant energy savings.

(37) The term "standby mode" means the lowest amount of electric power used by a household appliance when not performing its active functions, as defined on an individual product basis by the Secretary.

(38) The term "torchiere" means a portable electric lamp with a reflector bowl that directs light upward so as to give indirect illumination.

(39) The term "transformer" means a device consisting of two or more coils of insulated wire that transfers alternating current by electromagnetic induction from one coil to another to change the original voltage or current value.

(40) The term "unit heater" means a self-contained fan-type heater designed to be installed within the heated space, except that such term does not include a warm air furnace.

(41) The term "traffic signal module" means a standard 8-inch (200mm) or 12-inch (300mm) traffic signal indication, consisting of a light source, a lens, and all other parts necessary for operation, that communicates movement messages to drivers through red, amber, and green colors.

* * * * * * *

TEST PROCEDURES

SEC. 323. (a) * * *

(b) AMENDED AND NEW PROCEDURES.—(1) * * *

* * * * * * *

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

(10) Test procedures for low voltage dry-type distribution transformers shall be based on the 'Standard Test Method for Measuring the Energy Consumption of Distribution Transformers' prescribed by the National Electrical Manufacturers Association (NEMA TP 2–1998). The Secretary may review and revise this test procedure based on future revisions to such standard test method.

(11) Test procedures for traffic signal modules shall be based on the test method used under the Energy Star program of the Environmental Protection Agency for traffic signal modules, as in effect on the date of enactment of this paragraph.

* * * * * * *

(f) ADDITIONAL CONSUMER AND COMMERCIAL PRODUCTS.—The Secretary shall within 24 months after the date of enactment of this subsection prescribe testing requirements for suspended ceiling fans, refrigerated bottled or canned beverage vending machines, commercial unit heaters, and commercial refrigerators, freezers and refrigerator-freezers. Such testing requirements shall be based on existing test procedures used in industry to the extent practical and reasonable. In the case of suspended ceiling fans, such test procedures shall include efficiency at both maximum output and at an output no more than 50 percent of the maximum output.

LABELING

SEC. 324. (a) IN GENERAL.—(1) * * *
(2)(A) * * *

* * * * * * *

(F) Not later than 3 months after the date of enactment of this subparagraph, the Commission shall initiate a rulemaking to consider the effectiveness of the current consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency and to consider changes to the labeling rules that would improve the effectiveness of consumer product labels. Such rulemaking shall be completed within 2 years after the date of enactment of this subparagraph.

* * * * * * *

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

* * * * * * *

SEC. 324A. ENERGY STAR PROGRAM.

There is established at the Department of Energy and the Environmental Protection Agency a program to identify and promote energy-efficient products and buildings in order to reduce energy consumption, improve energy security, and reduce pollution through labeling of and other forms of communication about products and buildings that meet the highest energy efficiency standards. Responsibilities under the program shall be divided between the Department of Energy and the Environmental Protection Agency consistent with the terms of agreements between the two agencies. The Administrator and the Secretary shall—

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

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

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

(4) solicit the comments of interested parties in establishing a new Energy Star product category or in revising a product category, and upon adoption of a new or revised product category provide an explanation of the decision that responds to significant public comments.

ENERGY CONSERVATION STANDARDS

SEC. 325. (a) * * *

* * * * * * *

(u) STANDBY MODE ELECTRIC ENERGY CONSUMPTION.—

(1) INITIAL RULEMAKING.—(A) The Secretary shall, within 18 months after the date of enactment of this subsection, prescribe by notice and comment, definitions of standby mode and test procedures for the standby mode power use of battery chargers and external power supplies. In establishing these test procedures, the Secretary shall consider, among other factors, exist-

ing test procedures used for measuring energy consumption in standby mode and assess the current and projected future market for battery chargers and external power supplies. This assessment shall include estimates of the significance of potential energy savings from technical improvements to these products and suggested product classes for standards. Prior to the end of this time period, the Secretary shall hold a scoping workshop to discuss and receive comments on plans for developing energy conservation standards for standby mode energy use for these products.

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

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

(ii) will result in significant overall annual energy savings, considering both standby mode and other operating modes.

(2) DESIGNATION OF ADDITIONAL COVERED PRODUCTS.—(A) Not later than 180 days after the date of enactment of this subsection, the Secretary shall publish for public comment and public hearing a notice to determine whether any noncovered products should be designated as covered products for the purpose of instituting a rulemaking under this section to determine whether an energy conservation standard restricting standby mode energy consumption, should be promulgated; except that any restriction on standby mode energy consumption shall be limited to major sources of such consumption.

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

(i) standby mode power consumption compared to overall product energy consumption; and

(ii) the priority and energy savings potential of standards which may be promulgated under this subsection compared to other required rulemakings under this section and the available resources of the Department to conduct such rulemakings.

(C) Not later than 1 year after the date of enactment of this subsection, the Secretary shall issue a determination of any new covered products for which he intends to institute rulemakings on standby mode pursuant to this section and he shall state the dates by which he intends to initiate those rulemakings.

(3) REVIEW OF STANDBY ENERGY USE IN COVERED PRODUCTS.—In determining pursuant to section 323 whether test procedures and energy conservation standards pursuant to this section should be revised, the Secretary shall consider for covered products which are major sources of standby mode energy consumption whether to incorporate standby mode into such test procedures and energy conservation standards, taking into account, among other relevant factors, the criteria for non-cov-

ered products in subparagraph (B) of paragraph (2) of this subsection.

(4) RULEMAKING FOR STANDBY MODE.—(A) Any rulemaking instituted under this subsection or for covered products under this section which restricts standby mode power consumption shall be subject to the criteria and procedures for issuing energy conservation standards set forth in this section and the criteria set forth in subparagraph (B) of paragraph (2) of this subsection.

(B) No standard can be proposed for new covered products or covered products in a standby mode unless the Secretary has promulgated applicable test procedures for each product pursuant to section 323.

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

(5) EFFECTIVE DATE.—Any standard promulgated under this subsection shall be applicable to products manufactured or imported 3 years after the date of promulgation.

(6) VOLUNTARY PROGRAMS TO REDUCE STANDBY MODE ENERGY USE.—The Secretary and the Administrator shall collaborate and develop programs, including programs pursuant to section 324A (relating to Energy Star Programs) and other voluntary industry agreements or codes of conduct, which are designed to reduce standby mode energy use.

(v) SUSPENDED CEILING FANS, VENDING MACHINES, UNIT HEATERS, AND COMMERCIAL REFRIGERATORS, FREEZERS AND REFRIGERATOR-FREEZERS.—The Secretary shall within 24 months after the date on which testing requirements are prescribed by the Secretary pursuant to section 323(f), prescribe, by rule, energy conservation standards for suspended ceiling fans, refrigerated bottled or canned beverage vending machines, unit heaters, and commercial refrigerators, freezers and refrigerator-freezers. In establishing standards under this subsection, the Secretary shall use the criteria and procedures contained in subsections (l) and (m). Any standard prescribed under this subsection shall apply to products manufactured 3 years after the date of publication of a final rule establishing such standard.

(w) ILLUMINATED EXIT SIGNS.—Illuminated exit signs manufactured on or after January 1, 2005 shall meet the Version 2.0 Energy Star Program performance requirements for illuminated exit signs prescribed by the Environmental Protection Agency

(x) TORCHIERES.—Torchieres manufactured on or after January 1, 2005—

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

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

(y) LOW VOLTAGE DRY-TYPE TRANSFORMERS.—The efficiency of low voltage dry-type transformers manufactured on or after January 1, 2005 shall be the Class I Efficiency Levels for low voltage dry-type transformers specified in Table 4–2 of the "Guide for Determining Energy Efficiency for Distribution Transformers" published by the National Electrical Manufacturers Association (NEMA TP–1–1996).

(z) TRAFFIC SIGNAL MODULES.—Traffic signal modules manufactured on or after January 1, 2006 shall meet the performance requirements used under the Energy Star program of the Environmental Protection Agency for traffic signals, as in effect on the date of enactment of this paragraph, and shall be installed with compatible, electrically-connected signal control interface devices and conflict monitoring systems.

(aa) EFFECTIVE DATE OF SECTION 327.—The provisions of section 327 shall apply to products for which standards are set in subsections (v) through (z) of this section after the effective date for such standards.

* * * * * * *

CONSUMER EDUCATION

SEC. 337. (a) * * *

* * * * * * *

(c) HVAC MAINTENANCE.—(1) For the purpose of ensuring that installed air conditioning and heating systems operate at their maximum rated efficiency levels, the Secretary shall, within 180 days of the date of enactment of this subsection, carry out a program to educate homeowners and small business owners concerning the energy savings resulting from properly conducted maintenance of air conditioning, heating, and ventilating systems.

(2) The Secretary shall carry out the program in cooperation with the Administrator of the Environmental Protection Agency and such other entities as the Secretary considers appropriate, including industry trade associations, industry members, and energy efficiency organizations.

(d) SMALL BUSINESS EDUCATION AND ASSISTANCE.—The Administrator of the Small Business Administration, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall develop and coordinate a Government-wide program, building on the existing Energy Star for Small Business Program, to assist small business to become more energy efficient, understand the cost savings obtainable through efficiencies, and identify financing options for energy efficiency upgrades. The Secretary and the Administrator shall make the program information available directly to small businesses and through other Federal agencies, including the Federal Emergency Management Agency, and the Department of Agriculture.

* * * * * * *

PART D—STATE ENERGY CONSERVATION PLANS

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STATE ENERGY CONSERVATION PLANS

SEC. 362. (a) * * *

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(g) The Secretary shall, at least once every 3 years, invite the Governor of each State to review and, if necessary, revise the energy conservation plan of such State submitted under subsection (b) or (e). Such reviews should consider the energy conservation plans of other

States within the region, and identify opportunities and actions carried out in pursuit of common energy conservation goals.

* * * * * * *

[STATE ENERGY EFFICIENCY GOALS

[SEC. 364. Each State energy conservation plan with respect to which assistance is made available under this part on or after October 1, 1991, shall contain a goal, consisting of an improvement of 10 percent or more in the efficiency of use of energy in the State concerned in the calendar year 2000 as compared to the calendar year 1990, and may contain interim goals.]

STATE ENERGY EFFICIENCY GOALS

SEC. 364. Each State energy conservation plan with respect to which assistance is made available under this part on or after the date of enactment of the Energy Policy Act of 2003 shall contain a goal, consisting of an improvement of 25 percent or more in the efficiency of use of energy in the State concerned in calendar year 2010 as compared to calendar year 1990, and may contain interim goals.

GENERAL PROVISIONS

SEC. 365. (a) * * *

* * * * * * *

(f) For the purpose of carrying out this part, there are authorized to be appropriated [for fiscal years 1999 through 2003 such sums as may be necessary] *$100,000,000 for each of the fiscal years 2004 and 2005 and $125,000,000 for fiscal year 2006*.

* * * * * * *

PART J—ENCOURAGING THE USE OF ALTERNATIVE FUELS

SEC. 400AA. ALTERNATIVE FUEL USE BY LIGHT DUTY FEDERAL VEHICLES.

(a) DEPARTMENT OF ENERGY PROGRAM.—(1) * * *

* * * * * * *

(3)(A) * * *

* * * * * * *

[(E) Dual fueled vehicles acquired pursuant to this section shall be operated on alternative fuels unless the Secretary determines that operation on such alternative fuels is not feasible.]

(E)(i) Dual fueled vehicles acquired pursuant to this section shall be operated on alternative fuels unless the Secretary determines that an agency needs a waiver of such requirement for vehicles in the fleet of the agency in a particular geographic area where—

(I) the alternative fuel otherwise required to be used in the vehicle is not reasonably available to retail purchasers of the fuel, as certified to the Secretary by the head of the agency; or

(II) the cost of the alternative fuel otherwise required to be used in the vehicle is unreasonably more expensive compared to gasoline, as certified by the head of the agency.

(ii) The Secretary shall monitor compliance with this subparagraph by all such fleets and shall report annually to the Congress on the extent to which the requirements of this subparagraph are being achieved. The report shall include information on annual reductions achieved of petroleum-based fuels and the problems, if any, encountered in acquiring alternative fuels.

* * * * * * *

SECTION 10 OF THE ALASKA NATURAL GAS TRANSPORTATION ACT OF 1976

JUDICIAL REVIEW

SEC. 10. (a) * * *

* * * * * * *

(c)(1) * * *

(2) The United States Court of Appeals for the District of Columbia Circuit shall set any action brought under this section for expedited consideration, taking into account the national interest described in section 2.

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SECTION 1421 OF THE SAFE DRINKING WATER ACT

REGULATIONS FOR STATE PROGRAMS

SEC. 1421. (a) * * *

* * * * * * *

(d) For purposes of this part:

[(1) The term "underground injection" means the subsurface emplacement of fluids by well injection. Such term does not include the underground injection of natural gas for purposes of storage.]

(1) The term "underground injection"—

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

(B) excludes—

(i) the underground injection of natural gas for purposes of storage; and

(ii) the underground injection of fluids or propping agents pursuant to hydraulic fracturing operations related to oil or gas production activities.

* * * * * * *

SECTION 502 OF THE FEDERAL WATER POLLUTION CONTROL ACT

GENERAL DEFINITIONS

SEC. 502. Except as otherwise specifically provided, when used in this Act:

(1) * * *

* * * * * * *

(24) The term "oil and gas exploration and production" means all field operations necessary for both exploration and production of oil and gas, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such activities may be considered construction activities.

FEDERAL POWER ACT

PART I

* * * * * * *

SEC. 3. The words defined in this section shall have the following meanings for purpose of this Act, to wit:

(1) * * *

* * * * * * *

(17)(A) * * *

* * * * * * *

[(C) "qualifying small power production facility" means a small power production facility—

[(i) which the Commission determines, by rule, meets such requirements (including requirements respecting fuel use, fuel efficiency, and reliability) as the Commission may, by rule, prescribe; and

[(ii) which is owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities);]

(C) "qualifying small power production facility" means a small power production facility that the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe.

* * * * * * *

(18)(A) * * *

[(B) "qualifying cogeneration facility" means a cogeneration facility which—

[(i) the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe; and

[(ii) is owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities);]

(B) "qualifying cogeneration facility" means a cogeneration facility that the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe.

* * * * * * *

SEC. 4. The Commission is hereby authorized and empowered—

(a) * * *

* * * * * * *

(e) To issue licenses to citizens of the United States, or to any association of such citizens, or to any corporation organized under the laws of the United States or any State thereof, or to any State or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from or in any of the streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam, except as herein provided: *Provided,* That licenses shall be issued within any reservation only after a finding by the Commission that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation. *The license applicant shall be entitled to a determination on the record, after opportunity for an agency trial-type hearing of any disputed issues of material fact, with respect to such conditions. Provided further,* That no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting navigation have been approved by the Chief of Engineers and the Secretary of the Army. Whenever the contemplated improvement is, in the judgment of the Commission, desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, a finding to that effect shall be made by the Commission and shall become a part of the records of the Commission: *Provided further,* That in case the Commission shall find that any Government dam may be advantageously used by the United States for public purposes in addition to navigation, no license therefor shall be issued until two years after it shall have reported to Congress the facts and conditions relating thereto, except that this provision shall not apply to any Government dam constructed prior to June 10, 1920: *And provided further,* That upon the filing of any application for a license which has not been preceded by a preliminary permit under subsection (f) of this section, notice shall be given and published as required by the proviso of said subsection. In deciding whether to issue any license under this Part for any project, the Commission, in addition to the power and development purposes for which licenses are issued, shall give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational op-

portunities, and the preservation of other aspects of environmental quality.

* * * * * * *

SEC. 18. The Commission shall require the construction, maintenance, and operation by a licensee at its own expense of such lights and signals as may be directed by the Secretary of the Department in which the Coast Guard is operating, and such fishways as may be prescribed by the Secretary of Commerce. *The license applicant shall be entitled to a determination on the record, after opportunity for an agency trial-type hearing of any disputed issues of material fact, with respect to such fishways.* The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure built under the provisions of this Act, whether at the expense of a licensee hereunder or of the United States, shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure as may be made from time to time by the Secretary of the Army, and for willful failure to comply with any such rule or regulation such licensee shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section 316 hereof.

* * * * * * *

SEC. 33. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.

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

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

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

(B) will either—

(i) cost less to implement; or

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

as compared to the condition initially deemed necessary by the Secretary.

(3) The Secretary shall submit into the public record of the Commission proceeding with any condition under section 4(e) or alternative condition it accepts under this section, a written statement explaining the basis for such condition, and reason for not accepting any alternative condition under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the condition adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of

other aspects of environmental quality); based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary's decision.

(4) Nothing in this section shall prohibit other interested parties from proposing alternative conditions.

(5) If the Secretary does not accept an applicant's alternative condition under this section, and the Commission finds that the Secretary's condition would be inconsistent with the purposes of this part, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a non-binding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will not adequately protect the reservation. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.

(b) ALTERNATIVE PRESCRIPTIONS.—(1) Whenever the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under section 18, the license applicant or licensee may propose an alternative to such prescription to construct, maintain, or operate a fishway. The alternative may include a fishway or an alternative to a fishway.

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

(A) will be no less protective of the fish resources than the fishway initially prescribed by the Secretary; and

(B) will either—

(i) cost less to implement; or

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

as compared to the fishway initially deemed necessary by the Secretary.

(3) The Secretary concerned shall submit into the public record of the Commission proceeding with any prescription under section 18 or alternative prescription it accepts under this section, a written statement explaining the basis for such prescription, and reason for not accepting any alternative prescription under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the condition adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality); based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual in-

formation available to the Secretary and relevant to the Secretary's decision.

(4) Nothing in this section shall prohibit other interested parties from proposing alternative prescriptions.

(5) If the Secretary concerned does not accept an applicant's alternative prescription under this section, and the Commission finds that the Secretary's prescription would be inconsistent with the purposes of this part, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a non-binding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will not adequately protect the fish resources. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.

PART II—REGULATION OF ELECTRIC UTILITY COMPANIES ENGAGED IN INTERSTATE COMMERCE

DECLARATION OF POLICY; APPLICATION OF PART; DEFINITIONS

SECTION 201. (a) * * *

(b)(1) The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but except as provided in paragraph (2) shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this Part and the Part next following, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.

(2) The provisions of [sections 210] *sections 206(f), 210*, 211, [and 212] *212, 215, 216, 217, 218, 219, and 220* shall apply to the entities described in such provisions, and such entities shall be subject to the jurisdiction of the Commission for purposes of carrying out such provisions and for purposes of applying the enforcement authorities of this Act with respect to such provisions. Compliance with any order of the Commission under the provisions of [section 210] *section 206(f), 210,* or 211, shall not make an electric utility or other entity subject to the jurisdiction of the Commission for any purposes other than the purposes specified in the preceding sentence.

* * * * * * *

(e) The term "public utility" when used in this Part or in the Part next following means any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part (other than facilities subject to such jurisdiction solely by reason of [sec-

tion 210] *section 206(f), 210*, 211, [or 212] *212, 215, 216, 217, 218, 219, or 220*).

* * * * * * *

(g) BOOKS AND RECORDS.—(1) * * *

* * * * * * *

(5) As used in this subsection the terms "affiliate", "associate company", "electric utility company", "holding company", "subsidiary company", and "exempt wholesale generator" shall have the same meaning as when used in the Public Utility Holding Company Act of [1935] *2003*.

* * * * * * *

FIXING RATES AND CHARGES; DETERMINATION OF COST OF PRODUCTION OR TRANSPORTATION

SEC. 206. (a) Whenever the Commission, after a [hearing had] *hearing held* upon its own motion or upon complaint, shall find that any rate, charges, or classification demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.

(b) Whenever the Commission institutes a proceeding under this section, the Commission shall establish a refund effective date. In the case of a proceeding instituted on complaint, the refund effective date shall not be earlier than [the date 60 days after the filing of such complaint nor later than 5 months after the expiration of such 60-day period] *the date of the filing of such complaint nor later than 5 months after the filing of such complaint*. In the case of a proceeding instituted by the Commission on its own motion, the refund effective date shall not be earlier than the date [60 days after] *of* the publication by the Commission of notice of its intention to initiate such proceeding nor later than 5 months after the [expiration of such 60-day period] *publication date*. Upon institution of a proceeding under this section, the Commission shall give to the decision of such proceeding the same preference as provided under section 205 of this Act and otherwise act as speedily as possible. If no final decision is rendered by the *date 60 days after the* refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. In any proceeding under this section, the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant. At the conclusion of any proceeding under this section, the Commission may order [the public utility to make] refunds of any amounts paid, for the period subsequent to the refund effective date through a date fifteen

months after such refund effective date, in excess of those which would have been paid under the just and reasonable rate, charge, classification, rule, regulation, practice, or contract which the Commission orders to be thereafter observed and in force: *Provided,* That if the proceeding is not concluded within fifteen months after the refund effective date and if the Commission determines at the conclusion of the proceeding that the proceeding was not resolved within the fifteen-month period primarily because of dilatory behavior by the public utility, the Commission may order refunds of any or all amounts paid for the period subsequent to the refund effective date and prior to the conclusion of the proceeding. The refunds shall be made, with interest, to those persons who have paid those rates or charges which are the subject of the proceeding.

* * * * * * *

(e)(1) If an entity that is not a public utility (including an entity referred to in section 201(f)) voluntarily makes a spot market sale of electric energy and such sale violates Commission rules in effect at the time of such sale, such entity shall be subject to the Commission's refund authority under this section with respect to such violation.

(2) This section shall not apply to any entity that is either—

(A) an entity described in section 201(f); or

(B) a rural electric cooperative

that does not sell more than 4,000,000 megawatt hours of electricity per year.

(3) For purposes of this subsection, the term "spot market sale" means an agreement for the sale of electric energy at wholesale in interstate commerce that is for 24 hours or less and that is entered into the day of, or the day prior to, delivery.

* * * * * * *

SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES.

(a) IN GENERAL.—Subject to section 212(h), the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

(1) at rates that are comparable to those that the unregulated transmitting utility charges itself, and

(2) on terms and conditions (not relating to rates) that are comparable to those under which such unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential.

(b) EXEMPTIONS.—

(1) IN GENERAL.—The Commission shall exempt from any rule or order under this subsection any unregulated transmitting utility that—

(A)(i) sells no more than 4,000,000 megawatt hours of electricity per year; and

(ii) is a distribution utility; or

(B) does not own or operate any transmission facilities that are necessary for operating an interconnected transmission system (or any portion thereof); or

(C) meets other criteria the Commission determines to be in the public interest.

(2) LOCAL DISTRIBUTION.— The requirements of subsection (a) shall not apply to facilities used in local distribution.

(c) RATE CHANGING PROCEDURES.—The rate changing procedures applicable to public utilities under subsections (c) and (d) of section 205 are applicable to unregulated transmitting utilities for purposes of this section.

(d) REMAND.—In exercising its authority under paragraph (1), the Commission may remand transmission rates to an unregulated transmitting utility for review and revision where necessary to meet the requirements of subsection (a).

(e) SECTION 211 REQUESTS.—The provision of transmission services under subsection (a) does not preclude a request for transmission services under section 211.

(f) DEFINITIONS.—For purposes of this section—

(1) The term "unregulated transmitting utility" means an entity that—

(A) owns or operates facilities used for the transmission of electric energy in interstate commerce, and

(B) is either an entity described in section 201(f) or a rural electric cooperative.

(2) The term "distribution utility" means an unregulated transmitting utility that serves at least ninety percent of its electric customers at retail.

* * * * * * *

SEC. 214. SALES BY EXEMPT WHOLESALE GENERATORS.

No rate or charge received by an exempt wholesale generator for the sale of electric energy shall be lawful under section 205 if, after notice and opportunity for hearing, the Commission finds that such rate or charge results from the receipt of any undue preference or advantage from an electric utility which is an associate company or an affiliate of the exempt wholesale generator. For purposes of this section, the terms "associate company" and "affiliate" shall have the same meaning as provided in section 2(a) of the Public Utility Holding Company Act of [1935] *2003*.

SEC. 215. TRANSMISSION INFRASTRUCTURE IMPROVEMENT RULEMAKING.

(a) RULEMAKING REQUIREMENT.—Within 1 year after the enactment of this section, the Commission shall establish, by rule, incentive-based (including but not limited to performance-based) transmission rate treatments to promote capital investment in the enlargement and improvement of facilities for the transmission of electric energy in interstate commerce as appropriate to—

(1) promote economically efficient transmission and generation of electricity;

(2) provide a return on equity that attracts new investment in transmission facilities and reasonably reflects the risks taken by public utilities in restructuring control of transmission assets; and

(3) encourage deployment of transmission technologies and other measures to increase the capacity and efficiency of existing transmission facilities and improve the operation of such facilities.

The Commission may, from time to time, revise such rule.

(b) FUNDING OF CERTAIN FACILITIES.—The rule promulgated pursuant to this section shall provide that, upon the request of a regional transmission organization or other Commission-approved transmission organization, new transmission facilities that increase the transfer capability of the transmission system shall be participant funded. In such rules, the Commission shall also provide guidance as to what types of facilities may be participant funded.

(c) JUST AND REASONABLE RATES.—With respect to any transmission rate filed with the Commission on or after the effective date of the rule promulgated under this section, the Commission shall, in its review of such rate under sections 205 and 206, apply the rules adopted pursuant to this section, including any revisions thereto. Nothing in this section shall be construed to override, weaken, or conflict with the procedural and other requirements of this part, including the requirement of sections 205 and 206 that all rates, charges, terms, and conditions be just and reasonable and not unduly discriminatory or preferential.

SEC. 216. SITING OF INTERSTATE ELECTRICAL TRANSMISSION FACILITIES.

(a) TRANSMISSION STUDIES.—Within one year after the enactment of this section, and every 3 years thereafter, the Secretary of Energy shall conduct a study of electric transmission congestion. After considering alternatives and recommendations from interested parties the Secretary shall issue a report, based on such study, which may designate one or more geographic areas experiencing electric energy transmission congestion as "interstate congestion areas".

(b) CONSTRUCTION PERMIT.—The Commission is authorized, after notice and an opportunity for hearing, to issue permits for the construction or modification of electric transmission facilities in interstate congestion areas designated by the Secretary under subsection (a) if the Commission makes each of the following findings:

(1) A finding that—

(A) the State in which the transmission facilities are to be constructed or modified is without authority to approve the siting of the facilities, or

(B) a State commission or body in the State in which the transmission facilities are to be constructed or modified that has authority to approve the siting of the facilities has withheld approval, conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission congestion in interstate commerce and is otherwise not economically feasible, or delayed final approval for more than one year after the filing of an application seeking approval or one year after the designation of the relevant interstate congestion area, whichever is later.

(2) A finding that the facilities to be authorized by the permit will be used for the transmission of electric energy in interstate commerce.

(3) A finding that the proposed construction or modification is consistent with the public interest.

(4) A finding that the proposed construction or modification will significantly reduce transmission congestion in interstate commerce.

The Commission may include in a permit issued under this section conditions consistent with the public interest.

(c) PERMIT APPLICATIONS.—Permit applications under subsection (b) shall be made in writing to the Commission and verified under oath. The Commission shall issue rules setting forth the form of the application, the information it is to contain, and the manner of service of notice of the permit application upon interested persons.

(d) COMMENTS.—In any proceeding before the Commission under subsection (b), the Commission shall afford each State in which a transmission facility covered by the permit is or will be located, each affected Federal agency and Indian tribe, private property owners, and other interested persons, a reasonable opportunity to present their views and recommendations with respect to the need for and impact of a facility covered by the permit.

(e) RIGHTS-OF-WAY.—In the case of a permit under subsection (b) for electric transmission facilities to be located on property other than property owned by the United States or a State, if the permit holder cannot acquire by contract, or is unable to agree with the owner of the property to the compensation to be paid for, the necessary right-of-way to construct or modify such transmission facilities, the permit holder may acquire the right-of-way by the exercise of the right of eminent domain in the district court of the United States for the district in which the property concerned is located, or in the appropriate court of the State in which the property is located. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated.

(f) STATE LAW.—Nothing in this section shall preclude any person from constructing any transmission facilities pursuant to State law.

(g) COMPLIANCE WITH OTHER LAWS.—Commission action under this section shall be subject to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all other applicable Federal laws.

(h) COMPENSATION.—Any exercise of eminent domain authority pursuant to this section shall be considered a taking of private property for which just compensation is due. Just compensation shall be an amount equal to the full fair market value of the property taken on the date of the exercise of eminent domain authority, except that the compensation shall exceed fair market value if necessary to make the landowner whole for decreases in the value of any portion of the land not subject to eminent domain. Any parcel of land acquired by eminent domain under this subsection shall be transferred back to the owner from whom it was acquired (or his heirs or assigns) if the land is not used for power line construction or modification within a reasonable period of time after the acquisition. Property acquired under this subsection may not be used for any heritage area, recreational trail, or park, or for any other purpose (other than power line construction or modification, and for power line operation and maintenance) without the consent of the owner of the parcel from whom the property was acquired (or his heirs or assigns).

(i) ERCOT.—Nothing in this section shall be construed to authorize any interconnection with any facility owned or operated by an entity referred to in section 212(k)(2)(B).

(j) RIGHTS OF WAY ON FEDERAL LANDS.—

(1) LEAD AGENCY.—If an applicant, or prospective applicant, for Federal authorization related to an electricity transmission or distribution facility so requests, the Department of Energy (DOE) shall act as the lead agency for purposes of coordinating all applicable Federal authorization and related environmental review of the facility. The term "Federal authorization" shall mean any authorization required under Federal law in order to site a transmission or distribution facility, including but not limited to such permits, special use authorizations, certifications, opinions, or other approvals as may be required, whether issued by a Federal or a State agency. To the maximum extent practicable under applicable Federal law, the Secretary of Energy shall coordinate this Federal authorization and review process with any Indian tribes, multi-State entities, and State agencies that are responsible for conducting any separate permitting and environmental reviews of the facility, to ensure timely and efficient review and permit decisions.

(2) AUTHORITY TO SET DEADLINES.—As lead agency, the Department of Energy, in consultation with other Federal and, as appropriate, with Indian tribes, multi-State entities, and State agencies that are willing to coordinate their own separate permitting and environmental reviews with the Federal authorization and environmental reviews, shall establish prompt and binding intermediate milestones and ultimate deadlines for the review of and Federal authorization decisions relating to the proposed facility. The Secretary of Energy shall ensure that once an application has been submitted with such data as the Secretary deems necessary, all permit decisions and related environmental reviews under all applicable Federal laws shall be completed within 1 year or, if a requirement of another provision of Federal law makes this impossible, as soon thereafter as is practicable. The Secretary of Energy also shall provide an expeditious pre-application mechanism for prospective applicants to confer with the agencies involved to have each such agency determine and communicate to the prospective applicant within 60 days of when the prospective applicant submits a request for such information concerning—

(A) the likelihood of approval for a potential facility; and

(B) key issues of concern to the agencies and public.

(3) CONSOLIDATED ENVIRONMENTAL REVIEW AND RECORD OF DECISION.—The Secretary of Energy, in consultation with the affected agencies, shall prepare a single environmental review document, which shall be used as the basis for all decisions on the proposed project under Federal law. The document may be an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969 if warranted, or such other form of analysis as may be warranted. DOE and other agencies shall streamline the review and permitting of transmission and distribution facilities within corridors designated under Section 503 of the Federal Land Policy and Management Act (43 U.S.C. Section 1763) by fully taking

into account prior analyses and decisions as to the corridors. The document under this section may consist of or include an environmental assessment, if allowed by law, or an environmental impact statement, if warranted or required by law, or such other form of analysis as warranted, consistent with any requirement of the National Environmental Policy Act, the Federal Land Policy and Management Act, or any other applicable law. Such document shall include consideration by the relevant agencies of any applicable criteria or other matters as required under applicable laws.

(4) APPEALS.—In the event that any agency has denied a Federal authorization required for a transmission or distribution facility, or has failed to act by the deadline established by the Secretary pursuant to this section for deciding whether to issue the authorization, the applicant or any State in which the facility would be located may file an appeal with the Secretary of Energy, who shall, in consultation with the affected agency, review the denial or take action on the pending application. Based on the overall record and in consultation with the affected agency, the Secretary may then either issue the necessary authorization with any appropriate conditions, or deny the application. The Secretary shall issue a decision within 90 days of the filing of the appeal. In making a decision under this paragraph, the Secretary shall comply with all applicable requirements of Federal law, including any requirements of the Endangered Species Act, the Clean Water Act, the National Forest Management Act, the National Environmental Policy Act, and the Federal Land Management and Policy Act.

(5) CONFORMING REGULATIONS AND MEMORANDA OF AGREEMENT.—Not later than 18 months after the date of enactment of this section, the Secretary of Energy shall issue any regulations necessary to implement the foregoing provisions. Not later than 1 year after the date of enactment of this section, the Secretary and the heads of all relevant Federal departments and non-departmental agencies shall, and interested Indian tribes, multi-State entities, and State agencies may, enter into Memoranda of Agreement to ensure the timely and coordinated review and permitting of electricity transmission and distribution facilities. The head of each Federal department or non-departmental agency with approval authority shall designate a senior responsible official and dedicate sufficient other staff and resources to ensure that the DOE regulations and any Memoranda are fully implemented.

(6) MISCELLANEOUS.—Each Federal authorization for an electricity transmission or distribution facility shall be issued for a duration, as determined by the Secretary of Energy, commensurate with the anticipated use of the facility and with appropriate authority to manage the right-of-way for reliability and environmental protection. Further, when such authorizations expire, they shall be reviewed for renewal taking fully into account reliance on such electricity infrastructure, recognizing its importance for public health, safety and economic welfare and as a legitimate use of Federal lands.

(7) MAINTAINING AND ENHANCING THE TRANSMISSION INFRASTRUCTURE.—In exercising the responsibilities under this Sec-

tion, the Secretary of Energy shall consult regularly with the Federal Energy Regulatory Commission (FERC) and FERC-approved Regional Transmission Organizations and Independent System Operators.

(k) INTERSTATE COMPACTS.—The consent of Congress is hereby given for States to enter into interstate compacts establishing regional transmission siting agencies to facilitate coordination among the States within such areas for purposes of siting future electric energy transmission facilities and to carry out State electric energy transmission siting responsibilities. The Secretary of Energy may provide technical assistance to regional transmission siting agencies established under this subsection.

(l) SAVINGS CLAUSE.—Nothing in this section shall be construed to affect any requirement of the environmental laws of the United States, including, but not limited to, the National Environmental Policy Act of 1969. This section shall not apply to any component of the National Wilderness Preservation System, the National Wild and Scenic Rivers System, or the National Park system (including National Monuments therein).

SEC. 217. SERVICE OBLIGATIONS OF LOAD-SERVING ENTITIES.

(a) IN GENERAL.—In exercising authority under this Act, the Commission shall ensure that any load-serving entity that either—

(1) owns transmission facilities for the transmission of electric energy in interstate commerce used to purchase or deliver electric energy to meet—

(A) a service obligation to customers; or

(B) an existing wholesale contractual obligation; or

(2) holds a contract or service agreement for firm transmission service used to purchase or deliver electric energy to meet—

(A) a service obligation to customers; or

(B) an existing wholesale contractual obligation

shall be entitled to use such transmission facilities or equivalent transmission rights to meet such obligations before transmission capacity is made available for other uses.

(b) USE BY SUCCESSOR IN INTEREST.—To the extent that all or a portion of the service obligation or contractual obligation covered by subsection (a) is transferred to another load serving entity, the successor shall be entitled to use such transmission facilities or firm transmission rights associated with the transferred service obligation consistent with subsection (a). Subsequent transfers to another load serving entity, or back to the original load-serving entity, shall be entitled to the same rights.

(c) OTHER ENTITIES.—The Commission may exercise authority under this Act to make transmission rights not used to meet an obligation covered by subsection (a) available to other entities in a manner determined by the Commission to be not unduly discriminatory or preferential.

(d) DEFINITIONS.—For the purposes of this section:

(1) The term "load-serving entity" means an electric utility, transmitting utility or Federal power marketing agency that has an obligation under Federal, State, or local law, or under long-term contracts, to provide electric service to either—

(A) electric consumers (as defined in section 3(5) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(5)); or

(B) an electric utility as defined in section 3(4) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(5)) that has an obligation to provide electric service to electric consumers.

Such obligations shall be deemed "service obligations".

(2) The term "existing wholesale contractual obligation" means an obligation under a firm long-term wholesale contract that was in effect on March 28, 2003. A contract modification after March 28, 2003 (other than one that increases the quantity of electric energy sold under the contract) shall not affect the status of such contract as an existing wholesale contractual obligation.

(e) RELATIONSHIP TO OTHER PROVISIONS.—To the extent that a transmitting utility reserves transmission capacity (or reserves the equivalent amount of tradable transmission rights) to provide firm transmission service to meet service obligations or firm long-term wholesale contractual obligations pursuant to subsection (a), that transmitting utility shall not be considered as engaging in undue discrimination or preference under this Act.

(f) JURISDICTION.—This section shall not apply to an entity located in an area referred to in section 212(k)(2)(A).

(g) SAVINGS CLAUSE.—Nothing in this section shall affect any allocation of transmission rights by the PJM Interconnection, the New York Independent System Operator, the New England Independent System Operator, the Midwest Independent System Operator, or the California Independent System Operator. Nothing in this section shall provide a basis for abrogating any contract for firm transmission service or rights in effect as of the date of enactment of this section.

SEC. 218. ELECTRIC RELIABILITY.

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

(1) The term "bulk-power system" means—

(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and

(B) electric energy from generation facilities needed to maintain transmission system reliability.

The term does not include facilities used in the local distribution of electric energy.

(2) The terms "Electric Reliability Organization" and "ERO" mean the organization certified by the Commission under subsection (c) the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to Commission review.

(3) The term "reliability standard" means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include

any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

(4) The term "reliable operation" means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance or unanticipated failure of system elements.

(5) The term "Interconnection" means a geographic area in which the operation of bulk-power system components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain reliable operation of the facilities within their control.

(6) The term "transmission organization" means a regional transmission organization, independent system operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.

(7) The term "regional entity" means an entity having enforcement authority pursuant to subsection (e)(4).

(b) JURISDICTION AND APPLICABILITY.—(1) The Commission shall have jurisdiction, within the United States, over the ERO certified by the Commission under subsection (c), any regional entities, and all users, owners and operators of the bulk-power system, including but not limited to the entities described in section 201(f), for purposes of approving reliability standards established under this section and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.

(2) The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.

(c) CERTIFICATION.—Following the issuance of a Commission rule under subsection (b)(2), any person may submit an application to the Commission for certification as the Electric Reliability Organization (ERO). The Commission may certify one such ERO if the Commission determines that such ERO—

(1) has the ability to develop and enforce, subject to subsection (e)(2), reliability standards that provide for an adequate level of reliability of the bulk-power system;

(2) has established rules that—

(A) assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decisionmaking in any ERO committee or subordinate organizational structure;

(B) allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section;

(C) provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties in accordance with subsection (e) (including limitations on activities, functions, or operations, or other appropriate sanctions);

(D) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties; and

(E) provide for taking, after certification, appropriate steps to gain recognition in Canada and Mexico.

(d) RELIABILITY STANDARDS.—(1) The Electric Reliability Organization shall file each reliability standard or modification to a reliability standard that it proposes to be made effective under this section with the Commission.

(2) The Commission may approve, by rule or order, a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed standard or modification to a reliability standard and to the technical expertise of a regional entity organized on an Interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall not defer with respect to the effect of a standard on competition. A proposed standard or modification shall take effect upon approval by the Commission.

(3) The Electric Reliability Organization shall rebuttably presume that a proposal from a regional entity organized on an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

(4) The Commission shall remand to the Electric Reliability Organization for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

(5) The Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

(6) The final rule adopted under subsection (b)(2) shall include fair processes for the identification and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a transmission organization. Such transmission organization shall continue to comply with such function, rule, order, tariff, rate schedule or agreement accepted approved, or ordered by the Commission until—

(A) the Commission finds a conflict exists between a reliability standard and any such provision;

(B) the Commission orders a change to such provision pursuant to section 206 of this part; and

(C) the ordered change becomes effective under this part.

If the Commission determines that a reliability standard needs to be changed as a result of such a conflict, it shall order the ERO to develop and file with the Commission a modified reliability standard under paragraph (4) or (5) of this subsection.

(e) ENFORCEMENT.—(1) The ERO may impose, subject to paragraph (2), a penalty on a user or owner or operator of the bulk-power system for a violation of a reliability standard approved by the Commission under subsection (d) if the ERO, after notice and an opportunity for a hearing—

(A) finds that the user or owner or operator has violated a reliability standard approved by the Commission under subsection (d); and

(B) files notice and the record of the proceeding with the Commission.

(2) A penalty imposed under paragraph (1) may take effect not earlier than the 31st day after the electric reliability organization files with the Commission notice of the penalty and the record of proceedings. Such penalty shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with the Commission. Application to the Commission for review, or the initiation of review by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty. In any proceeding to review a penalty imposed under paragraph (1), the Commission, after notice and opportunity for hearing (which hearing may consist solely of the record before the electric reliability organization and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), shall by order affirm, set aside, reinstate, or modify the penalty, and, if appropriate, remand to the electric reliability organization for further proceedings. The Commission shall implement expedited procedures for such hearings.

(3) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk-power system, if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk-power system has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a reliability standard.

(4) The Commission shall establish regulations authorizing the ERO to enter into an agreement to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards under paragraph (1) if—

(A) the regional entity is governed by—

(i) an independent board;

(ii) a balanced stakeholder board; or

(iii) a combination independent and balanced stakeholder board.

(B) the regional entity otherwise satisfies the provisions of subsection (c)(1) and (2); and

(C) the agreement promotes effective and efficient administration of bulk-power system reliability.

The Commission may modify such delegation. The ERO and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power system reliability and should be approved. Such regulation may provide that

the Commission may assign the ERO's authority to enforce reliability standards under paragraph (1) directly to a regional entity consistent with the requirements of this paragraph.

(5) The Commission may take such action as is necessary or appropriate against the ERO or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the ERO or a regional entity.

(6) Any penalty imposed under this section shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner.

(f) CHANGES IN ELECTRICITY RELIABILITY ORGANIZATION RULES.—The Electric Reliability Organization shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or complaint, may propose a change to the rules of the Electric Reliability Organization. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (c).

(g) RELIABILITY REPORTS.—The Electric Reliability Organization shall conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America.

(h) COORDINATION WITH CANADA AND MEXICO.—The President is urged to negotiate international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the Electric Reliability Organization in the United States and Canada or Mexico.

(i) SAVINGS PROVISIONS.—(1) The Electric Reliability Organization shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system.

(2) This section does not authorize the Electric Reliability Organization or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard, except that the State of New York may establish rules that result in greater reliability within that State, as long as such action does not result in lesser reliability outside the State than that provided by the reliability standards.

(4) Within 90 days of the application of the Electric Reliability Organization or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a State action is inconsistent with a reliability standard, taking into consideration any recommendation of the Electric Reliability Organization.

(5) The Commission, after consultation with the Electric Reliability Organization and the State taking action, may stay the effec-

tiveness of any State action, pending the Commission's issuance of a final order.

(j) REGIONAL ADVISORY BODIES.—The Commission shall establish a regional advisory body on the petition of at least two-thirds of the States within a region that have more than one-half of their electric load served within the region. A regional advisory body shall be composed or of one member from each participating State in the region, appointed by the Governor of each State, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the Electric Reliability Organization, a regional entity, or the Commission regarding the governance of an existing or proposed regional entity within the same region, whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest, whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.

(k) APPLICATION TO ALASKA AND HAWAII.—The provisions of this section do not apply to Alaska or Hawaii.

SEC. 219. MARKET TRANSPARENCY RULES.

(a) COMMISSION RULES.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules establishing an electronic information system to provide the Commission and the public with access to such information as is necessary or appropriate to facilitate price transparency and participation in markets subject to the Commission's jurisdiction. Such systems shall provide information about the availability and market price of sales of electric energy at wholesale in interstate commerce and transmission of electric energy in interstate commerce to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public on a timely basis. The Commission shall have authority to obtain such information from any person, and any entity described in section 201(f), who sells electric energy at wholesale in interstate commerce or provides transmission services in interstate commerce.

(b) EXEMPTIONS.—The Commission shall exempt from disclosure information it determines would, if disclosed, (1) be detrimental to the operation of an effective market; or (2) jeopardize system security. This section shall not apply to an entity described in section 212(k)(2)(B) with respect to transactions for the purchase or sale of wholesale electric energy and transmission services within the area described in section 212(k)(2)(A).

SEC. 220. PROHIBITION ON ROUND TRIP TRADING.

(a) PROHIBITION.—It shall be a violation of this Act for any person, and any entity described in section 201(f), willfully and knowingly to enter into any contract or other arrangement to execute a round-trip trade for the purchase or sale of electric energy at wholesale.

(b) DEFINITION OF ROUND-TRIP TRADE.—For the purposes of this section, the term "round-trip trade" means a transaction, or combination of transactions, in which a person or other entity—

(1) enters into a contract or other arrangement to purchase from, or sell to, any other person or other entity electric energy at wholesale;

(2) simultaneously with entering into the contract described in paragraph (1), arranges a financially offsetting trade with such other person or entity for the same quantity of electric energy so that, collectively, the purchase and sale transactions in themselves result in no financial gain or loss; and

(3) has a specific intent to distort reported revenues, trading volumes, or prices.

PART III—LICENSEES AND PUBLIC UTILITIES; PROCEDURAL AND ADMINISTRATIVE PROVISIONS

* * * * * * *

COMPLAINTS

SEC. 306. Any person, *electric utility,* State, municipality, or State commission complaining of anything done or omitted to be done by any licensee*, transmitting utility,* or public utility in contravention of the provisions of this Act may apply to the Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such licensee*, transmitting utility,* or public utility, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission. If such licensee*, transmitting utility,* or public utility shall not satisfy the complaint within the time specified or there shall appear to be any reasonable ground for investigating such complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall find proper.

INVESTIGATIONS BY COMMISSION; ATTENDANCE OF WITNESSES; DEPOSITIONS

SEC. 307. (a) The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person*, electric utility, transmitting utility, or other entity* has violated or is about to violate any provisions of this Act or any rule, regulation, or order thereunder, or to aid in the enforcement of the provisions of this Act or in prescribing rules or regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation concerning the matters to which this Act relates**[.]** *or in obtaining information about the sale of electric energy at wholesale in interstate commerce and the transmission of electric energy in interstate commerce.* The Commission may permit any person*, electric utility, transmitting utility, or other entity* to file with it a statement in writing under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation. The Commission, in its discretion, may publish or make available to State commissions information concerning any such subject.

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REHEARINGS; COURT REVIEW OF ORDERS

SEC. 313. (a) Any person, *electric utility,* State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this Act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any orders of the Commission shall be brought by [any person unless such person] *any entity unless such entity* shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this act.

* * * * * * *

GENERAL PENALTIES

SEC. 316. (a) Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this Act required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished by a fine of not more than [$5,000] *$1,000,000* or by imprisonment for not more than [two years] *five years* or both.

(b) Any person who willfully and knowingly violates any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this Act, or any rule or regulation imposed by the Secretary of the Army under authority of Part I of this Act shall, in addition to any other penalties provided by law, be punished upon conviction thereof by a fine of not exceeding [$500] *$25,000* for each and every day during which such offense occurs.

[(c) This subsection shall not apply in the case of any provision of section 211, 212, 213, or 214 or any rule or order issued under any such provision.]

SEC. 316A. ENFORCEMENT OF CERTAIN PROVISIONS.

(a) VIOLATIONS.—It shall be unlawful for any person to violate any provision of [section 211, 212, 213, or 214] *Part II* or any rule or order issued under any such provision.

(b) CIVIL PENALTIES.—Any person who violates any provision of [section 211, 212, 213, or 214] *Part II* or any provision of any rule or order thereunder shall be subject to a civil penalty of not more than [$10,000] *$1,000,000* for each day that such violation continues. Such penalty shall be assessed by the Commission, after notice and opportunity for public hearing, in accordance with the

same provisions as are applicable under section 31(d) in the case of civil penalties assessed under section 31. In determining the amount of a proposed penalty, the Commission shall take into consideration the seriousness of the violation and the efforts of such person to remedy the violation in a timely manner.

* * * * * * *

[CONFLICT OF JURISDICTION

[SEC. 318. If, with respect to the issue, sale, or guaranty of a security, or assumption of obligation or liability in respect of a security, the method of keeping accounts, the filing of reports, or the acquisition or disposition of any security, capital assets, facilities, or any other subject matter, any person is subject both to a requirement of the Public Utility Holding Company Act of 1935 or of a rule, regulation, or other thereunder and to a requirement of this Act or of a rule, regulation, or order thereunder, the requirement of the Public Utility Holding Company Act of 1935 shall apply to such person, and such person shall not be subject to the requirement of this Act, or of any rule, regulation, or order thereunder, with respect to the same subject matter, unless the Securities and Exchange Commission has exempted such person from such requirement of the Public Utility Holding Company Act of 1935, in which case the requirements of this Act shall apply to such person.]

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PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

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TITLE I—RETAIL REGULATORY POLICIES FOR ELECTRIC UTILITIES

* * * * * * *

Subtitle B—Standards For Electric Utilities

SEC. 111. CONSIDERATION AND DETERMINATION RESPECTING CERTAIN RATEMAKING STANDARDS.

(a) * * *

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(d) ESTABLISHMENT.—The following Federal standards are hereby established:

(1) * * *

* * * * * * *

(11) REAL-TIME PRICING.—(A) Each electric utility shall, at the request of an electric consumer, provide electric service under a real-time rate schedule, under which the rate charged by the electric utility varies by the hour (or smaller time inter-

val) according to changes in the electric utility's wholesale power cost. The real-time pricing service shall enable the electric consumer to manage energy use and cost through real-time metering and communications technology.

(B) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

(C) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standard set out in subparagraph (A) not later than 1 year after the date of enactment of this paragraph.

(12) TIME-OF-USE METERING.—(A) Each electric utility shall, at the request of an electric consumer, provide electric service under a time-of-use rate schedule which enables the electric consumer to manage energy use and cost through time-of-use metering and technology.

(B) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

(C) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standards set out in subparagraph (A) not later than 1 year after the date of enactment of this paragraph.

(13) TIME-BASED METERING AND COMMUNICATIONS.—(A) Not later than eighteen (18) months after the date of enactment of this paragraph, each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance in the costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

(B) The types of time-based rate schedules that may be offered under the schedule referred to in subparagraph (A) include, among others, each the following:

(i) Time-Of-Use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year. Prices paid for energy consumed during these periods shall be preestablished and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall.

(ii) Critical Peak Pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and purchasing electricity at the wholesale level and when consumers may receive addi-

tional discounts for reducing peak period energy consumption.

(iii) Real-Time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis and may change as often as hourly.

(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

(D) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

(E) In a State that permits third-party marketers to sell electric energy to retail electric consumers, such consumers shall be entitled to receive that same time-based metering and communications device and service as a retail electric consumer of the electric utility.

(F) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall, not later than twelve (12) months after enactment of this paragraph conduct an investigation in accordance with section 115(i) and issue a decision whether it is appropriate to implement the standards set out in subparagraphs (A) and (C).

(14) NET METERING.—(A) Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves.

(B) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

(C) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standard set out in subparagraph (A) not later than 1 year after the date of enactment of this paragraph.

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SEC. 115. SPECIAL RULES FOR STANDARDS.

(a) * * *

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(i) REAL-TIME PRICING.—In a State that permits third-party marketers to sell electric energy to retail electric consumers, the electric consumer shall be entitled to receive the same real-time metering and communication service as a direct retail electric consumer of the electric utility.

(j) TIME-OF-USE METERING.—In a State that permits third-party marketers to sell electric energy to retail electric consumers, the electric consumer shall be entitled to receive the same time-of-use metering and communication service as a direct retail electric consumer of the electric utility.

(k) TIME-BASED METERING AND COMMUNICATIONS.—Each State regulatory authority shall, not later than twelve (12) months after enactment of this subsection, conduct an investigation and issue a decision whether or not it is appropriate for electric utilities to pro-

vide and install time-based meters and communications devices for each of their customers which enable such customers to participate in time-based pricing rate schedules and other demand response programs.

(l) NET METERING.—In undertaking the consideration and making the determination under section 111 with respect to the standard concerning net metering established by section 111(d)(14), the term "net metering service" shall mean a service provided in accordance with the following standards:

(1) RATES AND CHARGES.—An electric utility—

(A) shall charge the owner or operator of an on-site generating facility rates and charges that are identical to those that would be charged other electric consumers of the electric utility in the same rate class; and

(B) shall not charge the owner or operator of an on-site generating facility any additional standby, capacity, interconnection, or other rate or charge.

(2) MEASUREMENT.—An electric utility that sells electric energy to the owner or operator of an on-site generating facility shall measure the quantity of electric energy produced by the on-site facility and the quantity of electric energy consumed by the owner or operator of an on-site generating facility during a billing period in accordance with normal metering practices.

(3) ELECTRIC ENERGY SUPPLIED EXCEEDING ELECTRIC ENERGY GENERATED.—If the quantity of electric energy sold by the electric utility to an on-site generating facility exceeds the quantity of electric energy supplied by the on-site generating facility to the electric utility during the billing period, the electric utility may bill the owner or operator for the net quantity of electric energy sold, in accordance with normal metering practices.

(4) ELECTRIC ENERGY GENERATED EXCEEDING ELECTRIC ENERGY SUPPLIED.—If the quantity of electric energy supplied by the on-site generating facility to the electric utility exceeds the quantity of electric energy sold by the electric utility to the on-site generating facility during the billing period—

(A) the electric utility may bill the owner or operator of the on-site generating facility for the appropriate charges for the billing period in accordance with paragraph (2); and

(B) the owner or operator of the on-site generating facility shall be credited for the excess kilowatt-hours generated during the billing period, with the kilowatt-hour credit appearing on the bill for the following billing period.

(5) SAFETY AND PERFORMANCE STANDARDS.—An eligible on-site generating facility and net metering system used by an electric consumer shall meet all applicable safety, performance, reliability, and interconnection standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and Underwriters Laboratories.

(6) ADDITIONAL CONTROL AND TESTING REQUIREMENTS.—The Commission, after consultation with State regulatory authorities and nonregulated electric utilities and after notice and opportunity for comment, may adopt, by rule, additional control and testing requirements for on-site generating facilities and

net metering systems that the Commission determines are necessary to protect public safety and system reliability.

(7) DEFINITIONS.—For purposes of this subsection:

(A) The term "eligible on-site generating facility" means—

(i) a facility on the site of a residential electric consumer with a maximum generating capacity of 10 kilowatts or less that is fueled by solar energy, wind energy, or fuel cells; or

(ii) a facility on the site of a commercial electric consumer with a maximum generating capacity of 500 kilowatts or less that is fueled solely by a renewable energy resource, landfill gas, or a high efficiency system.

(B) The term "renewable energy resource" means solar, wind, biomass, or geothermal energy.

(C) The term "high efficiency system" means service fuel cells or combined heat and power.

(D) The term "net metering" means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

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Subtitle D—Administrative Provisions

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SEC. 132. RESPONSIBILITIES OF SECRETARY OF ENERGY.

(a) AUTHORITY.—The Secretary may periodically notify the State regulatory authorities, and electric utilities identified pursuant to section 102(c)—

(1) * * *

* * * * * * *

(3) methods for determining cost of service; **[**and**]**

(4) any other data or information which the Secretary determines would assist such authorities and utilities in carrying out the provisions of this title**[**.**]***; and*

(5) technologies, techniques and rate-making methods related to advanced metering and communications and the use of these technologies, techniques and methods in demand response programs.

* * * * * * *

(d) DEMAND RESPONSE.—The Secretary shall be responsible for each of the following:

(1) Educating consumers on the availability, advantages and benefits of advanced metering and communications technologies including the funding of demonstration or pilot projects.

(2) Working with States, utilities, other energy providers and advanced metering and communications experts to identify and address barriers to the adoption of demand response programs, and

(3) Within 6 months of enactment, provide the Congress with a report that identifies and quantifies the national benefits of demand response and provides policy recommendations as to how to achieve specific levels of such benefits by January 1, 2005.

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TITLE II—CERTAIN FEDERAL ENERGY REGULATORY COMMISSION AND DEPARTMENT OF ENERGY AUTHORITIES

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SEC. 210. COGENERATION AND SMALL, POWER PRODUCTION.

(a) * * *

* * * * * * *

(m) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—

(1) OBLIGATION TO PURCHASE.—After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that—

(A) the qualifying cogeneration facility or qualifying small power production facility has access to

(i) independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy, and

(ii) long-term wholesale markets for the sale of capacity and electric energy;

(B) the qualifying cogeneration facility or qualifying small power production facility has access to a competitive wholesale market for the sale of electric energy that provides such qualifying cogeneration facility or qualifying small power production facility with opportunities to sell electric energy that, at a minimum, are comparable to the opportunities provided by the markets, or some minimum combination thereof, described in subparagraph (A); or

(C) the qualifying cogeneration facility does not meet criteria established by the Commission pursuant to the rulemaking set forth in subparagraph (n) and has not filed with the Commission a notice of self-certification or an application for Commission certification under 18 C.F.R. 292.207 prior to the date of enactment of this subsection.

(2) COMMISSION REVIEW.—(A) Any electric utility may file an application with the Commission for relief from the mandatory purchase obligation pursuant to this subsection on a utility-wide basis. Such application shall set forth the reasons why such relief is appropriate and describe how the conditions set forth in subparagraphs (A) and (B) of paragraph (1) of this subsection have been met.

(B) After notice, including sufficient notice to potentially affected qualifying facilities, and an opportunity for comment, and within 90 days of the filing of an application under subparagraph (A), the Commission shall make a final determination as to whether the conditions set forth in subparagraphs (A) and (B) of paragraph (1) have been met. The Commission shall not be authorized to issue a tolling order regarding such application or otherwise delay a final decision regarding such application.

(3) REINSTATEMENT OF OBLIGATION TO PURCHASE.—(A) At any time after the Commission makes a finding under paragraph (2) relieving an electric utility of its obligation to purchase electric energy, a qualifying cogeneration facility or a qualifying small power production facility may apply to the Commission for an order reinstating the electric utility's obligation to purchase electric energy under this section. Such application shall set forth the reasons why such relief is no longer appropriate and describe how the tests set forth in subparagraphs (A) and (B) of paragraph (1) of this subsection are no longer met.

(B) After notice, including sufficient notice to potentially affected utilities, and opportunity for comment, and within 90 days of the filing of an application under subparagraph (A), the Commission shall issue an order reinstating the electric utility's obligation to purchase electric energy under this section if the Commission finds that the condition in paragraph (1), which relieved the obligation to purchase, is no longer met. The Commission shall not be authorized to issue a tolling order regarding such application or otherwise delay a final decision regarding such application.

(4) OBLIGATION TO SELL.—After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to sell electric energy to a qualifying cogeneration facility or a qualifying small power production facility if—

(A) competing retail electric suppliers are willing and able to provide electric energy to the qualifying cogeneration facility or qualifying small power production facility, and

(B) the electric utility is not required by State law to sell electric energy in its service territory.

(5) NO EFFECT ON EXISTING RIGHTS AND REMEDIES.—Nothing in this subsection affects the rights or remedies of any party under any contract or obligation, in effect or pending approval before the appropriate State regulatory authority or nonregulated electric utility on the date of enactment of this subsection, to purchase electric energy or capacity from or to sell electric energy or capacity to a facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

(6) RECOVERY OF COSTS.—

(A) REGULATION.—To ensure recovery by an electric utility that purchases electric energy or capacity from a qualifying facility pursuant to any legally enforceable obligation entered into or imposed under this section of all prudently incurred costs associated with the purchases, the Commis-

sion shall issue and enforce such regulations as may be required to ensure that the electric utility shall recover the prudently incurred costs associated with such purchases.

(B) ENFORCEMENT.—A regulation under subparagraph (A) shall be enforceable in accordance with the provisions of law applicable to enforcement of regulations under the Federal Power Act (16 U.S.C. 791a et seq.).

(n) RULEMAKING FOR NEW FACILITIES.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Commission shall issue a rule revising the criteria for qualifying cogeneration facilities in 18 C.F.R. 292.205. In particular, the Commission shall evaluate the rules regarding qualifying facility criteria and revise such rules, as necessary, to ensure—

(A) that the thermal energy output of a new qualifying cogeneration facility is used in a productive and beneficial manner;

(B) the electrical and thermal output of the cogeneration facility is used predominantly for commercial or industrial processes and not intended predominantly for sale to an electric utility; and

(C) continuing progress in the development of efficient electric energy generating technology.

(2) APPLICABILITY.—Any revisions made to operating and efficiency standards shall be applicable only to a cogeneration facility that—

(A) was not a qualifying cogeneration facility, or

(B) had not filed with the Commission a notice of self-certification or an application for Commission certification under 18 C.F.R. 292.207

prior to the date of enactment of this subsection.

(3) DEFINITION.—For purposes of this subsection, the term "commercial processes" includes uses of thermal and electric energy for educational and healthcare facilities.

(o) RULES FOR EXISTING FACILITIES.— Notwithstanding rule revisions under subsection (n), the Commission's rules in effect prior to the effective date of any revised rules prescribed under subsection (n) shall continue to apply to any cogeneration facility or small power production facility that—

(1) was a qualifying cogeneration facility or a qualifying small power production facility, or

(2) had filed with the Commission a notice of self-certification or an application for Commission certification under 18 C.F.R. 292.207

prior to the date of enactment of subsections (m) and (n).

* * * * * * *

TITLE IV—SMALL HYDROELECTRIC POWER PROJECTS

* * * * * * *

SEC. 408. DEFINITIONS.

(a) For purposes of this title, the term—

(1) * * *

* * * * * * *

(6) "existing dam" means any dam, the construction of which was completed on or before [April 20, 1977] *March 4, 2003*, and which does not require any construction or enlargement of impoundment structures (other than repairs or reconstruction) in connection with the installation of any small hydroelectric power project;

* * * * * * *

ATOMIC ENERGY ACT OF 1954

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TITLE I—ATOMIC ENERGY

* * * * * * *

CHAPTER 10. ATOMIC ENERGY LICENSES

* * * * * * *

SEC. 103. COMMERCIAL LICENSES.—

a. * * *

* * * * * * *

c. Each such license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years *from the authorization to commence operations*, and may be renewed upon the expiration of such period.

* * * * * * *

CHAPTER 11. INTERNATIONAL ACTIVITIES

* * * * * * *

SEC. 134. FURTHER RESTRICTIONS ON EXPORTS.—

a. * * *

b. The Commission may issue a license authorizing the export (including shipment to and use at intermediate and ultimate consignees specified in the license) to a Recipient Country of highly enriched uranium for medical isotope production if, in addition to any other requirements of this Act, the Commission determines that—

(1) a Recipient Country that supplies an assurance letter to the United States Government in connection with the Commission's consideration of the export license application has in-

formed the United States Government that any intermediate consignees and the ultimate consignee specified in the application are required to use such highly enriched uranium solely to produce medical isotopes; and

(2) the highly enriched uranium for medical isotope production will be irradiated only in a reactor in a Recipient Country that—

(A) uses an alternative nuclear reactor fuel; or

(B) is the subject of an agreement with the United States Government to convert to an alternative nuclear reactor fuel when such fuel can be used in that reactor.

c. Applications to the Commission for licenses authorizing the export to a Recipient Country of highly enriched uranium for medical isotope production shall be subject to subsection b., and subsection a. shall not be applicable to such exports.

d. The Commission is authorized to specify, by rulemaking or decision in connection with an export license application, that a country other than a Recipient Country may receive exports of highly enriched uranium for medical isotope production in accordance with the same criteria established by subsection b. for exports to a Recipient Country, upon the Commission's finding that such additional country is a party to the Treaty on the Nonproliferation of Nuclear Weapons and the Convention on the Physical Protection of Nuclear Material and will receive such highly enriched uranium pursuant to an agreement with the United States concerning peaceful uses of nuclear energy.

e. The Commission shall review the adequacy of physical protection requirements that are currently applicable to the transportation of highly enriched uranium for medical isotope production. If it determines that additional physical protection measures are necessary, including any limits that the Commission finds are necessary on the quantity of highly enriched uranium contained in a single shipment for medical isotope production, the Commission shall impose such requirements, as license conditions or through other appropriate means.

[b.**]** *f.* As used in this section—

(1) * * *

(2) the term "highly enriched uranium" means uranium enriched to 20 percent or more in the isotope U–235; **[**and**]**

(3) a fuel or target "can be used" in a nuclear research or test reactor if—

(A) * * *

(B) use of the fuel or target will permit the large majority of ongoing and planned experiments and isotope production to be conducted in the reactor without a large percentage increase in the total cost of operating the reactor**[**.**]***;*

(4) the term "medical isotopes" means radioactive isotopes, including Molybdenum 99, Iodine 131, and Xenon 133, that are used to produce radiopharmaceuticals for diagnostic or therapeutic procedures on patients, or in connection with research and development of radiopharmaceuticals;

(5) the term "highly enriched uranium for medical isotope production" means highly enriched uranium contained in, or

for use in, targets to be irradiated for the sole purpose of producing medical isotopes;

(6) the term "radiopharmaceuticals" means radioactive isotopes containing byproduct material combined with chemical or biological material that are designed to accumulate temporarily in a part of the body, for therapeutic purposes or for enabling the production of a useful image of the appropriate body organ or function for use in diagnosis of medical conditions; and

(7) the term "Recipient Country" means Canada, Belgium, France, Germany, and the Netherlands.

* * * * * * *

CHAPTER 14. GENERAL AUTHORITY

SEC. 161. GENERAL PROVISIONS.—In the performance of its functions the Commission is authorized to—

a. * * *

* * * * * * *

[k. authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States and located at facilities owned by or contracted to the United States or being transported to or from such facilities as it deems necessary in the interests of the common defense and security to carry firearms while in the discharge of their official duties. A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of (1) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission, or (2) any provision of this Act that may subject an offender to a fine, imprisonment, or both. The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary, with the approval of the Attorney General, shall issue guidelines to implement this subsection;]

k. authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize—

(1) such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States located at facilities owned by or contracted to the United States or being transported to or from such facilities as it deems necessary in the interests of the common defense and security; and

(2) such of those employees of persons licensed or certified by the Commission (including employees of contractors of licensees or certificate holders) engaged in the protection of property of (A) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission, or (B) property of significance to the common defense and security located at facilities owned or operated by a Commission licensee or certificate holder or being transported to or from such facilities;

to carry firearms while in the discharge of their official duties. A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor or of a Commission licensee or certificate holder (or a contractor of a licensee or certificate holder) authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission or of a licensee or certificate holder of the Commission, laws applicable to facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission pursuant to this subsection and property of significance to the common defense and security that is in the custody of a licensee or certificate holder or a contractor of a licensee or certificate holder of the Commission, or any provision of this Act that may subject an offender to a fine, imprisonment, or both. The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary and the Commission, with the approval of the Attorney General, shall issue guidelines to implement this subsection;

* * * * * * *

w. prescribe and collect from any other Government agency, which applies ❙for or is issued a license for a utilization facility designed to produce electrical or heat energy pursuant to section 103 or 104 b., or which operates any facility regulated or certified under section 1701 or 1702❙ *to the Commission for, or is issued by the Commission, a license or certificate*, any fee, charge, or price which it may require, in accordance with the

provisions of section [483a] *9701* of title 31 of the United States Code or any other law[, of applicants for, or holders of, such licenses or certificates].

* * * * * * *

y. exempt from the application of sections 8344 and 8468 of title 5, United States Code, an annuitant who was formerly an employee of the Commission who is hired by the Commission as a consultant, if the Commission finds that the annuitant has a skill that is critical to the performance of the duties of the Commission.

* * * * * * *

SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.—

a. * * *

b. AMOUNT AND TYPE OF FINANCIAL PROTECTION FOR LICENSEES.—(1) The amount of primary financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (A) the cost and terms of private insurance, (B) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (C) the nature and purpose of the licensed activity: *Provided,* That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of primary financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources (excluding the amount of private liability insurance available under the industry retrospective rating plan required in this subsection). Such primary financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. The Commission shall require licensees that are required to have and maintain primary financial protection equal to the maximum amount of liability insurance available from private sources to maintain, in addition to such primary financial protection, private liability insurance available under an industry retrospective rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident: *Provided,* That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such primary financial protection: *And provided further:* That the maximum amount of the standard deferred premium that may be charged a licensee following any nuclear incident under such a plan shall not be more than [$63,000,000] *$94,000,000* (subject to adjustment for inflation under subsection t.), but not more than [$10,000,000 in any 1 year] *$15,000,000 in any 1 year (subject to adjustment for inflation under subsection t.)*, for each facility for which such licensee is required to maintain the maximum amount of primary financial protection: *And provided further,* That the

amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs (excluding legal costs subject to subsection o. (1)(D), payment of which has not been authorized under such subsection) arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission.

* * * * * * *

(5)(A) For purposes of this section only, the Commission shall consider a combination of facilities described in subparagraph (B) to be a single facility having a rated capacity of 100,000 electrical kilowatts or more.

(B) A combination of facilities referred to in subparagraph (A) is 2 or more facilities located at a single site, each of which has a rated capacity of 100,000 electrical kilowatts or more but not more than 300,000 electrical kilowatts, with a combined rated capacity of not more than 1,300,000 electrical kilowatts.

c. INDEMNIFICATION OF [LICENSES] *LICENSEES* BY NUCLEAR REGULATORY COMMISSION.—The Commission shall, with respect to licenses issued between August 30, 1954, and [December 31, 2003] *August 1, 2017*, for which it requires financial protection of less than $560,000,000, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, excluding costs of investigating and settling claims and defending suits for damage: *Provided, however,* That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and [December 31, 2003] *August 1, 2017*, the requirements of this subsection shall apply to any license issued for such facility subsequent to [December 31, 2003] *August 1, 2017*.

d. INDEMNIFICATION OF CONTRACTORS BY DEPARTMENT OF ENERGY.—(1)(A) In addition to any other authority the Secretary of Energy (in this section referred to as the "Secretary") may have, the Secretary shall, until [December 31, 2004] *August 1, 2017*, enter into agreements of indemnification under this subsection with any person who may conduct activities under a contract with the Department of Energy that involve the risk of public liability and that are not subject to financial protection requirements under subsection b. or agreements of indemnification under subsection c. or k.

* * * * * * *

[(2) In agreements of indemnification entered into under paragraph (1), the Secretary may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public

liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, to the full extent of the aggregate public liability of the persons indemnified for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.

[(3)(A) Notwithstanding paragraph (2), if the maximum amount of financial protection required of the contractor, shall at all times remain equal to or greater than the maximum amount of financial protection required of licensees under subsection b.

[(B) The amount of indemnity provided contractors under this subsection shall not, at any time, be reduced in the event that the maximum amount of financial protection required of licensees is reduced.

[(C) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person, shall be deemed to be amended, on the date of the enactment of the Price-Anderson Amendments Act of 1988, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection on such date.**]**

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

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

(B) shall indemnify the persons indemnified against such liability above the amount of the financial protection required, in the amount of $10,000,000,000 (subject to adjustment for inflation under subsection t.), in the aggregate, for all persons indemnified in connection with the contract and for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.

(3) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person under this section shall be deemed to be amended, on the date of enactment of the Price-Anderson Amendments Act of 2003, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection.

* * * * * * *

(5) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Secretary under this subsection shall not exceed **[**$100,000,000**]** *$500,000,000*.

* * * * * * *

e. LIMITATION ON AGGREGATE PUBLIC LIABILITY.—(1) The aggregate public liability for a single nuclear incident of persons indemnified, including such legal costs as are authorized to be paid under subsection o. (1)(D), shall not exceed—

(A) * * *

(B) in the case of contractors with whom the Secretary has entered into an agreement of indemnification under subsection d., [the maximum amount of financial protection required under subsection b. or] the amount of indemnity and financial protection that may be required under [paragraph (3) of subsection d., whichever amount is more] *paragraph (2) of subsection d.*; and

* * * * * * *

(4) With respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection d. is applicable, such aggregate public liability shall not exceed the amount of [$100,000,000] *$500,000,000*, together with the amount of financial protection required of the contractor.

* * * * * * *

k. EXEMPTION FROM FINANCIAL PROTECTION REQUIREMENT FOR NONPROFIT EDUCATIONAL INSTITUTIONS.—With respect to any license issued pursuant to section 53, 63, 81, 104 a., or 104 c. for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection a. With respect to licenses issued between August 30, 1954, and [August 1, 2002] *August 1, 2017*, for which the Commission grants such exemption:

(1) * * *

* * * * * * *

Any licensee may waive an exemption to which it is entitled under this subsection. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and [August 1, 2002] *August 1, 2017*, the requirements of this subsection shall apply to any license issued for such facility subsequent to [August 1, 2002] *August 1, 2017*.

* * * * * * *

p. REPORTS TO CONGRESS.—The Commission and the Secretary shall submit to the Congress by [August 1, 1998] *August 1, 2013*, detailed reports concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.

* * * * * * *

t. INFLATION ADJUSTMENT.—(1) The Commission shall adjust the amount of the maximum *total and annual* standard deferred premium under subsection b. (1) not less than once during each 5-year period following [the date of the enactment of the Price-Anderson Amendments Act of 1988] *July 1, 2002*, in accordance with the aggregate percentage change in the Consumer Price Index since—

(A) [such date of enactment] *July 1, 2002*, in the case of the first adjustment under this subsection; or

* * * * * * *

(2) The Secretary shall adjust the amount of indemnification provided under an agreement of indemnification under subsection d. not less than once during each 5-year period following July 1, 2002, in accordance with the aggregate percentage change in the Consumer Price Index since—

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

(B) the previous adjustment under this paragraph.

[(2)] *(3)* For purposes of this subsection, the term "Consumer Price Index" means the Consumer Price Index for all urban consumers published by the Secretary of Labor.

u. PROHIBITION ON ASSUMPTION OF LIABILITY FOR CERTAIN FOREIGN ACCIDENTS.—Notwithstanding this section or any other provision of law, no officer of the United States or of any department, agency, or instrumentality of the United States Government may enter into any contract or other arrangement, or into any amendment or modification of a contract or other arrangement, the purpose or effect of which would be to directly or indirectly impose liability on the United States Government, or any department, agency, or instrumentality of the United States Government, or to otherwise directly or indirectly require an indemnity by the United States Government, for nuclear accidents occurring in connection with the design, construction, or operation of a production facility or utilization facility in any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which, as of September 11, 2001, had been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961, section 6(j)(1) of the Export Administration Act of 1979, or section 40(d) of the Arms Export Control Act to have repeatedly provided support for acts of international terrorism).

v. UNREASONABLE RISK CONSULTATION.—(1) Before entering into an agreement of indemnification under this section with respect to a utilization facility, the Nuclear Regulatory Commission shall consult with the Assistant to the President for Homeland Security (or any successor official) concerning whether the location of the proposed facility and the design of that type of facility ensure that the facility provides for adequate protection of public health and safety if subject to a terrorist attack.

(2) Before issuing a license or a license renewal for a sensitive nuclear facility, the Nuclear Regulatory Commission shall consult with the Secretary of Homeland Security or his designee concerning the emergency evacuation plan for the communities living near the sensitive nuclear facility. For purposes of this paragraph, the term "sensitive nuclear facility" has the meaning given that term in section 4012 of the Energy Policy Act of 2003.

w. FINANCIAL ACCOUNTABILITY.—(1) Notwithstanding subsection d., the Attorney General may bring an action in the appropriate United States district court to recover from a contractor of the Secretary (or subcontractor or supplier of such contractor) amounts paid by the Federal Government under an agreement of indemnification under subsection d. for public liability resulting from conduct which constitutes intentional misconduct of any corporate officer, manager, or superintendent of such contractor (or subcontractor or supplier of such contractor).

(2) The Attorney General may recover under paragraph (1) an amount not to exceed the amount of the profit derived by the defendant from the contract.

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

(4) Paragraph (1) shall not apply to any nonprofit entity conducting activities under contract for the Secretary.

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

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

* * * * * * *

SEC. 170C. SECURE TRANSFER OF NUCLEAR MATERIALS.—

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

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

(A) from a facility licensed by the Nuclear Regulatory Commission;

(B) from a facility licensed by an agreement State; or

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

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

(2) each individual transferring or accompanying the transfer of such materials has been subject to a security background check by appropriate Federal entities; and

(3) such materials are not transferred to or received at a destination other than a facility licensed by the Nuclear Regulatory Commission or an agreement State under this Act or other appropriate Federal facility, or a destination outside the United States in a country with whom the United States has an agreement for cooperation under section 123.

b. Except as otherwise provided by the Commission by regulation, the materials referred to in subsection a. are byproduct materials, source materials, special nuclear materials, high-level radioactive waste, spent nuclear fuel, transuranic waste, and low-level radioactive waste (as defined in section 2(16) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(16))).

SEC. 170D. PREVENTING THE MISUSE OF NUCLEAR MATERIALS AND TECHNOLOGY.—

a. In order to successfully promote the development of nuclear energy as a safe and reliable source of electrical energy, it is the policy of the United States to prevent any nuclear materials, technology, components, substances, technical information, or related goods or services from being misused or diverted from peaceful nuclear energy purposes.

b. In order to further advance the policy set forth in subsection a., notwithstanding any other provision of law, no Federal agency shall issue any license, approval, or authorization for the export or

reexport, or the transfer or retransfer, either directly or indirectly, to any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which, as of September 11, 2001, had been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961, section 6(j)(1) of the Export Administration Act of 1979, or section 40(d) of the Arms Export Control Act to have repeatedly provided support for acts of international terrorism) of—

(1) any special nuclear material or byproduct material;

(2) any nuclear production or utilization facilities; or

(3) any components, technologies, substances, technical information, or related goods or services used (or which could be used) in a nuclear production or utilization facility.

c. Any license, approval, or authorization described in subsection b. made prior to the date of enactment of this section is hereby revoked.

* * * * * * *

CHAPTER 18. ENFORCEMENT

* * * * * * *

SEC. 229, TRESPASS UPON COMMISSION INSTALLATIONS.—

a. The Commission is authorized to issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapons, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property, into or upon any facility, installation, or real property subject to the jurisdiction, administration, or in the custody of the Commission *or subject to its licensing authority or to certification by the Commission under this Act or any other Act*. Every such regulation of the Commission shall be posted conspicuously at the location involved.

* * * * * * *

SEC. 234A. CIVIL MONETARY PENALTIES FOR VIOLATIONS OF DEPARTMENT OF ENERGY SAFETY REGULATIONS.—a. * * *

b. (1) * * *

(2) In determining the amount of any civil penalty under this subsection, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. **[**In implementing this section, the Secretary shall determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty under this section.**]**

* * * * * * *

[d. The provisions of this section shall not apply to:

[(1) The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;

[(2) The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos Na-

tional Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;

[(3) American Telephone an Telegraph Company and its subsidiaries (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratories;

[(4) Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI National Laboratory;

[(5) Princeton University (and any subcontractors or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;

[(6) The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with the Brookhaven National Laboratory; and

[(7) Battelle Memorial Institute (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory.]

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

(1) described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; or

(2) identified by the Secretary by rule as appropriate to be treated the same under this subsection as an entity described in paragraph (1), consistent with the purposes of this section.

* * * * * * *

SEC. 236. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.—

[a. Any person who intentionally and willfully destroys or causes physical damage to—

[(1) any production facility or utilization facility licensed under this Act;

[(2) any nuclear waste storage facility licensed under this Act;

[(3) any nuclear fuel for such a utilization facility, or any spent nuclear fuel from such a facility; or

[(4) any uranium enrichment facility licensed by the Nuclear Regulatory Commission,

or attempts or conspires to do such an act, shall be fined not more than $10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.]

a. Any person who intentionally and willfully destroys or causes physical damage to, or who intentionally and willfully attempts to destroy or cause physical damage to—

(1) any production facility or utilization facility licensed under this Act;

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

(3) any nuclear fuel for a utilization facility licensed under this Act or any spent nuclear fuel from such a facility;

(4) any uranium enrichment or nuclear fuel fabrication facility licensed or certified by the Nuclear Regulatory Commission; or

(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, or nuclear fuel fabrication facility subject to licensing or certification under this Act during its construction where the destruction or damage caused or attempted to be caused could affect public health and safety during the operation of the facility,

shall be fined not more than $1,000,000 or imprisoned for up to life in prison without parole, or both.

* * * * * * *

SECTION 3112 OF THE USEC PRIVATIZATION ACT

SEC. 3112. URANIUM TRANSFERS AND SALES.

(a) * * *

* * * * * * *

[(d) INVENTORY SALES.—(1) In addition to the transfers authorized under subsections (c) and (e), the Secretary may, from time to time, sell natural and low-enriched uranium (including low-enriched uranium derived from highly enriched uranium) from the Department of Energy's stockpile.

[(2) Except as provided in subsections (b), (c), and (e), no sale or transfer of natural or low-enriched uranium shall be made unless—

[(A) the President determines that the material is not necessary for national security needs,

[(B) the Secretary determines that the sale of the material will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industry, taking into account the sales of uranium under the Russian HEU Agreement and the Suspension Agreement, and

[(C) the price paid to the Secretary will not be less than the fair market value of the material.]

(d) INVENTORY SALES.—(1) In addition to the transfers and sales authorized under subsections (b), (c), and (e), the Secretary of Energy or the Secretary of the Army may transfer or sell uranium subject to paragraph (2).

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

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

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

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

(3) The Secretary of Energy shall not make any transfer or sale of uranium under this subsection that would cause the total amount of uranium transferred or sold pursuant to this subsection that is delivered for consumption by end users to exceed—

(A) 3 million pounds of U_3O_8 equivalent in fiscal year 2004, 2005, 2006, 2007, 2008, or 2009;

(B) 5 million pounds of U_3O_8 equivalent in fiscal year 2010 or 2011;

(C) 7 million pounds of U_3O_8 equivalent in fiscal year 2012; and

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

(4) For the purposes of this subsection, the recovery of uranium from uranium bearing materials transferred or sold by the Secretary of Energy or the Secretary of the Army to the domestic uranium industry shall be the preferred method of making uranium available. The recovered uranium shall be counted against the annual maximum deliveries set for in this section, when such uranium is sold to end users.

* * * * * * *

(g) TRANSFERS TO CORPORATION.—Notwithstanding subsection (b)(2) and subsection (d)(2), the Secretary may transfer up to 9,550 metric tons of uranium to the Corporation to replace uranium that the Secretary transferred to the Corporation on or about June 30, 1993, April 20, 1998, and May 18, 1998, and that does not meet commercial specifications.

(h) SERVICES.—(1) Notwithstanding any other provision of this section, if the Secretary determines that if the Corporation has failed, or may fail, to perform any obligation under the Agreement between the Department of Energy and the Corporation dated June 17, 2002, and as amended thereafter, which failure could result in termination of the Agreement, the Secretary shall notify the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, in such a manner that affords the Committees an opportunity to comment, prior to a determination by the Secretary whether termination, waiver, or modification of the Agreement is required. The Secretary is authorized to take such action as he determines necessary under the Agreement to terminate, waive, or modify provisions of the Agreement to achieve its purposes.

(2) Notwithstanding any other provision of this section, if the Secretary determines in accordance with Article 2D of the Agreement between the Department of Energy and the Corporation dated June 17, 2002, and as amended thereafter, to transition operation of the Paducah gaseous diffusion plant, the Secretary may provide uranium enrichment services in a manner consistent with Article 2D of such Agreement.

ENERGY REORGANIZATION ACT OF 1974

* * * * * * *

TITLE II—NUCLEAR REGULATORY COMMISSION; NUCLEAR WHISTLEBLOWER PROTECTION

* * * * * * *

EMPLOYEE PROTECTION

SEC. 211. (a)(1) * * *

(2) For purposes of this section, the term "employer" includes—

(A) * * *

* * * * * * *

(C) a contractor or subcontractor of such a licensee or applicant; [and]

(D) a contractor or subcontractor of the Department of Energy [that is indemnified by the Department under section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)), but such term shall not include any contractor or subcontractor covered by Executive Order No. 12344.] *or the Commission; and*

(E) the Department of Energy and the Commission.

(b)(1) * * *

* * * * * * *

(4) If the Secretary has not issued a final decision within 180 days after the filing of a complaint under paragraph (1), and there is no showing that such delay is due to the bad faith of the claimant, the claimant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

* * * * * * *

REPORTS

SEC. 307. (a) * * *

* * * * * * *

(d) Not later than 6 months after the date of the enactment of this Act, the Secretary of Energy shall transmit to the Congress a report with recommendations on reducing the threat resulting from the theft or diversion of highly enriched uranium. Such report shall address—

(1) monitoring of highly enriched uranium supplies at any commercial companies who have access to substantial amounts of highly enriched uranium;

(2) assistance to companies described in paragraph (1) with security and personnel checks;

(3) acceleration of the process of blending down excess highly enriched uranium into low-enriched uranium;

(4) purchasing highly enriched uranium (except for production of medical isotopes);

(5) paying the cost of shipping highly enriched uranium;

(6) accelerating the conversion of commercial research reactors and energy reactors to the use of low-enriched uranium fuel where they now use highly enriched uranium fuel; and

(7) minimizing, and encouraging transparency in, the further enrichment of low-enriched uranium to highly enriched uranium.

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ENERGY POLICY ACT OF 1992

* * * * * * *

TITLE III—ALTERNATIVE FUELS—GENERAL

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SEC. 303. MINIMUM FEDERAL FLEET REQUIREMENT.

(a) * * *

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(c) ALLOCATION OF INCREMENTAL COSTS.—The General Services Administration and any other Federal agency that procures motor vehicles for distribution to other Federal agencies [may] *shall* allocate the incremental cost of alternative fueled vehicles over the cost of comparable gasoline vehicles across the entire fleet of motor vehicles distributed by such agency.

* * * * * * *

TITLE V—AVAILABILITY AND USE OF REPLACEMENT FUELS, ALTERNATIVE FUELS, AND ALTERNATIVE FUELED PRIVATE VEHICLES

* * * * * * *

SEC. 508. CREDITS.

(a) * * *

* * * * * * *

(e) CREDIT FOR SUBSTANTIAL CONTRIBUTION TOWARD USE OF DEDICATED VEHICLES IN NONCOVERED FLEETS.—

(1) DEFINITIONS.—In this subsection:

(A) MEDIUM OR HEAVY DUTY VEHICLE.—The term "medium or heavy duty vehicle" means a dedicated vehicle that—

(i) in the case of a medium duty vehicle, has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds; or

(ii) in the case of a heavy duty vehicle, has a gross vehicle weight rating of more than 14,000 pounds.

(B) SUBSTANTIAL CONTRIBUTION.—The term "substantial contribution" means not less than $15,000 in cash or in kind services, as determined by the Secretary.

(2) ALLOCATION OF CREDITS.—The Secretary shall allocate a credit to a fleet or covered person under this section if the fleet or person makes a substantial contribution toward the acquisition and use of dedicated vehicles or neighborhood electric vehicles by a person that owns, operates, leases, or otherwise controls a fleet that is not covered by this title.

(3) MULTIPLE CREDITS FOR MEDIUM AND HEAVY DUTY VEHICLES.—The Secretary shall issue 2 full credits to a fleet or covered person under this section if the fleet or person makes a substantial contribution toward the acquisition and use of a medium or heavy duty vehicle.

(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the acquisition of the dedicated vehicle or neighborhood electric vehicle is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.

(5) LIMITATION.—Except as provided in paragraph (3), no more than 1 credit shall be allocated under this subsection for each vehicle.

(f) CREDIT FOR INVESTMENT IN ALTERNATIVE FUEL INFRASTRUCTURE.—

(1) DEFINITION.—In this subsection, the term "qualifying infrastructure" means—

(A) equipment required to refuel or recharge alternative fueled vehicles;

(B) facilities or equipment required to maintain, repair, or operate alternative fueled vehicles;

(C) training programs, educational materials, or other activities necessary to provide information regarding the operation, maintenance, or benefits associated with alternative fueled vehicles; and

(D) such other activities the Secretary considers to constitute an appropriate expenditure in support of the operation, maintenance, or further widespread adoption of or utilization of alternative fueled vehicles.

(2) ALLOCATION OF CREDITS.—The Secretary shall allocate a credit to a fleet or covered person under this section for investment in qualifying infrastructure if the qualifying infrastructure is open to the general public during regular business hours.

(3) AMOUNT.—For the purposes of credits under this subsection—

(A) 1 credit shall be equal to a minimum investment of $25,000 in cash or in kind services, as determined by the Secretary; and

(B) except in the case of a Federal or State fleet, no part of the investment may be provided by Federal or State funds.

(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the investment is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.

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TITLE XII—RENEWABLE ENERGY

* * * * * * *

SEC. 1212. RENEWABLE ENERGY PRODUCTION INCENTIVE.

(a) INCENTIVE PAYMENTS.—For electric energy generated and sold by a qualified renewable energy facility during the incentive period, the Secretary shall make, subject to the availability of appropriations, incentive payments to the owner or operator of such facility. The amount of such payment made to any such owner or

operator shall be as determined under subsection (e). Payments under this section may only be made upon receipt by the Secretary of an incentive payment application which establishes that the applicant is eligible to receive such payment [and which satisfies such other requirements as the Secretary deems necessary. Such application shall be in such form, and shall be submitted at such time, as the Secretary shall establish.]. *If there are insufficient appropriations to make full payments for electric production from all qualified renewable energy facilities in any given year, the Secretary shall assign 60 percent of appropriated funds for that year to facilities that use solar, wind, geothermal, or closed-loop (dedicated energy crops) biomass technologies to generate electricity, and assign the remaining 40 percent to other projects. The Secretary may, after transmitting to the Congress an explanation of the reasons therefor, alter the percentage requirements of the preceding sentence.*

(b) QUALIFIED RENEWABLE ENERGY FACILITY.—For purposes of this section, a qualified renewable energy facility is a facility which is owned by [a State or any political subdivision of a State (or an agency, authority, or instrumentality of a State or a political subdivision), by any corporation or association which is wholly owned, directly or indirectly, by one or more of the foregoing, or by a nonprofit electrical cooperative] *a not-for-profit electric cooperative, a public utility described in section 115 of the Internal Revenue Code of 1986, a State, Commonwealth, territory, or possession of the United States or the District of Columbia, or a political subdivision thereof, or an Indian tribal government of subdivision thereof,* and which generates electric energy for sale in, or affecting, interstate commerce using solar, wind, biomass, *landfill gas,* or geothermal energy, except that—

(1) * * *

(c) ELIGIBILITY WINDOW.—Payments may be made under this section only for electricity generated from a qualified renewable energy facility first used [during the 10-fiscal year period beginning with the first full fiscal year occurring after the enactment of this section] *after October 1, 2003, and before October 1, 2013*.

* * * * * * *

(e) AMOUNT OF PAYMENT.—

(1) IN GENERAL.—Incentive payments made by the Secretary under this section to the owner or operator of any qualified renewable energy facility shall be based on the number of kilowatt hours of electricity generated by the facility through the use of solar, wind, biomass, *landfill gas,* or geothermal energy during the payment period referred to in subsection (d). For any facility, the amount of such payment shall be 1.5 cents per kilowatt hour, adjusted as provided in paragraph (2).

* * * * * * *

(f) SUNSET.—No payment may be made under this section to any facility after [the expiration of the 20-fiscal year period beginning with the first full fiscal year occurring after the enactment of this section] *September 30, 2023*, and no payment may be made under this section to any facility after a payment has been made with respect to such facility for a 10-fiscal year period.

[(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for fiscal years 1993, 1994, and

1995 such sums as may be necessary to carry out the purposes of this section.]

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), there are authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years 2003 through 2023.

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

* * * * * * *

SECTION 127 OF TITLE 23, UNITED STATES CODE

§ 127. Vehicle weight limitations—Interstate System

(a) IN GENERAL.—No funds shall be apportioned in any fiscal year under section 104(b)(1) of this title to any State which does not permit the use of the National System of Interstate and Defense Highways within its boundaries by vehicles with a weight of twenty thousand pounds carried on any one axle, including enforcement tolerances, or with a tandem axle weight of thirty-four thousand pounds, including enforcement tolerances, or a gross weight of at least eighty thousand pounds for vehicle combinations of five axles or more. However, the maximum gross weight to be allowed by any State for vehicles using the National System of Interstate and Defense Highways shall be twenty thousand pounds carried on one axle, including enforcement tolerances, and a tandem axle weight of thirty-four thousand pounds, including enforcement tolerances and with an overall maximum gross weight, including enforcement tolerances, on a group of two or more consecutive axles produced by application of the following formula:

$$W=500\left(\frac{LN}{N-1}+12N+36\right)$$

where W equals overall gross weight on any group of two or more consecutive axles to the nearest five hundred pounds, L equals distance in feet between the extreme of any group of two or more consecutive axles, and N equals number of axles in group under consideration, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem axles is (1) thirty-six feet or more, or (2) in the case of a motor vehicle hauling any tank trailer, dump trailer, or ocean transport container before September 1, 1989, is 30 feet or more: *Provided,* That such overall gross weight may not exceed eighty thousand pounds, including all enforcement tolerances, except for vehicles using Interstate Route 29 between Sioux City, Iowa, and the border between Iowa and South Dakota or vehicles using Interstate Route 129 between Sioux City, Iowa, and the border between Iowa and Nebraska, and except for those vehicles and loads which cannot be easily dismantled or divided and which have been issued special permits in accordance with applicable State laws, or the corresponding maximum weights permitted for vehi-

cles using the public highways of such State under laws or regulations established by appropriate State authority in effect on July 1, 1956 except in the case of the overall gross weight of any group of two or more consecutive axles on any vehicle (other than a vehicle comprised of a motor vehicle hauling any tank trailer, dump trailer, or ocean transport container on or after September 1, 1989), on the date of enactment of the Federal-Aid Highway Amendments of 1974, whichever is the greater. Any amount which is withheld from apportionment to any State pursuant to the foregoing provisions shall lapse if not released and obligated within the availability period specified in section 118(b)(1) of this title. This section shall not be construed to deny apportionment to any State allowing the operation within such State of any vehicles or combinations thereof, other than vehicles or combinations subject to subsection (d) of this section, which the State determines could be lawfully operated within such State on July 1, 1956, except in the case of the overall gross weight of any group of two or more consecutive axles, on the date of enactment of the Federal-Aid Highway Amendments of 1974. With respect to State of Hawaii, laws or regulations in effect on February 1, 1960, shall be applicable for the purposes of this section in lieu of those in effect on July 1, 1956. With respect to the State of Colorado, vehicles designed to carry 2 or more precast concrete panels shall be considered a nondivisible load. With respect to the State of Michigan, laws or regulations in effect on May 1, 1982, shall be applicable for the purposes of this subsection. With respect to the State of Maryland, laws and regulations in effect on June 1, 1993, shall be applicable for the purposes of this subsection. The State of Louisiana may allow, by special permit, the operation of vehicles with a gross vehicle weight of up to 100,000 pounds for the hauling of sugarcane during the harvest season, not to exceed 100 days annually. With respect to Interstate Route 95 in the State of New Hampshire, State laws (including regulations) concerning vehicle weight limitations that were in effect on January 1, 1987, and are applicable to State highways other than the Interstate System, shall be applicable in lieu of the requirements of this subsection. With respect to that portion of the Maine Turnpike designated Interstate Route 95 and 495, and that portion of Interstate Route 95 from the southern terminus of the Maine Turnpike to the New Hampshire State line, laws (including regulations) of the State of Maine concerning vehicle weight limitations that were in effect on October 1, 1995, and are applicable to State highways other than the Interstate System, shall be applicable in lieu of the requirements of this subsection. *In instances where an idle reduction technology is installed onboard a motor vehicle, the maximum gross vehicle weight limit and the axle weight limit for any motor vehicle equipped with an idling reduction system may be increased by an amount necessary to compensate for the additional weight of the idling reduction system, except that the weight limit increase shall be no greater than 400 pounds.*

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That this Act may be cited as the "Public Utility Act of 1935."

[TITLE I—CONTROL OF PUBLIC-UTILITY HOLDING COMPANIES

[NECESSITY FOR CONTROL OF HOLDING COMPANIES

[SECTION 1. (a) Public-utility holding companies and their subsidiary companies are affected with a national public interest in that, among other things, (1) their securities are widely marketed and distributed by means of the mails and instrumentalities of interstate commerce and are sold to a large number of investors in different States; (2) their service, sales, construction, and other contracts and arrangements are often made and performed by means of the mails and instrumentalities of interstate commerce; (3) their subsidiary public-utility companies often sell and transport gas and electric energy by the use of means and instrumentalities of interstate commerce; (4) their practices in respect of and control over subsidiary companies often materially affect the interstate commerce in which those companies engage; (5) their activities extending over many States are not susceptible of effective control by any State and make difficult, if not impossible, effective State regulation of public-utility companies.

[(b) Upon the basis of facts disclosed by the reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session), the reports of the Committee on Interstate and Foreign Commerce, House of Representatives, made pursuant to H. Res. 59 (Seventy-second Congress, first session) and H.J. Res. 572 (Seventy-second Congress, second session) and otherwise disclosed and ascertained, it is hereby declared that the national public interest, the interest of investors in the securities of holding companies and their subsidiary companies and affiliates, and the interest of consumers of electric energy and natural and manufactured gas, are or may be adversely affected—

[(1) when such investors cannot obtain the information necessary to appraise the financial position or earning power of the issuers, because of the absence of uniform standard accounts; when such securities are issued without the approval or consent of the States having jurisdiction over subsidiary public-utility companies; when such securities are issued upon the basis of fictitious or unsound asset values having no fair relation to the sums invested in or the earning capacity of the properties and upon the basis of paper profits from intercompany transactions, or in anticipation of excessive revenues from subsidiary public-utility companies; when such securities are issued by a subsidiary public-utility company under circumstances which subject such company to the burden of supporting an overcapitalized structure and tend to prevent voluntary rate reductions;

[(2) when subsidiary public-utility companies are subjected to excessive charges for services, construction work, equipment, and materials, or enter into transactions in which evils result from an absence of arm's-length bargaining or from restraint of free and independent competition; when service, management, construction, and other contracts involve the allocation of charges among subsidiary public-utility companies in different States so as to present problems of regulation which cannot be dealt with effectively by the States;

[(3) when control of subsidiary public-utility companies affects the accounting practices and rate, dividend, and other policies of such companies so as to complicate and obstruct State regulation of such companies, or when control of such companies is exerted through disproportionately small investment;

[(4) when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties; or

[(5) when in any other respect there is lack of economy of management and operation of public-utility companies or lack of efficiency and adequacy of service rendered by such companies, or lack of effective public regulation, or lack of economies in the raising of capital.

[(c) When abuses of the character above enumerated become persistent and wide-spread the holding company becomes an agency which, unless regulated, is injurious to investors, consumers, and the general public; and it is hereby declared to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce; and for the purpose of effectuating such policy to compel the simplification of public-utility holding-company systems and the elimination therefrom of properties detrimental to the proper functioning of such systems, and to provide as soon as practicable for the elimination of public-utility holding companies except as otherwise expressly provided in this title.

[DEFINITIONS

[SEC. 2. (a) When used in this title, unless the context otherwise requires—

[(1) "Person" means an individual or company.

[(2) "Company" means a corporation, a partnership, an association, a joint-stock company, a business trust, or an organized group of persons, whether incorporated or not; or any receiver, trustee, or other liquidating agent of any of the foregoing in his capacity as such.

[(3) "Electric utility company" means any company which owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale, other than sale to tenants or employees of the company operating such facilities for their own use and not for resale. The Commission, upon application, shall by order declare a company operating any such facilities not to be an electric utility company if the Commission finds that (A) such company is primarily engaged in one or more businesses other than the business of an electric utility company, and by reason of the small amount of electric energy sold by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered an electric utility company for the purposes of this title, or (B) such company is one operating within a single State, and substantially all of its out-

standing securities are owned directly or indirectly by another company to which such operating company sells or furnishes electric energy which it generates; such other company uses and does not resell such electric energy, is engaged primarily in manufacturing (other than the manufacturing of electric energy or gas) and is not controlled by any other company; and by reason of the small amount of electric energy sold or furnished by such operating company to other persons it is not necessary in the public interest or for the protection of investors or consumers that it be considered an electric utility company for the purposes of this title. The filing of an application hereunder in good faith shall exempt such company (and the owner of the facilities operated by such company) from the application of this paragraph until the Commission has acted upon such application. As a condition to the entry of any such order, and as a part thereof, the Commission may require application to be made periodically for a renewal of such order, and may require the filing of such periodic or special reports regarding the business of the company as the Commission may find necessary or appropriate to insure that such company continues to be entitled to such exemption during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke such order whenever it finds that the conditions specified in clause (A) or (B) are not satisfied in the case of such company. Any action of the Commission under the preceding sentence shall be by order. Application under this paragraph may be made by the company in respect of which the order is to be issued or by the owner of the facilities operated by such company. Any order issued under this paragraph shall apply equally to such company and such owner. The Commission may by rules or regulations conditionally or unconditionally provide that any specified class or classes of companies which it determines to satisfy the conditions specified in clause (A) or (B), and the owners of the facilities operated by such companies, shall not be deemed electric utility companies within the meaning of this paragraph.

[(4) "Gas utility company" means any company which owns or operates facilities used for the distribution at retail (other than distribution only in enclosed portable containers, or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power. The Commission, upon application, shall by order declare a company operating any such facilities not to be a gas utility company if the Commission finds that (A) such company is primarily engaged in one or more businesses other than the business of a gas utility company, and (B) by reason of the small amount of natural or manufactured gas distributed at retail by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered a gas utility company for the purposes of this title. The filing of an application hereunder in good faith shall exempt such company (and the owner of the facilities operated by such company) from the application of this paragraph until the Commission has acted upon such application. As a condition to the entry of

any such order, and as a part thereof, the Commission may require application to be made periodically for a renewal of such order, and may require the filing of such periodic or special reports regarding the business of the company as the Commission may find necessary or appropriate to insure that such company continues to be entitled to such exemption during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke such order whenever it finds that the conditions specified in clauses (A) and (B) are not satisfied in the case of such company. Any action of the Commission under the preceding sentence shall be by order. Application under this paragraph may be made by the company in respect of which the order is to be issued or by the owner of the facilities operated by such company. Any order issued under this paragraph shall apply equally to such company and such owner. The Commission may by rules or regulations conditionally or unconditionally provide that any specified class or classes of companies which it determines to satisfy the conditions specified in clauses (A) and (B), and the owners of the facilities operated by such companies, shall not be deemed gas utility companies within the meaning of this paragraph.

[(5) "Public-utility company" means an electric utility company or a gas utility company.

[(6) "Commission" means the Securities and Exchange Commission.

[(7) "Holding company" means—

[(A) any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public-utility company or of a company which is a holding company by virtue of this clause or clause (B), unless the Commission, as hereinafter provided, by order declares such company not to be a holding company; and

[(B) any person which the Commission determines, after notice and opportunity for hearing, directly or indirectly to exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon holding companies.

The Commission, upon application, shall by order declare that a company is not a holding company under clause (A) if the Commission finds that the applicant (i) does not, either alone or pursuant to an arrangement or understanding with one or more other persons, directly or indirectly control a public-utility or holding company either through one or more intermediary persons or by any means or device whatsoever, (ii) is not an intermediary company through which such control is exercised, and (iii) does not, directly or indirectly, exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over

the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon holding companies. The filing of an application hereunder in good faith by a company other than a registered holding company shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a holding company, until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application. As a condition to the entry of any order granting such application and as a part of any such order, the Commission may require the applicant to apply periodically for a renewal of such order and to do or refrain from doing such acts or things, in respect of exercise of voting rights, control over proxies, designation of officers and directors, existence of interlocking officers, directors and other relationships, and submission of periodic or special reports regarding affiliations or intercorporate relationships of the applicant, as the Commission may find necessary or appropriate to ensure that in the case of the applicant the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application of the company affected, shall revoke the order declaring such company not to be a holding company whenever in its judgment any condition specified in clause (i), (ii), or (iii) is not satisfied in the case of such company, or modify the terms of such order whenever in its judgment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. Any action of the Commission under the preceding sentence shall be by order.

[(8) "Subsidiary company" of a specified holding company means—

[(A) any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company (or by a company that is a subsidiary company of such holding company by virtue of this clause or clause (B)), unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company; and

[(B) any person the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies.

The Commission, upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through one or more intermediary persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies. The filing of an application hereunder in good faith shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a subsidiary company of such specified holding company until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application. As a condition to the entry of, and as a part of, any order granting such application, the Commission may require the applicant to apply periodically for a renewal of such order and to file such periodic or special reports regarding the affiliations or intercorporate relationships of the applicant as the Commission may find necessary or appropriate to enable it to determine whether in the case of the applicant the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke the order declaring such company not to be a subsidiary company whenever in its judgment any condition specified in clause (i), (ii), or (iii) is not satisfied in the case of such company, or modify the terms of such order whenever in its judgment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. Any action of the Commission under the preceding sentence shall be by order. Any application under this paragraph may be made by the holding company or the company in respect of which the order is to be entered, but as used in this paragraph the term "applicant" means only the company in respect of which the order is to be entered.

[(9) "Holding-company system" means any holding company, together with all its subsidiary companies, and all mutual service companies (as defined in paragraph (13) of this subsection) of which such holding company or any subsidiary company thereof is a member company (as defined in paragraph (14) of this subsection).

[(10) "Associate company" of a company means any company in the same holding-company system with such company.

[(11) "Affiliate" of a specified company means—

[(A) any person that directly or indirectly owns, controls, or holds with power to vote, 5 per centum or more of the outstanding voting securities of such specified company;

[(B) any company 5 per centum or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by such specified company;

[(C) any individual who is an officer or director of such specified company, or of any company which is an affiliate thereof under clause (A) of this paragraph; and

[(D) any person or class of persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to such specified company that there is liable to be such an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon affiliates of a company.

[(12) "Registered holding company" means a person whose registration is in effect under section 5.

[(13) "Mutual service company" means a company approved as a mutual service company under section 13.

[(14) "Member company" means a company which is a member of an association or group of companies mutually served by a mutual service company.

[(15) "Director" means any director of a corporation or any individual who performs similar functions in respect of any company.

[(16) "Security" means any note, draft, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, receiver's or trustee's certificate, or, in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, assumption of liability on, or warrant or right to subscribe to or purchase, any of the foregoing.

[(17) "Voting security" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company, or any security issued under or pursuant to any trust, agreement, or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such security are presently entitled to vote in the direction or management of the affairs of a company; and a specified per centum of the outstanding voting securities of a company means such amount of the outstanding voting securities of such company as entitles the holder or holders thereof to cast said specified per centum of the aggregate votes which the holders of all the outstanding voting securities of such com-

pany are entitled to cast in the direction or management of the affairs of such company.

[(18) "Utility assets" means the facilities, in place, of any electric utility company or gas utility company for the production, transmission, transportation, or distribution of electric energy or natural or manufactured gas.

[(19) "Service contract" means any contract, agreement, or understanding whereby a person undertakes to sell or furnish, for a charge, any managerial, financial, legal, engineering, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, or any other service, information, or data.

[(20) "Sales contract" means any contract, agreement, or understanding whereby a person undertakes to sell, lease, or furnish, for a charge, any goods, equipment, materials, supplies, appliances, or similar property. As used in this paragraph the term "property" does not include electric energy or natural or manufactured gas.

[(21) "Construction contract" means any contract, agreement, or understanding for the construction, extension, improvement, maintenance, or repair of the facilities or any part thereof of a company for a charge.

[(22) "Buy", "acquire", "acquisition", or "purchase" includes any purchase, acquisition by lease, exchange, merger, consolidation, or other acquisition.

[(23) "Sale" or "sell" includes any sale, disposition by lease, exchange or pledge, or other disposition.

[(24) "State" means any State of the United States or the District of Columbia.

[(25) "United States", when used in a geographical sense, means the States.

[(26) "State commission" means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State which under the law of such State has jurisdiction to regulate public-utility companies.

[(27) "State securities commission" means any commission, board, agency, or officer, by whatever name designated, other than a State commission as defined in paragraph (26) of this subsection, which under the law of a State has jurisdiction to regulate, approve, or control the issue or sale of a security by a company.

[(28) "Interstate commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

[(29) "Integrated public-utility system" means—

[(A) As applied to electric utility companies, a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and

the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; and

[(B) As applied to gas utility companies, a system consisting of one or more gas utility companies which are so located and related that substantial economies may be effectuated by being operated as a single coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; *Provided,* That gas utility companies deriving natural gas from a common source of supply may be deemed to be included in a single area or region.

[(b) No person shall be deemed to be a holding company under clause (B) of paragraph (7) of subsection (a), or a subsidiary company under clause (B) of paragraph (8) of such subsection, or an affiliate under clause (D) of paragraph (11) of such subsection, unless the Commission, after appropriate notice and opportunity for hearing, has issued an order declaring such person to be a holding company, a subsidiary company, or an affiliate, or declaring a class of which such person is a member to be affiliates. Such an order shall not become effective for at least thirty days after the mailing of a copy thereof to the person thereby declared to be a holding company, subsidiary company, or affiliate; or, in the case of determination of affiliates by classes, until at least thirty days after appropriate publication thereof in such manner as the Commission shall determine. Whenever the Commission, on its own motion or upon application by the person declared to be a holding company, subsidiary company, or affiliate, finds that the circumstances which gave rise to the issuance of any such order no longer exist, the Commission shall by order revoke such order.

[(c) No provision in this title shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

[POWER TO MAKE PARTICULAR EXEMPTIONS REGARDING HOLDING COMPANIES, SUBSIDIARY COMPANIES, AND AFFILIATES

[SEC. 3. (a) The Commission, by rules and regulations upon its own motion, or by order upon application, shall exempt any holding company, and every subsidiary company thereof as such, from any provision or provisions of this title, unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers, if—

[(1) such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in character and carry on their business substantially in a single State in

which such holding company and every such subsidiary company thereof are organized;

[(2) such holding company is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto;

[(3) such holding company is only incidentally a holding company, being primarily engaged or interested in one or more businesses other than the business of a public-utility company and (A) not deriving, directly or indirectly, any material part of its income from any one or more subsidiary companies, the principal business of which is that of a public-utility company, or (B) deriving a material part of its income from any one or more such subsidiary companies, if substantially all the outstanding securities of such companies are owned, directly or indirectly, by such holding company;

[(4) such holding company is temporarily a holding company solely by reason of the acquisition of securities for purposes of liquidation or distribution in connection with a bona fide debt previously contracted or in connection with a bona fide arrangement for the underwriting or distribution of securities; or

[(5) such holding company is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company.

[(b) The Commission, by rules and regulations upon its own motion, or by order upon application, shall exempt any subsidiary company, as such, of a holding company from any provision or provisions of this title, the application of which to such subsidiary company the Commission finds is not necessary in the public interest or for the protection of investors, if such subsidiary company derives no material part of its income, directly or indirectly, from sources within the United States, and neither it nor any of its subsidiary companies is a public-utility company operating in the United States.

[(c) Within a reasonable time after the receipt of an application for exemption under subsection (a) or (b), the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of such application. The filing of an application in good faith under subsection (a) by a person other than a registered holding company shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a holding company until the Commission has acted upon such application. The filing of an application in good faith under subsection (b) shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a subsidiary company until the Commission has acted upon such application. Whenever the Commission, on its own motion, or upon application by the holding company or any subsidiary company thereof exempted by any order issued under subsection (a), or by the subsidiary company exempted by any order issued under subsection (b), finds that the circumstances which gave rise to the issuance of such order no longer exist, the Commission shall by order revoke such order.

[(d) The Commission may, by rules and regulations, conditionally or unconditionally exempt any specified class or classes of persons from the obligations, duties, or liabilities imposed upon such persons as subsidiary companies or affiliates under any provision or provisions of this title, and may provide within the extent of any such exemption that such specified class or classes of persons shall not be deemed subsidiary companies or affiliates within the meaning of any such provision or provisions, if and to the extent that it deems the exemption necessary or appropriate in the public interest or for the protection of investors or consumers and not contrary to the purposes of this title.

[TRANSACTIONS BY UNREGISTERED HOLDING COMPANIES

[SEC. 4. (a) After December 1, 1935, unless a holding company is registered under section 5, it shall be unlawful for such holding company, directly or indirectly—

[(1) to sell, transport, transmit, or distribute, or own or operate any utility assets for the transportation, transmission, or distribution of, natural or manufactured gas or electric energy in interstate commerce;

[(2) by use of the mails or any means or instrumentality of interstate commerce, to negotiate, enter into, or take any step in the performance of, any service, sales, or construction contract undertaking to perform services or construction work for, or sell goods to, any public-utility company or holding company;

[(3) to distribute or make any public offering for sale or exchange of any security of such holding company, any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company, by use of the mails or any means or instrumentality of interstate commerce, or to sell any such security having reason to believe that such security, by use of the mails or any means or instrumentality of interstate commerce, will be distributed or made the subject of a public offering;

[(4) by use of the mails or any means or instrumentality of interstate commerce, to acquire or negotiate for the acquisition of any security or utility assets of any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company;

[(5) to engage in any business in interstate commerce; or

[(6) to own, control, or hold with power to vote, any security of any subsidiary company thereof that does any of the acts enumerated in paragraphs (1) to (5), inclusive, of this subsection.

[(b) Every holding company which has outstanding any security any of which, by use of the mails or any means or instrumentality of interstate commerce, has been distributed or made the subject of a public offering subsequent to January 1, 1925, and any of which security is owned or held on October 1, 1935 (or, if such company is not a holding company on that date, on the date such company becomes a holding company) by persons not resident in the State in which such holding company is organized, shall register under section 5 on or before December 1, 1935 or the thirtieth day

after such company becomes a holding company, whichever date is later.

[REGISTRATION OF HOLDING COMPANIES

[SEC. 5. (a) On or at any time after October 1, 1935, any holding company or any person purposing to become a holding company may register by filing with the Commission a notification of registration, in such form as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. A person shall be deemed to be registered upon receipt by the Commission of such notification of registration.

[(b) It shall be the duty of every registered holding company to file with the Commission, within such reasonable time after registration as the Commission shall fix by rules and regulations or order, a registration statement in such form as the Commission shall by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. Such registration statement shall include—

[(1) such copies of the charter or articles of incorporation, partnership, or agreement, with all amendments thereto, and the bylaws, trust indentures, mortgages, underwriting arrangements, voting-trust agreements, and similar documents, by whatever name known, of or relating to the registrant or any of its associate companies as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers;

[(2) such information in such form and in such detail relating to, and copies of such documents of or relating to, the registrant and its associate companies as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers in respect of—

[(A) the organization and financial structure of such companies and the nature of their business;

[(B) the terms, position, rights, and privileges of the different classes of their securities outstanding;

[(C) the terms and underwriting arrangements under which their securities, during not more than the five preceding years, have been offered to the public or otherwise disposed of and the relations of underwriters to, and their interest in, such companies;

[(D) the directors and officers of such companies, their remuneration, their interest in the securities of, their material contracts with, and their borrowings from, any of such companies;

[(E) bonus and profit-sharing arrangements;

[(F) material contracts, not made in the ordinary course of business, and service, sales, and construction contracts;

[(G) options in respect of securities;

[(H) balance sheets for not more than the five preceding fiscal years certified, if required by the rules and regulations of the Commission, by an independent public accountant;

[(I) profit and loss statements for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission, by an independent public accountant;

[(3) such further information or documents regarding the registrant or its associate companies or the relations between them as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

[(c) The Commission by such rules and regulations or order as it deems necessary or appropriate in the public interest or for the protection of investors or consumers, may permit a registrant to file a preliminary registration statement without complying with the provisions of subsection (b); but every registrant shall file a complete registration statement with the Commission within such reasonable period of time as the Commission shall fix by rules and regulations or order, but not later than one year after the date of registration.

[(d) Whenever the Commission, upon application, finds that a registered holding company has ceased to be a holding company, it shall so declare by order and upon the taking effect of such order the registration of such company shall, upon such terms and conditions as the Commission finds and in such order prescribes as necessary for the protection of investors, cease to be in effect. The denial of any such application by the Commission shall be by order.

[UNLAWFUL SECURITY TRANSACTIONS BY REGISTERED HOLDING AND SUBSIDIARY COMPANIES

[SEC. 6. (a) Except in accordance with a declaration effective under section 7 and with the order under such section permitting such declaration to become effective, it shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly (1) to issue or sell any security of such company; or (2) to exercise any privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of an outstanding security of such company.

[(b) The provisions of subsection (a) shall not apply to the issue, renewal, or guaranty by a registered holding company or subsidiary company thereof of a note or draft (including the pledge of any security as collateral therefor) if such note or draft (1) is not part of a public offering, (2) matures or is renewed for not more than nine months, exclusive of days of grace, after the date of such issue, renewal, or guaranty thereof, and (3) aggregates (together with all other then outstanding notes and drafts of a maturity of nine months or less, exclusive of days of grace, as to which such company is primarily or secondarily liable) not more than 5 per centum of the principal amount and par value of the other securities of such company then outstanding, or such greater per centum thereof as the Commission upon application may by order authorize as necessary or appropriate in the public interest or for the protection of investors or consumers. In the case of securities having no principal amount or no par value, the value for the purposes of this subsection shall be the fairmarket value as of the date of issue. The Commission by rules and regulations or order, subject to such

terms and conditions as it deems appropriate in the public interest or for the protection of investors or consumers, shall exempt from the provisions of subsection (a) the issue or sale of any security by any subsidiary company of a registered holding company, if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company and have been expressly authorized by the State commission of the State in which such subsidiary company is organized and doing business, or if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company when such subsidiary company is not a holding company, a public-utility company, an investment company, or a fiscal or financing agency of a holding company, a public-utility company, or an investment company. The provisions of subsection (a) shall not apply to the issue, by a registered holding company or subsidiary company thereof, of a security issued pursuant to the terms of any security outstanding on January 1, 1935, giving the holder of such outstanding security the right to convert such outstanding security into another security of the same issuer or of another person, or giving the right to subscribe to another security of the same issuer or another issuer. Within ten days after any issue, sale, renewal, or guaranty exempted from the application of subsection (a) by or under authority of this subsection, such holding company or subsidiary company thereof shall file with the Commission a certificate of notification in such form and setting forth such of the information required in a declaration under section 7 as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

[(c) It shall be unlawful, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, for any registered holding company or any subsidiary company thereof, directly or indirectly,—

[(1) to sell or offer for sale or to cause to be sold or offered for sale, from house to house, any security of such holding company; or

[(2) to cause any officer or employee of any subsidiary company of such holding company to sell or cause to be sold any security of such holding company.

As used in this subsection the term "house" shall not include an office used for business purposes.

[DECLARATIONS BY REGISTERED HOLDING AND SUBSIDIARY COMPANIES IN RESPECT OF SECURITY TRANSACTIONS

[SEC. 7. (a) A registered holding company or subsidiary company thereof may file a declaration with the Commission, regarding any of the acts enumerated in subsection (a) of section 6, in such form as the Commission may be rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. Such declaration shall include—

[(1) such of the information and documents which are required to be filed in order to register a security under section 7 of the Securities Act of 1933, as amended, as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers; and

[(2) such additional information, in such form and detail, and such documents regarding the declarant or any associate company thereof, the particular security and compliance with such State laws as may apply to the act in question as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

[(b) A declaration filed under this section shall become effective within such reasonable period of time after the filing thereof as the Commission shall fix by rules and regulations or order, unless the Commission prior to the expiration of such period shall have issued an order to the declarant to show cause why such declaration should become effective. Within a reasonable time after an opportunity for hearing upon an order to show cause under this subsection, unless the declarant shall withdraw its declaration, the Commission shall enter an order either permitting such declaration to become effective as filed or amended, or refusing to permit such declaration to become effective. Amendments to a declaration may be made upon such terms and conditions as the Commission may prescribe.

[(c) The Commission shall not permit a declaration regarding the issue or sale of a security to become effective unless it finds that—

[(1) such security is (A) a common stock having a par value and being without preference as to dividends or distribution over, and having at least equal voting rights with, any outstanding security of the declarant; (B) a bond (i) secured by a first lien on physical property of the declarant, or (ii) secured by an obligation of a subsidiary company of the declarant secured by a first lien on physical property of such subsidiary company, or (iii) secured by any other assets of the type and character which the Commission by rules and regulations or order may prescribe as appropriate in the public interest or for the protection of investors; (C) a guaranty of, or assumption of liability on, a security of another company; or (D) a receiver's or trustee's certificate duly authorized by the appropriate court or courts; or

[(2) such security is to be issued or sold solely (A) for the purpose of refunding, extending, exchanging, or discharging an outstanding security of the declarant and/or a predecessor company thereof or for the purpose of effecting a merger, consolidation, or other reorganization; (B) for the purpose of financing the business of the declarant as a public-utility company; (C) for the purpose of financing the business of the declarant, when the declarant is neither a holding company nor a public-utility company; and/or (D) for necessary and urgent corporate purposes of the declarant where the requirements of the provisions of paragraph (1) would impose an unreasonable financial burden upon the declarant and are not necessary or appropriate in the public interest or for the protection of investors or consumers; or

[(3) such security is one the issuance of which was authorized by the company prior to January 1, 1935, and which the Commission by rules and regulations or order authorizes as necessary or appropriate in the public interest or for the protection of investors or consumers.

[(d) If the requirements of subsections (c) and (g) are satisfied, the Commission shall permit a declaration regarding the issue or sale of a security to become effective unless the Commission finds that—

[(1) the security is not reasonably adapted to the security structure of the declarant and other companies in the same holding-company system;

[(2) the security is not reasonably adapted to the earning power of the declarant;

[(3) financing by the issue and sale of the particular security is not necessary or appropriate to the economical and efficient operation of a business in which the applicant lawfully is engaged or has an interest;

[(4) the fees, commissions, or other remuneration, to whomsoever paid, directly or indirectly, in connection with the issue, sale, or distribution of the security are not reasonable;

[(5) in the case of a security that is a guaranty of, or assumption of liability on, a security of another company, the circumstances are such as to constitute the making of such guaranty or the assumption of such liability an improper risk for the declarant; or

[(6) the terms and conditions of the issue or sale of the security are detrimental to the public interest or the interest of investors or consumers.

[(e) If the requirements of subsection (g) are satisfied, the Commission shall permit a declaration to become effective regarding the exercise of a privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of an outstanding security unless the Commission finds that such exercise of such privilege or right will result in an unfair or inequitable distribution of voting power among holders of the securities of the declarant or is otherwise detrimental to the public interest or the interest of investors or consumers.

[(f) Any order permitting a declaration to become effective may contain such terms and conditions as the Commission finds necessary to assure compliance with the conditions specified in this section.

[(g) If a State commission or State securities commission, having jurisdiction over any of the acts enumerated in subsection (a) of section 6, shall inform the Commission, upon request by the Commission for an opinion or otherwise, that State laws applicable to the act in question have not been complied with, the Commission shall not permit a declaration regarding the act in question to become effective until and unless the Commission is satisfied that such compliance has been effected.

[ACQUIRING INTEREST IN ELECTRIC AND GAS UTILITY COMPANIES SERVING SAME TERRITORY

[SEC. 8. Whenever a State law prohibits, or requires approval or authorization of, the ownership or operation by a single company of the utility assets of an electric utility company and a gas utility company serving substantially the same territory, it shall be unlawful for a registered holding company, or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise—

[(1) to take any step, without the express approval of the State commission of such State, which results in its having a direct or indirect interest in an electric utility company and a gas utility company serving substantially the same territory; or

[(2) if it already has any such interest, to acquire, without the express approval of the State commission, any direct or indirect interest in an electric utility company or gas utility company serving substantially the same territory as that served by such companies in which it already has an interest.

[ACQUISITION OF SECURITIES AND UTILITY ASSETS AND OTHER INTERESTS

[SEC. 9. (a) Unless the acquisition has been approved by the Commission under section 10, it shall be unlawful—

[(1) for any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to acquire, directly or indirectly, any securities or utility assets or any other interest in any business;

[(2) for any person, by use of the mails or any means or instrumentality of interstate commerce, to acquire, directly or indirectly, any security of any public-utility company, if such person is an affiliate, under clause (A) of paragraph (11) of subsection (a) of section 2, of such company and of any other public utility or holding company, or will by virtue of such acquisition become such an affiliate.

[(b) Subsection (a) shall not apply to—

[(1) the acquisition by a public-utility company of utility assets the acquisition of which has been expressly authorized by a State commission; or

[(2) the acquisition by a public-utility company of securities of a subsidiary public-utility company thereof, provided that both such public-utility companies and all other public-utility companies in the same holding-company system are organized in the same State, that the business of each such company in such system is substantially confined to such State, and that the acquisition of such securities has been expressly authorized by the State commission of such State.

[(c) Subsection (a) shall not apply to the acquisition by a registered holding company, or a subsidiary company thereof, of—

[(1) securities of, or securities the principal or interest of which is guaranteed by, the United States, a State, or political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing;

[(2) such other readily marketable securities, within the limitation of such amounts, as the Commission may by rules and regulations prescribe as appropriate for investment of current funds and as not detrimental to the public interest or the interest of investors or consumers; or

[(3) such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary com-

pany thereof and as not detrimental to the public interest or the interest of investors or consumers.

[APPROVAL OF ACQUISITION OF SECURITIES AND UTILITY ASSETS AND OTHER INTERESTS

[SEC. 10. (a) A person may apply for approval of the acquisition of securities or utility assets, or of any other interest in any business, by filing an application in such form as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors and consumers. Such application shall include—

[(1) in the case of the acquisition of securities, such information and copies of such documents as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers in respect of—

[(A) the security to be acquired, the consideration to be paid therefor, and compliance with such State laws as may apply in respect of the issue, sale, or acquisition thereof,

[(B) the outstanding securities of the company whose security is to be acquired, the terms, position, rights, and privileges of each class and the options in respect of any such securities,

[(C) the names of all security holders of record (or otherwise known to the applicant) owning, holding, or controlling 1 per centum or more of any class of security of such company, the officers and directors of such company, and their remuneration, security holdings in, material contracts with, and borrowings from such company and the offices or directorships held, and securities owned, held, or controlled, by them in other companies,

[(D) the bonus, profit-sharing and voting-trust agreements, underwriting arrangements, trust indentures, mortgages, and similar documents, by whatever name known, of or relating to such company,

[(E) the material contracts, not made in the ordinary course of business, and the service, sales, and construction contracts of such company,

[(F) the securities owned, held, or controlled, directly or indirectly, by such company,

[(G) balance sheets and profit and loss statements of such company for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission by an independent public accountant,

[(H) any further information regarding such company and any associate company or affiliate thereof, or its relations with the applicant company, and

[(I) if the applicant be not a registered holding company, any of the information and documents which may be required under section 5 from a registered holding company;

[(2) in the case of the acquisition of utility assets, such information concerning such assets, the value thereof and consideration to be paid therefor, the owner or owners thereof and their relation to, agreements with, and interest in the securities of, the applicant or any associate company thereof as the

Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers; and

[(3) in the case of the acquisition of any other interest in any business, such information concerning such business and the interest to be acquired, and the consideration to be paid, as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

[(b) If the requirements of subsection (f) are satisfied, the Commission shall approve the acquisition unless the Commission finds that—

[(1) such acquisition will tend towards interlocking relations or the concentration of control of public-utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors, or consumers;

[(2) in case of the acquisition of securities or utility assets, the consideration, including all fees, commissions, and other remuneration, to whomsoever paid, to be given, directly or indirectly, in connection with such acquisition is not reasonable or does not bear a fair relation to the sums invested in or the earning capacity of the utility assets to be acquired or the utility assets underlying the securities to be acquired; or

[(3) such acquisition will unduly complicate the capital structure of the holding-company system of the applicant or will be detrimental to the public interest or the interest of investors or consumers or the proper functioning of such holding-company system.

The Commission may condition its approval of the acquisition of securities of another company upon such a fair offer to purchase such of the other securities of the company whose security is to be acquired as the Commission may find necessary or appropriate in the public interest or for the protection of investors or consumers.

[(c) Notwithstanding the provisions of subsection (b), the Commission shall not approve—

[(1) an acquisition of securities or utility assets, or of any other interest, which is unlawful under the provisions of section 8 or is detrimental to the carrying out of the provisions of section 11; or

[(2) the acquisition of securities or utility assets of a public-utility or holding company unless the Commission finds that such acquisition will serve the public interest by tending towards the economical and efficient development of an integrated public-utility system. This paragraph shall not apply to the acquisition of securities or utility assets of a public-utility company operating exclusively outside the United States.

[(d) Within such reasonable time after the filing of an application under this section as the Commission shall fix by rules and regulations or order, the Commission shall enter an order either granting or, after notice and opportunity for hearing, denying approval of the acquisition unless the applicant shall withdraw its application. Amendments to an application may be made upon such terms and conditions as the Commission may prescribe.

[(e) The Commission, in any order approving the acquisition of securities or utility assets, may prescribe such terms and condi-

tions in respect of such acquisition, including the price to be paid for such securities or utility assets, as the Commission may find necessary or appropriate in the public interest or for the protection of investors or consumers.

[(f) The Commission shall not approve any acquisition as to which an application is made under this section unless it appears to the satisfaction of the Commission that such State laws as may apply in respect of such acquisition have been complied with, except where the Commission finds that compliance with such State laws would be detrimental to the carrying out of the provisions of section 11.

[SIMPLIFICATION OF HOLDING-COMPANY SYSTEMS

[SEC. 11. (a) It shall be the duty of the Commission to examine the corporate structure of every registered holding company and subsidiary company thereof, the relationships among the companies in the holding-company system of every such company and the character of the interests thereof and the properties owned or controlled thereby to determine the extent to which the corporate structure of such holding-company system and the companies therein may be simplified, unnecessary complexities therein eliminated, voting power fairly and equitably distributed among the holders of securities thereof, and the properties and business thereof confined to those necessary or appropriate to the operations of an integrated public-utility system.

[(b) It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

[(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system: *Provided, however*, That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

[(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

[(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

[(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-util-

ity company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.

[(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. Except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company which is not a holding company, or of any company whose principal business is that of a public-utility company.

The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection shall be subject to judicial review as provided in section 24.

[(c) Any order under subsection (b) shall be complied with within one year from the date of such order; but the Commission shall, upon a showing (made before or after the entry of such order) that the applicant has been or will be unable in the exercise of due diligence to comply with such order within such time, extend such time for an additional period not exceeding one year if it finds such extension necessary or appropriate in the public interest or for the protection of investors or consumers.

[(d) The Commission may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce compliance with any order issued under subsection (b). In any such proceeding, the court as a court of equity may, to such extent as it deems necessary for purposes of enforcement of such order, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction, in any such proceeding, to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer under the direction of the court the assets so possessed. In any proceeding for the enforcement of an order of the Commission issued under subsection (b), the trustee with the approval of the court shall have power to dispose of any or all of such assets and, subject to such terms and conditions as the court may prescribe, may make such disposition in accordance with a fair and equitable reorganization plan which shall have been approved by

the Commission after opportunity for hearing. Such reorganization plan may be proposed in the first instance by the Commission, or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization.

[(e) In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of section 11, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed.

[(f) In any proceeding in a court of the United States, whether under this section or otherwise, in which a receiver or trustee is appointed for any registered holding company, or any subsidiary company thereof, the court may constitute and appoint the Commission as sole trustee or receiver, subject to the directions and orders of the court, whether or not a trustee or receiver shall theretofore have been appointed, and in any such proceeding the court shall not appoint any person other than the Commission trustee or receiver without notifying the Commission and giving it an opportunity to be heard before making any such appointment. In no proceeding under this section or otherwise shall the Commission be appointed as trustee or receiver without its express consent. In any such proceeding a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court. Notwithstanding any other provision of law, any such reorganization plan may be proposed in the first instance by the Commission or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the pro-

tection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization. The Commission may, by such rules and regulations or order as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers, require that any or all fees, expenses, and remuneration, to whomsoever paid, in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary company thereof, in any such proceeding, shall be subject to approval by the Commission.

[(g) It shall be unlawful for any person to solicit or permit the use of his or its name to solicit, by use of the mails or any means or instrumentality of interestate commerce, or otherwise, any proxy, consent, authorization, power of attorney, deposit, or dissent in respect of any reorganization plan of a registered holding company or any subsidiary company thereof under this section, or otherwise, or in respect of any plan under this section for the divestment of control, securities, or other assets, or for the dissolution of any registered holding company or any subsidiary company thereof, unless—

[(1) the plan has been proposed by the Commission, or the plan and such information regarding it and its sponsors as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers has been submitted to the Commission by a person having a bona fide interest (as defined by the rules and regulations of the Commission) in such reorganization;

[(2) each such solicitation is accompanied or preceded by a copy of a report on the plan which shall be made by the Commission after an opportunity for a hearing on the plan and other plans submitted to it, or by an abstract of such report made or approved by the Commission; and

[(3) each such solicitation is made not in contravention of such rules and regulations or orders as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers.

Nothing in this subsection or the rules and regulations thereunder shall prevent any person from appearing before the Commission or any court through an attorney or proxy.

[INTERCOMPANY LOANS; DIVIDENDS; SECURITY TRANSACTIONS; SALE OF UTILITY ASSETS; PROXIES; OTHER TRANSACTIONS

[SEC. 12. (a) It shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly, to borrow, or to receive any extension of credit or indemnity, from any public-utility company in the same holding-company system or from any subsidiary company of such holding company, but it shall not be unlawful under this subsection to renew, or extend the time of, any loan, credit, or indemnity outstanding on the date of the enactment of this title.

[(b) It shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly, to lend or in any manner extend its credit to or indemnify

any company in the same holding-company system in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

[(c) It shall be unlawful for any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to declare or pay any dividend on any security of such company or to acquire, retire, or redeem any security of such company, in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate to protect the financial integrity of companies in holding-company systems, to safeguard the working capital of public-utility companies, to prevent the payment of dividends out of capital or unearned surplus, or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

[(d) It shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to sell any security which it owns of any public-utility company, or any utility assets, in contravention of such rules and regulations or orders regarding the consideration to be received for such sale, maintenance of competitive conditions, fees and commissions, accounts, disclosure of interest, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

[(e) It shall be unlawful for any person to solicit or to permit the use of his or its name to solicit, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, any proxy, power of attorney, consent, or authorization regarding any security of a registered holding company or a subsidiary company thereof in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

[(f) It shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to negotiate, enter into, or take any step in the performance of any transaction not otherwise unlawful under this title, with any company in the same holding-company system or with any affiliate of a company in such holding-company system in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, a disclosure of interest, duration of contracts, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules and regulations thereunder.

[(g) It shall be unlawful for any affiliate of any public-utility company, by use of the mails or any means or instrumentality of interstate commerce, or for any affiliate of any public-utility com-

pany engaged in interstate commerce, or of any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to negotiate, enter into, or take any step in the performance of any transaction not otherwise unlawful under this title, with any such company of which it is an affiliate, in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters as the Commission deems necessary or appropriate to prevent the circumvention of the provisions of this title.

[(h) It shall be unlawful for any registered holding company, or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly—

[(1) to make any contribution whatsoever in connection with the candidacy, nomination, election or appointment of any person for or to any office or position in the Government of the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing; or

[(2) to make any contribution to or in support of any political party or any committee or agency thereof.

The term "contribution" as used in this subsection includes any gift, subscription, loan, advance, or deposit of money or anything of value, and includes any contract, agreement, or promise, whether or not legally enforceable, to make a contribution.

[(i) It shall be unlawful for any person employed or retained by any registered holding company, or any subsidiary company thereof, to present, advocate, or oppose any matter affecting any registered holding company or any subsidiary company thereof, before the Congress or any Member or committee thereof, or before the Commission or Federal Power Commission, or any member, officer, or employee of either such Commission, unless such person shall file with the Commission in such form and detail and at such time as the Commission shall by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers, a statement of the subject matter in respect of which such person is retained or employed, the nature and character of such retainer or employment, and the amount of compensation received or to be received by such person, directly or indirectly, in connection therewith. It shall be the duty of every such person so employed or retained to file with the Commission within ten days after the close of each calendar month during such retainer or employment, in such form and detail as the Commission shall by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers, a statement of the expenses incurred and the compensation received by such person during such month in connection with such retainer or employment.

[SERVICE, SALES, AND CONSTRUCTION CONTRACTS

[SEC. 13. (a) After April 1, 1936, it shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or

take any step in the performance of any service, sales, or construction contract by which such company undertakes to perform services or construction work for, or sell goods to, any associate company thereof which is a public-utility or mutual service company. This provision shall not apply to such transactions, involving special or unusual circumstances or not in the ordinary course of business, as the Commission by rules and regulations or order may conditionally or unconditionally exempt as being necessary or appropriate in the public interest or for the protection of investors or consumers.

[(b) After April 1, 1936, it shall be unlawful for any subsidiary company of any registered holding company or for any mutual service company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract by which such company undertakes to perform services or construction work for, or sell goods to, any associate company thereof except in accordance with such terms and conditions and subject to such limitations and prohibitions as the Commission by rules and regulations or order shall prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers and to insure that such contracts are performed economically and efficiently for the benefit of such associate companies at cost, fairly and equitably allocated among such companies. This provision shall not apply to such transactions as the Commission by rules and regulations or order may conditionally or unconditionally exempt as being necessary or appropriate in the public interest or for the protection of investors or consumers, if such transactions (1) are with any associate company which does not derive, directly or indirectly, any material part of its income from sources within the United States and which is not a public-utility company operating within the United States, or (2) involve special or unusual circumstances or are not in the ordinary course of business.

[(c) The rules and regulations and orders of the Commission under this section may prescribe, among other things, such terms and conditions regarding the determination of costs and the allocation thereof among specified classes of companies and for specified classes of service, sales, and construction contracts, the duration of such contracts, the making and keeping of accounts and cost-accounting procedures, the filing of annual and other periodic and special reports, the maintenance of competitive conditions, the disclosure of interests, and similar matters, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

[(d) The rules and regulations and orders of the Commission under this section shall prescribe, among other things, such terms and conditions regarding the manner in which application may be made for approval as a mutual service company and the granting and continuance of such approval, the nature and enforcement of agreements for the sharing of expenses and distributing of revenues among member companies, and matters relating to such agreements, the nature and types of businesses and transactions in which mutual service companies may engage, and the manner of engaging therein, and the relations and transactions with member companies and affiliates, as the Commission deems necessary or

appropriate in the public interest or for the protection of investors or consumers. The Commission shall not approve, or continue the approval of, any company as a mutual service company unless the Commission finds such company is so organized as to ownership, costs, revenues, and the sharing thereof as reasonably to insure the efficient and economical performance of service, sales, or construction contracts by such company for member companies, at cost fairly and equitably allocated among such member companies, at a reasonable saving to member companies over the cost to such companies of comparable contracts performed by independent persons. The Commission, upon its own motion or at the request of a member company or a State commission, may, after notice and opportunity for hearing, by order require a reallocation or reapportionment of costs among member companies of a mutual service company if it finds the existing allocation inequitable and may require the elimination of a service or services to a member company which does not bear its fair proportion of costs or which, by reason of its size or other circumstances, does not require such service or services. The Commission, after notice and opportunity for hearing, by order shall revoke, suspend, or modify the approval given any mutual service company if it finds that such company has persistently violated any provision of this section or any rule, regulation, or order thereunder.

[(e) It shall be unlawful for any affiliate of any public-utility company engaged in interstate commerce, or of any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract, by which such affiliate undertakes to perform services or construction work for, or sell goods to, any such company of which it is an affiliate, in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters, as the Commission deems necessary or appropriate to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

[(f) It shall be unlawful for any person whose principal business is the performance of service, sales, or construction contracts for public-utility or holding companies, by use of the mails or any means or instrumentality of interstate commerce, to enter into or take any step in the performance of any service, sales, or construction contract with any public-utility company, or for any such person, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract with any public-utility company engaged in interstate commerce, or with any registered holding company or any subsidiary company of a registered holding company, in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

[(g) The Commission, in order to obtain information to serve as a basis for recommending further legislation, shall from time to time conduct investigations regarding the making, performance, and costs of service, sales, and construction contracts with holding companies and subsidiary companies thereof and with public-utility companies, the economies resulting therefrom, and the desirability thereof. The Commission shall report to Congress, from time to time, the results of such investigations, together with such recommendations for legislation as it deems advisable. On the basis of such investigations the Commission shall classify the different types of such contracts and the work done thereunder, and shall make recommendations from time to time regarding the standards and scope of such contracts in relation to public-utility companies of different kinds and sizes and the costs incurred thereunder and economies resulting therefrom. Such recommendations shall be made available to State commissions, public-utility companies, and to the public in such form and at such reasonable charge as the Commission may prescribe.

[PERIODIC AND OTHER REPORTS

[SEC. 14. Every registered holding company and every mutual service company shall file with the Commission such annual, quarterly, and other periodic and special reports, the answers to such specific questions and the minutes of such directors', stockholders', and other meetings, as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. Such reports, if required by the rules and regulations of the Commission, shall be certified by an independent public accountant, and shall be made and filed at such time and in such form and detail as the Commission shall prescribe. The Commission may require that there be included in reports filed with it such information and documents as it finds necessary or appropriate to keep reasonably current the information filed under section 5 or 13, and such further information concerning the financial condition, security structure, security holdings, assets, and cost thereof, wherever determinable, and affiliations of the reporting company and the associate companies, member companies, and affiliates thereof as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

[ACCOUNTS AND RECORDS

[SEC. 15. (a) Every registered holding company and every subsidiary company thereof shall make, keep, and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this title or the rules, regulations, or orders thereunder.

[(b) Every affiliate of a registered holding company or of any subsidiary company thereof, or of any public-utility company engaged in interstate commerce or not so engaged, shall make, keep, and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other

records relating to any transaction of such affiliate which is subject to any provision of this title or any rule, regulation, or order thereunder, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this title or the rules, regulations, or orders thereunder.

[(c) Every mutual service company, and every affiliate of a mutual service company as to any transaction of such affiliate which is subject to any provision of this title or any rule, regulation, or order thereunder, shall make, keep, and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this title or the rules, regulations, or orders thereunder.

[(d) Every person whose principal business is the performance of service, sales, or construction contracts for public-utility or holding companies shall make, keep, and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records, relating to any transaction by such person which is subject to any provision of this title or any rule, regulation, or order thereunder, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this title or the rules and regulations thereunder.

[(e) After the Commission has prescribed the form and manner of making and keeping accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records to be kept by any person hereunder, it shall be unlawful for any such person to keep any accounts, cost-accounting procedures, correspondence, memoranda, papers, books, or other records other than those prescribed or such as may be approved by the Commission, or to keep his or its accounts, cost-accounting procedures, correspondence, memoranda, papers, books, or other records in any manner other than that prescribed or approved by the Commission.

[(f) All accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records kept or required to be kept by persons subject to any provision of this section shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. The Commission, after notice and opportunity for hearing, may prescribe the account or accounts in which particular outlays, receipts, and other transactions shall be entered, charged, or credited and the manner in which such entry, charge, or credit shall be made, and may require an entry to be modified or supplemented so as properly to show the cost of any asset or any other cost.

[(g) It shall be the duty of every registered holding company and of every subsidiary company thereof and of every affiliate of a company insofar as such affiliate is subject to any provision of this title or any rule, regulation, or order thereunder, to submit the accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records of such holding company, subsidiary company, or affiliate, as the case may be, to such examinations, in person or by duly appointed attorney, by the holder of any

security of such holding company, subsidiary company, or affiliate, as the case may be, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

[(h) It shall be the duty of every mutual service company, and of every affiliate of a mutual service company, and of every person whose principal business is the performance of service, sales, or construction contracts for public-utility or holding companies, insofar as such affiliate or such person is subject to any provision of this title or any rule, regulation, or order thereunder, to submit the accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records of such mutual service company, affiliate, or person to such examinations, in person or by duly appointed attorney, by member companies of such mutual service company and by public-utility or holding companies for which such person performs service, sales, or construction contracts as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

[(i) The Commission, by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors or consumers may prescribe for persons subject to the provisions of subsection (a), (b), (c), or (d) of this section uniform methods for keeping accounts required under any provision of this section, including, among other things, the manner in which the cost of all assets, whenever determinable, shall be shown, the methods of classifying and segregating accounts, and the manner in which cost-accounting procedures shall be maintained.

[LIABILITY FOR MISLEADING STATEMENTS

[SEC. 16. (a) Any person who shall make or cause to be made any statement in any application, report, registration statement, or document filed pursuant to any provision of this title, or any rule, regulation, or order thereunder, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact shall be liable in the same manner, to the same extent, and subject to the same limitations as provided in section 18 of the Securities Exchange Act of 1934 with respect to an application, report, or document filed pursuant to the Securities Exchange Act of 1934.

[(b) The rights and remedies provided by this title, except as provided in section 17(b), shall be in addition to any and all other rights and remedies that may exist under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, or otherwise at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of.

[OFFICERS, DIRECTORS, AND OTHER AFFILIATES

[SEC. 17. (a) Every person who is an officer or director of a registered holding company shall file with the Commission in such form as the Commission shall prescribe (1) at the time of the registration of such holding company, or within ten days after such person becomes an officer or director, a statement of the securities

of such registered holding company or any subsidiary company thereof of which he is, directly or indirectly, the beneficial owner, and (2) within ten days after the close of each calendar month thereafter, if there has been any change in such ownership during such month, a statement of such ownership as of the close of such calendar month and of the changes in such ownership that have occurred during such calendar month.

[(b) For the purpose of preventing the unfair use of information which may have been obtained by any such officer or director by reason of his relationship to such registered holding company or any subsidiary company thereof, any profit realized by any such officer or director from any purchase and sale, or any sale and purchase, of any security of such registered holding company or any subsidiary company thereof within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the holding company or subsidiary company in respect of the security of which such profit was realized, irrespective of any intention on the part of such officer or director in entering into such transaction to hold the security purchased or not to repurchase the security sold for a period of more than six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company entitled thereto or by the owner of any security of such company in the name and in the behalf of such company if such company shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not cover any transaction where such person was not an officer or director at the times of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Commission by rules and regulations may, as necessary or appropriate in the public interest or for the protection of investors or consumers, exempt as not comprehended within the purpose of this subsection. Nothing in this subsection shall be construed to give a remedy in the case of any transaction in respect of which a remedy is given under subsection (b) of section 16 of the Securities Exchange Act of 1934.

[(c) After one year from the date of the enactment of this title, no registered holding company or any subsidiary company thereof shall have, as an officer or director thereof, any executive officer, director, partner, appointee, or representative of any bank, trust company, investment banker, or banking association or firm, or any executive officer, director, partner, appointee, or representative of any corporation a majority of whose stock, having the unrestricted right to vote for the election of directors, is owned by any bank, trust company, investment banker, or banking association or firm, except in such cases as rules and regulations prescribed by the Commission may permit as not adversely affecting the public interest or the interest of investors or consumers.

[INVESTIGATIONS; INJUNCTIONS, ENFORCEMENT OF TITLE, AND PROSECUTION OF OFFENSES

[SEC. 18. (a) The Commission, in its discretion, may investigate any facts, conditions, practices, or matters which it may deem nec-

essary or appropriate to determine whether any person has violated or is about to violate any provision of this title or any rule or regulation thereunder, or to aid in the enforcement of the provisions of this title, in the prescribing of rules and regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation concerning the matters to which this title relates. The Commission may require or permit any person to file with it a statement in writing, under oath or otherwise as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation. The Commission, in its discretion, may publish, or make available to State commissions, information concerning any such subject.

[(b) The Commission upon its own motion or at the request of a State commission may investigate, or obtain any information regarding the business, financial condition, or practices of any registered holding company or subsidiary company thereof or facts, conditions, practices, or matters affecting the relations between any such company and any other company or companies in the same holding-company system.

[(c) For the purpose of any investigation or any other proceeding under this title, any member of the Commission, or any officer thereof designated by it, is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in any State or in any Territory or other place subject to the jurisdiction of the United States at any designated place of hearing.

[(d) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who, without just cause, shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpoena of the Commission, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

[(e) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this title,

or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper district court of the United States or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this title or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or degree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings under this title.

[(f) Upon application of the Commission, the district courts of the United States, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this title or any rule, regulation, or order of the Commission thereunder.

[HEARINGS BY COMMISSION

[SEC. 19. Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before the Commission, the Commission, in accordance with such rules and regulations as it may prescribe, shall admit as a party any interested State, State commission, State securities commission, municipality, or other political subdivision of a State, and may admit as a party any representative of interested consumers or security holders, or any other person whose participation in the proceedings may be in the public interest or for the protection of investors or consumers.

[RULES, REGULATIONS, AND ORDERS

[SEC. 20. (a) The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as it may deem necessary or appropriate to carry out the provisions of this title, including rules and regulations defining accounting, technical, and trade terms used in this title. Among other things, the Commission shall have authority, for the purpose of this title, to prescribe the form or forms in which information required in any statement, declaration, application, report, or other document filed with the Commission shall be set forth, the items or details to be shown in balance sheets, profit and loss statements, and surplus accounts, the manner in which the cost of all assets, whenever determinable, shall be shown in regard to such statements, declarations, applications, reports, and other documents filed with the Commission, or accounts required to be kept by the rules, regulations, or orders of the Commission, and the methods to be followed in the keeping of accounts and cost-accounting procedures and the preparation of reports, in the segregation and allocation of costs, in the determination of liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the keeping or preparation, where the Commission deems it necessary or appropriate, of sepa-

rate or consolidated balance sheets or profit and loss statements for any companies in the same holding-company system.

[(b) In the case of the accounts of any company whose methods of accounting are prescribed under the provisions of any law of the United States or of any State, the rules and regulations or orders of the Commission in respect of accounts shall not be inconsistent with the requirements imposed by such law or any rule or regulation thereunder; nor shall anything in this title relieve any public-utility company from the duty to keep the accounts, books, records, or memoranda which may be required to be kept by the law of any State in which it operates or by the State commission of any such State. But this provision shall not prevent the Commission from imposing such additional requirements regarding reports or accounts as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers.

[(c) The rules and regulations of the Commission shall be effective upon publication in the manner which the Commission shall prescribe. For the purpose of its rules, regulations, or orders the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. Orders of the Commission under this title shall be issued only after opportunity for hearing.

[(d) The Commission, by such rules and regulations or order as it deems necessary or appropriate in the public interest or for the protection of investors or consumers, may authorize the filing of any information or documents required to be filed with the Commission under this title, or under the Securities Act of 1933, as amended, or under the Securities Exchange Act of 1934, by incorporating by reference any information or documents theretofore or concurrently filed with the Commission under this title or either of such Acts. No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or order of the Commission, notwithstanding that such rule, regulation, or order may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

[EFFECT ON EXISTING LAW

[SEC. 21. Nothing in this title shall affect (1) the jurisdiction of the Commission under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934 over any person, security, or contract, or (2) the rights, obligations, duties, or liabilities of any person under such Acts; nor shall anything in this title affect the jurisdiction of any other commission, board, agency, or officer of the United States or of any State or political subdivision of any State, over any person, security, or contract, insofar as such jurisdiction does not conflict with any provision of this title or any rule, regulation, or order thereunder.

[INFORMATION FILED WITH THE COMMISSION

[SEC. 22. (a) When in the judgment of the Commission the disclosure of such information would be in the public interest or the interest of investors or consumers, the information contained in any statement, application, declaration, report, or other document filed with the Commission shall be available to the public, and cop-

ies thereof may be furnished to any person at such reasonable charge and under such reasonable limitations as the Commission may prescribe: *Provided, however,* That nothing in this title shall be construed to require, or to authorize the Commission to require, the revealing of trade secrets or processes in any application, declaration, report, or document filed with the Commission under this title.

[(b) Any person filing such application, declaration, report, or document may make written objection to the public disclosure of information contained therein, stating the grounds for such objection, and the Commission is authorized to hear objections in any such case where it finds it advisable.

[(c) It shall be unlawful for any member, officer, or employee of the Commission to disclose to any person other than a member, officer, or employee of the Commission, or to use for personal benefit, any information contained in any application, declaration, report, or document filed with the Commission which is not made available to the public pursuant to this section.

[ANNUAL REPORTS OF COMMISSION

[SEC. 23. The Commission shall submit annually a report to the Congress covering the work of the Commission for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this title as it may find advisable.

[COURT REVIEW OF ORDERS

[SEC. 24. (a) Any person or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission, or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commissions as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission

may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

[(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

[JURISDICTION OF OFFENSES AND SUITS

[SEC. 25. The District Courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this title or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28, United States Code. No costs shall be assessed for or against the Commission in any proceeding under this title brought by or against the Commission in any court.

[VALIDITY OF CONTRACTS

[SEC. 26. (a) Any condition, stipulation, or provision binding any person to waive compliance with any provision of this title or with any rule, regulation, or order thereunder shall be void.

[(b) Every contract made in violation of any provision of this title or of any rule, regulation, or order thereunder, and every contract heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this title, or any rule, regulation, or order thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, regulation, or order, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule, regulation, or order.

[(c) Nothing in this title shall be construed (1) to affect the validity of any loan or extension of credit (or any extension or renewal thereof) made or of any lien created prior or subsequent to the en-

actment of this title, unless at the time of the making of such loan or extension of credit (or extension or renewal thereof) or the creating of such lien, the person making such loan or extension of credit (or extension or renewal thereof) or acquiring such lien shall have actual knowledge of facts by reason of which the making of such loan or extension of credit (or extension or renewal thereof) or the acquisition of such lien as a violation of the provisions of this title or any rule or regulation thereunder, or (2) to afford a defense to the collection of any debt or obligation or the enforcement of any lien by any person who shall have acquired such debt, obligation, or lien in good faith for value and without actual knowledge of the violation of any provision of this title or any rule or regulation thereunder affecting the legality of such debt, obligation, or lien.

[LIABILITY OF CONTROLLING PERSONS; PREVENTING COMPLIANCE WITH TITLE

[SEC. 27. (a) It shall be unlawful for any person, directly or indirectly, to cause to be done any act or thing through or by means of any other person which it would be unlawful for such person to do under the provisions of this title or any rule, regulation, or order thereunder.

[(b) It shall be unlawful for any person without just cause to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, record, or account required to be made, filed, or kept under any provision of this title or any rule, regulation, or order thereunder.

[UNLAWFUL REPRESENTATIONS

[SEC. 28. It shall be unlawful for any person in issuing, selling, or offering for sale any security of a registered holding company or subsidiary company thereof, to represent or imply in any manner whatsoever that such security has been guaranteed, sponsored, or recommended for investment by the United States or any agency or officer thereof.

[PENALTIES

[SEC. 29. Any person who willfully violates any provision of this title or any rule, regulation, or order thereunder (other than an order of the Commission under subsection (b), (d), (e), or (f) of section 11), or any person who willfully makes any statement or entry in an application, report, document, account, or record filed or kept or required to be filed or kept under the provisions of this title or any rule, regulation, or order thereunder, knowing such statement or entry to be false or misleading in any material respect, or any person who willfully destroys (except after such time as may be prescribed under any rules or regulations under this title), mutilates, alters, or by any means, or device falsifies any account, correspondence, memorandum, book, paper, or other record kept or required to be kept under the provisions of this title or any rule, regulation, or order thereunder, shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both, except that in the case of a violation of a provision of subsection (a) or (b) of section 4 by a holding company which is not an individual, the fine imposed upon such holding company shall be a fine

not exceeding $200,000; but no person shall be convicted under this section for the violation of any rule, regulation, or order if he proves that he had no knowledge of such rule, regulation, or order.

[STUDY OF PUBLIC-UTILITY AND INVESTMENT COMPANIES

[SEC. 30. The Commission is authorized and directed to make studies and investigations of public-utility companies, the territories served or which can be served by public-utility companies, and the manner in which the same are or can be served, to determine the sizes, types, and locations of public-utility companies which do or can operate most economically and efficiently in the public interest, in the interest of investors and consumers, and in furtherance of a wider and more economical use of gas and electric energy; upon the basis of such investigations and studies the Commission shall make public from time to time its recommendations as to the type and size of geographically and economically integrated public-utility systems which, having regard for the nature and character of the locality served, can best promote and harmonize the interests of the public, the investor, and the consumer.

[HIRING AND LEASING AUTHORITY OF THE COMMISSION

[SEC. 31. The provisions of section 4(b) of the Securities Exchange Act of 1934 shall be applicable with respect to the power of the Commission—

[(1) to appoint and fix the compensation of such employees as may be necessary for carrying out its functions under this title, and

[(2) to lease and allocate such real property as may be necessary for carrying out its functions under this title.

[SEC. 32. EXEMPT WHOLESALE GENERATORS.

[(a) DEFINITIONS.—For purposes of this section—

[(1) EXEMPT WHOLESALE GENERATOR.—The term "exempt wholesale generator" means any person determined by the Federal Energy Regulatory Commission to be engaged directly, or indirectly through one or more affiliates as defined in section 2(a)(11)(B), and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale. No person shall be deemed to be an exempt wholesale generator under this section unless such person has applied to the Federal Energy Regulatory Commission for a determination under this paragraph. A person applying in good faith for such a determination shall be deemed an exempt wholesale generator under this section, with all of the exemptions provided by this section, until the Federal Energy Regulatory Commission makes such determination. The Federal Energy Regulatory Commission shall make such determination within 60 days of its receipt of such application and shall notify the Commission whenever a determination is made under this paragraph that any person is an exempt wholesale generator. Not later than 12 months after the date of enactment of this section, the Federal Energy Regulatory Commission shall promulgate rules implementing the provisions of this paragraph. Applications for

determination filed after the effective date of such rules shall be subject thereto.

[(2) ELIGIBLE FACILITY.—The term "eligible facility" means a facility, wherever located, which is either—

[(A) used for the generation of electric energy exclusively for sale at wholesale, or

[(B) used for the generation of electric energy and leased to one or more public utility companies; *Provided*, That any such lease shall be treated as a sale of electric energy at wholesale for purposes of sections 205 and 206 of the Federal Power Act.

Such term shall not include any facility for which consent is required under subsection (c) if such consent has not been obtained. Such term includes interconnecting transmission facilities necessary to effect a sale of electric energy at wholesale. For purposes of this paragraph, the term "facility" may include a portion of a facility subject to the limitations of subsection (d) and shall include a facility the construction of which has not been commenced or completed.

[(3) SALE OF ELECTRIC ENERGY AT WHOLESALE.—The term "sale of electric energy at wholesale" shall have the same meaning as provided in section 201(d) of the Federal Power Act (16 U.S.C. 824(d)).

[(4) RETAIL RATES AND CHARGES.—The term "retail rates and charges" means rates and charges for the sale of electric energy directly to consumers.

[(b) FOREIGN RETAIL SALES.—Notwithstanding paragraphs (1) and (2) of subsection (a), retail sales of electric energy produced by a facility located in a foreign country shall not prevent such facility from being an eligible facility, or prevent a person owning or operating, or both owning and operating, such facility from being an exempt wholesale generator if none of the electric energy generated by such facility is sold to consumers in the United States.

[(c) STATE CONSENT FOR EXISTING RATE-BASED FACILITIES.—If a rate or charge for, or in connection with, the construction of a facility, or for electric energy produced by a facility (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge) was in effect under the laws of any State as of the date of enactment of this section, in order for the facility to be considered an eligible facility, every State commission having jurisdiction over any such rate or charge must make a specific determination that allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law; *Provided,* That in the case of such a rate or charge which is a rate or charge of an affiliate of a registered holding company:

[(A) such determination with respect to the facility in question shall be required from every State commission having jurisdiction over the retail rates and charges of the affiliates of such registered holding company; and

[(B) the approval of the Commission under this Act shall not be required for the transfer of the facility to an exempt wholesale generator.

[(d) HYBRIDS.—(1) No exempt wholesale generator may own or operate a portion of any facility if any other portion of the facility

is owned or operated by an electric utility company that is an affiliate or associate company of such exempt wholesale generator.

[(2) ELIGIBLE FACILITY.—Notwithstanding paragraph (1), an exempt wholesale generator may own or operate a portion of a facility identified in paragraph (1) if such portion has become an eligible facility as a result of the operation of subsection (c).

[(e) EXEMPTION OF EWGS.—An exempt wholesale generator shall not be considered an electric utility company under section 2(a)(3) of this Act and, whether or not a subsidiary company, an affiliate, or an associate company of a holding company, an exempt wholesale generator shall be exempt from all provisions of this Act.

[(f) OWNERSHIP OF EWGS BY EXEMPT HOLDING COMPANIES.—Notwithstanding any provision of this Act, a holding company that is exempt under section 3 of this Act shall be permitted, without condition or limitation under this Act, to acquire and maintain an interest in the business of one or more exempt wholesale generators.

[(g) OWNERSHIP OF EWGS BY REGISTERED HOLDING COMPANIES.—Notwithstanding any provision of this Act and the Commission's jurisdiction as provided under subsection (h) of this section, a registered holding company shall be permitted (without the need to apply for, or receive, approval from the Commission, and otherwise without condition under this Act) to acquire and hold the securities, or an interest in the business, of one or more exempt wholesale generators.

[(h) FINANCING AND OTHER RELATIONSHIPS BETWEEN EWGS AND REGISTERED HOLDING COMPANIES.—The issuance of securities by a registered holding company for purposes of financing the acquisition of an exempt wholesale generator, the guarantee of securities of an exempt wholesale generator by a registered holding company, the entering into service, sales or construction contracts, and the creation or maintenance of any other relationship in addition to that described in subsection (g) between an exempt wholesale generator and a registered holding company, its affiliates and associate companies, shall remain subject to the jurisdiction of the Commission under this Act: *Provided,* That—

[(1) section 11 of this Act shall not prohibit the ownership of an interest in the business of one or more exempt wholesale generators by a registered holding company (regardless of where facilities owned or operated by such exempt wholesale generators are located), and such ownership by a registered holding company shall be deemed consistent with the operation of an integrated public utility system;

[(2) the ownership of an interest in the business of one or more exempt wholesale generators by a registered holding company (regardless of where facilities owned or operated by such exempt wholesale generators are located) shall be considered as reasonably incidental, or economically necessary or appropriate, to the operations of an integrated public utility system;

[(3) in determining whether to approve (A) the issue or sale of a security by a registered holding company for purposes of financing the acquisition of an exempt wholesale generator, or (B) the guarantee of a security of an exempt wholesale generator by a registered holding company, the Commission shall not make a finding that such security is not reasonably adapt-

ed to the earning power of such company or to the security structure of such company and other companies in the same holding company system, or that the circumstances are such as to constitute the making of such guarantee an improper risk for such company, unless the Commission first finds that the issue or sale of such security, or the making of the guarantee, would have a substantial adverse impact on the financial integrity of the registered holding company system;

[(4) in determining whether to approve (A) the issue or sale of a security by a registered holding company for purposes other than the acquisition of an exempt wholesale generator, or (B) other transactions by such registered holding company or by its subsidiaries other than with respect to exempt wholesale generators, the Commission shall not consider the effect of the capitalization or earnings of any subsidiary which is an exempt wholesale generator upon the registered holding company system, unless the approval of the issue or sale or other transaction, together with the effect of such capitalization and earnings, would have a substantial adverse impact on the financial integrity of the registered holding company system;

[(5) the Commission shall make its decision under paragraph (3) to approve or disapprove the issue or sale of a security or the guarantee of a security within 120 days of the filing of a declaration concerning such issue, sale or guarantee; and

[(6) the Commission shall promulgate regulations with respect to the actions which would be considered, for purposes of this subsection, to have a substantial adverse impact on the financial integrity of the registered holding company system; such regulations shall ensure that the action has no adverse impact on any utility subsidiary or its customers, or on the ability of State commissions to protect such subsidiary or customers, and shall take into account the amount and type of capital invested in exempt wholesale generators, the ratio of such capital to the total capital invested in utility operations, the availability of books and records, and the financial and operating experience of the registered holding company and the exempt wholesale generator; the Commission shall promulgate such regulations within 6 months after the enactment of this section; after such 6-month period the Commission shall not approve any actions under paragraph (3), (4) or (5) except in accordance with such issued regulations.

[(i) APPLICATION OF ACT TO OTHER ELIGIBLE FACILITIES.—In the case of any person engaged directly and exclusively in the business of owning or operating (or both owning and operating) all or part of one or more eligible facilities, an advisory letter issued by the Commission staff under this Act after the date of enactment of this section, or an order issued by the Commission under this Act after the date of enactment of this section, shall not be required for the purpose, or have the effect, of exempting such person from treatment as an electric utility company under section 2(a)(3) or exempting such person from any provision of this Act.

[(j) OWNERSHIP OF EXEMPT WHOLESALE GENERATORS AND QUALIFYING FACILITIES.—The ownership by a person of one or more exempt wholesale generators shall not result in such person being considered as being primarily engaged in the generation or sale of

electric power within the meaning of sections 3(17)(C)(ii) and 3(18)(B)(ii) of the Federal Power Act (16 U.S.C. 796(17)(C)(ii) and 796(18)(B)(ii)).

[(k) PROTECTION AGAINST ABUSIVE AFFILIATE TRANSACTIONS.—

[(1) PROHIBITION.—After the date of enactment of this section, an electric utility company may not enter into a contract to purchase electric energy at wholesale from an exempt wholesale generator if the exempt wholesale generator is an affiliate or associate company of the electric utility company.

[(2) STATE AUTHORITY TO EXEMPT FROM PROHIBITION.—Notwithstanding paragraph (1), an electric utility company may enter into a contract to purchase electric energy at wholesale from an exempt wholesale generator that is an affiliate or associate company of the electric utility company—

[(A) if every State commission having jurisdiction over the retail rates of such electric utility company makes each of the following specific determinations in advance of the electric utility company entering into such contract:

[(i) A determination that such commission has sufficient regulatory authority, resources and access to books and records of the electric utility company and any relevant associate, affiliate or subsidiary company to exercise its duties under this subparagraph.

[(ii) A determination that the transaction—

[(I) will benefit consumers,

[(II) does not violate any State law (including where applicable, least cost planning),

[(III) would not provide the exempt wholesale generator any unfair competitive advantage by virtue of its affiliation or association with the electric utility company, and

[(IV) is in the public interest; or

[(B) if such electric utility company is not subject to State commission retail rate regulation and the purchased electric energy:

[(i) would not be resold to any affiliate or associate company, or

[(ii) the purchased electric energy would be resold to an affiliate or associate company and every State commission having jurisdiction over the retail rates of such affiliate or associate company makes each of the determinations provided under subparagraph (A), including the determination concerning a State commission's duties.

[(l) RECIPROCAL ARRANGEMENTS PROHIBITED.—Reciprocal arrangements among companies that are not affiliates or associate companies of each other that are entered into in order to avoid the provisions of this section are prohibited.

[SEC. 33. TREATMENT OF FOREIGN UTILITIES.

[(a) EXEMPTIONS FOR FOREIGN UTILITY COMPANIES.—

[(1) IN GENERAL.—A foreign utility company shall be exempt from all of the provisions of this Act, except as otherwise provided under this section, and shall not, for any purpose under this Act, be deemed to be a public utility company under section 2(a)(5), notwithstanding that the foreign utility company

may be a subsidiary company, an affiliate, or an associate company of a holding company or of a public utility company.

[(2) STATE COMMISSION CERTIFICATION.—Section (a)(1) shall not apply or be effective unless every State commission having jurisdiction over the retail electric or gas rates of a public utility company that is an associate company or an affiliate of a company otherwise exempted under section (a)(1) (other than a public utility company that is an associate company or an affiliate of a registered holding company) has certified to the Commission that it has the authority and resources to protect ratepayers subject to its jurisdiction and that it intends to exercise its authority. Such certification, upon the filing of a notice by such State commission, may be revised or withdrawn by the State commission prospectively as to any future acquisition. The requirement of State certification shall be deemed satisfied if the relevant State commission had, prior to the date of enactment of this section, on the basis of prescribed conditions of general applicability, determined that ratepayers of a public utility company are adequately insulated from the effects of diversification and the diversification would not impair the ability of the State commission to regulate effectively the operations of such company.

[(3) DEFINITION.—For purposes of this section, the term "foreign utility company" means any company that—

[(A) owns or operates facilities that are not located in any State and that are used for the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, if such company—

[(i) derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, within the United States; and

[(ii) neither the company nor any of its subsidiary companies is a public utility company operating in the United States; and

[(B) provides notice to the Commission, in such form as the Commission may prescribe, that such company is a foreign utility company.

[(b) OWNERSHIP OF FOREIGN UTILITY COMPANIES BY EXEMPT HOLDING COMPANIES.—Notwithstanding any provision of this Act except as provided under this section, a holding company that is exempt under section 3 of the Act shall be permitted without condition or limitation under the Act to acquire and maintain an interest in the business of one or more foreign utility companies.

[(c) REGISTERED HOLDING COMPANIES.—

[(1) OWNERSHIP OF FOREIGN UTILITY COMPANIES BY REGISTERED HOLDING COMPANIES.—Notwithstanding any provision of this Act except as otherwise provided under this section, a registered holding company shall be permitted as of the date of enactment of this section (without the need to apply for, or receive approval from the Commission) to acquire and hold the securities or an interest in the business, of one or more foreign utility companies. The Commission shall promulgate rules or

regulations regarding registered holding companies' acquisition of interests in foreign utility companies which shall provide for the protection of the customers of a public utility company which is an associate company of a foreign utility company and the maintenance of the financial integrity of the registered holding company system.

[(2) ISSUANCE OF SECURITIES.—The issuance of securities by a registered holding company for purposes of financing the acquisition of a foreign utility company, the guarantee of securities of a foreign utility company by a registered holding company, the entering into service, sales, or construction contracts, and the creation or maintenance of any other relationship between a foreign utility company and a registered holding company, its affiliates and associate companies, shall remain subject to the jurisdiction of the Commission under this Act (unless otherwise exempted under this Act, in the case of a transaction with an affiliate or associate company located outside of the United States). Any State commission with jurisdiction over the retail rates of a public utility company which is part of a registered holding company system may make such recommendations to the Commission regarding the registered holding company's relationship to a foreign utility company, and the Commission shall reasonably and fully consider such State recommendation.

[(3) CONSTRUCTION.—Any interest in the business of 1 or more foreign utility companies, or 1 or more companies organized exclusively to own, directly or indirectly, the securities or other interest in a foreign utility company, shall for all purposes of this Act, be considered to be—

[(A) consistent with the operation of a single integrated public utility system, within the meaning of section 11; and

[(B) reasonably incidental, or economically necessary or appropriate, to the operations of an integrated public utility system, within the meaning of section 11.

[(d) EFFECT ON EXISTING LAW; NO STATE PREEMPTION.—Nothing in this section shall—

[(1) preclude any person from qualifying for or maintaining any exemption otherwise provided for under this Act or the rules, regulations, or orders promulgated or issued under this Act; or

[(2) be deemed or construed to limit the authority of any State (including any State regulatory authority) with respect to—

[(A) any public utility company or holding company subject to such State's jurisdiction; or

[(B) any transaction between any foreign utility company (or any affiliate or associate company thereof) and any public utility company or holding company subject to such State's jurisdiction.

[(e) REPORTING REQUIREMENTS.—

[(1) FILING OF REPORTS.—A public utility company that is an associate company of a foreign utility company shall file with the Commission such reports (with respect to such foreign utility company) as the Commission may by rules, regulations, or

order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

[(2) NOTICE OF ACQUISITIONS.—Not later than 30 days after the consummation of the acquisition of an interest in a foreign utility company by an associate company of a public utility company that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates or by such public utility company, such associate company or such public utility company, shall provide notice of such acquisition to every State commission having jurisdiction over the retail electric or gas rates of such public utility company, in such form as may be prescribed by the State commission.

[(f) PROHIBITION ON ASSUMPTION OF LIABILITIES.—

[(1) IN GENERAL.—No public utility company that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates shall issue any security for the purpose of financing the acquisition, or for the purposes of financing the ownership or operation, of a foreign utility company, nor shall any such public utility company assume any obligation or liability as guarantor, endorser, surety, or otherwise in respect of any security of a foreign utility company.

[(2) EXCEPTION FOR HOLDING COMPANIES WHICH ARE PREDOMINANTLY PUBLIC UTILITY COMPANIES.—Subsection (f)(1) shall not apply if:

[(A) the public utility company that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates is a holding company and is not an affiliate under section 2(a)(11)(B) of another holding company or is not subject to regulation as a holding company and has no affiliate as defined in section 2(a)(11)(A) that is a public utility company subject to the jurisdiction of a State commission with respect to its retail electric or gas rates; and

[(B) each State commission having jurisdiction with respect to the retail electric and gas rates of such public utility company expressly permits such public utility to engage in a transaction otherwise prohibited under section (f)(1); and

[(C) the transaction (aggregated with all other then-outstanding transactions exempted under this subsection) does not exceed 5 per centum of the then-outstanding total capitalization of the public utility.

[(g) PROHIBITION ON PLEDGING OR ENCUMBERING UTILITY ASSETS.—No public utility company that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates shall pledge or encumber any utility assets or utility assets of any subsidiary thereof for the benefit of an associate foreign utility company.

[SEC. 34. EXEMPT TELECOMMUNICATIONS COMPANIES.

[(a) DEFINITIONS.—For purposes of this section—

[(1) EXEMPT TELECOMMUNICATIONS COMPANY.—The term "exempt telecommunications company" means any person determined by the Federal Communications Commission to be engaged directly or indirectly, wherever located, through one or

more affiliates (as defined in section 2(a)(11)(B)), and exclusively in the business of providing——

[(A) telecommunications services;

[(B) information services;

[(C) other services or products subject to the jurisdiction of the Federal Communications Commission; or

[(D) products or services that are related or incidental to the provision of a product or service described in subparagraph (A), (B), or (C).

No person shall be deemed to be an exempt telecommunications company under this section unless such person has applied to the Federal Communications Commission for a determination under this paragraph. A person applying in good faith for such a determination shall be deemed an exempt telecommunications company under this section, with all of the exemptions provided by this section, until the Federal Communications Commission makes such determination. The Federal Communications Commission shall make such determination within 60 days of its receipt of any such application filed after the enactment of this section and shall notify the Commission whenever a determination is made under this paragraph that any person is an exempt telecommunications company. Not later than 12 months after the date of enactment of this section, the Federal Communications Commission shall promulgate rules implementing the provisions of this paragraph which shall be applicable to applications filed under this paragraph after the effective date of such rules.

[(2) OTHER TERMS.—For purposes of this section, the terms "telecommunications services" and "information services" shall have the same meanings as provided in the Communications Act of 1934.

[(b) STATE CONSENT FOR SALE OF EXISTING RATE-BASED FACILITIES.—If a rate or charge for the sale of electric energy or natural gas (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge) for, or in connection with, assets of a public utility company that is an associate company or affiliate of a registered holding company was in effect under the laws of any State as of December 19, 1995, the public utility company owning such assets may not sell such assets to an exempt telecommunications company that is an associate company or affiliate unless State commissions having jurisdiction over such public utility company approve such sale. Nothing in this subsection shall preempt the otherwise applicable authority of any State to approve or disapprove the sale of such assets. The approval of the Commission under this Act shall not be required for the sale of assets as provided in this subsection.

[(c) OWNERSHIP OF ETCS BY EXEMPT HOLDING COMPANIES.—Notwithstanding any provision of this Act, a holding company that is exempt under section 3 of this Act shall be permitted, without condition or limitation under this Act, to acquire and maintain an interest in the business of one or more exempt telecommunications companies.

[(d) OWNERSHIP OF ETCS BY REGISTERED HOLDING COMPANIES.—Notwithstanding any provision of this Act, a registered holding company shall be permitted (without the need to apply for, or

receive, approval from the Commission, and otherwise without condition under this Act) to acquire and hold the securities, or an interest in the business, of one or more exempt telecommunications companies.

[(e) FINANCING AND OTHER RELATIONSHIPS BETWEEN ETCS AND REGISTERED HOLDING COMPANIES.—The relationship between an exempt telecommunications company and a registered holding company, its affiliates and associate companies, shall remain subject to the jurisdiction of the Commission under this Act: *Provided,* That—

[(1) section 11 of this Act shall not prohibit the ownership of an interest in the business of one or more exempt telecommunications companies by a registered holding company (regardless of activities engaged in or where facilities owned or operated by such exempt telecommunications companies are located), and such ownership by a registered holding company shall be deemed consistent with the operation of an integrated public utility system;

[(2) the ownership of an interest in the business of one or more exempt telecommunications companies by a registered holding company (regardless of activities engaged in or where facilities owned or operated by such exempt telecommunications companies are located) shall be considered as reasonably incidental, or economically necessary or appropriate, to the operations of an integrated public utility system;

[(3) the Commission shall have no jurisdiction under this Act over, and there shall be no restriction or approval required under this Act with respect to (A) the issue or sale of a security by a registered holding company for purposes of financing the acquisition of an exempt telecommunications company, or (B) the guarantee of a security of an exempt telecommunications company by a registered holding company; and

[(4) except for costs that should be fairly and equitably allocated among companies that are associate companies of a registered holding company, the Commission shall have no jurisdiction under this Act over the sales, service, and construction contracts between an exempt telecommunications company and a registered holding company, its affiliates and associate companies.

[(f) REPORTING OBLIGATIONS CONCERNING INVESTMENTS AND ACTIVITIES OF REGISTERED PUBLIC-UTILITY HOLDING COMPANY SYSTEMS.—

[(1) OBLIGATIONS TO REPORT INFORMATION.—Any registered holding company or subsidiary thereof that acquires or holds the securities, or an interest in the business, of an exempt telecommunications company shall file with the Commission such information as the Commission, by rule, may prescribe concerning—

[(A) investments and activities by the registered holding company, or any subsidiary thereof, with respect to exempt telecommunications companies, and

[(B) any activities of an exempt telecommunications company within the holding company system,

that are reasonably likely to have a material impact on the financial or operational condition of the holding company system.

[(2) AUTHORITY TO REQUIRE ADDITIONAL INFORMATION.—If, based on reports provided to the Commission pursuant to paragraph (1) of this subsection or other available information, the Commission reasonably concludes that it has concerns regarding the financial or operational condition of any registered holding company or any subsidiary thereof (including an exempt telecommunications company), the Commission may require such registered holding company to make additional reports and provide additional information.

[(3) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under this subsection. Nothing in this subsection shall authorize the Commission to withhold the information from Congress, or prevent the Commission from complying with a request for information from any other Federal or State department or agency requesting the information for purposes within the scope of its jurisdiction. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

[(g) ASSUMPTION OF LIABILITIES.—Any public utility company that is an associate company, or an affiliate, of a registered holding company and that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates shall not issue any security for the purpose of financing the acquisition, ownership, or operation of an exempt telecommunications company. Any public utility company that is an associate company, or an affiliate, of a registered holding company and that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates shall not assume any obligation or liability as guarantor, endorser, surety, or otherwise by the public utility company in respect of any security of an exempt telecommunications company.

[(h) PLEDGING OR MORTGAGING OF ASSETS.—Any public utility company that is an associate company, or affiliate, of a registered holding company and that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates shall not pledge, mortgage, or otherwise use as collateral any assets of the public utility company or assets of any subsidiary company thereof for the benefit of an exempt telecommunications company.

[(i) PROTECTION AGAINST ABUSIVE AFFILIATE TRANSACTIONS.—A public utility company may enter into a contract to purchase services or products described in subsection (a)(1) from an exempt telecommunications company that is an affiliate or associate company of the public utility company only if—

[(1) every State commission having jurisdiction over the retail rates of such public utility company approves such contract; or

[(2) such public utility company is not subject to State commission retail rate regulation and the purchased services or products—

[(A) would not be resold to any affiliate or associate company; or

[(B) would be resold to an affiliate or associate company and every State commission having jurisdiction over the

retail rates of such affiliate or associate company makes the determination required by subparagraph (A).

The requirements of this subsection shall not apply in any case in which the State or the State commission concerned publishes a notice that the State or State commission waives its authority under this subsection.

[(j) NONPREEMPTION OF RATE AUTHORITY.—Nothing in this Act shall preclude the Federal Energy Regulatory Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public utility company may recover in rates the costs of products or services purchased from or sold to an associate company or affiliate that is an exempt telecommunications company, regardless of whether such costs are incurred through the direct or indirect purchase or sale of products or services from such associate company or affiliate.

[(k) RECIPROCAL ARRANGEMENTS PROHIBITED.—Reciprocal arrangements among companies that are not affiliates or associate companies of each other that are entered into in order to avoid the provisions of this section are prohibited.

[(l) BOOKS AND RECORDS.—(1) Upon written order of a State commission, a State commission may examine the books, accounts, memoranda, contracts, and records of—

[(A) a public utility company subject to its regulatory authority under State law;

[(B) any exempt telecommunications company selling products or services to such public utility company or to an associate company of such public utility company; and

[(C) any associate company or affiliate of an exempt telecommunications company which sells products or services to a public utility company referred to in subparagraph (A),

wherever located, if such examination is required for the effective discharge of the State commission's regulatory responsibilities affecting the provision of electric or gas service in connection with the activities of such exempt telecommunications company.

[(2) Where a State commission issues an order pursuant to paragraph (1), the State commission shall not publicly disclose trade secrets or sensitive commercial information.

[(3) Any United States district court located in the State in which the State commission referred to in paragraph (1) is located shall have jurisdiction to enforce compliance with this subsection.

[(4) Nothing in this section shall—

[(A) preempt applicable State law concerning the provision of records and other information; or

[(B) in any way limit rights to obtain records and other information under Federal law, contracts, or otherwise.

[(m) INDEPENDENT AUDIT AUTHORITY FOR STATE COMMISSIONS.—

[(1) STATE MAY ORDER AUDIT.—Any State commission with jurisdiction over a public utility company that—

[(A) is an associate company of a registered holding company; and

[(B) transacts business, directly or indirectly, with a subsidiary company, an affiliate or an associate company that is an exempt telecommunications company,

may order an independent audit to be performed, no more frequently than on an annual basis, of all matters deemed rel-

evant by the selected auditor that reasonably relate to retail rates: *Provided*, That such matters relate, directly or indirectly, to transactions or transfers between the public utility company subject to its jurisdiction and such exempt telecommunications company.

[(2) SELECTION OF FIRM TO CONDUCT AUDIT.—(A) If a State commission orders an audit in accordance with paragraph (1), the public utility company and the State commission shall jointly select, within 60 days, a firm to perform the audit. The firm selected to perform the audit shall possess demonstrated qualifications relating to—

[(i) competency, including adequate technical training and professional proficiency in each discipline necessary to carry out the audit; and

[(ii) independence and objectivity, including that the firm be free from personal or external impairments to independence, and should assume an independent position with the State commission and auditee, making certain that the audit is based upon an impartial consideration of all pertinent facts and responsible opinions.

[(B) The public utility company and the exempt telecommunications company shall cooperate fully with all reasonable requests necessary to perform the audit and the public utility company shall bear all costs of having the audit performed.

[(3) AVAILABILITY OF AUDITOR'S REPORT.—The auditor's report shall be provided to the State commission not later than 6 months after the selection of the auditor, and provided to the public utility company not later than 60 days thereafter.

[(n) APPLICABILITY OF TELECOMMUNICATIONS REGULATION.—Nothing in this section shall affect the authority of the Federal Communications Commission under the Communications Act of 1934, or the authority of State commissions under State laws concerning the provision of telecommunications services, to regulate the activities of an exempt telecommunications company.

[SEPARABILITY OF PROVISIONS

[SEC. 35. If any provision of this title or the application of such provision to any person or circumstances shall be held invalid, the remainder of the title and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

[SHORT TITLE

[SEC. 36. This title may be cited as the "Public Utility Holding Company Act of 1935".

[TITLE II—AMENDMENTS TO FEDERAL WATER POWER ACT

[SECTION 201. Section 3 of the Federal Water Power Act, as amended, is amended to read as follows:

["SEC. 3. The words defined in this section shall have the following meanings for purposes of this Act, to with:

["(1) 'public lands' means such lands and interest in lands owned by the United States as are subject to private appropriation and

disposal under public land laws. It shall not include 'reservations', as hereinafter defined;

[“(2) 'reservations' means national forests, tribal lands embraced within Indian reservations, military reservations, and other lands and interested in lands acquired and held for any public purposes; but shall not include national monuments or national park;

[“(3) 'corporation' means any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. It shall not include 'municipalities' as hereinafter defined;

[“(4) 'person' means an individual or a corporation;

[“(5) 'licensee' means any person, State, or municipality licensed under the provisions of section of this Act, and any assignee or successor in interest thereof;

[“(6) 'State' means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States;

[“(7) 'municipality' means a city, county, irrigation district, drainage district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power;

[“(8) 'navigable waters' means those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, and which either in their natural or improved condition notwithstanding interruptions between the navigable parts of such streams or waters by falls, shallows, or rapids compelling land carriage, are used or suitable for use for the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows, or rapids, together with such other parts of streams as shall have been authorized by Congress for improvement by the United States or shall have been recommended to Congress for such improvement after investigation under its authority;

[“(9) 'municipal purposes' means and includes all purposes within municipal powers as defined by the constitution or laws of the State or by the charter of the municipality;

[“(10) 'Government dam' means a dam or other work constructed or owned by the United States for Government purposes with or without constribution from others;

[“(11) 'project' means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water-rights, rights-of-way, ditches, dams reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit;

[“(12) 'project works' means the physical structures of a project;

[“(13) 'net investment' in a project means the actual legitimate original cost thereof as defined and interpreted in the 'classification

of investment in road and equipment of steam roads, issue of 1914, Interstate Commerce Commission', plus similar costs of additions thereto and betterments thereof, minus the sum of the following items properly allocated thereto, if and to the extent that such items have been accumulated during the period of the license from earnings in excess of a fair return on such investment: (a) Unappropriated surplus, (b) aggregate credit balances of current depreciation accounts, and (c) aggregate appropriations of surplus expended for additions or betterments or used for the purposes for which such reserves were created. The term 'cost' shall include, insofar as applicable, the elements thereof prescribed in said classification, but shall not include expenditures from funds obtained through donations by States, municipalities, individuals or others, and said classification of investment of the Interstate Commerce Commission shall insofar as applicable be published and promulgated as a part of the rules and regulations of the Commission;

[“(14) 'Commission' and "Commissioner' means the Federal Power Commission, and a member thereof, respectively;

[“(15) 'State commission' means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State or municipality;

[“(16) 'security' means any note, stock, treasury stock, bond, debenture, or other evidence of interest in or indebtedness of a corporation subject to the provisions of this Act.”

[SEC. 202. Section 4 of the Federal Water Power Act, as amended, is amended to read as follows:

[“SEC. 4. The Commission is hereby authorized and empowered—

[“(a) To make investigations and to collect and record data concerning the utilization of the water resources of any region to be developed, the water-power industry and its relation to other industries and to interstate or foreign commerce, and concerning the location, capacity, development costs, and relation to markets of power sites, and whether the power from Government dams can be advantageously used by the United States for its public purposes, and what is a fair value of such power, to the extent the Commission may deem necessary or useful for the purpose of this Act.

[“(b) To determine the actual legitimate original cost of and the net investment in a licensed project, and to aid the Commission in such determinations, each licensee shall, upon oath, within a reasonable period of time to be fixed by the Commission, after the construction of the original project or any addition thereto or betterment thereof, file with the Commission in such detail as the Commission may require, a statement in duplicate showing the actual legitimate original cost of construction of such project, addition, or betterment, and of the price paid for water rights, rights-of-way, lands, or interest in lands. The licensee shall grant to the Commission or to its duly authorized agent or agents, at all reasonable times, free access to such project, addition, or betterment, and to all maps, profiles, contracts, reports of engineers, accounts, books, records, and all other papers and documents relating thereto. The statement of actual legitimate original cost of said project, and revisions thereof as determined by the Commission, shall be filed with the Secretary of the Treasury.

[“(c) To cooperate with the executive departments and other agencies of State or National Governments in such investigations; and for such purpose the several departments and agencies of the National Government are authorized and directed upon the request of the Commission to furnish such records, papers, and information in their possession as may be requested by the Commission, and temporarily to detail to the Commission such officers or experts as may be necessary in such investigations.

[“(d) To make public from time to time the information secured hereunder and to provide for the publication of its reports and investigations in such form and manner as may be best adapted for public information and use. The Commission, on or before the 3d day of January of each year, shall submit to Congress for the fiscal year preceding a classified report showing the permits and licenses issued under this Part, and in each case the parties thereto, the terms prescribed, and the moneys received if any, or account thereof. Such report shall contain the names and show the compensation of the persons employed by the Commission.

[“(e) To issue licenses to citizens of the United States, or to any association of such citizens, or to any corporation organized under the laws of the United States or any State thereof, or to any State or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, or in any of the streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam, except as herein provided: *Provided,* That licenses shall be issued within any reservation only after a finding by the Commission that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation: *Provided further,* That no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the same or other structures affecting navigation have been approved by the Chief of Engineers and the Secretary of War. Whenever the contemplated improvement is, in the judgment of the Commission, desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, a finding to that effect shall be made by the Commission and shall become a part of the records of the Commission: *Provided further,* That in case the Commission shall find that any Government dam may be advantageously used by the United States for public purposes in addition to navigation, no license therefor shall be issued until two years after it shall have reported to Congress the facts and conditions relating thereto, except that this provision shall not apply to any Government dam constructed prior to June 10, 1920:

And provided further, That upon the filing of any application for a license which has not been preceded by a preliminary permit under subsection (f) of this section, notice shall be given and published as required by the proviso of said subsection.

[“(f) To issue preliminary permits for the purpose of enabling applicants for a license hereunder to secure the data and to perform the acts required by section 9 hereof: *Provided, however,* That upon the filing of any application for a preliminary permit by any person, association, or corporation the Commission, before granting such application, shall at once give notice of such application in writing to any State or municipality likely to be interested in or affected by such application; and shall also publish notice of such application once each week for four weeks in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated.

[“(g) Upon its own motion to order an investigation of any occupancy of, or evidenced intention to occupy, for the purpose of developing electric power, public lands, reservations, or streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States by any person, corporation, State, or municipality and to issue such order as it may find appropriate, expedient, and in the public interest to conserve and utilize the navigation and water-power resources of the region.”

[SEC. 203. Section 5 of the Federal Water Power Act, as amended, is amended to read as follows:

[“SEC. 5. Each preliminary permit issued under this Part shall be for the sole purpose of maintaining priority of application for a license under the terms of this Act for such period or periods, not exceeding a total of three years, as in the discretion of the Commission may be necessary for making examinations and surveys, for preparing maps, plans, specifications, and estimates, and for making financial arrangements. Each such permit shall set forth the conditions under which priority shall be maintained. Such permits shall not be transferable, and may be canceled by order of the Commission upon failure of permittees to comply with the conditions thereof or for other good cause shown after notice and opportunity for hearing.”

[SEC. 204. Section 6 of the Federal Water Power Act, as amended, is amended to read as follows:

[“SEC. 6. Licenses under this Part shall be issued for a period not exceeding fifty years. Each such license shall be conditioned upon acceptance by the licensee of all the terms and conditions of this Act and such further conditions, if any, as the Commission shall prescribe in conformity with this Act, which said terms and conditions and the acceptance thereof shall be expressed in said license. Licenses may be revoked only for the reasons and in the manner prescribed under the provisions of this Act, and may be altered or surrendered only upon mutual agreement between the licensee and the Commission after thirty days' public notice. Copies of all licenses issued under the provisions of this Part and calling for the payment of annual charges shall be deposited with the General Accounting Office, in compliance with section 3743, Revised Statutes, as amended (U.S.C., title 41, sec. 20).”

[SEC. 205. Section 7 of the Federal Water Power Act, as amended, is amended to read as follows:

["SEC. 7. (a) In issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing licenses to new licensees under section 15 hereof the Commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region; and as between other applicants, the Commission may give preference to the applicant the plans of which it finds and determines are best adapted to develop, conserve, and utilize in the public interest the water resources of the region, if it be satisfied as to the ability of the applicant to carry out such plans.

["(b) Whenever, in the judgment of the Commission, the development of any water resources for public purposes should be undertaken by the United States itself, the Commission shall not approve any application for any project affecting such development, but shall cause to be made such examinations, surveys, reports, plans, and estimates of the cost of the proposed development as it may find necessary, and shall submit its findings to Congress with such recommendations as it may find appropriate concerning such development."

[SEC. 206. Section 10 of the Federal Water Power Act, as amended, is amended to read as follows:

["SEC. 10. All licenses issued under this Part shall be on the following conditions:

["(a) That the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes; and if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

["(b) That except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition, not in conformity with the approved plans shall be made to any dam or other project works constructed hereunder of an installed capacity in excess of one hundred horsepower without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct.

["(c) That the licensee shall maintain the project works in a condition of repair adequate for the purposes of navigation and for the efficient operation of said works in the development and transmission of power, shall make all necessary renewals and replacements, shall establish and maintain adequate depreciation reserves for such purposes, shall so maintain and operate said works as not to impair navigation, and shall conform to such rules and regulations as the Commission may from time to time prescribe for the protection of life, health, and property. Each licensee hereunder

shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto, constructed under the license, and in no event shall the United States be liable therefor.

[“(d) That after the first twenty years of operation, out of surplus earned thereafter, if any, accumulated in excess of a specified reasonable rate of return upon the net investment of a licensee in any project or projects under license, the licensee shall establish and maintain amortization reserves, which reserves shall, in the discretion of the Commission, be held until the termination of the license or be applied from time to time in reduction of the net investment. Such specified rate of return and the proportion of such surplus earnings to be paid into and held in such reserves shall be set forth in the license.

[“(e) That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this Part; for recompensing it for the use, occupancy, and enjoyment of its lands or other property; and for the expropriation to the Government of excessive profits until the respective States shall make provision for preventing excessive profits or for the expropriation thereof to themselves, or until the period of amortization as herein provided is reached, and in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges, and any such charges may be adjusted from time to time by the Commission as conditions may require: *Provided,* That when licenses are issued involving the use of Government dams or other structures owned by the United States or tribal lands embraced within Indian reservations the Commission shall, subject to the approval of the Secretary of the Interior in the case of such dams or structures in reclamation projects and, in the case of such tribal lands, subject to the approval of the Indian tribe having jurisdiction of such lands as provided in section 16 of the Act of June 18, 1934 (48 Stat. 984), fix a reasonable annual charge for the use thereof, and such charges may with like approval be readjusted by the Commission at the end of twenty years after the project is available for service and at periods of not less than ten years thereafter upon notice and opportunity for hearing: *Provided further,* That licenses for the development, transmission, or distribution of power by States or municipalities shall be issued and enjoyed without charge to the extent such power is sold to the public without profit or is used by such State or municipality for State or municipal purposes, except that as to projects constructed or to be constructed by States or municipalities primarily designed to provide or improve navigation, licenses therefor shall be issued without charge; and that licenses for the development, transmission, or distribution of power for domestic, mining, or other beneficial use in projects of not more than one hundred horsepower installed capacity may be issued without charge, except on tribal lands within Indian reservations; but in no case shall a license be issued free of charge for the development and utilization of power created by any Government dam and that the amount charged therefor in any license shall be such as determined by the Commission. In the event an overpayment of any

charge due under this section shall be made by a licensee, the Commission is authorized to allow a credit for such overpayment when charges are due for any subsequent period.

[“(f) That whenever any licensee hereunder is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Commission shall require as a condition of the license that the licensee so benefited shall reimburse the owner of such reservoir or other improvements for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable. The proportion of such charges to be paid by any licensee shall be determined by the Commission. The licensees or permittees affected shall pay to the United States the cost of making such determination as fixed by the Commission.

[“Whenever such reservoir or other improvement is constructed by the United States the Commission shall assess similar charges against any licensee directly benefited thereby, and any amount so assessed shall be paid into the Treasury of the United States, to be reserved and appropriated as a part of the special fund for headwater improvements as provided in section 17 hereof.

[“Whenever any power project not under license is benefited by the construction work of a licensee or permittee, the United States or any agency thereof, the Commission, after notice to the owner or owners of such unlicensed project, shall determine and fix a reasonable and equitable annual charge to be paid to the licensee or permittee on account of such benefits, or to the United States if it be the owner of such headwater improvement.

[“(g) Such other conditions not inconsistent with the provisions of this Act as the Commission may require.

[“(h) That combinations, agreements, arrangements, or understandings, express or implied, to limit the output of electrical energy, to restrain trade, or to fix, maintain, or increase prices for electrical energy or service are hereby prohibited.

[“(i) In issuing licenses for a minor part only of a complete project, or for a complete project of not more than one hundred horsepower installed capacity, the Commission may in its discretion waive such conditions, provisions, and requirements of this Part, except the license period of fifty years, as it may deem to be to the public interest to waive under the circumstances: *Provided,* That the provisions hereof shall not apply to annual charges for use of lands within Indian reservations.”

[“SEC. 207. Section 14 of the Federal Water Power Act, as amended, is amended to read as follows:

[“SEC. 14. Upon not less than two years’ notice in writing from the Commission the United States shall have the right upon or after the expiration of any license to take over and thereafter to maintain and operate any project or projects as defined in section 3 hereof, and covered in whole or in part by the license, or the right to take over upon mutual agreement with the licensee all property owned and held by the licensee then valuable and serviceable in the development, transmission, or distribution of power and which is then dependent for its usefulness upon the continuance of the license, together with any lock or locks or other aids to navigation constructed at the expense of the licensee, upon the condition that before taking possession it shall pay the net investment of the li-

censee in the project or projects taken, not to exceed the fair value of the property taken, plus such reasonable damages, if any, to property of the licensee valuable, serviceable, and dependent as above set forth but not taken, as may be caused by the severance therefrom of property taken, and shall assume all contracts entered into by the licensee with the approval of the Commission. The net investment of the licensee in the project or projects so taken and the amount of such severance damages, if any, shall be determined by the Commission after notice and opportunity for hearing. Such net investment shall not include or be affected by the value of any lands, rights-of-way, or other property of the United States licensed by the Commission under this Act, by the license or by good will, going value, or prospective revenues; nor shall the values allowed for water rights, rights-of-way, lands, or interest in lands be in excess of the actual reasonable cost thereof at the time of acquisition by the licensee: *Provided,* That the right of the United States or any State or municipality to take over, maintain, and operate any project licensed under this Act at any time by condemnation proceedings upon payment of just compensation is hereby expressly reserved."

[Sec. 208. Section 17 of the Federal Water Power Act, as amended, is amended to read as follows:

[Sec. 17. (a) All proceeds from any Indian reservation shall be placed to the credit of the Indians of such reservation. All other charges arising from licenses hereunder, except charges fixed by the Commission for the purpose of reimbursing the United States for the costs of administration of this Part, shall be paid into the Treasury of the United States, subject to the following distribution: 12½ per centum thereof is hereby appropriated to be paid into the Treasury of the United States and credited to 'Miscellaneous receipts'; 50 per centum of the charges arising from licenses hereunder for the occupancy and use of public lands and national forests shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902; and 37½ per centum of the charges arising from licenses hereunder for the occupancy and use of national forests and public lands from development within the boundaries of any State shall be paid by the Secretary of the Treasury to such State; and 50 per centum of the charges arising from all other licenses hereunder is hereby reserved and appropriated as a special fund in the Treasury to be expended under the direction as a special fund in the Treasury to be expended under the direction of the Secretary of War in the maintenance and operation of dams and other navigation structures owned by the United States or in the construction, maintenance, or operation of headwater or other improvements of navigable waters of the United States. The proceeds of charges made by the Commission for the purpose of reimbursing the United States for the costs of the administration of this Part shall be paid into the Treasury of the United States and credited to miscellaneous receipts.

[(b) In case of delinquency on the part of any licensee in the payment of annual charges a penalty of 5 per centum of the total amount so delinquent may be added to the total charges which shall apply for the first month or part of month so delinquent with an additional penalty of 3 per centum for each subsequent month

until the total of the charges and penalties are paid or until the license is canceled and the charges and penalties satisfied in accordance with law."

[Sec. 209. Section 18 of the Federal Water Power Act, as amended, is amended to read as follows:

["Sec. 18. The Commission shall require the construction, maintenance, and operation by a licensee at its own expense of such lights and signals as may be directed by the Secretary of War, and such fishways as may be prescribed by the Secretary of Commerce. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure built under the provisions of this Act, whether at the expense of a licensee hereunder or of the United States, shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure as may be made from time to time by the Secretary of War; and for willful failure to comply with any such rule or regulation such licensee shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section 316 hereof."

[SEC. 210. Section 23 of the Federal Water Power Act, as amended, is amended to read as follows:

["SEC. 23. (a) The provisions of this Part shall not be construed as affecting any permit or valid existing right-of-way heretofore granted or as confirming or otherwise affecting any claim, or as affecting any authority heretofore given pursuant to law, but any person, association, corporation, State, or municipality holding or possessing such permit, right-of-way, or authority may apply for a license hereunder, and upon such application the Commission may issue to any such applicant a license in accordance with the provisions of this Part and in such case the provisions of the Act shall apply to such applicant as a license hereunder: *Provided,* That when application is made for a license under this section for a project or projects already constructed the fair value of said project or projects determined as provided in this section, shall for the purposes of this Part and of said license be deemed to be the amount to be allowed as the net investment of the applicant in such project or projects as of the date of such license, or as of the date of such determination, if license has not been issued. Such fair value shall be determined by the Commission after notice and opportunity for hearing.

["(b) It shall be unlawful for any person, State, or municipality, for the purpose of developing electric power, to construct, operate, or maintain any dam, water conduit, reservoir, power house, or other works incidental thereto across, along, or in any of the navigable waters of the United States, or upon any part of the public lands or reservations of the United States (including the Territories), or utilize the surplus water or water power from any Government dam, except under and in accordance with the terms of a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to this Act. Any person, association, corporation, State, or municipality intending to construct a dam or other project works across, along, over, or in any stream or part thereof, other than those defined herein as navigable waters, and over which Congress has jurisdiction under its authority to

regulate commerce with foreign nations and among the several States shall before such construction file declaration of such intention with the Commission, whereupon the Commission shall cause immediate investigation of such proposed construction to be made, and if upon investigation it shall find that the interests of interstate or foreign commerce would be affected by such proposed construction, such person, association, corporation, State, or municipality shall not construct, maintain, or operate such dam or other project works until it shall have applied for and shall have received a license under the provisions of this Act. If the Commission shall not so find, and if no public lands or reservations are affected, permission is hereby granted to construct such dam or other project works in such stream upon compliance with State laws."

[SEC. 211. Section 24 of the Federal Water Power Act, as amended, is amended to read as follows:

["SEC. 24. Any lands of the United States included in any proposed project under the provisions of this Part shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress. Notice that such application has been made, together with the date of filing thereof and a description of the lands of the United States affected thereby, shall be filled in the local land office for the district in which such lands are located. Whenever the Commission shall determine that the value of any lands of the United States so applied for, or heretofore or hereafter reserved or classified as power sites, will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public land laws, the Secretary of the Interior, upon notice of such determination, shall deserve such lands open to location, entry, or selection, for such purpose or purposes and under such restrictions as the Commission may determine, subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgment of the Commission, for the purposes of this Part, which right shall be expressly reserved in every patent issued for such lands; and no chain or right to compensation shall accrue from the occupation or use of any of said lands for said purposes. The United States or any licensee for any such lands hereunder may enter thereupon for the purposes of this Part, upon payment of any damages to crops, buildings, or other improvements caused thereby to the owner thereof, or upon giving a good and sufficient bond to the United States for the use and benefit of the owner to secure the payment of such damages as may be determined and fixed in an action brought upon the bond in a court of competent jurisdiction, said bond to be in the form prescribed by the Commission: *Provided,* That locations, entries, selections, or filings heretofore made for lands reserved as water-power sites, or in connection with water-power development, or electrical transmission may proceed to approval or patent under and subject to the limitations and conditions in this section contained.

[SEC. 212. Sections 1 and 29, inclusive, of the Federal Water Power Act, as amended, shall constitute Part I of that Act, and sections 25 and 30 of such Act, as amended, are repealed: *Provided*, That nothing in that Act, as amended, shall be construed to repeal

or amend the provisions of the amendment to the Federal Water Power Act approved March 3, 1921 (41 Stat. 1353), or the provisions of any other Act relating to national parks and national monuments.

[SEC. 213. The Federal Water Power Act, as amended, is further amended by adding thereto the following parts:

[“PART II—REGULATION OF ELECTRIC UTILITY COMPANIES ENGAGED IN INTERSTATE COMMERCE

[“DECLARATION OF POLICY; APPLICATION OF PART; DEFINITIONS

[“SECTION 201. (a) It is hereby declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this Part and the Part next following and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, however, to extent only to those matters which are not subject to regulation by the States.

[(b) The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this Part and the Part next following, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.

[“(c) For the purpose of this Part, electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States.

[“(d) The term ‘sale of electric energy at wholesale’ when used in this Part means a sale of electric energy to any person for resale.

[“(e) The term ‘public utility’ when used in this Part or in the Part next following means any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part.

[“(f) No provision in this Part shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

[“INTERCONNECTION AND COORDINATION OF FACILITIES; EMERGENCIES; TRANSMISSION TO FOREIGN COUNTRIES

[“SEC. 202. (a) For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon its own motion or upon application, make such modifications thereof as in its judgment will promote the public interest. Each such district shall embrace an area which, in the judgment of the Commission, can economically be served by such interconnected and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts. Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district, and shall afford each such State commission reasonable opportunity to present its views and recommendations, and shall receive and consider such views and recommendations.

[“(b) Wherever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical connection of its transmission facilities with the facilities of one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons; *Provided,* That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them.

[“(c) During the continuance of any war in which the United States is engaged, or whenever the Commission determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, the Commission shall have authority, either upon its own motion or upon complaint, with or without notice, hearing, or report, to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgement will best meet the emergency and serve the public interest. If the parties affected by such order fail to agree upon the terms of any ar-

rangement between them in carrying out such order, the Commission, after hearing held either before or after such order takes effect, may prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party.

[“(d) During the continuance of any emergency requiring immediate action, any person engaged in the transmission or sale of electric energy and not otherwise subject to the jurisdiction of the Commission may make such temporary connections with any public utility subject to the jurisdiction of the Commission or may construct such temporary facilities for the transmission of electric energy in interstate commerce as may be necessary or appropriate to meet such emergency, and shall not become subject to the jurisdiction of the Commission by reason of such temporary connection or temporary construction: *Provided,* That such temporary connection shall be discontinued or such temporary construction removed or otherwise disposed of upon the termination of such emergency: *Provided further,* That upon approval of the Commission permanent connections for emergency use only may be made hereunder.

[“(e) After six months from the date on which this Part takes effect, no person shall transmit any electric energy from the United States to a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application unless, after opportunity for hearing, it finds that the proposed transmission would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission. The Commission may by its order grant such application in whole or in part, with such modifications and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown make such supplemental orders in the premises as it may find necessary or appropriate.

[“DISPOSITION OF PROPERTY; CONSOLIDATIONS; PURCHASE OF SECURITIES

[“SEC. 203. (a) No public utility shall sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $50,000, or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person, or purchase, acquire, or take any security of any other public utility, without first having secured an order of the Commission authorizing it to do so. Upon application for such approval the Commission shall give reasonable notice in writing to the Governor and State commission of each of the States in which the physical property affected, or any part thereof, is situated, and to such other persons as it may deem advisable. After notice and opportunity for hearing, if the Commission finds that the proposed disposition, consolidation, acquisition, or control will be consistent with the public interest, it shall approve the same.

[“(b) The Commission may grant any application for an order under this section in whole or in part and upon such terms and conditions as it finds necessary or appropriate to secure the main-

tenance of adequate service and the coordination in the public interest of facilities subject to the jurisdiction of the Commission. The Commission may from time to time for good cause show make such orders supplemental to any order made under this section as it may find necessary or appropriate.

[“ISSUANCE OF SECURITIES; ASSUMPTION OF LIABILITIES

[“SEC. 204. (a) No public utility shall issue any security, or assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person, unless and until, and then only to the extent that, upon application by the public utility, the Commission by order authorizes such issue or assumption of liability. The Commission shall make such order only if it finds that such issue or assumption (a) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes. The provisions of this section shall be effective six months after this Part takes effect.

[“(b) The Commission, after opportunity for hearing, may grant any application under this section in whole or in part, and with such modifications and upon such terms and conditions as it may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it may find necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any security so theretofore authorized or the proceeds thereof may be applied, subject always to the requirements of subsection (a) of this section.

[“(c) No public utility shall, without the consent of the Commission, apply any security or any proceeds thereof to any purpose not specified in the Commission’s order, or supplemental order, or to any purpose in excess of the amount allowed for such purpose in such order, or otherwise in contravention of such order.

[“(d) The Commission shall not authorize the capitalization of the right to be a corporation or of any franchise, permit, or contract for consolidation, merger, or lease in excess of the amount (exclusive of any tax or annual charge) actually paid as the consideration for such right, franchise, permit, or contract.

[“(e) Subsection (a) shall not apply to the issue or renewal of, or assumption of liability on, a note or draft maturing not more than one year after the date of such issue, renewal or assumption of liability, and aggregating (together with all other then outstanding notes and drafts of a maturity of one year or less on which such public utility is primarily or secondarily liable) not more than 5 per centum of the par value of the other securities of the public utility then outstanding. In the case of securities having no par value, the par value for the purpose of this subsection shall be the fair market value as of the date of issue. Within ten days after any such issue, renewal, or assumption of liability, the public utility shall file with the Commission a certificate of notification, in such form as may

be prescribed by the Commission, setting forth such matters as the Commission shall by regulation require.

[“(f) The provisions of this section shall not extend to a public utility organized and operating in a State under the laws of which its security issues are regulated by a State commission.

[“(g) Nothing in this section shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which the provisions of this section relate.

[“(h) Any public utility whose security issues are approved by the Commission under this section may file with the Securities and Exchange Commission duplicate copies of reports filed with the Federal Power Commission in lieu of the reports, information, and documents required under section 7 of the Securities Act of 1933 and sections 12 and 13 of the Securities and Exchange Act of 1934.

[“RATES AND CHARGES; SCHEDULES; SUSPENSION OF NEW RATES

[“SEC. 205. (a) All rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

[“(b) No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

[“(c) Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission, within such time and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

[“(d) Unless the Commission otherwise orders, no change shall be made by any public utility in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days’ notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days’ notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

[“(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint or upon its own initiative without complaint, at once, and, if it so orders, without answer

or formal pleading by the public utility, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of such five months, the proposed change of rate, charge, classification, or service shall go into effect at the end of such period, but in case of a proposed increased rate or charge, the Commission may by order require the interested public utility or public utilities to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require such public utility or public utilities to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the public utility, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

[“FIXING RATES AND CHARGES; DETERMINATION OF COST OF PRODUCTION OR TRANSMISSION

[“SEC. 206. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.

[“(b) The Commission upon its own motion, or upon the request of any State commission whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transmission of electric energy by means of facilities under the jurisdiction of the Commission in cases where the Commission has no authority to establish a rate governing the sale of such energy.

[“FURNISHING OF ADEQUATE SERVICE

[“SEC. 207. Whenever the Commission, upon complaint of a State commission, after notice to each State commission and public utility affected and after opportunity for hearing, shall find that

any interstate service of any public utility is inadequate or insufficient, the Commission shall determine the proper, adequate, or sufficient service to be furnished, and shall fix the same by its order, rule, or regulation: *Provided*, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel the public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers.

[“ASCERTAINMENT OF COST OF PROPERTY

[“SEC. 208. (a) The Commission may investigate and ascertain the actual legitimate cost of the property of every public utility, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation, and the fair value of such property.

[“(b) Every public utility upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction.

[“USE OF JOINT BOARDS; COOPERATION WITH STATE COMMISSIONS

[“SEC. 209. (a) The Commission may refer any matter arising in the administration of this Part to a board to be composed of a member or members, as determined by the Commission, from the State or each of the States affected or to be affected by such matter. Any such board shall be vested with the same power and be subject to the same duties and liabilities as in the case of a member of the Commission when designated by the Commission to hold any hearings. The action of such board shall have such force and effect and its proceedings shall be conducted in such manner as the Commission shall by regulations prescribe. The board shall be appointed by the Commission from persons nominated by the State commission of each State affected, or by the Governor of such State if there is no State commission. Each State affected shall be entitled to the same number of representatives on the board unless the nominating power of such State waives such right. The Commission shall have discretion to reject the nominee from any State, but shall thereupon invite a new nomination from that State. The members of a board shall receive such allowances for expenses as the Commission shall provide. The Commission may, when in its discretion sufficient reason exists therefor, revoke any reference to such a board.

[“(b) The Commission may confer with any State commission regarding the relationship between rate structures, costs, accounts, charges, practices, classifications, and regulations of public utilities subject to the jurisdiction of such State commission and of the Commission; and the Commission is authorized, under such rules and regulations as it shall prescribe, to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this Act to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

[“(c) The Commission shall make available to the several State commissions such information and reports as may be of assistance in State regulation of public utilities. Whenever the Commission can do so without prejudice to the efficient and proper conduct of its affairs, it may upon request from a State make available to such State as witnesses any of its trained rate, valuation, or other experts, subject to reimbursement to the Commission by such State of the compensation and traveling expenses of such witnesses. All sums collected hereunder shall be credited to the appropriation from which the amounts were expended in carrying out the provisions of this subsection.

[“PART III—LICENSEES AND PUBLIC UTILITIES; PROCEDURAL AND ADMINISTRATIVE PROVISIONS

[“ACCOUNTS, RECORDS, AND MEMORANDA

[“SECTION 301. (a) Every licensee and public utility shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this Act, including accounts, records, and memoranda of the generation, transmission, distribution, delivery, or sale of electric energy, the furnishing of services or facilities in connection therewith, and receipts and expenditures with respect to any of the foregoing: *Provided, however*, That nothing in this Act shall relieve any public utility from keeping any accounts, memoranda, or records which such public utility may be required to keep by or under authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by licensees and public utilities and may classify such licensees and public utilities and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays and receipts shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

[“(b) The Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of licensees and public utilities, and it shall be the duty of such licensees and public utilities to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records, and memoranda when requested so to do. No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts, as hereinbefore provided, except insofar as he may be directed by the Commission or by a court.

[“(c) The books, accounts, memoranda, and records of any person who controls, directly or indirectly, a licensee or public utility sub-

ject to the jurisdiction of the Commission, and of any other company controlled by such person, insofar as they relate to transactions with or the business of such licensee or public utility, shall be subject to examination on the order of the Commission.

[“RATES OF DEPRECIATION

[“SEC. 302. (a) The Commission may, after hearing, require licensees and public utilities to carry a proper and adequate depreciation account in accordance with such rules, regulations, and forms of account as the Commission may prescribe. The Commission may, from time to time, ascertain and determine, and by order fix, the proper and adequate rates of depreciation of the several classes of property of each licensee and public utility. Each licensee and public utility shall conform its depreciation accounts to the rates so ascertained, determined, and fixed. The licensees and public utilities subject to the jurisdiction of the Commission shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such licensee or public utility shall in any case include in any form under its operating or other expenses any depreciation or other charge or expenditure included elsewhere as a depreciation charge or otherwise under its operating or other expenses. Nothing in this section shall limit the power of a State commission to determine in the exercise of its jurisdiction, with respect to any public utility, the percentage rate of depreciation to be allowed, as to any class of property of such public utility, or the composite depreciation rate, for the purpose of determining rates or charges.

[“(b) The Commission, before prescribing any rules or requirements as to accounts, records, or memoranda, or as to depreciation rates, shall notify each State commission having jurisdiction with respect to any public utility involved, and shall give reasonable opportunity to each such commission to present its views, and shall receive and consider such views and recommendations.

[“REQUIREMENTS APPLICABLE TO AGENCIES OF THE UNITED STATES

[“SEC. 303. All agencies of the United States engaged in the generation and sale of electric energy for ultimate distribution to the public shall be subject, as to all facilities used for such generation and sale, and as to the electric energy sold by such agency, to the provisions of sections 301 and 302 hereof, so far as may be practicable, and shall comply with the provisions of such sections and with the rules and regulations of the Commission thereunder to the same extent as may be required in the case of a public utility.

[“PERIODIC AND SPECIAL REPORTS

[“SEC. 304. (a) Every licensee and every public utility shall file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper administration of this Act. The Commission may prescribe the manner and form in which such reports shall be made, and require from such persons specific answers to all questions

upon which the Commission may need information. The Commission may require that such reports shall include, among other things, full information as to assets and liabilities, capitalization, net investment, and reduction thereof, gross receipts, interest due and paid, depreciation, and other reserves, cost of project and other facilities, cost of maintenance and operation of the project and other facilities, cost of renewals and replacement of the project works and other facilities, depreciation, generation, transmission, distribution, delivery, use, and sale of electric energy. The Commission may require any such person to make adequate provision for currently determining such costs and other facts. Such reports shall be made under oath unless the Commission otherwise specifies.

[“(b) It shall be unlawful for any person willfully to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, memorandum, record, or account required to be made, filed, or kept under this act or any rule, regulation, or order thereunder.

[“OFFICIALS DEALING IN SECURITIES; INTERLOCKING DIRECTORATES

[“SEC. 305. (a) It shall be unlawful for any officer or director of any public utility to receive for his own benefit, directly or indirectly, any money of thing of value in respect of the negotiation, hypothecation, or sale by such public utility of any security issued or to be issued by such public utility, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of such utility from any funds properly included in capital account.

[“(b) After six months from the date on which this Part takes effect, it shall be unlawful for any person to hold the position of officer or director of more than one public utility or to hold the position of officer or director of a public utility and the position of officer or director of any bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility, or officer or director of any company supplying electrical equipment to such public utility, unless the holding of such positions shall have been authorized by order of the Commission, upon due showing in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby. The Commission shall not grant any such authorization in respect of such positions held on the date on which this Part takes effect, unless application for such authorization is filed with the Commission within sixty days after that date.

[“COMPLAINTS

[“SEC. 306. Any person, State, municipality, or State commission complaining of anything done or omitted to be done by any licensee or public utility in contravention of the provisions of this Act may supply to the Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such licensee or public utility, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission. If such licensee or public utility shall not satisfy the com-

plaint within the time specified or there shall appear to be any reasonable ground for investigating such complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall find proper.

[“INVESTIGATIONS BY COMMISSION; ATTENDANCE OF WITNESSES; DEPOSITIONS

[“SEC. 307. (a) The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person has violated or is about to violate any provision of this Act or any rule, regulation, or order thereunder, or to aid in the enforcement of the provisions of this Act or in prescribing rules or regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation concerning the matters to which this Act relates. The Commission may permit any person to file with it a statement in writing under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation. The Commission, in its discretion, may publish or make available to State commissions information concerning any such subject.

[“(b) For the purpose of any investigation or any other proceeding under this Act, any member of the Commission, or any officer designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission finds relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States at any designated place of hearing. Witnesses summoned by the Commission to appear before it shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

[“(c) In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. Such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found or may be doing business. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

[“(d) The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation pending before the Commission, by deposition, at any time after the proceeding is at issue. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any person authorized to administer oaths not being of counsel or attorney to either of the parties, nor interested in the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the dependent.

[“(e) If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

[“(f) Witnesses whose depositions are taken as authorized in this Act, and the person or officer taking the same, shall be entitled to the same fees as are paid for like services in the courts of the United States.

[“(g) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts, agreements, or other records, and documents before the Commission, or in obedience to the subpoena of the Commission or any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

[“HEARING; RULES OF PROCEDURE

[“SEC. 308. (a) Hearings under this Act may be held before the Commission, any member or members thereof or any representative of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before it, the Commission, in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality, or any representative of interested consumers or security holders, or any competitor of a party to such proceeding, or any

other person whose participation in the proceeding may be in the public interest.

[“(b) All hearings, investigations, and proceedings under this Act shall be governed by rules of practice and procedure to be adopted by the Commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation issued under the authority of this Act.

[“ADMINISTRATIVE POWERS OF COMMISSION; RULES, REGULATIONS, AND ORDERS

[“SEC. 309. The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this Act; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours.

[“APPOINTMENT OF OFFICERS AND EMPLOYEES

[“SEC. 310. The Commission is authorized to appoint and fix the compensation of such officers, attorneys, examiners, and experts as may be necessary for carrying out its functions under this Act, without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States; and the Commission may, subject to civil-service laws, appoint such other officers and employees as are necessary for carrying out such functions and fix their salaries in accordance with the Classification Act of 1923, as amended.

[“INVESTIGATIONS RELATING TO ELECTRIC ENERGY

[“SEC. 311. In order to secure information necessary or appropriate as a basis for recommending legislation, the Commission is authorized and directed to conduct investigations regarding the generation, transmission, distribution, and sale of electric energy, however produced, throughout the United States and its possessions, whether or not otherwise subject to the jurisdiction of the Commission, including the generation, transmission, distribution, and sale of electric energy by any agency, authority, or instrumentality of the United States, or of any State or municipality or other

political subdivision of a State. It shall, so far as practicable, secure and keep current information regarding the ownership, operation, management, and control of all facilities for such generation, transmission, distribution, and sale; the capacity and output thereof and the relationship between the two; the cost of generation, transmission, and distribution; the rates, charges, and contracts in respect of the sale of electric energy and its service to residential, rural, commercial, and industrial consumers and other purchasers by private and public agencies; and the relation of any or all such facts to the development of navigation, industry, commerce, and the national defense. The Commission shall report to Congress the results of investigations made under authority of this section.

[“PUBLICATION AND SALE OF REPORTS

[“SEC. 312. The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and is authorized to sell at reasonable prices copies of all maps, atlases, and reports as it may from time to time publish. Such reasonable prices may include the cost of compilation, composition, and reproduction. The Commission is also authorized to make such charges as it deems reasonable for special statistical services and other special or periodic services. The amounts collected under this section shall be deposited in the Treasury to the credit of miscellaneous receipts. All printing for the Federal Power Commission making use of engraving, lithography, and photolithography, together with the plates for the same, shall be contracted for and performed under the direction of the Commission, under such limitations and conditions as the Joint Committee on Printing may from time to time prescribe, and all other printing for the Commission shall be done by the Public Printer under such limitations and conditions as the Joint Committee on Printing may from time to time prescribe. The entire work may be done at, or ordered through, the Government Printing Office whenever, in the judgment of the Joint Committee on Printing, the same would be to the interest of the Government: *Provided,* That when the exigencies of the public service so require, the Joint Committee on Printing may authorize the Commission to make immediate contracts for engraving, lithographing, and photolithography, without advertisement for proposals: *Provided further,* That nothing contained in this or any other Act shall prevent the Federal Power Commission from placing orders with other departments or establishments for engraving, lithographing, and photolithographing, in accordance with the provisions of sections 601 and 602 of the Act of June 30, 1932 (47 Stat. 417), providing for interdepartmental work.

[“REHEARINGS; COURT REVIEW OF ORDERS

[“SEC. 313. (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this Act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission

acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon.

[“(b) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the Circuit Court of Appeals of the United States for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347).

[“(c) The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission’s order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission’s order.

[“ENFORCEMENT OF ACT, REGULATIONS AND ORDERS

[“SEC. 314. (a) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this Act, or of any rule, regulation, or order thereunder, it may in

its discretion bring an action in the proper District Court of the United States, the Supreme Court of the District of Columbia, or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this Act or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who, in his discretion, may institute the necessary criminal proceedings under this Act.

[“(b) Upon application of the Commission the district courts of the United States, the Supreme Court of the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this Act or any rule, regulation, or order of the Commission thereunder.

[“(c) The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work, or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for or represent the Commission in any case in court; and the expenses of such employment shall be paid out of the appropriation for the Commission.

[“GENERAL FORFEITURE PROVISION

[“SEC. 315. (a) Any licensee or public utility which willfully fails, within the time prescribed by the Commission, to comply with any order of the Commission, to file any report required under this Act or any rule or regulation of the Commission thereunder, to submit any information or document required by the Commission in the course of an investigation conducted under this Act, or to appear by an officer or agent at any hearing or investigation in response to a subpoena issued under this Act, shall forfeit to the United States an amount not exceeding $1,000 to be fixed by the Commission after notice and opportunity for hearing. The imposition or payment of any such forfeiture shall not bar or affect any penalty prescribed in this Act but such forfeiture shall be in addition to any such penalty.

[“(b) The forfeitures provided for in this Act shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States, brought in the district where the person is an inhabitant or has his principal place of business, or if a licensee or public utility, in any district in which such licensee or public utility transacts business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures under this Act. The costs and expenses of such prosecution shall be paid from the appropriations for the expenses of the courts of the United States.

[“GENERAL PENALTIES; VENUE

[“SEC. 316. (a) Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this Act required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both.

[“(b) Any person who willfully and knowingly violates any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this Act, or any rule or regulation imposed by the Secretary of War under authority of Part I of this Act shall, in addition to any other penalties provided by law, be punished upon conviction thereof by a fine of not exceeding $500 for each and every day during which such offense occurs.

[“JURISDICTION OF OFFENSES; ENFORCEMENT OF LIABILITIES AND DUTIES

[“SEC. 317. The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this Act or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation, or order thereunder. Any criminal proceeding shall be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation, or order thereunder may be brought in any such district or in the district wherein the defendant is an inhabitant, and process in such cases may be served wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 128 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347). No costs shall be assessed against the Commission in any judicial proceeding by or against the Commission under this Act.

[“CONFLICT OF JURISDICTION

[“SEC. 318. If, with respect to the issue, sale, or guaranty of a security, or assumption of obligation or liability in respect of a security, the method of keeping accounts, the filing of reports, or the acquisition or disposition of any security, capital assets, facilities, or any other subject matter, any person is subject both to a requirement of the Public Utility Holding Company Act of 1935 or of a rule, regulation, or order thereunder and to a requirement of this Act or of a rule, regulation, or order thereunder, the requirement of the Public Utility Holding Company Act of 1935 shall apply to such person, and such person shall not be subject to the requirement of this Act, or of any rule, regulation, or order thereunder, with respect to the same subject matter, unless the Securities and Exchange Commission has exempted such person from such re-

quirement of the Public Utility Holding Company Act of 1935, in which case the requirements of this Act shall apply to such person.

[“SEPARABILITY OF PROVISIONS

[“SEC. 319. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[“SHORT TITLE

[“SEC. 320. This Act may be cited as the ‘Federal Power Act’.”]

SECTION 211 OF THE CLEAN AIR ACT

REGULATION OF FUELS

SEC. 211. (a) * * *

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(c)(1) * * *

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(5) MTBE MERCHANT PRODUCER CONVERSION ASSISTANCE.—

(A) IN GENERAL.—

(i) GRANTS.—The Secretary of Energy, in consultation with the Administrator, may make grants to merchant producers of methyl tertiary butyl ether in the United States to assist the producers in the conversion of eligible production facilities described in subparagraph (C) to the production of iso-octane and alkylates.

(ii) DETERMINATION.—The Administrator, in consultation with the Secretary of Energy, may determine that transition assistance for the production of iso-octane and alkylates is inconsistent with the provisions of subparagraph (B) and, on that basis, may deny applications for grants authorized by this provision.

(B) FURTHER GRANTS.—The Secretary of Energy, in consultation with the Administrator, may also further make grants to merchant producers of MTBE in the United States to assist the producers in the conversion of eligible production facilities described in subparagraph (C) to the production of such other fuel additives that, consistent with this subsection—

(i) unless the Administrator determines that such fuel additives may reasonably be anticipated to endanger public health or the environment;

(ii) have been registered and have been tested or are being tested in accordance with the requirements of this section; and

(iii) will contribute to replacing gasoline volumes lost as a result of paragraph (5).

(C) ELIGIBLE PRODUCTION FACILITIES.—A production facility shall be eligible to receive a grant under this paragraph if the production facility—

(i) is located in the United States; and

(ii) produced methyl tertiary butyl ether for consumption before April 1, 2003 and ceased production at any time after the date of enactment.

(D) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph $250,000,000 for each of fiscal years 2004 through 2006, to remain available until expended.

(d) PENALTIES AND INJUNCTIONS.—

(1) CIVIL PENALTIES.—Any person who violates subsection (a), (f), (g), (k), (l), (m), [or (n)] *(n) or (o)* of this section or the regulations prescribed under subsection (c), (h), (i), (k), (l), (m), [or (n)] *(n) or (o)* of this section or who fails to furnish any information or conduct any tests required by the Administrator under subsection (b) of this section shall be liable to the United States for a civil penalty of not more than the sum of $25,000 for every day of such violation and the amount of economic benefit or savings resulting from the violation. Any violation with respect to a regulation prescribed under subsection (c), (k), (l), [or (m)] *(m), or (o)* of this section which establishes a regulatory standard based upon a multiday averaging period shall constitute a separate day of violation for each and every day in the averaging period. Civil penalties shall be assessed in accordance with subsections (b) and (c) of section 205.

(2) INJUNCTIVE AUTHORITY.—The district courts of the United States shall have jurisdiction to restrain violations of subsections (a), (f), (g), (k), (l), (m), [and (n)] *(n), and (o)* of this section and of the regulations prescribed under subsections (c), (h), (i), (k), (l), (m), [and (n)] *(n), and (o)* of this section, to award other appropriate relief, and to compel the furnishing of information and the conduct of tests required by the Administrator under subsection (b) of this section. Actions to restrain such violations and compel such actions shall be brought by and in the name of the United States. In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

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(k) REFORMULATED GASOLINE FOR CONVENTIONAL VEHICLES.—

(1) EPA REGULATIONS.—[Within 1 year after the enactment of the Clean Air Act Amendments of 1990,]

(A) IN GENERAL.—Not later than November 15, 1991, the Administrator shall promulgate regulations under this section establishing requirements for reformulated gasoline to be used in gasoline-fueled vehicles in specified nonattainment areas. Such regulations shall require the greatest reduction in emissions of ozone forming volatile organic compounds (during the high ozone season) and emissions of toxic air pollutants (during the entire year) achievable through the reformulation of conventional gasoline, taking into consideration the cost of achieving such emission reductions, any nonair-quality and other air-quality related health and environmental impacts and energy requirements.

(B) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSIONS REDUCTIONS FROM REFORMULATED GASOLINE.—

(i) DEFINITIONS.—In this subparagraph the term "PADD" means a Petroleum Administration for Defense District.

(ii) REGULATIONS REGARDING EMISSIONS OF TOXIC AIR POLLUTANTS.—Not later than 270 days after the date of enactment of this subparagraph the Administrator shall establish, for each refinery or importer, standards for toxic air pollutants from use of the reformulated gasoline produced or distributed by the refinery or importer that maintain the reduction of the average annual aggregate emissions of toxic air pollutants for reformulated gasoline produced or distributed by the refinery or importer during calendar years 1999 and 2000, determined on the basis of data collected by the Administrator with respect to the refinery or importer.

(iii) STANDARDS APPLICABLE TO SPECIFIC REFINERIES OR IMPORTERS.—

(I) APPLICABILITY OF STANDARDS.—For any calendar year, the standards applicable to a refinery or importer under clause (ii) shall apply to the quantity of gasoline produced or distributed by the refinery or importer in the calendar year only to the extent that the quantity is less than or equal to the average annual quantity of reformulated gasoline produced or distributed by the refinery or importer during calendar years 1999 and 2000.

(II) APPLICABILITY OF OTHER STANDARDS.—For any calendar year, the quantity of gasoline produced or distributed by a refinery or importer that is in excess of the quantity subject to subclause (I) shall be subject to standards for toxic air pollutants promulgated under subparagraph (A) and paragraph (3)(B).

(iv) CREDIT PROGRAM.—The Administrator shall provide for the granting and use of credits for emissions of toxic air pollutants in the same manner as provided in paragraph (7).

(v) REGIONAL PROTECTION OF TOXICS REDUCTION BASELINES.—

(I) IN GENERAL.—Not later than 60 days after the date of enactment of this subparagraph, and not later than April 1 of each calendar year that begins after that date of enactment, the Administrator shall publish in the Federal Register a report that specifies, with respect to the previous calendar year—

(aa) the quantity of reformulated gasoline produced that is in excess of the average annual quantity of reformulated gasoline produced in 1999 and 2000; and

(bb) the reduction of the average annual aggregate emissions of toxic air pollutants in each PADD, based on retail survey data or data from other appropriate sources.

(II) EFFECT OF FAILURE TO MAINTAIN AGGREGATE TOXICS REDUCTIONS.—If, in any calendar year, the reduction of the average annual aggregate emissions of toxic air pollutants in a PADD fails to meet or exceed the reduction of the average annual aggregate emissions of toxic air pollutants in the PADD in calendar years 1999 and 2000, the Administrator, not later than 90 days after the date of publication of the report for the calendar year under subclause (I), shall—

(aa) identify, to the maximum extent practicable, the reasons for the failure, including the sources, volumes, and characteristics of reformulated gasoline that contributed to the failure; and

(bb) promulgate revisions to the regulations promulgated under clause (ii), to take effect not earlier than 180 days but not later than 270 days after the date of promulgation, to provide that, notwithstanding clause (iii)(II), all reformulated gasoline produced or distributed at each refinery or importer shall meet the standards applicable under clause (ii) not later than April 1 of the year following the report in subclause (II) and for subsequent years.

(vi) REGULATIONS TO CONTROL HAZARDOUS AIR POLLUTANTS FROM MOTOR VEHICLES AND MOTOR VEHICLE FUELS.—Not later than July 1, 2004, the Administrator shall promulgate final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels, as provided for in section 80.1045 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subparagraph).

(2) GENERAL REQUIREMENTS.—The regulations referred to in paragraph (1) shall require that reformulated gasoline comply with paragraph (3) and with each of the following requirements (subject to paragraph (7)):

(A) NO_x EMISSIONS.—The emissions of oxides of nitrogen (NO_x) from baseline vehicles when using the reformulated gasoline shall be no greater than the level of such emissions from such vehicles when using baseline gasoline. If the Administrator determines that compliance with the limitation on emissions of oxides of nitrogen under the preceding sentence is technically infeasible, considering the other requirements applicable under this subsection to such gasoline, the Administrator may, as appropriate to ensure compliance with this subparagraph, adjust (or waive entirely), any other requirements of this paragraph [(including the oxygen content requirement contained in subparagraph (B))] or any requirements applicable under paragraph (3)(A).

[(B) OXYGEN CONTENT.—The oxygen content of the gasoline shall equal or exceed 2.0 percent by weight (subject to a testing tolerance established by the Administrator) ex-

cept as otherwise required by this Act. The Administrator may waive, in whole or in part, the application of this subparagraph for any ozone nonattainment area upon a determination by the Administrator that compliance with such requirement would prevent or interfere with the attainment by the area of a national primary ambient air quality standard.]

[(C)] *(B)* BENZENE CONTENT.—The benzene content of the gasoline shall not exceed 1.0 percent by volume.

[(D)] *(C)* HEAVY METALS.—The gasoline shall have no heavy metals, including lead or manganese. The Administrator may waive the prohibition contained in this subparagraph for a heavy metal (other than lead) if the Administrator determines that addition of the heavy metal to the gasoline will not increase, on an aggregate mass or cancer-risk basis, toxic air pollutant emissions from motor vehicles.

(3) MORE STRINGENT OF FORMULA OR PERFORMANCE STANDARDS.—The regulations referred to in paragraph (1) shall require compliance with the more stringent of either the requirements set forth in subparagraph (A) or the requirements of subparagraph (B) of this paragraph. For purposes of determining the more stringent provision, clause (i) and clause (ii) of subparagraph (B) shall be considered independently.

(A) FORMULA.—

(i) * * *

* * * * * * *

[(v) OXYGEN CONTENT.—The oxygen content of the reformulated gasoline shall equal or exceed 2.0 percent by weight (subject to a testing tolerance established by the Administrator) except as otherwise required by this Act.]

* * * * * * *

(7) CREDITS.—(A) The regulations promulgated under this subsection shall provide for the granting of an appropriate amount of credits to a person who refines, blends, or imports and certifies a gasoline or slate of gasoline that—

[(i) has an oxygen content (by weight) that exceeds the minimum oxygen content specified in paragraph (2);]

[(ii)] *(i)* has an aromatic hydrocarbon content (by volume) that is less than the maximum aromatic hydrocarbon content required to comply with paragraph (3); or

[(iii)] *(ii)* has a benzene content (by volume) that is less than the maximum benzene content specified in paragraph (2).

* * * * * * *

(C) The regulations promulgated under subparagraphs (A) and (B) shall ensure the enforcement of the requirements for the issuance, application, and transfer of the credits. Such regulations shall prohibit the granting or transfer of such credits for use with respect to any gasoline in a nonattainment area, to the extent the use of such credits would result in any of the following:

(i) * * *

[(ii) An average gasoline oxygen content (by weight) for the nonattainment area (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) lower than the average gasoline oxygen content (by weight) that would occur in the absence of using any such credits.]

[(iii)] *(ii)* An average benzene content (by volume) for the nonattainment area (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) higher than the average benzene content (by volume) that would occur in the absence of using any such credits.

* * * * * * *

(o) RENEWABLE FUEL PROGRAM.—

(1) DEFINITIONS.—In this section:

(A) CELLULOSIC BIOMASS ETHANOL.—The term "cellulosic biomass ethanol" means ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, including—

(i) dedicated energy crops and trees;

(ii) wood and wood residues;

(iii) plants;

(iv) grasses;

(v) agricultural residues;

(vi) fibers;

(vii) animal wastes and other waste materials; and

(viii) municipal solid waste.

(B) RENEWABLE FUEL.—

(i) IN GENERAL.—The term "renewable fuel" means motor vehicle fuel that—

(I)(aa) is produced from grain, starch, oilseeds, or other biomass; or

(bb) is natural gas produced from a biogas source, including a landfill, sewage waste treatment plant, feedlot, or other place where decaying organic material is found; and

(II) is used to replace or reduce the quantity of fossil fuel present in a fuel mixture used to operate a motor vehicle.

(ii) INCLUSION.—The term "renewable fuel" includes cellulosic biomass ethanol and biodiesel (as defined in section 312(f) of the Energy Policy Act of 1992 (42 U.S.C. 13220(f)) and any blending components derived from renewable fuel (provided that only the renewable fuel portion of any such blending component shall be considered part of the applicable volume under the renewable fuel program established by this subsection).

(C) SMALL REFINERY.—The term "small refinery" means a refinery for which average aggregate daily crude oil throughput for the calendar year (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels.

(2) RENEWABLE FUEL PROGRAM.—

(A) IN GENERAL.—Not later than 1 year from enactment of this provision, the Administrator shall promulgate regulations ensuring that gasoline sold or dispensed to consumers in the contiguous United States, on an annual average basis, contains the applicable volume of renewable fuel as specified in subparagraph (B). Regardless of the date of promulgation, such regulations shall contain compliance provisions for refiners, blenders, and importers, as appropriate, to ensure that the requirements of this section are met, but shall not restrict where renewables can be used, or impose any per-gallon obligation for the use of renewables. If the Administrator does not promulgate such regulations, the applicable percentage, on a volume percentage of gasoline basis, shall be 1.62 in 2005.

(B) APPLICABLE VOLUME.—

(i) CALENDAR YEARS 2005 THROUGH 2015.—For the purpose of subparagraph (A), the applicable volume for any of calendar years 2005 through 2015 shall be determined in accordance with the following table:

Applicable volume of renewable fuel

Calendar year:	***(In billions of gallons)***
2005	*2.7*
2006	*2.7*
2007	*2.9*
2008	*2.9*
2009	*3.4*
2010	*3.4*
2011	*3.4*
2012	*4.2*
2013	*4.2*
2014	*4.2*
2015	*5.0.*

(ii) CALENDAR YEAR 2016 AND THEREAFTER.—For the purpose of subparagraph (A), the applicable volume for calendar year 2016 and each calendar year thereafter shall be equal to the product obtained by multiplying—

(I) the number of gallons of gasoline that the Administrator estimates will be sold or introduced into commerce in the calendar year; and

(II) the ratio that—

(aa) 5.0 billion gallons of renewable fuels; bears to

(bb) the number of gallons of gasoline sold or introduced into commerce in calendar year 2015.

(3) APPLICABLE PERCENTAGES.—Not later than October 31 of each calendar year after 2002, the Administrator of the Energy Information Administration shall provide the Administrator an estimate of the volumes of gasoline sales in the United States for the coming calendar year. Based on such estimates, the Administrator shall, by November 30 of each calendar year after 2003, determine and publish in the Federal Register, the renewable fuel obligation, on a volume percentage of gasoline basis, applicable to refiners, blenders, and importers, as appropriate, for the coming calendar year, to ensure that the requirements of paragraph (2) are met. For each calendar year, the Administrator shall establish a single applicable percentage that applies

to all parties, and make provision to avoid redundant obligations. In determining the applicable percentages, the Administrator shall make adjustments to account for the use of renewable fuels by exempt small refineries during the previous year.

(4) CELLULOSIC BIOMASS ETHANOL.—For the purpose of paragraph (2), 1 gallon of cellulosic biomass ethanol shall be considered to be the equivalent of 1.5 gallon of renewable fuel.

(5) CREDIT PROGRAM.—

(A) IN GENERAL.—The regulations promulgated to carry out this subsection shall provide for the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2). Such regulations shall provide for the generation of an appropriate amount of credits for biodiesel fuel. If a small refinery notifies the Administrator that it waives the exemption provided by this Act, the regulations shall provide for the generation of credits by the small refinery beginning in the year following such notification.

(B) USE OF CREDITS.—A person that generates credits under subparagraph (A) may use the credits, or transfer all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

(C) LIFE OF CREDITS.—A credit generated under this paragraph shall be valid to show compliance:

(i) in the calendar year in which the credit was generated or the next calendar year, or

(ii) in the calendar year in which the credit was generated or next two consecutive calendar years if the Administrator promulgates regulations under paragraph (6).

(D) INABILITY TO PURCHASE SUFFICIENT CREDITS.—The regulations promulgated to carry out this subsection shall include provisions allowing any person that is unable to generate or purchase sufficient credits to meet the requirements under paragraph (2) to carry forward a renewables deficit provided that, in the calendar year following the year in which the renewables deficit is created, such person shall achieve compliance with the renewables requirement under paragraph (2), and shall generate or purchase additional renewables credits to offset the renewables deficit of the previous year.

(6) SEASONAL VARIATIONS IN RENEWABLE FUEL USE.—

(A) STUDY.—For each of calendar years 2005 through 2015, the Administrator of the Energy Information Administration, shall conduct a study of renewable fuels blending to determine whether there are excessive seasonal variations in the use of renewable fuels.

(B) REGULATION OF EXCESSIVE SEASONAL VARIATIONS.—If, for any calendar year, the Administrator of the Energy Information Administration, based on the study under subparagraph (A), makes the determinations specified in subparagraph (C), the Administrator shall promulgate regulations to ensure that 35 percent or more of the quantity of renewable fuels necessary to meet the requirement of para-

graph (2) is used during each of the periods specified in subparagraph (D) of each subsequent calendar year.

(C) DETERMINATIONS.—The determinations referred to in subparagraph (B) are that—

(i) less than 35 percent of the quantity of renewable fuels necessary to meet the requirement of paragraph (2) has been used during one of the periods specified in subparagraph (D) of the calendar year;

(ii) a pattern of excessive seasonal variation described in clause (i) will continue in subsequent calendar years; and

(iii) promulgating regulations or other requirements to impose a 35% or more seasonal use of renewable fuels will not prevent or interfere with the attainment of national ambient air quality standards or significantly increase the price of motor fuels to the consumer.

(D) PERIODS.—The two periods referred to in this paragraph are—

(i) April through September; and

(ii) January through March and October through December.

(E) EXCLUSIONS.—Renewable fuels blended or consumed in 2005 in a State which has received a waiver under section 209(b) shall not be included in the study in subparagraph (A).

(7) WAIVERS.—

(A) IN GENERAL.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the requirement of paragraph (2) in whole or in part on petition by one or more States by reducing the national quantity of renewable fuel required under this subsection—

(i) based on a determination by the Administrator, after public notice and opportunity for comment, that implementation of the requirement would have a significant and meaningful adverse impact on the economy or environment of a State, a region, or the United States, or will prevent or interfere with the attainment of a national ambient air quality standard in any area of a State; or

(ii) based on a determination by the Administrator, after public notice and opportunity for comment, that there is an inadequate domestic supply or distribution capacity to meet the requirement.

(B) PETITIONS FOR WAIVERS.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a State petition for a waiver of the requirement of paragraph (2) within 90 days after the date on which the petition is received by the Administrator. If the Administrator does not act to approve or disapprove a State petition for a waiver within 90 days, the Administrator shall publish a notice setting forth the reasons for not acting within the required 90-day period.

(C) TERMINATION OF WAIVERS.—A waiver granted under subparagraph (A) shall terminate after 1 year, but may be renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy.

(8) STUDY AND WAIVER FOR INITIAL YEAR OF PROGRAM.—Not later than 180 days from enactment, the Secretary of Energy shall complete for the Administrator a study assessing whether the renewable fuels requirement under paragraph (2) will likely result in significant adverse consumer impacts in 2005, on a national, regional or State basis. Such study shall evaluate renewable fuel supplies and prices, blendstock supplies, and supply and distribution system capabilities. Based on such study, the Secretary shall make specific recommendations to the Administrator regarding waiver of the requirements of paragraph (2), in whole or in part, to avoid any such adverse impacts. Within 270 days from enactment, the Administrator shall, consistent with the recommendations of the Secretary waive, in whole or in part, the renewable fuels requirement under paragraph (2) by reducing the national quantity of renewable fuel required under this subsection in 2005. This provision shall not be interpreted as limiting the Administrator's authority to waive the requirements of paragraph (2) in whole, or in part, under paragraph (7) or paragraph (9), pertaining to waivers.

(9) ASSESSMENT AND WAIVER.—The Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of Agriculture on his own motion, or upon petition of any State shall evaluate the requirement of paragraph (2) and determine, prior to January 1, 2007, or prior to January 1 of any subsequent year in which the applicable volume of renewable fuel is increased under paragraph (2)(B), whether the requirement of paragraph (2), including the applicable volume of renewable fuel contained in paragraph (2)(B) should remain in effect, in whole or in part, during 2007 or any year or years subsequent to 2007. In evaluating the requirement of paragraph (2) and in making any determination under this section, the Secretary shall consider the best available information and data collected by accepted methods or best available means regarding—

(A) the capacity of renewable fuel producers to supply an adequate amount of renewable fuel at competitive prices to fulfill the requirement in paragraph (2);

(B) the potential of the requirement in paragraph (2) to significantly raise the price of gasoline, food or heating oil for consumers in any significant area or region of the country above the price that would otherwise apply to such commodities in the absence of the requirement;

(C) the potential of the requirement in paragraph (2) to interfere with the supply of fuel in any significant gasoline market or region of the country, including interference with the efficient operation of refiners, blenders, importers, wholesale suppliers, and retail vendors of gasoline, and other motor fuels; and

(D) the potential of the requirement to cause or promote exceedences of Federal, State, or local air quality standards.

If the Secretary determines, after public notice and the opportunity for comment, that the requirement of paragraph (2) would have significant and meaningful adverse impact on the supply of fuel and related infrastructure or on the economy, environment, public health or environment of any significant area or region of the country, the Secretary may waive, in whole or in part, the requirement of paragraph (2) in any one year or period of years as well as reduce the applicable volume of renewable fuel contained in paragraph (2)(B) in any one year or period of years.

(10) SMALL REFINERIES.—

(A) IN GENERAL.—The requirement of paragraph (2) shall not apply to small refineries until the first calendar year beginning more than 5 years after the first year set forth in the table in paragraph (2)(B)(i). Not later than December 31, 2006, the Secretary of Energy shall complete for the Administrator a study to determine whether the requirement of paragraph (2) would impose a disproportionate economic hardship on small refineries. For any small refinery that the Secretary of Energy determines would experience a disproportionate economic hardship, the Administrator shall extend the small refinery exemption for such small refinery for no less than two additional years.

(B) ECONOMIC HARDSHIP.—

(i) EXTENSION OF EXEMPTION.—A small refinery may at any time petition the Administrator for an extension of the exemption from the requirement of paragraph (2) for the reason of disproportionate economic hardship. In evaluating a hardship petition, the Administrator, in consultation with the Secretary of Energy, shall consider the findings of the study in addition to other economic factors.

(ii) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the receipt of the petition.

(C) CREDIT PROGRAM.—If a small refinery notifies the Administrator that it waives the exemption provided by this Act, the regulations shall provide for the generation of credits by the small refinery beginning in the year following such notification.

(D) OPT-IN FOR SMALL REFINERS.—A small refinery shall be subject to the requirements of this section if it notifies the Administrator that it waives the exemption under subparagraph (A).

(p) ANALYSES OF MOTOR VEHICLE FUEL CHANGES AND EMISSIONS MODEL.—

(1) ANTI-BACKSLIDING ANALYSIS.—

(A) DRAFT ANALYSIS.—Not later than 4 years after the date of enactment of this paragraph, the Administrator shall publish for public comment a draft analysis of the changes in emissions of air pollutants and air quality due to the use of motor vehicle fuel and fuel additives resulting from implementation of the amendments made by title IX of the Energy Policy Act of 2003.

(B) FINAL ANALYSIS.—After providing a reasonable opportunity for comment but not later than 5 years after the date of enactment of this paragraph, the Administrator shall publish the analysis in final form.

(2) EMISSIONS MODEL.—For the purposes of this subsection, as soon as the necessary data are available, the Administrator shall develop and finalize an emissions model that reasonably reflects the effects of gasoline characteristics or components on emissions from vehicles in the motor vehicle fleet during calendar year 2005.

[(o)] *(q)* FUEL AND FUEL ADDITIVE IMPORTERS AND IMPORTATION.—For the purposes of this section, the term "manufacturer" includes an importer and the term "manufacture" includes importation.

SECTION 205 OF THE DEPARTMENT OF ENERGY ORGANIZATION ACT

ENERGY INFORMATION ADMINISTRATION

SEC. 205. (a) * * *

* * * * * * *

(m) RENEWABLE FUELS SURVEY.—(1) In order to improve the ability to evaluate the effectiveness of the Nation's renewable fuels mandate, the Administrator shall conduct and publish the results of a survey of renewable fuels demand in the motor vehicle fuels market in the United States monthly, and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information both on a national and regional basis, including—

(A) the quantity of renewable fuels produced;

(B) the quantity of renewable fuels blended;

(C) the quantity of renewable fuels imported;

(D) the quantity of renewable fuels demanded;

(E) market price data; and

(F) such other analyses or evaluations as the Administrator finds is necessary to achieve the purposes of this section.

(2) The Administrator shall also collect or estimate information both on a national and regional basis, pursuant to subparagraphs (A) through (F) of paragraph (1), for the five years prior to implementation of this subsection.

(3) This subsection does not affect the authority of the Administrator to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).

DISSENTING VIEWS

ELECTRICITY AND HYDROELECTRIC RELICENSING PROVISIONS

The bill reported by the Committee on Energy and Commerce in this Congress differs dramatically from the one reported in the previous Congress. In that Congress, we worked in a bipartisan manner to report a bill that most of our Committee could support. In order to do so, we worked on bipartisan compromises in some areas, such as hydroelectric relicensing, and agreed to defer consideration of other matters, such as electricity issues, until a consensus arose.

Unfortunately, our Republican colleagues chose to pursue a different path in this Congress and drafted a partisan bill. This can be seen in the fact that last Congress, 5 Democrats out of 26 voted against the bill. In this Congress, 17 Democrats voted against the bill.

While some of the bill reflects some bipartisan agreements reached during last year's energy bill conference, which was never completed, other portions of the bill reflect partisan decisions that will do little in solving our energy needs, but instead will hurt our environment, and reduce protections for consumers and investors in energy.

While many of our Democratic colleagues take issue with a variety of provisions in this bill, these Dissenting Views will deal with two of the worst problems with the bill—provisions relating to electricity and hydroelectric relicensing. In each case, Democrats offered substitutes that were defeated along party lines.

In the case of electricity, the Republican bill would, among other things, repeal the Public Utility Holding Company Act, and preempt state and Federal decisions on power line siting. In contrast, the Democratic substitute, identical to H.R. 1272, would provide improved regulation to prevent fraudulent practices by energy traders, and provide other common sense reforms to protect consumers and investors from the manipulative practices of traders like Enron in the Western electricity markets.

In the case of hydroelectric relicensing, the Republican bill abandoned a bipartisan compromise reached in the committee in the last Congress, and supported by all stakeholders, that would have allowed all parties to propose alternatives to mandatory conditions, while achieving the same level of resource protections. Instead the Republican bill includes provisions that would tip the scales in favor of the utility and reduce important resource, fish and wildlife protections.

Our detailed comments on these two subjects follow.

Electricity

The electricity provisions contained in Title VII suffer from sins of both commission and omission. They ignore the lessons of the past several years of volatility in electricity markets, which harmed consumers in California and other western states and eroded investor confidence in this critical industry. The title represents a victory for various special interests at the expense of the citizens whom our federal energy laws are supposed to safeguard. Indeed, it combines the worst of deregulatory principles with favors to a select few.

Among the most objectionable features of Title VII is the outright repeal of the Public Utility Holding Company Act of 1935 (PUHCA), without appropriate compensating protections to ensure that investors and consumers are not subject to unconstrained market power. It contains so-called "reforms," which hardly scratch the surface of what is needed to prevent the recurrence of market abuses that cost consumers billions of dollars in electricity overcharges and compromised the reliability of an electricity system that once was without peer.

The title includes "native load protections" that exempt so many regions that the net effect is impossible to determine. It displaces the traditional "just and reasonable" standard for modifying unfair contracts with a far less protective standard in an effort to tie the hands of federal regulators who recently have had to modify agreements that were harmful to consumers.

Finally, the title includes transmission siting provisions which preempt not only state decisions about which new or expanded lines should be built in our neighborhoods, but also federal land agencies' decisions as to whether lines should be built in our national forests and other public lands.

A far better alternative for electricity reform was proposed by the Democratic substitute amendment, identical to H.R. 1272, which was introduced by Congressmen Dingell, Waxman, Markey, and Boucher and cosponsored by 13 other Committee on Energy and Commerce Democrats. The premise of this substitute was to protect consumers by setting aside further deregulatory efforts and instead instituting reforms to prevent the sort of manipulation that occurred in west coast electricity markets from 2000 through 2001. As the Federal Energy Regulatory Commission (FERC) reported late last month, the massive fraud which took place during that period appears to have involved dozens of parties. It is particularly disappointing that the committee would report a bill at this time that repeals PUHCA and includes only superficial consumer protections.

The Democratic substitute amendment set aside the most divisive questions about "restructuring" the industry in favor of targeted, common sense reforms designed to ensure that FERC and the Securities and Exchange Commission (SEC) can and do fulfill their responsibilities to protect consumers and investors. Most significantly, the amendment banned fraudulent or manipulative practices in the sale and transmission of electricity, and in the sale and transportation of natural gas. It established audit trail requirements to improve FERC's ability to conduct investigations and take enforcement actions, and provided for greater transparency by re-

quiring the reporting of information about transactions or quotations involving the purchase and sale, and the transmission and transportation, of electric power and natural gas.

The amendment updated the Federal Power Act's penalties for civil and criminal offenses to the same levels included in the Sarbanes-Oxley Act enacted during the last Congress. It directed the SEC to review existing PUHCA exemptions, so that it does not miss another Enron, only to discover belatedly that the company should not have had the "exempt" status that enabled it to exploit investors and consumers. The amendment required FERC to issue rules against affiliate abuse to ensure that entities that are regulated by the Commission are not exploited financially by affiliates that FERC does not regulate, and reformed the Federal Power Act to allow the Commission to issue refunds for "unjust and unreasonable rates" from the date they were charged. Finally, the amendment reformed FERC's market-based rate policy, to require frequent review of such rates and the revocation of this privilege when it was abused.

Unlike the Democratic substitute, Title VII does not provide FERC with anti-fraud authority, despite the fact that the Commission staff has found some western market abuses were not illegal under current law and its Chairman's support for such authority. It repeals PUHCA, and erodes that just and reasonable standard for contracts. It offers only thin and patently inadequate protections for consumers. In so doing, it both misses an opportunity to respond to recent abuses in electric markets and obviates Congress' responsibility to stabilize this critical industry.

Hydroelectric Relicensing

The hydroelectric relicensing provisions contained in Title III, like many other sections of this legislation, abandon the bipartisan consensus that was reached during the last Congress in favor of an approach that drastically alters the licensing process to benefit the hydropower industry and undermines several decades of important environmental and fish and wildlife protections. The title also contains a costly new subsidy program for hydroelectric utilities, an unnecessary measure given the maturity of the industry.

Title III confers super-party status on license applicants by allowing them to propose alternatives to the mandatory conditions of the resource agencies. The Secretary of the relevant agency must accept the alternative provided it meets certain criteria, one of which is a weaker standard for the protection of public lands. License applicants are also entitled to an on-the-record, trial-type hearing, and a referral of their disputes to the FERC's Dispute Resolution Service. None of these procedural entitlements are granted to other legitimate stakeholders in the relicensing process including states, tribes, sportsmen or concerned citizens.

This represents a fundamental shift away from the principle that has guided licensing of hydroelectric facilities for decades: that our rivers are public resources in which many stakeholders have legitimate interests. Instead, this legislation treats these resources as the private dominion of utilities.

The legislation commits egregious offenses against the environment as well as fish and wildlife through the rollback of fishway

prescriptions that have been a part of the law for nearly 100 years. By allowing license applicants to substitute a hatchery for a fishway, the bill could have disastrous effects on migratory fish species. Allowing fish to press upstream and downstream of a dam ensures that their natural patterns and life cycle are not interrupted. This is vital not only to the species, but to river health in general.

The title's subsidy program or "incentive payment" scheme is an unnecessary and costly addition to an already offensive title. Hydroelectricity is a very mature technology that hardly needs the benefits of taxpayer dollars at a time when the nation is facing massive deficits and an uncertain economic outlook.

A Democratic substitute offered by Representative Dingell proposed a superior alternative to this title. It consisted of the bipartisan compromise language passed by the full House in last year's energy bill. The compromise introduces flexibility into the licensing process by allowing any party to propose an alternative to mandatory conditions. This approach recognizes that there may be less costly means of meeting licensing requirements without sacrificing natural resource or fish and wildlife protections.

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DISSENTING VIEWS

OIL AND GAS PROVISIONS

Although Title II contains a number of noncontroversial provisions, it also includes several new provisions that undermine environmental protections under current law.

Section 2201 eliminates authority under the Safe Drinking Water Act that ensures that hydraulic fracturing for oil and gas production does not endanger underground sources of drinking water. Section 2401 amends the Coastal Zone Management Act to limit the record for appeals of federal agency decisions concerning construction of interstate natural gas pipelines (including liquefied natural gas facilities) to that developed by the Federal Energy Regulatory Commission, thereby marginalizing the Secretary of Commerce and the coastal state's roles. Section 2403 amends the Clean Water Act to enlarge a current loophole for the oil and gas industry, exempting all of their exploration and production activities from EPA storm water permit requirements.

Hydraulic Fracturing and Safe Drinking Water (Section 2201)

Part C of the Safe Drinking Water Act (SDWA) is designed to protect underground drinking water sources from contamination caused by underground injection of fluids. In two separate decisions in 1997 and 2001 the United States Court of Appeals for the Eleventh Circuit concluded that hydraulic fracturing activities constitute injection under Part C of the SDWA and that wells used for the injection of hydraulic fracturing fluids should be regulated as Class II wells. No other Federal court has addressed the issue or concluded otherwise.

Hydraulic fracturing is a technique used to enhance the recovery of methane gas from coal beds. The Environmental Protection Agency (EPA) defines hydraulic fracturing as a "temporary and intermittent process in which fluids are injected underground at high pressures to create fractures in the coals seam that enhance the recovery of methane gas by creating pathways for the gas to flow to the surface."

The EPA has been conducting a narrowly focused study to address hydraulic fracturing of coal bed methane wells, but not all hydraulic fracturing practices. The study has not yet been completed or finalized but a draft evaluation of impacts to underground sources of drinking water by hydraulic fracturing of coal bed methane reservoirs was publicly released in August 2002. The EPA is currently reviewing and incorporating the comments received from the public on the draft evaluation.

The Committee Print that was provided to the minority members approximately 72 hours before the Committee markup contained a new provision (Section 2201) amending the Safe Drinking Water

Act (SDWA). Section 2201 eliminates existing statutory authority under SDWA to ensure that hydraulic fracturing does not endanger underground sources of drinking water by removing hydraulic fracturing for oil and gas operations from the term "underground injection" in Section 1421.

In doing so the majority is acting before the EPA study is completed and without the benefit of a final report incorporating the public's comments. Rather, the majority provision in Section 2201 eliminates all EPA authority under the Safe Drinking Water Act to protect sources of drinking water from improper or harmful hydraulic fracturing practices now or in the future. It does not allow for a regulatory determination by the EPA after a completed study. Further, the majority action is taken without the benefit of any hearings on this matter by the Subcommittee on Environment and Hazardous Materials which has jurisdiction over Safe Drinking Water Act matters.

While the EPA's initial findings indicated that the threat to public health from hydraulic fracturing appears to be low, it did indicate that the use of diesel fuel in fracturing fluids by some companies introduced the majority of constituents of concern to underground sources of drinking water. The EPA also stated that water-based alternatives exist and from an environmental perspective are preferable to the injection of diesel fuel in underground sources of drinking water.

Underground sources of drinking water are the source of groundwater for all current and future drinking water supplies across the country. Over 50% of all Americans rely on groundwater for their drinking water. Recognizing the importance of protecting current and future supplies of drinking water Representative Dingell offered an amendment to the Committee Print for Section 2201. In summary, Rep. Dingell's amendment provided for:

- A completed study and independent scientific review by the National Academy of Science;
- A regulatory determination by the Administrator of the EPA;
- Preservation of federal authority to respond in the future where endangerment of underground sources of drinking water or adverse health effects are established; and
- Prevention of lawsuits that would force state regulation under the Safe Drinking Water Act.

This approach is based on a bipartisan staff agreement that was circulated for inclusion in the conference report last fall. We believe this approach which preserves authority under the Safe Drinking Water Act to protect underground sources of drinking water but addresses industry fears of lawsuits forcing regulation is a far sounder public policy approach than the one set forth in Section 2201 of the Committee Print.

Coastal Zone Management Act (Section 2401)

Seciton 2401 essentially guts the process envisioned under the Coastal Zone Management Act (CZMA) for considering the environmental effects of siting interstate natural gas pipelines (including liquefied natural gas facilities) offshore, including the states' role in determining the consistency of any proposal with state coastal

management policies. The section alters current law by declaring that the record developed by the Federal Energy Regulatory Commission (FERC) under section 7 of the Natural Gas Act, in proceedings primarily concerned with economic issues, shall be the "exclusive" record for reviewing any appeals. In so doing, it would require administrative appeal decisions of the Secretary of Commerce under the CZMA to be based on a record compiled for a different purpose.

It would preclude language in the CZMA requiring the Secretary to provide "a reasonable opportunity for detailed comments" from interested Federal agencies and from the state, and preclude the Secretary from considering new information relevant to administrative appeals that was not covered in the FERC proceeding. Section 2401 also includes a "sense of Congress" provision directing Federal and State agencies to coordinate their proceedings concerning pipeline construction with FERC's procedural timelines, which would prevent an adequate opportunity for parties in an appeal under the CZMA to present information to the Secretary in support of their position.

Oil and Gas Exploration and Production Defined (Section 2403)

Sec. 2403 of the Committee Print adds a definition to the Federal Water Pollution Control Act for "oil and gas exploration and production" that includes all related activities, including construction activities.

Currently, the Clean Water Act includes an exemption from the National Pollutant Discharge Elimination System for oil and gas facilities for storm water runoff that does not come in contact with "any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations."

Previously, the Environmental Protection Agency interpreted this exemption to exclude construction activities. Thus, construction activities, including those at oil and gas exploration and production sites have been required to get a storm water permit. Initially, the permit requirements only applied to sites greater than 5 acres in size (phase I). In December 1999, EPA issued rules that required permits for sites from 1 to 5 acres in size (phase II). This permit requirement should have taken effect on March 10, 2003. However, on March 10, 2003, EPA issued a rule that delayed for two years the permit requirement for oil and gas construction sites from 1 to 5 acres in size. (68 Fed. Reg. 11325)

The language in the Republican bill would provide two immediate benefits for the oil and gas industry at the expense of the environment:

1. 1–5 acre (Phase II) oil and gas facilities would not have to gain storm water permits for any activity related to field operations, and the requirement for construction activities to oil and gas sites greater than 5 acres (Phase I) would become invalid.

2. No legal challenge to EPA's extension language would be possible.

Adoption of this provision would provide the "certainty" that Majority Counsel said the oil and gas industry was looking for at the Subcommittee markup on March 19, 2003, when questioned by

Ranking Member Dingell regard this section, but this would be the "certainty" that the industry could pollute with impunity. We do not believe that any coherent argument has been made for granting the oil and gas industry this type of exemption.

The Republican language ignores the fact that construction is construction. The purpose of the permits is to ensure that polluters take steps to reduce the harm they are causing to our Nation's water. The primary water pollution problem from construction is erosion. Construction activities cause excessive sediment to flow into the Nation's waterways, harming drinking water supplies and aquatic life. At oil and gas sites, there is the additional problem of toxics including benzene, toluene and heavy metals. While toxics may not necessarily be a problem at a completely new drilling site, most construction is occurring at existing sites where oil and waste products can be easily disturbed and enter the Nation's waters. EPA has no evidence whatsoever that construction at oil and gas sites causes less pollution than other construction activities.

Including this non-germane section in the Energy and Commerce Committee's print and then blocking the Markey amendment to delete this non-germane provision on grounds of germaness was unfair and denied the full legislative consideration of this change to the Clean Water Act. The Energy and Commerce Committee does not have jurisdiction over the Clean Water Act and has had no hearings on this issue. The Committee has not heard from EPA regarding the implementation of this program or from industry regarding the effect of these regulations on their practices. In a letter to Representative Don Young, Chairman of the Committee on Transportation and Infrastructure—the committee of jurisdiction on this section—Representative Oberstar, Ranking Member of that Committee, expressed his view that no legislation within the jurisdiction of the Transportation Committee should be included in another committee's legislation unless it had been specifically considered by the Transportation Committee and urged that the provision be deleted from the bill.

The oil and gas industry says that it is possible to develop in an environmentally responsible way, yet this language would exempt them from pollution control requirements that other industries have to follow. if they are serious about their claims, they should follow the rules every other industry has learned to live with.

We continue to believe that Sec. 2403 is unwise, harmful to the environment and urge its deletion from the bill.

JOHN D. DINGELL.
BART GORDON.
ELIOT L. ENGEL.
ED MARKEY.
LOIS CAPPS.
JAN SCHAKOWSKY.
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DISSENTING VIEWS

MOTOR FUELS PROVISIONS (TITLE IX)

In 1990, Congress created the Reformulated Gasoline (RFG) program under section 211 of the Clean Air Act. Under this provision, Congress required the use of reformulated gasoline in certain ozone nonattainment areas. In addition, the Act further specified that RFG must contain 2% oxygen by weight, which was thought to be helpful in reducing ozone precursors. The primary fuel additives used to meet the 2% oxygenate requirement have been Methyl Tertiary Butyl Ether (MTBE) and ethanol. However, it is worth noting that the Act in no way mandated the use of either MTBE or ethanol and this fact was confirmed by Subcommittee Chairman Barton at the full Committee mark-up.

Although the 2% oxygenate requirement has been useful in reducing air pollution (especially in wintertime CO areas), there is general agreement that gasoline meeting the RFG requirements can be made without oxygenates and EPA's Blue Ribbon Panel on Oxygenates confirmed this result. However, an unforeseen benefit from the use of oxygenates has been a reduction in toxic air pollution; environmentalists have sought to capture this benefit by seeking "anti-backsliding" provisions to ensure that the removal of the 2% oxygenate requirement for RFG will not result in increases in toxic air emissions.

The House bill includes a repeal of the 2% standard and anti-backsliding requirements, which is both necessary and commendable.

Other features of the bill, however, are far less meritorious and are either bad for the environment, anti-consumer or tamper with existing case-law in ways that benefit special interests groups at the expense of public drinking water systems. In addition, some of these features could lead to substantial fuel supply disruption, inequitable distribution of costs among various regions of the United States, and call for Congress to expend almost a billion taxpayer dollars on unnecessary transition assistance for MTBE manufacturers. The ultimate and combined effect of these provisions is to create legislation that is fundamentally illogical, aids special interests at the expense of the public and includes the worst aspects of proposed legislation without solving the fundamental national problem—MTBE use in gasoline—which provides the only legitimate impetus for legislation at all.

Problems With an Ethanol Mandate

Title IX of this bill contains an ethanol mandate requiring the United States to use annually 5 billion gallons of ethanol by 2015. The need for, and effects of, this mandate, which was created last year on the floor of the Senate, has not been carefully examined by the Committee. In fact, Title IX was not even added to the bill until after the Energy and Air Quality Subcommittee mark-up. At Subcommittee, we had nothing before us to guide our deliberations and as a result, no amendments regarding ethanol or MTBE were offered or considered. The record for a program of this magnitude is exceedingly thin.

When Congress enacted the RFG provisions in 1990, and required the use of 2% oxygenates, it did so on the basis of air quality concerns—it did not mandate use of either ethanol or MTBE. Congress let the markets determine where and to what extent each oxygenate should be used. Congress preserved the federal/state balance set by the Clean Air Act and let states decide how to meet the federal requirement.

We now know that we can meet clean air requirements without the use of oxygenates. Because of groundwater concerns, many states have already banned MTBE, or are planning to do so soon. As a result, there seems to be general agreement that we should repeal the 2% oxygenate requirement, which is the single meritorious aspect of this legislation. However, repeal of the 2% oxygenate requirement does not, and cannot, justify an ethanol mandate by itself.

To the contrary, ethanol provides a source of clean octane and since many states are banning MTBE, even if we repeal the 2% oxygenate standard ethanol use will inevitably increase. Yet under the proposed ethanol mandate, usage will be required to nearly triple. In essence, we are being held hostage by an ethanol industry that seeks to permanently codify its current market position. There is no basis for this result.

Some have argued that this is a renewable fuels mandate and that ethanol will help us to decrease our dependence on foreign oil. This claim however, appears highly suspect. During consideration of last year's Senate bill, a Wall Street Journal editorial cited a Cornell University study indicating, "it takes about 70% more energy (which comes from fossil fuels, by the way) to produce ethanol, than the energy ethanol creates." A USDA study indicated that "the amount of energy needed to produce ethanol is roughly equal to the amount of energy obtained from its combustion, which could lead to little or no reductions in fossils energy use." Mandating a tripling in the amount of ethanol that we use appears to do little to reduce foreign oil dependence. More likely, it will have an opposite effect. In fact, it will also make the price of gasoline subject to even more variables—such as drought or other factors affecting the price of corn.

Moreover, gasoline blended with ten volume percent ethanol currently receives a 5.3 cent per gallon tax credit on the standard gasoline excise tax of 18.4 cents per gallon. The ethanol tax subsidy currently costs U.S. taxpayers more than $1.1 billion/year. This reduces federal monies available for road maintenance and transportation systems. According to Department of Treasury officials, if ethanol-blended fuel use continues to increase, the Highway Account will forgo $13.72 billion by 2012. Ethanol already receives substantial subsidies from the federal government—the ethanol mandate will increase this subsidy unnecessarily.

The ethanol mandate could also increase gasoline prices and restrict gasoline supplies. Energy Information Agency (EIA) data indicates that the renewable fuels standard could cause gasoline prices to rise by 4 cents per gallon and RFG prices to rise by 9.75 cents per gallon. EIA has concluded that summertime gasoline supplies will shrink by 2.8% when ethanol is added to gasoline. That significant loss in gasoline volumes is caused when 10% ethanol is

blended with 7.0 psi RVP gasoline. This EIA analysis illustrates a major fallacy in the ethanol industry's argument that increased ethanol use helps reduce US reliance on crude. Because ethanol shrinks gasoline supplies, crude oil demand may actually increase.

Moreover, ethanol is difficult and expensive to transport across the country. Because ethanol-blended gasoline cannot travel through common carrier petroleum pipelines, ethanol must be transported to its point of destination by truck, rail, or barge, where it can finally be blended into gasoline. Transportation costs for ethanol can run as high at 12 to 18 cents per gallon. Additionally, the current transportation infrastructure for ethanol is lacking in enough barges and rail-cars to meet any new demand. And, if shipped by truck, added wear and tear on our highway infrastructure will be added while the mandate removes money from the Highway Trust Fund. And once ethanol is shipped around the country, it is difficult to store. Because it tends to separate from gasoline and attract water, ethanol must be blended with gasoline at the terminal as tanker trucks are being loaded for shipment to individual gasoline stations. States must account for these changes in blending at the terminal, as well as finding additional storage facilities to accommodate for the need to store ethanol in segregated tanks.

In addition, the ethanol industry is a highly concentrated market. One company owns at least 45% of the production capability of ethanol. GAO found as recently as January 2002 that the market concentration in the ethanol industry was 1,866 on the HHI index. As a result, we have no assurance that price fixing will not occur in the ethanol industry.

Some argue that mandating ethanol will provide increased air quality. In truth, while ethanol is useful in reducing wintertime carbon monoxide pollution, and has helped reduce toxic air emissions, ethanol also has a higher volatility than gasoline or MTBE, potentially leading to increased evaporative emissions that cause ozone pollution. The current law actually recognized this fact—CAA section 211(h)(4) specifically allows RFG containing ethanol to have a vapor pressure that is one pound higher than RFG without ethanol. In order to counteract this increased volatility, gasoline containing ethanol must be specially refined to have a lower vapor pressure—at an increased cost.

According to the American Lung Association, ethanol has higher rate of evaporation during driving and refueling, especially in the summer driving season when there are more motorist on the roads, releasing higher levels of harmful emissions leading to ozone pollution than other gasoline blends. In addition, EPA has acknowledged that the expanded use of ethanol, as through an ethanol mandate, will result in increased NO_X and VOC emissions. Increased air emissions translate to dirtier air for all Americans—particularly smog that, according to recent studies, leads to increased cases of asthma.

Finally, there is a question of equities. Midwestern corn growing states can choose to use a lot of ethanol. But Title IX contains a banking and credit system for ethanol. Under this system, areas outside the Midwest that choose not to use ethanol, (including most of the East and West Coasts) must pay to purchase ethanol cred-

its—even as they must also suffer from increased costs associated with further refining their gasoline to meet air quality goals. This is nothing more than a hidden subsidy for ethanol-producing states that forces consumers to pay for the privilege of *not* using ethanol.

Lack of an MTBE Ban

Equally, if not more important, the Motor Fuels title of the Energy Policy Act fails to address the serious problem of the contamination of underground sources of drinking water by MTBE and in fact, includes provisions that will almost certainly worsen the problem, by making MTBE manufacturers immune from past and future liability. Without an MTBE ban, such provisions will provide an incentive for additional, irresponsible MTBE use, at a time when it is no longer arguable that MTBE is a defective product when used in gasoline. This result in untenable for anyone that cares about protecting public drinking water supplies.

MTBE is a petroleum byproduct that has long been used as a gasoline additive, even before the 2% oxygenate requirement. However, it has contaminated a growing number of drinking water sources across the nation, through leaking underground storage tanks, spills and other incidents. It is extremely soluble in water and even when present at fairly low levels—as little as 20 to 40 parts per billion, according to the EPA—it makes water undrinkable, giving it the smell and taste of kerosene.

MTBE has been banned in 17 states because of groundwater concerns. But a national ban is needed both to protect drinking water and to ensure uninterrupted fuel supplies. The New York Mercantile Exchange (NYMEX), the world's largest energy marketplace, has concluded that "failure to arise at a uniform standard and approach to banning MTBE will subject their [the states] respective citizens to inefficient, fragmented gasoline "markets" which, if the fragmentation leads to the NYMEX gasoline contract being de-listed, does further damage by removing that market from the federal oversight of commodity markets provided by the Commodity Futures Trading Commission."

Liability Protection

The bill also contains a "safe harbor" from defective product liability lawsuits for ethanol producers. This provision is being advocated, nominally because the federal government is requiring their product be used, even though the ethanol industry has publicly sought (and indeed, insisted on) an ethanol mandate. Given all of these problems, the ethanol mandate should be dropped and liability protection should not be provided for ethanol.

Presently, we simply do not know enough about the health or environmental effects of ethanol to approve a liability safe harbor. There are some indications that ethanol may inhibit the breakdown of other, more toxic components in gasoline and increase the spread of benzene and other hydrocarbons around leaking storage tanks. Moreover, as research on existing fuels goes forward and new renewable fuel technologies develop, new and unanticipated public health and environmental hazards may well emerge. In 1999 an EPA Blue Ribbon Panel that studied this issue said:

> No national monitoring of ethanol in ground water, surface water or drinking water has been completed at this time.

But one analysis presented to the EPA estimated that the addition of ethanol to gasoline would extend the pollution plumes of carcinogens like benzene, toluene and xylene by 25 to 45 percent from leaking underground storage tanks.

In light of the possibility that ethanol might have adverse health or environmental effects, and the lack of any comprehensive field studies of the effects of ethanol on drinking water supplies, we should not be rushing to pass this safe harbor.

We note that the bill also gives the MTBE industry the same "safe harbor" protections. This is completely unjustified and will prevent the MTBE industry from being held accountable for the damage it has caused to the drinking water in thousands of communities across the country, including those that do not yet know their groundwater is contaminated or will be in the future by MTBE in gasoline.

The proponents of this liability waiver argue this protection is warranted because the government "forced" MTBE to be used through the 1990 Clean Air Act 2% oxygenate standard. This is incorrect.

There is no requirement in the Clean Air Act for MTBE use. The Act does call for oxygenates, but MTBE use is not mandated. In fact, MTBE was in use long before enactment of the Clean Air Act. According to the Environmental Working Group, by 1986, some 54,000 barrels of MTBE were being added to gasoline every day. By 1991—a year before the EPA regulations went into effect—the industry was using more than 100,000 barrels of MTBE per day in reformulated gasoline.

More to the point, documents from recent court cases reveal that the industry knew MTBE could cause severe harm to groundwater supplies, as early as the mid 1980's. These cases—pursued by a California-based public interest group, Communities for a Better Environment, and by the South Lake Tahoe Water District—have revealed that the industry knew that their product could quickly and disastrously damage groundwater. Providing this protection for an industry that knowingly caused widespread groundwater contamination is simply indefensible.

Moreover, some argue that the liability protection is limited and that actions for negligence and other liability theories will remain. This ignores the fact that MTBE producers knowingly produced a defective product, that the liability theory being statutorily eliminated has already been successfully used, and that negligence and other theories of action against gasoline retailers will likely result in insolvency for those parties and insufficient funds to pay for substitute drinking water supplies and contamination clean-up. The end result will be that public drinking water supply systems, and hence the public, will be forced to bear the costs of MTBE contamination, which rightfully belongs to those that produced the product initially and profited substantially from its use.

And finally, the bill contains a $750 million fund for MTBE producers to help them transition to other business opportunities. Yet the bill also allows MTBE manufacturers to continue in business.

If MTBE were to be banned, this provision might make sense. Without an MTBE ban, it simply provides funds for MTBE manufacturers. This is not a wise use of taxpayer funds and this provision should be dropped or substantially reduced. Instead of further subsidizing those manufacturers that profited from MTBE, these funds could be much better spent to fund MTBE contamination clean-up from Leaking Underground Storage Tanks.

We are disappointed that amendments offered during committee markup to address these and other concerns were defeated. The legislation falls woefully short of solving the basic problem of ending groundwater contamination by MTBE and ensuring reliable fuel supplies at the lowest cost to consumers and taxpayers. In reality, it moves almost entirely in the opposite direction and should be opposed.

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ADDITIONAL DISSENTING VIEWS

During Committee consideration of the Energy Policy Act, I offered an amendment to provide natural gas consumers with a way to obtain refunds when they are charged excessive rates by interstate natural gas pipelines. Unfortunately, that amendment was not included in the final bill.

Under current law, natural gas pipelines are required to charge their customers "just and reasonable" rates. However, the reality is that pipelines are free to charge unreasonable rates with impunity and are never required to refund past overcharges.

That structure makes it difficult for customers to successfully petition the Federal Energy Regulatory Commission for relief because the cost of rate cases is prohibitive.

This same problem used to exist for consumers of electricity. However, Congress, recognizing the importance of consumers having the right not to be overcharged, changed the law in 1988 to make it easier for electricity consumers to secure refunds. This was an important step for electricity consumers, and the bill passed by the Energy and Commerce Committee actually seeks to give that group even more protections and a greater opportunity to go after providers who overcharge for electricity services.

My amendment would have simply given natural gas consumers those same rights. It provided identical refund options to those given electricity consumers under current law and it was absolutely consistent with the proposal for expanded consumer protections in the underlying bill.

This effort makes sense. In almost any business relationship that exists, when an overcharge takes place, a refund is provided to the consumer.

By rejecting the Schakowsky amendment the Committee refused to address the current shortcoming in the law and sent a message to our constituents and natural gas consumers across the country that it is acceptable for pipelines that overcharge them to keep those illegitimate profits.

This is a simple fairness issue for natural gas customers who prevail in rate cases and are entitled to refunds. They should be able to collect refunds from pipelines that overcharge from the date the complaint is filed.

Bipartisan members of the FERC agree that Natural gas consumers are entitled to protections from overcharges that are equal to those which electricity consumers enjoy.

In March 27, 2003 testimony before the Senate Energy and Natural Resources Committee concerning pending legislative proposals to restructure electric power regulation, FERC Chairman Wood stated:

> Several of the legislative proposals would change the refund effective date under FPA section 206, so that refunds

> would be allowed from the date on which a complaint is filed, instead of 60 days later. I support this change, and would support allowing refunds to the same extent under the Natural Gas Act.

In March 5, 2003 testimony before the House Energy and Air Quality Subcommittee concerning national energy policy and a discussion draft of energy policy legislation released by Chairman Barton on 02/28/03, Chairman Wood stated with respect to Section 7091 of the Barton bill:

> This section would eliminate the 60-day wait at the beginning of the refund period under the FPA, so that refunds would be allowed from the date a complaint is filed, instead of only 60 days later. I support this change, and also recommend including a similar provision in the NGA.

At the same hearing, Commissioner Massey's testimony stated:

> Section 7091 of the discussion draft would expand the refund protection under section 206 of the Federal Power Act by eliminating the 60-day delay in the refund effective date. I support this provision but would recommend additional protections * * * During the time that it takes to detect the market flaws or misbehavior and to file a complaint, unjust and unreasonable rates are charged. The Federal Power Act states that such rates are absolutely unlawful * * * I recommend clear statutory language that would allow the Commission to orer refunds for past periods if the rates charged are determined to be unjust and unreasonable * * *.
>
> Section 7084 of the discussion draft should be modified to provide penalties for prohibited behavior under the Natural Gas Act. I also recommend that the Natural Gas Act be amended to include the refund effective date provisions of Section 7091 (with modifications I mentioned earlier).

My amendment took the comments of concerned natural gas customers and the FERC into account. It provided the exact same refund options currently available to electricity consumers and included the expanded consumer protection proposal contained in section 7091 of the committee print.

Members considering the merits of this measure only had to ask themselves one question: Do natural gas consumers have a right to refunds when they have been overcharged for services?

A vote in favor of the amendment would have allowed the overcharges collected by monopoly pipeline providers to be refunded to their customers; while a vote against was a vote to allow those pipelines to continue collecting and pocketing those overcharges.

It is clear that the FERC needs additional authority to protect the rights of natural gas consumers and that, by not providing that authority, we will subject natural gas consumers to excessive payments.

JAN SCHAKOWSKY.

EXCHANGE OF COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC, April 4, 2003.

Hon. W. J. "BILLY" TAUZIN,
Chairman, Committee on Energy and Commerce, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN TAUZIN: I am writing with regard to H.R. 1644, the Energy Policy Act of 2003, a committee print of which was ordered reported by the Committee on Energy and Commerce on April 2, 2003. As you know, the Committee on Transportation and Infrastructure was named as an additional Committee of jurisdiction on similar energy legislation that passed the House in the 107th Congress. I expect that the Speaker will refer the legislation that your Committee just reported in the same way.

I recognize you desire to bring this bill before the House in an expeditious manner. Accordingly, I will not exercise my Committee's right to a sequential referral of the legislation. However, this is conditional on the removal of sec. 5066, Hybrid Vehicles, either by a manager's amendment or a self-executing rule when the bill is considered on the Floor. As you know, this provision allows states to permit single occupant hybrid vehicles to operate in high occupancy vehicle highway lanes. This is a matter within the jurisdiction of the Transportation and Infrastructure Committee and will be addressed in the context of the reauthorization of TEA 21. That effort is currently underway.

By agreeing to waive its consideration of the bill, however, the Committee on Transportation and Infrastructure does not waive its jurisdiction over the bill. In addition, the Transportation and Infrastructure Committee reserves its authority to seek conferees on provisions of the bill that are within its jurisdiction during any House-Senate conference that may be convened on this legislation. I ask for your commitment to support any request by the Transportation and Infrastructure Committee for conferees on the legislation.

I request that you include a copy of our exchange of letters in your Committee's report on the bill and in the Congressional Record during consideration on the House Floor. Thank you.

Sincerely,

DON YOUNG,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, April 8, 2003.

Hon. DON YOUNG,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN YOUNG: Thank you for your letter regarding H.R. 1644, the Energy Policy Act of 2003.

The Committee on Energy and Commerce will file a report on H.R. 1644, which includes section 5066 on hybrid vehicles, to reflect the Committee's action on the Committee Print ordered reported by the Committee on April 3, 2002. While H.R. 1644 and the Committee's report on that bill contain section 5066, this section will not be included in the comprehensive energy legislation, H.R. 6, that will be considered by the House in the 108th Congress.

I appreciate your willingness not to seek a referral on H.R. 1644. I agree that your decision to forego action on the bill will not prejudice the Committee on Transportation and Infrastructure with respect to its jurisdictional prerogatives on this or similar legislation.

I will include your letter and this response in the Committee's report on H.R. 1644, and I look forward to working with you as we bring comprehensive energy legislation to the Floor.

Sincerely,

W.J. "BILLY" TAUZIN,
Chairman.

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