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ENERGY POLICY ACT OF 2005

JULY 29, 2005.—Ordered to be printed

Mr. BARTON of Texas, 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. 1640]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1640) to ensure jobs for our future with secure and reliable energy, 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 2005".
(b) TABLE OF CONTENTS.—The table of contents for the bill is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ENERGY EFFICIENCY

Subtitle A—Federal Programs

Sec. 101. Energy and water saving measures in congressional buildings.
Sec. 102. Energy management requirements.
Sec. 103. Energy use measurement and accountability.
Sec. 104. Procurement of energy efficient products.
Sec. 105. Energy Savings Performance Contracts.
Sec. 107. Voluntary commitments to reduce industrial energy intensity.
Sec. 108. Advanced Building Efficiency Testbed.
Sec. 109. Federal building performance standards.
Sec. 110. Daylight savings.

Subtitle B—Energy Assistance and State Programs

Sec. 121. Low Income Home Energy Assistance Program.
Sec. 122. Weatherization assistance.
Sec. 123. State energy programs.
Sec. 124. Energy efficient appliance rebate programs.
Sec. 125. Energy efficient public buildings.
Sec. 126. Low income community energy efficiency pilot program.

Subtitle C—Energy Efficient Products

Sec. 131. Energy Star Program.
Sec. 132. HVAC maintenance consumer education program.
Sec. 133. Energy conservation standards for additional products.
Sec. 134. Energy labeling.
Sec. 135. Preemption.
Sec. 136. State consumer product energy efficiency standards.

Subtitle D—Public Housing

Sec. 145. Grants for energy-conserving improvements for assisted housing.
Sec. 147. Energy-efficient appliances.
Sec. 149. Energy strategy for HUD.

TITLE II—RENEWABLE ENERGY

Subtitle A—General Provisions

Sec. 201. Assessment of renewable energy resources.
Sec. 202. Renewable energy production incentive.
Sec. 203. Federal purchase requirement.
Sec. 204. Insular areas energy security.
Sec. 205. Use of photovoltaic energy in public buildings.
Sec. 206. Grants to improve the commercial value of forest biomass for electric energy, useful heat, transportation fuels, petroleum-based product substitutes, and other commercial purposes.
Sec. 207. Biobased products.
Sec. 208. Renewable energy security.

Subtitle C—Hydroelectric

PART I—ALTERNATIVE CONDITIONS

Sec. 231. Alternative conditions and fishways.

PART II—ADDITIONAL HYDROPOWER

Sec. 241. Hydroelectric production incentives.
Sec. 242. Hydroelectric efficiency improvement.
Sec. 243. Small hydroelectric power projects.
Sec. 244. Increased hydroelectric generation at existing Federal facilities.
Sec. 245. Shift of project loads to off-peak periods.

TITLE III—OIL AND GAS

Subtitle A—Petroleum Reserve and Home Heating Oil

Sec. 301. Permanent authority to operate the Strategic Petroleum Reserve and other energy programs.
Sec. 302. National Oilheat Research Alliance.
Sec. 303. Site selection.
Sec. 304. Suspension of Strategic Petroleum Reserve deliveries.

Subtitle B—Production Incentives

Sec. 320. Liquefaction or gasification natural gas terminals.
Sec. 327. Hydraulic fracturing.
Sec. 330. Appeals relating to pipeline construction or offshore mineral development projects.
Sec. 333. Natural gas market transparency.

Subtitle C—Access to Federal Land

Sec. 344. Consultation regarding oil and gas leasing on public land.
Sec. 346. Compliance with executive order 13211; actions concerning regulations that significantly affect energy supply, distribution, or use.
Sec. 350. Energy facility rights-of-way and corridors on Federal land.
Sec. 355. Encouraging Great Lakes oil and gas drilling ban.
Sec. 358. Federal coalbed methane regulation.

Subtitle D—Refining Revitalization

Sec. 371. Short title.
Sec. 372. Findings.
Sec. 373. Purpose.
Sec. 374. Designation of Refinery Revitalization Zones.
Sec. 375. Memorandum of understanding.
Sec. 376. State environmental permitting assistance.
Sec. 377. Coordination and expeditious review of permitting process.
Sec. 378. Compliance with all environmental regulations required.
Sec. 379. Definitions.

TITLE IV—COAL

Subtitle A—Clean Coal Power Initiative

Sec. 401. Authorization of appropriations.
Sec. 402. Project criteria.
Sec. 403. Report.
Sec. 404. Clean Coal Centers of Excellence.

Subtitle B—Clean Power Projects

Sec. 411. Coal technology loan.
Sec. 412. Coal gasification.
Sec. 414. Petroleum coke gasification.
Sec. 416. Electron scrubbing demonstration.

Subtitle D—Coal and Related Programs

Sec. 441. Clean air coal program.

TITLE V—INDIAN ENERGY

Sec. 501. Short title.
Sec. 502. Office of Indian Energy Policy and Programs.
Sec. 503. Indian energy.
Sec. 504. Four Corners transmission line project.
Sec. 505. Energy efficiency in federally assisted housing.
Sec. 506. Consultation with Indian tribes.

TITLE VI—NUCLEAR MATTERS

Subtitle A—Price-Anderson Act Amendments

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Sec. 604. Department of Energy liability limit.
Sec. 605. Incidents outside the United States.
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Sec. 607. Inflation adjustment.
Sec. 608. Treatment of modular reactors.
Sec. 609. Applicability.
Sec. 610. Prohibition on assumption by United States Government of liability for certain foreign incidents.
Sec. 611. Civil penalties.
Sec. 612. Financial accountability.

Subtitle B—General Nuclear Matters

Sec. 621. Licenses.
Sec. 622. NRC training program.
Sec. 623. Cost recovery from government agencies.
Sec. 624. Elimination of pension offset.
Sec. 625. Antitrust review.
Sec. 626. Decommissioning.
Sec. 627. Limitation on legal fee reimbursement.
Sec. 629. Report on feasibility of developing commercial nuclear energy generation facilities at existing Department of Energy sites.
Sec. 630. Uranium sales.
Sec. 631. Cooperative research and development and special demonstration projects for the uranium mining industry.
Sec. 632. Whistleblower protection.
Sec. 633. Medical isotope production.
Sec. 634. Fernald byproduct material.
Sec. 635. Safe disposal of greater-than-class c radioactive waste.
Sec. 636. Prohibition on nuclear exports to countries that sponsor terrorism.
Sec. 638. National uranium stockpile.
Sec. 639. Nuclear Regulatory Commission meetings.
Sec. 640. Employee benefits.

Subtitle C—Additional Hydrogen Production Provisions

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Subtitle D—Nuclear Security

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Sec. 663. Use of firearms by security personnel of licensees and certificate holders of the Commission.
Sec. 664. Unauthorized introduction of dangerous weapons.
Sec. 665. Sabotage of nuclear facilities or fuel.
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Sec. 704. Incremental cost allocation.
Sec. 705. Lease condensates.
Sec. 706. Review of Energy Policy Act of 1992 programs.
Sec. 707. Report concerning compliance with alternative fueled vehicle purchasing requirements.

Subtitle B—Hybrid Vehicles, Advanced Vehicles, and Fuel Cell Buses

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Sec. 712. Hybrid retrofit and electric conversion program.

PART 2—ADVANCED VEHICLES

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Sec. 722. Pilot program.
Sec. 723. Reports to Congress.
Sec. 724. Authorization of appropriations.

PART 3—FUEL CELL BUSES

Sec. 731. Fuel cell transit bus demonstration.

Subtitle C—Clean School Buses

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Sec. 742. Program for replacement of certain school buses with clean school buses.
Sec. 743. Diesel retrofit program.
Sec. 744. Fuel cell school buses.

Subtitle D—Miscellaneous

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Sec. 752. Mobile emission reductions trading and crediting.
Sec. 753. Aviation fuel conservation and emissions.
Sec. 754. Diesel fueled vehicles.
Sec. 757. Biodiesel engine testing program.
Sec. 759. Ultra-efficient engine technology for aircraft.

Subtitle E—Automobile Efficiency

Sec. 771. Authorization of appropriations for implementation and enforcement of fuel economy standards.
Sec. 772. Revised considerations for decisions on maximum feasible average fuel economy.
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Subtitle B—Distributed Energy and Electric Energy Systems

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Sec. 913. High power density industry program.
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Sec. 918. Renewable energy.
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Subtitle E—Fossil Energy

PART I—STUDIES AND PROGRAM SUPPORT

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Sec. 968. Arctic Engineering Research Center.
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Sec. 1511. Commercial byproducts from municipal solid waste and cellulosic biomass loan guarantee program.
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Sec. 1612. Report on energy integration with Latin America.
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TITLE I—ENERGY EFFICIENCY

Subtitle A—Federal Programs

SEC. 101. ENERGY AND WATER SAVING MEASURES IN CONGRESSIONAL BUILDINGS.

(a) IN GENERAL.—Part 3 of title V of the National Energy Conservation Policy Act (42 U.S.C. 8251 et seq.) is amended by adding at the end the following:

"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 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 of the Capitol 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 (2 U.S.C. 1815), 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 OF APPROPRIATIONS.—There are authorized to be appropriated to the Architect of the Capitol to carry out subsection (d), $2,000,000 for each of fiscal years 2006 through 2010.

SEC. 102. 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 2006 through 2015 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in fiscal year 2003, by the percentage specified in the following table:

(2) REPORTING BASELINE.—The energy reduction goals and baseline established in paragraph (1) of section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)(1)), as amended by 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, 2014, 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 2016 through 2025.".

(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";

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

(3) by striking "energy consumption requirements" and inserting "requirements of subsections (a) and (b)(1)".

(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 AND WATER 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 AND WATER SAVINGS.—An agency may retain any funds appropriated to that agency for energy expenditures, water expenditures, or wastewater treatment expenditures, at buildings subject to the requirements of section 543(a) and (b), that are not made because of energy savings or water savings. Except as otherwise provided by law, such funds may be used only for energy efficiency, water conservation, 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. 103. 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, 2012, 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, energy efficiency advocacy organizations, 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 1 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.—Not 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. 104. PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

(a) REQUIREMENTS.—Part 3 of title V of the National Energy Conservation Policy Act (42 U.S.C. 8251 et seq.), as amended by section 101, is amended by adding at the end the following:

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

"(a) DEFINITIONS.—In this section:

"(1) AGENCY.—The term 'agency' has the meaning given that term in section 7902(a) of title 5, United States Code.

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

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

"(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 agency for an energy consuming product, the head of the 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 agency is not required to procure an Energy Star product or FEMP designated product under paragraph (1) if the head of the 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 agency.

"(3) PROCUREMENT PLANNING.—The head of an 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) SPECIFIC PRODUCTS.—(1) 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 not later than 120 days after the date of the enactment of this section, after considering the recommendations of associated electric motor manufacturers and energy efficiency groups.

"(2) All Federal agencies are encouraged to take actions to maximize the efficiency of air conditioning and refrigeration equipment, including appropriate cleaning and maintenance, including the use of any system treatment or additive that will reduce the electricity consumed by air conditioning and refrigeration equipment. Any such treatment or additive must be—

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

"(B) determined by the Administrator of the Environmental Protection Agency to be environmentally safe; and

"(C) shown to increase seasonal energy efficiency ratio (SEER) or energy efficiency ratio (EER) when tested by the National Institute of Standards and Technology according to Department of Energy test procedures without causing any adverse impact on the system, system components, the refrigerant or lubricant, or other materials in the system.

Results of testing described in subparagraph (C) shall be published in the Federal Register for public review and comment. For purposes of this section, a hardware device or primary refrigerant shall not be considered an additive.

"(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 of the National Energy Conservation Policy Act is further amended by inserting after the item relating to section 552 the following new item:

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

SEC. 105. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) LIMITATIONS.—

(1) IN GENERAL.—Section 801(a)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)(2)) is amended by adding at the end the following subparagraph:

"(E) All Federal agencies combined may not, after the date of enactment of the Energy Policy Act of 2005, enter into more than a total of 100 contracts under this title. Payments made by the Federal Government under all contracts permitted by this subparagraph combined shall not exceed a total of $500,000,000. Each Federal agency shall appoint a coordinator for Energy Savings Performance Contracts with the responsibility to monitor the number of such contracts for that Federal agency and the investment value of each contract. The coordinators for each Federal agency shall meet monthly to ensure that the limits specified in this subparagraph on the number of contracts and the payments made for the contracts are not exceeded.".

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

"(1) The term 'Federal agency' means the Department of Defense, the Department of Veterans Affairs, and the Department of Energy. ".

(3) VALIDITY OF CONTRACTS.—The amendments made by this subsection shall not affect the validity of contracts entered into under title VIII of the National Energy Conservation Policy Act (42 U.S.C. 8287 et seq.) before the date of enactment of this Act, or of contracts described in subsection (h).

(b) PERMANENT EXTENSION.—Effective October 1, 2006, section 801(c) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)) is repealed.

(c) REVIEW.—Not later than 180 days after the date of the enactment of this Act, 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, including the identification of additional qualified contractors, and energy efficiency services covered. The Secretary shall report these findings to Congress 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.

(d) EXTENSION OF AUTHORITY.—Any energy savings performance contract entered into under section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) after October 1, 2006, and before the date of enactment of this Act, shall be deemed to have been entered into pursuant to such section 801 as amended by subsection (a) of this section.

SEC. 107. VOLUNTARY COMMITMENTS TO REDUCE INDUSTRIAL ENERGY INTENSITY.

(a) VOLUNTARY AGREEMENTS.—The Secretary of Energy is authorized to enter into voluntary agreements with 1 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 by a significant amount relative to improvements in each sector in recent years.

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

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

SEC. 108. ADVANCED BUILDING EFFICIENCY TESTBED.

(a) ESTABLISHMENT.—The Secretary of Energy, in consultation with the Administrator of General Services, 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 (including by improving indoor air quality) 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 2006 through 2008, to remain available until expended. For any fiscal year in which funds are expended under this section, the Secretary shall provide ⅓ of the total amount to the lead university described in subsection (b), and provide the remaining ⅔ to the other participants referred to in subsection (b) on an equal basis.

SEC. 109. 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 2003 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—

"(i) if life-cycle 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 version current as of the date of enactment of this paragraph of the ASHRAE Standard or 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; and

"(ii) where water is used to achieve energy efficiency, water conservation technologies shall be applied to the extent they are life-cycle cost effective.

"(B) ADDITIONAL REVISIONS.—Not later than 1 year after the date of approval of each subsequent revision of the ASHRAE Standard or the International Energy Conservation Code, as appropriate, 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. 110. DAYLIGHT SAVINGS.

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

(1) by striking "April" and inserting "March"; and

(2) by striking "October" and inserting "November".

(b) REPORT TO CONGRESS.—Not later than 9 months after the date of enactment of this Act, the Secretary of Energy shall report to Congress on the impact this section on energy consumption in the United States.

Subtitle B—Energy Assistance and State Programs

SEC. 121. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM.

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

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

"RENEWABLE FUELS

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

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

SEC. 122. WEATHERIZATION ASSISTANCE.

(a) AUTHORIZATION OF APPROPRIATIONS.—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 "$500,000,000 for fiscal year 2006, $600,000,000 for fiscal year 2007, and $700,000,000 for fiscal year 2008".

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

SEC. 123. 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 2005 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 2012 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 2006 and 2007 and $125,000,000 for fiscal year 2008".

SEC. 124. 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) SECRETARY.—The term "Secretary" means the Secretary of Energy.

(5) 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).

(6) 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 the Secretary to carry out this section $50,000,000 for each of the fiscal years 2006 through 2010.

SEC. 125. 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 the most recent version of the 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 $30,000,000 for each of fiscal years 2006 through 2010. Not more than 10 percent of appropriated funds shall be used for administration.

SEC. 126. 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.), that 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 each of fiscal years 2006 through 2008.

Subtitle C—Energy Efficient Products

SEC. 131. ENERGY STAR PROGRAM.

(a) AMENDMENT.—The Energy Policy and Conservation Act (42 U.S.C. 6201 et seq.) 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 voluntary program to identify and promote energy-efficient products and buildings in order to reduce energy consumption, improve energy security, and reduce pollution through voluntary labeling of or 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 2 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;

"(4) solicit comments from interested parties prior to establishing or revising an Energy Star product category, specification, or criterion (or effective dates for any of the foregoing);

"(5) upon adoption of a new or revised product category, specification, or criterion, provide reasonable notice to interested parties of any changes (including effective dates) in product categories, specifications, or criteria along with an explanation of such changes and, where appropriate, responses to comments submitted by interested parties; and

"(6) provide appropriate lead time (which shall be 9 months, unless the Agency or Department determines otherwise) prior to the effective date for a new or a significant revision to a product category, specification, or criterion, taking into account the timing requirements of the manufacturing, product marketing, and distribution process for the specific product addressed.".

(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. 132. HVAC MAINTENANCE CONSUMER EDUCATION PROGRAM.

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.—For the purpose of ensuring that installed air conditioning and heating systems operate at their maximum rated efficiency levels, the Secretary shall, not later than 180 days after 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. The Secretary shall carry out the program in a cost-shared manner 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 businesses 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 of the Small Business Administration shall make the program information available directly to small businesses and through other Federal agencies, including the Federal Emergency Management Program and the Department of Agriculture.".

SEC. 133. ENERGY CONSERVATION STANDARDS FOR ADDITIONAL PRODUCTS.

(a) DEFINITIONS.—Section 321 of the Energy Policy and Conservation Act (42 U.S.C. 6291) is amended—

(1) in paragraph (30)(S), by striking the period and adding at the end the following: "but does not include any lamp specifically designed to be used for special purpose applications and that is unlikely to be used in general purpose applications such as those described in subparagraph (D), and also does not include any lamp not described in subparagraph (D) that is excluded by the Secretary, by rule, because the lamp is designed for special applications and is unlikely to be used in general purpose applications."; and

(2) by adding at the end the following:

"(32) The term 'battery charger' means a device that charges batteries for consumer products and includes battery chargers embedded in other consumer products.

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

"(A) are not consumer products regulated under this Act; and

"(B) incorporate 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 an electrically powered integral light source that illuminates the legend 'EXIT' and any directional indicators and provides contrast between the legend, any directional indicators, and the background.

"(36)(A) Except as provided in subparagraph (B), the term 'distribution transformer' means a transformer that—

"(i) has an input voltage of 34.5 kilovolts or less;

"(ii) has an output voltage of 600 volts or less; and

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

"(B) The term 'distribution 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, such as those commonly known as drive transformers, rectifier transformers, auto-transformers, Uninterruptible Power System transformers, impedance transformers, regulating transformers, sealed and nonventilating transformers, machine tool transformers, welding transformers, grounding transformers, or testing transformers, that are designed to be used in a special purpose application and are unlikely to be used in general purpose applications; or

"(iii) any transformer not listed in clause (ii) that is excluded by the Secretary by rule because—

"(I) the transformer is designed for a special application;

"(II) the transformer is unlikely to be used in general purpose applications; and

"(III) the application of standards to the transformer would not result in significant energy savings.

"(37) The term 'low-voltage dry-type distribution transformer' means a distribution transformer that—

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

"(B) is air-cooled; and

"(C) does not use oil as a coolant.

"(38) The term 'standby mode' means the lowest power consumption mode that—

"(A) cannot be switched off or influenced by the user; and

"(B) may persist for an indefinite time when an appliance is connected to the main electricity supply and used in accordance with the manufacturer's instructions,

as defined on an individual product basis by the Secretary.

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

"(40) 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.

"(41) The term 'transformer' means a device consisting of 2 or more coils of insulated wire that transfers alternating current by electromagnetic induction from 1 coil to another to change the original voltage or current value.

"(42) 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.

"(43) The term 'ceiling fan' means a non-portable device that is suspended from a ceiling for circulating air via the rotation of fan blades.

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

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

"(B) attachable, such that at the time of retail sale the equipment is not physically attached to the ceiling fan, but may be included inside the ceiling fan package at the time of sale or sold separately for subsequent attachment to the fan.".

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

(1) in subsection (b), 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 distribution transformers and 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. For purposes of section 346(a), this test procedure shall be deemed to be testing requirements prescribed by the Secretary under section 346(a)(1) for distribution transformers for which the Secretary makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings.

"(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.

"(12) Test procedures for medium base compact fluorescent lamps shall be based on the test methods used under the August 9, 2001, version of the Energy Star program of the Environmental Protection Agency and Department of Energy for compact fluorescent lamps. Covered products shall meet all test requirements for regulated parameters in section 325(bb). However, covered products may be marketed prior to completion of lamp life and lumen maintenance at 40 percent of rated life testing provided manufacturers document engineering predictions and analysis that support expected attainment of lumen maintenance at 40 percent rated life and lamp life time.

"(13) The Secretary shall, not later than 18 months after the date of enactment of this paragraph, prescribe testing requirements for ceiling fans and ceiling fan light kits."; and

(2) by adding at the end the following:

"(f) ADDITIONAL CONSUMER AND COMMERCIAL PRODUCTS.—The Secretary shall, not later than 24 months after the date of enactment of this subsection, prescribe testing requirements for suspended ceiling fans, refrigerated bottled or canned beverage vending machines, 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.".

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

"(u) BATTERY CHARGER AND EXTERNAL POWER SUPPLY 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 and test procedures for the power use of battery chargers and external

power supplies. In establishing these test procedures, the Secretary shall consider, among other factors, existing definitions and test procedures used for measuring energy consumption in standby mode and other modes 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 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 issued 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 energy use that—

"(i) meets the criteria and procedures 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) 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 that 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, standby mode power consumption compared to overall product energy consumption.

"(3) RULEMAKING.—The Secretary shall not propose a standard under this section unless the Secretary has issued applicable test procedures for each product pursuant to section 323.

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

"(5) VOLUNTARY PROGRAMS.—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, that are designed to reduce standby mode energy use.

"(v) SUSPENDED CEILING FANS, VENDING MACHINES, AND COMMERCIAL REFRIGERATORS, FREEZERS, AND REFRIGERATOR-FREEZERS.—The Secretary shall not later than 36 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, and commercial refrigerators, freezers, and refrigerator-freezers. In establishing standards under this subsection, the Secretary shall use the criteria and procedures contained in subsections (o) and (p). 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, 2006, 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, 2006—

"(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 DISTRIBUTION TRANSFORMERS.—The efficiency of low voltage dry-type distribution transformers manufactured on or after January 1, 2006, shall be the Class I Efficiency Levels for distribution 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–1–2002).

"(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 subsection, and shall be installed with compatible, electrically connected signal control interface devices and conflict monitoring systems.

"(aa) UNIT HEATERS.—Unit heaters manufactured on or after the date that is 3 years after the date of enactment of this subsection shall be equipped with an inter-

mittent ignition device and shall have either power venting or an automatic flue damper.

"(bb) MEDIUM BASE COMPACT FLUORESCENT LAMPS.—Bare lamp and covered lamp (no reflector) medium base compact fluorescent lamps manufactured on or after January 1, 2006, shall meet the following requirements prescribed by the August 9, 2001, version of the Energy Star Program Requirements for Compact Fluorescent Lamps, Energy Star Eligibility Criteria, Energy-Efficiency Specification issued by the Environmental Protection Agency and Department of Energy: minimum initial efficacy; lumen maintenance at 1000 hours; lumen maintenance at 40 percent of rated life; rapid cycle stress test; and lamp life. The Secretary may, by rule, establish requirements for color quality (CRI); power factor; operating frequency; and maximum allowable start time based on the requirements prescribed by the August 9, 2001, version of the Energy Star Program Requirements for Compact Fluorescent Lamps. The Secretary may, by rule, revise these requirements or establish other requirements considering energy savings, cost effectiveness, and consumer satisfaction.

"(cc) EFFECTIVE DATE.—Section 327 shall apply—

"(1) to products for which standards are to be established under subsections (u) and (v) on the date on which a final rule is issued by the Department of Energy, except that any State or local standards prescribed or enacted for any such product prior to the date on which such final rule is issued shall not be preempted until the standard established under subsection (u) or (v) for that product takes effect; and

"(2) to products for which standards are established under subsections (w) through (bb) on the date of enactment of those subsections, except that any State or local standards prescribed or enacted prior to the date of enactment of those subsections shall not be preempted until the standards established under subsections (w) through (bb) take effect.

"(dd) CEILING FANS.—

"(1) FEATURES.—All ceiling fans manufactured on or after January 1, 2006, shall have the following features:

"(A) Lighting controls operate independently from fan speed controls.

"(B) Adjustable speed controls (either more than 1 speed or variable speed).

"(C) The capability of reversible fan action, except for fans sold for industrial applications, outdoor applications, and where safety standards would be violated by the use of the reversible mode. The Secretary may promulgate regulations to define in greater detail the exceptions provided under this subparagraph but may not substantively expand the exceptions.

"(2) REVISED STANDARDS.—

"(A) IN GENERAL.—Notwithstanding any provision of this Act, if the requirements of subsections (o) and (p) are met, the Secretary may consider and prescribe energy efficiency or energy use standards for electricity used by ceiling fans to circulate air in a room.

"(B) SPECIAL CONSIDERATION.—If the Secretary sets such standards, the Secretary shall consider—

"(i) exempting or setting different standards for certain product classes for which the primary standards are not technically feasible or economically justified; and

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

"(C) APPLICATION.—Any air movement standard prescribed under this subsection shall apply to products manufactured on or after the date that is 3 years after the date of publication of a final rule establishing the standard.".

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

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

SEC. 134. ENERGY LABELING.

(a) RULEMAKING ON EFFECTIVENESS OF CONSUMER PRODUCT LABELING.—Section 324(a)(2) 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 not later than 2 years after the date of enactment of this subparagraph.

"(G)(i) Not later than 18 months after date of enactment of this subparagraph, the Commission shall prescribe by rule, pursuant to this section, labeling requirements for the electricity used by ceiling fans to circulate air in a room.

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

"(I) January 1, 2009; or

"(II) the date that is 60 days after the final rule is prescribed.".

(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 (aa) 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. In the case of products to which TP–1 standards under section 325(y) apply, labeling requirements shall be based on the 'Standard for the Labeling of Distribution Transformer Efficiency' prescribed by the National Electrical Manufacturers Association (NEMA TP–3) as in effect upon the date of enactment of this paragraph.".

SEC. 135. PREEMPTION.

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

"(h) CEILING FANS.—Effective on January 1, 2006, this section shall apply to and supersede all State and local standards prescribed or enacted for ceiling fans and ceiling fan light kits.".

SEC. 136. STATE CONSUMER PRODUCT ENERGY EFFICIENCY STANDARDS.

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

"(h) LIMITATION ON PREEMPTION.—Subsections (a) and (b) shall not apply with respect to State regulation of energy consumption or water use of any covered product during any period of time—

"(1) after the date which is 3 years after a Federal standard is required by law to be established or revised, but has not been established or revised; and

"(2) before the date on which such Federal standard is established or revised.".

Subtitle D—Public Housing

SEC. 145. GRANTS FOR ENERGY-CONSERVING IMPROVEMENTS FOR ASSISTED HOUSING.

Section 251(b)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8231(1)) is amended—

(1) by striking "financed with loans" and inserting "assisted";

(2) by inserting after "1959," the following: "which are eligible multifamily housing projects (as such term is defined in section 512 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note)) and are subject to mortgage restructuring and rental assistance sufficiency plans under such Act,"; and

(3) by inserting after the period at the end of the first sentence the following new sentence: "Such improvements may also include the installation of energy and water conserving fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2–1998 and A112.18.1–2000, or any revision thereto, applicable at the time of installation.".

SEC. 147. ENERGY-EFFICIENT APPLIANCES.

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

SEC. 149. ENERGY STRATEGY FOR HUD.

The Secretary of Housing and Urban Development shall develop and implement an integrated strategy to reduce utility expenses through cost-effective energy conservation and efficiency measures and energy efficient design and construction of public and assisted housing. The energy strategy shall include the development of energy reduction goals and incentives for public housing agencies. The Secretary shall submit a report to Congress, not later than 1 year after the date of the enactment of this Act, on the energy strategy and the actions taken by the Department of Housing and Urban Development to monitor the energy usage of public housing agencies and shall submit an update every 2 years thereafter on progress in implementing the strategy.

TITLE II—RENEWABLE ENERGY

Subtitle A—General Provisions

SEC. 201. ASSESSMENT OF RENEWABLE ENERGY RESOURCES.

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

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

(1) 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.

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

SEC. 202. 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 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 or subdivision thereof,"; and

(2) by inserting "landfill gas, livestock methane, ocean (tidal, wave, current, and thermal)," 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, 2005, and before October 1, 2015".

(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, livestock methane, ocean (tidal, wave, current, and thermal)," 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, 2025".

(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 2005 through 2025.

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

SEC. 203. FEDERAL PURCHASE REQUIREMENT.

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

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

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

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

(b) DEFINITIONS.—In this section:

(1) BIOMASS.—The term "biomass" means any solid, nonhazardous, cellulosic material that is derived from—

(A) any of the following forest-related resources: mill residues, precommercial thinnings, slash, and brush, or nonmerchantable material;

(B) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste (garbage), gas derived from the biodegradation of solid waste, or paper that is commonly recycled;

(C) agriculture wastes, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues, and livestock waste nutrients; or

(D) a plant that is grown exclusively as a fuel for the production of electricity.

(2) RENEWABLE ENERGY.—The term "renewable energy" means electric energy generated from solar, wind, biomass, landfill gas, ocean (tidal, wave, current, and thermal), geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project.

(c) CALCULATION.—For purposes of determining compliance with the requirement of this section, the amount of renewable energy shall be doubled if—

(1) the renewable energy is produced and used on-site at a Federal facility;

(2) the renewable energy is produced on Federal lands and used at a Federal facility; or

(3) the renewable energy is produced on Indian land as defined in title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et. seq.) and used at a Federal facility.

(d) REPORT.—Not later than April 15, 2007, and every 2 years thereafter, the Secretary of Energy shall provide a report to Congress on the progress of the Federal Government in meeting the goals established by this section.

SEC. 204. INSULAR AREAS ENERGY SECURITY.

Section 604 of the Act entitled "An Act to authorize appropriations for certain insular areas of the United States, and for other purposes", approved December 24, 1980 (48 U.S.C. 1492), is amended—

(1) in subsection (a)(4) by striking the period and inserting a semicolon;

(2) by adding at the end of subsection (a) the following new paragraphs:

"(5) electric power transmission and distribution lines in insular areas are inadequate to withstand damage caused by the hurricanes and typhoons which frequently occur in insular areas and such damage often costs millions of dollars to repair; and

"(6) the refinement of renewable energy technologies since the publication of the 1982 Territorial Energy Assessment prepared pursuant to subsection (c) reveals the need to reassess the state of energy production, consumption, infra-

structure, reliance on imported energy, opportunities for energy conservation and increased energy efficiency, and indigenous sources in regard to the insular areas.";

(3) by amending subsection (e) to read as follows:

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

"(A) updating the contents required by subsection (c);

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

"(C) drafting long-term energy transmission line plans for such insular areas with the objective that the maximum percentage feasible of electric power transmission and distribution lines in each insular area be protected from damage caused by hurricanes and typhoons.

"(2) Not later than December 31, 2007, the Secretary of the Interior shall submit to Congress the updated plans for each insular area required by this subsection."; and

(4) by amending subsection (g)(4) to read as follows:

"(4) POWER LINE GRANTS FOR INSULAR AREAS.—

"(A) IN GENERAL.—The Secretary of the Interior is authorized to make grants to governments of insular areas of the United States to carry out eligible projects to protect electric power transmission and distribution lines in such insular areas from damage caused by hurricanes and typhoons.

"(B) ELIGIBLE PROJECTS.—The Secretary may award grants under subparagraph (A) only to governments of insular areas of the United States that submit written project plans to the Secretary for projects that meet the following criteria:

"(i) The project is designed to protect electric power transmission and distribution lines located in 1 or more of the insular areas of the United States from damage caused by hurricanes and typhoons.

"(ii) The project is likely to substantially reduce the risk of future damage, hardship, loss, or suffering.

"(iii) The project addresses 1 or more problems that have been repetitive or that pose a significant risk to public health and safety.

"(iv) The project is not likely to cost more than the value of the reduction in direct damage and other negative impacts that the project is designed to prevent or mitigate. The cost benefit analysis required by this criterion shall be computed on a net present value basis.

"(v) The project design has taken into consideration long-term changes to the areas and persons it is designed to protect and has manageable future maintenance and modification requirements.

"(vi) The project plan includes an analysis of a range of options to address the problem it is designed to prevent or mitigate and a justification for the selection of the project in light of that analysis.

"(vii) The applicant has demonstrated to the Secretary that the matching funds required by subparagraph (D) are available.

"(C) PRIORITY.—When making grants under this paragraph, the Secretary shall give priority to grants for projects which are likely to—

"(i) have the greatest impact on reducing future disaster losses; and

"(ii) best conform with plans that have been approved by the Federal Government or the government of the insular area where the project is to be carried out for development or hazard mitigation for that insular area.

"(D) MATCHING REQUIREMENT.—The Federal share of the cost for a project for which a grant is provided under this paragraph shall not exceed 75 percent of the total cost of that project. The non-Federal share of the cost may be provided in the form of cash or services.

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

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

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

(a) IN GENERAL.—Part 4 of title V of the National Energy Conservation Policy Act (42 U.S.C. 8271 et seq.) is amended by adding at the end the following:

"SEC. 570. USE OF PHOTOVOLTAIC ENERGY IN PUBLIC BUILDINGS.

"(a) PHOTOVOLTAIC ENERGY COMMERCIALIZATION PROGRAM.—

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

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

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

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

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

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

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

"(3) ACQUISITION OF PHOTOVOLTAIC SOLAR ELECTRIC SYSTEMS.—

"(A) IN GENERAL.—The program shall provide for the acquisition of photovoltaic solar electric systems and associated storage capability for use in public buildings.

"(B) ACQUISITION LEVELS.—The acquisition of photovoltaic electric systems shall be at a level substantial enough to allow use of low-cost production techniques with at least 150 megawatts (peak) cumulative acquired during the 5 years of the program.

"(4) ADMINISTRATION.—The Secretary shall administer the program and shall—

"(A) issue such rules and regulations as may be appropriate to monitor and assess the performance and operation of photovoltaic solar electric systems installed pursuant to this subsection;

"(B) develop innovative procurement strategies for the acquisition of such systems; and

"(C) transmit to Congress an annual report on the results of the program.

"(b) PHOTOVOLTAIC SYSTEMS EVALUATION PROGRAM.—

"(1) IN GENERAL.—Not later than 60 days after the date of enactment of this section, the Secretary shall establish a photovoltaic solar energy systems evaluation program to evaluate such photovoltaic solar energy systems as are required in public buildings.

"(2) PROGRAM REQUIREMENT.—In evaluating photovoltaic solar energy systems under the program, the Secretary shall ensure that such systems reflect the most advanced technology.

"(c) AUTHORIZATION OF APPROPRIATIONS.—

"(1) PHOTOVOLTAIC ENERGY COMMERCIALIZATION PROGRAM.—There are authorized to be appropriated to carry out subsection (a) $50,000,000 for each of fiscal years 2006 through 2010. Such sums shall remain available until expended.

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

(b) CONFORMING AMENDMENT.—The table of sections for the National Energy Conservation Policy Act is amended by inserting after the item relating to section 569 the following:

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

SEC. 206. GRANTS TO IMPROVE THE COMMERCIAL VALUE OF FOREST BIOMASS FOR ELECTRIC ENERGY, USEFUL HEAT, TRANSPORTATION FUELS, PETROLEUM-BASED PRODUCT SUBSTITUTES, AND OTHER COMMERCIAL PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Thousands of communities in the United States, many located near Federal lands, are at risk to wildfire. Approximately 190,000,000 acres of land managed by the Secretary of Agriculture and the Secretary of the Interior are at risk of catastrophic fire in the near future. The accumulation of heavy forest fuel loads continues to increase as a result of disease, insect infestations, and drought, further raising the risk of fire each year.

(2) In addition, more than 70,000,000 acres across all land ownerships are at risk to higher than normal mortality over the next 15 years from insect infestation and disease. High levels of tree mortality from insects and disease result in increased fire risk, loss of old growth, degraded watershed conditions, and changes in species diversity and productivity, as well as diminished fish and wildlife habitat and decreased timber values.

(3) Preventive treatments such as removing fuel loading, ladder fuels, and hazard trees, planting proper species mix and restoring and protecting early successional habitat, and other specific restoration treatments designed to reduce the susceptibility of forest land, woodland, and rangeland to insect outbreaks, disease, and catastrophic fire present the greatest opportunity for long-term forest health by creating a mosaic of species-mix and age distribution. Such prevention treatments are widely acknowledged to be more successful and cost effective than suppression treatments in the case of insects, disease, and fire.

(4) The byproducts of preventive treatment (wood, brush, thinnings, chips, slash, and other hazardous fuels) removed from forest lands, woodlands and rangelands represent an abundant supply of biomass for biomass-to-energy facilities and raw material for business. There are currently few markets for the extraordinary volumes of byproducts being generated as a result of the necessary large-scale preventive treatment activities.

(5) The United States should—

(A) promote economic and entrepreneurial opportunities in using byproducts removed through preventive treatment activities related to hazardous fuels reduction, disease, and insect infestation; and

(B) develop and expand markets for traditionally underused wood and biomass as an outlet for byproducts of preventive treatment activities.

(b) DEFINITIONS.—In this section:

(1) BIOMASS.—The term "biomass" means trees and woody plants, including limbs, tops, needles, and other woody parts, and byproducts of preventive treatment, such as wood, brush, thinnings, chips, and slash, that are removed—

(A) to reduce hazardous fuels; or

(B) to reduce the risk of or to contain disease or insect infestation.

(2) INDIAN TRIBE.—The term "Indian tribe" has the meaning given the term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(3) PERSON.—The term "person" includes—

(A) an individual;

(B) a community (as determined by the Secretary concerned);

(C) an Indian tribe;

(D) a small business, micro-business, or a corporation that is incorporated in the United States; and

(E) a nonprofit organization.

(4) PREFERRED COMMUNITY.—The term "preferred community" means—

(A) any town, township, municipality, or other similar unit of local government (as determined by the Secretary concerned) that—

(i) has a population of not more than 50,000 individuals; and

(ii) the Secretary concerned, in the sole discretion of the Secretary concerned, determines contains or is located near land, the condition of which is at significant risk of catastrophic wildfire, disease, or insect infestation or which suffers from disease or insect infestation; or

(B) any county that—

(i) is not contained within a metropolitan statistical area; and

(ii) the Secretary concerned, in the sole discretion of the Secretary concerned, determines contains or is located near land, the condition of which is at significant risk of catastrophic wildfire, disease, or insect infestation or which suffers from disease or insect infestation.

(5) SECRETARY CONCERNED.—The term "Secretary concerned" means—

(A) the Secretary of Agriculture with respect to National Forest System lands; and

(B) the Secretary of the Interior with respect to Federal lands under the jurisdiction of the Secretary of the Interior and Indian lands.

(c) BIOMASS COMMERCIAL USE GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary concerned may make grants to any person that owns or operates a facility that uses biomass as a raw material to produce electric energy, sensible heat, transportation fuels, or substitutes for petroleum-based products to offset the costs incurred to purchase biomass for use by such facility.

(2) GRANT AMOUNTS.—A grant under this subsection may not exceed $20 per green ton of biomass delivered.

(3) MONITORING OF GRANT RECIPIENT ACTIVITIES.—As a condition of a grant under this subsection, the grant recipient shall keep such records as the Secretary concerned may require to fully and correctly disclose the use of the grant funds and all transactions involved in the purchase of biomass. Upon notice by a representative of the Secretary concerned, the grant recipient shall afford the representative reasonable access to the facility that purchases or uses biomass and an opportunity to examine the inventory and records of the facility.

(d) IMPROVED BIOMASS USE GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary concerned may make grants to persons to offset the cost of projects to develop or research opportunities to improve the use of, or add value to, biomass. In making such grants, the Secretary concerned shall give preference to persons in preferred communities.

(2) SELECTION.—The Secretary concerned shall select a grant recipient under paragraph (1) after giving consideration to the anticipated public benefits of the project, including the potential to develop thermal or electric energy resources or affordable energy, opportunities for the creation or expansion of small businesses and micro-businesses, and the potential for new job creation.

(3) GRANT AMOUNT.—A grant under this subsection may not exceed $500,000.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $50,000,000 for each of the fiscal years 2006 through 2016 to carry out this section.

(f) REPORT.—Not later than October 1, 2012, the Secretary of Agriculture, in consultation with the Secretary of the Interior, shall submit to the Committee on Energy and Natural Resources and the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Resources, the Committee on Energy and Commerce, and the Committee on Agriculture of the House of Representatives a report describing the results of the grant programs authorized by this section. The report shall include the following:

(1) An identification of the size, type, and the use of biomass by persons that receive grants under this section.

(2) The distance between the land from which the biomass was removed and the facility that used the biomass.

(3) The economic impacts, particularly new job creation, resulting from the grants to and operation of the eligible operations.

SEC. 207. BIOBASED PRODUCTS.

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

SEC. 208. RENEWABLE ENERGY SECURITY.

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

(1) in paragraph (1), by striking "in paragraph (3)" and inserting "in paragraphs (3) and (4)";

(2) in paragraph (3), by striking "$2,500 per dwelling unit average provided in paragraph (1)" and inserting "dwelling unit averages provided in paragraphs (1) and (4)"; and

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

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

"(5)(A) The Secretary shall by regulations—

"(i) establish the criteria which are to be used in prescribing performance and quality standards under paragraph (6)(A)(ii) or in specifying any form of renewable energy under paragraph (6)(A)(i)(I); and

"(ii) establish a procedure under which a manufacturer of an item may request the Secretary to certify that the item will be treated, for purposes of this paragraph, as a renewable energy system.

"(B) The Secretary shall make a final determination with respect to any request filed under subparagraph (A)(ii) within 1 year after the filing of the request, together with any information required to be filed with such request under subparagraph (A)(ii).

"(C) Each month the Secretary shall publish a report of any request under subparagraph (A)(ii) which has been denied during the preceding month and the reasons for the denial.

"(D) The Secretary shall not specify any form of renewable energy under paragraph (6)(A)(i)(I) unless the Secretary determines that—

"(i) there will be a reduction in oil or natural gas consumption as a result of such specification;

"(ii) such specification will not result in an increased use of any item which is known to be, or reasonably suspected to be, environmentally hazardous or a threat to public health or safety; and

"(iii) available Federal subsidies do not make such specification unnecessary or inappropriate (in the light of the most advantageous allocation of economic resources).

"(6) In this subsection—

"(A) the term 'renewable energy system' means a system which—

"(i) when installed in connection with a dwelling, transmits or uses—

"(I) solar energy, energy derived from the geothermal deposits, energy derived from biomass, or any other form of renewable energy which the Secretary specifies by regulations, for the purpose of heating or cooling such dwelling or providing hot water or electricity for use within such dwelling; or

"(II) wind energy for nonbusiness residential purposes;

"(ii) meets the performance and quality standards (if any) which have been prescribed by the Secretary by regulations;

"(iii) in the case of a combustion rated system, has a thermal efficiency rating of at least 75 percent; and

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

"(B) the term 'biomass' means any organic matter that is available on a renewable or recurring basis, including agricultural crops and trees, wood and wood wastes and residues, plants (including aquatic plants), grasses, residues, fibers, and animal wastes, municipal wastes, and other waste materials.".

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

(1) in subsection (a)—

(A) by striking "and" at the end of paragraph (3);

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

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

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

(2) in subsection (b), by striking "this Act" and inserting "the Energy Policy Act of 2005".

(c) DEFINITION OF BIOMASS.—Section 203(2) of the Biomass Energy and Alcohol Fuels Act of 1980 (42 U.S.C. 8802(2)) is amended to read as follows:

"(2) The term 'biomass' means any organic matter that is available on a renewable or recurring basis, including agricultural crops and trees, wood and wood wastes and residues, plants (including aquatic plants), grasses, residues, fibers, and animal wastes, municipal wastes, and other waste materials.".

(d) REBATE PROGRAM.—

(1) ESTABLISHMENT.—The Secretary of Energy shall establish a program providing rebates for consumers for expenditures made for the installation of a renewable energy system in connection with a dwelling unit or small business.

(2) AMOUNT OF REBATE.—Rebates provided under the program established under paragraph (1) shall be in an amount not to exceed the lesser of—

(A) 25 percent of the expenditures described in paragraph (1) made by the consumer; or

(B) $3,000.

(3) DEFINITION.—For purposes of this subsection, the term "renewable energy system" has the meaning given that term in section 415(c)(6)(A) of the Energy Conservation and Production Act (42 U.S.C. 6865(c)(6)(A)), as added by subsection (a)(3) of this section.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy for carrying out this subsection, to remain available until expended—

(A) $150,000,000 for fiscal year 2006;

(B) $150,000,000 for fiscal year 2007;

(C) $200,000,000 for fiscal year 2008;

(D) $250,000,000 for fiscal year 2009; and

(E) $250,000,000 for fiscal year 2010.

(e) RENEWABLE FUEL INVENTORY.—Not later than 180 days after the date of enactment of this Act, the Secretary of Energy shall transmit to Congress a report containing—

(1) an inventory of renewable fuels available for consumers; and

(2) a projection of future inventories of renewable fuels based on the incentives provided in this section

Subtitle C—Hydroelectric

PART I—ALTERNATIVE CONDITIONS

SEC. 231. 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 expedited agency trial-type hearing of any disputed issues of material fact, with respect to such conditions. Such hearing may be conducted in accordance with procedures established by agency regulation in consultation with the Federal Energy Regulatory Commission.".

(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 expedited agency trial-type hearing of any disputed issues of material fact, with respect to such fishways. Such hearing may be conducted in accordance with procedures established by agency regulation in consultation with the Federal Energy Regulatory Commission.".

(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 Reso-

lution Service advisory unless the Secretary finds that the recommendation will not provide for the adequate protection and utilization of 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.

"(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 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 be less protective than the fishway initially prescribed by the Secretary. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.".

PART II—ADDITIONAL HYDROPOWER

SEC. 241. 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 re-

construction) 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 (16 U.S.C. 823a(a)(2)).

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 1 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 2005 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 2005 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 2006 through 2015.

SEC. 242. 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 1 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 OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section not more than $10,000,000 for each of the fiscal years 2006 through 2015.

SEC. 243. SMALL HYDROELECTRIC POWER PROJECTS.

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

SEC. 244. INCREASED HYDROELECTRIC GENERATION AT EXISTING FEDERAL FACILITIES.

(a) IN GENERAL.—The Secretary of the Interior and the Secretary of Energy, in consultation with the Secretary of the Army, shall jointly conduct a study of the potential for increasing electric power production capability at federally owned or operated water regulation, storage, and conveyance facilities.

(b) CONTENT.—The study under this section shall include identification and description in detail of each facility that is capable, with or without modification, of producing additional hydroelectric power, including estimation of the existing potential for the facility to generate hydroelectric power.

(c) REPORT.—The Secretaries shall submit to the Committees on Energy and Commerce, Resources, and Transportation and Infrastructure of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on the findings, conclusions, and recommendations of the study under this section

by not later than 18 months after the date of the enactment of this Act. The report shall include each of the following:

(1) The identifications, descriptions, and estimations referred to in subsection (b).

(2) A description of activities currently conducted or considered, or that could be considered, to produce additional hydroelectric power from each identified facility.

(3) A summary of prior actions taken by the Secretaries to produce additional hydroelectric power from each identified facility.

(4) The costs to install, upgrade, or modify equipment or take other actions to produce additional hydroelectric power from each identified facility and the level of Federal power customer involvement in the determination of such costs.

(5) The benefits that would be achieved by such installation, upgrade, modification, or other action, including quantified estimates of any additional energy or capacity from each facility identified under subsection (b).

(6) A description of actions that are planned, underway, or might reasonably be considered to increase hydroelectric power production by replacing turbine runners, by performing generator upgrades or rewinds, or construction of pumped storage facilities.

(7) The impact of increased hydroelectric power production on irrigation, fish, wildlife, Indian tribes, river health, water quality, navigation, recreation, fishing, and flood control.

(8) Any additional recommendations to increase hydroelectric power production from, and reduce costs and improve efficiency at, federally owned or operated water regulation, storage, and conveyance facilities.

SEC. 245. SHIFT OF PROJECT LOADS TO OFF-PEAK PERIODS.

(a) IN GENERAL.—The Secretary of the Interior shall—

(1) review electric power consumption by Bureau of Reclamation facilities for water pumping purposes; and

(2) make such adjustments in such pumping as possible to minimize the amount of electric power consumed for such pumping during periods of peak electric power consumption, including by performing as much of such pumping as possible during off-peak hours at night.

(b) CONSENT OF AFFECTED IRRIGATION CUSTOMERS REQUIRED.—The Secretary may not under this section make any adjustment in pumping at a facility without the consent of each person that has contracted with the United States for delivery of water from the facility for use for irrigation and that would be affected by such adjustment.

(c) EXISTING OBLIGATIONS NOT AFFECTED.—This section shall not be construed to affect any existing obligation of the Secretary to provide electric power, water, or other benefits from Bureau of Reclamation facilities, including recreational releases.

TITLE III—OIL AND GAS

Subtitle A—Petroleum Reserve and Home Heating Oil

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

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

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

"AUTHORIZATION OF APPROPRIATIONS

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

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

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

(b) AMENDMENT TO TITLE II OF THE ENERGY POLICY AND CONSERVATION ACT.—Title II of the Energy 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 amending part D of title I to read as follows:

"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."

(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. 6250(b)(1)) is amended by striking all after "increases" through "mid-October through March" and inserting "by more than 60 percent over its 5-year rolling average for the months of mid-October through March (considered as a heating season average)".

(e) FILL STRATEGIC PETROLEUM RESERVE TO CAPACITY.—The Secretary of Energy shall, as expeditiously as practicable, acquire petroleum in amounts sufficient to fill the Strategic Petroleum Reserve to the 1,000,000,000 barrel capacity authorized under section 154(a) of the Energy Policy and Conservation Act (42 U.S.C. 6234(a)), consistent with the provisions of sections 159 and 160 of such Act (42 U.S.C. 6239, 6240).

SEC. 302. NATIONAL OILHEAT RESEARCH ALLIANCE.

Section 713 of the Energy Act of 2000 (42 U.S.C. 6201 note) is amended by striking "4" and inserting "9".

SEC. 303. SITE SELECTION.

Not later than 1 year after the date of enactment of this Act, the Secretary of Energy shall complete a proceeding to select, from sites that the Secretary has previously studied, sites necessary to enable acquisition by the Secretary of the full authorized volume of the Strategic Petroleum Reserve.

SEC. 304. SUSPENSION OF STRATEGIC PETROLEUM RESERVE DELIVERIES.

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

Subtitle B—Production Incentives

SEC. 320. LIQUEFACTION OR GASIFICATION NATURAL GAS TERMINALS.

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

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

"(11) 'Liquefaction or gasification natural gas terminal' includes all facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by waterborne tanker, but does not include—

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

"(B) any pipeline or storage facility subject to the jurisdiction of the Commission under section 7.".

(c) AUTHORIZATION FOR CONSTRUCTION, EXPANSION, OR OPERATION OF LIQUEFACTION OR GASIFICATION NATURAL GAS TERMINALS.—(1) The title for section 3 of the Natural Gas Act (15 U.S.C. 717b) is amended by inserting "; LIQUEFACTION OR GASIFICATION NATURAL GAS TERMINALS" after "EXPORTATION OR IMPORTATION OF NATURAL GAS".

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

"(d) AUTHORIZATION FOR CONSTRUCTION, EXPANSION, OR OPERATION OF LIQUEFACTION OR GASIFICATION NATURAL GAS TERMINALS.—

"(1) COMMISSION AUTHORIZATION REQUIRED.—No person shall construct, expand, or operate a liquefaction or gasification natural gas terminal without an order from the Commission authorizing such person to do so.

"(2) AUTHORIZATION PROCEDURES.—

"(A) NOTICE AND HEARING.—Upon the filing of any application to construct, expand, or operate a liquefaction or gasification natural gas terminal, the Commission shall—

"(i) set the matter for hearing;

"(ii) give reasonable notice of the hearing to all interested persons, including the State commission of the State in which the liquefaction or gasification natural gas terminal is located;

"(iii) decide the matter in accordance with this subsection; and

"(iv) issue or deny the appropriate order accordingly.

"(B) DESIGNATION AS LEAD AGENCY.—

"(i) IN GENERAL.—The Commission shall act as the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4312 et seq.) for a liquefaction or gasification natural gas terminal.

"(ii) OTHER AGENCIES.—Each Federal agency considering an aspect of the construction, expansion, or operation of a liquefaction or gasification natural gas terminal shall cooperate with the Commission and comply with the deadlines established by the Commission.

"(C) SCHEDULE.—

"(i) COMMISSION AUTHORITY TO SET SCHEDULE.—The Commission shall establish a schedule for all Federal and State administrative proceedings required under authority of Federal law to construct, expand, or operate a liquefaction or gasification natural gas terminal. In establishing the schedule, the Commission shall—

"(I) ensure expeditious completion of all such proceedings; and

"(II) accommodate the applicable schedules established by Federal law for such proceedings.

"(ii) FAILURE TO MEET SCHEDULE.—If a Federal or State administrative agency does not complete a proceeding for an approval that is required before a person may construct, expand, or operate the liquefaction or gasification natural gas terminal, in accordance with the schedule established by the Commission under this subparagraph, and if—

"(I) a determination has been made by the Court pursuant to section 19(d) that such delay is unreasonable; and

"(II) the agency has failed to act on any remand by the Court within the deadline set by the Court,

that approval may be conclusively presumed by the Commission.

"(D) EXCLUSIVE RECORD.—The Commission shall, with the cooperation of Federal and State administrative agencies and officials, maintain a complete consolidated record of all decisions made or actions taken by the Commission or by a Federal administrative agency or officer (or State administrative agency or officer acting under delegated Federal authority) with respect to the construction, expansion, or operation of a liquefaction or gasification natural gas terminal. Such record shall be the exclusive record for any Federal administrative proceeding that is an appeal or review of any such decision made or action taken.

"(E) STATE AND LOCAL SAFETY CONSIDERATIONS.—

"(i) IN GENERAL.—The Commission shall consult with the State commission of the State in which the liquefaction or gasification natural gas terminal is located regarding State and local safety considerations prior to issuing an order pursuant to this subsection and consistent with the schedule established under subparagraph (C).

"(ii) STATE SAFETY INSPECTIONS.—The State commission of the State in which a liquefaction or gasification natural gas terminal is located

may, after the terminal is operational, conduct safety inspections with respect to the liquefaction or gasification natural gas terminal if—

"(I) the State commission provides written notice to the Commission of its intention to do so; and

"(II) the inspections will be carried out in conformance with Federal regulations and guidelines.

Enforcement of any safety violation discovered by a State commission pursuant to this clause shall be carried out by Federal officials. The Commission shall take appropriate action in response to a report of a violation not later that 90 days after receiving such report.

"(iii) STATE AND LOCAL SAFETY CONSIDERATIONS.—For the purposes of this subparagraph, State and local safety considerations include—

"(I) the kind and use of the facility;

"(II) the existing and projected population and demographic characteristics of the location;

"(III) the existing and proposed land use near the location;

"(IV) the natural and physical aspects of the location;

"(V) the medical, law enforcement, and fire prevention capabilities near the location that can respond at the facility; and

"(VI) the feasibility of remote siting.

"(3) ISSUANCE OF COMMISSION ORDER.—

"(A) IN GENERAL.—The Commission shall issue an order authorizing, in whole or in part, the construction, expansion, or operation covered by the application to any qualified applicant—

"(i) unless the Commission finds such actions or operations will not be consistent with the public interest; and

"(ii) if the Commission has found that the applicant is—

"(I) able and willing to carry out the actions and operations proposed; and

"(II) willing to conform to the provisions of this Act and any requirements, rules, and regulations of the Commission set forth under this Act.

"(B) TERMS AND CONDITIONS.—The Commission may by its order grant an application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate.

"(C) LIMITATIONS ON TERMS AND CONDITIONS TO COMMISSION ORDER.—

"(i) IN GENERAL.—Any Commission order issued pursuant to this subsection before January 1, 2011, shall not be conditioned on—

"(I) a requirement that the liquefaction or gasification natural gas terminal offer service to persons other than the person, or any affiliate thereof, securing the order; or

"(II) any regulation of the liquefaction or gasification natural gas terminal's rates, charges, terms, or conditions of service.

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

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

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

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

"(III) undue discrimination against the regulated terminal users.

"(iv) EXPIRATION.—This subparagraph shall cease to have effect on January 1, 2021.

"(4) DEFINITION.—For the purposes of this subsection, the term 'Federal authorization' means any authorization required under Federal law in order to construct, expand, or operate a liquefaction or gasification natural gas terminal, including such permits, special use authorizations, certifications, opinions, or other approvals as may be required, whether issued by a Federal or State agency.".

(d) JUDICIAL REVIEW.—Section 19 of the Natural Gas Act (15 U.S.C. 717r) is amended by adding at the end the following:

"(d) JUDICIAL REVIEW.—

"(1) IN GENERAL.—The United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction over any civil action—

"(A) for review of any order, action, or failure to act of any Federal or State administrative agency to issue, condition, or deny any permit, license, concurrence, or approval required under Federal law for the construction, expansion, or operation of a liquefaction or gasification natural gas terminal;

"(B) alleging unreasonable delay, in meeting a schedule established under section 3(d)(2)(C) or otherwise, by any Federal or State administrative agency in entering an order or taking other action described in subparagraph (A); or

"(C) challenging any decision made or action taken by the Commission under section 3(d).

"(2) COMMISSION ACTION.—For any action described in this subsection, the Commission shall file with the Court the consolidated record maintained under section 3(d)(2)(D).

"(3) COURT ACTION.—If the Court finds under paragraph (1)(A) or (B) that an order, action, failure to act, or delay is inconsistent with applicable Federal law, and would prevent the construction, expansion, or operation of a liquefaction or gasification natural gas terminal, the order or action shall be deemed to have been issued or taken, subject to any conditions established by the Federal or State administrative agency upon remand from the Court, such conditions to be consistent with the order of the Court. If the Court remands the order or action to the Federal or State agency, the Court shall set a reasonable deadline for the agency to act on remand.

"(4) UNREASONABLE DELAY.—For the purposes of paragraph (1)(B), the failure of an agency to issue a permit, license, concurrence, or approval within the later of—

"(A) 1 year after the date of filing of an application for the permit, license, concurrence, or approval; or

"(B) 60 days after the date of issuance of the order under section 3(d), shall be considered unreasonable delay unless the Court, for good cause shown, determines otherwise.

"(5) EXPEDITED REVIEW.—The Court shall set any action brought under this subsection for expedited consideration.".

SEC. 327. 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) UNDERGROUND INJECTION.—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.".

SEC. 330. APPEALS RELATING TO PIPELINE CONSTRUCTION OR OFFSHORE MINERAL DEVELOPMENT PROJECTS.

(a) AGENCY OF RECORD, PIPELINE CONSTRUCTION PROJECTS.—Any Federal administrative agency proceeding that is an appeal or review under section 319 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1465), as amended by this Act, related to 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 the Commission's proceeding under sections 3 and 7 of the Natural Gas Act (15 U.S.C. 717b, 717f).

(b) SENSE OF CONGRESS.—It is the sense of Congress that all Federal and State agencies with jurisdiction over interstate natural gas pipeline construction activities should coordinate their proceedings within the timeframes established by the Federal Energy Regulatory Commission when the Commission is acting under sections 3 and 7 of the Natural Gas Act (15 U.S.C. 717b, 717f) to determine whether a certificate of public convenience and necessity should be issued for a proposed interstate natural gas pipeline.

(c) AGENCY OF RECORD, OFFSHORE MINERAL DEVELOPMENT PROJECTS.—Any Federal administrative agency proceeding that is an appeal or review under section 319 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1465), as amended by this Act, related to Federal authority for the permitting, approval, or other authorization of energy projects, including projects to explore, develop, or produce mineral resources in or underlying the outer Continental Shelf shall use as its exclusive record

for all purposes (except for the filing of pleadings) the record compiled by the relevant Federal permitting agency.

SEC. 333. NATURAL GAS MARKET TRANSPARENCY.

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

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

(2) by inserting after section 23 the following:

"SEC. 24. NATURAL GAS MARKET TRANSPARENCY.

"(a) AUTHORIZATION.—(1) Not later than 180 days after the date of enactment of the Energy Policy Act of 2005, the Federal Energy Regulatory Commission shall issue rules directing all entities subject to the Commission's jurisdiction as provided under this Act to timely report information about the availability and prices of natural gas sold at wholesale in interstate commerce to the Commission and price publishers.

"(2) The Commission shall evaluate the data for adequate price transparency and accuracy.

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

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

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

"(B) regulate price publishers or impose any requirements on the publication of information.

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

"(c) LIMITATION ON COMMISSION AUTHORITY.—(1) The Commission shall not condition access to interstate pipeline transportation upon the reporting requirements authorized under this section.

"(2) Natural gas sales by a producer that are attributable to volumes of natural gas produced by such producer shall not be subject to the rules issued pursuant to this section.

"(3) The Commission shall not require natural gas producers, processors, or users who have a de minimis market presence to participate in the reporting requirements provided in this section.".

Subtitle C—Access to Federal Land

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

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

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

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

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

(1) establish administrative procedures and lines of authority that ensure timely processing of oil and gas lease applications, surface use plans of operation, and applications for permits to drill, including steps for processing surface use plans and applications for permits to drill consistent with the timelines established by the amendment made by section 348;

(2) eliminate duplication of effort by providing for coordination of planning and environmental compliance efforts; and

(3) ensure that lease stipulations are—

(A) applied consistently;

(B) coordinated between agencies; and

(C) only as restrictive as necessary to protect the resource for which the stipulations are applied.

(c) DATA RETRIEVAL SYSTEM.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture shall establish a joint data retrieval system that is capable of—

(A) tracking applications and formal requests made in accordance with procedures of the Federal onshore oil and gas leasing program; and

(B) providing information regarding the status of the applications and requests within the Department of the Interior and the Department of Agriculture.

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

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

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

SEC. 346. COMPLIANCE WITH EXECUTIVE ORDER 13211; ACTIONS CONCERNING REGULATIONS THAT SIGNIFICANTLY AFFECT ENERGY SUPPLY, DISTRIBUTION, OR USE.

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

(b) GUIDANCE.—Not later than 180 days after the date of enactment of this Act, the Secretary of Energy shall publish guidance for purposes of this section describing what constitutes a significant adverse effect on the supply of domestic energy resources under Executive Order No. 13211 (42 U.S.C. 13201 note).

(c) MEMORANDUM OF UNDERSTANDING.—The Secretary of the Interior and the Secretary of Agriculture shall include in the memorandum of understanding under section 344 provisions for implementing subsection (a) of this section.

SEC. 350. ENERGY FACILITY RIGHTS-OF-WAY AND CORRIDORS ON FEDERAL LAND.

(a) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Agriculture and the Secretary of the Interior, in consultation with the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, and the Federal Energy Regulatory Commission, shall submit to Congress a joint report—

(A) that addresses—

(i) the location of existing rights-of-way and designated and de facto corridors for oil and gas pipelines and electric transmission and distribution facilities on Federal land; and

(ii) opportunities for additional oil and gas pipeline and electric transmission capacity within those rights-of-way and corridors; and

(B) that includes a plan for making available, on request, to the appropriate Federal, State, and local agencies, tribal governments, and other persons involved in the siting of oil and gas pipelines and electricity transmission facilities Geographic Information System-based information regarding the location of the existing rights-of-way and corridors and any planned rights-of-way and corridors.

(2) CONSULTATIONS AND CONSIDERATIONS.—In preparing the report, the Secretary of the Interior and the Secretary of Agriculture shall consult with—

(A) other agencies of Federal, State, tribal, or local units of government, as appropriate;

(B) persons involved in the siting of oil and gas pipelines and electric transmission facilities; and

(C) other interested members of the public.

(3) LIMITATION.—The Secretary of the Interior and the Secretary of Agriculture shall limit the distribution of the report and Geographic Information System-based information referred to in paragraph (1) as necessary for national and infrastructure security reasons, if either Secretary determines that the information may be withheld from public disclosure under a national security or other exception under section 552(b) of title 5, United States Code.

(b) CORRIDOR DESIGNATIONS.—

(1) 11 CONTIGUOUS WESTERN STATES.—Not later than 2 years after the date of enactment of this Act, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, and the Secretary of the Interior, in consultation with the Federal Energy Regulatory Commission and the affected utility industries, shall jointly—

(A) designate, under title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.) and other applicable Federal laws, corridors for oil and gas pipelines and electricity transmission and facilities on Federal land in the eleven contiguous Western States (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702));

(B) perform any environmental reviews that may be required to complete the designations of corridors for the facilities on Federal land in the eleven contiguous Western States; and

(C) incorporate the designated corridors into—

(i) the relevant departmental and agency land use and resource management plans; or

(ii) equivalent plans.

(2) OTHER STATES.—Not later than 4 years after the date of enactment of this Act, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, and the Secretary of the Interior, in consultation with the Federal Energy Regulatory Commission and the affected utility industries, shall jointly—

(A) identify corridors for oil and gas pipelines and electricity transmission and distribution facilities on Federal land in the States other than those described in paragraph (1); and

(B) schedule prompt action to identify, designate, and incorporate the corridors into the land use plan.

(3) ONGOING RESPONSIBILITIES.—The Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, and the Secretary of the Interior, with respect to lands under their respective jurisdictions, in consultation with the Federal Energy Regulatory Commission and the affected utility industries, shall establish procedures that—

(A) ensure that additional corridors for oil and gas pipelines and electricity transmission and distribution facilities on Federal land are promptly identified and designated; and

(B) expedite applications to construct or modify oil and gas pipelines and electricity transmission and distribution facilities within the corridors, taking into account prior analyses and environmental reviews undertaken during the designation of corridors.

(c) CONSIDERATIONS.—In carrying out this section, the Secretaries shall take into account the need for upgraded and new electricity transmission and distribution facilities to—

(1) improve reliability;

(2) relieve congestion; and

(3) enhance the capability of the national grid to deliver electricity.

(d) DEFINITION OF CORRIDOR.—

(1) IN GENERAL.—In this section and title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.), the term "corridor" means—

(A) a linear strip of land—

(i) with a width determined with consideration given to technological, environmental, and topographical factors; and

(ii) that contains, or may in the future contain, 1 or more utility, communication, or transportation facilities;

(B) a land use designation that is established—

(i) by law;

(ii) by Secretarial Order;

(iii) through the land use planning process; or

(iv) by other management decision; and

(C) a designation made for the purpose of establishing the preferred location of compatible linear facilities and land uses.

(2) SPECIFICATIONS OF CORRIDOR.—On designation of a corridor under this section, the centerline, width, and compatible uses of a corridor shall be specified.

SEC. 355. ENCOURAGING GREAT LAKES OIL AND GAS DRILLING BAN.

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

SEC. 358. FEDERAL COALBED METHANE REGULATION.

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

Subtitle D—Refining Revitalization

SEC. 371. SHORT TITLE.

This subtitle may be cited as the "United States Refinery Revitalization Act of 2005".

SEC. 372. FINDINGS.

Congress finds the following:

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

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

(3) The petroleum refining industry is operating at 95 percent of capacity. The United States is currently importing 5 percent of its refined petroleum products and because of the stringent United States gasoline and diesel fuel specifications, few foreign refiners can produce the clean fuels required in the United States and the number of foreign suppliers that can produce United States quality gasoline is decreasing.

(4) Refiners are subject to significant environmental and other regulations and face several new Clean Air Act requirements over the next decade. New Clean Air Act requirements will benefit the environment but will also require substantial capital investment and additional government permits.

(5) No new refinery has been built in the United States since 1976 and many smaller domestic refineries have become idle since the removal of the Domestic Crude Oil Allocation Program and because of regulatory uncertainty and generally low returns on capital employed. Today, the United States has 149 refineries, down from 324 in 1981. Restoration of recently idled refineries alone would amount to 483,570 barrels a day in additional capacity, or approximately 3.3 percent of the total operating capacity.

(6) Refiners have met growing demand by increasing the use of existing equipment and increasing the efficiency and capacity of existing plants. But refining capacity has begun to lag behind peak summer demand.

(7) Heavy industry and manufacturing jobs have closed or relocated due to barriers to investment, burdensome regulation, and high costs of operation, among other reasons.

(8) Because the production and disruption in supply of refined petroleum products has a significant impact on interstate commerce, it serves the national interest to increase the domestic refining operating capacity.

(10) More regulatory certainty for refinery owners is needed to stimulate investment in increased refinery capacity and required procedures for Federal, State, and local regulatory approvals need to be streamlined to ensure that increased refinery capacity can be developed and operated in a safe, timely, and cost-effective manner.

(11) The proposed Yuma Arizona Refinery, a grassroots refinery facility, which only recently received its Federal air quality permit after 5 years under the current regulatory process, and is just now beginning its environmental impact statement and local permitting process, serves as an example of the obstacles a refiner would have to overcome to reopen an idle refinery.

SEC. 373. PURPOSE.

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

SEC. 374. DESIGNATION OF REFINERY REVITALIZATION ZONES.

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

(1) that—

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

(B) contains an idle refinery; and

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

SEC. 375. MEMORANDUM OF UNDERSTANDING.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall enter into a memorandum of understanding with the Administrator for the purposes of this subtitle. The Secretary and the Administrator shall each designate a senior official responsible for, and dedicate sufficient other staff and resources to ensure, full implementation of the purposes of this subtitle and any regulations enacted pursuant to this subtitle.

(b) ADDITIONAL SIGNATORIES.—The Governor of any State, and the appropriate representative of any Indian Tribe, with jurisdiction over a Refinery Revitalization Zone, as designated by the Secretary pursuant to section 374, may be signatories to the memorandum of understanding under this section.

SEC. 376. STATE ENVIRONMENTAL PERMITTING ASSISTANCE.

Not later than 30 days after a Revitalization Program Qualifying State becomes a signatory to the memorandum of understanding under section 375(b)—

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

(2) the Administrator shall designate, to provide legal and technical assistance for that Revitalization Program Qualifying State, one or more employees of the Environmental Protection Agency with expertise on regulatory issues, relating to the siting and operation of refineries, with respect to each of—

(A) the Clean Air Act (42 U.S.C. 7401 et seq.);

(B) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(C) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(D) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(E) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

(F) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

(G) the National Historic Preservation Act (16 U.S.C. 470 et seq.); and

(H) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

SEC. 377. COORDINATION AND EXPEDITIOUS REVIEW OF PERMITTING PROCESS.

(a) DEPARTMENT OF ENERGY AS LEAD AGENCY.—Upon written request of a prospective applicant for Federal authorization for a refinery facility in a Refinery Revitalization Zone, the Department shall act as the lead Federal agency for the purposes of coordinating all applicable Federal authorizations and environmental reviews of the refining facility. To the maximum extent practicable under applicable Federal law, the Secretary shall coordinate this Federal authorization and review process with any Indian Tribes and State and local agencies responsible for conducting any separate permitting and environmental reviews of the refining facility.

(b) SCHEDULE.—

(1) IN GENERAL.—The Secretary, in coordination with the agencies with authority over Federal authorizations and, as appropriate, with Indian Tribes and State and local agencies that are willing to coordinate their separate permitting and environmental reviews with the Federal authorizations and environmental reviews, shall establish a schedule with prompt and binding intermediate and ultimate deadlines for the review of, and Federal authorization decisions relating to, refinery facility siting and operation.

(2) PREAPPLICATION PROCESS.—Prior to establishing the schedule, the Secretary shall provide an expeditious preapplication mechanism for applicants to confer with the agencies involved and to have each agency communicate to the prospective applicant within 60 days concerning—

(A) the likelihood of approval for a potential refinery facility; and

(B) key issues of concern to the agencies and local community.

(3) SCHEDULE.—The Secretary shall consider the preapplication findings under paragraph (2) in setting the schedule and shall ensure that once an application has been submitted with such information as the Secretary considers necessary, all permit decisions and related environmental reviews under all applicable Federal laws shall be completed within 6 months or, where circumstances require otherwise, as soon as thereafter practicable.

(c) CONSOLIDATED ENVIRONMENTAL REVIEW.—

(1) LEAD AGENCY.—In carrying out its role as the lead Federal agency for environmental review, the Department shall coordinate all applicable Federal actions for complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and shall be responsible for preparing any environmental impact statement required by section 102(2)(C) of that Act (42 U.S.C. 4332(2)(C)) or such other form of environmental review as is required.

(2) CONSOLIDATION OF STATEMENTS.—In carrying out paragraph (1), if the Department determines an environmental impact statement is required, the Department shall prepare a single environmental impact statement, which shall consolidate the environmental reviews of all Federal agencies considering any aspect of the project covered by the environmental impact statement.

(d) OTHER AGENCIES.—Each Federal agency considering an aspect of the siting or operation of a refinery facility in a Refinery Revitalization Zone shall cooperate with the Department and comply with the deadlines established by the Department in the preparation of any environmental impact statement or such other form of review as is required.

(e) EXCLUSIVE RECORD.—The Department shall, with the cooperation of Federal and State administrative agencies and officials, maintain a complete consolidated record of all decisions made or actions taken by the Department or by a Federal administrative agency or officer (or State administrative agency or officer acting under delegated Federal authority) with respect to the siting or operation of a refinery facility in a Refinery Revitalization Zone. Such record shall be the exclusive record for any Federal administrative proceeding that is an appeal or review of any such decision made or action taken.

(f) APPEALS.—In the event any agency has denied a Federal authorization required for a refinery facility in a Refinery Revitalization Zone, or has failed to act by a deadline established by the Secretary pursuant to subsection (b) for deciding whether to issue the Federal authorization, the applicant or any State in which the refinery facility would be located may file an appeal with the Secretary. Based on the record maintained under subsection (e), and in consultation with the affected agency, the Secretary may then either issue the necessary Federal authorization with appropriate conditions, or deny the appeal. The Secretary shall issue a decision within 60 days after the filing of the appeal. In making a decision under this subsection, the Secretary shall comply with applicable requirements of Federal law, including each of the laws referred to in section 376(2)(A) through (H). Any judicial appeal of the Secretary's decision shall be to the United States Court of Appeals for the District of Columbia.

(g) CONFORMING REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the Secretary shall issue any regulations necessary to implement this subtitle.

SEC. 378. COMPLIANCE WITH ALL ENVIRONMENTAL REGULATIONS REQUIRED.

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

SEC. 379. DEFINITIONS.

For the purposes of this subtitle, the term—

(1) "Administrator" means the Administrator of the Environmental Protection Agency;

(2) "Department" means the Department of Energy;

(3) "Federal authorization" means any authorization required under Federal law (including the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Solid Waste Disposal Act, the Toxic Substances Control Act, the National Historic Preservation Act, and the National Environmental Policy Act of 1969) in order to site, construct, upgrade, or operate a refinery facility within a Refinery Revitalization Zone, including such permits, special use authorizations, certifications, opinions, or other approvals as may be required, whether issued by a Federal, State, or local agency;

(4) "idle refinery" means any real property site that has been used at any time for a refinery facility since December 31, 1979, that has not been in operation after April 1, 2005;

(5) "refinery facility" means any facility designed and operated to receive, unload, store, process and refine raw crude oil by any chemical or physical process, including distillation, fluid catalytic cracking, hydrocracking, coking, alkylation, etherification, polymerization, catalytic reforming, isomerization, hydrotreating, blending, and any combination thereof;

(6) "Revitalization Program Qualifying State" means a State or Indian Tribe that—

(A) has entered into the memorandum of understanding pursuant to section 375(b); and

(B) has established a refining infrastructure coordination office that the Secretary finds will facilitate Federal-State cooperation for the purposes of this subtitle; and

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

TITLE IV—COAL

Subtitle A—Clean Coal Power Initiative

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

(a) CLEAN COAL POWER INITIATIVE.—There are authorized to be appropriated to the Secretary of Energy (referred to in this title as the "Secretary") to carry out the activities authorized by this subtitle $200,000,000 for each of fiscal years 2006 through 2014, to remain available until expended.

(b) REPORT.—The Secretary shall submit to Congress the report required by this subsection not later than March 31, 2007. 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.

SEC. 402. PROJECT CRITERIA.

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

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

(1) GASIFICATION PROJECTS.—

(A) IN GENERAL.—In allocating the funds made available under section 401(a), the Secretary shall ensure that at least 60 percent of the funds are used only for projects on coal-based gasification technologies, including gasification combined cycle, gasification fuel cells, gasification coproduction, and hybrid gasification/combustion.

(B) TECHNICAL MILESTONES.—The Secretary shall periodically set technical milestones specifying the emission and thermal efficiency levels that coal gasification projects under this subtitle shall be designed, and reasonably expected, to achieve. The technical milestones shall become more restrictive during the life of the program. The Secretary shall set the periodic milestones so as to achieve by 2020 coal gasification projects able—

(i) to remove 99 percent of sulfur dioxide;

(ii) to emit not more than .05 lbs of NO_x 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.—The Secretary shall periodically set technical milestones and ensure that up to 40 percent of the funds appropriated pursuant to section 401(a) are used for projects not described in paragraph (1). The milestones shall specify the emission and thermal efficiency levels that projects funded under this paragraph shall be designed to and reasonably expected to achieve. The technical milestones shall become more restrictive during the life of the program. The Secretary shall set the periodic milestones so as to achieve by 2010 projects able—

(A) to remove 97 percent of sulfur dioxide;

(B) to emit no more than .08 lbs of NO_x per million Btu;

(C) to achieve substantial reductions in mercury emissions; and

(D) 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) 40 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 units in existence on the date of enactment of this Act, in lieu of the thermal efficiency requirements set forth in paragraph (1)(B)(iv) and (2)(D), the milestones 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 carrying out this subtitle, the Secretary may fund projects that include, as part of the project, the separation and capture of carbon dioxide. The thermal efficiency goals of paragraphs (1), (2), and (4) shall not apply for projects that separate and capture at least 50 percent of the facility's potential emissions of carbon dioxide.

(c) FINANCIAL CRITERIA.—The Secretary shall not provide a funding award under this subtitle unless the recipient documents 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 to enable 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, using various types of coal, that use coal as the primary feedstock as of the date of enactment of this Act.

(e) FEDERAL SHARE.—The Federal share of the cost of a coal or related technology project funded by the Secretary under this subtitle 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 (42 U.S.C. 7411), achievable for purposes of section 169 of that Act (42 U.S.C. 7479), or achievable in practice for purposes of section 171 of that Act (42 U.S.C. 7501) solely by reason of the use of such technology, or the achievement of such emission reduction, by 1 or more facilities receiving assistance under this subtitle.

SEC. 403. REPORT.

Not later than 1 year after the date of enactment of this Act, and once every 2 years thereafter through 2014, the Secretary, in consultation with other appropriate Federal agencies, shall submit to Congress a report describing—

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

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

SEC. 404. CLEAN COAL CENTERS OF EXCELLENCE.

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

Subtitle B—Clean Power Projects

SEC. 411. COAL TECHNOLOGY LOAN.

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

SEC. 412. 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. 414. PETROLEUM COKE GASIFICATION.

The Secretary is authorized to provide loan guarantees for at least 5 petroleum coke gasification projects.

SEC. 416. ELECTRON SCRUBBING DEMONSTRATION.

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

Subtitle D—Coal and Related Programs

SEC. 441. CLEAN AIR COAL PROGRAM.

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

"TITLE XXXI—CLEAN AIR COAL PROGRAM

"SEC. 3101. FINDINGS; PURPOSES; DEFINITIONS.

"(a) FINDINGS.—The Congress finds that—

"(1) new environmental regulations present additional challenges for coal-fired electrical generation in the private marketplace; and

"(2) the Department of Energy, in cooperation with industry, has already fully developed and commercialized several new clean-coal technologies that will allow the clean use of coal.

"(b) PURPOSES.—The purposes of this title are to—

"(1) promote national energy policy and energy security, diversity, and economic competitiveness benefits that result from the increased use of coal;

"(2) mitigate financial risks, reduce the cost, and increase the marketplace acceptance of the new clean coal technologies; and

"(3) advance the deployment of pollution control equipment to meet the current and future obligations of coal-fired generation units regulated under the Clean Air Act (42 U.S.C. 7402 and following).

"SEC. 3102. AUTHORIZATION OF PROGRAM.

"The Secretary shall carry out a program to facilitate production and generation of coal-based power and the installation of pollution control equipment.

"SEC. 3103. AUTHORIZATION OF APPROPRIATIONS.

"(a) POLLUTION CONTROL PROJECTS.—There are authorized to be appropriated to the Secretary $300,000,000 for fiscal year 2006, $100,000,000 for fiscal year 2007, $40,000,000 for fiscal year 2008, $30,000,000 for fiscal year 2009, and $30,000,000 for fiscal year 2010, to remain available until expended, for carrying out the program for pollution control projects, which may include—

"(1) pollution control equipment and processes for the control of mercury air emissions;

"(2) pollution control equipment and processes for the control of nitrogen dioxide air emissions or sulfur dioxide emissions;

"(3) pollution control equipment and processes for the mitigation or collection of more than one pollutant;

"(4) advanced combustion technology for the control of at least two pollutants, including mercury, particulate matter, nitrogen oxides, and sulfur dioxide, which may also be designed to improve the energy efficiency of the unit; and

"(5) advanced pollution control equipment and processes designed to allow use of the waste byproducts or other byproducts of the equipment or an electrical generation unit designed to allow the use of byproducts.

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

"(b) GENERATION PROJECTS.—There are authorized to be appropriated to the Secretary $250,000,000 for fiscal year 2007, $350,000,000 for fiscal year 2008, $400,000,000 for fiscal year 2009, $400,000,000 for fiscal year 2010, $400,000,000 for fiscal year 2011, $400,000,000 for fiscal year 2012, and $300,000,000 for fiscal year 2013, to remain available until expended, for generation projects and air pollution control projects. Such projects may include—

"(1) coal-based electrical generation equipment and processes, including gasification combined cycle or other coal-based generation equipment and processes;

"(2) associated environmental control equipment, that will be cost-effective and that is designed to meet anticipated regulatory requirements;

"(3) coal-based electrical generation equipment and processes, including gasification fuel cells, gasification coproduction, and hybrid gasification/combustion projects; and

"(4) advanced coal-based electrical generation equipment and processes, including oxidation combustion techniques, ultra-supercritical boilers, and chemical looping, which the Secretary determines will be cost-effective and could substantially contribute to meeting anticipated environmental or energy needs.

"(c) LIMITATION.—Funds placed at risk during any fiscal year for Federal loans or loan guarantees pursuant to this title may not exceed 30 percent of the total funds obligated under this title.

"SEC. 3104. AIR POLLUTION CONTROL PROJECT CRITERIA.

"The Secretary shall pursuant to authorizations contained in section 3103 provide funding for air pollution control projects designed to facilitate compliance with Federal and State environmental regulations, including any regulation that may be established with respect to mercury.

"SEC. 3105. CRITERIA FOR GENERATION PROJECTS.

"(a) CRITERIA.—The Secretary shall establish criteria on which selection of individual projects described in section 3103(b) should be based. The Secretary may modify the criteria as appropriate to reflect improvements in equipment, except that the criteria shall not be modified to be less stringent. These selection criteria shall include—

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

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

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

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

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

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

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

except that energy used for coproduction or cogeneration shall not be counted in calculating the thermal efficiency under this paragraph; and

"(5) equipment and processes beginning in 2012 and 2013 that are projected to achieve an thermal efficiency of—

"(A) 45 percent for coal of more than 9,000 Btu per pound based on higher heating values;

"(B) 44 percent for coal of 7,000 to 9,000 Btu per pound based on higher heating values; and

"(C) 40 percent for coal of less than 7,000 Btu per pound based on higher heating values,

except that energy used for coproduction or cogeneration shall not be counted in calculating the thermal efficiency under this paragraph.

"(b) SELECTION.—(1) In selecting the projects, up to 25 percent of the projects selected may be either coproduction or cogeneration or other gasification projects, but at least 25 percent of the projects shall be for the sole purpose of electrical generation, and priority should be given to equipment and projects less than 600 MW to foster and promote standard designs.

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

"SEC. 3106. FINANCIAL CRITERIA.

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

"(1) achieve overall cost reductions in the utilization of coal to generate useful forms of energy; and

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

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

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

"(2) the recipient provides sufficient information to the Secretary for the Secretary to ensure that the award funds are spent efficiently and effectively.

"(c) EQUAL ACCESS.—The Secretary shall, to the extent practical, utilize cooperative agreement, loan guarantee, and direct Federal loan mechanisms designed to ensure that all electrical generation owners have equal access to these technology deployment incentives. The Secretary shall develop and direct a competitive solicitation process for the selection of technologies and projects under this title.

"SEC. 3107. FEDERAL SHARE.

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

"SEC. 3108. APPLICABILITY.

"No technology, or level of emission reduction, shall be treated as adequately demonstrated for purposes of section 111 of the Clean Air Act (42 U.S.C. 7411), achievable for purposes of section 169 of the Clean Air Act (42 U.S.C. 7479), or achievable in practice for purposes of section 171 of the Clean Air Act (42 U.S.C. 7501) 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.".

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

"TITLE XXXI—CLEAN AIR COAL PROGRAM

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

TITLE V—INDIAN ENERGY

SEC. 501. SHORT TITLE.

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

SEC. 502. OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS.

(a) IN GENERAL.—Title II of the Department of Energy Organization Act (42 U.S.C. 7131 et seq.) is amended by adding at the end the following:

"OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

"SEC. 217. (a) ESTABLISHMENT.—There is established within the Department an Office of Indian Energy Policy and Programs (referred to in this section as the 'Office'). The Office shall be headed by a Director, who shall be appointed by the Sec-

retary and compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(b) DUTIES OF DIRECTOR.—The Director, in accordance with Federal policies promoting Indian self-determination and the purposes of this Act, shall provide, direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs of the Department that—

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

"(2) reduce or stabilize energy costs;

"(3) enhance and strengthen Indian tribal energy and economic infrastructure relating to natural resource development and electrification; and

"(4) bring electrical power and service to Indian land and the homes of tribal members located on Indian lands or acquired, constructed, or improved (in whole or in part) with Federal funds.".

(b) CONFORMING AMENDMENTS.—

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

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

(B) by striking the items relating to sections 213 through 216 and inserting the following:

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

(2) Section 5315 of title 5, United States Code, is amended by inserting after "Inspector General, Department of Energy." the following:

"Director, Office of Indian Energy Policy and Programs, Department of Energy."

§ 503. Indian energy

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

"TITLE XXVI—INDIAN ENERGY

"SEC. 2601. DEFINITIONS.

"For purposes of this title:

"(1) The term 'Director' means the Director of the Office of Indian Energy Policy and Programs, Department of Energy.

"(2) The term 'Indian land' means—

"(A) any land located within the boundaries of an Indian reservation, pueblo, or rancheria;

"(B) any land not located within the boundaries of an Indian reservation, pueblo, or rancheria, the title to which is held—

"(i) in trust by the United States for the benefit of an Indian tribe or an individual Indian;

"(ii) by an Indian tribe or an individual Indian, subject to restriction against alienation under laws of the United States; or

"(iii) by a dependent Indian community; and

"(C) land that is owned by an Indian tribe and was conveyed by the United States to a Native Corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or that was conveyed by the United States to a Native Corporation in exchange for such land.

"(3) The term 'Indian reservation' includes—

"(A) an Indian reservation in existence in any State or States as of the date of enactment of this paragraph;

"(B) a public domain Indian allotment; and

"(C) a dependent Indian community located within the borders of the United States, regardless of whether the community is located—

"(i) on original or acquired territory of the community; or

"(ii) within or outside the boundaries of any particular State.

"(4) The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), except that the term 'Indian tribe', for the purpose of paragraph (11) and sections 2603(b)(3) and 2604, shall not include any Native Corporation.

"(5) The term 'integration of energy resources' means any project or activity that promotes the location and operation of a facility (including any pipeline,

gathering system, transportation system or facility, or electric transmission or distribution facility) on or near Indian land to process, refine, generate electricity from, or otherwise develop energy resources on, Indian land.

"(6) The term 'Native Corporation' has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

"(7) The term 'organization' means a partnership, joint venture, limited liability company, or other unincorporated association or entity that is established to develop Indian energy resources.

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

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

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

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

"SEC. 2602. INDIAN TRIBAL ENERGY RESOURCE DEVELOPMENT.

"(a) DEPARTMENT OF THE INTERIOR PROGRAM.—

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

"(2) In carrying out the Program, the Secretary shall—

"(A) provide development grants to Indian tribes and tribal energy resource development organizations for use in developing or obtaining the managerial and technical capacity needed to develop energy resources on Indian land, and to properly account for resulting energy production and revenues;

"(B) provide grants to Indian tribes and tribal energy resource development organizations for use in carrying out projects to promote the integration of energy resources, and to process, use, or develop those energy resources, on Indian land; and

"(C) provide low-interest loans to Indian tribes and tribal energy resource development organizations for use in the promotion of energy resource development on Indian land and integration of energy resources.

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

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

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

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

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

"(B) studies and other activities supporting tribal acquisitions of energy supplies, services, and facilities;

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

"(D) development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities.

"(3)(A) The Director may develop, in consultation with Indian tribes, a formula for providing grants under this subsection.

"(B) In providing a grant under this subsection, the Director shall give priority to an application received from an Indian tribe with inadequate electric service (as determined by the Director).

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

"(5) There are authorized to be appropriated to carry out this subsection $20,000,000 for each of fiscal years 2006 through 2016.

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

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

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

"(A) a financial institution subject to examination by the Secretary of Energy; or

"(B) an Indian tribe, from funds of the Indian tribe.

"(3) The aggregate outstanding amount guaranteed by the Secretary of Energy at any time under this subsection shall not exceed $2,000,000,000.

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

"(5) There are authorized to be appropriated such sums as are necessary to carry out this subsection, to remain available until expended.

"(6) Not later than 1 year from the date of enactment of this section, the Secretary of Energy shall report to Congress on the financing requirements of Indian tribes for energy development on Indian land.

"(d) FEDERAL AGENCIES-INDIAN ENERGY PREFERENCE.—

"(1) In purchasing electricity or any other energy product or byproduct, a Federal agency or department may give preference to an energy and resource production enterprise, partnership, consortium, corporation, or other type of business organization the majority of the interest in which is owned and controlled by 1 or more Indian tribes.

"(2) In carrying out this subsection, a Federal agency or department shall not—

"(A) pay more than the prevailing market price for an energy product or byproduct; or

"(B) obtain less than prevailing market terms and conditions.

"SEC. 2603. INDIAN TRIBAL ENERGY RESOURCE REGULATION.

"(a) GRANTS.—The Secretary may provide to Indian tribes, on an annual basis, grants for use in accordance with subsection (b).

"(b) USE OF FUNDS.—Funds from a grant provided under this section may be used—

"(1) by an Indian tribe for the development of a tribal energy resource inventory or tribal energy resource on Indian land;

"(2) by an Indian tribe for the development of a feasibility study or other report necessary to the development of energy resources on Indian land;

"(3) by an Indian tribe (other than an Indian Tribe in Alaska except the Metlakatla Indian Community) for the development and enforcement of tribal laws (including regulations) relating to tribal energy resource development and the development of technical infrastructure to protect the environment under applicable law; or

"(4) by a Native Corporation for the development and implementation of corporate policies and the development of technical infrastructure to protect the environment under applicable law; and

"(5) by an Indian tribe for the training of employees that—

"(A) are engaged in the development of energy resources on Indian land; or

"(B) are responsible for protecting the environment.

"(c) OTHER ASSISTANCE.—In carrying out the obligations of the United States under this title, the Secretary shall ensure, to the maximum extent practicable and to the extent of available resources, that upon the request of an Indian tribe, the Indian tribe shall have available scientific and technical information and expertise, for use in the Indian tribe's regulation, development, and management of energy resources on Indian land. The Secretary may fulfill this responsibility either directly, through the use of Federal officials, or indirectly, by providing financial assistance to the Indian tribe to secure independent assistance.

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

"(a) LEASES AND BUSINESS AGREEMENTS.—Subject to the provisions of this section—

"(1) an Indian tribe may, at its discretion, enter into a lease or business agreement for the purpose of energy resource development on tribal land, including a lease or business agreement for—

"(A) exploration for, extraction of, processing of, or other development of the Indian tribe's energy mineral resources located on tribal land; and

"(B) construction or operation of an electric generation, transmission, or distribution facility located on tribal land or a facility to process or refine energy resources developed on tribal land; and

"(2) such lease or business agreement described in paragraph (1) shall not require the approval of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81) or any other provision of law, if—

"(A) the lease or business agreement is executed pursuant to a tribal energy resource agreement approved by the Secretary under subsection (e);

"(B) the term of the lease or business agreement does not exceed—

"(i) 30 years; or

"(ii) in the case of a lease for the production of oil resources, gas resources, or both, 10 years and as long thereafter as oil or gas is produced in paying quantities; and

"(C) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including the periodic review and evaluation of the activities of the Indian tribe under the agreement, to be conducted pursuant to the provisions required by subsection (e)(2)(D)(i)).

"(b) RIGHTS-OF-WAY FOR PIPELINES OR ELECTRIC TRANSMISSION OR DISTRIBUTION LINES.—An Indian tribe may grant a right-of-way over tribal land for a pipeline or an electric transmission or distribution line without approval by the Secretary if—

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

"(2) the term of the right-of-way does not exceed 30 years;

"(3) the pipeline or electric transmission or distribution line serves—

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

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

"(4) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including the periodic review and evaluation of the Indian tribe's activities under such agreement described in subparagraphs (D) and (E) of subsection (e)(2)).

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

"(d) VALIDITY.—No lease, business agreement, or right-of-way relating to the development of tribal energy resources pursuant to the provisions of this section shall be valid unless the lease, business agreement, or right-of-way is authorized by the provisions of a tribal energy resource agreement approved by the Secretary under subsection (e)(2).

"(e) TRIBAL ENERGY RESOURCE AGREEMENTS.—

"(1) On issuance of regulations under paragraph (8), an Indian tribe may submit to the Secretary for approval a tribal energy resource agreement governing leases, business agreements, and rights-of-way under this section.

"(2)(A) Not later than 180 days after the date on which the Secretary receives a tribal energy resource agreement submitted by an Indian tribe under paragraph (1), or not later than 60 days after the Secretary receives a revised tribal energy resource agreement submitted by an Indian tribe under paragraph (4)(C), (or such later date as may be agreed to by the Secretary and the Indian tribe), the Secretary shall approve or disapprove the tribal energy resource agreement.

"(B) The Secretary shall approve a tribal energy resource agreement submitted under paragraph (1) if—

"(i) the Secretary determines that the Indian tribe has demonstrated that the Indian tribe has sufficient capacity to regulate the development of energy resources of the Indian tribe;

"(ii) the tribal energy resource agreement includes provisions required under subparagraph (D); and

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

"(I) ensure the acquisition of necessary information from the applicant for the lease, business agreement, or right-of-way;

"(II) address the term of the lease or business agreement or the term of conveyance of the right-of-way;

"(III) address amendments and renewals;

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

"(V) address technical or other relevant requirements;

"(VI) establish requirements for environmental review in accordance with subparagraph (C);

"(VII) ensure compliance with all applicable environmental laws;

"(VIII) identify final approval authority;

"(IX) provide for public notification of final approvals;

"(X) establish a process for consultation with any affected States concerning off-reservation impacts, if any, identified pursuant to the provisions required under subparagraph (C)(i);

"(XI) describe the remedies for breach of the lease, business agreement, or right-of-way;

"(XII) require each lease, business agreement, and right-of-way to include a statement that, in the event that any of its provisions violates an express term or requirement set forth in the tribal energy resource agreement pursuant to which it was executed—

"(aa) such provision shall be null and void; and

"(bb) if the Secretary determines such provision to be material, the Secretary shall have the authority to suspend or rescind the lease, business agreement, or right-of-way or take other appropriate action that the Secretary determines to be in the best interest of the Indian tribe;

"(XIII) require each lease, business agreement, and right-of-way to provide that it will become effective on the date on which a copy of the executed lease, business agreement, or right-of-way is delivered to the Secretary in accordance with regulations adopted pursuant to this subsection; and

"(XIV) include citations to tribal laws, regulations, or procedures, if any, that set out tribal remedies that must be exhausted before a petition may be submitted to the Secretary pursuant to paragraph (7)(B).

"(C) Tribal energy resource agreements submitted under paragraph (1) shall establish, and include provisions to ensure compliance with, an environmental review process that, with respect to a lease, business agreement, or right-of-way under this section, provides for—

"(i) the identification and evaluation of all significant environmental impacts (as compared with a no-action alternative), including effects on cultural resources;

"(ii) the identification of proposed mitigation;

"(iii) a process for ensuring that the public is informed of and has an opportunity to comment on the environmental impacts of the proposed action before tribal approval of the lease, business agreement, or right-of-way; and

"(iv) sufficient administrative support and technical capability to carry out the environmental review process.

"(D) A tribal energy resource agreement negotiated between the Secretary and an Indian tribe in accordance with this subsection shall include—

"(i) provisions requiring the Secretary to conduct a periodic review and evaluation to monitor the performance of the Indian tribe's activities associated with the development of energy resources under the tribal energy resource agreement; and

"(ii) when such review and evaluation result in a finding by the Secretary of imminent jeopardy to a physical trust asset arising from a violation of the tribal energy resource agreement or applicable Federal laws, provisions authorizing the Secretary to take appropriate actions determined by the Secretary to be necessary to protect such asset, which actions may include reassumption of responsibility for activities associated with the development of energy resources on tribal land until the violation and conditions that gave rise to such jeopardy have been corrected.

"(E) The periodic review and evaluation described in subparagraph (D) shall be conducted on an annual basis, except that, after the third such annual review and evaluation, the Secretary and the Indian tribe may mutually agree to amend the tribal energy resource agreement to authorize the review and evaluation required by subparagraph (D) to be conducted once every 2 years.

"(3) The Secretary shall provide notice and opportunity for public comment on tribal energy resource agreements submitted for approval under paragraph (1). The Secretary's review of a tribal energy resource agreement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall be limited to the direct effects of that approval.

"(4) If the Secretary disapproves a tribal energy resource agreement submitted by an Indian tribe under paragraph (1), the Secretary shall, not later than 10 days after the date of disapproval—

"(A) notify the Indian tribe in writing of the basis for the disapproval;

"(B) identify what changes or other actions are required to address the concerns of the Secretary; and

"(C) provide the Indian tribe with an opportunity to revise and resubmit the tribal energy resource agreement.

"(5) If an Indian tribe executes a lease or business agreement or grants a right-of-way in accordance with a tribal energy resource agreement approved under this subsection, the Indian tribe shall, in accordance with the process and requirements set forth in the Secretary's regulations adopted pursuant to paragraph (8), provide to the Secretary—

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

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

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

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

"(ii) act in good faith and in the best interests of the Indian tribes.

"(B) Subject to the provisions of subsections (a)(2), (b), and (c) waiving the requirement of Secretarial approval of leases, business agreements, and rights-of-way executed pursuant to tribal energy resource agreements approved under this section, and the provisions of subparagraph (D), nothing in this section shall absolve the United States from any responsibility to Indians or Indian tribes, including, but not limited to, those which derive from the trust relationship or from any treaties, statutes, and other laws of the United States, Executive Orders, or agreements between the United States and any Indian tribe.

"(C) The Secretary shall continue to have a trust obligation to ensure that the rights and interests of an Indian tribe are protected in the event that—

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

"(ii) any provision in such lease, business agreement, or right-of-way violates any express provision or requirement set forth in the tribal energy resource agreement pursuant to which the lease, business agreement, or right-of-way was executed.

"(D) Notwithstanding subparagraph (B), the United States shall not be liable to any party (including any Indian tribe) for any of the negotiated terms of, or any losses resulting from the negotiated terms of, a lease, business agreement, or right-of-way executed pursuant to and in accordance with a tribal energy resource agreement approved by the Secretary under paragraph (2). For the purpose of this subparagraph, the term 'negotiated terms' means any terms or provisions that are negotiated by an Indian tribe and any other party or parties to a lease, business agreement, or right-of-way entered into pursuant to an approved tribal energy resource agreement.

"(7)(A) In this paragraph, the term 'interested party' means any person or entity the interests of which have sustained or will sustain a significant adverse environmental impact as a result of the failure of an Indian tribe to comply with a tribal energy resource agreement of the Indian tribe approved by the Secretary under paragraph (2).

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

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

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

"(iii) Subject to subparagraph (D), if the Secretary determines that the Indian tribe is not in compliance with the tribal energy resource agreement as alleged in the petition, the Secretary shall take such action as is necessary to ensure compliance with the provisions of the tribal energy resource agreement, which action may include—

"(I) temporarily suspending some or all activities under a lease, business agreement, or right-of-way under this section until the Indian tribe or such activities are in compliance with the provisions of the approved tribal energy resource agreement; or

"(II) rescinding approval of all or part of the tribal energy resource agreement, and if all of such agreement is rescinded, reassuming the responsibility for approval of any future leases, business agreements, or rights-of-way described in subsections (a) and (b).

"(D) Prior to seeking to ensure compliance with the provisions of the tribal energy resource agreement of an Indian tribe under subparagraph (C)(iii), the Secretary shall—

"(i) make a written determination that describes the manner in which the tribal energy resource agreement has been violated;

"(ii) provide the Indian tribe with a written notice of the violations together with the written determination; and

"(iii) before taking any action described in subparagraph (C)(iii) or seeking any other remedy, provide the Indian tribe with a hearing and a reasonable opportunity to attain compliance with the tribal energy resource agreement.

"(E) An Indian tribe described in subparagraph (D) shall retain all rights to appeal as provided in regulations issued by the Secretary.

"(8) Not later than 1 year after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act of 2005, the Secretary shall issue regulations that implement the provisions of this subsection, including—

"(A) criteria to be used in determining the capacity of an Indian tribe described in paragraph (2)(B)(i), including the experience of the Indian tribe in managing natural resources and financial and administrative resources available for use by the Indian tribe in implementing the approved tribal energy resource agreement of the Indian tribe;

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

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

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

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

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

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

"(1) any Federal environment law;

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

"(3) except as otherwise provided in this title, the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as are necessary for each of fiscal years 2006 through 2016 to implement the provisions of this section and to make grants or provide other appropriate assistance to Indian tribes to assist the Indian tribes in developing and implementing tribal energy resource agreements in accordance with the provisions of this section.

"SEC. 2605. INDIAN MINERAL DEVELOPMENT REVIEW.

"(a) IN GENERAL.—The Secretary shall conduct a review of all activities being conducted under the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.) as of that date.

"(b) REPORT.—Not later than 1 year after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act of 2005, the Secretary shall submit to Congress a report that includes—

"(1) the results of the review;

"(2) recommendations to ensure that Indian tribes have the opportunity to develop Indian energy resources; and

"(3) an analysis of the barriers to the development of energy resources on Indian land (including legal, fiscal, market, and other barriers), along with recommendations for the removal of those barriers.".

(b) CONFORMING AMENDMENTS.—The table of contents for the Energy Policy Act of 1992 is amended by striking the items relating to title XXVI and inserting the following:

"Sec. 2601. Definitions.
"Sec. 2602. Indian tribal energy resource development.
"Sec. 2603. Indian tribal energy resource regulation.
"Sec. 2604. Leases, business agreements, and rights-of-way involving energy development or transmission.
"Sec. 2605. Indian mineral development review.".

§ 504. Four Corners transmission line project

The Dine Power Authority, an enterprise of the Navajo Nation, shall be eligible to receive grants and other assistance as authorized by section 217 of the Department of Energy Organization Act, as added by section 502 of this title, and section 2602 of the Energy Policy Act of 1992, as amended by this title, for activities associated with the development of a transmission line from the Four Corners Area to southern Nevada, including related power generation opportunities.

§ 505. Energy efficiency in federally assisted housing

(a) IN GENERAL.—The Secretary of Housing and Urban Development shall promote energy conservation in housing that is located on Indian land and assisted with Federal resources through—

(1) the use of energy-efficient technologies and innovations (including the procurement of energy-efficient refrigerators and other appliances);

(2) the promotion of shared savings contracts; and

(3) the use and implementation of such other similar technologies and innovations as the Secretary of Housing and Urban Development considers to be appropriate.

(b) AMENDMENT.—Section 202(2) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(2)) is amended by inserting "improvement to achieve greater energy efficiency," after "planning,".

§ 506. Consultation with Indian tribes

In carrying out this title and the amendments made by this title, the Secretary of Energy and the Secretary shall, as appropriate and to the maximum extent practicable, involve and consult with Indian tribes in a manner that is consistent with the Federal trust and the government-to-government relationships between Indian tribes and the United States.

TITLE VI—NUCLEAR MATTERS

Subtitle A—Price-Anderson Act Amendments

§ 601. Short title

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

§ 602. Extension of indemnification authority

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

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

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

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

(c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL INSTITUTIONS.—Section 170 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(k)) is amended by striking "August 1, 2002" each place it appears and inserting "December 31, 2025".

§ 603. Maximum assessment

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

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

(A) by striking "$63,000,000" and inserting "$95,800,000"; 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.(1)—

(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 "August 20, 2003"; and

(C) in subparagraph (A), by striking "such date of enactment" and inserting "August 20, 2003".

§ 604. 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 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 further 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 2005, 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.".

§ 605. 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".

§ 606. 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 "December 31, 2021".

§ 607. 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 inserting 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, 2003, 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.".

§ 608. 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:

"(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.".

§ 609. Applicability

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

§ 610. Prohibition on assumption by United States Government of liability for certain foreign incidents

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 INCIDENTS.—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 incidents 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 (22 U.S.C. 2371(a)), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)) to have repeatedly provided support for acts of international terrorism). This subsection shall not apply to nuclear incidents occurring as a result of missions, carried out under the direction of the Secretary of Energy, the Secretary of Defense, or the Secretary of State, that are necessary to safely secure, store, transport, or remove nuclear materials for nuclear safety or nonproliferation purposes.".

§ 611. Civil penalties

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

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

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

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

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

§ 612. 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:

"v. 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.

Subtitle B—General Nuclear Matters

§ 621. Licenses

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

§ 622. NRC training program

(a) IN GENERAL.—In order to maintain the human resource investment and infrastructure of the United States in the nuclear sciences, health physics, and engineering fields, in accordance with the statutory authorities of the Nuclear Regulatory 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 the Nuclear Regulatory Commission to carry out this section $1,000,000 for each of fiscal years 2005 through 2009.

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

§ 623. 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".

§ 624. 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.".

§ 625. Antitrust review

Section 105 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2135(c)) is amended by adding at the end the following:

"(9) APPLICABILITY.—This subsection does not apply to an application for a license to construct or operate a utilization facility or production facility under section 103 or 104 b. that is filed on or after the date of enactment of this paragraph.".

§ 626. Decommissioning

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

(1) by striking "and (3)" and inserting "(3)"; and

(2) by inserting before the semicolon at the end the following: ", and (4) to ensure that sufficient funds will be available for the decommissioning of any production or utilization facility licensed under section 103 or 104 b., including standards and restrictions governing the control, maintenance, use, and disbursement by any former licensee under this Act that has control over any fund for the decommissioning of the facility".

§ 627. Limitation on legal fee reimbursement

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

"LIMITATION ON LEGAL FEE REIMBURSEMENT

"SEC. 212. The Department of Energy shall not, except as required under a contract entered into before the date of enactment of this section, 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 part 708 of title 10, Code of Federal Regulations, or by a Department of Labor Administrative Law Judge pursuant to section 211 of this Act; 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 this Act, or any comparable State law,

unless the adverse determination or final judgment is reversed upon further administrative or judicial review.".

§ 629. Report on feasibility of developing commercial nuclear energy generation facilities at existing Department of Energy sites

Not later than 1 year after the date of the enactment of this Act, the Secretary of Energy shall submit to Congress a report on the feasibility of developing commercial nuclear energy generation facilities at Department of Energy sites in existence on the date of enactment of this Act.

§ 630. Uranium sales

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

"(3) The Secretary may transfer to the Corporation, notwithstanding subsections (b)(2) and (d), natural uranium in amounts sufficient to fulfill the Department of Energy's commitments under Article 4(B) of the Agreement between the Department and the Corporation dated June 17, 2002.

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

"(2) Except as provided in subsections (b) and (c) and paragraph (5) of this subsection, no sale or transfer of uranium shall be made under this subsection by the United States Government unless—

"(A) the President determines that the material is not necessary for national security needs and the sale or transfer has no adverse impact on implementation of existing government-to-government agreements;

"(B) the price paid to the appropriate Federal agency, 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 commercial nuclear power end users is made pursuant to a contract of at least 3 years' duration.

"(3) Except as provided in paragraph (5), the United States Government shall not make any transfer or sale of uranium in any form under this subsection that would cause the total amount of uranium transferred or sold pursuant to this subsection that is delivered for consumption by commercial nuclear power end users to exceed—

"(A) 3,000,000 pounds of U_3 O_8 equivalent in fiscal year 2005, 2006, 2007, 2008, or 2009;

"(B) 5,000,000 pounds of U_3O_8 equivalent in fiscal year 2010 or 2011;

"(C) 7,000,000 pounds of U_3O_8 equivalent in fiscal year 2012; and

"(D) 10,000,000 pounds of U_3O_8 equivalent in fiscal year 2013 or any fiscal year thereafter.

"(4) Except for sales or transfers under paragraph (5), for the purposes of this subsection, the recovery of uranium from uranium bearing materials transferred or sold by the United States Government 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 forth in this section, when such uranium is sold to end users.

"(5) The United States Government may make the following sales and transfers:

"(A) Sales or transfers to a Federal agency if the material is transferred for the use of the receiving agency without any resale or transfer to another entity and the material does not meet commercial specifications.

"(B) Sales or transfers to any person for national security purposes, as determined by the Secretary.

"(C) Sales or transfers to any State or local agency or nonprofit, charitable, or educational institution for use other than the generation of electricity for commercial use.

"(D) Sales or transfers to the Department of Energy research reactor sales program.

"(E) Sales or transfers, at fair market value, for emergency purposes in the event of a disruption in supply to commercial nuclear power end users in the United States.

"(F) Sales or transfers, at fair market value, for use in a commercial reactor in the United States with nonstandard fuel requirements.

"(G) Sales or transfers provided for under law for use by the Tennessee Valley Authority in relation to the Department of Energy's highly enriched uranium or tritium programs.

"(6) For purposes of this subsection, the term 'United States Government' does not include the Tennessee Valley Authority.

"(e) SAVINGS PROVISION.—Nothing in this subchapter modifies the terms of the Russian HEU Agreement.

"(f) SERVICES.—Notwithstanding any other provision of this section, if the Secretary determines that 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 Congress, in such a manner that affords Congress 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.".

(b) REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary of Energy shall report to 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 United States Government; 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.

§ 631. 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 2006, 2007, and 2008 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.

(c) LIMITATION.—No activities funded under this section may be carried out in the State of New Mexico.

§ 632. 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) in subparagraph (C), by striking "and" at the end;

(2) in subparagraph (D), by striking the period at the end and inserting "; and" and

(3) by adding at the end the following:

"(E) a contractor or subcontractor of 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 540 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 person seeking relief under this paragraph, such person 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.".

§ 633. Medical isotope production

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

(1) in subsection a., by striking "a. The Commission" and inserting "a. IN GENERAL.—Except as provided in subsection b., the Commission";

(2) by redesignating subsection b. as subsection c.; and

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

"b. MEDICAL ISOTOPE PRODUCTION.—

"(1) DEFINITIONS.—In this subsection:

"(A) HIGHLY ENRICHED URANIUM.—The term 'highly enriched uranium' means uranium enriched to include concentration of U–235 above 20 percent.

"(B) MEDICAL ISOTOPE.—The term 'medical isotope' includes Molybdenum 99, Iodine 131, Xenon 133, and other radioactive materials used to produce a radiopharmaceutical for diagnostic, therapeutic procedures or for research and development.

"(C) RADIOPHARMACEUTICAL.—The term 'radiopharmaceutical' means a radioactive isotope that—

"(i) contains byproduct material combined with chemical or biological material; and

"(ii) is designed to accumulate temporarily in a part of the body for therapeutic purposes or for enabling the production of a useful image for use in a diagnosis of a medical condition.

"(D) RECIPIENT COUNTRY.—The term 'recipient country' means Canada, Belgium, France, Germany, and the Netherlands.

"(2) LICENSES.—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 (except subsection a.), the Commission determines that—

"(A) a recipient country that supplies an assurance letter to the United States Government in connection with the consideration by the Commission 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 the highly enriched uranium solely to produce medical isotopes; and

"(B) the highly enriched uranium for medical isotope production will be irradiated only in a reactor in a recipient country that—

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

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

"(3) REVIEW OF PHYSICAL PROTECTION REQUIREMENTS.—

"(A) IN GENERAL.—The Commission shall review the adequacy of physical protection requirements that, as of the date of an application under paragraph (2), are applicable to the transportation and storage of highly enriched uranium for medical isotope production or control of residual material after irradiation and extraction of medical isotopes.

"(B) IMPOSITION OF ADDITIONAL REQUIREMENTS.—If the Commission determines that additional physical protection requirements are necessary (including a limit on the quantity of highly enriched uranium that may be contained in a single shipment), the Commission shall impose such requirements as license conditions or through other appropriate means.

"(4) FIRST REPORT TO CONGRESS.—

"(A) NAS STUDY.—The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct a study to determine—

"(i) the feasibility of procuring supplies of medical isotopes from commercial sources that do not use highly enriched uranium;

"(ii) the current and projected demand and availability of medical isotopes in regular current domestic use;

"(iii) the progress that is being made by the Department of Energy and others to eliminate all use of highly enriched uranium in reactor fuel, reactor targets, and medical isotope production facilities; and

"(iv) the potential cost differential in medical isotope production in the reactors and target processing facilities if the products were derived from production systems that do not involve fuels and targets with highly enriched uranium.

"(B) FEASIBILITY.—For the purpose of this subsection, the use of low enriched uranium to produce medical isotopes shall be determined to be feasible if—

"(i) low enriched uranium targets have been developed and demonstrated for use in the reactors and target processing facilities that produce significant quantities of medical isotopes to serve United States needs for such isotopes;

"(ii) sufficient quantities of medical isotopes are available from low enriched uranium targets and fuel to meet United States domestic needs; and

"(iii) the average anticipated total cost increase from production of medical isotopes in such facilities without use of highly enriched uranium is less than 10 percent.

"(C) REPORT BY THE SECRETARY.—Not later than 5 years after the date of enactment of the Energy Policy Act of 2005, the Secretary shall submit to Congress a report that—

"(i) contains the findings of the National Academy of Sciences made in the study under subparagraph (A); and

"(ii) discloses the existence of any commitments from commercial producers to provide domestic requirements for medical isotopes without use of highly enriched uranium consistent with the feasibility criteria described in subparagraph (B) not later than the date that is 4 years after the date of submission of the report.

"(5) SECOND REPORT TO CONGRESS.—If the study of the National Academy of Sciences determines under paragraph (4)(A)(i) that the procurement of supplies of medical isotopes from commercial sources that do not use highly enriched uranium is feasible, but the Secretary is unable to report the existence of commitments under paragraph (4)(C)(ii), not later than the date that is 6 years after the date of enactment of the Energy Policy Act of 2005, the Secretary shall submit to Congress a report that describes options for developing domestic supplies of medical isotopes in quantities that are adequate to meet domestic demand without the use of highly enriched uranium consistent with the cost increase described in paragraph (4)(B)(iii).

"(6) CERTIFICATION.—At such time as commercial facilities that do not use highly enriched uranium are capable of meeting domestic requirements for medical isotopes, within the cost increase described in paragraph (4)(B)(iii) and without impairing the reliable supply of medical isotopes for domestic utilization, the Secretary shall submit to Congress a certification to that effect.

"(7) SUNSET PROVISION.—After the Secretary submits a certification under paragraph (6), the Commission shall, by rule, terminate its review of export license applications under this subsection.".

§ 634. Fernald byproduct material

Title III of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10221 et seq.) is amended by adding at the end the following new section:

"FERNALD BYPRODUCT MATERIAL

"SEC. 307. Notwithstanding any other law, the material in the concrete silos at the Fernald uranium processing facility managed on the date of enactment of this section by the Department shall be considered byproduct material (as defined by section 11 e.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2))). The Department may dispose of the material in a facility regulated by the Commission or by an Agreement State. If the Department disposes of the material in such a facility, the Commission or the Agreement State shall regulate the material as byproduct material under that Act. This material shall remain subject to the jurisdiction of the Department until it is received at a commercial, Commission-licensed, or Agreement State-licensed facility, at which time the material shall be subject to the health and safety requirements of the Commission or the Agreement State with jurisdiction over the disposal site.".

§ 635. Safe disposal of greater-than-class c radioactive waste

Subtitle D of title I of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10171) is amended by adding at the end the following new section:

"SAFE DISPOSAL OF GREATER-THAN-CLASS C RADIOACTIVE WASTE

"SEC. 152. (a) DESIGNATION OF RESPONSIBILITY.—The Secretary shall designate an Office within the Department to have the responsibility for activities needed to develop a new, or use an existing, facility for safely disposing of all low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Commission for Class C radioactive waste (referred to in this section as 'GTCC waste').

"(b) COMPREHENSIVE PLAN.—The Secretary shall develop a comprehensive plan for permanent disposal of GTCC waste which includes plans for a disposal facility. This plan shall be transmitted to Congress in a series of reports, including the following:

"(1) REPORT ON SHORT-TERM PLAN.—Not later than 180 days after the date of enactment of this section, the Secretary shall submit to Congress a plan describing the Secretary's operational strategy for continued recovery and storage of GTCC waste until a permanent disposal facility is available.

"(2) UPDATE OF 1987 REPORT.—

"(A) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary shall submit to Congress an update of the Secretary's February 1987 report submitted to Congress that made comprehensive recommendations for the disposal of GTCC waste.

"(B) CONTENTS.—The update under this paragraph shall contain—

"(i) a detailed description and identification of the GTCC waste that is to be disposed;

"(ii) a description of current domestic and international programs, both Federal and commercial, for management and disposition of GTCC waste;

"(iii) an identification of the Federal and private options and costs for the safe disposal of GTCC waste;

"(iv) an identification of the options for ensuring that, wherever possible, generators and users of GTCC waste bear all reasonable costs of waste disposal;

"(v) an identification of any new statutory authority required for disposal of GTCC waste; and

"(vi) in coordination with the Environmental Protection Agency and the Commission, an identification of any new regulatory guidance needed for the disposal of GTCC waste.

"(3) REPORT ON COST AND SCHEDULE FOR COMPLETION OF ENVIRONMENTAL IMPACT STATEMENT AND RECORD OF DECISION.—Not later than 180 days after the date of submission of the update required under paragraph (2), the Secretary shall submit to Congress a report containing an estimate of the cost and schedule to complete a draft and final environmental impact statement and to issue a record of decision for a permanent disposal facility, utilizing either a new or existing facility, for GTCC waste.".

§ 636. Prohibition on nuclear exports to countries that sponsor terrorism

(a) IN GENERAL.—Section 129 of the Atomic Energy Act of 1954 (42 U.S.C. 2158) is amended—

(1) by inserting "a." before "No nuclear materials and equipment"; and

(2) by adding at the end the following new subsection:

"b.(1) Notwithstanding any other provision of law, including specifically section 121 of this Act, and except as provided in paragraphs (2) and (3), no nuclear materials and equipment or sensitive nuclear technology, including items and assistance authorized by section 57 b. of this Act and regulated under part 810 of title 10, Code of Federal Regulations, and nuclear-related items on the Commerce Control List maintained under part 774 of title 15 of the Code of Federal Regulations, shall be exported or reexported, or transferred or retransferred whether directly or indirectly, and no Federal agency shall issue any license, approval, or authorization for the export or reexport, or transfer, or retransfer, whether directly or indirectly, of these items or assistance (as defined in this paragraph) 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 has been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)) to have repeatedly provided support for acts of international terrorism).

"(2) This subsection shall not apply to exports, reexports, transfers, or retransfers of radiation monitoring technologies, surveillance equipment, seals, cameras, tamper-indication devices, nuclear detectors, monitoring systems, or equipment necessary to safely store, transport, or remove hazardous materials, whether such

items, services, or information are regulated by the Department of Energy, the Department of Commerce, or the Nuclear Regulatory Commission, except to the extent that such technologies, equipment, seals, cameras, devices, detectors, or systems are available for use in the design or construction of nuclear reactors or nuclear weapons.

"(3) The President may waive the application of paragraph (1) to a country if the President determines and certifies to Congress that the waiver will not result in any increased risk that the country receiving the waiver will acquire nuclear weapons, nuclear reactors, or any materials or components of nuclear weapons and—

"(A) the government of such country has not within the preceding 12-month period willfully aided or abetted the international proliferation of nuclear explosive devices to individuals or groups or willfully aided and abetted an individual or groups in acquiring unsafeguarded nuclear materials;

"(B) in the judgment of the President, the government of such country has provided adequate, verifiable assurances that it will cease its support for acts of international terrorism;

"(C) the waiver of that paragraph is in the vital national security interest of the United States; or

"(D) such a waiver is essential to prevent or respond to a serious radiological hazard in the country receiving the waiver that may or does threaten public health and safety.".

(b) APPLICABILITY TO EXPORTS APPROVED FOR TRANSFER BUT NOT TRANSFERRED.—Subsection b. of section 129 of Atomic Energy Act of 1954, as added by subsection (a) of this section, shall apply with respect to exports that have been approved for transfer as of the date of the enactment of this Act but have not yet been transferred as of that date.

§ 638. National uranium stockpile

The USEC Privatization Act (42 U.S.C. 2297h et seq.) is amended by adding at the end the following new section:

"SEC. 3118. NATIONAL URANIUM STOCKPILE.

"(a) STOCKPILE CREATION.—The Secretary of Energy may create a national low-enriched uranium stockpile with the goals to—

"(1) enhance national energy security; and

"(2) reduce global proliferation threats.

"(b) SOURCE OF MATERIAL.—The Secretary shall obtain material for the stockpile from—

"(1) material derived from blend-down of Russian highly enriched uranium derived from weapons materials; and

"(2) domestically mined and enriched uranium.

"(c) LIMITATION ON SALES OR TRANSFERS.—Sales or transfer of materials in the stockpile shall occur pursuant to section 3112.".

§ 639. 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.

§ 640. Employee benefits

Section 3110(a) of the USEC Privatization Act (42 U.S.C. 2297h-8(a)) is amended by adding at the end the following new paragraph:

"(8) CONTINUITY OF BENEFITS.—Not later than 30 days after the date of enactment of this paragraph, the Secretary shall implement such actions as are necessary to ensure that any employee who—

"(A) is involved in providing infrastructure or environmental remediation services at the Portsmouth, Ohio, or the Paducah, Kentucky, Gaseous Diffusion Plant;

"(B) has been an employee of the Department of Energy's predecessor management and integrating contractor (or its first or second tier subcontractors), or of the Corporation, at the Portsmouth, Ohio, or the Paducah, Kentucky, facility; and

"(C) was eligible as of April 1, 2005, to participate in or transfer into the Multiple Employer Pension Plan or the associated multiple employer retiree health care benefit plans, as defined in those plans,

shall continue to be eligible to participate in or transfer into such pension or health care benefit plans.".

Subtitle C—Additional Hydrogen Production Provisions

§ 651. Hydrogen production programs

(a) ADVANCED REACTOR HYDROGEN COGENERATION PROJECT.—

(1) PROJECT ESTABLISHMENT.— The Secretary is directed to establish an Advanced Reactor Hydrogen Cogeneration Project.

(2) PROJECT DEFINITION.— The project shall consist of the research, development, design, construction, and operation of a hydrogen production cogeneration research facility that, relative to the current commercial reactors, enhances safety features, reduces waste production, enhances thermal efficiencies, increases proliferation resistance, and has the potential for improved economics and physical security in reactor siting. This facility shall be constructed so as to enable research and development on advanced reactors of the type selected and on alternative approaches for reactor-based production of hydrogen.

(3) PROJECT MANAGEMENT.—

(A) MANAGEMENT.—The project shall be managed within the Department by the Office of Nuclear Energy, Science, and Technology.

(B) LEAD LABORATORY.—The lead laboratory for the project, providing the site for the reactor construction, shall be the Idaho National Laboratory (in this subsection referred to as "INL").

(C) STEERING COMMITTEE.—The Secretary shall establish a national steering committee with membership from the national laboratories, universities, and industry to provide advice to the Secretary and the Director of the Office of Nuclear Energy, Science, and Technology on technical and program management aspects of the project.

(D) COLLABORATION.—Project activities shall be conducted at INL, other national laboratories, universities, domestic industry, and international partners.

(4) PROJECT REQUIREMENTS.—

(A) RESEARCH AND DEVELOPMENT.—

(i) IN GENERAL.—The project shall include planning, research and development, design, and construction of an advanced, next-generation, nuclear energy system suitable for enabling further research and development on advanced reactor technologies and alternative approaches for reactor-based generation of hydrogen.

(ii) REACTOR TEST CAPABILITIES AT INL.—The project shall utilize, where appropriate, extensive reactor test capabilities resident at INL.

(iii) ALTERNATIVES.—The project shall be designed to explore technical, environmental, and economic feasibility of alternative approaches for reactor-based hydrogen production.

(iv) INDUSTRIAL LEAD.—The industrial lead for the project shall be a company incorporated in the United States.

(B) INTERNATIONAL COLLABORATION.—

(i) IN GENERAL.—The Secretary shall seek international cooperation, participation, and financial contribution in this project.

(ii) ASSISTANCE FROM INTERNATIONAL PARTNERS.—The Secretary may contract for assistance from specialists or facilities from member countries of the Generation IV International Forum, the Russian Federation, or other international partners where such specialists or facilities provide access to cost-effective and relevant skills or test capabilities.

(iii) GENERATION IV INTERNATIONAL FORUM.—International activities shall be coordinated with the Generation IV International Forum.

(iv) GENERATION IV NUCLEAR ENERGY SYSTEMS PROGRAM.—The Secretary may combine this project with the Generation IV Nuclear Energy Systems Program.

(C) DEMONSTRATION.—The overall project, which may involve demonstration of selected project objectives in a partner nation, must demonstrate both electricity and hydrogen production and may provide flexibility, where technically and economically feasible in the design and construction, to enable tests of alternative reactor core and cooling configurations.

(D) PARTNERSHIPS.—The Secretary shall establish cost-shared partnerships with domestic industry or international participants for the research, development, design, construction, and operation of the research facility, and preference in determining the final project structure shall be given to

an overall project which retains United States leadership while maximizing cost sharing opportunities and minimizing Federal funding responsibilities.

(E) TARGET DATE.—The Secretary shall select technologies and develop the project to provide initial testing of either hydrogen production or electricity generation by 2011, or provide a report to Congress explaining why this date is not feasible.

(F) WAIVER OF CONSTRUCTION TIMELINES.—The Secretary is authorized to conduct the Advanced Reactor Hydrogen Cogeneration Project without the constraints of DOE Order 413.3, relating to program and project management for the acquisition of capital assets, as necessary to meet the specified operational date.

(G) COMPETITION.—The Secretary may fund up to 2 teams for up to 1 year to develop detailed proposals for competitive evaluation and selection of a single proposal and concept for further progress. The Secretary shall define the format of the competitive evaluation of proposals.

(H) USE OF FACILITIES.—Research facilities in industry, national laboratories, or universities either within the United States or with cooperating international partners may be used to develop the enabling technologies for the research facility. Utilization of domestic university-based facilities shall be encouraged to provide educational opportunities for student development.

(I) ROLE OF NUCLEAR REGULATORY COMMISSION.—

(i) IN GENERAL.—The Nuclear Regulatory Commission shall have licensing and regulatory authority for any reactor authorized under this subsection, pursuant to section 202 of the Energy Reorganization Act of 1974 (42 U.S.C. 5842).

(ii) RISK-BASED CRITERIA.—The Secretary shall seek active participation of the Nuclear Regulatory Commission throughout the project to develop risk-based criteria for any future commercial development of a similar reactor architecture.

(J) REPORT.—The Secretary shall develop and transmit to Congress a comprehensive project plan not later than 3 months after the date of enactment of this Act. The project plan shall be updated annually with each annual budget submission.

(b) ADVANCED NUCLEAR REACTOR TECHNOLOGIES.—The Secretary shall—

(1) prepare a detailed roadmap for carrying out the provisions in this subtitle related to advanced nuclear reactor technologies and for implementing the recommendations related to advanced nuclear reactor technologies that are included in the report transmitted under subsection (d); and

(2) provide for the establishment of 5 projects in geographic areas that are regionally and climatically diverse to demonstrate the commercial production of hydrogen at existing nuclear power plants, including one demonstration project at a national laboratory or institution of higher education using an advanced gas-cooled reactor.

(c) COLLOCATION WITH HYDROGEN PRODUCTION FACILITY.—Section 103 of the Atomic Energy Act of 1954 (42 U.S.C. 2011) is amended by adding at the end the following new subsection:

"g. The Commission shall give priority to the licensing of a utilization facility that is collocated with a hydrogen production facility. The Commission shall issue a final decision approving or disapproving the issuance of a license to construct and operate a utilization facility not later than the expiration of 3 years after the date of the submission of such application, if the application references a Commission-certified design and an early site permit, unless the Commission determines that the applicant has proposed material and substantial changes to the design or the site design parameters.".

(d) REPORT.—The Secretary shall transmit to the Congress not later than 120 days after the date of enactment of this Act a report containing detailed summaries of the roadmaps prepared under subsection (b)(1), descriptions of the Secretary's progress in establishing the projects and other programs required under this section, and recommendations for promoting the availability of advanced nuclear reactor energy technologies for the production of hydrogen.

(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of supporting research programs related to the development of advanced nuclear reactor technologies under this section, there are authorized to be appropriated to the Secretary—

(1) $65,000,000 for fiscal year 2006;

(2) $74,750,000 for fiscal year 2007;

(3) $85,962,500 for fiscal year 2008;

(4) $98,856,875 for fiscal year 2009;

(5) $113,685,406 for fiscal year 2010;

(6) $130,738,217 for fiscal year 2011;
(7) $150,348,950 for fiscal year 2012;
(8) $172,901,292 for fiscal year 2013;
(9) $198,836,486 for fiscal year 2014; and
(10) $228,661,959 for fiscal year 2015.

§ 652. Definitions

For purposes of this subtitle—

(1) the term "advanced nuclear reactor technologies" means—

(A) technologies related to advanced light water reactors that may be commercially available in the near-term, including mid-sized reactors with passive safety features, for the generation of electric power from nuclear fission and the production of hydrogen; and

(B) technologies related to other nuclear reactors that may require prototype demonstration prior to availability in the mid-term or long-term, including high-temperature, gas-cooled reactors and liquid metal reactors, for the generation of electric power from nuclear fission and the production of hydrogen;

(2) the term "institution of higher education" has the meaning given to that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); and

(3) the term "Secretary" means the Secretary of Energy.

Subtitle D—Nuclear Security

§ 661. Nuclear facility threats

(a) STUDY.—The President, in consultation with the Nuclear Regulatory Commission (referred to in this subtitle as the "Commission") and other appropriate Federal, State, and local agencies and private entities, shall conduct a study to identify the types of threats that pose an appreciable risk to the security of the various classes of facilities licensed by the Commission under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). Such study shall take into account, but not be limited to—

(1) the events of September 11, 2001;

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

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

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

(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;

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

(11) the adequacy of planning to protect the public health and safety at and around nuclear facilities, as appropriate, in the event of a terrorist attack against a nuclear facility; and

(12) the potential for theft and diversion of nuclear materials from such facilities.

(b) SUMMARY AND CLASSIFICATION REPORT.—Not later than 180 days after the date of the enactment of this Act, the President shall transmit to Congress and the 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 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 Congress a report on actions taken, or to be taken, to address the types of threats identified under subsection (b)(2)(A), including identification of the Federal, State, and local

agencies responsible for carrying out the obligations and authorities of the United States. Such report may include a classified annex, as appropriate.

(d) REGULATIONS.—Not later than 180 days after the date on which a report is transmitted under subsection (b), the Commission may revise, by rule, the design basis threats issued before the date of enactment of this section as the Commission considers appropriate based on the summary and classification report.

(e) PHYSICAL SECURITY PROGRAM.—The 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 and category I fuel cycle facilities.

(f) CONTROL OF INFORMATION.—Notwithstanding any other provision of law, the Commission may undertake any rulemaking under this subtitle in a manner that will fully protect safeguards and classified national security information.

(g) FEDERAL SECURITY COORDINATORS.—

(1) REGIONAL OFFICES.—Not later than 18 months after the date of enactment of this Act, the Commission shall assign a Federal security coordinator, under the employment of the Commission, to each region of the Commission.

(2) RESPONSIBILITIES.—The Federal security coordinator shall be responsible for—

(A) communicating with the Commission and other Federal, State, and local authorities concerning threats, including threats against such classes of facilities as the Commission determines to be appropriate;

(B) ensuring that such classes of facilities as the Commission determines to be appropriate maintain security consistent with the security plan in accordance with the appropriate threat level; and

(C) assisting in the coordination of security measures among the private security forces at such classes of facilities as the Commission determines to be appropriate and Federal, State, and local authorities, as appropriate.

(h) TRAINING PROGRAM.—The President shall establish a program to provide technical assistance and training to Federal agencies, the National Guard, and State and local law enforcement and emergency response agencies in responding to threats against a designated nuclear facility.

§ 662. Fingerprinting for criminal history record checks

(a) IN GENERAL.—Subsection a. of section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169(a)) is amended—

(1) by striking "a. The Nuclear" and all that follows through "section 147." and inserting the following:

"a. IN GENERAL.—

"(1) REQUIREMENTS.—

"(A) IN GENERAL.—The Commission shall require each individual or entity—

"(i) that is licensed or certified to engage in an activity subject to regulation by the Commission;

"(ii) that has filed an application for a license or certificate to engage in an activity subject to regulation by the Commission; or

"(iii) that has notified the Commission, in writing, of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to regulation by the Commission,

to fingerprint each individual described in subparagraph (B) before the individual is permitted unescorted access or access, whichever is applicable, as described in subparagraph (B).

"(B) INDIVIDUALS REQUIRED TO BE FINGERPRINTED.—The Commission shall require to be fingerprinted each individual who—

"(i) is permitted unescorted access to—

"(I) a utilization facility; or

"(II) radioactive material or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks; or

"(ii) is permitted access to safeguards information under section 147.";

(2) by striking "All fingerprints obtained by a licensee or applicant as required in the preceding sentence" and inserting the following:

"(2) SUBMISSION TO THE ATTORNEY GENERAL.—All fingerprints obtained by an individual or entity as required in paragraph (1)";

(3) by striking "The costs of any identification and records check conducted pursuant to the preceding sentence shall be paid by the licensee or applicant." and inserting the following:

"(3) COSTS.—The costs of any identification and records check conducted pursuant to paragraph (1) shall be paid by the individual or entity required to conduct the fingerprinting under paragraph (1)(A).'; and

(4) by striking "Notwithstanding any other provision of law, the Attorney General may provide all the results of the search to the Commission, and, in accordance with regulations prescribed under this section, the Commission may provide such results to the licensee or applicant submitting such fingerprints." and inserting the following:

"(4) PROVISION TO INDIVIDUAL OR ENTITY REQUIRED TO CONDUCT FINGERPRINTING.—Notwithstanding any other provision of law, the Attorney General may provide all the results of the search to the Commission, and, in accordance with regulations prescribed under this section, the Commission may provide such results to the individual or entity required to conduct the fingerprinting under paragraph (1)(A).".

(b) ADMINISTRATION.—Subsection c. of section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169(c)) is amended—

(1) by striking ", subject to public notice and comment, regulations—" and inserting "requirements—"; and

(2) by striking, in paragraph (2)(B), "unescorted access to the facility of a licensee or applicant" and inserting "unescorted access to a utilization facility, radioactive material, or other property described in subsection a.(1)(B)".

(c) BIOMETRIC METHODS.—Subsection d. of section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169(d)) is redesignated as subsection e., and the following is inserted after subsection c.:

"d. USE OF OTHER BIOMETRIC METHODS.—The Commission may satisfy any requirement for a person to conduct fingerprinting under this section using any other biometric method for identification approved for use by the Attorney General, after the Commission has approved the alternative method by rule.".

§ 663. Use of firearms by security personnel of licensees and certificate holders of the Commission

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

"(z)(1) notwithstanding section 922(o), (v), and (w) of title 18, United States Code, or any similar provision of any State law or any similar rule or regulation of a State or any political subdivision of a State prohibiting the transfer or possession of a handgun, a rifle or shotgun, a short-barreled shotgun, a short-barreled rifle, a machinegun, a semiautomatic assault weapon, ammunition for the foregoing, or a large capacity ammunition feeding device, authorize security personnel of licensees and certificate holders of the Commission (including employees of contractors of licensees and certificate holders) to receive, possess, transport, import, and use 1 or more of those weapons, ammunition, or devices, if the Commission determines that—

"(A) such authorization is necessary to the discharge of the security personnel's official duties; and

"(B) the security personnel—

"(i) are not otherwise prohibited from possessing or receiving a firearm under Federal or State laws pertaining to possession of firearms by certain categories of persons;

"(ii) have successfully completed requirements established through guidelines implementing this subsection for training in use of firearms and tactical maneuvers;

"(iii) are engaged in the protection of—

"(I) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission; or

"(II) radioactive material or other property owned or possessed by a person that is a licensee or certificate holder of the Commission, or that is being transported to or from a facility owned or operated by such a licensee or certificate holder, and that has been determined by the Commission to be of significance to the common defense and security or public health and safety; and

"(iv) are discharging their official duties.

"(2) Such receipt, possession, transportation, importation, or use shall be subject to—

"(A) chapter 44 of title 18, United States Code, except for section 922(a)(4), (o), (v), and (w);

"(B) chapter 53 of title 26, United States Code, except for section 5844; and

"(C) a background check by the Attorney General, based on fingerprints and including a check of the system established under section 103(b) of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note) to determine whether the person applying for the authority is prohibited from possessing or receiving a firearm under Federal or State law.

"(3) This subsection shall become effective upon the issuance of guidelines by the Commission, with the approval of the Attorney General, to govern the implementation of this subsection.

"(4) In this subsection, the terms 'handgun', 'rifle', 'shotgun', 'firearm', 'ammunition', 'machinegun', 'semiautomatic assault weapon', 'large capacity ammunition feeding device', 'short-barreled shotgun', and 'short-barreled rifle' shall have the meanings given those terms in section 921(a) of title 18, United States Code.".

§ 664. Unauthorized introduction of dangerous weapons

Section 229 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended in the first sentence by inserting "or subject to the licensing authority of the Commission or to certification by the Commission under this Act or any other Act" before the period at the end.

§ 665. Sabotage of nuclear facilities or fuel

(a) IN GENERAL.—Section 236 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)) is amended—

(1) in paragraph (2), by striking "storage facility" and inserting "storage, treatment, or disposal facility";

(2) in paragraph (3)—

(A) by striking "such a utilization facility" and inserting "a utilization facility licensed under this Act"; and

(B) by striking "or" at the end;

(3) in paragraph (4)—

(A) by striking "facility licensed" and inserting ", uranium conversion, or nuclear fuel fabrication facility licensed or certified"; and

(B) by striking the comma at the end and inserting a semicolon; and

(4) by inserting after paragraph (4) the following:

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

"(6) any primary facility or backup facility from which a radiological emergency preparedness alert and warning system is activated; or

"(7) any radioactive material or other property subject to regulation by the Nuclear Regulatory Commission that, before the date of the offense, the Nuclear Regulatory Commission determines, by order or regulation published in the Federal Register, is of significance to the public health and safety or to common defense and security,".

(b) PENALTIES.—Section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284) is amended by striking "$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" both places it appears and inserting "$1,000,000 or imprisoned for up to life without parole".

§ 666. 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 materials described in subsection b., when transferred or received in the United States by any party pursuant to an import or export license issued pursuant to this Act, are accompanied by a manifest describing the type and amount of materials being transferred or received. Each individual receiving or accompanying the transfer of such materials shall be subject to a security background check conducted by appropriate Federal entities.

"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 or classes of individuals 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), except that the background check requirement shall become effective on a date established by the Commission.

(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.".

§ 667. Department of Homeland Security consultation

Before issuing a license for a utilization facility, the Nuclear Regulatory Commission shall consult with the Department of Homeland Security concerning the potential vulnerabilities of the location of the proposed facility to terrorist attack.

§ 668. Authorization of appropriations

(a) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this subtitle and the amendments made by this subtitle.

(b) NUCLEAR REGULATORY COMMISSION USER FEES AND ANNUAL CHARGES.—Section 6101 of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214) is amended—

(1) in subsection (a)—

(A) by striking "Except as provided in paragraph (3), the" and inserting "The" in paragraph (1); and

(B) by striking paragraph (3); and

(2) in subsection (c)—

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

(B) by striking the period at the end of paragraph (2)(A)(ii) and inserting a semicolon;

(C) by adding at the end of paragraph (2)(A) the following new clauses:

"(iii) amounts appropriated to the Commission for the fiscal year for implementation of section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005; and

"(iv) amounts appropriated to the Commission for homeland security activities of the Commission for the fiscal year, except for the costs of fingerprinting and background checks required by section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169) and the costs of conducting security inspections."; and

(D) by amending paragraph (2)(B)(v) to read as follows:

"(v) 90 percent for fiscal year 2005 and each fiscal year thereafter.".

(c) REPEAL.—Section 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (42 U.S.C. 2213) is repealed.

TITLE VII—VEHICLES AND FUELS

Subtitle A—Existing Programs

§ 701. Use of alternative fuels by dual-fueled vehicles

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 qualifies for a waiver of such requirement for vehicles operated by the agency in a particular geographic area in which—

"(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 to the Secretary by the head of the agency.

"(ii) The Secretary shall monitor compliance with this subparagraph by all such fleets and shall report annually to Congress on the extent to which the requirements of this subparagraph are being achieved. The report shall include information on annual reductions achieved from the use of petroleum-based fuels and the problems, if any, encountered in acquiring alternative fuels.".

§ 704. Incremental cost allocation

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

§ 705. Lease condensates

(a) LEASE CONDENSATE FUELS.—Section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211) is amended—

(1) in paragraph (2), by inserting "mixtures containing 50 percent or more by volume of lease condensate or fuels extracted from lease condensate;" after "liquefied petroleum gas;";

(2) in paragraph (13), by striking "and" at the end;

(3) in paragraph (14)—

(A) by inserting "mixtures containing 50 percent or more by volume of lease condensate or fuels extracted from lease condensate," after "liquefied petroleum gas,"; and

(B) by striking the period and inserting "; and";

(4) by adding at the end the following:

"(15) the term 'lease condensate' means a mixture, primarily of pentanes and heavier hydrocarbons, that is recovered as a liquid from natural gas in lease separation facilities.".

(b) LEASE CONDENSATE USE CREDITS.—

(1) IN GENERAL.—Title III of the Energy Policy Act of 1992 (42 U.S.C. 13211 et seq.) is amended by adding at the end the following:

"SEC. 313. LEASE CONDENSATE USE CREDITS.

"(a) IN GENERAL.—Subject to subsection (d), the Secretary shall allocate 1 credit under this section to a fleet or covered person for each qualifying volume of the lease condensate component of fuel containing at least 50 percent lease condensate, or fuels extracted from lease condensate, after the date of enactment of this section for use by the fleet or covered person in vehicles owned or operated by the fleet or covered person that weigh more than 8,500 pounds gross vehicle weight rating.

"(b) REQUIREMENTS.—A credit allocated under this section—

"(1) shall be subject to the same exceptions, authority, documentation, and use of credits that are specified for qualifying volumes of biodiesel in section 312; and

"(2) shall not be considered a credit under section 508.

"(c) REGULATION.—

"(1) IN GENERAL.—Subject to subsection (d), not later than January 1, 2006, after the collection of appropriate information and data that consider usage options, uses in other industries, products, or processes, potential volume capacities, costs, air emissions, and fuel efficiencies, the Secretary shall issue a regulation establishing requirements and procedures for the implementation of this section.

"(2) QUALIFYING VOLUME.—The regulation shall include a determination of an appropriate qualifying volume for lease condensate, except that in no case shall the Secretary determine that the qualifying volume for lease condensate is less than 1,125 gallons.

"(d) APPLICABILITY.—This section applies unless the Secretary finds that the use of lease condensate as an alternative fuel would adversely affect public health or safety or ambient air quality or the environment.".

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Energy Policy Act of 1992 (42 U.S.C. prec. 13201) is amended by adding at the end of the items relating to title III the following:

"Sec. 313. Lease condensate use credits.".

(c) EMERGENCY EXEMPTION.—Section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211) is amended in paragraph (9)(E) by inserting before the semicolon at the end ", including vehicles directly used in the emergency repair of transmission

lines and in the restoration of electricity service following power outages, as determined by the Secretary".

§ 706. Review of Energy Policy Act of 1992 programs

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary of Energy shall complete a study to determine the effect that titles III, IV, and V of the Energy Policy Act of 1992 (42 U.S.C. 13211 et seq.) have had on—

(1) the development of alternative fueled vehicle technology;

(2) the availability of that technology in the market; and

(3) the cost of alternative fueled vehicles.

(b) TOPICS.—As part of the study under subsection (a), the Secretary shall specifically identify—

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

(2) the quantity, by type, of alternative fuel actually used in alternative fueled vehicles acquired by fleets or covered persons;

(3) the quantity of petroleum displaced by the use of alternative fuels in alternative fueled vehicles acquired by fleets or covered persons;

(4) the direct and indirect costs of compliance with requirements under titles III, IV, and V of the Energy Policy Act of 1992 (42 U.S.C. 13211 et seq.), including—

(A) vehicle acquisition requirements imposed on fleets or covered persons;

(B) administrative and recordkeeping expenses;

(C) fuel and fuel infrastructure costs;

(D) associated training and employee expenses; and

(E) any other factors or expenses the Secretary determines to be necessary to compile reliable estimates of the overall costs and benefits of complying with programs under those titles for fleets, covered persons, and the national economy;

(5) the existence of obstacles preventing compliance with vehicle acquisition requirements and increased use of alternative fuel in alternative fueled vehicles acquired by fleets or covered persons; and

(6) the projected impact of amendments to the Energy Policy Act of 1992 made by this title.

(c) REPORT.—Upon completion of the study under this section, the Secretary shall submit to Congress a report that describes the results of the study and includes any recommendations of the Secretary for legislative or administrative changes concerning the alternative fueled vehicle requirements under titles III, IV and V of the Energy Policy Act of 1992 (42 U.S.C. 13211 et seq.).

§ 707. Report concerning compliance with alternative fueled vehicle purchasing requirements

Section 310(b)(1) of the Energy Policy Act of 1992 (42 U.S.C. 13218(b)(1)) is amended by striking "1 year after the date of enactment of this subsection" and inserting "February 15, 2006".

Subtitle B—Hybrid Vehicles, Advanced Vehicles, and Fuel Cell Buses

PART 1—HYBRID VEHICLES

§ 711. Hybrid vehicles

The Secretary of Energy shall accelerate efforts directed toward the improvement of batteries and other rechargeable energy storage systems, power electronics, hybrid systems integration, and other technologies for use in hybrid vehicles.

§ 712. Hybrid retrofit and electric conversion program

(a) ESTABLISHMENT.—The Administrator of the Environmental Protection Agency, in consultation with the Secretary, shall establish a program for awarding grants on a competitive basis to entities for the installation of hybrid retrofit and electric conversion technologies for combustion engine vehicles.

(b) ELIGIBLE RECIPIENTS.—A grant shall be awarded under this section only—

(1) to a local or State governmental entity;

(2) to a for-profit or nonprofit corporation or other person; or

(3) to 1 or more contracting entities that service combustion engine vehicles for an entity described in paragraph (1) or (2).

(c) AWARDS.—

(1) IN GENERAL.—The Administrator shall seek, to the maximum extent practicable, to ensure a broad geographic distribution of grants under this section.

(2) PREFERENCES.—In making awards of grants under this section, the Administrator shall give preference to proposals that—

(A) will achieve the greatest reductions in emissions per proposal or per vehicle; or

(B) involve the use of emissions control retrofit or conversion technology.

(d) CONDITIONS OF GRANT.—A grant shall be provided under this section on the conditions that—

(1) combustion engine vehicles on which hybrid retrofit or conversion technology are to be demonstrated—

(A) with the retrofit or conversion technology applied will achieve low-emission standards consistent with the Voluntary National Low Emission Vehicle Program for Light-Duty Vehicles and Light-Duty Trucks (40 CFR Part 86) without model year restrictions; and

(B) will be used for a minimum of 3 years;

(2) grant funds will be used for the purchase of hybrid retrofit or conversion technology, including State taxes and contract fees; and

(3) grant recipients will provide at least 15 percent of the total cost of the retrofit or conversion, including the purchase of hybrid retrofit or conversion technology and all necessary labor for installation of the retrofit or conversion.

(e) VERIFICATION.—Not later than 90 days after the date of enactment of this Act, the Administrator shall publish in the Federal Register procedures to verify—

(1) the hybrid retrofit or conversion technology to be demonstrated; and

(2) that grants are administered in accordance with this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator to carry out this section, to remain available until expended—

(1) $20,000,000 for fiscal year 2005;

(2) $35,000,000 for fiscal year 2006;

(3) $45,000,000 for fiscal year 2007; and

(4) such sums as are necessary for each of fiscal years 2008 and 2009.

PART 2—ADVANCED VEHICLES

§ 721. Definitions

In this part:

(1) ALTERNATIVE FUELED VEHICLE.—

(A) IN GENERAL.—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)).

(B) EXCLUSION.—The term "alternative fueled vehicle" does not include a vehicle that the Secretary determines, by regulation, 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 an electric motor powered by a fuel cell system that converts chemical energy into electricity by combining oxygen (from air) with hydrogen fuel that is stored on the vehicle or is produced onboard by reformation of a hydrocarbon fuel. Such fuel cell system may or may not include the use of auxiliary energy storage systems to enhance vehicle performance.

(3) HYBRID VEHICLE.—The term "hybrid vehicle" means a medium or heavy duty vehicle propelled by an internal combustion engine or heat engine using any combustible fuel and an onboard rechargeable energy storage device.

(4) NEIGHBORHOOD ELECTRIC VEHICLE.—The term "neighborhood electric vehicle" means a motor vehicle that—

(A) meets the definition of a low-speed vehicle (as defined in part 571 of title 49, Code of Federal Regulations);

(B) meets the definition of a zero-emission vehicle (as defined in section 86.1702–99 of title 40, Code of Federal Regulations);

(C) meets the requirements of Federal Motor Vehicle Safety Standard No. 500; and

(D) has a maximum speed of not greater than 25 miles per hour.

(5) PILOT PROGRAM.—The term "pilot program" means the competitive grant program established under section 722.

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

(7) ULTRA-LOW SULFUR DIESEL VEHICLE.—The term "ultra-low sulfur diesel vehicle" means a vehicle manufactured in any of model years 2004 through 2006 powered by a heavy-duty diesel engine that—

(A) is fueled by diesel fuel that contains sulfur at not more than 15 parts per million; and

(B) emits not more than the lesser of—

(i) for vehicles 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; or

(ii) the quantity of 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.

§ 722. Pilot program

(a) ESTABLISHMENT.—The Secretary, in consultation with the Secretary of Transportation, 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 15 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.—A grant 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 2-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 or pull airplanes toward or away from terminal gates).

(3) The acquisition of ultra-low sulfur diesel vehicles.

(4) Installation or acquisition of 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.—

(A) IN GENERAL.—The Secretary shall issue requirements for applying for grants under the pilot program.

(B) MINIMUM REQUIREMENTS.—At a minimum, the Secretary shall require that an application for a grant—

(i) 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

(ii) include—

(I) a description of the project proposed in the application, including how the project meets the requirements of this part;

(II) an estimate of the ridership or degree of use of the project;

(III) an estimate of the air pollution emissions reduced and fossil fuel displaced as a result of the project, and a plan to collect and disseminate environmental data, related to the project to be funded under the grant, over the life of the project;

(IV) a description of how the project will be sustainable without Federal assistance after the completion of the term of the grant;

(V) a complete description of the costs of the project, including acquisition, construction, operation, and maintenance costs over the expected life of the project;

(VI) a description of which costs of the project will be supported by Federal assistance under this part; and

(VII) 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 project, and a commitment by the applicant to use such fuel in carrying out the project.

(2) PARTNERS.—An applicant under paragraph (1) may carry out a project under the pilot program in partnership with public and private entities.

(d) SELECTION CRITERIA.—In evaluating applications under the pilot program, the Secretary shall—

(1) consider each applicant's previous experience with similar projects; and

(2) give priority consideration to applications that—

(A) are most likely to maximize protection of the environment;

(B) demonstrate the greatest commitment on the part of the applicant to ensure funding for the proposed project and the greatest likelihood that the project will be maintained or expanded after Federal assistance under this part is completed; and

(C) exceed the minimum requirements of subsection (c)(1)(B)(ii).

(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 90 days after the date of 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 not later than 180 days after the date of publication of the notice.

(2) SELECTION.—Not later than 180 days after the date by which applications for grants are due, the Secretary shall select by competitive, peer reviewed proposal, 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 nor more than 25 percent of the grant funding made available under this section for the acquisition of ultra-low sulfur diesel vehicles.

§ 723. Reports to Congress

(a) INITIAL REPORT.—Not later than 60 days after the date on which grants are awarded under this part, the Secretary shall submit to 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 enactment of this Act, and annually thereafter until the pilot program ends, the Secretary shall submit to Congress a report containing an evaluation of the effectiveness of the pilot program, including—

(1) an assessment of the benefits to the environment derived from the projects included in the pilot program; and

(2) an estimate of the potential benefits to the environment to be derived from widespread application of alternative fueled vehicles and ultra-low sulfur diesel vehicles.

§ 724. Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out this part $200,000,000, to remain available until expended.

PART 3—FUEL CELL BUSES

§ 731. Fuel cell transit bus demonstration

(a) IN GENERAL.—The Secretary of Energy, in consultation with the Secretary of Transportation, shall establish a transit bus demonstration program to make competitive, merit-based awards for 5-year projects to demonstrate not more than 25 fuel cell transit buses (and necessary infrastructure) in 5 geographically dispersed localities.

(b) PREFERENCE.—In selecting projects under this section, the Secretary of Energy shall give preference to projects that are most likely to mitigate congestion and improve air quality.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy to carry out this section $10,000,000 for each of fiscal years 2006 through 2010.

Subtitle C—Clean School Buses

§ 741. Definitions

In this subtitle:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) ALTERNATIVE FUEL.—The term "alternative fuel" means liquefied natural gas, compressed natural gas, liquefied petroleum gas, hydrogen, propane, or methanol or ethanol at no less than 85 percent by volume.

(3) ALTERNATIVE FUEL SCHOOL BUS.—The term "alternative fuel school bus" means a school bus that meets all of the requirements of this subtitle and is operated solely on an alternative fuel.

(4) EMISSIONS CONTROL RETROFIT TECHNOLOGY.—The term "emissions control retrofit technology" means a particulate filter or other emissions control equipment that is verified or certified by the Administrator or the California Air Resources Board as an effective emission reduction technology when installed on an existing school bus.

(5) IDLING.—The term "idling" means operating an engine while remaining stationary for more than approximately 15 minutes, except that the term does not apply to routine stoppages associated with traffic movement or congestion.

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

(7) ULTRA-LOW SULFUR DIESEL FUEL.—The term "ultra-low sulfur diesel fuel" means diesel fuel that contains sulfur at not more than 15 parts per million.

(8) ULTRA-LOW SULFUR DIESEL FUEL SCHOOL BUS.—The term "ultra-low sulfur diesel fuel school bus" means a school bus that meets all of the requirements of this subtitle and is operated solely on ultra-low sulfur diesel fuel.

§ 742. Program for replacement of certain school buses with clean school buses

(a) ESTABLISHMENT.—The Administrator, in consultation with the Secretary and other appropriate Federal departments and agencies, shall establish a program for awarding grants on a competitive basis to eligible entities for the replacement of existing school buses manufactured before model year 1991 with alternative fuel school buses and ultra-low sulfur diesel fuel school buses.

(b) REQUIREMENTS.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator 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 instructions for the submission of grant applications and certification requirements to ensure compliance with this subtitle.

(2) APPLICATION DEADLINES.—The requirements established under paragraph (1) shall require submission of grant applications not later than—

(A) in the case of the first year of program implementation, the date that is 180 days after the publication of the requirements in the Federal Register; and

(B) in the case of each subsequent year, June 1 of the year.

(c) ELIGIBLE RECIPIENTS.—A grant shall be awarded under this section only—

(1) to 1 or more local or State governmental entities responsible for providing school bus service to 1 or more public school systems or responsible for the purchase of school buses;

(2) to 1 or more contracting entities that provide school bus service to 1 or more public school systems, if the grant application is submitted jointly with

the 1 or more school systems to be served by the buses, except that the application may provide that buses purchased using funds awarded shall be owned, operated, and maintained exclusively by the 1 or more contracting entities; or

(3) to a nonprofit school transportation association representing private contracting entities, if the association has notified and received approval from the 1 or more school systems to be served by the buses.

(d) AWARD DEADLINES.—

(1) IN GENERAL.—Subject to paragraph (2), the Administrator shall award a grant made to a qualified applicant for a fiscal year—

(A) in the case of the first fiscal year of program implementation, not later than the date that is 90 days after the application deadline established under subsection (b)(2); and

(B) in the case of each subsequent fiscal year, not later than August 1 of the fiscal year.

(2) INSUFFICIENT NUMBER OF QUALIFIED GRANT APPLICATIONS.—If the Administrator does not receive a sufficient number of qualified grant applications to meet the requirements of subsection (i)(1) for a fiscal year, the Administrator shall award a grant made to a qualified applicant under subsection (i)(2) not later than September 30 of the fiscal year.

(e) TYPES OF GRANTS.—

(1) IN GENERAL.—A grant under this section shall be used for the replacement of school buses manufactured before model year 1991 with alternative fuel school buses and ultra-low sulfur diesel fuel school buses.

(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 Administrator shall give priority to applicants that propose to replace school buses manufactured before model year 1977.

(f) CONDITIONS OF GRANT.—A grant provided under this section shall include the following conditions:

(1) SCHOOL BUS FLEET.—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) USE OF FUNDS.—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 fuel school buses, including State taxes and contract fees associated with the acquisition of such buses; and

(B) to provide—

(i) up to 20 percent of the price of the alternative fuel school buses acquired, for necessary alternative fuel infrastructure if the infrastructure will only be available to the grant recipient; and

(ii) up to 25 percent of the price of the alternative fuel school buses acquired, for necessary alternative fuel infrastructure if the infrastructure will be available to the grant recipient and to other bus fleets.

(3) GRANT RECIPIENT FUNDS.—The grant recipient shall be required to provide at least—

(A) in the case of a grant recipient described in paragraph (1) or (3) of subsection (c), the lesser of—

(i) an amount equal to 15 percent of the total cost of each bus received; or

(ii) $15,000 per bus; and

(B) in the case of a grant recipient described in subsection (c)(2), the lesser of—

(i) an amount equal to 20 percent of the total cost of each bus received; or

(ii) $20,000 per bus.

(4) ULTRA-LOW SULFUR DIESEL FUEL.—In the case of a grant recipient receiving a grant for ultra-low sulfur diesel fuel school buses, the grant recipient shall be required to provide documentation to the satisfaction of the Administrator 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.

(5) TIMING.—All alternative fuel school buses, ultra-low sulfur diesel fuel school buses, or alternative fuel infrastructure acquired under a grant awarded under this section shall be purchased and placed in service as soon as practicable.

(g) BUSES.—

(1) IN GENERAL.—Except as provided in paragraph (2), funding under a grant made under this section for the acquisition of new alternative fuel school buses or ultra-low sulfur diesel fuel school buses shall only be used to acquire school buses—

(A) with a gross vehicle weight of greater than 14,000 pounds;

(B) that are powered by a heavy duty engine;

(C) in the case of alternative fuel school buses manufactured in model years 2004 through 2006, that emit not more than 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

(D) in the case of ultra-low sulfur diesel fuel school buses manufactured in model years 2004 through 2006, that emit not more than 2.5 grams per brake horsepower-hour of nonmethane hydrocarbons and oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter.

(2) LIMITATIONS.—A bus shall not be acquired under this section that emits 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 fuel school buses commercially available at the time the grant is made.

(h) DEPLOYMENT AND DISTRIBUTION.—The Administrator shall—

(1) seek, to the maximum extent practicable, to achieve nationwide deployment of alternative fuel school buses and ultra-low sulfur diesel fuel school buses through the program under this section; and

(2) 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) ALLOCATION OF FUNDS.—

(1) IN GENERAL.—Subject to paragraph (2), of the amount of grant funding made available to carry out this section for any fiscal year, the Administrator shall use—

(A) 70 percent for the acquisition of alternative fuel school buses or supporting infrastructure; and

(B) 30 percent for the acquisition of ultra-low sulfur diesel fuel school buses.

(2) INSUFFICIENT NUMBER OF QUALIFIED GRANT APPLICATIONS.—After the first fiscal year in which this program is in effect, if the Administrator does not receive a sufficient number of qualified grant applications to meet the requirements of subparagraph (A) or (B) of paragraph (1) for a fiscal year, effective beginning on August 1 of the fiscal year, the Administrator shall make the remaining funds available to other qualified grant applicants under this section.

(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.—

(1) IN GENERAL.—Not later than January 31 of each year, the Administrator shall transmit to Congress a report evaluating implementation of the programs under this section and section 743.

(2) COMPONENTS.—The reports shall include a description of—

(A) the total number of grant applications received;

(B) the number and types of alternative fuel school buses, ultra-low sulfur diesel fuel school buses, and retrofitted buses requested in grant applications;

(C) grants awarded and the criteria used to select the grant recipients;

(D) certified engine emission levels of all buses purchased or retrofitted under the programs under this section and section 743;

(E) an evaluation of the in-use emission level of buses purchased or retrofitted under the programs under this section and section 743; and

(F) any other information the Administrator considers appropriate.

(l) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator to carry out this section, to remain available until expended—

(1) $45,000,000 for fiscal year 2005;

(2) $65,000,000 for fiscal year 2006;

(3) $90,000,000 for fiscal year 2007; and

(4) such sums as are necessary for each of fiscal years 2008 and 2009.

§ 743. Diesel retrofit program

(a) ESTABLISHMENT.—The Administrator, in consultation with the Secretary, shall establish a program for awarding grants on a competitive basis to entities for the installation of retrofit technologies for diesel school buses.

(b) 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 1 or more public school systems;

(2) to 1 or more contracting entities that provide school bus service to 1 or more public school systems, if the grant application is submitted jointly with the 1 or more school systems that the buses will serve, except that the application may provide that buses purchased using funds awarded shall be owned, operated, and maintained exclusively by the 1 or more contracting entities; or

(3) to a nonprofit school transportation association representing private contracting entities, if the association has notified and received approval from the 1 or more school systems to be served by the buses.

(c) AWARDS.—

(1) IN GENERAL.—The Administrator shall seek, to the maximum extent practicable, to ensure a broad geographic distribution of grants under this section.

(2) PREFERENCES.—In making awards of grants under this section, the Administrator shall give preference to proposals that—

(A) will achieve the greatest reductions in emissions of nonmethane hydrocarbons, oxides of nitrogen, or particulate matter per proposal or per bus; or

(B) involve the use of emissions control retrofit technology on diesel school buses that operate solely on ultra-low sulfur diesel fuel.

(d) CONDITIONS OF GRANT.—A grant shall be provided under this section on the conditions that—

(1) buses on which retrofit emissions-control technology are to be demonstrated—

(A) will operate on ultra-low sulfur diesel fuel where such fuel is reasonably available or required for sale by State or local law or regulation;

(B) were manufactured in model year 1991 or later; and

(C) will be used for the transportation of school children to and from school for a minimum of 5 years;

(2) grant funds will be used for the purchase of emission control retrofit technology, including State taxes and contract fees; and

(3) grant recipients will provide at least 15 percent of the total cost of the retrofit, including the purchase of emission control retrofit technology and all necessary labor for installation of the retrofit.

(e) VERIFICATION.—Not later than 90 days after the date of enactment of this Act, the Administrator shall publish in the Federal Register procedures to verify—

(1) the retrofit emissions-control technology to be demonstrated;

(2) that buses powered by ultra-low sulfur diesel fuel on which retrofit emissions-control technology are to be demonstrated will operate on diesel fuel containing not more than 15 parts per million of sulfur; and

(3) that grants are administered in accordance with this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator to carry out this section, to remain available until expended—

(1) $20,000,000 for fiscal year 2005;

(2) $35,000,000 for fiscal year 2006;

(3) $45,000,000 for fiscal year 2007; and

(4) such sums as are necessary for each of fiscal years 2008 and 2009.

§ 744. Fuel cell school buses

(a) ESTABLISHMENT.—The Secretary shall establish a program for entering into cooperative agreements—

(1) with private sector fuel cell bus developers for the development of fuel cell-powered school buses; and

(2) 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 demonstrate 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—

(1) 20 percent for fuel infrastructure development activities; and

(2) 50 percent for demonstration activities and for development activities not described in paragraph (1).

(c) REPORTS TO CONGRESS.—Not later than 3 years after the date of enactment of this Act, the Secretary shall transmit to Congress a report that—

(1) evaluates the process of converting natural gas infrastructure to accommodate fuel cell-powered school buses; and

(2) assesses the results of the development and demonstration program under this section.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $25,000,000 for the period of fiscal years 2005 through 2007.

Subtitle D—Miscellaneous

§ 751. Railroad efficiency

(a) ESTABLISHMENT.—The Secretary of Energy shall, in cooperation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, establish a cost-shared, public-private research partnership involving the Federal Government, railroad carriers, locomotive manufacturers and equipment suppliers, and the Association of American Railroads, to develop and demonstrate railroad locomotive technologies that increase fuel economy, reduce emissions, and lower costs of operation.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy to carry out this section—

(1) $25,000,000 for fiscal year 2006;

(2) $35,000,000 for fiscal year 2007; and

(3) $50,000,000 for fiscal year 2008.

§ 752. Mobile emission reductions trading and crediting

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall submit to Congress a report on the experience of the Administrator with the trading of mobile source emission reduction credits for use by owners and operators of stationary source emission sources to meet emission offset requirements within a nonattainment area.

(b) CONTENTS.—The report shall describe—

(1) projects approved by the Administrator that include the trading of mobile source emission reduction credits for use by stationary sources in complying with offset requirements, including a description of—

(A) project and stationary sources location;

(B) volumes of emissions offset and traded;

(C) the sources of mobile emission reduction credits; and

(D) if available, the cost of the credits;

(2) the significant issues identified by the Administrator in consideration and approval of trading in the projects;

(3) the requirements for monitoring and assessing the air quality benefits of any approved project;

(4) the statutory authority on which the Administrator has based approval of the projects;

(5) an evaluation of how the resolution of issues in approved projects could be used in other projects; and

(6) any other issues that the Administrator considers relevant to the trading and generation of mobile source emission reduction credits for use by stationary sources or for other purposes.

§ 753. Aviation fuel conservation and emissions

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration and the Administrator of the Environmental Protection Agency shall jointly initiate a study to identify—

(1) the impact of aircraft emissions on air quality in nonattainment areas; and

(2) ways to promote fuel conservation measures for aviation to—

(A) enhance fuel efficiency; and

(B) reduce emissions.

(b) FOCUS.—The study under subsection (a) shall focus on how air traffic management inefficiencies, such as aircraft idling at airports, result in unnecessary fuel burn and air emissions.

(c) REPORT.—Not later than 1 year after the date of the initiation of the study under subsection (a), the Administrator of the Federal Aviation Administration and the Administrator of the Environmental Protection Agency shall jointly submit to the Committee on Energy and Commerce and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works and the Committee on Commerce, Science, and Transportation of the Senate a report that—

(1) describes the results of the study; and

(2) includes any recommendations on ways in which unnecessary fuel use and emissions affecting air quality may be reduced—

(A) without adversely affecting safety and security and increasing individual aircraft noise; and

(B) while taking into account all aircraft emissions and the impact of the emissions on human health.

§ 754. Diesel fueled vehicles

(a) DEFINITION OF TIER 2 EMISSION STANDARDS.—In this section, the term "tier 2 emission standards" means the motor vehicle emission standards that apply to passenger cars, light trucks, and larger passenger vehicles manufactured after the 2003 model year, as issued on February 10, 2000, by the Administrator of the Environmental Protection Agency under sections 202 and 211 of the Clean Air Act (42 U.S.C. 7521, 7545).

(b) 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.

(c) GOALS.—The Secretary shall carry out subsection (b) with a view toward achieving the following goals:

(1) Developing and demonstrating diesel technologies that, not later than 2010, meet the following standards:

(A) Tier 2 emission standards.

(B) The heavy-duty emissions standards of 2007 that are applicable to heavy-duty vehicles under regulations issued by the Administrator of the Environmental Protection Agency as of the date of enactment of this Act.

(2) Developing the next generation of low-emission, high efficiency diesel engine technologies, including homogeneous charge compression ignition technology.

§ 757. Biodiesel engine testing program

(a) IN GENERAL.—Not later that 180 days after the date of enactment of this Act, the Secretary shall initiate a partnership with diesel engine, diesel fuel injection system, and diesel vehicle manufacturers and diesel and biodiesel fuel providers, to include biodiesel testing in advanced diesel engine and fuel system technology.

(b) SCOPE.—The program shall provide for testing to determine the impact of biodiesel from different sources on current and future emission control technologies, with emphasis on—

(1) the impact of biodiesel on emissions warranty, in-use liability, and antitampering provisions;

(2) the impact of long-term use of biodiesel on engine operations;

(3) the options for optimizing these technologies for both emissions and performance when switching between biodiesel and diesel fuel; and

(4) the impact of using biodiesel in these fueling systems and engines when used as a blend with 2006 Environmental Protection Agency-mandated diesel fuel containing a maximum of 15-parts-per-million sulfur content.

(c) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall provide an interim report to Congress on the findings of the program, including a comprehensive analysis of impacts from biodiesel on engine operation for both existing and expected future diesel technologies, and recommendations for ensuring optimal emissions reductions and engine performance with biodiesel.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of fiscal years 2006 through 2010 to carry out this section.

(e) DEFINITION.—For purposes of this section, the term "biodiesel" means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545) and that meets the American Society for Testing and Materials D6751–02a Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

§ 759. Ultra-efficient engine technology for aircraft

(a) ULTRA-EFFICIENT ENGINE TECHNOLOGY PARTNERSHIP.—The Secretary of Energy shall enter into a cooperative agreement with the National Aeronautics and Space Administration for the development of ultra-efficient engine technology for aircraft.

(b) PERFORMANCE OBJECTIVE.—The Secretary of Energy shall establish the following performance objectives for the program set forth in subsection (a):

(1) A fuel efficiency increase of 10 percent.

(2) A reduction in the impact of landing and takeoff nitrogen oxides emissions on local air quality of 70 percent.

(c) AUTHORIZATION OF APPROPRIATIONS .—There are authorized to be appropriated to the Secretary of Energy for carrying out this section $45,000,000 for each of the fiscal years 2006, 2007, 2008, 2009, and 2010.

Subtitle E—Automobile Efficiency

§ 771. 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 carry out its obligations with respect to average fuel economy standards $2,000,000 for each of fiscal years 2006 through 2010.

§ 772. Revised considerations for decisions on maximum feasible average fuel economy

Section 32902(f) of title 49, United States Code, is amended to read as follows:

"(f) CONSIDERATIONS FOR DECISIONS ON MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.—When deciding maximum feasible average fuel economy under this section, the Secretary of Transportation shall consider the following matters:

"(1) Technological feasibility.

"(2) Economic practicability.

"(3) The effect of other motor vehicle standards of the Government on fuel economy.

"(4) The need of the United States to conserve energy.

"(5) The effects of fuel economy standards on passenger automobiles, nonpassenger automobiles, and occupant safety.

"(6) The effects of compliance with average fuel economy standards on levels of automobile industry employment in the United States.".

§ 773. Extension of maximum fuel economy increase for alternative fueled vehicles

(a) MANUFACTURING INCENTIVES.—Section 32905 of title 49, United States Code, is amended—

(1) in each of subsections (b) and (d), by striking "1993–2004" and inserting "1993–2010";

(2) in subsection (f), by striking "2001" and inserting "2007"; and

(3) in subsection (f)(1), by striking "2004" and inserting "2010".

(b) MAXIMUM FUEL ECONOMY INCREASE.—Subsection (a)(1) of section 32906 of title 49, United States Code, is amended—

(1) in subparagraph (A), by striking "the model years 1993–2004" and inserting "model years 1993–2010"; and

(2) in subparagraph (B), by striking "the model years 2005–2008" and inserting "model years 2011–2014".

§ 774. 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 initiate a study of the feasibility and effects of reducing by model year 2014, by a significant percentage, the amount of fuel consumed by 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 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 VIII—HYDROGEN

§ 801. Definitions

In this title:

(1) ADVISORY COMMITTEE.—The term "Advisory Committee" means the Hydrogen Technical and Fuel Cell Advisory Committee established under section 805.

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

(3) FUEL CELL.—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.

(4) INFRASTRUCTURE.—The term "infrastructure" means the equipment, systems, or facilities used to produce, distribute, deliver, or store hydrogen.

(5) LIGHT DUTY VEHICLE.—The term "light duty vehicle" means a car or truck classified by the Department of Transportation as a Class I or IIA vehicle.

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

§ 802. Plan

Not later than 6 months after the date of enactment of this Act, the Secretary shall transmit to Congress a coordinated plan for the programs described in this title and any other programs of the Department that are directly related to fuel cells or hydrogen. The plan shall describe, at a minimum—

(1) the agenda for the next 5 years for the programs authorized under this title, including the agenda for each activity enumerated in section 803(a);

(2) the types of entities that will carry out the activities under this title and what role each entity is expected to play;

(3) the milestones that will be used to evaluate the programs for the next 5 years;

(4) the most significant technical and nontechnical hurdles that stand in the way of achieving the goals described in section 803(b), and how the programs will address those hurdles; and

(5) the policy assumptions that are implicit in the plan, including any assumptions that would affect the sources of hydrogen or the marketability of hydrogen-related products.

§ 803. Programs

(a) ACTIVITIES.—The Secretary, in partnership with the private sector, shall conduct programs to address—

(1) production of hydrogen from diverse energy sources, including—

(A) fossil fuels, which may include carbon capture and sequestration;

(B) hydrogen-carrier fuels (including ethanol and methanol);

(C) renewable energy resources, including biomass; and

(D) nuclear energy;

(2) use of hydrogen for commercial, industrial, and residential electric power generation;

(3) safe delivery of hydrogen or hydrogen-carrier fuels, including—

(A) transmission by pipeline and other distribution methods; and

(B) convenient and economic refueling of vehicles either at central refueling stations or through distributed on-site generation;

(4) advanced vehicle technologies, including—

(A) engine and emission control systems;

(B) energy storage, electric propulsion, and hybrid systems;

(C) automotive materials; and

(D) other advanced vehicle technologies;

(5) storage of hydrogen or hydrogen-carrier fuels, including development of materials for safe and economic storage in gaseous, liquid, or solid form at refueling facilities and onboard vehicles;

(6) development of safe, durable, affordable, and efficient fuel cells, including fuel-flexible fuel cell power systems, improved manufacturing processes, high-temperature membranes, cost-effective fuel processing for natural gas, fuel cell stack and system reliability, low temperature operation, and cold start capability;

(7) development, after consultation with the private sector, of necessary codes and standards (including international codes and standards and voluntary consensus standards adopted in accordance with OMB Circular A–119) and safety

practices for the production, distribution, storage, and use of hydrogen, hydrogen-carrier fuels, and related products;

(8) a public education program to develop improved knowledge and acceptability of hydrogen-based systems; and

(9) the ability of domestic automobile manufacturers to manufacture commercially available competitive hybrid vehicle technologies in the United States.

(b) PROGRAM GOALS.—

(1) VEHICLES.—For vehicles, 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 in the mass consumer market; and

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

(i) a range of at least 300 miles;

(ii) improved performance and ease of driving;

(iii) safety and performance comparable to vehicle technologies in the market; and

(iv) when compared to light duty vehicles in model year 2003—

(I) fuel economy that is substantially higher;

(II) substantially lower emissions of air pollutants; and

(III) equivalent or improved vehicle fuel system crash integrity and occupant protection.

(2) HYDROGEN ENERGY AND ENERGY INFRASTRUCTURE.—For hydrogen energy and energy infrastructure, the goals of the program are to enable a commitment not later than 2015 that will lead to infrastructure by 2020 that will provide—

(A) safe and convenient refueling;

(B) improved overall efficiency;

(C) widespread availability of hydrogen from domestic energy sources through—

(i) production, with consideration of emissions levels;

(ii) delivery, including transmission by pipeline and other distribution methods for hydrogen; and

(iii) storage, including storage in surface transportation vehicles;

(D) hydrogen for fuel cells, internal combustion engines, and other energy conversion devices for portable, stationary, and transportation applications; and

(E) other technologies consistent with the Department's plan.

(3) FUEL CELLS.—The goals for fuel cells and their portable, stationary, and transportation applications are to enable—

(A) safe, economical, and environmentally sound hydrogen fuel cells;

(B) fuel cells for light duty and other vehicles; and

(C) other technologies consistent with the Department's plan.

(c) DEMONSTRATION.—In carrying out the programs under this section, the Secretary shall fund a limited number of demonstration projects, consistent with a determination of the maturity, cost-effectiveness, and environmental impacts of technologies supporting each project. In selecting projects under this subsection, the Secretary shall, to the extent practicable and in the public interest, select projects that—

(1) involve using hydrogen and related products at existing facilities or installations, such as existing office buildings, military bases, vehicle fleet centers, transit bus authorities, or units of the National Park System;

(2) depend on reliable power from hydrogen to carry out essential activities;

(3) lead to the replication of hydrogen technologies and draw such technologies into the marketplace;

(4) include vehicle, portable, and stationary demonstrations of fuel cell and hydrogen-based energy technologies;

(5) address the interdependency of demand for hydrogen fuel cell applications and hydrogen fuel infrastructure;

(6) raise awareness of hydrogen technology among the public;

(7) facilitate identification of an optimum technology among competing alternatives;

(8) address distributed generation using renewable sources; and

(9) address applications specific to rural or remote locations, including isolated villages and islands, the National Park System, and tribal entities.

The Secretary shall give preference to projects which address multiple elements contained in paragraphs (1) through (9).

(d) DEPLOYMENT.—In carrying out the programs under this section, the Secretary shall, in partnership with the private sector, conduct activities to facilitate the de-

ployment of hydrogen energy and energy infrastructure, fuel cells, and advanced vehicle technologies.

(e) FUNDING.—

(1) IN GENERAL.—The Secretary shall carry out the programs under this section using a competitive, merit-based review process and consistent with the generally applicable Federal laws and regulations governing awards of financial assistance, contracts, or other agreements.

(2) RESEARCH CENTERS.—Activities under this section may be carried out by funding nationally recognized university-based or Federal laboratory research centers.

(f) COST SHARING.—

(1) RESEARCH AND DEVELOPMENT.—Except as otherwise provided in this title, for research and development programs carried out under this title the Secretary shall require a commitment from non-Federal sources of at least 20 percent of the cost of the project. The Secretary may reduce or eliminate the non-Federal requirement under this paragraph if the Secretary determines that the research and development is of a basic or fundamental nature or involves technical analyses or educational activities.

(2) DEMONSTRATION AND COMMERCIAL APPLICATION.—Except as otherwise provided in this title, the Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration or commercial application project under this title to be provided from non-Federal sources. The Secretary may reduce the non-Federal requirement under this paragraph if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this title.

(3) CALCULATION OF AMOUNT.—In calculating the amount of the non-Federal commitment under paragraph (1) or (2), the Secretary may include personnel, services, equipment, and other resources.

(4) SIZE OF NON-FEDERAL SHARE.—The Secretary may consider the size of the non-Federal share in selecting projects.

(g) DISCLOSURE.—Section 623 of the Energy Policy Act of 1992 (42 U.S.C. 13293) relating to the protection of information shall apply to projects carried out through grants, cooperative agreements, or contracts under this title.

§ 804. 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 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 Department of State.

(6) The Environmental Protection Agency.

(7) The National Aeronautics and Space Administration.

(8) Other Federal agencies as the Secretary determines appropriate.

(b) DUTIES.—

(1) PLANNING.—The interagency task force shall work toward—

(A) a safe, economical, and environmentally sound fuel infrastructure for hydrogen and hydrogen-carrier fuels, including an infrastructure that supports buses and other fleet transportation;

(B) fuel cells in government and other applications, including portable, stationary, and transportation applications;

(C) distributed power generation, including the generation of combined heat, power, and clean fuels including hydrogen;

(D) uniform hydrogen codes, standards, and safety protocols; and

(E) vehicle hydrogen fuel system integrity safety performance.

(2) ACTIVITIES.—The interagency task force may organize workshops and conferences, may issue publications, and may create databases to carry out its duties. The interagency task force shall—

(A) foster the exchange of generic, nonproprietary information and technology among industry, academia, and government;

(B) develop and maintain an inventory and assessment of hydrogen, fuel cells, and other advanced technologies, including the commercial capability of each technology for the economic and environmentally safe production, distribution, delivery, storage, and use of hydrogen;

(C) integrate technical and other information made available as a result of the programs and activities under this title;

(D) promote the marketplace introduction of infrastructure for hydrogen fuel vehicles; and

(E) conduct an education program to provide hydrogen and fuel cell information to potential end-users.

(c) AGENCY COOPERATION.—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.

§ 805. Advisory Committee

(a) ESTABLISHMENT.—The Hydrogen Technical and Fuel Cell Advisory Committee is established to advise the Secretary on the programs and activities under this title.

(b) MEMBERSHIP.—

(1) MEMBERS.—The Advisory Committee shall be comprised of not fewer than 12 nor more than 25 members. The members shall be appointed by the Secretary to represent domestic industry, academia, professional societies, government agencies, Federal laboratories, previous advisory panels, and financial, environmental, and other appropriate organizations based on the Department's assessment of the technical and other qualifications of committee members and the needs of the Advisory Committee.

(2) TERMS.—The term of a member of the Advisory Committee shall not be more than 3 years. The Secretary may appoint members of the Advisory Committee in a manner that allows the terms of the members serving at any time to expire at spaced intervals so as to ensure continuity in the functioning of the Advisory Committee. A member of the Advisory Committee whose term is expiring may be reappointed.

(3) CHAIRPERSON.—The Advisory Committee shall have a chairperson, who is elected by the members from among their number.

(c) REVIEW.—The Advisory Committee shall review and make recommendations to the Secretary on—

(1) the implementation of programs and activities under this title;

(2) the safety, economical, and environmental consequences of technologies for the production, distribution, delivery, storage, or use of hydrogen energy and fuel cells; and

(3) the plan under section 802.

(d) RESPONSE.—

(1) CONSIDERATION OF RECOMMENDATIONS.—The Secretary shall consider, but need not adopt, any recommendations of the Advisory Committee under subsection (c).

(2) BIENNIAL REPORT.—The Secretary shall transmit a biennial report to Congress describing any recommendations made by the Advisory Committee since the previous report. The report shall include a description of how the Secretary has implemented or plans to implement the recommendations, or an explanation of the reasons that a recommendation will not be implemented. The report shall be transmitted along with the President's budget proposal.

(e) SUPPORT.—The Secretary shall provide resources necessary in the judgment of the Secretary for the Advisory Committee to carry out its responsibilities under this title.

§ 806. External review

(a) PLAN.—The Secretary shall enter into an arrangement with the National Academy of Sciences to review the plan prepared under section 802, which shall be completed not later than 6 months after the Academy receives the plan. Not later than 45 days after receiving the review, the Secretary shall transmit the review to Congress along with a plan to implement the review's recommendations or an explanation of the reasons that a recommendation will not be implemented.

(b) ADDITIONAL REVIEW.—The Secretary shall enter into an arrangement with the National Academy of Sciences under which the Academy will review the programs under section 803 during the fourth year following the date of enactment of this Act. The Academy's review shall include the research priorities and technical milestones, and evaluate the progress toward achieving them. The review shall be completed not later than 5 years after the date of enactment of this Act. Not later than 45 days after receiving the review, the Secretary shall transmit the review to Congress along with a plan to implement the review's recommendations or an explanation for the reasons that a recommendation will not be implemented.

§ 807. Miscellaneous provisions

(a) REPRESENTATION.—The Secretary may represent the United States interests with respect to activities and programs under this title, in coordination with the Department of Transportation, the National Institute of Standards and Technology, and other relevant Federal agencies, before governments and nongovernmental organizations including—

(1) other Federal, State, regional, and local governments and their representatives;

(2) industry and its representatives, including members of the energy and transportation industries; and

(3) in consultation with the Department of State, foreign governments and their representatives including international organizations.

(b) REGULATORY AUTHORITY.—Nothing in this title shall be construed to alter the regulatory authority of the Department.

§ 808. Savings clause

Nothing in this title shall be construed to affect the authority of the Secretary of Transportation that may exist prior to the date of enactment of this Act with respect to—

(1) research into, and regulation of, hydrogen-powered vehicles fuel systems integrity, standards, and safety under subtitle VI of title 49, United States Code;

(2) regulation of hazardous materials transportation under chapter 51 of title 49, United States Code;

(3) regulation of pipeline safety under chapter 601 of title 49, United States Code;

(4) encouragement and promotion of research, development, and deployment activities relating to advanced vehicle technologies under section 5506 of title 49, United States Code;

(5) regulation of motor vehicle safety under chapter 301 of title 49, United States Code;

(6) automobile fuel economy under chapter 329 of title 49, United States Code; or

(7) representation of the interests of the United States with respect to the activities and programs under the authority of title 49, United States Code.

§ 809. Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out this title, in addition to any amounts made available for these purposes under other Acts—

(1) $546,000,000 for fiscal year 2006;

(2) $750,000,000 for fiscal year 2007;

(3) $850,000,000 for fiscal year 2008;

(4) $900,000,000 for fiscal year 2009; and

(5) $1,000,000,000 for fiscal year 2010.

§ 810. Solar and wind technologies

(a) SOLAR ENERGY TECHNOLOGIES.—The Secretary shall—

(1) prepare a detailed roadmap for carrying out the provisions in this subtitle related to solar energy technologies and for implementing the recommendations related to solar energy technologies that are included in the report transmitted under subsection (c);

(2) provide for the establishment of 5 projects in geographic areas that are regionally and climatically diverse to demonstrate the production of hydrogen at solar energy facilities, including one demonstration project at a national laboratory or institution of higher education;

(3) establish a research and development program—

(A) to develop optimized concentrating solar power devices that may be used for the production of both electricity and hydrogen; and

(B) to evaluate the use of thermochemical cycles for hydrogen production at the temperatures attainable with concentrating solar power devices;

(4) coordinate with activities sponsored by the Department of Energy's Office of Nuclear Energy, Science, and Technology on high-temperature materials, thermochemical cycles, and economic issues related to solar energy;

(5) provide for the construction and operation of new concentrating solar power devices or solar power cogeneration facilities that produce hydrogen either concurrently with, or independently of, the production of electricity;

(6) support existing facilities and research programs dedicated to the development and advancement of concentrating solar power devices; and

(7) establish a program—

(A) to research and develop methods that use electricity from photovoltaic devices for the onsite production of hydrogen, such that no intermediate transmission or distribution infrastructure is required or used and future demand growth may be accommodated;

(B) to evaluate the economics of small-scale electrolysis for hydrogen production; and

(C) to research the potential of modular photovoltaic devices for the development of a hydrogen infrastructure, the security implications of a hydrogen infrastructure, and the benefits potentially derived from a hydrogen infrastructure.

(b) WIND ENERGY TECHNOLOGIES.—The Secretary shall—

(1) prepare a detailed roadmap for carrying out the provisions in this subtitle related to wind energy technologies and for implementing the recommendations related to wind energy technologies that are included in the report transmitted under subsection (c); and

(2) provide for the establishment of 5 projects in geographic areas that are regionally and climatically diverse to demonstrate the production of hydrogen at existing wind energy facilities, including one demonstration project at a national laboratory or institution of higher education.

(c) PROGRAM SUPPORT.—The Secretary shall support research programs at institutions of higher education for the development of solar energy technologies and wind energy technologies for the production of hydrogen. The research programs supported under this subsection shall—

(1) enhance fellowship and faculty assistance programs;

(2) provide support for fundamental research;

(3) encourage collaborative research among industry, national laboratories, and institutions of higher education;

(4) support communication and outreach; and

(5) to the greatest extent possible—

(A) be located in geographic areas that are regionally and climatically diverse; and

(B) be located at part B institutions, minority institutions, and institutions of higher education located in States participating in the Experimental Program to Stimulate Competitive Research of the Department of Energy.

(d) INSTITUTIONS OF HIGHER EDUCATION AND NATIONAL LABORATORY INTERACTIONS.—In conjunction with the programs supported under this section, the Secretary shall develop sabbatical, fellowship, and visiting scientist programs to encourage national laboratories and institutions of higher education to share and exchange personnel.

(e) DEFINITIONS.—For purposes of this section—

(1) the term "concentrating solar power devices" means devices that concentrate the power of the sun by reflection or refraction to improve the efficiency of a photovoltaic or thermal generation process;

(2) the term "institution of higher education" has the meaning given to that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a));

(3) the term "minority institution" has the meaning given to that term in section 365 of the Higher Education Act of 1965 (20 U.S.C. 1067k);

(4) the term "part B institution" has the meaning given to that term in section 322 of the Higher Education Act of 1965 (20 U.S.C. 1061); and

(5) the term "photovoltaic devices" means devices that convert light directly into electricity through a solid-state, semiconductor process.

TITLE IX—STUDIES AND PROGRAM SUPPORT

§ 901. Goals

(a) IN GENERAL.—The Secretary shall conduct a balanced set of programs of study to support Federal energy policy and programs by the Department. Such programs shall be focused on—

(1) increasing the efficiency of all energy intensive sectors through conservation and improved technologies;

(2) promoting diversity of energy supply;

(3) decreasing the Nation's dependence on foreign energy supplies;

(4) improving United States energy security; and

(5) decreasing the environmental impact of energy-related activities.

(b) GOALS.—The Secretary shall publish measurable 5-year cost and performance-based goals with each annual budget submission in at least the following areas:

(1) Energy efficiency for buildings, energy-consuming industries, and vehicles.

(2) Electric energy generation (including distributed generation), transmission, and storage.

(3) Renewable energy technologies including wind power, photovoltaics, solar thermal systems, geothermal energy, hydrogen-fueled systems, biomass-based systems, biofuels, and hydropower.

(4) Fossil energy including power generation, onshore and offshore oil and gas resource recovery, and transportation.

(5) Nuclear energy including programs for existing and advanced reactors and education of future specialists.

(c) PUBLIC COMMENT.—The Secretary shall provide mechanisms for input on the annually published goals from industry, university, and other public sources.

(d) EFFECT OF GOALS.—

(1) NO NEW AUTHORITY OR REQUIREMENT.—Nothing in subsection (a) or the annually published goals shall—

(A) create any new—

(i) authority for any Federal agency; or

(ii) requirement for any other person;

(B) be used by a Federal agency to support the establishment of regulatory standards or regulatory requirements; or

(C) alter the authority of the Secretary to make grants or other awards.

(2) NO LIMITATION.—Nothing in this subsection shall be construed to limit the authority of the Secretary to impose conditions on grants or other awards based on the goals in subsection (a) or any subsequent modification thereto.

§ 902. 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) SECRETARY.—The term "Secretary" means the Secretary of Energy.

Subtitle A—Energy Efficiency

§ 904. 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 2006, $616,000,000.

(2) For fiscal year 2007, $695,000,000.

(3) For fiscal year 2008, $772,000,000.

(4) For fiscal year 2009, $865,000,000.

(5) For fiscal year 2010, $920,000,000.

(b) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities under section 905—

(A) for fiscal year 2006, $20,000,000;

(B) for fiscal year 2007, $30,000,000;

(C) for fiscal year 2008, $50,000,000;

(D) for fiscal year 2009, $50,000,000; and

(E) for fiscal year 2010, $50,000,000.

(2) For activities under section 907—

(A) for fiscal year 2006, $4,000,000; and

(B) for each of fiscal years 2007 through 2010, $7,000,000.

(3) For activities under section 908—

(A) for fiscal year 2006, $20,000,000;

(B) for fiscal year 2007, $25,000,000;

(C) for fiscal year 2008, $30,000,000;

(D) for fiscal year 2009, $35,000,000; and

(E) for fiscal year 2010, $40,000,000.

(4) For activities under section 909, $2,000,000 for each of fiscal years 2007 through 2010.

(c) EXTENDED AUTHORIZATION.—There are authorized to be appropriated to the Secretary for activities under section 905, $50,000,000 for each of fiscal years 2011 through 2015.

(d) LIMITATION ON USE OF FUNDS.—None of the funds authorized to be appropriated under this section may be used for—

(1) the issuance and implementation of energy efficiency regulations;

(2) the Weatherization Assistance Program under part A of title IV of the Energy Conservation and Production Act (42 U.S.C. 6861 et seq.);

(3) the State Energy Program under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.); or

(4) the Federal Energy Management Program under part 3 of title V of the National Energy Conservation Policy Act (42 U.S.C. 8251 et seq.).

§ 905. 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 to develop advanced solid-state organic and inorganic lighting technologies based on white light emitting diodes that, compared to incandescent and fluorescent lighting technologies, are longer lasting; more energy-efficient; and cost-competitive, and have less environmental impact.

(c) INDUSTRY ALLIANCE.—The Secretary shall, not later than 3 months after the date of enactment of this section, competitively select an Industry Alliance to represent participants that are private, for-profit firms which, as a group, are broadly representative of United States solid state lighting expertise as a whole.

(d) STUDY.—

(1) IN GENERAL.—The Secretary shall carry out the activities of the Next Generation Lighting Initiative through competitively awarded grants, including to Industry Alliance participants, National Laboratories, and institutions of higher education.

(2) ASSISTANCE FROM THE INDUSTRY ALLIANCE.—The Secretary shall annually solicit from the Industry Alliance—

(A) comments to identify solid-state lighting technology needs;

(B) assessment of the progress of the Initiative's research activities; and

(C) assistance in annually updating solid-state lighting technology roadmaps.

(3) AVAILABILITY OF INFORMATION AND ROADMAPS.—The information and roadmaps under paragraph (2) shall be available to the public and public response shall be solicited by the Secretary.

(e) INTELLECTUAL PROPERTY.—The Secretary may require, in accordance with the authorities provided in section 202(a)(ii) of title 35, United States Code, section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182), and section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908), that—

(1) for any new invention resulting from activities under subsection (d)—

(A) the Industry Alliance members that are active participants in research, development, and demonstration activities related to the advanced solid-state lighting technologies that are the subject of this section shall be granted first option to negotiate with the invention owner nonexclusive licenses and royalties for uses of the invention related to solid-state lighting on terms that are reasonable under the circumstances; and

(B)(i) for 1 year after a United States patent is issued for the invention, the patent holder shall not negotiate any license or royalty with any entity that is not a participant in the Industry Alliance described in subparagraph (A); and

(ii) during the year described in clause (i), the invention owner shall negotiate nonexclusive licenses and royalties in good faith with any interested participant in the Industry Alliance described in subparagraph (A); and

(2) such other terms as the Secretary determines are required to promote accelerated commercialization of inventions made under the Initiative.

(f) NATIONAL ACADEMY REVIEW.—The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct periodic reviews of the Next Generation Lighting Initiative. The Academy shall review the priorities, technical milestones, and plans for technology transfer and progress towards achieving them. The Secretary shall consider the results of such reviews in evaluating the information obtained under subsection (d)(2).

(g) 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) INDUSTRY ALLIANCE.—The term "Industry Alliance" means an entity selected by the Secretary under subsection (c).

(3) WHITE LIGHT EMITTING DIODE.—The term "white light emitting diode" means a semiconducting package, utilizing either organic or inorganic materials, that produces white light using externally applied voltage.

§ 906. National Building Performance Initiative

(a) INTERAGENCY GROUP.—Not later than 90 days after the date of enactment of this Act, the President shall establish an interagency group to develop, in coordination with the advisory committee established under subsection (e), a National Building Performance Initiative (in this section referred to as the "Initiative"). The interagency group shall be co-chaired by appropriate officials of the Department and the Department of Commerce, who shall jointly arrange for the provision of necessary administrative support to the group.

(b) INTEGRATION OF EFFORTS.—The Initiative, working with the National Institute of Building Sciences, shall integrate Federal, State, and voluntary private sector efforts to reduce the costs of construction, operation, maintenance, and renovation of commercial, industrial, institutional, and residential buildings.

(c) DEPARTMENT OF ENERGY ROLE.—Within the Federal portion of the Initiative, the Department shall be the lead agency for all aspects of building performance related to use and conservation of energy.

(d) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Secretary, in consultation with the Secretary of Commerce and the Director of the Office of Science and Technology Policy, shall establish an advisory committee to—

(A) analyze and provide recommendations on potential private sector roles and participation in the Initiative; and

(B) review and provide recommendations on the plan described in subsection (c).

(2) MEMBERSHIP.—Membership of the advisory committee shall include representatives with a broad range of appropriate expertise, including expertise in—

(A) building technology;

(B) architecture, engineering, and building materials and systems; and

(C) the residential, commercial, and industrial sectors of the construction industry.

(e) CONSTRUCTION.—Nothing in this section provides any Federal agency with new authority to regulate building performance.

§ 907. Secondary electric vehicle battery use program

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

(1) ASSOCIATED EQUIPMENT.—The term "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.

(2) BATTERY.—The term "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.

(b) PROGRAM.—The Secretary shall establish and conduct a program of study for the secondary use of batteries if the Secretary finds that there are sufficient numbers of such batteries to support the program. The program shall be—

(1) designed to demonstrate the use of batteries in secondary applications, 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 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.

(c) SOLICITATION.—Not later than 180 days after the date of enactment of this Act, if the Secretary finds under subsection (b) that there are sufficient numbers of batteries to support the program, 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.

(d) SELECTION OF PROPOSALS.—

(1) IN GENERAL.—The Secretary shall, not later than 90 days after the closing date established by the Secretary for receipt of proposals under subsection (c), select up to 5 proposals which may receive financial assistance under this section, subject to the availability of appropriations.

(2) DIVERSITY; ENVIRONMENTAL EFFECT.—In selecting proposals, the Secretary shall consider diversity of battery type, geographic and climatic diversity, and life-cycle environmental effects of the approaches.

(3) LIMITATION.—No 1 project selected under this section shall receive more than 25 percent of the funds authorized for the program under this section.

(4) OPTIMIZATION OF FEDERAL RESOURCES.—The Secretary shall consider the extent of involvement of State or local government and other persons in each demonstration project to optimize use of Federal resources.

(5) OTHER CRITERIA.—The Secretary may consider such other criteria as the Secretary considers appropriate.

(e) CONDITIONS.—The Secretary shall require that—

(1) relevant information be provided to the Department, the users of the batteries, the proposers, and the battery manufacturers;

(2) the proposer provide at least 50 percent of the costs associated with the proposal; and

(3) 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.

§ 908. Energy efficiency study initiative

(a) ESTABLISHMENT.—The Secretary shall establish an Energy Efficiency Science Initiative to be managed by the Assistant Secretary in the Department with responsibility for energy conservation under section 203(a)(9) of the Department of Energy Organization Act (42 U.S.C. 7133(a)(9)), in consultation with the Director of the Office of Science, for grants to be competitively awarded and subject to peer review for studies relating to energy efficiency.

(b) REPORT.—The Secretary shall submit to Congress, along with the President's annual budget request under section 1105(a) of title 31, United States Code, a report on the activities of the Energy Efficiency Science Initiative, including a description of the process used to award the funds and an explanation of how the studies relate to energy efficiency.

§ 909. Electric motor control technology

The Secretary shall conduct a program of study on advanced control devices to improve the energy efficiency of electric motors used in heating, ventilation, air conditioning, and comparable systems.

Subtitle B—Distributed Energy and Electric Energy Systems

§ 911. Distributed energy and electric energy systems

(a) IN GENERAL.—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 2006, $190,000,000.

(2) For fiscal year 2007, $200,000,000.

(3) For fiscal year 2008, $220,000,000.

(4) For fiscal year 2009, $240,000,000.

(5) For fiscal year 2010, $260,000,000.

(b) MICRO-COGENERATION ENERGY TECHNOLOGY.—From amounts authorized under subsection (a), $20,000,000 for each of fiscal years 2006 and 2007 is authorized for activities under section 914.

§ 913. High power density industry program

The Secretary shall establish a comprehensive program of study 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.

§ 916. Reciprocating power

The Secretary shall conduct a program of study regarding fuel system optimization and emissions reduction after-treatment technologies for industrial reciprocating engines. Such after-treatment technologies shall use processes that reduce emissions by recirculating exhaust gases and shall be designed to be retrofitted to any new or existing diesel or natural gas engine used for power generation, peaking power generation, combined heat and power, or compression.

§ 917. Advanced portable power devices

(a) PROGRAM.—The Secretary shall—

(1) establish a program to develop working models of small scale portable power devices; and

(2) to the fullest extent practicable, identify and utilize the resources of universities that have shown expertise with respect to advanced portable power devices for either civilian or military use.

(b) ORGANIZATION.—The universities identified and utilized under subsection (a)(2) are authorized to establish an organization to promote small scale portable power devices.

(c) DEFINITION.—For purposes of this section, the term "small scale portable power device" means a field deployable portable mechanical or electromechanical device that can be used for applications such as communications, computation, mobility enhancement, weapons systems, optical devices, cooling, sensors, medical devices and active biological agent detection systems.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for carrying out this section $8,000,000 for the period encompassing fiscal years 2006 through 2010.

Subtitle C—Renewable Energy

§ 918. 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 2006, $480,000,000.
(2) For fiscal year 2007, $550,000,000.
(3) For fiscal year 2008, $610,000,000.
(4) For fiscal year 2009, $659,000,000.
(5) For fiscal year 2010, $710,000,000.

(b) BIOENERGY.—From the amounts authorized under subsection (a), the following sums are authorized to be appropriated to carry out section 919:

(1) For fiscal year 2006, $135,425,000.
(2) For fiscal year 2007, $155,600,000.
(3) For fiscal year 2008, $167,650,000.
(4) For fiscal year 2009, $180,000,000.
(5) For fiscal year 2010, $192,000,000.

(c) CONCENTRATING SOLAR POWER.—From amounts authorized under subsection (a), the following sums are authorized to be appropriated to carry out section 920:

(1) For fiscal year 2006, $20,000,000.
(2) For fiscal year 2007, $40,000,000.
(3) For each of fiscal years 2008, 2009, and 2010, $50,000,000.

(d) PUBLIC BUILDINGS.—From the amounts authorized under subsection (a), $30,000,000 for each of the fiscal years 2006 through 2010 are authorized to be appropriated to carry out section 922.

(e) LIMITS ON USE OF FUNDS.—

(1) NO FUNDS FOR RENEWABLE SUPPORT AND IMPLEMENTATION.—None of the funds authorized to be appropriated under this section may be used for Renewable Support and Implementation.

(2) GRANTS.—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.

(3) REGIONAL FIELD VERIFICATION PROGRAM.—Of the funds authorized under subsection (a), not less than $4,000,000 for each fiscal year shall be made available for the Regional Field Verification Program of the Department.

(4) OFF-STREAM PUMPED STORAGE HYDROPOWER.—Of the funds authorized under subsection (a), such sums as may be necessary shall be made available for demonstration projects of off-stream pumped storage hydropower.

(f) CONSULTATION.—In carrying out this subtitle, the Secretary, in consultation with the Secretary of Agriculture, shall demonstrate the use of advanced wind power technology, including combined use with coal gasification; biomass; geothermal energy systems; and other renewable energy technologies to assist in delivering electricity to rural and remote locations.

§ 919. Bioenergy programs

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

(1) The term "agricultural byproducts" includes waste products, including poultry fat and poultry waste.

(2) The term "cellulosic biomass" means any portion of a crop containing lignocellulose or hemicellulose, including barley grain, grapeseed, forest thinnings, rice bran, rice hulls, rice straw, soybean matter, and sugarcane ba-

gasse, or any crop grown specifically for the purpose of producing cellulosic feedstocks.

(b) PROGRAM.—The Secretary shall conduct a program of study for bioenergy, including—

(1) biopower energy systems;

(2) biofuels;

(3) bio-based products;

(4) integrated biorefineries that may produce biopower, biofuels, and bio-based products;

(5) cross-cutting research and development in feedstocks and enzymes; and

(6) economic analysis.

(c) BIOFUELS AND BIO-BASED PRODUCTS.—The goals of the biofuels and bio-based products programs shall be to promote, in partnership with industry—

(1) advanced biochemical and thermochemical conversion technologies capable of making biofuels that are price-competitive with gasoline or diesel in either internal combustion engines or fuel cell-powered vehicles, and bio-based products from a variety of feedstocks, including grains, cellulosic biomass, and other agricultural byproducts; and

(2) advanced biotechnology processes capable of making biofuels and bio-based products with emphasis on development of biorefinery technologies using enzyme-based processing systems.

§ 920. Concentrating solar power study program

(a) IN GENERAL.—The Secretary shall conduct a program of study to evaluate the potential of concentrating solar power for hydrogen production, including cogeneration approaches for both hydrogen and electricity. Such program shall take advantage of existing facilities to the extent possible and shall include—

(1) development of optimized technologies that are common to both electricity and hydrogen production;

(2) evaluation of thermochemical cycles for hydrogen production at the temperatures attainable with concentrating solar power;

(3) evaluation of materials issues for the thermochemical cycles described in paragraph (2);

(4) system architectures and economics studies; and

(5) coordination with activities in the Advanced Reactor Hydrogen Cogeneration Project on high temperature materials, thermochemical cycles, and economic issues.

(b) ASSESSMENT.—In carrying out the program under this section, the Secretary shall—

(1) assess conflicting guidance on the economic potential of concentrating solar power for electricity production received from the National Research Council report entitled "Renewable Power Pathways: A Review of the U.S. Department of Energy's Renewable Energy Programs" in 2000 and subsequent Department-funded reviews of that report; and

(2) provide an assessment of the potential impact of the technology before, or concurrent with, submission of the fiscal year 2008 budget.

(c) REPORT.—Not later than 5 years after the date of enactment of this Act, the Secretary shall provide a report to Congress on the economic and technical potential for electricity or hydrogen production, with or without cogeneration, with concentrating solar power.

§ 921. Miscellaneous projects

The Secretary may conduct studies for—

(1) ocean energy, including wave energy; and

(2) the combined use of renewable energy technologies with one another and with other energy technologies, including the combined use of wind power and coal gasification technologies.

§ 922. Renewable energy in public buildings

(a) TECHNOLOGY TRANSFER PROGRAM.—The Secretary shall establish a program for the transfer of innovative technologies for solar and other renewable energy sources in buildings owned or operated by a State or local government, and for the dissemination of information resulting from an assessment of such program to interested parties.

(b) LIMIT ON FEDERAL FUNDING.—The Secretary shall provide under this section no more than 40 percent of the incremental costs of the solar or other renewable energy source project funded.

(c) REQUIREMENT.—As part of the application for awards under this section, the Secretary shall require all applicants—

(1) to demonstrate a continuing commitment to the use of solar and other renewable energy sources in buildings they own or operate; and

(2) to state how they expect any award to further their transition to the significant use of renewable energy.

§ 923. University biodiesel program

(a) IN GENERAL.—The Secretary shall establish a program regarding the feasibility of the operation of diesel electric power generators, using biodiesel fuels, with ratings as high as B100 at a university electric generation facility. The program shall examine—

(1) heat rates of diesel fuels with large quantities of cellulosic content;

(2) the reliability of operation of various fuel blends;

(3) performance in cold or freezing weather;

(4) stability of fuel after extended storage; and

(5) other criteria, as determined by the Secretary.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $400,000 to carry out subsection (a). Such funds shall remain available until expended.

Subtitle D—Nuclear Energy

§ 929. Alternatives to industrial radioactive sources

(a) STUDY.—The Secretary shall conduct a study and provide a report to Congress not later than August 1, 2006. The study shall—

(1) survey industrial applications of large radioactive sources, including well-logging sources;

(2) review current domestic and international Department, Department of Defense, Department of State, and commercial programs to manage and dispose of radioactive sources;

(3) discuss disposal options and practices for currently deployed or future sources and, if deficiencies are noted in existing disposal options or practices for either deployed or future sources, recommend options to remedy deficiencies; and

(4) develop a program plan for research and development to develop alternatives to large industrial sources that reduce safety, environmental, or proliferation risks to either workers using the sources or the public.

(b) PROGRAM.—The Secretary shall establish a research and development program to implement the program plan developed under subsection (a)(4). The program shall include miniaturized particle accelerators for well-logging or other industrial applications and portable accelerators for production of short-lived radioactive materials at an industrial site.

§ 930. Geological isolation of spent fuel

The Secretary shall conduct a study to determine the feasibility of deep borehole disposal of spent nuclear fuel and high-level radioactive waste. The study shall emphasize geological, chemical, and hydrological characterization of, and design of engineered structures for, deep borehole environments. Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit the study to Congress.

Subtitle E—Fossil Energy

PART I—STUDIES AND PROGRAM SUPPORT

§ 931. Fossil energy

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for fossil energy activities, including activities authorized under this part:

(1) For fiscal year 2006, $530,000,000.

(2) For fiscal year 2007, $556,000,000.

(3) For fiscal year 2008, $583,000,000.

(4) For fiscal year 2009, $611,000,000.

(5) For fiscal year 2010, $626,000,000.

(b) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities under section 932(b)(2), $28,000,000 for each of the fiscal years 2006 through 2010.

(2) For activities under section 934—

(A) for fiscal year 2006, $12,000,000;

(B) for fiscal year 2007, $15,000,000; and
(C) for each of fiscal years 2008 through 2010, $20,000,000.

(3) For activities under section 935—
(A) for fiscal year 2006, $259,000,000;
(B) for fiscal year 2007, $272,000,000;
(C) for fiscal year 2008, $285,000,000;
(D) for fiscal year 2009, $298,000,000; and
(E) for fiscal year 2010, $308,000,000.

(4) For the Office of Arctic Energy under section 3197 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (42 U.S.C. 7144d), $25,000,000 for each of fiscal years 2006 through 2010.

(5) For activities under section 933, $4,000,000 for fiscal year 2006 and $2,000,000 for each of fiscal years 2007 through 2010.

(c) EXTENDED AUTHORIZATION.—There are authorized to be appropriated to the Secretary for the Office of Arctic Energy under section 3197 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (42 U.S.C. 7144d), $25,000,000 for each of fiscal years 2009 through 2012.

(d) LIMITS ON USE OF FUNDS.—

(1) NO FUNDS FOR CERTAIN PROGRAMS.—None of the funds authorized under this section may be used for Fossil Energy Environmental Restoration or Import/Export Authorization.

(2) INSTITUTIONS OF HIGHER EDUCATION.—Of the funds authorized under subsection (b)(2), not less than 20 percent of the funds appropriated for each fiscal year shall be dedicated to activities carried out at institutions of higher education.

§ 932. Oil and gas studies

(a) OIL AND GAS STUDIES.—The Secretary shall conduct a program of studies on oil and gas, including—
(1) exploration and production;
(2) gas hydrates;
(3) reservoir life and extension;
(4) transportation and distribution infrastructure;
(5) ultraclean fuels;
(6) heavy oil and oil shale;
(7) related environmental research; and
(8) compressed natural gas marine transport.

(b) FUEL CELLS.—

(1) IN GENERAL.—The Secretary shall conduct a program of studies on fuel cells for low-cost, high-efficiency, fuel-flexible, modular power systems.

(2) IMPROVED MANUFACTURING PRODUCTION AND PROCESSES.—The studies under paragraph (1) shall include fuel cell technology for commercial, residential, and transportation applications, and distributed generation systems, utilizing improved manufacturing production and processes.

(c) NATURAL GAS AND OIL DEPOSITS REPORT.—Not later than 2 years after the date of enactment of this Act, and every 2 years thereafter, the Secretary of the Interior, in consultation with other appropriate Federal agencies, shall transmit a report to Congress of the latest estimates of natural gas and oil reserves, reserves growth, and undiscovered resources in Federal and State waters off the coast of Louisiana and Texas.

(d) INTEGRATED CLEAN POWER AND ENERGY.—

(1) NATIONAL CENTER OR CONSORTIUM OF EXCELLENCE.—The Secretary shall establish a national center or consortium of excellence in clean energy and power generation to address the Nation's critical dependence on energy and the need to reduce emissions.

(2) PROGRAM.—The center or consortium shall conduct a program integrating the following focus areas:
(A) Efficiency and reliability of gas turbines for power generation.
(B) Reduction in emissions from power generation.
(C) Promotion of energy conservation issues.
(D) Effectively utilizing alternative fuels and renewable energy.
(E) Advanced materials technology for oil and gas exploration and utilization in harsh environments.
(F) Education on energy and power generation issues.

§ 933. Technology transfer

The Secretary shall establish a competitive program to award a contract to a nonprofit entity for the purpose of transferring technologies developed with public funds. The entity selected under this section shall have experience in offshore oil and gas technology management, in the transfer of technologies developed with pub-

lic funds to the offshore and maritime industry, and in management of an offshore and maritime industry consortium. The program consortium selected under section 942 shall not be eligible for selection under this section. When appropriate, the Secretary shall consider utilizing the entity selected under this section when implementing the activities authorized by section 975.

§ 934. Coal mining technologies

(a) ESTABLISHMENT.—The Secretary shall carry out a program of studies on coal mining technologies. The Secretary shall cooperate with appropriate Federal agencies, coal producers, trade associations, equipment manufacturers, institutions of higher education with mining engineering departments, and other relevant entities.

(b) PROGRAM.—The activities carried out under this section shall—

(1) be guided by the mining priorities identified by the Mining Industry of the Future Program and in the recommendations from relevant reports of the National Academy of Sciences on mining technologies; and

(2) include activities exploring minimization of contaminants in mined coal that contribute to environmental concerns.

§ 935. Coal and related technologies program

(a) IN GENERAL.—In addition to the programs authorized under title IV, the Secretary shall conduct a program of technology to study coal and power systems, including programs to facilitate production and generation of coal-based power through—

(1) innovations for existing plants;

(2) integrated gasification combined cycle;

(3) advanced combustion systems;

(4) turbines for synthesis gas derived from coal;

(5) carbon capture and sequestration;

(6) coal-derived transportation fuels and chemicals;

(7) solid fuels and feedstocks;

(8) advanced studies;

(9) advanced separation technologies; and

(10) a joint project for permeability enhancement in coals for natural gas production and carbon dioxide sequestration.

(b) COST AND PERFORMANCE GOALS.—In carrying out programs authorized by this section, the Secretary shall identify cost and performance goals for coal-based technologies that would permit the continued cost-competitive use of coal for electricity generation, as chemical feedstocks, and as transportation fuel in 2007, 2015, and the years after 2020. In establishing such cost and performance goals, the Secretary shall—

(1) consider activities and studies undertaken to date by industry in cooperation with the Department in support of such assessment;

(2) consult with interested entities, including coal producers, industries using coal, organizations to promote coal and advanced coal technologies, environmental organizations, and organizations representing workers;

(3) not later than 120 days after the date of enactment of this Act, publish in the Federal Register proposed draft cost and performance goals for public comments; and

(4) not later than 180 days after the date of enactment of this Act and every 4 years thereafter, submit to Congress a report describing final cost and performance goals for such technologies that includes a list of technical milestones as well as an explanation of how programs authorized in this section will not duplicate the activities authorized under the Clean Coal Power Initiative authorized under subtitle A of title IV.

§ 936. Complex Well Technology Testing Facility

The Secretary, in coordination with industry leaders in extended research drilling technology, shall establish a Complex Well Technology Testing Facility at the Rocky Mountain Oilfield Testing Center to increase the range of extended drilling technologies.

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

§ 941. Program authority

(a) IN GENERAL.—The Secretary shall carry out a program under this part regarding technologies for ultra-deepwater and unconventional natural gas and other petroleum resource exploration and production, including addressing the technology

challenges for small producers, safe operations, and environmental mitigation (including reduction of greenhouse gas emissions and sequestration of carbon).

(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, including drilling to formations in the Outer Continental Shelf to depths greater than 15,000 feet.

(2) Ultra-deepwater architecture.

(3) Unconventional natural gas and other petroleum resource exploration and production technology, including the technology challenges of small producers.

(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) CONSULTATION WITH SECRETARY OF THE INTERIOR.—In carrying out this part, the Secretary shall consult regularly with the Secretary of the Interior.

§ 942. Ultra-deepwater Program

(a) IN GENERAL.—The Secretary shall carry out the activities under section 941(a), to maximize the use of the ultra-deepwater natural gas and other petroleum resources of the United States by increasing the supply of such resources, through 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 may 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) PROCEDURES.—The Secretary shall establish procedures—

(i) to ensure that each board member, officer, or employee of the program consortium who is in a decision-making 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) FAILURE TO COMPLY.—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, trade associations, 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 180 days after the date of enactment of this Act, the Secretary shall solicit proposals from eligible consortia to perform the duties in subsection (c)(1), which shall be submitted not later than 360 days after the date of enactment of this Act. The Secretary shall select the program consortium not later than 18 months 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) CRITERION.—The Secretary shall 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) SOLICITATION OF RECOMMENDATIONS.—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) SUBMISSION OF RECOMMENDATIONS; OTHER COMMENT.—The Secretary shall submit the recommendations of the program consortium under subparagraph (A) to the Ultra-Deepwater Advisory Committee established under section 945(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) CONSULTATION.—The Secretary shall consult regularly with the program consortium throughout the preparation of the annual plan.

(3) PUBLICATION.—The Secretary shall transmit to Congress and publish in the Federal Register the annual plan, along with any written comments received under paragraph (2)(A) and (B).

(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 research, development, demonstration, or commercial application 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).

(5) ESTIMATES OF INCREASED ROYALTY RECEIPTS.—The Secretary, in consultation with the Secretary of the Interior, shall provide an annual report to Congress with the President's budget on the estimated cumulative increase in Federal royalty receipts (if any) resulting from the implementation of this part. The initial report under this paragraph shall be submitted in the first President's budget following the completion of the first annual plan required under this subsection.

(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) IN GENERAL.—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) EFFECT.—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) PROVISION OF INFORMATION.—The Secretary shall provide to the program consortium the information necessary for the program consortium to carry out its responsibilities under this paragraph.

(g) ADMINISTRATIVE COSTS.—

(1) IN GENERAL.—To compensate the program consortium for carrying out its activities under this section, the Secretary shall provide to the program consortium funds sufficient to administer the program. This compensation may include a management fee consistent with Department of Energy contracting practices and procedures.

(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.

§ 943. Unconventional natural gas and other petroleum resources Program

(a) IN GENERAL.—The Secretary shall carry out activities under subsection 941(b)(3), to maximize the use of the onshore unconventional natural gas and other petroleum resources of the United States, by increasing the supply of such resources, through 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 to consortia made through an open, competitive process. As a condition of award of funds, qualified consortia shall—

(A) demonstrate capability and experience in unconventional onshore natural gas or other petroleum technologies;

(B) provide a research plan that demonstrates how additional natural gas or oil production will be achieved; and

(C) at the request of the Secretary, provide technical advice to the Secretary for the purposes of developing the annual plan required under subsection (e).

(2) PRODUCTION POTENTIAL.—The Secretary shall seek to ensure that the number and types of awards made under this subsection have reasonable potential to lead to additional oil and natural gas production on Federal lands.

(3) SCHEDULE.—To carry out this subsection, not later than 180 days after the date of enactment of this Act, the Secretary shall solicit proposals from consortia, which shall be submitted not later than 360 days after the date of enactment of this Act. The Secretary shall select the first group of research consortia to receive awards under this subsection not later than 18 months after such date of enactment.

(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 FOR AWARDS.—

(1) UNCONVENTIONAL RESOURCES.—Awards from allocations under section 949(d)(2) shall focus on areas including advanced coalbed methane, deep drilling, natural gas production from tight sands, natural gas production from gas shales, stranded gas, innovative exploration and production techniques, enhanced recovery techniques, and environmental mitigation of unconventional natural gas and other petroleum resources exploration and production.

(2) SMALL PRODUCERS.—Awards from allocations under section 949(d)(3) shall be made to consortia consisting of small producers or organized primarily for the benefit of small producers, and shall focus on areas including complex geology involving rapid changes in the type and quality of the oil and gas reservoirs

across the reservoir; low reservoir pressure; unconventional natural gas reservoirs in coalbeds, deep reservoirs, tight sands, or shales; and unconventional oil reservoirs in tar sands and oil shales.

(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) WRITTEN RECOMMENDATIONS.—Before drafting an annual plan under this subsection, the Secretary shall solicit specific written recommendations from the consortia receiving awards under subsection (b) and the Unconventional Resources Technology Advisory Committee for each element to be addressed in the plan, including those described in subparagraph (D).

(B) CONSULTATION.—The Secretary shall consult regularly with the consortia throughout the preparation of the annual plan.

(C) PUBLICATION.—The Secretary shall transmit to Congress and publish in the Federal Register the annual plan, along with any written comments received under subparagraph (A).

(D) CONTENTS.—The annual plan shall describe the ongoing and prospective activities under this section and shall include 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.

(3) ESTIMATES OF INCREASED ROYALTY RECEIPTS.—The Secretary, in consultation with the Secretary of the Interior, shall provide an annual report to Congress with the President's budget on the estimated cumulative increase in Federal royalty receipts (if any) resulting from the implementation of this part. The initial report under this paragraph shall be submitted in the first President's budget following the completion of the first annual plan required under this subsection.

§ 944. 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 941(c), a demonstration project under this part relating to an ultra-deepwater technology or an ultra-deepwater architecture may be conducted in deepwater 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.—2.5 percent of the amount of each award made under this part shall be designated for technology transfer and outreach activities under this title.

(e) COST SHARING REDUCTION FOR INDEPENDENT PRODUCERS.—In applying the cost sharing requirements under section 972 to an award under this part the Secretary may reduce or eliminate the non-Federal requirement if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project.

§ 945. Advisory committees

(a) ULTRA-DEEPWATER ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 270 days after the date of enactment of this Act, 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 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 942(e)(2)(B).

(4) COMPENSATION.—A member of the advisory committee under this subsection shall serve without compensation but shall receive travel expenses 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 Act, 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 including—

(A) a majority of members who are employees or representatives of independent producers of natural gas and other petroleum, including small producers;

(B) individuals with extensive research experience or operational knowledge of unconventional natural gas and other petroleum resource exploration and production;

(C) 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

(D) 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 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 particular consortia or other entities, or for specific projects.

§ 946. Limits on participation

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 that affords—

(i) to United States-owned entities opportunities, comparable to those afforded to any other entity, to participate in any cooperative research 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.

§ 947. Sunset

The authority provided by this part shall terminate on September 30, 2014.

§ 948. 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) INDEPENDENT PRODUCER OF OIL OR GAS.—

(A) IN GENERAL.—The term "independent producer of oil or gas" means any person that produces oil or gas other than a person to whom subsection (c) of section 613A of the Internal Revenue Code of 1986 does not apply by reason of paragraph (2) (relating to certain retailers) or paragraph (4) (relating to certain refiners) of section 613A(d) of such Code.

(B) RULES FOR APPLYING PARAGRAPHS (2) AND (4) OF SECTION 613A(d).—For purposes of subparagraph (A), paragraphs (2) and (4) of section 613A(d) of

the Internal Revenue Code of 1986 shall be applied by substituting "calendar year" for "taxable year" each place it appears in such paragraphs.

(3) PROGRAM CONSORTIUM.—The term "program consortium" means the consortium selected under section 942(d).

(4) 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.

(5) SMALL PRODUCER.—The term "small producer" means an entity organized under the laws of the United States with production levels of less than 1,000 barrels per day of oil equivalent.

(6) ULTRA-DEEPWATER.—The term "ultra-deepwater" means a water depth that is equal to or greater than 1,500 meters.

(7) 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.

(8) ULTRA-DEEPWATER TECHNOLOGY.—The term "ultra-deepwater technology" means a discrete technology that is specially suited to address 1 or more challenges associated with the exploration for, or production of, natural gas or other petroleum resources located at ultra-deepwater depths.

(9) 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, including resources of small producers.

§ 949. Funding

(a) IN GENERAL.—

(1) OIL AND GAS LEASE INCOME.—For each of fiscal years 2005 through 2014, from any Federal royalties, rents, and bonuses derived from Federal onshore and offshore oil and gas leases issued under the Outer Continental Shelf Lands Act and the Mineral Leasing Act which are deposited in the Treasury, and after distribution of any such funds as described in subsection (c), $50,000,000 shall be deposited into the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund (in this section referred to as the Fund). For purposes of this section, the term "royalties" excludes proceeds from the sale of royalty production taken in kind and royalty production that is transferred under section 27(a)(3) of the Outer Continental Shelf Lands Act (43 U.S.C. 1353(a)(3)).

(2) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts described in paragraph (1), there are authorized to be appropriated to the Secretary, to be deposited in the Fund, $150,000,000 for each of the fiscal years 2005 through 2014, to remain available until expended.

(b) OBLIGATIONAL AUTHORITY.—Monies in the Fund shall be available to the Secretary for obligation under this part without fiscal year limitation, to remain available until expended.

(c) PRIOR DISTRIBUTIONS.—The distributions described in subsection (a) are those required by law—

(1) to States and to the Reclamation Fund under the Mineral Leasing Act (30 U.S.C. 191(a)); and

(2) to other funds receiving monies from Federal oil and gas leasing programs, including—

(A) any recipients pursuant to section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g));

(B) the Land and Water Conservation Fund, pursuant to section 2(c) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–5(c));

(C) the Historic Preservation Fund, pursuant to section 108 of the National Historic Preservation Act (16 U.S.C. 470h); and

(D) the Secure Energy Reinvestment Fund.

(d) ALLOCATION.—Amounts obligated from the Fund under this section in each fiscal year shall be allocated as follows:

(1) 50 percent shall be for activities under section 942.

(2) 35 percent shall be for activities under section 943(d)(1).

(3) 10 percent shall be for activities under section 943(d)(2).

(4) 5 percent shall be for research under section 941(d).

(e) FUND.—There is hereby established in the Treasury of the United States a separate fund to be known as the "Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund".

Subtitle F—Energy Sciences

§ 953. Plan for Fusion Energy Sciences Program

(a) DECLARATION OF POLICY.—It shall be the policy of the United States to conduct a program of activities to ensure that the United States is competitive with other nations in providing fusion energy for its own needs and the needs of other nations.

(b) PLANNING.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall present to Congress a plan, with proposed cost estimates, budgets, and potential international partners, for the implementation of the policy described in subsection (a).

(2) COSTS AND SCHEDULES.—Such plan shall also address the status of and, to the degree possible, costs and schedules for—

(A) the design and implementation of international or national facilities for the testing of fusion materials; and

(B) the design and implementation of international or national facilities for the testing and development of key fusion technologies.

§ 954. Spallation Neutron Source

(a) DEFINITION.—For the purposes of this section, the term "Spallation Neutron Source" means Department Project 99–E–334, Oak Ridge National Laboratory, Oak Ridge, Tennessee.

(b) REPORT.—The Secretary shall report on the Spallation Neutron Source as part of the Department's annual budget submission, including a description of the achievement of milestones, a comparison of actual costs to estimated costs, and any changes in estimated project costs or schedule.

(c) LIMITATIONS.—The total amount obligated by the Department, including prior year appropriations, for the Spallation Neutron Source shall not exceed—

(1) $1,192,700,000 for costs of construction;

(2) $219,000,000 for other project costs; and

(3) $1,411,700,000 for total project cost.

§ 962. Nitrogen fixation

The Secretary shall conduct studies on biological nitrogen fixation, including plant genomics research relevant to the development of commercial crop varieties with enhanced nitrogen fixation efficiency and ability.

Subtitle G—Energy and Environment

§ 966. Waste reduction and use of alternatives

(a) GRANT AUTHORITY.—The Secretary may make a single grant to a qualified institution to examine 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 an institution of higher education with demonstrated expertise in the fields of fiber recycling and logistical modeling of carpet waste collection and preparation.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for carrying out this section $500,000.

§ 967. Report on fuel cell test center

(a) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of a study of the establishment of a test center for next-generation fuel cells at an institution of higher education that has available a continuous source of hydrogen and access to the electric transmission grid. Such report shall include a conceptual design for such test center and a projection of the costs of establishing the test center.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for carrying out this section $500,000.

§ 968. Arctic Engineering Research Center

(a) IN GENERAL.—The Secretary of Energy (referred to in this section as the "Secretary") in consultation with the Secretary of Transportation and the United States Arctic Research Commission shall provide annual grants to a university located adjacent to the Arctic Energy Office of the Department of Energy, to establish and operate a university research center to be headquartered in Fairbanks and to be known as the "Arctic Engineering Research Center" (referred to in this section as the "Center").

(b) PURPOSE.—The purpose of the Center shall be to conduct research on, and develop improved methods of, construction and use of materials to improve the overall performance of roads, bridges, residential, commercial, and industrial structures, and other infrastructure in the Arctic region, with an emphasis on developing—

(1) new construction techniques for roads, bridges, rail, and related transportation infrastructure and residential, commercial, and industrial infrastructure that are capable of withstanding the Arctic environment and using limited energy resources as efficiently as possible;

(2) technologies and procedures for increasing road, bridge, rail, and related transportation infrastructure and residential, commercial, and industrial infrastructure safety, reliability, and integrity in the Arctic region;

(3) new materials and improving the performance and energy efficiency of existing materials for the construction of roads, bridges, rail, and related transportation infrastructure and residential, commercial, and industrial infrastructure in the Arctic region; and

(4) recommendations for new local, regional, and State permitting and building codes to ensure transportation and building safety and efficient energy use when constructing, using, and occupying such infrastructure in the Arctic region.

(c) OBJECTIVES.—The Center shall carry out—

(1) basic and applied research in the subjects described in subsection (b), the products of which shall be judged by peers or other experts in the field to advance the body of knowledge in road, bridge, rail, and infrastructure engineering in the Arctic region; and

(2) an ongoing program of technology transfer that makes research results available to potential users in a form that can be implemented.

(d) AMOUNT OF GRANT.—For each of fiscal years 2005 through 2010, the Secretary shall provide a grant in the amount of $3,000,000 to the institution specified in subsection (a) to carry out this section.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $3,000,000 for each of fiscal years 2005 through 2010.

§ 970. Western Michigan demonstration project

The Administrator of the Environmental Protection Agency, in consultation with the State of Michigan and affected local officials, shall conduct a demonstration project to address the effect of transported ozone and ozone precursors in Southwestern Michigan. The demonstration program shall address projected nonattainment areas in Southwestern Michigan that include counties with design values for ozone of less than .095 based on years 2000 to 2002 or the most current 3-year period of air quality data. The Administrator shall assess any difficulties such areas may experience in meeting the 8 hour national ambient air quality standard for ozone due to the effect of transported ozone or ozone precursors into the areas. The Administrator shall work with State and local officials to determine the extent of ozone and ozone precursor transport, to assess alternatives to achieve compliance with the 8 hour standard apart from local controls, and to determine the timeframe in which such compliance could take place. The Administrator shall complete this demonstration project no later than 2 years after the date of enactment of this section and shall not impose any requirement or sanction that might otherwise apply during the pendency of the demonstration project.

§ 971. Low-cost hydrogen propulsion and infrastructure

(a) PROGRAM.—The Secretary of Energy shall—

(1) establish a program with respect to the feasibility of using hydrogen propulsion in light-weight vehicles and the integration of the associated hydrogen production infrastructure using off-the-shelf components; and

(2) identify universities and institutions that—

(A) have expertise in operating and testing vehicles fueled by hydrogen, methane, and other fuels;

(B) have expertise in integrating off-the-shelf components to minimize cost; and

(C) within two years can test a vehicle based on an existing commercially available platform with a curb weight of not less than 2,000 pounds before modifications, that—

(i) operates solely on hydrogen gas;

(ii) can travel a minimum of 300 miles under normal road conditions; and

(iii) uses hydrogen produced from water using only solar energy.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy for carrying out this section $200,000 for fiscal year 2006. Such sums shall remain available until expended.

§ 972. Carbon-based fuel cell development

(a) GRANT AUTHORITY.—The Secretary of Energy is authorized to make a single grant to a qualified institution to design and fabricate a 5-kilowatt prototype coal-based fuel cell with the following performance objectives:

(1) A current density of 600 milliamps per square centimeter at a cell voltage of 0.8 volts.

(2) An operating temperature range not to exceed 900 degrees celsius.

(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 development of carbon-based fuel cells allowing the direct use of high sulfur content coal as fuel, and which has produced a laboratory-scale carbon-based fuel cell with a proven current density of 100 milliamps per square centimeter at a voltage of 0.6 volts.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy for carrying out this section $850,000 for fiscal year 2006.

Subtitle H—International Cooperation

§ 981. United States-Israel cooperation

(a) FINDINGS.—The Congress finds that—

(1) on February 1, 1996, United States Secretary of Energy Hazel R. O'Leary and Israeli Minister of Energy and Infrastructure Gonen Segev signed the Agreement between the Department of Energy of the United States of America and the Ministry of Energy and Infrastructure of Israel Concerning Energy Cooperation, to establish a framework for collaboration between the United States and Israel in energy research and development activities;

(2) the Agreement entered into force in February 2000;

(3) in February 2005, the Agreement was automatically renewed for one additional 5-year period pursuant to Article X of the Agreement; and

(4) under the Agreement, the United States and Israel may cooperate in energy research and development in a variety of alternative and advanced energy sectors.

(b) REPORT TO CONGRESS.—(1) The Secretary of Energy shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on—

(A) how the United States and Israel have cooperated on energy research and development activities under the Agreement;

(B) projects initiated pursuant to the Agreement; and

(C) plans for future cooperation and joint projects under the Agreement.

(2) The report shall be submitted no later than three months after the date of enactment of this Act.

(c) SENSE OF CONGRESS.—It is the sense of the Congress that energy cooperation between the Governments of the United States and Israel is mutually beneficial in the development of energy technology.

TITLE X—DEPARTMENT OF ENERGY MANAGEMENT

§ 1001. Additional Assistant Secretary position

(a) ADDITIONAL ASSISTANT SECRETARY POSITION TO ENABLE IMPROVED MANAGEMENT OF NUCLEAR ENERGY ISSUES.—

(1) IN GENERAL.—Section 203(a) of the Department of Energy Organization Act (42 U.S.C. 7133(a)) is amended by striking "six Assistant Secretaries" and inserting "7 Assistant Secretaries".

(2) SENSE OF CONGRESS.—It is the sense of Congress that the leadership for departmental missions in nuclear energy should be at the Assistant Secretary level.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TITLE 5.—Section 5315 of title 5, United States Code, is amended by striking "Assistant Secretaries of Energy (6)" and inserting "Assistant Secretaries of Energy (7)".

(2) DEPARTMENT OF ENERGY ORGANIZATION ACT.—The table of contents for the Department of Energy Organization Act (42 U.S.C. 7101 note) is amended—

(A) by striking "Section 209" and inserting "Sec. 209";

(B) by striking "213." and inserting "Sec. 213.";

(C) by striking "214." and inserting "Sec. 214.";

(D) by striking "215." and inserting "Sec. 215."; and

(E) by striking "216." and inserting "Sec. 216.".

§ 1002. Other transactions authority

Section 646 of the Department of Energy Organization Act (42 U.S.C. 7256) is amended by adding at the end the following:

"(g)(1) In addition to other authorities granted to the Secretary under law, the Secretary may enter into other transactions on such terms as the Secretary may deem appropriate in furtherance of research, development, or demonstration functions vested in the Secretary. Such other transactions shall not be subject to the provisions of section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908) or section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182).

"(2)(A) The Secretary shall ensure that—

"(i) to the maximum extent the Secretary determines practicable, no transaction entered into under paragraph (1) provides for research, development, or demonstration that duplicates research, development, or demonstration being conducted under existing projects carried out by the Department;

"(ii) to the extent the Secretary determines practicable, the funds provided by the Government under a transaction authorized by paragraph (1) do not exceed the total amount provided by other parties to the transaction; and

"(iii) to the extent the Secretary determines practicable, competitive, merit-based selection procedures shall be used when entering into transactions under paragraph (1).

"(B) A transaction authorized by paragraph (1) may be used for a research, development, or demonstration project only if the Secretary makes a written determination that the use of a standard contract, grant, or cooperative agreement for the project is not feasible or appropriate.

"(3)(A) The Secretary shall protect from disclosure, including disclosure under section 552 of title 5, United States Code, for up to 5 years after the date the information is received by the Secretary—

"(i) a proposal, proposal abstract, and supporting documents submitted to the Department in a competitive or noncompetitive process having the potential for resulting in an award under paragraph (1) to the party submitting the information; and

"(ii) a business plan and technical information relating to a transaction authorized by paragraph (1) submitted to the Department as confidential business information.

"(B) The Secretary may protect from disclosure, for up to 5 years after the information was developed, any information developed pursuant to a transaction under paragraph (1) 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 obtained from a person other than a Federal agency.

"(4) Not later than 90 days after the date of enactment of this subsection, the Secretary shall prescribe guidelines for using other transactions authorized by paragraph (1). Such guidelines shall be published in the Federal Register for public comment under rulemaking procedures of the Department.

"(5) The authority of the Secretary under this subsection may be delegated only to an officer of the Department who is appointed by the President by and with the advice and consent of the Senate and may not be delegated to any other person.

"(6)(A) Not later than September 31, 2006, the Comptroller General of the United States shall report to Congress on the Department's use of the authorities granted under this section, including the ability to attract nontraditional government contractors and whether additional safeguards are needed with respect to the use of such authorities.

"(B) In this section, the term 'nontraditional Government contractor' has the same meaning as the term 'nontraditional defense contractor' as defined in section 845(e)

of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).".

§ 1003. University collaboration

Not later than 2 years after the date of enactment of this Act, the Secretary of Energy shall transmit to the Congress a report that examines the feasibility of promoting collaborations between major universities and other colleges and universities in grants, contracts, and cooperative agreements made by the Secretary for energy projects. For purposes of this section, major universities are schools listed by the Carnegie Foundation as Doctoral Research Extensive Universities. The Secretary shall also consider providing incentives to increase the inclusion of small institutions of higher education, including minority-serving institutions, in energy grants, contracts, and cooperative agreements.

§ 1004. Sense of Congress

It is the sense of the Congress that—

(1) the Secretary of Energy should develop and implement more stringent procurement and inventory controls, including controls on the purchase card program, to prevent waste, fraud, and abuse of taxpayer funds by employees and contractors of the Department of Energy; and

(2) the Department's Inspector General should continue to closely review purchase card purchases and other procurement and inventory practices at the Department.

TITLE XII—ELECTRICITY

§ 1201. Short title

This title may be cited as the "Electric Reliability Act of 2005".

Subtitle A—Reliability Standards

§ 1211. Electric reliability standards

(a) IN GENERAL.—Part II of the Federal Power Act (16 U.S.C 824 et seq.) is amended by adding at the end the following:

"SEC. 215. 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, including cybersecurity protection, 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, including a cybersecurity incident, 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 1 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).

"(8) The term 'cybersecurity incident' means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communication networks including hardware, software and data that are essential to the reliable operation of the bulk power system.

"(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. The Commission may certify 1 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; and

"(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.

The total amount of all dues, fees, and other charges collected by the ERO in each of the fiscal years 2006 through 2015 and allocated under subparagraph (B) shall not exceed $50,000,000.

"(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 ERO 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 ERO 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 ERO 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 issue 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 ELECTRIC 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 ERO. 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 ERO 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 ERO in the United States and Canada or Mexico.

"(i) SAVINGS PROVISIONS.—(1) The ERO shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system.

"(2) This section does not authorize the ERO 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 ERO.

"(5) The Commission, after consultation with the ERO 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 ⅔ of the States within a region that have more than ½ of their electric load served within the region. A regional advisory body shall be composed of 1 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) ALASKA AND HAWAII.—The provisions of this section do not apply to Alaska or Hawaii.".

(b) STATUS OF ERO.—The Electric Reliability Organization certified by the Federal Energy Regulatory Commission under section 215(c) of the Federal Power Act and any regional entity delegated enforcement authority pursuant to section 215(e)(4) of that Act are not departments, agencies, or instrumentalities of the United States Government.

(c) LIMITATION ON ANNUAL APPROPRIATIONS.—There is authorized to be appropriated not more than $50,000,000 per year for fiscal years 2006 through 2015 for all activities under the amendment made by subsection (a).

Subtitle B—Transmission Infrastructure Modernization

§ 1221. Siting of interstate electric 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 ELECTRIC TRANSMISSION FACILITIES.

"(a) DESIGNATION OF NATIONAL INTEREST ELECTRIC TRANSMISSION CORRIDORS.—

"(1) TRANSMISSION CONGESTION STUDY.—Within 1 year after the enactment of this section, and every 3 years thereafter, the Secretary of Energy, in consultation with affected States, shall conduct a study of electric transmission congestion. After considering alternatives and recommendations from interested parties, including an opportunity for comment from affected States, the Secretary shall issue a report, based on such study, which may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a national interest electric transmission corridor. The Secretary shall conduct the study and issue the report in consultation with any appropriate regional entity referenced in section 215 of this Act.

"(2) CONSIDERATIONS.—In determining whether to designate a national interest electric transmission corridor referred to in paragraph (1) under this section, the Secretary may consider whether—

"(A) the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity;

"(B)(i) economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and

"(ii) a diversification of supply is warranted;

"(C) the energy independence of the United States would be served by the designation;

"(D) the designation would be in the interest of national energy policy; and

"(E) the designation would enhance national defense and homeland security.

"(b) CONSTRUCTION PERMIT.—Except as provided in subsection (i), the Commission is authorized, after notice and an opportunity for hearing, to issue a permit or permits for the construction or modification of electric transmission facilities in a national interest electric transmission corridor designated by the Secretary under subsection (a) if the Commission finds that—

"(1)(A) a State in which the transmission facilities are to be constructed or modified is without authority to—

"(i) approve the siting of the facilities; or

"(ii) consider the interstate benefits expected to be achieved by the proposed construction or modification of transmission facilities in the State;

"(B) the applicant for a permit is a transmitting utility under this Act but does not qualify to apply for a permit or siting approval for the proposed project in a State because the applicant does not serve end-use customers in the State; or

"(C) a State commission or other entity that has authority to approve the siting of the facilities has—

"(i) withheld approval for more than 1 year after the filing of an application pursuant to applicable law seeking approval or 1 year after the designation of the relevant national interest electric transmission corridor, whichever is later; or

"(ii) conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission congestion in interstate commerce or is not economically feasible;

"(2) the facilities to be authorized by the permit will be used for the transmission of electric energy in interstate commerce;

"(3) the proposed construction or modification is consistent with the public interest;

"(4) the proposed construction or modification will significantly reduce transmission congestion in interstate commerce and protects or benefits consumers; and

"(5) the proposed construction or modification is consistent with sound national energy policy and will enhance energy independence.

"(c) PERMIT APPLICATIONS.—Permit applications under subsection (b) shall be made in writing to the Commission. The Commission shall issue rules setting forth

the form of the application, the information to be contained in the application, 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 or modifying any transmission facility pursuant to State law.

"(g) 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 the construction or modification of electric transmission facilities within a reasonable period of time after the acquisition. Other than construction, modification, operation, or maintenance of electric transmission facilities and related facilities, property acquired under subsection (e) may not be used for any purpose (including use for any heritage area, recreational trail, or park) without the consent of the owner of the parcel from whom the property was acquired (or the owner's heirs or assigns).

"(h) COORDINATION OF FEDERAL AUTHORIZATIONS FOR TRANSMISSION AND DISTRIBUTION FACILITIES.—

"(1) LEAD AGENCY.—If an applicant, or prospective applicant, for a Federal authorization related to an electric transmission or distribution facility so requests, the Department of Energy (DOE) shall act as the lead agency for purposes of coordinating all applicable Federal authorizations and related environmental reviews of the facility. For purposes of this subsection, the term 'Federal authorization' means 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 agencies responsible for Federal authorizations 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 considers 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.—As lead agency head, 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. The Secretary of Energy and the heads of 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 relating to the corridors. 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, 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 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 of 1969, and the Federal Land Policy and Management Act.

"(5) CONFORMING REGULATIONS AND MEMORANDA OF UNDERSTANDING.—Not later than 18 months after the date of enactment of this section, the Secretary of Energy shall issue any regulations necessary to implement this subsection. Not later than 1 year after the date of enactment of this section, the Secretary and the heads of all Federal agencies with authority to issue Federal authorizations shall enter into Memoranda of Understanding to ensure the timely and coordinated review and permitting of electricity transmission and distribution facilities. The head of each Federal agency with authority to issue a Federal authorization shall designate a senior official responsible for, and dedicate sufficient other staff and resources to ensure, full implementation of the DOE regulations and any Memoranda. Interested Indian tribes, multi-State entities, and State agencies may enter such Memoranda of Understanding.

"(6) DURATION AND RENEWAL.—Each Federal land use authorization for an electricity transmission or distribution facility shall be issued—

"(A) for a duration, as determined by the Secretary of Energy, commensurate with the anticipated use of the facility, and

"(B) with appropriate authority to manage the right-of-way for reliability and environmental protection.

Upon the expiration of any such authorization (including an authorization issued prior to enactment of this section), the authorization 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), FERC-approved electric reliability organizations (including related regional entities), and FERC-approved Regional Transmission Organizations and Independent System Operators.

"(i) INTERSTATE COMPACTS.—The consent of Congress is hereby given for 3 or more contiguous States to enter into an interstate compact, subject to approval by Congress, establishing regional transmission siting agencies to facilitate siting of future electric energy transmission facilities within such States and to carry out the electric energy transmission siting responsibilities of such States. The Secretary of Energy may provide technical assistance to regional transmission siting agencies established under this subsection. Such regional transmission siting agencies shall have the authority to review, certify, and permit siting of transmission facilities, including facilities in national interest electric transmission corridors (other than fa-

cilities on property owned by the United States). The Commission shall have no authority to issue a permit for the construction or modification of electric transmission facilities within a State that is a party to a compact, unless the members of a compact are in disagreement and the Secretary makes, after notice and an opportunity for a hearing, the finding described in subsection (b)(1)(C).

"(j) 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. Subsection (h)(4) of this section shall not apply to any Congressionally-designated components of the National Wilderness Preservation System, the National Wild and Scenic Rivers System, or the National Park system (including National Monuments therein).

"(k) ERCOT.—This section shall not apply within the area referred to in section 212(k)(2)(A).".

(b) REPORTS TO CONGRESS ON CORRIDORS AND RIGHTS OF WAY ON FEDERAL LANDS.—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 each of 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 under Title V of the Federal Land Policy and Management Act (43 U.S.C. 1761 et. Seq.), 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.

(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.

§ 1222. Third-party finance

(a) EXISTING FACILITIES.—The Secretary of Energy (hereinafter in this section referred to as the "Secretary"), acting through the Administrator of the Western Area Power Administration (hereinafter in this section referred to as "WAPA"), or through the Administrator of the Southwestern Power Administration (hereinafter in this section referred to as "SWPA"), or both, may design, develop, construct, operate, maintain, or own, or participate with other entities in designing, developing, constructing, operating, maintaining, or owning, an electric power transmission facility and related facilities ("Project") needed to upgrade existing transmission facilities owned by SWPA or WAPA if the Secretary of Energy, in consultation with the applicable Administrator, determines that the proposed Project—

(1)(A) is located in a national interest electric transmission corridor designated under section 216(a) of the Federal Power Act and will reduce congestion of electric transmission in interstate commerce; or

(B) is necessary to accommodate an actual or projected increase in demand for electric transmission capacity;

(2) is consistent with—

(A) transmission needs identified, in a transmission expansion plan or otherwise, by the appropriate Regional Transmission Organization or Independent System Operator (as defined in the Federal Power Act), if any, or approved regional reliability organization; and

(B) efficient and reliable operation of the transmission grid; and

(3) would be operated in conformance with prudent utility practice.

(b) NEW FACILITIES.—The Secretary, acting through WAPA or SWPA, or both, may design, develop, construct, operate, maintain, or own, or participate with other entities in designing, developing, constructing, operating, maintaining, or owning, a new electric power transmission facility and related facilities ("Project") located within any State in which WAPA or SWPA operates if the Secretary, in consultation with the applicable Administrator, determines that the proposed Project—

(1)(A) is located in an area designated under section 216(a) of the Federal Power Act and will reduce congestion of electric transmission in interstate commerce; or

(B) is necessary to accommodate an actual or projected increase in demand for electric transmission capacity;

(2) is consistent with—

(A) transmission needs identified, in a transmission expansion plan or otherwise, by the appropriate Regional Transmission Organization or Independent System Operator, if any, or approved regional reliability organization; and

(B) efficient and reliable operation of the transmission grid;

(3) will be operated in conformance with prudent utility practice;

(4) will be operated by, or in conformance with the rules of, the appropriate (A) Regional Transmission Organization or Independent System Operator, if any, or (B) if such an organization does not exist, regional reliability organization; and

(5) will not duplicate the functions of existing transmission facilities or proposed facilities which are the subject of ongoing or approved siting and related permitting proceedings.

(c) OTHER FUNDS.—

(1) IN GENERAL.—In carrying out a Project under subsection (a) or (b), the Secretary may accept and use funds contributed by another entity for the purpose of carrying out the Project.

(2) AVAILABILITY.—The contributed funds shall be available for expenditure for the purpose of carrying out the Project—

(A) without fiscal year limitation; and

(B) as if the funds had been appropriated specifically for that Project.

(3) ALLOCATION OF COSTS.—In carrying out a Project under subsection (a) or (b), any costs of the Project not paid for by contributions from another entity shall be collected through rates charged to customers using the new transmission capability provided by the Project and allocated equitably among these project beneficiaries using the new transmission capability.

(d) RELATIONSHIP TO OTHER LAWS.—Nothing in this section affects any requirement of—

(1) any Federal environmental law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(2) any Federal or State law relating to the siting of energy facilities; or

(3) any existing authorizing statutes.

(e) SAVINGS CLAUSE.—Nothing in this section shall constrain or restrict an Administrator in the utilization of other authority delegated to the Administrator of WAPA or SWPA.

(f) SECRETARIAL DETERMINATIONS.—Any determination made pursuant to subsections (a) or (b) shall be based on findings by the Secretary using the best available data.

(g) MAXIMUM FUNDING AMOUNT.—The Secretary shall not accept and use more than $100,000,000 under subsection (c)(1) for the period encompassing fiscal years 2006 through 2015.

§ 1223. Transmission system monitoring

Within 6 months after the date of enactment of this Act, the Secretary of Energy and the Federal Energy Regulatory Commission shall study and report to Congress on the steps which must be taken to establish a system to make available to all transmission system owners and Regional Transmission Organizations (as defined in the Federal Power Act) within the Eastern and Western Interconnections real-time information on the functional status of all transmission lines within such Interconnections. In such study, the Commission shall assess technical means for implementing such transmission information system and identify the steps the Commission or Congress must take to require the implementation of such system.

§ 1224. Advanced transmission technologies

(a) AUTHORITY.—The Federal Energy Regulatory Commission, in the exercise of its authorities under the Federal Power Act and the Public Utility Regulatory Policies Act of 1978, shall encourage the deployment of advanced transmission technologies.

(b) DEFINITION.—For the purposes of this section, the term "advanced transmission technologies" means technologies that increase the capacity, efficiency, or reliability of existing or new transmission facilities, including, but not limited to—

(1) high-temperature lines (including superconducting cables);

(2) underground cables;

(3) advanced conductor technology (including advanced composite conductors, high-temperature low-sag conductors, and fiber optic temperature sensing conductors);

(4) high-capacity ceramic electric wire, connectors, and insulators;

(5) optimized transmission line configurations (including multiple phased transmission lines);

(6) modular equipment;
(7) wireless power transmission;
(8) ultra-high voltage lines;
(9) high-voltage DC technology;
(10) flexible AC transmission systems;
(11) energy storage devices (including pumped hydro, compressed air, superconducting magnetic energy storage, flywheels, and batteries);
(12) controllable load;
(13) distributed generation (including PV, fuel cells, microturbines);
(14) enhanced power device monitoring;
(15) direct system state sensors;
(16) fiber optic technologies;
(17) power electronics and related software (including real time monitoring and analytical software); and
(18) any other technologies the Commission considers appropriate.

(c) OBSOLETE OR IMPRACTICABLE TECHNOLOGIES.—The Commission is authorized to cease encouraging the deployment of any technology described in this section on a finding that such technology has been rendered obsolete or otherwise impracticable to deploy.

§ 1225. Electric transmission and distribution programs

(a) ELECTRIC TRANSMISSION AND DISTRIBUTION PROGRAM.—The Secretary of Energy (hereinafter in this section referred to as the "Secretary") acting through the Director of the Office of Electric Transmission and Distribution shall establish a comprehensive research, development, demonstration and commercial application program to promote improved reliability and efficiency of electrical transmission and distribution systems. This program shall include—

(1) advanced energy delivery and storage technologies, materials, and systems, including new transmission technologies, such as flexible alternating current transmission systems, composite conductor materials and other technologies that enhance reliability, operational flexibility, or power-carrying capability;
(2) advanced grid reliability and efficiency technology development;
(3) technologies contributing to significant load reductions;
(4) advanced metering, load management, and control technologies;
(5) technologies to enhance existing grid components;
(6) the development and use of high-temperature superconductors to—
(A) enhance the reliability, operational flexibility, or power-carrying capability of electric transmission or distribution systems; or
(B) increase the efficiency of electric energy generation, transmission, distribution, or storage systems;
(7) integration of power systems, including systems to deliver high-quality electric power, electric power reliability, and combined heat and power;
(8) supply of electricity to the power grid by small scale, distributed and residential-based power generators;
(9) the development and use of advanced grid design, operation and planning tools;
(10) any other infrastructure technologies, as appropriate; and
(11) technology transfer and education.

(b) PROGRAM PLAN.—Not later than 1 year after the date of the enactment of this legislation, 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 may 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) IMPLEMENTATION.—The Secretary shall consider implementing this program using a consortium of industry, university and national laboratory participants.

(d) 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 and distribution infrastructure technologies.

(e) POWER DELIVERY RESEARCH INITIATIVE.—

(1) IN GENERAL.—The Secretary shall establish a research, development, demonstration, and commercial application initiative specifically focused on power delivery utilizing components incorporating high temperature superconductivity.
(2) GOALS.—The goals of this initiative shall be to—

(A) establish facilities to develop high temperature superconductivity power applications in partnership with manufacturers and utilities;

(B) provide technical leadership for establishing reliability for high temperature superconductivity power applications including suitable modeling and analysis;

(C) facilitate commercial transition toward direct current power transmission, storage, and use for high power systems utilizing high temperature superconductivity; and

(D) facilitate the integration of very low impedance high temperature superconducting wires and cables in existing electric networks to improve system performance, power flow control and reliability.

(3) REQUIREMENTS.—The initiative shall include—

(A) feasibility analysis, planning, research, and design to construct demonstrations of superconducting links in high power, direct current and controllable alternating current transmission systems;

(B) public-private partnerships to demonstrate deployment of high temperature superconducting cable into testbeds simulating a realistic transmission grid and under varying transmission conditions, including actual grid insertions; and

(C) testbeds developed in cooperation with national laboratories, industries, and universities to demonstrate these technologies, prepare the technologies for commercial introduction, and address cost or performance roadblocks to successful commercial use.

(4) AUTHORIZATION OF APPROPRIATIONS.—For purposes of carrying out this subsection, there are authorized to be appropriated—

(A) for fiscal year 2006, $15,000,000;

(B) for fiscal year 2007, $20,000,000;

(C) for fiscal year 2008, $30,000,000;

(D) for fiscal year 2009, $35,000,000; and

(E) for fiscal year 2010, $40,000,000.

§ 1226. 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) QUALIFYING ADVANCED POWER SYSTEM TECHNOLOGY FACILITY.—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.

(2) QUALIFYING SECURITY AND ASSURED POWER FACILITY.—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 2006 through 2012.

§ 1227. Office of Electric Transmission and Distribution

(a) CREATION OF AN OFFICE OF ELECTRIC TRANSMISSION AND DISTRIBUTION.—Title II of the Department of Energy Organization Act (42 U.S.C. 7131 et seq.) (as amend-

ed by section 502(a) of this Act) is amended by inserting the following after section 217, as added by title V of this Act:

"SEC. 218. OFFICE OF ELECTRIC TRANSMISSION AND DISTRIBUTION.

"(a) ESTABLISHMENT.—There is established within the Department an Office of Electric Transmission and Distribution. This Office shall be headed by a Director, subject to the authority of the Secretary. The Director shall be appointed by the Secretary. The Director shall be compensated at the annual rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(b) DIRECTOR.—The Director shall—

"(1) coordinate and develop a comprehensive, multi-year strategy to improve the Nation's electricity transmission and distribution;

"(2) implement or, where appropriate, coordinate the implementation of, the recommendations made in the Secretary's May 2002 National Transmission Grid Study;

"(3) oversee research, development, and demonstration to support Federal energy policy related to electricity transmission and distribution;

"(4) grant authorizations for electricity import and export pursuant to section 202(c), (d), (e), and (f) of the Federal Power Act (16 U.S.C. 824a);

"(5) perform other functions, assigned by the Secretary, related to electricity transmission and distribution; and

"(6) develop programs for workforce training in power and transmission engineering.".

(b) CONFORMING AMENDMENTS.—(1) The table of contents of the Department of Energy Organization Act (42 U.S.C. 7101 note) is amended by inserting after the item relating to section 217 the following new item:

"Sec. 218. Office of Electric Transmission and Distribution.".

(2) Section 5315 of title 5, United States Code, is amended by inserting after the item relating to "Inspector General, Department of Energy." the following:

"Director, Office of Electric Transmission and Distribution, Department of Energy.".

Subtitle C—Transmission Operation Improvements

§ 1231. Open nondiscriminatory access

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting after section 211 the following new section:

"SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES.

"(a) TRANSMISSION SERVICES.—Subject to section 212(h), the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

"(1) at rates that are comparable to those that the unregulated transmitting utility charges itself; and

"(2) on terms and conditions (not relating to rates) that are comparable to those under which such unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential.

"(b) EXEMPTION.—The Commission shall exempt from any rule or order under this section any unregulated transmitting utility that—

"(1) sells no more than 4,000,000 megawatt hours of electricity per year; or

"(2) does not own or operate any transmission facilities that are necessary for operating an interconnected transmission system (or any portion thereof); or

"(3) meets other criteria the Commission determines to be in the public interest.

"(c) LOCAL DISTRIBUTION FACILITIES.—The requirements of subsection (a) shall not apply to facilities used in local distribution.

"(d) EXEMPTION TERMINATION.—Whenever the Commission, after an evidentiary hearing held upon a complaint and after giving consideration to reliability standards established under section 215, finds on the basis of a preponderance of the evidence that any exemption granted pursuant to subsection (b) unreasonably impairs the continued reliability of an interconnected transmission system, it shall revoke the exemption granted to that transmitting utility.

"(e) APPLICATION TO UNREGULATED TRANSMITTING UTILITIES.—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.

"(f) REMAND.—In exercising its authority under paragraph (1) of subsection (a), the Commission may remand transmission rates to an unregulated transmitting

utility for review and revision where necessary to meet the requirements of subsection (a).

"(g) OTHER REQUESTS.—The provision of transmission services under subsection (a) does not preclude a request for transmission services under section 211.

"(h) LIMITATION.—The Commission may not require a State or municipality to take action under this section that would violate a private activity bond rule for purposes of section 141 of the Internal Revenue Code of 1986 (26 U.S.C. 141).

"(i) TRANSFER OF CONTROL OF TRANSMITTING FACILITIES.—Nothing in this section authorizes the Commission to require an unregulated transmitting utility to transfer control or operational control of its transmitting facilities to an RTO or any other Commission-approved independent transmission organization designated to provide nondiscriminatory transmission access.

"(j) DEFINITION.—For purposes of this section, the term 'unregulated transmitting utility' means an entity that—

"(1) owns or operates facilities used for the transmission of electric energy in interstate commerce; and

"(2) is an entity described in section 201(f).".

§ 1232. Sense of Congress on Regional Transmission Organizations

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 Regional Transmission Organizations as defined in section 3 of the Federal Power Act.

§ 1233. Regional Transmission Organization applications progress report

Not later than 120 days after the date of enactment of this section, the Federal Energy Regulatory Commission shall submit to Congress a report containing each of the following:

(1) A list of all regional transmission organization applications filed at the Commission pursuant to subpart F of part 35 of title 18, Code of Federal Regulations (in this section referred to as "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 brief description of the status of each pending regional transmission organization application, including a precise explanation of how each fails to comply with the minimal requirements of Order No. 2000 and what steps need to be taken to bring each application into such compliance.

(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;

(B) a discussion of the impact of such seams on consumers and wholesale competition; and

(C) a discussion of minimizing cost-shifting on consumers.

§ 1234. Federal utility participation in Regional Transmission Organizations

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

(1) APPROPRIATE FEDERAL REGULATORY AUTHORITY.—The term "appropriate Federal regulatory authority" means—

(A) with respect to a Federal power marketing agency (as defined in the Federal Power Act), the Secretary of Energy, except that the Secretary may designate the Administrator of a Federal power marketing agency to act as the appropriate Federal regulatory authority with respect to the transmission system of that Federal power marketing agency; and

(B) with respect to the Tennessee Valley Authority, the Board of Directors of the Tennessee Valley Authority.

(2) FEDERAL UTILITY.—The term "Federal utility" means a Federal power marketing agency or the Tennessee Valley Authority.

(3) TRANSMISSION SYSTEM.—The term "transmission system" means electric transmission facilities owned, leased, or contracted for by the United States and operated by a Federal utility.

(b) 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 an RTO or ISO (as defined in the Federal Power Act), approved by the Federal Energy Regulatory Commission. Such contract, agreement or arrangement shall include—

(1) 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;

(2) provisions for monitoring and oversight by the Federal utility of the RTO's or ISO's fulfillment of the terms and conditions of the contract, agreement or other arrangement, including a provision 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

(3) a provision that allows the Federal utility to withdraw from the RTO or ISO 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 an RTO or ISO shall 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.

(c) EXISTING STATUTORY AND OTHER OBLIGATIONS.—

(1) SYSTEM OPERATION REQUIREMENTS.—No statutory provision requiring or authorizing a Federal utility to transmit electric power or to construct, operate or maintain its transmission system shall be construed to prohibit a transfer of control and use of its transmission system pursuant to, and subject to all requirements of subsection (b).

(2) OTHER OBLIGATIONS.—This subsection shall not be construed to—

(A) 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

(B) authorize abrogation of any contract or treaty obligation.

(3) REPEAL.—Section 311 of title III of Appendix B of the Act of October 27, 2000 (P.L. 106–377, section 1(a)(2); 114 Stat. 1441, 1441A–80; 16 U.S.C. 824n) is repealed.

§ 1235. Standard market design

(a) REMAND.—The Commission's proposed rulemaking entitled "Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design" (Docket No. RM01–12–000) ("SMD NOPR") is remanded to the Commission for reconsideration. No final rule mandating a standard electricity market design pursuant to the proposed rulemaking, including any rule or order of general applicability within the scope of the proposed rulemaking, may be issued before October 31, 2006, or take effect before December 31, 2006. Any final rule issued by the Commission pursuant to the proposed rulemaking shall be preceded by a second notice of proposed rulemaking issued after the date of enactment of this Act and an opportunity for public comment.

(b) SAVINGS CLAUSE.—This section shall not be construed to modify or diminish any authority or obligation the Commission has under this Act, the Federal Power Act, or other applicable law, including, but not limited to, any authority to—

(1) issue any rule or order (of general or particular applicability) pursuant to any such authority or obligation; or

(2) act on a filing or filings by 1 or more transmitting utilities for the voluntary formation of a Regional Transmission Organization or Independent System Operator (as defined in the Federal Power Act) (and related market struc-

tures or rules) or voluntary modification of an existing Regional Transmission Organization or Independent System Operator (and related market structures or rules).

§ 1236. Native load service obligation

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

"SEC. 217. NATIVE LOAD SERVICE OBLIGATION.

"(a) MEETING SERVICE OBLIGATIONS.—(1) Any load-serving entity that, as of the date of enactment of this section—

"(A) owns generation facilities, markets the output of Federal generation facilities, or holds rights under 1 or more wholesale contracts to purchase electric energy, for the purpose of meeting a service obligation, and

"(B) by reason of ownership of transmission facilities, or 1 or more contracts or service agreements for firm transmission service, holds firm transmission rights for delivery of the output of such generation facilities or such purchased energy to meet such service obligation,

is entitled to use such firm transmission rights, or, equivalent tradable or financial transmission rights, in order to deliver such output or purchased energy, or the output of other generating facilities or purchased energy to the extent deliverable using such rights, to the extent required to meet its service obligation.

"(2) To the extent that all or a portion of the service obligation covered by such firm transmission rights or equivalent tradable or financial transmission rights is transferred to another load-serving entity, the successor load-serving entity shall be entitled to use the firm transmission rights or equivalent tradable or financial transmission rights associated with the transferred service obligation. Subsequent transfers to another load-serving entity, or back to the original load-serving entity, shall be entitled to the same rights.

"(3) The Commission shall exercise its authority under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy their service obligations, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long term basis for long term power supply arrangements made, or planned, to meet such needs.

"(b) ALLOCATION OF TRANSMISSION RIGHTS.—Nothing in subsections (a)(1) and (a)(2) of this section shall affect any existing or future methodology employed by an RTO or ISO for allocating or auctioning transmission rights if such RTO or ISO was authorized by the Commission to allocate or auction financial transmission rights on its system as of January 1, 2005, and the Commission determines that any future allocation or auction is just, reasonable and not unduly discriminatory or preferential, provided, however, that if such an RTO or ISO never allocated financial transmission rights on its system that pertained to a period before January 1, 2005, with respect to any application by such RTO or ISO that would change its methodology the Commission shall exercise its authority in a manner consistent with the Act and the policies expressed in subsections (a)(1) and (a)(2) as applied to firm transmission rights held by a load serving entity as of January 1, 2005, to the extent the associated generation ownership or power purchase arrangements remain in effect.

"(c) CERTAIN TRANSMISSION RIGHTS.—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 just, reasonable, and not unduly discriminatory or preferential.

"(d) OBLIGATION TO BUILD.—Nothing in this Act shall relieve a load-serving entity from any obligation under State or local law to build transmission or distribution facilities adequate to meet its service obligations.

"(e) CONTRACTS.—Nothing in this section shall provide a basis for abrogating any contract or service agreement for firm transmission service or rights in effect as of the date of the enactment of this subsection. If an ISO in the Western Interconnection had allocated financial transmission rights prior to the date of enactment of this section but had not done so with respect to one or more load-serving entities' firm transmission rights held under contracts to which the preceding sentence applies (or held by reason of ownership of transmission facilities), such load-serving entities may not be required, without their consent, to convert such firm transmission rights to tradable or financial rights, except where the load-serving entity has voluntarily joined the ISO as a participating transmission owner (or its successor) in accordance with the ISO tariff.

"(f) WATER PUMPING FACILITIES.—The Commission shall ensure that any entity described in section 201(f) that owns transmission facilities used predominately to support its own water pumping facilities shall have, with respect to such facilities,

protections for transmission service comparable to those provided to load-serving entities pursuant to this section.

"(g) FERC RULEMAKING ON LONG-TERM TRANSMISSION RIGHTS IN ORGANIZED MARKETS.—Within one year after the date of enactment of this section and after notice and an opportunity for comment, the Commission shall by rule or order implement subsection (a)(3) in Commission-approved RTOs and ISOs with organized electricity markets.

"(h) ERCOT.—This section shall not apply within the area referred to in section 212(k)(2)(A).

"(i) JURISDICTION.—This section does not authorize the Commission to take any action not otherwise within its jurisdiction.

"(j) EFFECT OF EXERCISING RIGHTS.—An entity that lawfully exercises rights granted under subsection (a) shall not be considered by such action as engaging in undue discrimination or preference under this Act.

"(k) TVA AREA.—For purposes of subsection (a)(1)(B), a load-serving entity that is located within the service area of the Tennessee Valley Authority and that has a firm wholesale power supply contract with the Tennessee Valley Authority shall be deemed to hold firm transmission rights for the transmission of such power.

"(l) DEFINITIONS.—For purposes of this section:

"(1) The term 'distribution utility' means an electric utility that has a service obligation to end-users or to a State utility or electric cooperative that, directly or indirectly, through 1 or more additional State utilities or electric cooperatives, provides electric service to end-users.

"(2) The term 'load-serving entity' means a distribution utility or an electric utility that has a service obligation.

"(3) The term 'service obligation' means a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.

"(4) The term 'State utility' means a State or any political subdivision of a State, or any agency, authority, or instrumentality of any 1 or more of the foregoing, or a corporation which is wholly owned, directly or indirectly, by any 1 or more of the foregoing, competent to carry on the business of developing, transmitting, utilizing or distributing power.".

§ 1237. 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 Congress and the States on the results of the study conducted under subsection (a), including recommendations to Congress and the States for any suggested legislative or regulatory changes.

Subtitle D—Transmission Rate Reform

§ 1241. Transmission infrastructure investment

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

"SEC. 218. TRANSMISSION INFRASTRUCTURE INVESTMENT.

"(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) rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefiting consumers

by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion. Such rule shall—

"(1) promote reliable and economically efficient transmission and generation of electricity by promoting capital investment in the enlargement, improvement, maintenance and operation of facilities for the transmission of electric energy in interstate commerce;

"(2) provide a return on equity that attracts new investment in transmission facilities (including related transmission technologies);

"(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; and

"(4) allow recovery of all prudently incurred costs necessary to comply with mandatory reliability standards issued pursuant to section 215 of this Act.

The Commission may, from time to time, revise such rule.

"(b) ADDITIONAL INCENTIVES FOR RTO PARTICIPATION.—In the rule issued under this section, the Commission shall, to the extent within its jurisdiction, provide for incentives to each transmitting utility or electric utility that joins a Regional Transmission Organization or Independent System Operator. Incentives provided by the Commission pursuant to such rule shall include—

"(1) recovery of all prudently incurred costs to develop and participate in any proposed or approved RTO, ISO, or independent transmission company;

"(2) recovery of all costs previously approved by a State commission which exercised jurisdiction over the transmission facilities prior to the utility's participation in the RTO or ISO, including costs necessary to honor preexisting transmission service contracts, in a manner which does not reduce the revenues the utility receives for transmission services for a reasonable transition period after the utility joins the RTO or ISO;

"(3) recovery as an expense in rates of the costs prudently incurred to conduct transmission planning and reliability activities, including the costs of participating in RTO, ISO and other regional planning activities and design, study and other precertification costs involved in seeking permits and approvals for proposed transmission facilities;

"(4) a current return in rates for construction work in progress for transmission facilities and full recovery of prudently incurred costs for constructing transmission facilities;

"(5) formula transmission rates; and

"(6) a maximum 15 year accelerated depreciation on new transmission facilities for rate treatment purposes.

The Commission shall ensure that any costs recoverable pursuant to this subsection may be recovered by such utility through the transmission rates charged by such utility or through the transmission rates charged by the RTO or ISO that provides transmission service to such utility.

"(c) JUST AND REASONABLE RATES.—All rates approved under the rules adopted pursuant to this section, including any revisions to such rules, are subject to the requirement of sections 205 and 206 that all rates, charges, terms, and conditions be just and reasonable and not unduly discriminatory or preferential.".

Subtitle E—Amendments to PURPA

§ 1251. Net metering and additional 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) NET METERING.—Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term 'net metering service' 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.

"(12) FUEL SOURCES.—Each electric utility shall develop a plan to minimize dependence on 1 fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.

"(13) FOSSIL FUEL GENERATION EFFICIENCY.—Each electric utility shall develop and implement a 10-year plan to increase the efficiency of its fossil fuel generation.".

(b) COMPLIANCE.—

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

"(3)(A) Not later than 2 years after the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has rate-making authority) and each nonregulated electric utility shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to each standard established by paragraphs (11) through (13) of section 111(d).

"(B) Not later than 3 years after the date of the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has rate-making authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to each standard established by paragraphs (11) through (13) of section 111(d).".

(2) FAILURE TO COMPLY.—Section 112(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(c)) is amended by adding at the end the following:

"In the case of each standard established by paragraphs (11) through (13) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraphs (11) through (13).".

(3) PRIOR STATE ACTIONS.—

(A) IN GENERAL.—Section 112 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622) is amended by adding at the end the following:

"(d) PRIOR STATE ACTIONS.—Subsections (b) and (c) of this section shall not apply to the standards established by paragraphs (11) through (13) of section 111(d) in the case of any electric utility in a State if, before the enactment of this subsection—

"(1) the State has implemented for such utility the standard concerned (or a comparable standard);

"(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility; or

"(3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility.".

(B) CROSS REFERENCE.—Section 124 of such Act (16 U.S.C. 2634) is amended by adding the following at the end thereof: "In the case of each standard established by paragraphs (11) through (13) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraphs (11) through (13).".

SEC. 1252. SMART METERING.

(a) IN GENERAL.—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) TIME-BASED METERING AND COMMUNICATIONS.—

"(A) Not later than 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, if any, in the utility's 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—

"(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, based on the utility's cost of generating and/or purchasing such electricity at the wholesale level for the benefit of the consumer. 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/or 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, reflecting the utility's cost of generating and/or purchasing electricity at the wholesale level, and may change as often as hourly; and

"(iv) credits for consumers with large loads who enter into pre-established peak load reduction agreements that reduce a utility's planned capacity obligations.

"(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 the 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 18 months after the date of 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 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended as follows:

(1) By inserting in subsection (b) after the phrase "the standard for time-of-day rates established by section 111(d)(3)" the following: "and the standard for time-based metering and communications established by section 111(d)(14)".

(2) By inserting in subsection (b) after the phrase "are likely to exceed the metering" the following: "and communications".

(3) By adding the at the end the following:

"(i) TIME-BASED METERING AND COMMUNICATIONS.—In making a determination with respect to the standard established by section 111(d)(14), the investigation requirement of section 111(d)(14)(F) shall be as follows: Each State regulatory authority shall 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 Policies 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. 2642) is amended by adding the following at the end thereof:

"(d) DEMAND RESPONSE.—The Secretary shall be responsible for—

"(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) not later than 180 days after the date of enactment of the Energy Policy Act of 2005, providing Congress with a report that identifies and quantifies the national benefits of demand response and makes a recommendation on achieving specific levels of such benefits by January 1, 2007.".

(e) DEMAND RESPONSE AND REGIONAL COORDINATION.—

(1) IN GENERAL.—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 2 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;

(C) developing plans and programs to use demand response to respond to peak demand or emergency needs; and

(D) identifying specific measures consumers can take to participate in these demand response programs.

(3) REPORT.—Not later than 1 year after the date of enactment of the Energy Policy Act of 2005, the 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—

(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;

(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, 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; and

(F) regulatory barriers to improved customer participation in demand response, peak reduction and critical period pricing programs.

(f) FEDERAL ENCOURAGEMENT 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, the deployment of such technology and devices that enable electricity customers to participate in such pricing and demand response systems shall be facilitated, and unnecessary barriers to demand response participation in energy, capacity and ancillary service markets shall be eliminated. 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.

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

"(4)(A) Not later than 1 year after the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to the standard established by paragraph (14) of section 111(d).

"(B) Not later than 2 years after the date of the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to the standard established by paragraph (14) of section 111(d).".

(h) FAILURE TO COMPLY.—Section 112(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(c)) is amended by adding at the end the following:

"In the case of the standard established by paragraph (14) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraph (14).".

(i) PRIOR STATE ACTIONS REGARDING SMART METERING STANDARDS.—

(1) IN GENERAL.—Section 112 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622) is amended by adding at the end the following:

"(e) PRIOR STATE ACTIONS.—Subsections (b) and (c) of this section shall not apply to the standard established by paragraph (14) of section 111(d) in the case of any electric utility in a State if, before the enactment of this subsection—

"(1) the State has implemented for such utility the standard concerned (or a comparable standard);

"(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility within the previous 3 years; or

"(3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility within the previous 3 years.".

(2) CROSS REFERENCE.—Section 124 of such Act (16 U.S.C. 2634) is amended by adding the following at the end thereof: "In the case of the standard established by paragraph (14) of section 111(d), the reference contained in this sub-

section to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraph (14).".

SEC. 1253. 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 the qualifying cogeneration facility or qualifying small power production facility has nondiscriminatory access to—

"(A)(i) independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and (ii) wholesale markets for long-term sales of capacity and electric energy; or

"(B)(i) transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and (ii) competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful opportunity to sell exists, the Commission shall consider, among other factors, evidence of transactions within the relevant market; or

"(C) wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in subparagraphs (A) and (B).

"(2) REVISED PURCHASE AND SALE OBLIGATION FOR NEW FACILITIES.—(A) After the date of enactment of this subsection, no electric utility shall be required pursuant to this section to enter into a new contract or obligation to purchase from or sell electric energy to a facility that is not an existing qualifying cogeneration facility unless the facility meets the criteria for qualifying cogeneration facilities established by the Commission pursuant to the rulemaking required by subsection (n).

"(B) For the purposes of this paragraph, the term 'existing qualifying cogeneration facility' means a facility that—

"(i) was a qualifying cogeneration facility on the date of enactment of subsection (m); or

"(ii) had filed with the Commission a notice of self-certification, self recertification or an application for Commission certification under 18 C.F.R. 292.207 prior to the date on which the Commission issues the final rule required by subsection (n).

"(3) COMMISSION REVIEW.—Any electric utility may file an application with the Commission for relief from the mandatory purchase obligation pursuant to this subsection on a service territory-wide basis. Such application shall set forth the factual basis upon which relief is requested and describe why the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) of this subsection have been met. After notice, including sufficient notice to potentially affected qualifying cogeneration facilities and qualifying small power production facilities, and an opportunity for comment, the Commission shall make a final determination within 90 days of such application regarding whether the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) have been met.

"(4) REINSTATEMENT OF OBLIGATION TO PURCHASE.—At any time after the Commission makes a finding under paragraph (3) relieving an electric utility of its obligation to purchase electric energy, a qualifying cogeneration facility, a qualifying small power production facility, a State agency, or any other affected person 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 factual basis upon which the application is based and describe why the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) of this subsection are no longer met. After notice, including sufficient notice to potentially affected utilities, and opportunity for comment, the Commission shall issue an order within 90 days of such application reinstating the electric utility's obligation to purchase electric energy under this section if the Commission finds that the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) which relieved the obligation to purchase, are no longer met.

"(5) 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 under this section if the Commission finds that—

"(A) competing retail electric suppliers are willing and able to sell and deliver 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.

"(6) 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 non-regulated 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 qualifying cogeneration facility or qualifying small power production facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

"(7) RECOVERY OF COSTS.—(A) The Commission shall issue and enforce such regulations as are necessary to ensure that an electric utility that purchases electric energy or capacity from a qualifying cogeneration facility or qualifying small power production facility in accordance with any legally enforceable obligation entered into or imposed under this section recovers all prudently incurred costs associated with the purchase.

"(B) 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 QUALIFYING FACILITIES.—(1)(A) Not later than 180 days after the date of enactment of this section, the Commission shall issue a rule revising the criteria in 18 C.F.R. 292.205 for new qualifying cogeneration facilities seeking to sell electric energy pursuant to section 210 of this Act to ensure—

"(i) that the thermal energy output of a new qualifying cogeneration facility is used in a productive and beneficial manner;

"(ii) the electrical, thermal, and chemical output of the cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as State laws applicable to sales of electric energy from a qualifying facility to its host facility; and

"(iii) continuing progress in the development of efficient electric energy generating technology.

"(B) The rule issued pursuant to paragraph (1)(A) of this subsecvtion shall be applicable only to facilities that seek to sell electric energy pursuant to section 210 of this Act. For all other purposes, except as specifically provided in subsection (m)(2)(A), qualifying facility status shall be determined in accordance with the rules and regulations of this Act.

"(2) Notwithstanding rule revisions under paragraph (1), the Commission's criteria for qualifying cogeneration facilities in effect prior to the date on which the Commission issues the final rule required by paragraph (1) shall continue to apply to any cogeneration facility that—

"(A) was a qualifying cogeneration facility on the date of enactment of subsection (m), or

"(B) had filed with the Commission a notice of self-certification, self-recertification or an application for Commission certification under 18 C.F.R. 292.207 prior to the date on which the Commission issues the final rule required by paragraph (1).".

(b) ELIMINATION OF OWNERSHIP LIMITATIONS.—

(1) QUALIFYING SMALL POWER PRODUCTION FACILITY.—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 fuel use, fuel efficiency, and reliability) as the Commission may, by rule, prescribe;".

(2) QUALIFYING COGENERATION FACILITY.—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. 1254. INTERCONNECTION.

(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:

"(16) INTERCONNECTION.—Each electric utility shall make available, upon request, interconnection service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term 'interconnection service' means service to an electric consumer under which an on-site generating facility on the consumer's premises shall be connected to the local distribution facilities. Interconnection services shall be offered based upon the standards developed by the Institute of Electrical and Electronics Engineers: IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems, as they may be amended from time to time. In addition, agreements and procedures shall be established whereby the services are offered shall promote current best practices of interconnection for distributed generation, including but not limited to practices stipulated in model codes adopted by associations of state regulatory agencies. All such agreements and procedures shall be just and reasonable, and not unduly discriminatory or preferential.".

(b) COMPLIANCE.—

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

"(5)(A) Not later than one year after the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated utility shall commence the consideration referred to in section 111, or set a hearing date for consideration, with respect to the standard established by paragraph (16) of section 111(d).

"(B) Not later than two years after the date of the enactment of the this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to each standard established by paragraph (16) of section 111(d).".

(2) FAILURE TO COMPLY.—Section 112 (d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622 (c)) is amended by adding at the end the following: "In the case of the standard established by paragraph (16), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of paragraph (16).".

(3) PRIOR STATE ACTIONS.—

(A) IN GENERAL.—Section 112 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622) is amended by adding at the end the following:

"(f) PRIOR STATE ACTIONS.—Subsections (b) and (c) of this section shall not apply to the standards established by paragraph (16) of section 111(d) in the case of any electric utility in a State if, before the enactment of this subsection—

"(1) the State has implemented for such utility the standard concerned (or a comparable standard);

"(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility; or

"(3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility.".

(B) CROSS REFERENCE.—Section 124 of such Act (16 U.S.C. 2634) is amended by adding the following at the end thereof: "In the case of each standard established by paragraph (16) of section 111(d), the reference contained in this subsection to the date of enactment of the Act shall be deemed to be a reference to the date of enactment of paragraph (16).".

Subtitle F—Repeal of PUHCA

SEC. 1261. SHORT TITLE.

This subtitle may be cited as the "Public Utility Holding Company Act of 2005".

SEC. 1262. DEFINITIONS.

For purposes of this subtitle:

(1) AFFILIATE.—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) ASSOCIATE COMPANY.—The term "associate company" of a company means any company in the same holding company system with such company.

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

(4) COMPANY.—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) ELECTRIC UTILITY COMPANY.—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) EXEMPT WHOLESALE GENERATOR AND FOREIGN UTILITY COMPANY.—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) GAS UTILITY COMPANY.—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) HOLDING COMPANY.—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 1 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) HOLDING COMPANY SYSTEM.—The term "holding company system" means a holding company, together with its subsidiary companies.

(10) JURISDICTIONAL RATES.—The term "jurisdictional rates" means rates accepted or 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) NATURAL GAS COMPANY.—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) PERSON.—The term "person" means an individual or company.

(13) PUBLIC UTILITY.—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) PUBLIC-UTILITY COMPANY.—The term "public-utility company" means an electric utility company or a gas utility company.

(15) STATE COMMISSION.—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) SUBSIDIARY COMPANY.—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 1 or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) VOTING SECURITY.—The term "voting security" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 1263. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is repealed.

SEC. 1264. FEDERAL ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(b) AFFILIATE COMPANIES.—Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(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 determines are 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. 1265. 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 in a proceeding before the State commission;

(2) the State commission determines 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 1 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. 1266. EXEMPTION AUTHORITY.

(a) RULEMAKING.—Not later than 90 days after the effective date of this subtitle, the Commission shall issue a final rule to exempt from the requirements of section 1264 (relating to Federal access to books and records) any person that is a holding company, solely with respect to 1 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 1264 (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. 1267. 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 issuance 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. 1268. APPLICABILITY.

Except as otherwise specifically provided in this subtitle, no provision of this subtitle shall apply to, or be deemed to include—

(1) the United States;

(2) a State or any political subdivision of a State;

(3) any foreign governmental authority not operating in the United States;

(4) any agency, authority, or instrumentality of any entity referred to in paragraph (1), (2), or (3); or

(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), (3), or (4) acting as such in the course of his or her official duty.

SEC. 1269. EFFECT ON OTHER REGULATIONS.

Nothing in this subtitle precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility customers.

SEC. 1270. ENFORCEMENT.

The Commission shall have the same powers as set forth in sections 306 through 317 of the Federal Power Act (16 U.S.C. 825e–825p) to enforce the provisions of this subtitle.

SEC. 1271. SAVINGS PROVISIONS.

(a) IN GENERAL.—Nothing in this subtitle, or otherwise in the Public Utility Holding Company Act of 1935, or rules, regulations, or orders thereunder, 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, if that person continues to comply with the terms (other than an expiration date or termination date) 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.) or the Natural Gas Act (15 U.S.C. 717 et seq.).

SEC. 1272. IMPLEMENTATION.

Not later than 12 months after the date of enactment of this subtitle, the Commission shall—

(1) issue such regulations as may be necessary or appropriate to implement this subtitle (other than section 1265, relating to State access to books and records); and

(2) submit to 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. 1273. 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. 1274. EFFECTIVE DATE.

(a) IN GENERAL.—Except for section 1272 (relating to implementation), this subtitle shall take effect 12 months after the date of enactment of this subtitle.

(b) COMPLIANCE WITH CERTAIN RULES.—If the Commission approves and makes effective any final rulemaking modifying the standards of conduct governing entities that own, operate, or control facilities for transmission of electricity in interstate

commerce or transportation of natural gas in interstate commerce prior to the effective date of this subtitle, any action taken by a public-utility company or utility holding company to comply with the requirements of such rulemaking shall not subject such public-utility company or utility holding company to any regulatory requirement applicable to a holding company under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.).

SEC. 1275. SERVICE ALLOCATION.

(a) FERC REVIEW.—In the case of non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system, at the election of the system or a State commission having jurisdiction over the public utility, the Commission, after the effective date of this subtitle, shall review and authorize the allocation of the costs for such goods or services to the extent relevant to that associate company in order to assure that each allocation is appropriate for the protection of investors and consumers of such public utility.

(b) COST ALLOCATION.—Nothing in this section shall preclude the Commission or a State commission from exercising its jurisdiction under other applicable law with respect to the review or authorization of any costs allocated to a public utility in a holding company system located in the affected State as a result of the acquisition of non-power goods or administrative and management services by such public utility from an associate company organized specifically for that purpose.

(c) RULES.—Not later than 6 months after the date of enactment of this Act, the Commission shall issue rules (which rules shall be effective no earlier than the effective date of this subtitle) to exempt from the requirements of this section any company in a holding company system whose public utility operations are confined substantially to a single State and any other class of transactions that the Commission finds is not relevant to the jurisdictional rates of a public utility.

(d) PUBLIC UTILITY.—As used in this section, the term "public utility" has the meaning given that term in section 201(e) of the Federal Power Act.

SEC. 1276. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such funds as may be necessary to carry out this subtitle.

SEC. 1277. 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 "2005".

(2) Section 214 of the Federal Power Act (16 U.S.C. 824m) is amended by striking "1935" and inserting "2005".

Subtitle G—Market Transparency, Enforcement, and Consumer Protection

SEC. 1281. MARKET TRANSPARENCY RULES.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

"SEC. 220. MARKET TRANSPARENCY RULES.

"(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules establishing an electronic information system to provide the Commission and the public with access to such information as is necessary or appropriate to facilitate price transparency and participation in markets subject to the Commission's jurisdiction under this Act. Such systems shall provide information about the availability and market price of wholesale electric energy and transmission services to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public on a timely basis. The Commission shall have authority to obtain such information from any electric utility or transmitting utility, including any entity described in section 201(f).

"(b) EXEMPTIONS.—The Commission shall exempt from disclosure information it determines would, if disclosed, be detrimental to the operation of an effective market or jeopardize system security. This section shall not apply to transactions for the purchase or sale of wholesale electric energy or transmission services within the area described in section 212(k)(2)(A). In determining the information to be made available under this section and time to make such information available, the Com-

mission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anti-competitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.

"(c) COMMODITY FUTURES TRADING COMMISSION.—This section shall not affect the exclusive jurisdiction of the Commodity Futures Trading Commission with respect to accounts, agreements, contracts, or transactions in commodities under the Commodity Exchange Act (7 U.S.C. 1 et seq.).

"(d) SAVINGS PROVISION.—In exercising its authority under this section, the Commission shall not—

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

"(2) regulate price publishers or impose any requirements on the publication of information.".

SEC. 1282. MARKET MANIPULATION.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

"SEC. 221. PROHIBITION ON FILING FALSE INFORMATION.

"No person or other entity (including an entity described in section 201(f)) shall willfully and knowingly report any information relating to the price of electricity sold at wholesale or availability of transmission capacity, which information the person or any other entity knew to be false at the time of the reporting, to a Federal agency with intent to fraudulently affect the data being compiled by such Federal agency.

"SEC. 222. PROHIBITION ON ROUND TRIP TRADING.

"(a) PROHIBITION.—No person or other entity (including an entity described in section 201(f)) shall willfully and knowingly 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.—For the purposes of this section, the term 'round trip trade' means a transaction, or combination of transactions, in which a person or any 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 or arrangement described in paragraph (1), arranges a financially offsetting trade with such other person or entity for the same such electric energy, at the same location, price, quantity and terms so that, collectively, the purchase and sale transactions in themselves result in no financial gain or loss; and

"(3) enters into the contract or arrangement with a specific intent to fraudulently affect reported revenues, trading volumes, or prices.".

SEC. 1283. ENFORCEMENT.

(a) COMPLAINTS.—Section 306 of the Federal Power Act (16 U.S.C. 825e) is amended as follows:

(1) By inserting "electric utility," after "Any person,".

(2) By 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 2 places it appears and by striking "any person unless such person" and inserting "any entity unless such entity".

(c) INVESTIGATIONS.—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) 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 "5 years";

(2) in subsection (b), by striking "$500" and inserting "$25,000"; and

(3) by striking subsection (c).

(e) CIVIL PENALTIES.—Section 316A of the Federal Power Act (16 U.S.C. 825o–1) is amended as follows:

(1) In subsections (a) and (b), by striking "section 211, 212, 213, or 214" each place it appears and inserting "Part II".

(2) In subsection (b), by striking "$10,000" and inserting "$1,000,000".

SEC. 1284. REFUND EFFECTIVE DATE.

Section 206(b) of the Federal Power Act (16 U.S.C. 824e(b)) is amended as follows:

(1) By 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) By striking "60 days after" in the third sentence and inserting "of".

(3) By striking "expiration of such 60-day period" in the third sentence and inserting "publication date".

(4) By striking the fifth sentence and inserting the following: "If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, 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.".

SEC. 1285. REFUND 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) Except as provided in paragraph (2), if an entity described in section 201(f) voluntarily makes a short-term sale of electric energy and the sale violates Commission rules in effect at the time of the 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—

"(A) any entity that sells less than 8,000,000 megawatt hours of electricity per year; or

"(B) any electric cooperative.

"(3) For purposes of this subsection, the term 'short-term sale' means an agreement for the sale of electric energy at wholesale in interstate commerce that is for a period of 31 days or less (excluding monthly contracts subject to automatic renewal).

"(4) The Commission shall have refund authority under subsection (e)(1) with respect to a voluntary short-term sale of electric energy by the Bonneville Power Administration (in this section 'Bonneville') only if the sale is at an unjust and unreasonable rate and, in that event, may order a refund only for short-term sales made by Bonneville at rates that are higher than the highest just and reasonable rate charged by any other entity for a short-term sale of electric energy in the same geographic market for the same, or most nearly comparable, period as the sale by Bonneville.

"(5) With respect to any Federal power marketing agency or the Tennessee Valley Authority, the Commission shall not assert or exercise any regulatory authority or powers under subsection (e)(1) other than the ordering of refunds to achieve a just and reasonable rate.".

SEC. 1286. SANCTITY OF CONTRACT.

(a) IN GENERAL.—The Federal Energy Regulatory Commission (in this section, "the Commission") shall have no authority to abrogate or modify any provision of an executed contract or executed contract amendment described in subsection (b) that has been entered into or taken effect, except upon a finding that failure to take such action would be contrary to the public interest.

(b) LIMITATION.—Except as provided in subsection (c), this section shall apply only to a contract or contract amendment—

(1) executed on or after the date of enactment of this Act; and

(2) entered into—

(A) for the purchase or sale of electric energy under section 205 of the Federal Power Act (16 U.S.C. 824d) where the seller has been authorized by the Commission to charge market-based rates; or

(B) under section 4 of the Natural Gas Act (15 U.S.C. 717c) where the natural gas company has been authorized by the Commission to charge market-based rates for the service described in the contract.

(c) EXCLUSION.—This section shall not apply to an executed contract or executed contract amendment that expressly provides for a standard of review other than the public interest standard.

(d) SAVINGS PROVISION.—With respect to contracts to which this section does not apply, nothing in this section alters existing law regarding the applicable standard of review for a contract subject to the jurisdiction of the Commission.

SEC. 1287. CONSUMER PRIVACY AND UNFAIR TRADE PRACTICES.

(a) PRIVACY.—The Federal Trade Commission may 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.

(b) SLAMMING.—The Federal Trade Commission may 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.

(c) CRAMMING.—The Federal Trade Commission may issue rules prohibiting the sale of goods and services to an electric consumer unless expressly authorized by law or the electric consumer.

(d) 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.

(e) 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.

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

(1) STATE REGULATORY AUTHORITY.—The term "State regulatory authority" has the meaning given that term in section 3(21) of the Federal Power Act (16 U.S.C. 796(21)).

(2) ELECTRIC CONSUMER AND ELECTRIC UTILITY.—The terms "electric consumer" and "electric utility" have the meanings given those terms in section 3 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602).

Subtitle H—Merger Reform

SEC. 1291. MERGER REVIEW REFORM AND ACCOUNTABILITY.

(a) MERGER REVIEW REFORM.—Within 180 days after the date of enactment of this Act, the Secretary of Energy, in consultation with the Federal Energy Regulatory Commission and the Attorney General of the United States, shall prepare, and transmit to Congress each of the following:

(1) A study of the extent to which the authorities vested in the Federal Energy Regulatory Commission under section 203 of the Federal Power Act are duplicative of authorities vested in—

(A) other agencies of Federal and State Government; and

(B) the Federal Energy Regulatory Commission, including under sections 205 and 206 of the Federal Power Act.

(2) Recommendations on reforms to the Federal Power Act that would eliminate any unnecessary duplication in the exercise of regulatory authority or unnecessary delays in the approval (or 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 Congress 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.

SEC. 1292. ELECTRIC UTILITY MERGERS.

(a) AMENDMENT.—Section 203(a) of the Federal Power Act (16 U.S.C. 824b(a)) is amended to read as follows:

"(a)(1) No public utility shall, without first having secured an order of the Commission authorizing it to do so—

"(A) 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 $10,000,000;

"(B) merge or consolidate, directly or indirectly, such facilities or any part thereof with those of any other person, by any means whatsoever; or

"(C) purchase, acquire, or take any security with a value in excess of $10,000,000 of any other public utility.

"(2) No holding company in a holding company system that includes a public utility shall purchase, acquire, or take any security with a value in excess of $10,000,000 of, or, by any means whatsoever, directly or indirectly, merge or consolidate with, a public utility or a holding company in a holding company system that includes a public utility with a value in excess of $10,000,000 without first having secured an order of the Commission authorizing it to do so.

"(3) Upon receipt of an 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.

"(4) After notice and opportunity for hearing, the Commission shall approve the proposed disposition, consolidation, acquisition, or change in control, if it finds that the proposed transaction will be consistent with the public interest. In evaluating whether a transaction will be consistent with the public interest, the Commission shall consider whether the proposed transaction—

"(A) will adequately protect consumer interests;

"(B) will be consistent with competitive wholesale markets;

"(C) will impair the financial integrity of any public utility that is a party to the transaction or an associate company of any party to the transaction; and

"(D) satisfies such other criteria as the Commission considers consistent with the public interest.

"(5) The Commission shall, by rule, adopt procedures for the expeditious consideration of applications for the approval of dispositions, consolidations, or acquisitions under this section. Such rules shall identify classes of transactions, or specify criteria for transactions, that normally meet the standards established in paragraph (4). The Commission shall provide expedited review for such transactions. The Commission shall grant or deny any other application for approval of a transaction not later than 180 days after the application is filed. If the Commission does not act within 180 days, such application shall be deemed granted unless the Commission finds, based on good cause, that further consideration is required to determine whether the proposed transaction meets the standards of paragraph (4) and issues an order tolling the time for acting on the application for not more than 180 days, at the end of which additional period the Commission shall grant or deny the application.

"(6) For purposes of this subsection, the terms 'associate company', 'holding company', and 'holding company system' have the meaning given those terms in the Public Utility Holding Company Act of 2005.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect 12 months after the date of enactment of this section.

Subtitle I—Definitions

SEC. 1295. DEFINITIONS.

(a) ELECTRIC UTILITY.—Section 3(22) of the Federal Power Act (16 U.S.C. 796(22)) is amended to read as follows:

"(22) ELECTRIC UTILITY.—The term 'electric utility' means any person or Federal or State agency (including any entity described in section 201(f)) that sells electric energy; such term includes the Tennessee Valley Authority and each Federal power marketing administration.".

(b) TRANSMITTING UTILITY.—Section 3(23) of the Federal Power Act (16 U.S.C. 796(23)) is amended to read as follows:

"(23) TRANSMITTING UTILITY.—The term 'transmitting utility' means an entity, including any entity described in section 201(f), that owns, operates, or controls facilities used for the transmission of electric energy—

"(A) in interstate commerce; or

"(B) for the sale of electric energy at wholesale.".

(c) ADDITIONAL DEFINITIONS.—Section 3 of the Federal Power Act (16 U.S.C. 796) is amended by adding at the end the following:

"(26) ELECTRIC COOPERATIVE.—The term 'electric cooperative' means a cooperatively owned electric utility.

"(27) RTO.—The term 'Regional Transmission Organization' or 'RTO' means an entity of sufficient regional scope approved by the Commission to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce and to ensure nondiscriminatory access to such facilities.

"(28) ISO.—The term 'Independent System Operator' or 'ISO' means an entity approved by the Commission to exercise operational or functional control of fa-

cilities used for the transmission of electric energy in interstate commerce and to ensure nondiscriminatory access to such facilities.".

(d) COMMISSION.—For the purposes of this title, the term "Commission" means the Federal Energy Regulatory Commission.

(e) APPLICABILITY.—Section 201(f) of the Federal Power Act (16 U.S.C. 824(f)) is amended by adding after "political subdivision of a state," the following: "an electric cooperative that has financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) or that sells less than 4,000,000 megawatt hours of electricity per year,".

Subtitle J—Technical and Conforming Amendments

SEC. 1297. CONFORMING AMENDMENTS.

The Federal Power Act is amended as follows:

(1) 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 "210, 211, and 212" and inserting "203(a)(2), 206(e), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, and 222".

(B) In the second sentence by striking "210 or 211" and inserting "203(a)(2), 206(e), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, and 222".

(C) Section 201(b)(2) of such Act is amended by striking "The" in the first place it appears and inserting "Notwithstanding section 201(f), the" and in the second sentence after "any order" by inserting "or rule".

(2) Section 201(e) of such Act is amended by striking "210, 211, or 212" and inserting "206(e), 206(f), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, and 222".

(3) Section 206 of such 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".

(4) Section 211(c) of such Act (16 U.S.C. 824j(c)) is amended by—

(A) striking "(2)";

(B) striking "(A)" and inserting "(1)"

(C) striking "(B)" and inserting "(2)"; and

(D) striking "termination of modification" and inserting "termination or modification".

(5) Section 211(d)(1) of such Act (16 U.S.C. 824j(d)(1)) is amended by striking "electric utility" the second time it appears and inserting "transmitting utility".

(6) Section 315 (c) of such Act (16 U.S.C. 825n(c)) is amended by striking "subsection" and inserting "section".

Subtitle K—Economic Dispatch

SEC. 1298. ECONOMIC DISPATCH.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

"SEC. 223. JOINT BOARD ON ECONOMIC DISPATCH.

"(a) IN GENERAL.—The Commission shall convene a joint board pursuant to section 209 of this Act to study the issue of security constrained economic dispatch for a market region.

"(b) MEMBERSHIP.—The Commission shall request each State to nominate a representative for such joint board.

"(c) POWERS.—The board's sole authority shall be to consider issues relevant to what constitutes 'security constrained economic dispatch' and how such a mode of operating an electric energy system affects or enhances the reliability and affordability of service to customers.

"(d) REPORT TO THE CONGRESS.—The board shall issue a report on these matters within one year of enactment of this section, including any consensus recommendations for statutory or regulatory reform.".

TITLE XIV—MISCELLANEOUS

Subtitle C—Other Provisions

SEC. 1441. CONTINUATION OF TRANSMISSION SECURITY ORDER.

Department of Energy Order No. 202–03–2, issued by the Secretary of Energy on August 28, 2003, shall remain in effect unless rescinded by Federal statute.

SEC. 1442. REVIEW OF AGENCY DETERMINATIONS.

Section 7 of the Natural Gas Act (15 U.S.C. 717f) is amended by adding at the end the following:

"(i)(1) The United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction over any civil action—

"(A) for review of any order or action of any Federal or State administrative agency or officer to issue, condition, or deny any permit, license, concurrence, or approval issued under authority of any Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), required for the construction of a natural gas pipeline for which a certificate of public convenience and necessity is issued by the Commission under this section;

"(B) alleging unreasonable delay by any Federal or State administrative agency or officer in entering an order or taking other action described in subparagraph (A); or

"(C) challenging any decision made or action taken under this subsection.

"(2)(A) If the Court finds that the order, action, or failure to act is not consistent with the public convenience and necessity (as determined by the Commission under this section), or would prevent the construction and operation of natural gas facilities authorized by the certificate of public convenience and necessity, the permit, license, concurrence, or approval that is the subject of the order, action, or failure to act shall be deemed to have been issued subject to any conditions set forth in the reviewed order or action that the Court finds to be consistent with the public convenience and necessity.

"(B) For purposes of paragraph (1)(B), the failure of an agency or officer to issue any such permit, license, concurrence, or approval within the later of 1 year after the date of filing of an application for the permit, license, concurrence, or approval or 60 days after the date of issuance of the certificate of public convenience and necessity under this section, shall be considered to be unreasonable delay unless the Court, for good cause shown, determines otherwise.

"(C) The Court shall set any action brought under paragraph (1) for expedited consideration.".

SEC. 1443. ATTAINMENT DATES FOR DOWNWIND OZONE NONATTAINMENT AREAS.

Section 181 of the Clean Air Act (42 U.S.C.7511) is amended by adding the following new subsection at the end thereof:

"(d) EXTENDED ATTAINMENT DATE FOR CERTAIN DOWNWIND AREAS.—

"(1) DEFINITIONS.—(A) The term 'upwind area' means an area that—

"(i) significantly contributes to nonattainment in another area, hereinafter referred to as a 'downwind area'; and

"(ii) is either—

"(I) a nonattainment area with a later attainment date than the downwind area, or

"(II) an area in another State that the Administrator has found to be significantly contributing to nonattainment in the downwind area in violation of section 110(a)(2)(D) and for which the Administrator has established requirements through notice and comment rulemaking to eliminate the emissions causing such significant contribution.

"(B) The term 'current classification' means the classification of a downwind area under this section at the time of the determination under paragraph (2).

"(2) EXTENSION.—If the Administrator—

"(A) determines that any area is a downwind area with respect to a particular national ambient air quality standard for ozone; and

"(B) approves a plan revision for such area as provided in paragraph (3) prior to a reclassification under subsection (b)(2)(A),

the Administrator, in lieu of such reclassification, shall extend the attainment date for such downwind area for such standard in accordance with paragraph (5).

"(3) REQUIRED APPROVAL.—In order to extend the attainment date for a downwind area under this subsection, the Administrator must approve a revision of

the applicable implementation plan for the downwind area for such standard that—

"(A) complies with all requirements of this Act applicable under the current classification of the downwind area, including any requirements applicable to the area under section 172(c) for such standard; and

"(B) includes any additional measures needed to demonstrate attainment by the extended attainment date provided under this subsection.

"(4) PRIOR RECLASSIFICATION DETERMINATION.—If, no more than 18 months prior to the date of enactment of this subsection, the Administrator made a reclassification determination under subsection (b)(2)(A) for any downwind area, and the Administrator approves the plan revision referred to in paragraph (3) for such area within 12 months after the date of enactment of this subsection, the reclassification shall be withdrawn and the attainment date extended in accordance with paragraph (5) upon such approval. The Administrator shall also withdraw a reclassification determination under subsection (b)(2)(A) made after the date of enactment of this subsection and extend the attainment date in accordance with paragraph (5) if the Administrator approves the plan revision referred to in paragraph (3) within 12 months of the date the reclassification determination under subsection (b)(2)(A) is issued. In such instances the 'current classification' used for evaluating the revision of the applicable implementation plan under paragraph (3) shall be the classification of the downwind area under this section immediately prior to such reclassification.

"(5) EXTENDED DATE.—The attainment date extended under this subsection shall provide for attainment of such national ambient air quality standard for ozone in the downwind area as expeditiously as practicable but no later than the date on which the last reductions in pollution transport necessary for attainment in the downwind area are required to be achieved by the upwind area or areas.".

SEC. 1444. ENERGY PRODUCTION INCENTIVES.

(a) IN GENERAL.—A State may provide to any entity—

(1) a credit against any tax or fee owed to the State under a State law, or

(2) any other tax incentive,

determined by the State to be appropriate, in the amount calculated under and in accordance with a formula determined by the State, for production described in subsection (b) in the State by the entity that receives such credit or such incentive.

(b) ELIGIBLE ENTITIES.—Subsection (a) shall apply with respect to the production in the State of—

(1) electricity from coal mined in the State and used in a facility, if such production meets all applicable Federal and State laws and if such facility uses scrubbers or other forms of clean coal technology,

(2) electricity from a renewable source such as wind, solar, or biomass, or

(3) ethanol.

(c) EFFECT ON INTERSTATE COMMERCE.—Any action taken by a State in accordance with this section with respect to a tax or fee payable, or incentive applicable, for any period beginning after the date of the enactment of this Act shall—

(1) be considered to be a reasonable regulation of commerce; and

(2) not be considered to impose an undue burden on interstate commerce or to otherwise impair, restrain, or discriminate, against interstate commerce.

SEC. 1446. REGULATION OF CERTAIN OIL USED IN TRANSFORMERS.

Notwithstanding any other provision of law, or rule promulgated by the Environmental Protection Agency, vegetable oil made from soybeans and used in electric transformers as thermal insulation shall not be regulated as an oil as defined under section 2(a)(1)(A) of the Edible Oil Regulatory Reform Act (33 U.S.C. 2720(a)(1)(A)).

SEC. 1447. RISK ASSESSMENTS.

Subtitle B of title XXX of the Energy Policy Act of 1992 is amended by adding at the end the following new section:

"SEC. 3022. RISK ASSESSMENT.

"Federal agencies conducting assessments of risks to human health and the environment from energy technology, production, transport, transmission, distribution, storage, use, or conservation activities shall use sound and objective scientific practices in assessing such risks, shall consider the best available science (including peer reviewed studies), and shall include a description of the weight of the scientific evidence concerning such risks.".

SEC. 1448. OXYGEN-FUEL.

(a) PROGRAM.—The Secretary of Energy shall establish a program on oxygen-fuel systems. If feasible, the program shall include renovation of at least one existing

large unit and one existing small unit, and construction of one new large unit and one new small unit. Cost sharing shall not be required.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for carrying out this section—

(1) $100,000,000 for fiscal year 2006;

(2) $100,000,000 for fiscal year 2007; and

(3) $100,000,000 for fiscal year 2008.

(c) DEFINITIONS.—For purposes of this section—

(1) the term "large unit" means a unit with a generating capacity of 100 megawatts or more;

(2) the term "oxygen-fuel systems" means systems that utilize fuel efficiency benefits of oil, gas, coal, and biomass combustion using substantially pure oxygen, with high flame temperatures and the exclusion of air from the boiler, in industrial or electric utility steam generating units; and

(3) the term "small unit" means a unit with a generating capacity in the 10–50 megawatt range.

SEC. 1449. PETROCHEMICAL AND OIL REFINERY FACILITY HEALTH ASSESSMENT.

(a) ESTABLISHMENT.—The Secretary of Energy shall conduct a study of direct and significant health impacts to persons resulting from living in proximity to petrochemical and oil refinery facilities. The Secretary shall consult with the Director of the National Cancer Institute and other Federal Government bodies with expertise in the field it deems appropriate in the design of such study. The study shall be conducted according to sound and objective scientific practices and present the weight of the scientific evidence. The Secretary shall obtain scientific peer review of the draft study.

(b) REPORT TO CONGRESS.—The Secretary shall transmit the results of the study to Congress within 6 months of the enactment of this section.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for activities under this section such sums as are necessary for the completion of the study.

TITLE XV—ETHANOL AND MOTOR FUELS

Subtitle A—General Provisions

SEC. 1501. 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) ETHANOL.—(i) 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; and

"(VI) fibers.

"(ii) The term 'waste derived ethanol' means ethanol derived from—

"(I) animal wastes, including poultry fats and poultry wastes, and other waste materials; or

"(II) 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, waste derived ethanol, and biodiesel (as defined in sec-

tion 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 after the enactment of this subsection, the Administrator shall promulgate regulations ensuring that motor vehicle fuel 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 renewable fuel can be used, or impose any per-gallon obligation for the use of renewable fuel. If the Administrator does not promulgate such regulations, the applicable percentage referred to in paragraph (4), on a volume percentage of gasoline basis, shall be 2.2 in 2005.

"(B) APPLICABLE VOLUME.—

"(i) CALENDAR YEARS 2005 THROUGH 2012.—For the purpose of subparagraph (A), the applicable volume for any of calendar years 2005 through 2012 shall be determined in accordance with the following table:

"(ii) CALENDAR YEAR 2013 AND THEREAFTER.—For the purpose of subparagraph (A), the applicable volume for calendar year 2013 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 2012.

"(3) NON-CONTIGUOUS STATE OPT-IN.—Upon the petition of a non-contiguous State, the Administrator may allow the renewable fuel program established by subtitle A of title XV of the Energy Policy Act of 2005 to apply in such non-contiguous State at the same time or any time after the Administrator promulgates regulations under paragraph (2). The Administrator may promulgate or revise regulations under paragraph (2), establish applicable percentages under paragraph (4), provide for the generation of credits under paragraph (6), and take such other actions as may be necessary to allow for the application of the renewable fuels program in a non-contiguous State.

"(4) APPLICABLE PERCENTAGES.—

"(A) PROVISION OF ESTIMATE OF VOLUMES OF GASOLINE SALES.—Not later than October 31 of each of calendar years 2005 through 2011, the Administrator of the Energy Information Administration shall provide to the Administrator of the Environmental Protection Agency an estimate of the volumes of gasoline that will be sold or introduced into commerce in the United States during the following calendar year.

"(B) DETERMINATION OF APPLICABLE PERCENTAGES.—

"(i) IN GENERAL.—Not later than November 30 of each of the calendar years 2005 through 2011, based on the estimate provided under subparagraph (A), the Administrator shall determine and publish in the Federal Register, with respect to the following calendar year, the renewable fuel obligation that ensures that the requirements of paragraph (2) are met.

"(ii) REQUIRED ELEMENTS.—The renewable fuel obligation determined for a calendar year under clause (i) shall—

"(I) be applicable to refiners, blenders, and importers, as appropriate;

"(II) be expressed in terms of a volume percentage of gasoline sold or introduced into commerce; and

"(III) subject to subparagraph (C)(i), consist of a single applicable percentage that applies to all categories of persons specified in subclause (I).

"(C) ADJUSTMENTS.—In determining the applicable percentage for a calendar year, the Administrator shall make adjustments—

"(i) to prevent the imposition of redundant obligations to any person specified in subparagraph (B)(ii)(I); and

"(ii) to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt under paragraph (11).

"(5) EQUIVALENCY.—For the purpose of paragraph (2), 1 gallon of either cellulosic biomass ethanol or waste derived ethanol—

"(A) shall be considered to be the equivalent of 1.5 gallon of renewable fuel; or

"(B) if the cellulostic biomass ethanol or waste derived ethanol is derived from agricultural residue or wood residue or is an agricultural byproduct (as that term is used in section 919 of the Energy Policy Act of 2005), shall be considered to be the equivalent of 2.5 gallons of renewable fuel.

"(6) 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 paragraph (11), 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 (7).

"(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 renewable fuel deficit provided that, in the calendar year following the year in which the renewable fuel deficit is created, such person shall achieve compliance with the renewable fuel requirement under paragraph (2), and shall generate or purchase additional renewable fuel credits to offset the renewable fuel deficit of the previous year.

"(7) SEASONAL VARIATIONS IN RENEWABLE FUEL USE.—

"(A) STUDY.—For each of the calendar years 2005 through 2012, 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 percent 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).

"(8) 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 severely harm the economy or environment of a State, a region, or the United States; 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.

"(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.

"(9) STUDY AND WAIVER FOR INITIAL YEAR OF PROGRAM.—Not later than 180 days after the enactment of this subsection, 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 after the enactment of this subsection, 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 paragraph shall not be interpreted as limiting the Administrator's authority to waive the requirements of paragraph (2) in whole, or in part, under paragraph (8) or paragraph (10), pertaining to waivers.

"(10) ASSESSMENT AND WAIVER.—The Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, shall evaluate the requirement of paragraph (2) and determine, prior to January 1, 2007, and 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 Administrator 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 of paragraph (2);

"(B) the potential of the requirement of paragraph (2) to significantly raise the price of gasoline, food (excluding the net price impact on the requirement in paragraph (2) on commodities used in the production of ethanol), 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 such requirement;

"(C) the potential of the requirement of 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 of paragraph (2) to cause or promote exceedances of Federal, State, or local air quality standards.

If the Administrator determines, by clear and convincing information, 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, public health, or environment of any significant area or region of the country, the Administrator may waive, in whole or in part, the requirement of paragraph (2) in any one year for which the determination is made for that area or region of the country, except that any such waiver shall not have the effect of reducing the applicable volume of renewable fuel specified in paragraph (2)(B) with respect to any year for which the determination is made. In determining economic impact under this paragraph, the Administrator shall not consider the reduced revenues available from the Highway Trust Fund (section 9503 of the Internal Revenue Code of 1986) as a result of the use of ethanol.

"(11) 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, 2007, 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).

"(12) ETHANOL MARKET CONCENTRATION ANALYSIS.—

"(A) ANALYSIS.—

"(i) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, and annually thereafter, the Federal Trade Commission shall perform a market concentration analysis of the ethanol production industry using the Herfindahl-Hirschman Index to determine whether there is sufficient competition among industry participants to avoid price setting and other anticompetitive behavior.

"(ii) SCORING.—For the purpose of scoring under clause (i) using the Herfindahl-Hirschman Index, all marketing arrangements among industry participants shall be considered.

"(B) REPORT.—Not later than December 1, 2005, and annually thereafter, the Federal Trade Commission shall submit to Congress and the Administrator a report on the results of the market concentration analysis performed under subparagraph (A)(i).".

(b) PENALTIES AND ENFORCEMENT.—Section 211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is amended as follows:

(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)".

(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 con-

sultation 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 of the Environmental Protection Agency (hereinafter in this subsection referred to as 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, to avoid duplicative requirements, shall rely, to the extent practicable, on existing reporting and recordkeeping requirements and other information available to the Administrator including gasoline distribution patterns that include multistate use areas.

(3) APPLICABLE LAW.—Activities carried out under this subsection shall be conducted in a manner designed to protect confidentiality of individual responses.

SEC. 1502. 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 methyl tertiary butyl ether (hereinafterin this section referred to as "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 a defective product 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 of the Environmental Protection Agency (hereinafter in this section referred to as 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 of such Act. If the safe harbor provided by this section does not apply, the existence of a claim of defective product shall be determined under otherwise applicable law. Nothing in this subsection shall be construed to affect the liability of any person for environmental remediation costs, drinking water contamination, negligence for spills or other reasonably foreseeable events, public or private nuisance, trespass, breach of warranty, breach of contract, or any other liability other than liability based upon a claim of defective product.

(b) EFFECTIVE DATE.—This section shall be effective as of September 5, 2003, and shall apply with respect to all claims filed on or after that date.

SEC. 1503. FINDINGS AND MTBE TRANSITION ASSISTANCE.

(a) FINDINGS.—Congress finds that—

(1) since 1979, methyl tertiary butyl ether (hereinafter in this section referred to 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) having previously required oxygenates like MTBE for air quality purposes, Congress has—

(A) reconsidered the relative value of MTBE in gasoline;

(B) decided to establish a date certain for action by the Environmental Protection Agency to prohibit the use of MTBE in gasoline; and

(C) decided to provide for the elimination of the oxygenate requirement for reformulated gasoline and to provide for a renewable fuels 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 and from the decision to establish a date certain for action by the Environmental Protection Agency to prohibit the use of MTBE in gasoline.

(b) PURPOSES.—The purpose of this section is to provide assistance to merchant producers of MTBE in making the transition from producing MTBE to producing other fuel additives.

(c) MTBE MERCHANT PRODUCER CONVERSION ASSISTANCE.—Section 211(c) of the Clean Air Act (42 U.S.C. 7545(c)) is amended by adding at the end the following:

"(5) MTBE MERCHANT PRODUCER CONVERSION ASSISTANCE.—

"(A) IN GENERAL.—

"(i) GRANTS.—The Secretary of Energy, in consultation with the Administrator, may make grants to merchant producers of methyl tertiary butyl ether (hereinafter in this subsection referred to as 'MTBE') 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, iso-octene, alkylates, or renewable fuels.

"(ii) DETERMINATION.—The Administrator, in consultation with the Secretary of Energy, may determine that transition assistance for the production of iso-octane, iso-octene, alkylates, or renewable fuels is inconsistent with the provisions of subparagraph (B) and, on that basis, may deny applications for grants authorized by this paragraph.

"(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 (unless the Administrator determines that such fuel additives may reasonably be anticipated to endanger public health or the environment) that, consistent with this subsection—

"(i) have been registered and have been tested or are being tested in accordance with the requirements of this section; and

"(ii) will contribute to replacing gasoline volumes lost as a result of amendments made to subsection (k) of this section by section 1504(a) and 1506 of the Energy Policy Act of 2005.

"(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 MTBE for consumption before April 1, 2003 and ceased production at any time after the date of enactment of this paragraph.

"(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this paragraph $250,000,000 for each of fiscal years 2005 through 2012, to remain available until expended.".

SEC. 1504. USE OF MTBE.

(a) IN GENERAL.—Subject to subsections (e) and (f), not later than December 31, 2014, the use of methyl tertiary butyl ether (hereinafter in this section referred to as "MTBE") in motor vehicle fuel in any State other than a State described in subsection (c) is prohibited.

(b) REGULATIONS.—The Administrator of the Environmental Protection Agency (hereafter referred to in this section as the "Administrator") shall promulgate regulations to effect the prohibition in subsection (a).

(c) STATES THAT AUTHORIZE USE.—A State described in this subsection is a State in which the Governor of the State submits a notification to the Administrator authorizing the use of MTBE in motor vehicle fuel sold or used in the State.

(d) PUBLICATION OF NOTICE.—The Administrator shall publish in the Federal Register each notice submitted by a State under subsection (c).

(e) TRACE QUANTITIES.—In carrying out subsection (a), the Administrator may allow trace quantities of MTBE, not to exceed 0.5 percent by volume, to be present in motor vehicle fuel in cases that the Administrator determines to be appropriate.

(f) LIMITATION.—The Administrator, under authority of subsection (a), shall not prohibit or control the production of MTBE for export from the United States or for any other use other than for use in motor vehicle fuel.

(g) EFFECT ON STATE LAW.—The amendments made 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. 1505. NATIONAL ACADEMY OF SCIENCES REVIEW AND PRESIDENTIAL DETERMINATION.

(a) NAS REVIEW.—Not later than May 31, 2013, the Secretary shall enter into an arrangement with the National Academy of Sciences to review the use of methyl tertiary butyl ether (hereafter referred to in this section as "MTBE") in fuel and fuel additives. The review shall only use the best available scientific information and data collected by accepted methods or the best available means. The review shall examine the use of MTBE in fuel and fuel additives, significant beneficial and detrimental effects of this use on environmental quality or public health or welfare including the costs and benefits of such effects, likely effects of controls or prohibitions on MTBE regarding fuel availability and price, and other appropriate and reasonable actions that are available to protect the environment or public health or welfare from any detrimental effects of the use of MTBE in fuel or fuel additives. The review shall be peer-reviewed prior to publication and all supporting data and analytical models shall be available to the public. The review shall be completed no later than May 31, 2014.

(b) PRESIDENTIAL DETERMINATION.—No later than June 30, 2014, the President may make a determination that restrictions on the use of MTBE to be implemented pursuant to section 1504 shall not take place and that the legal authority contained in section 1504 to prohibit the use of MTBE in motor vehicle fuel shall become null and void.

SEC. 1506. 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 as follows:

(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).

(II) by redesignating clause (iii) as clause (ii).

(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 such date of 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 as follows:

(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,".

(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, 2005, 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 of the Environmental Protection Agency 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 of the Environmental Protection Agency (hereinafter in this subsection referred to as the "Administrator") prior to the date of 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 Federal or State prohibitions on the use of methyl tertiary butyl ether imposed after the 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 years 1999–2000 in the average annual aggregate emissions of toxic air pollutants from reformulated gasoline produced or distributed by the refinery or importer; *Provided*, that 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. 1507. 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 subsection, 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 subtitle A of title XV of the Energy Policy Act of 2005.

"(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. 1508. 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 each of the following:

"(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.

"(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 5 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. 1509. REDUCING THE PROLIFERATION OF STATE FUEL CONTROLS.

(a) EPA APPROVAL OF STATE PLANS WITH FUEL CONTROLS.—Section 211(c)(4)(C) of the Clean Air Act (42 U.S.C. 7545(c)(4)(C)) is amended by adding at the end the following: "The Administrator shall not approve a control or prohibition respecting the use of a fuel or fuel additive under this subparagraph unless the Administrator, after consultation with the Secretary of Energy, publishes in the Federal Register a finding that, in the Administrator's judgment, such control or prohibition will not

cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas.".

(b) STUDY.—The Administrator of the Environmental Protection Agency (hereinafter in this subsection referred to as the "Administrator"), in cooperation with the Secretary of Energy, shall undertake a study of the projected effects on air quality, the proliferation of fuel blends, fuel availability, and fuel costs of providing a preference for each of the following:

(A) Reformulated gasoline referred to in subsection (k) of section 211 of the Clean Air Act.

(B) A low RVP gasoline blend that has been certified by the Administrator as having a Reid Vapor Pressure of 7.0 pounds per square inch (psi).

(C) A low RVP gasoline blend that has been certified by the Administrator as having a Reid Vapor Pressure of 7.8 pounds per square inch (psi).

In carrying out such study, the Administrator shall obtain comments from affected parties. The Administrator shall submit the results of such study to the Congress not later than 18 months after the date of enactment of this Act, together with any recommended legislative changes.

SEC. 1510. FUEL SYSTEM REQUIREMENTS HARMONIZATION STUDY.

(a) STUDY.—

(1) IN GENERAL.—The Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator") 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, 2007, the Administrator 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 under this subsection 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 under this subsection, the Administrator 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.

SEC. 1511. COMMERCIAL BYPRODUCTS FROM MUNICIPAL SOLID WASTE AND CELLULOSIC BIOMASS LOAN GUARANTEE PROGRAM.

(a) DEFINITION OF MUNICIPAL SOLID WASTE.—In this section, the term "municipal solid waste" has the meaning given the term "solid waste" in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).

(b) ESTABLISHMENT OF PROGRAM.—The Secretary of Energy (hereinafter in this section referred to as the "Secretary") shall establish a program to provide guarantees of loans by private institutions for the construction of facilities for the processing and conversion of municipal solid waste and cellulosic biomass into fuel ethanol and other commercial byproducts.

(c) REQUIREMENTS.—The Secretary may provide a loan guarantee under subsection (b) to an applicant if—

(1) without a loan guarantee, credit is not available to the applicant under reasonable terms or conditions sufficient to finance the construction of a facility described in subsection (b);

(2) the prospective earning power of the applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan to be guaranteed in accordance with the terms of the loan; and

(3) the loan bears interest at a rate determined by the Secretary to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.

(d) CRITERIA.—In selecting recipients of loan guarantees from among applicants, the Secretary shall give preference to proposals that—

(1) meet all applicable Federal and State permitting requirements;

(2) are most likely to be successful; and

(3) are located in local markets that have the greatest need for the facility because of—

(A) the limited availability of land for waste disposal;

(B) the availability of sufficient quantities of cellulosic biomass; or

(C) a high level of demand for fuel ethanol or other commercial byproducts of the facility.

(e) MATURITY.—A loan guaranteed under subsection (b) shall have a maturity of not more than 20 years.

(f) TERMS AND CONDITIONS.—The loan agreement for a loan guaranteed under subsection (b) shall provide that no provision of the loan agreement may be amended or waived without the consent of the Secretary.

(g) ASSURANCE OF REPAYMENT.—The Secretary shall require that an applicant for a loan guarantee under subsection (b) provide an assurance of repayment in the form of a performance bond, insurance, collateral, or other means acceptable to the Secretary in an amount equal to not less than 20 percent of the amount of the loan.

(h) GUARANTEE FEE.—The recipient of a loan guarantee under subsection (b) shall pay the Secretary an amount determined by the Secretary to be sufficient to cover the administrative costs of the Secretary relating to the loan guarantee.

(i) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of all guarantees made under this section. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the loan for the guarantee with respect to principal and interest. The validity of the guarantee shall be incontestable in the hands of a holder of the guaranteed loan.

(j) REPORTS.—Until each guaranteed loan under this section has been repaid in full, the Secretary shall annually submit to Congress a report on the activities of the Secretary under this section.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

(l) TERMINATION OF AUTHORITY.—The authority of the Secretary to issue a loan guarantee under subsection (b) terminates on the date that is 10 years after the date of enactment of this Act.

SEC. 1512. CELLULOSIC BIOMASS AND WASTE-DERIVED ETHANOL CONVERSION ASSISTANCE.

Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended by adding at the end the following:

"(r) CELLULOSIC BIOMASS AND WASTE-DERIVED ETHANOL CONVERSION ASSISTANCE.—

"(1) IN GENERAL.—The Secretary of Energy may provide grants to merchant producers of cellulosic biomass ethanol and waste-derived ethanol in the United States to assist the producers in building eligible production facilities described in paragraph (2) for the production of ethanol.

"(2) ELIGIBLE PRODUCTION FACILITIES.—A production facility shall be eligible to receive a grant under this subsection if the production facility—

"(A) is located in the United States; and

"(B) uses cellulosic biomass or waste-derived feedstocks derived from agricultural residues, wood residues, municipal solid waste, or agricultural byproducts as that term is used in section 919 of the Energy Policy Act of 2005.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated the following amounts to carry out this subsection:

"(A) $100,000,000 for fiscal year 2005.

"(B) $250,000,000 for fiscal year 2006.

"(C) $400,000,000 for fiscal year 2007.".

SEC. 1513. BLENDING OF COMPLIANT REFORMULATED GASOLINES.

Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended by adding at the end the following:

"(s) BLENDING OF COMPLIANT REFORMULATED GASOLINES.—

"(1) IN GENERAL.—Notwithstanding subsections (h) and (k) and subject to the limitations in paragraph (2) of this subsection, it shall not be a violation of this subtitle for a gasoline retailer, during any month of the year, to blend at a retail location batches of ethanol-blended and non-ethanol-blended reformulated gasoline, provided that—

"(A) each batch of gasoline to be blended has been individually certified as in compliance with subsections (h) and (k) prior to being blended;

"(B) the retailer notifies the Administrator prior to such blending, and identifies the exact location of the retail station and the specific tank in which such blending will take place;

"(C) the retailer retains and, as requested by the Administrator or the Administrator's designee, makes available for inspection such certifications accounting for all gasoline at the retail outlet; and

"(D) the retailer does not, between June 1 and September 15 of each year, blend a batch of VOC-controlled, or 'summer', gasoline with a batch of non-VOC-controlled, or 'winter', gasoline (as these terms are defined under subsections (h) and (k)).

"(2) LIMITATIONS.—

"(A) FREQUENCY LIMITATION.—A retailer shall only be permitted to blend batches of compliant reformulated gasoline under this subsection a maximum of two blending periods between May 1 and September 15 of each calendar year.

"(B) DURATION OF BLENDING PERIOD.—Each blending period authorized under subparagraph (A) shall extend for a period of no more than 10 consecutive calendar days.

"(3) SURVEYS.—A sample of gasoline taken from a retail location that has blended gasoline within the past 30 days and is in compliance with subparagraphs (A), (B), (C), and (D) of paragraph (1) shall not be used in a VOC survey mandated by 40 C.F.R. Part 80.

"(4) STATE IMPLEMENTATION PLANS.—A State shall be held harmless and shall not be required to revise its State implementation plan under section 110 to account for the emissions from blended gasoline authorized under paragraph (1).

"(5) PRESERVATION OF STATE LAW.—Nothing in this subsection shall—

"(A) preempt existing State laws or regulations regulating the blending of compliant gasolines; or

"(B) prohibit a State from adopting such restrictions in the future.

"(6) REGULATIONS.—The Administrator shall promulgate, after notice and comment, regulations implementing this subsection within one year after the date of enactment of this subsection.

"(7) EFFECTIVE DATE.—This subsection shall become effective 15 months after the date of its enactment and shall apply to blended batches of reformulated gasoline on or after that date, regardless of whether the implementing regulations required by paragraph (6) have been promulgated by the Administrator by that date.

"(8) LIABILITY.—No person other than the person responsible for blending under this subsection shall be subject to an enforcement action or penalties under subsection (d) solely arising from the blending of compliant reformulated gasolines by the retailers.

"(9) FORMULATION OF GASOLINE.—This subsection does not grant authority to the Administrator or any State (or any subdivision thereof) to require reformulation of gasoline at the refinery to adjust for potential or actual emissions increases due to the blending authorized by this subsection.".

Subtitle B—Underground Storage Tank Compliance

SEC. 1521. SHORT TITLE.

This subtitle may be cited as the "Underground Storage Tank Compliance Act of 2005".

SEC. 1522. LEAKING UNDERGROUND STORAGE TANKS.

(a) IN GENERAL.—Section 9004 of the Solid Waste Disposal Act (42 U.S.C. 6991c) is amended by adding at the end the following:

"(f) TRUST FUND DISTRIBUTION.—

"(1) IN GENERAL.—

"(A) AMOUNT AND PERMITTED USES OF DISTRIBUTION.—The Administrator shall distribute to States not less than 80 percent of the funds from the Trust Fund that are made available to the Administrator under section 9014(2)(A) for each fiscal year for use in paying the reasonable costs, incurred under a cooperative agreement with any State for—

"(i) corrective actions taken by the State under section 9003(h)(7)(A);

"(ii) necessary administrative expenses, as determined by the Administrator, that are directly related to State fund or State assurance programs under subsection (c)(1); or

"(iii) enforcement, by a State or a local government, of State or local regulations pertaining to underground storage tanks regulated under this subtitle.

"(B) USE OF FUNDS FOR ENFORCEMENT.—In addition to the uses of funds authorized under subparagraph (A), the Administrator may use funds from the Trust Fund that are not distributed to States under subparagraph (A) for enforcement of any regulation promulgated by the Administrator under this subtitle.

"(C) PROHIBITED USES.—Funds provided to a State by the Administrator under subparagraph (A) shall not be used by the State to provide financial assistance to an owner or operator to meet any requirement relating to underground storage tanks under subparts B, C, D, H, and G of part 280 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subsection).

"(2) ALLOCATION.—

"(A) PROCESS.—Subject to subparagraphs (B) and (C), in the case of a State with which the Administrator has entered into a cooperative agreement under section 9003(h)(7)(A), the Administrator shall distribute funds from the Trust Fund to the State using an allocation process developed by the Administrator.

"(B) DIVERSION OF STATE FUNDS.—The Administrator shall not distribute funds under subparagraph (A)(iii) of subsection (f)(1) to any State that has diverted funds from a State fund or State assurance program for purposes other than those related to the regulation of underground storage tanks covered by this subtitle, with the exception of those transfers that had been completed earlier than the date of enactment of this subsection.

"(C) REVISIONS TO PROCESS.—The Administrator may revise the allocation process referred to in subparagraph (A) after—

"(i) consulting with State agencies responsible for overseeing corrective action for releases from underground storage tanks; and

"(ii) taking into consideration, at a minimum, each of the following:

"(I) The number of confirmed releases from federally regulated leaking underground storage tanks in the States.

"(II) The number of federally regulated underground storage tanks in the States.

"(III) The performance of the States in implementing and enforcing the program.

"(IV) The financial needs of the States.

"(V) The ability of the States to use the funds referred to in subparagraph (A) in any year.

"(3) DISTRIBUTIONS TO STATE AGENCIES.—Distributions from the Trust Fund under this subsection shall be made directly to a State agency that—

"(A) enters into a cooperative agreement referred to in paragraph (2)(A); or

"(B) is enforcing a State program approved under this section.".

(b) WITHDRAWAL OF APPROVAL OF STATE FUNDS.—Section 9004(c) of the Solid Waste Disposal Act (42 U.S.C. 6991c(c)) is amended by inserting the following new paragraph at the end thereof:

"(6) WITHDRAWAL OF APPROVAL.—After an opportunity for good faith, collaborative efforts to correct financial deficiencies with a State fund, the Administrator may withdraw approval of any State fund or State assurance program to be used as a financial responsibility mechanism without withdrawing approval of a State underground storage tank program under section 9004(a).".

(c) ABILITY TO PAY.—Section 9003(h)(6) of the Solid Waste Disposal Act (42 U.S.C. 6591a(h)(6)) is amended by adding the following new subparagraph at the end thereof:

"(E) INABILITY OR LIMITED ABILITY TO PAY.—

"(i) IN GENERAL.—In determining the level of recovery effort, or amount that should be recovered, the Administrator (or the State pursuant to paragraph (7)) shall consider the owner or operator's ability to pay. An inability or limited ability to pay corrective action costs must be demonstrated to the Administrator (or the State pursuant to paragraph (7)) by the owner or operator.

"(ii) CONSIDERATIONS.—In determining whether or not a demonstration is made under clause (i), the Administrator (or the State pursuant to paragraph (7)) shall take into consideration the ability of the owner or operator to pay corrective action costs and still maintain its basic business operations, including consideration of the overall financial condition of the owner or operator and demonstrable constraints on the ability of the owner or operator to raise revenues.

"(iii) INFORMATION.—An owner or operator requesting consideration under this subparagraph shall promptly provide the Administrator (or the State pursuant to paragraph (7)) with all relevant information needed to determine the ability of the owner or operator to pay corrective action costs.

"(iv) ALTERNATIVE PAYMENT METHODS.—The Administrator (or the State pursuant to paragraph (7)) shall consider alternative payment methods as may be necessary or appropriate if the Administrator (or the State pursuant to paragraph (7)) determines that an owner or operator cannot pay all or a portion of the costs in a lump sum payment.

"(v) MISREPRESENTATION.—If an owner or operator provides false information or otherwise misrepresents their financial situation under clause (ii), the Administrator (or the State pursuant to paragraph (7)) shall seek full recovery of the costs of all such actions pursuant to the provisions of subparagraph (A) without consideration of the factors in subparagraph (B).".

SEC. 1523. INSPECTION OF UNDERGROUND STORAGE TANKS.

(a) INSPECTION REQUIREMENTS.—Section 9005 of the Solid Waste Disposal Act (42 U.S.C. 6991d) is amended by inserting the following new subsection at the end thereof:

"(c) INSPECTION REQUIREMENTS.—

"(1) UNINSPECTED TANKS.—In the case of underground storage tanks regulated under this subtitle that have not undergone an inspection since December 22, 1998, not later than 2 years after the date of enactment of this subsection, the Administrator or a State that receives funding under this subtitle, as appropriate, shall conduct on-site inspections of all such tanks to determine compliance with this subtitle and the regulations under this subtitle (40 C.F.R. 280) or a requirement or standard of a State program developed under section 9004.

"(2) PERIODIC INSPECTIONS.—After completion of all inspections required under paragraph (1), the Administrator or a State that receives funding under this subtitle, as appropriate, shall conduct on-site inspections of each underground storage tank regulated under this subtitle at least once every 3 years to determine compliance with this subtitle and the regulations under this subtitle (40 C.F.R. 280) or a requirement or standard of a State program developed under section 9004. The Administrator may extend for up to one additional year the first 3-year inspection interval under this paragraph if the State demonstrates that it has insufficient resources to complete all such inspections within the first 3-year period.

"(3) INSPECTION AUTHORITY.—Nothing in this section shall be construed to diminish the Administrator's or a State's authorities under section 9005(a).".

(b) STUDY OF ALTERNATIVE INSPECTION PROGRAMS.—The Administrator of the Environmental Protection Agency, in coordination with a State, shall gather information on compliance assurance programs that could serve as an alternative to the inspection programs under section 9005(c) of the Solid Waste Disposal Act (42 U.S.C. 6991d(c)) and shall, within 4 years after the date of enactment of this Act, submit a report to the Congress containing the results of such study.

SEC. 1524. OPERATOR TRAINING.

(a) IN GENERAL.—Section 9010 of the Solid Waste Disposal Act (42 U.S.C. 6991i) is amended to read as follows:

"SEC. 9010. OPERATOR TRAINING.

"(a) GUIDELINES.—

"(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Underground Storage Tank Compliance Act of 2005, in consultation and cooperation with States and after public notice and opportunity for comment, the Administrator shall publish guidelines that specify training requirements for—

"(A) persons having primary responsibility for on-site operation and maintenance of underground storage tank systems;

"(B) persons having daily on-site responsibility for the operation and maintenance of underground storage tanks systems; and

"(C) daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system.

"(2) CONSIDERATIONS.—The guidelines described in paragraph (1) shall take into account—

"(A) State training programs in existence as of the date of publication of the guidelines;

"(B) training programs that are being employed by tank owners and tank operators as of the date of enactment of the Underground Storage Tank Compliance Act of 2005;

"(C) the high turnover rate of tank operators and other personnel;

"(D) the frequency of improvement in underground storage tank equipment technology;

"(E) the nature of the businesses in which the tank operators are engaged;

"(F) the substantial differences in the scope and length of training needed for the different classes of persons described in subparagraphs (A), (B), and (C) of paragraph (1); and

"(G) such other factors as the Administrator determines to be necessary to carry out this section.

"(b) STATE PROGRAMS.—

"(1) IN GENERAL.—Not later than 2 years after the date on which the Administrator publishes the guidelines under subsection (a)(1), each State that receives funding under this subtitle shall develop State-specific training requirements that are consistent with the guidelines developed under subsection (a)(1).

"(2) REQUIREMENTS.—State requirements described in paragraph (1) shall—

"(A) be consistent with subsection (a);

"(B) be developed in cooperation with tank owners and tank operators;

"(C) take into consideration training programs implemented by tank owners and tank operators as of the date of enactment of this section; and

"(D) be appropriately communicated to tank owners and operators.

"(3) FINANCIAL INCENTIVE.—The Administrator may award to a State that develops and implements requirements described in paragraph (1), in addition to any funds that the State is entitled to receive under this subtitle, not more than $200,000, to be used to carry out the requirements.

"(c) TRAINING.—All persons that are subject to the operator training requirements of subsection (a) shall—

"(1) meet the training requirements developed under subsection (b); and

"(2) repeat the applicable requirements developed under subsection (b), if the tank for which they have primary daily on-site management responsibilities is determined to be out of compliance with—

"(A) a requirement or standard promulgated by the Administrator under section 9003; or

"(B) a requirement or standard of a State program approved under section 9004.".

(b) STATE PROGRAM REQUIREMENT.—Section 9004(a) of the Solid Waste Disposal Act (42 U.S.C. 6991c(a)) is amended by striking "and" at the end of paragraph (7), by striking the period at the end of paragraph (8) and inserting "; and", and by adding the following new paragraph at the end thereof:

"(9) State-specific training requirements as required by section 9010.".

(c) ENFORCEMENT.—Section 9006(d)(2) of such Act (42 U.S.C. 6991e) is amended as follows:

(1) By striking "or" at the end of subparagraph (B).

(2) By adding the following new subparagraph after subparagraph (C):

"(D) the training requirements established by States pursuant to section 9010 (relating to operator training); or".

(d) TABLE OF CONTENTS.—The item relating to section 9010 in table of contents for the Solid Waste Disposal Act is amended to read as follows:

"Sec. 9010. Operator training.".

SEC. 1525. REMEDIATION FROM OXYGENATED FUEL ADDITIVES.

Section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)) is amended as follows:

(1) In paragraph (7)(A)—

(A) by striking "paragraphs (1) and (2) of this subsection" and inserting "paragraphs (1), (2), and (12)" ; and

(B) by striking "and including the authorities of paragraphs (4), (6), and (8) of this subsection" and inserting "and the authority under sections 9011 and 9012 and paragraphs (4), (6), and (8),".

(2) By adding at the end the following:

"(12) REMEDIATION OF OXYGENATED FUEL CONTAMINATION.—

"(A) IN GENERAL.—The Administrator and the States may use funds made available under section 9014(2)(B) to carry out corrective actions with respect to a release of a fuel containing an oxygenated fuel additive that presents a threat to human health or welfare or the environment.

"(B) APPLICABLE AUTHORITY.—The Administrator or a State shall carry out subparagraph (A) in accordance with paragraph (2), and in the case of a State, in accordance with a cooperative agreement entered into by the Administrator and the State under paragraph (7).".

SEC. 1526. RELEASE PREVENTION, COMPLIANCE, AND ENFORCEMENT.

(a) RELEASE PREVENTION AND COMPLIANCE.—Subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) is amended by adding at the end the following:

"SEC. 9011. USE OF FUNDS FOR RELEASE PREVENTION AND COMPLIANCE.

"Funds made available under section 9014(2)(D) from the Trust Fund may be used to conduct inspections, issue orders, or bring actions under this subtitle—

"(1) by a State, in accordance with a grant or cooperative agreement with the Administrator, of State regulations pertaining to underground storage tanks regulated under this subtitle; and

"(2) by the Administrator, for tanks regulated under this subtitle (including under a State program approved under section 9004).".

(b) GOVERNMENT-OWNED TANKS.—Section 9003 of the Solid Waste Disposal Act (42 U.S.C. 6991b) is amended by adding at the end the following:

"(i) GOVERNMENT-OWNED TANKS.—

"(1) STATE COMPLIANCE REPORT.—(A) Not later than 2 years after the date of enactment of this subsection, each State that receives funding under this subtitle shall submit to the Administrator a State compliance report that—

"(i) lists the location and owner of each underground storage tank described in subparagraph (B) in the State that, as of the date of submission of the report, is not in compliance with section 9003; and

"(ii) specifies the date of the last inspection and describes the actions that have been and will be taken to ensure compliance of the underground storage tank listed under clause (i) with this subtitle.

"(B) An underground storage tank described in this subparagraph is an underground storage tank that is—

"(i) regulated under this subtitle; and

"(ii) owned or operated by the Federal, State, or local government.

"(C) The Administrator shall make each report, received under subparagraph (A), available to the public through an appropriate media.

"(2) FINANCIAL INCENTIVE.—The Administrator may award to a State that develops a report described in paragraph (1), in addition to any other funds that the State is entitled to receive under this subtitle, not more than $50,000, to be used to carry out the report.

"(3) NOT A SAFE HARBOR.—This subsection does not relieve any person from any obligation or requirement under this subtitle.".

(c) PUBLIC RECORD.—Section 9002 of the Solid Waste Disposal Act (42 U.S.C. 6991a) is amended by adding at the end the following:

"(d) PUBLIC RECORD.—

"(1) IN GENERAL.—The Administrator shall require each State that receives Federal funds to carry out this subtitle to maintain, update at least annually, and make available to the public, in such manner and form as the Administrator shall prescribe (after consultation with States), a record of underground storage tanks regulated under this subtitle.

"(2) CONSIDERATIONS.—To the maximum extent practicable, the public record of a State, respectively, shall include, for each year—

"(A) the number, sources, and causes of underground storage tank releases in the State;

"(B) the record of compliance by underground storage tanks in the State with—

"(i) this subtitle; or

"(ii) an applicable State program approved under section 9004; and

"(C) data on the number of underground storage tank equipment failures in the State.".

(d) INCENTIVE FOR PERFORMANCE.—Section 9006 of the Solid Waste Disposal Act (42 U.S.C. 6991e) is amended by adding at the end the following:

"(e) INCENTIVE FOR PERFORMANCE.—Both of the following may be taken into account in determining the terms of a civil penalty under subsection (d):

"(1) The compliance history of an owner or operator in accordance with this subtitle or a program approved under section 9004.

"(2) Any other factor the Administrator considers appropriate.".

(e) TABLE OF CONTENTS.—The table of contents for such subtitle I is amended by adding the following new item at the end thereof:

"Sec. 9011. Use of funds for release prevention and compliance.".

SEC. 1527. DELIVERY PROHIBITION.

(a) IN GENERAL.—Subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) is amended by adding at the end the following:

"SEC. 9012. DELIVERY PROHIBITION.

"(a) REQUIREMENTS.—

"(1) PROHIBITION OF DELIVERY OR DEPOSIT.—Beginning 2 years after the date of enactment of this section, it shall be unlawful to deliver to, deposit into, or accept a regulated substance into an underground storage tank at a facility which has been identified by the Administrator or a State implementing agency to be ineligible for fuel delivery or deposit.

"(2) GUIDANCE.—Within 1 year after the date of enactment of this section, the Administrator and States that receive funding under this subtitle shall, in consultation with the underground storage tank owner and product delivery industries, for territory for which they are the primary implementing agencies, publish guidelines detailing the specific processes and procedures they will use to implement the provisions of this section. The processes and procedures include, at a minimum—

"(A) the criteria for determining which underground storage tank facilities are ineligible for delivery or deposit;

"(B) the mechanisms for identifying which facilities are ineligible for delivery or deposit to the underground storage tank owning and fuel delivery industries;

"(C) the process for reclassifying ineligible facilities as eligible for delivery or deposit; and

"(D) a delineation of, or a process for determining, the specified geographic areas subject to paragraph (4).

"(3) DELIVERY PROHIBITION NOTICE.—

"(A) ROSTER.—The Administrator and each State implementing agency that receives funding under this subtitle shall establish within 24 months after the date of enactment of this section a Delivery Prohibition Roster listing underground storage tanks under the Administrator's or the State's

jurisdiction that are determined to be ineligible for delivery or deposit pursuant to paragraph (2).

"(B) NOTIFICATION.—The Administrator and each State, as appropriate, shall make readily known, to underground storage tank owners and operators and to product delivery industries, the underground storage tanks listed on a Delivery Prohibition Roster by:

"(i) posting such Rosters, including the physical location and street address of each listed underground storage tank, on official web sites and, if the Administrator or the State so chooses, other electronic means;

"(ii) updating these Rosters periodically; and

"(iii) installing a tamper-proof tag, seal, or other device blocking the fill pipes of such underground storage tanks to prevent the delivery of product into such underground storage tanks.

"(C) ROSTER UPDATES.—The Administrator and the State shall update the Delivery Prohibition Rosters as appropriate, but not less than once a month on the first day of the month.

"(D) TAMPERING WITH DEVICE.—

"(i) PROHIBITION.—It shall be unlawful for any person, other than an authorized representative of the Administrator or a State, as appropriate, to remove, tamper with, destroy, or damage a device installed by the Administrator or a State, as appropriate, under subparagraph (B)(iii) of this subsection.

"(ii) CIVIL PENALTIES.—Any person violating clause (i) of this subparagraph shall be subject to a civil penalty not to exceed $10,000 for each violation.

"(4) LIMITATION.—

"(A) RURAL AND REMOTE AREAS.—Subject to subparagraph (B), the Administrator or a State shall not include an underground storage tank on a Delivery Prohibition Roster under paragraph (3) if an urgent threat to public health, as determined by the Administrator, does not exist and if such a delivery prohibition would jeopardize the availability of, or access to, fuel in any rural and remote areas.

"(B) APPLICABILITY OF LIMITATION.—The limitation under subparagraph (A) shall apply only during the 180-day period following the date of a determination by the Administrator or the appropriate State that exercising the authority of paragraph (3) is limited by subparagraph (A).

"(b) EFFECT ON STATE AUTHORITY.—Nothing in this section shall affect the authority of a State to prohibit the delivery of a regulated substance to an underground storage tank.

"(c) DEFENSE TO VIOLATION.—A person shall not be in violation of subsection (a)(1) if the underground storage tank into which a regulated substance is delivered is not listed on the Administrator's or the appropriate State's Prohibited Delivery Roster 7 calendar days prior to the delivery being made.".

(b) ENFORCEMENT.—Section 9006(d)(2) of such Act (42 U.S.C. 6991e(d)(2)) is amended as follows:

(1) By adding the following new subparagraph after subparagraph (D):

"(E) the delivery prohibition requirement established by section 9012,".

(2) By adding the following new sentence at the end thereof: "Any person making or accepting a delivery or deposit of a regulated substance to an underground storage tank at an ineligible facility in violation of section 9012 shall also be subject to the same civil penalty for each day of such violation.".

(c) TABLE OF CONTENTS.—The table of contents for such subtitle I is amended by adding the following new item at the end thereof:

"Sec. 9012. Delivery prohibition.".

SEC. 1528. FEDERAL FACILITIES.

Section 9007 of the Solid Waste Disposal Act (42 U.S.C. 6991f) is amended to read as follows:

"SEC. 9007. FEDERAL FACILITIES.

"(a) IN GENERAL.—Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any underground storage tank or underground storage tank system, or (2) engaged in any activity resulting, or which may result, in the installation, operation, management, or closure of any underground storage tank, release response activities related thereto, or in the delivery, acceptance, or deposit of any regulated substance to an underground storage tank or underground storage tank system shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or

any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting underground storage tanks in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local underground storage tank regulatory program. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local law concerning underground storage tanks with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State law concerning underground storage tanks, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any underground storage tank of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

"(b) REVIEW OF AND REPORT ON FEDERAL UNDERGROUND STORAGE TANKS.—

"(1) REVIEW.—Not later than 12 months after the date of enactment of the Underground Storage Tank Compliance Act of 2005, each Federal agency that owns or operates 1 or more underground storage tanks, or that manages land on which 1 or more underground storage tanks are located, shall submit to the Administrator, the Committee on Energy and Commerce of the United States House of Representatives, and the Committee on the Environment and Public Works of the United States Senate a compliance strategy report that—

"(A) lists the location and owner of each underground storage tank described in this paragraph;

"(B) lists all tanks that are not in compliance with this subtitle that are owned or operated by the Federal agency;

"(C) specifies the date of the last inspection by a State or Federal inspector of each underground storage tank owned or operated by the agency;

"(D) lists each violation of this subtitle respecting any underground storage tank owned or operated by the agency;

"(E) describes the operator training that has been provided to the operator and other persons having primary daily on-site management responsibility for the operation and maintenance of underground storage tanks owned or operated by the agency; and

"(F) describes the actions that have been and will be taken to ensure compliance for each underground storage tank identified under subparagraph (B).

"(2) NOT A SAFE HARBOR.—This subsection does not relieve any person from any obligation or requirement under this subtitle.".

SEC. 1529. TANKS ON TRIBAL LANDS.

(a) IN GENERAL.—Subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) is amended by adding the following at the end thereof:

"SEC. 9013. TANKS ON TRIBAL LANDS.

"(a) STRATEGY.—The Administrator, in coordination with Indian tribes, shall, not later than 1 year after the date of enactment of this section, develop and implement a strategy—

"(1) giving priority to releases that present the greatest threat to human health or the environment, to take necessary corrective action in response to releases from leaking underground storage tanks located wholly within the boundaries of—

"(A) an Indian reservation; or

"(B) any other area under the jurisdiction of an Indian tribe; and

"(2) to implement and enforce requirements concerning underground storage tanks located wholly within the boundaries of—

"(A) an Indian reservation; or

"(B) any other area under the jurisdiction of an Indian tribe.

"(b) REPORT.—Not later than 2 years after the date of enactment of this section, the Administrator shall submit to Congress a report that summarizes the status of implementation and enforcement of this subtitle in areas located wholly within—

"(1) the boundaries of Indian reservations; and

"(2) any other areas under the jurisdiction of an Indian tribe.

The Administrator shall make the report under this subsection available to the public.

"(c) NOT A SAFE HARBOR.—This section does not relieve any person from any obligation or requirement under this subtitle.

"(d) STATE AUTHORITY.—Nothing in this section applies to any underground storage tank that is located in an area under the jurisdiction of a State, or that is subject to regulation by a State, as of the date of enactment of this section.".

(b) TABLE OF CONTENTS.—The table of contents for such subtitle I is amended by adding the following new item at the end thereof:

"Sec. 9013. Tanks on Tribal lands.".

SEC. 1530. ADDITIONAL MEASURES TO PROTECT GROUNDWATER.

(a) IN GENERAL.—Section 9003 of the Solid Waste Disposal Act (42 U.S.C. 6991b) is amended by adding the following new subsection at the end:

"(i) ADDITIONAL MEASURES TO PROTECT GROUNDWATER FROM CONTAIMINATION.—The Administrator shall require each State that receives funding under this subtitle to require one of the following:

"(1) TANK AND PIPING SECONDARY CONTAINMENT.—(A) Each new underground storage tank, or piping connected to any such new tank, installed after the effective date of this subsection, or any existing underground storage tank, or existing piping connected to such existing tank, that is replaced after the effective date of this subsection, shall be secondarily contained and monitored for leaks if the new or replaced underground storage tank or piping is within 1,000 feet of any existing community water system or any existing potable drinking water well.

"(B) In the case of a new underground storage tank system consisting of one or more underground storage tanks and connected by piping, subparagraph (A) shall apply to all underground storage tanks and connected pipes comprising such system.

"(C) In the case of a replacement of an existing underground storage tank or existing piping connected to the underground storage tank, subparagraph (A) shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes comprising such system.

"(D) Each installation of a new motor fuel dispenser system, after the effective date of this subsection, shall include under-dispenser spill containment if the new dispenser is within 1,000 feet of any existing community water system or any existing potable drinking water well.

"(E) This paragraph shall not apply to repairs to an underground storage tank, piping, or dispenser that are meant to restore a tank, pipe, or dispenser to operating condition

"(F) As used in this subsection:

"(i) The term 'secondarily contained' means a release detection and prevention system that meets the requirements of 40 CFR 280.43(g), but shall not include under-dispenser spill containment or control systems.

"(ii) The term 'underground storage tank' has the meaning given to it in section 9001, except that such term does not include tank combinations or more than a single underground pipe connected to a tank.

"(iii) The term 'installation of a new motor fuel dispenser system' means the installation of a new motor fuel dispenser and the equipment necessary

to connect the dispenser to the underground storage tank system, but does not mean the installation of a motor fuel dispenser installed separately from the equipment need to connect the dispenser to the underground storage tank system.

"(G) The Administrator may issue regulations or guidelines implementing the requirements of this subsection.

"(2) EVIDENCE OF FINANCIAL RESPONSIBILITY AND CERTIFICATION.—

"(A) MANUFACTURER AND INSTALLER FINANCIAL RESPONSIBILITY.—A person that manufactures an underground storage tank or piping for an underground storage tank system or that installs an underground storage tank system is required to maintain evidence of financial responsibility under section 9003(d) in order to provide for the costs of corrective actions directly related to releases caused by improper manufacture or installation unless the person can demonstrate themselves to be already covered as an owner or operator of an underground storage tank under section 9003.

"(B) INSTALLER CERTIFICATION.—The Administrator and each State that receives funding under this subtitle, as appropriate, shall require that a person that installs an underground storage tank system is—

"(i) certified or licensed by the tank and piping manufacturer;

"(ii) certified or licensed by the Administrator or a State, as appropriate;

"(iii) has their underground storage tank system installation certified by a registered professional engineer with education and experience in underground storage tank system installation;

"(iv) has had their installation of the underground storage tank inspected and approved by the Administrator or the State, as appropriate;

"(v) compliant with a code of practice developed by a nationally recognized association of independent testing laboratory and in accordance with the manufacturers instructions; or

"(vi) compliant with another method that is determined by the Administrator or a State, as appropriate, to be no less protective of human health and the environment.".

(b) EFFECTIVE DATE.—This subsection shall take effect 18 months after the date of enactment of this subsection

(c) PROMULGATION OF REGULATIONS OR GUIDELINES.—The Administrator shall issue regulations or guidelines implementing the requirements of this subsection, including guidance to differentiate between the terms "repair" and "replace" for the purposes of section 9003(i)(1) of the Solid Waste Disposal Act.

(d) PENALTIES.—Section 9006(d)(2) of such Act (42 U.S.C. 6991e(d)(2)) is amended by adding the following new subparagraph after subparagraph (C):

"(D) the requirements establishd in section 9003(i),".

SEC. 1531. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) is amended by adding at the end the following:

"SEC. 9014. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Administrator the following amounts:

"(1) To carry out subtitle I (except sections 9003(h), 9005(c), 9011 and 9012) $50,000,000 for each of fiscal years 2005 through 2009.

"(2) From the Trust Fund, notwithstanding section 9508(c)(1) of the Internal Revenue Code of 1986:

"(A) to carry out section 9003(h) (except section 9003(h)(12)) $200,000,000 for each of fiscal years 2005 through 2009;

"(B) to carry out section 9003(h)(12), $200,000,000 for each of fiscal years 2005 through 2009;

"(C) to carry out sections 9004(f) and 9005(c) $100,000,000 for each of fiscal years 2005 through 2009; and

"(D) to carry out sections 9011 and 9012 $55,000,000 for each of fiscal years 2005 through 2009.".

(b) TABLE OF CONTENTS.—The table of contents for such subtitle I is amended by adding the following new item at the end thereof:

"Sec. 9014. Authorization of appropriations.".

SEC. 1532. CONFORMING AMENDMENTS.

(a) IN GENERAL.—Section 9001 of the Solid Waste Disposal Act (42 U.S.C. 6991) is amended as follows:

(1) By striking "For the purposes of this subtitle—" and inserting "In this subtitle:".

(2) By redesignating paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) as paragraphs (10), (7), (4), (3), (8), (5), (2), and (6), respectively.

(3) By inserting before paragraph (2) (as redesignated by paragraph (2) of this subsection) the following:

"(1) INDIAN TRIBE.—

"(A) IN GENERAL.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community that is recognized as being eligible for special programs and services provided by the United States to Indians because of their status as Indians.

"(B) INCLUSIONS.—The term 'Indian tribe' includes an Alaska Native village, as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).".

(4) By inserting after paragraph (8) (as redesignated by paragraph (2) of this subsection) the following:

"(9) TRUST FUND.—The term 'Trust Fund' means the Leaking Underground Storage Tank Trust Fund established by section 9508 of the Internal Revenue Code of 1986.".

(b) CONFORMING AMENDMENTS.—The Solid Waste Disposal Act (42 U.S.C. 6901 and following) is amended as follows:

(1) Section 9003(f) (42 U.S.C. 6991b(f)) is amended—

(A) in paragraph (1), by striking "9001(2)(B)" and inserting "9001(7)(B)"; and

(B) in paragraphs (2) and (3), by striking "9001(2)(A)" each place it appears and inserting "9001(7)(A)".

(2) Section 9003(h) (42 U.S.C. 6991b(h)) is amended in paragraphs (1), (2)(C), (7)(A), and (11) by striking "Leaking Underground Storage Tank Trust Fund" each place it appears and inserting "Trust Fund".

(3) Section 9009 (42 U.S.C. 6991h) is amended—

(A) in subsection (a), by striking "9001(2)(B)" and inserting "9001(7)(B)"; and

(B) in subsection (d), by striking "section 9001(1) (A) and (B)" and inserting "subparagraphs (A) and (B) of section 9001(10)".

SEC. 1533. TECHNICAL AMENDMENTS.

The Solid Waste Disposal Act is amended as follows:

(1) Section 9001(4)(A) (42 U.S.C. 6991(4)(A)) is amended by striking "sustances" and inserting "substances".

(2) Section 9003(f)(1) (42 U.S.C. 6991b(f)(1)) is amended by striking "subsection (c) and (d) of this section" and inserting "subsections (c) and (d)".

(3) Section 9004(a) (42 U.S.C. 6991c(a)) is amended by striking "in 9001(2)(A) or (B) or both" and inserting "in subparagraph (A) or (B) of section 9001(7)".

(4) Section 9005 (42 U.S.C. 6991d) is amended—

(A) in subsection (a), by striking "study taking" and inserting "study, taking";

(B) in subsection (b)(1), by striking "relevent" and inserting "relevant"; and

(C) in subsection (b)(4), by striking "Evironmental" and inserting "Environmental".

Subtitle C—Boutique Fuels

SEC. 1541. REDUCING THE PROLIFERATION OF BOUTIQUE FUELS.

(a) TEMPORARY WAIVERS DURING SUPPLY EMERGENCIES.—Section 211(c)(4)(C) of the Clean Air Act (42 U.S.C. 7545(c)(4)(C)) is amended by inserting "(i)" after "(C)" and by adding the following new clauses at the end thereof:

"(ii) The Administrator may temporarily waive a control or prohibition respecting the use of a fuel or fuel additive required or regulated by the Administrator pursuant to subsection (c), (h), (i), (k), or (m) of this section or prescribed in an applicable implementation plan under section 110 approved by the Administrator under clause (i) of this subparagraph if, after consultation with, and concurrence by, the Secretary of Energy, the Administrator determines that—

"(I) extreme and unusual fuel or fuel additive supply circumstances exist in a State or region of the Nation which prevent the distribution of an adequate supply of the fuel or fuel additive to consumers;

"(II) such extreme and unusual fuel and fuel additive supply circumstances are the result of a natural disaster, an Act of God, a pipeline or refinery equip-

ment failure, or another event that could not reasonably have been foreseen or prevented and not the lack of prudent planning on the part of the suppliers of the fuel or fuel additive to such State or region; and

"(III) it is in the public interest to grant the waiver (for example, when a waiver is necessary to meet projected temporary shortfalls in the supply of the fuel or fuel additive in a State or region of the Nation which cannot otherwise be compensated for).

"(iii) If the Administrator makes the determinations required under clause (ii), such a temporary extreme and unusual fuel and fuel additive supply circumstances waiver shall be permitted only if—

"(I) the waiver applies to the smallest geographic area necessary to address the extreme and unusual fuel and fuel additive supply circumstances;

"(II) the waiver is effective for a period of 20 calendar days or, if the Administrator determines that a shorter waiver period is adequate, for the shortest practicable time period necessary to permit the correction of the extreme and unusual fuel and fuel additive supply circumstances and to mitigate impact on air quality;

"(III) the waiver permits a transitional period, the exact duration of which shall be determined by the Administrator, after the termination of the temporary waiver to permit wholesalers and retailers to blend down their wholesale and retail inventory;

"(IV) the waiver applies to all persons in the motor fuel distribution system; and

"(V) the Administrator has given public notice to all parties in the motor fuel distribution system, and local and State regulators, in the State or region to be covered by the waiver.

The term 'motor fuel distribution system' as used in this clause shall be defined by the Administrator through rulemaking.

"(iv) Within 180 days of the date of enactment of this clause, the Administrator shall promulgate regulations to implement clauses (ii) and (iii).

"(v) Nothing in this subparagraph shall—

"(I) limit or otherwise affect the application of any other waiver authority of the Administrator pursuant to this section or pursuant to a regulation promulgated pursuant to this section; and

"(II) subject any State or person to an enforcement action, penalties, or liability solely arising from actions taken pursuant to the issuance of a waiver under this subparagraph.".

(b) LIMIT ON NUMBER OF BOUTIQUE FUELS.—Section 211(c)(4)(C) of the Clean Air Act (42 U.S.C. 7545(c)(4)), as amended by subsection (a), is further amended by adding at the end the following:

"(vi)(I) The Administrator shall have no authority, when considering a State implementation plan or a State implementation plan revision, to approve under this paragraph any fuel included in such plan or revision if the effect of such approval increases the total number of fuels approved under this paragraph as of September 1, 2004, in all State implementation plans.

"(II) The Administrator, in consultation with the Secretary of Energy, shall determine the total number of fuels approved under this paragraph as of September 1, 2004, in all State implementation plans and shall publish a list of such fuels, including the states and Petroleum Administration for Defense District in which they are used, in the Federal Register for public review and comment no later than 90 days after enactment.

"(III) The Administrator shall remove a fuel from the list published under subclause (II) if a fuel ceases to be included in a State implementation plan or if a fuel in a State implementation plan is identical to a Federal fuel formulation implemented by the Administrator, but the Administrator shall not reduce the total number of fuels authorized under the list published under subclause (II).

"(IV) Subclause (I) shall not limit the Administrator's authority to approve a control or prohibition respecting any new fuel under this paragraph in a State implementation plan or revision to a State implementation plan if such new fuel:

"(aa) completely replaces a fuel on the list published under subclause (II); or

"(bb) does not increase the total number of fuels on the list published under subclause (II) as of September 1, 2004.

In the event that the total number of fuels on the list published under subclause (II) at the time of the Administrator's consideration of a control or prohibition respecting a new fuel is lower than the total number of fuels on such list as of September 1, 2004, the Administrator may approve a control or prohibition respecting a new fuel under this subclause if the Administrator, after consultation with the Secretary of Energy, publishes in the Federal Register after notice and comment a finding that, in the Administrator's judgment, such control or prohibition respecting

a new fuel will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas.

"(V) The Administrator shall have no authority under this paragraph, when considering any particular State's implementation plan or a revision to that State's implementation plan, to approve any fuel unless that fuel was, as of the date of such consideration, approved in at least one State implementation plan in the applicable Petroleum Administration for Defense District. However, the Administrator may approve as part of a State implementation plan or State implementation plan revision a fuel with a summertime Reid Vapor Pressure of 7.0 psi. In no event shall such approval by the Administrator cause an increase in the total number of fuels on the list published under subclause (II).

"(VI) Nothing in this clause shall be construed to have any effect regarding any available authority of States to require the use of any fuel additive registered in accordance with subsection (b), including any fuel additive registered in accordance with subsection (b) after the enactment of this subclause.".

(c) STUDY AND REPORT TO CONGRESS ON BOUTIQUE FUELS.—

(1) JOINT STUDY.—The Administrator of the Environmental Protection Agency and the Secretary of Energy shall undertake a study of the effects on air quality, on the number of fuel blends, on fuel availability, on fuel fungibility, and on fuel costs of the State plan provisions adopted pursuant to section 211(c)(4)(C) of the Clean Air Act (42 U.S.C. 7545(c)(4)(C)).

(2) FOCUS OF STUDY.—The primary focus of the study required under paragraph (1) shall be to determine how to develop a Federal fuels system that maximizes motor fuel fungibility and supply, preserves air quality standards, and reduces motor fuel price volatility that results from the proliferation of boutique fuels, and to recommend to Congress such legislative changes as are necessary to implement such a system. The study should include the impacts on overall energy supply, distribution, and use as a result of the legislative changes recommended.

(3) RESPONSIBILITY OF ADMINISTRATOR.—In carrying out the study required by this section, the Administrator shall coordinate obtaining comments from affected parties interested in the air quality impact assessment portion of the study. The Administrator shall use sound and objective science practices, shall consider the best available science, and shall consider and include a description of the weight of the scientific evidence.

(4) RESPONSIBILITY OF SECRETARY.—In carrying out the study required by this section, the Secretary shall coordinate obtaining comments from affected parties interested in the fuel availability, number of fuel blends, fuel fungibility and fuel costs portion of the study.

(5) REPORT TO CONGRESS.—The Administrator and the Secretary jointly shall submit the results of the study required by this section in a report to the Congress not later than 12 months after the date of the enactment of this Act, together with any recommended regulatory and legislative changes. Such report shall be submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated jointly to the Administrator and the Secretary $500,000 for the completion of the study required under this subsection.

(d) DEFINITIONS.—In this section:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

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

(3) The term "fuel" means gasoline, diesel fuel, and any other liquid petroleum product commercially known as gasoline and diesel fuel for use in highway and nonroad motor vehicles.

(4) The term "a control or prohibition respecting a new fuel" means a control or prohibition on the formulation, composition, or emissions characteristics of a fuel that would require the increase or decrease of a constituent in gasoline or diesel fuel.

TITLE XVI—STUDIES

SEC. 1601. STUDY ON INVENTORY OF PETROLEUM AND NATURAL GAS STORAGE.

(a) DEFINITION.—For purposes of this section "petroleum" means crude oil, motor gasoline, jet fuel, distillates, and propane.

(b) STUDY.—The Secretary of Energy shall conduct a study on petroleum and natural gas storage capacity and operational inventory levels, nationwide and by major geographical regions.

(c) CONTENTS.—The study shall address—

(1) historical normal ranges for petroleum and natural gas inventory levels;

(2) historical and projected storage capacity trends;

(3) estimated operation inventory levels below which outages, delivery slowdown, rationing, interruptions in service, or other indicators of shortage begin to appear;

(4) explanations for inventory levels dropping below normal ranges; and

(5) the ability of industry to meet United States demand for petroleum and natural gas without shortages or price spikes, when inventory levels are below normal ranges.

(d) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Energy shall submit a report to Congress on the results of the study, including findings and any recommendations for preventing future supply shortages.

SEC. 1605. 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 after the date 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 Congress.

SEC. 1606. TELECOMMUTING STUDY.

(a) STUDY REQUIRED.—The Secretary, in consultation with the Commission, the Director of the Office of Personnel Management, the Administrator of General Services, and the Administrator of NTIA, shall conduct a study of the energy conservation implications of the widespread adoption of telecommuting by Federal employees in the United States.

(b) REQUIRED SUBJECTS OF STUDY.—The study required by subsection (a) shall analyze the following subjects in relation to the energy saving potential of telecommuting by Federal employees:

(1) Reductions of energy use and energy costs in commuting and regular office heating, cooling, and other operations.

(2) Other energy reductions accomplished by telecommuting.

(3) Existing regulatory barriers that hamper telecommuting, including barriers to broadband telecommunications services deployment.

(4) Collateral benefits to the environment, family life, and other values.

(c) REPORT REQUIRED.—The Secretary shall submit to the President and Congress a report on the study required by this section not later than 6 months after the date of enactment of this Act. Such report shall include a description of the results of the analysis of each of the subject described in subsection (b).

(d) DEFINITIONS.—As used in this section:

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

(2) COMMISSION.—The term "Commission" means the Federal Communications Commission.

(3) NTIA.—The term "NTIA" means the National Telecommunications and Information Administration of the Department of Commerce.

(4) TELECOMMUTING.—The term "telecommuting" means the performance of work functions using communications technologies, thereby eliminating or substantially reducing the need to commute to and from traditional worksites.

(5) FEDERAL EMPLOYEE.—The term "Federal employee" has the meaning provided the term "employee" by section 2105 of title 5, United States Code.

SEC. 1607. LIHEAP REPORT.

Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall transmit to 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. 1608. 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;

(2) examine the feasibility of using oil bypass filtration technology in Federal motor vehicle fleets; and

(3) include in such study, prior to any determination of the feasibility of using oil bypass filtration technology, the evaluation of products and various manufacturers.

SEC. 1609. TOTAL INTEGRATED THERMAL SYSTEMS.

The Secretary of Energy 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. 1610. UNIVERSITY COLLABORATION.

Not later than 2 years after the date of enactment of this Act, the Secretary of Energy shall transmit to Congress a report that examines the feasibility of promoting collaborations between large institutions of higher education and small institutions of higher education through grants, contracts, and cooperative agreements made by the Secretary for energy projects. The Secretary shall also consider providing incentives for the inclusion of small institutions of higher education, including minority-serving institutions, in energy research grants, contracts, and cooperative agreements.

SEC. 1611. RELIABILITY AND CONSUMER PROTECTION ASSESSMENT.

Not later than 5 years after the date of enactment of this Act, and each 5 years thereafter, the Federal Energy Regulatory Commission shall assess the effects of the exemption of electric cooperatives and government-owned utilities from Commission regulation under section 201(f) of the Federal Power Act. The assessment shall include any effects on—

(1) reliability of interstate electric transmission networks;

(2) benefit to consumers, and efficiency, of competitive wholesale electricity markets;

(3) just and reasonable rates for electricity consumers; and

(4) the ability of the Commission to protect electricity consumers.

If the Commission finds that the 201(f) exemption results in adverse effects on consumers or electric reliability, the Commission shall make appropriate recommendations to Congress pursuant to section 311 of the Federal Power Act.

SEC. 1612. REPORT ON ENERGY INTEGRATION WITH LATIN AMERICA.

The Secretary of Energy shall submit an annual report to the Committee on Energy and Commerce of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate concerning the status of energy export development in Latin America and efforts by the Secretary and other departments and agencies of the United States to promote energy integration with Latin America. The report shall contain a detailed analysis of the status of energy export development in Mexico and a description of all significant efforts by the Secretary and other departments and agencies to promote a constructive relationship with Mexico regarding the development of that nation's energy capacity. In particular this report shall outline efforts the Secretary and other departments and agencies have made to ensure that regulatory approval and oversight of United States/Mexico border projects that result in the expansion of Mexican energy capacity are effectively coordinated across departments and with the Mexican government.

SEC. 1613. LOW-VOLUME GAS RESERVOIR STUDY.

(a) STUDY.—The Secretary of Energy shall make a grant to an organization of oil and gas producing States, specifically those containing significant numbers of marginal oil and natural gas wells, for conducting an annual study of low-volume natural gas reservoirs. Such organization shall work with the State geologist of each State being studied.

(b) CONTENTS.—The studies under this section shall—

(1) determine the status and location of marginal wells and gas reservoirs;

(2) gather the production information of these marginal wells and reservoirs;

(3) estimate the remaining producible reserves based on variable pipeline pressures;

(4) locate low-pressure gathering facilities and pipelines;

(5) recommend incentives which will enable the continued production of these resources;

(6) produce maps and literature to disseminate to States to promote conservation of natural gas reserves; and

(7) evaluate the amount of natural gas that is being wasted through the practice of venting or flaring of natural gas produced in association with crude oil well production.

(c) DATA ANALYSIS.—Data development and analysis under this section shall be performed by an institution of higher education with GIS capabilities. If the organization receiving the grant under subsection (a) does not have GIS capabilities, such organization shall contract with one or more entities with—

(1) technological capabilities and resources to perform advanced image processing, GIS programming, and data analysis; and

(2) the ability to—

(A) process remotely sensed imagery with high spatial resolution;

(B) deploy global positioning systems;

(C) process and synthesize existing, variable-format gas well, pipeline, gathering facility, and reservoir data;

(D) create and query GIS databases with infrastructure location and attribute information;

(E) write computer programs to customize relevant GIS software;

(F) generate maps, charts, and graphs which summarize findings from data research for presentation to different audiences; and

(G) deliver data in a variety of formats, including Internet Map Server for query and display, desktop computer display, and access through handheld personal digital assistants.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy for carrying out this section—

(1) $1,500,000 for fiscal year 2006; and

(2) $450,000 for each of the fiscal years 2007 through 2010.

(e) DEFINITIONS.—For purposes of this section, the term "GIS" means geographic information systems technology that facilitates the organization and management of data with a geographic component.

PURPOSE AND SUMMARY

Daily life in America requires energy that is abundant, affordable and reliable. Energy is fundamental to prosperity and general welfare, both for this Nation and its families. Energy security is critical in a world of growing demand and regional political instability. Dependence on any single source of energy, especially from a foreign country, leaves America vulnerable to price shocks and supply shortages.

The purpose of the H.R. 1640, "The Energy Policy Act of 2005" is to promote energy conservation and increase the availability of energy supplies nationwide. This legislation makes a significant and meaningful contribution toward ensuring America's continued welfare and security by providing for its 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 2005 encourages energy production and demand reduction by promoting new technology, more efficient processes, and greater public awareness.

The Energy Policy Act of 2005 addresses a wide range of issues related to energy production, generation, transportation, and consumption. It accelerates market penetration for clean coal technologies, encourages the use of alternative transportation fuels, changes the reformulated gasoline program, and promotes energy conservation and efficiency. The legislation also is designed to improve the hydropower licensing process and provide incentives to expand use of nuclear energy. Finally, H.R. 1640 addresses the need for investment in electric transmission capacity, as well as improvements to competitive wholesale electricity markets, along with a number of other attempts to modernize the electricity industry.

BACKGROUND AND NEED FOR LEGISLATION

According to the Energy Information Administration, U.S. energy consumption will increasingly outpace energy production over the next 20 years. Total U.S. energy consumption is projected to grow 35% by 2025, from 98.2 quadrillion BTU to 133.2 quadrillion BTU. Computers, electronic equipment, appliances, telecommunications, and transportation will account for the bulk of this growth. Meeting this demand requires combining increased energy production with more efficient use of existing energy supplies.

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 increased by only 30%. These gains are largely the result of advances not only in technology, but also the improved management and application of that technology. As consumer choice is a driver of energy efficiency, Federal programs such as energy labels and Energy Star enable consumers to make energy-conscious purchasing decisions. Furthermore, the Department of Energy (DOE) established energy conservation standards on a variety of consumer, commercial, and industrial products have resulted in substantial increases in energy efficiency. By investing in the future and procuring energy efficient products, Federal and state governments promote energy efficiency by better managing their inherently large energy demands. A variety of Federal grant programs, such as weatherization assistance and state energy programs, have spurred significant progress in energy efficiency at all levels of government. If the Nation is to meet its energy needs in the coming decades, continued advances in energy efficiency and conservation will play a significant part.

Nuclear energy provides 20% of the Nation's electricity. There are 103 operating commercial nuclear reactors in the United States, most of these located east of the Mississippi River. It has been over 25 years since the Nuclear Regulatory Commission (NRC) issued a license to construct a new nuclear power plant. 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 30 years. However, the industry has expressed a renewed interest in extending the licenses of existing nuclear plants, as well as constructing a new generation of advanced nuclear plants as an emission-free alternative to other fuels.

According to the Energy Information Administration (EIA) Annual Energy Outlook 2005, the U.S. consumes over 20 million barrels of petroleum each day, 67% of which is used for transportation needs. Over the next 20 years, oil imports are expected to rise from a current 56% share to 68% of total demand; natural gas imports are expected to increase from 15% to 28% over the same time. The domestic petroleum refining industry is operating at 95% of capacity. Due to a lack of capacity, refined product imports are expected to grow from 7.9% to 10.7% of total refined product by 2025. The Strategic Petroleum Reserve (SPR) was established in 1975 to "diminish the vulnerability of the United States to the effects of a severe energy supply interruption, and provide limited protection from the short-term consequences of interruptions in supplies of pe-

troleum products." The SPR has four sites used for crude oil storage, with an aggregated crude oil storage capacity of 727 million barrels. The Energy Policy Act of 2005 urges the Secretary of Energy to fill the SPR up to the 1 billion barrel level already authorized by Congress.

Hydropower is the largest source of renewable energy in the U.S. and provides about 7% of the electricity consumed in the U.S. according to the EIA. Over the next 15 years, more than half of this Nation's hydroelectric power projects (roughly 30,000 megawatts) must be relicensed. Current law gives the Federal resources agencies (U.S. Fish and Wildlife Service, U.S. Forest Service, and National Marine Fisheries Service) authority to impose mandatory conditions on hydroelectric power licenses issued by the Federal Energy Regulatory Commission (FERC). One of the areas identified by current and prospective licensees to improve the licensing process is requiring agencies to consider alternative conditions proposed by a licensee. Current law does not require agencies to consider alternative conditions that may be less costly (in dollars or energy lost) while not compromising 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, plans to build new coal-fired generation face obstacles. A number of factors contribute to this situation, including the high capital and operating costs of currently available clean coal technology 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 2005, 32 CCT projects had been completed and an additional 3 projects were in process. Two of these projects are in the operation phase and an integrated gasification combined cycle (IGCC) project is in its design phase.

Investment in electric transmission expansion has not kept pace with electricity demand. Moreover, transmission system reliability is suspect as demonstrated by the blackout that hit the Northeast and Midwest in August of 2003. Legislation is needed to address the issues of transmission capacity, operation, and reliability. In addition, state regulatory approval delays siting of new transmission lines by many years. Even if a project is completed, there is uncertainty as to whether utilities will be able to recover all of their investment, which hinders new transmission construction. Measures proposed, such as repealing the Public Utility Holding Company Act, would facilitate needed investment in the transmission sector.

Taken together, these issues highlight the need to promote innovation, conservation, and new domestic energy supplies. Reliable sources of energy will secure millions of jobs and make America less dependent on the outcomes of global conflicts. Ultimately, a comprehensive energy policy will provide better security for American families and a higher quality of life.

HEARINGS

The Full Committee on Energy and Commerce held a hearing entitled "The Department of Energy's Fiscal Year 2006 Budget Proposal and the Energy Policy Act of 2005: Ensuring Jobs for Our Future with Secure and Reliable Energy" on February 9, 2005. The Committee received testimony from The Honorable Samuel W. Bodman, Secretary, U.S. Department of Energy.

The Subcommittee on Energy and Air Quality held the first in a series of hearings on a comprehensive national energy policy on February 10, 2005. The Subcommittee received testimony from: The Honorable David K. Garman, Assistant Secretary, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy; Ms. Cynthia Marlette, General Counsel, Federal Energy Regulatory Commission; Mr. Luis Reyes, Executive Director for Operations, Nuclear Regulatory Commission; Mr. Guy F. Caruso, Administrator, Energy Information Administration; The Honorable Marilyn Showalter, President, National Association of Regulatory Utility Commissioners; The Honorable Frank H. Murkowski, Governor, State of Alaska; The Honorable Victor Carrillo, Chairman, Railroad Commission of Texas; Mr. Thomas R. Kuhn, President, Edison Electric Institute; Ms. Lynne H. Church, President, Electric Power Supply Association; Mr. Alan Richardson, President and CEO, American Public Power Association; Mr. Ed Hansen, General Manager, Snohomish County Public Utility District; Mr. Glenn English, CEO, National Rural Electric Cooperative Association; Ms. Kateri Callahan, President, Alliance to Save Energy; Mr. Marty Kanner, President, Kanner & Associates; Mr. Mark Cooper, Research Director, Consumer Federation of America; and Mr. Steven Nadel, Executive Director, American Council for an Energy-Efficient Economy.

The Subcommittee on Energy and Air Quality held its second hearing on a comprehensive national energy policy on February 16, 2005. The Subcommittee received testimony from Mr. Red Cavaney, President, American Petroleum Institute; Mr. Bob Dinneen, President and CEO, Renewable Fuels Association; Mr. Bob Slaughter, President, National Petrochemical & Refiners Association; Mr. Erik Olson, Senior Attorney, Natural Resources Defense Council; Mr. Lee O. Fuller, Vice President of Government Relations, Independent Petroleum Association of America; Mr. Laurence M. Downes, Chairman, American Gas Association; Mr. Gerald Norlander, Executive Director, Public Utility Law Project, National Association of State Utility Consumer Advocates; Mr. David Hamilton, Director, Global Warming and Energy Programs, Sierra Club; Mr. Donald F. Santa, Jr., President, Interstate Natural Gas Association; Mr. John Kane, Senior Vice President, Government Affairs, Nuclear Energy Institute; Mr. Navin Nayak, Environmental Advocate, U.S. Public Interest Research Group; Mr. James H. Hancock, Jr., Chair, Legislative Affairs Committee, National Hydropower Association; Mr. Andrew Fahlund, Vice President for Restoration and Protection, American Rivers; Mr. John E. Shelk, Senior Vice President, Government Affairs, National Mining Association; Mr. Alan Nogee, Director, Clean Energy Program, Union of Concerned Scientists; and, Mr. Rhone Resch, President, Solar Energy Industries Association.

COMMITTEE CONSIDERATION

On Tuesday, April 5, 2005, Wednesday, April 6, 2005, Tuesday April 12, 2005, and, Wednesday April 13, 2005, the Full Committee met in open markup session and ordered a Committee Print reported to the House, as amended, by a record vote of 39 yeas and 16 nays. A request by Mr. Barton to allow a report to be filed on a bill to be introduced by Mr. Barton, 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 39 yeas and 16 nays.

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 4

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Deal, No. 3, to define terms and set certain standards for ceiling fans and provide the Department of Energy with the authority to set further standards for ceiling fans, and to provide for preemption of state regulation of ceiling fan efficiency standards.

DISPOSITION: **AGREED TO**, by a roll call vote of 27 yeas to 19 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton	X			Mr. Dingell		X	
Mr. Hall	X			Mr. Waxman		X	
Mr. Bilirakis	X			Mr. Markey		X	
Mr. Upton	X			Mr. Boucher		X	
Mr. Stearns				Mr. Towns		X	
Mr. Gillmor	X			Mr. Pallone		X	
Mr. Deal	X			Mr. Brown			
Mr. Whitfield	X			Mr. Gordon	X		
Mr. Norwood	X			Mr. Rush			
Ms. Cubin				Ms. Eshoo		X	
Mr. Shimkus				Mr. Stupak	X		
Ms. Wilson	X			Mr. Engel			
Mr. Shadegg	X			Mr. Wynn			
Mr. Pickering	X			Mr. Green	X		
Mr. Fossella				Mr. Strickland		X	
Mr. Blunt				Ms. DeGette		X	
Mr. Buyer				Ms. Capps		X	
Mr. Radanovich	X			Mr. Doyle		X	
Mr. Bass	X			Mr. Allen		X	
Mr. Pitts				Mr. Davis		X	
Ms. Bono	X			Ms. Schakowsky		X	
Mr. Walden	X			Ms. Solis		X	
Mr. Terry	X			Mr. Gonzalez		X	
Mr. Ferguson	X			Mr. Inslee		X	
Mr. Rogers	X			Ms. Baldwin		X	
Mr. Otter	X			Mr. Ross		X	
Ms. Myrick	X						
Mr. Sullivan	X						
Mr. Murphy	X						
Mr. Burgess	X						
Ms. Blackburn	X						

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COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 5

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Waxman, No. 7, to require the President of the United States to purpose voluntary, regulatory, or other actions that are sufficient to reduce demand for oil in the United States by at least 1.0 million barrels per day from the projected demand for oil in 2013.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 12 yeas to 39 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell		X	
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher		X	
Mr. Stearns				Mr. Towns		X	
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown			
Mr. Whitfield		X		Mr. Gordon		X	
Mr. Norwood		X		Mr. Rush		X	
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus				Mr. Stupak		X	
Ms. Wilson		X		Mr. Engel			
Mr. Shadegg		X		Mr. Wynn		X	
Mr. Pickering		X		Mr. Green		X	
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. Allen	X		
Mr. Pitts		X		Mr. Davis			
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez		X	
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross		X	
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 6

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Green, No. 8, to amend the amount a state may receive under the Low Income Home Energy Assistance Act by amending a figure in the allocation formula.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 22 yeas to 30 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell		X	
Mr. Hall	X			Mr. Waxman			
Mr. Bilirakis	X			Mr. Markey		X	
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns	X			Mr. Towns		X	
Mr. Gillmor		X		Mr. Pallone		X	
Mr. Deal	X			Mr. Brown			
Mr. Whitfield	X			Mr. Gordon	X		
Mr. Norwood	X			Mr. Rush		X	
Ms. Cubin		X		Ms. Eshoo		X	
Mr. Shimkus				Mr. Stupak		X	
Ms. Wilson	X			Mr. Engel		X	
Mr. Shadegg	X			Mr. Wynn	X		
Mr. Pickering	X			Mr. Green	X		
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. Allen		X	
Mr. Pitts		X		Mr. Davis			
Ms. Bono	X			Ms. Schakowsky		X	
Mr. Walden		X		Ms. Solis		X	
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin		X	
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick	X						
Mr. Sullivan	X						
Mr. Murphy		X					
Mr. Burgess	X						
Ms. Blackburn	X						

4/06/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 7

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Rush, No. 9, to increase the authorization of appropriations for the Low Income Home Energy Assistance Program and weatherization assistance, and to amend the definition of "low income" as it relates to the criteria for weatherization assistance.

DISPOSITION: **AGREED TO**, by a roll call vote of 35 yeas to 13 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton	X			Mr. Dingell	X		
Mr. Hall	X			Mr. Waxman			
Mr. Bilirakis	X			Mr. Markey	X		
Mr. Upton	X			Mr. Boucher	X		
Mr. Stearns				Mr. Towns	X		
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown			
Mr. Whitfield	X			Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo			
Mr. Shimkus				Mr. Stupak	X		
Ms. Wilson	X			Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering	X			Mr. Green			
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. Allen	X		
Mr. Pitts		X		Mr. Davis			
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden	X			Ms. Solis	X		
Mr. Terry	X			Mr. Gonzalez	X		
Mr. Ferguson	X			Mr. Inslee	X		
Mr. Rogers	X			Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick							
Mr. Sullivan		X					
Mr. Murphy	X						
Mr. Burgess		X					
Ms. Blackburn	X						

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COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 8

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Terry, No. 10, to include "livestock methane" in the list of facilities eligible for renewable energy incentive payments.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 22 yeas to 23 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell		X	
Mr. Hall				Mr. Waxman			
Mr. Bilirakis	X			Mr. Markey		X	
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns				Mr. Towns		X	
Mr. Gillmor		X		Mr. Pallone		X	
Mr. Deal	X			Mr. Brown			
Mr. Whitfield	X			Mr. Gordon			
Mr. Norwood		X		Mr. Rush		X	
Ms. Cubin		X		Ms. Eshoo			
Mr. Shimkus				Mr. Stupak		X	
Ms. Wilson	X			Mr. Engel			
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering	X			Mr. Green		X	
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. Allen		X	
Mr. Pitts	X			Mr. Davis			
Ms. Bono	X			Ms. Schakowsky	X		
Mr. Walden	X			Ms. Solis	X		
Mr. Terry	X			Mr. Gonzalez		X	
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers	X			Ms. Baldwin	X		
Mr. Otter				Mr. Ross	X		
Ms. Myrick							
Mr. Sullivan	X						
Mr. Murphy	X						
Mr. Burgess		X					
Ms. Blackburn		X					

4/06/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 9

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Pallone, No. 13, to establish a renewable energy portfolio standard requirement on certain retail electric suppliers, and to set the standard at 1% in 2008 and increasing incrementally by 1% annually to 20% by 2027.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 17 yeas to 30 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher		X	
Mr. Stearns		X		Mr. Towns	X		
Mr. Gillmor				Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield				Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush			
Ms. Cubin				Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel			
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green		X	
Mr. Fossella				Mr. Strickland		X	
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle		X	
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts		X		Mr. Davis			
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez		X	
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan							
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

4/12/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 10

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment by Mr. Rogers, No. 18a, for Congress to encourage no Federal or State permit or lease be issued for new oil and gas slant, directional, or offshore drilling in or under one or more of the Great Lakes, to the Stupak Amendment, No. 18 prohibiting any Federal or State permit or license for new oil and gas slant, directional, or offshore drilling in or under the Great Lakes.

DISPOSITION: **AGREED TO**, by a roll call vote of 26 yeas to 23 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton	X			Mr. Dingell		X	
Mr. Hall	X			Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey		X	
Mr. Upton		X		Mr. Boucher			
Mr. Stearns				Mr. Towns			
Mr. Gillmor				Mr. Pallone		X	
Mr. Deal	X			Mr. Brown		X	
Mr. Whitfield	X			Mr. Gordon		X	
Mr. Norwood	X			Mr. Rush		X	
Ms. Cubin				Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Stupak		X	
Ms. Wilson	X			Mr. Engel		X	
Mr. Shadegg	X			Mr. Wynn		X	
Mr. Pickering	X			Mr. Green	X		
Mr. Fossella				Mr. Strickland		X	
Mr. Blunt				Ms. DeGette		X	
Mr. Buyer	X			Ms. Capps		X	
Mr. Radanovich	X			Mr. Doyle		X	
Mr. Bass	X			Mr. Allen		X	
Mr. Pitts	X			Mr. Davis		X	
Ms. Bono	X			Ms. Schakowsky		X	
Mr. Walden	X			Ms. Solis		X	
Mr. Terry	X			Mr. Gonzalez	X		
Mr. Ferguson		X		Mr. Inslee		X	
Mr. Rogers	X			Ms. Baldwin		X	
Mr. Otter	X			Mr. Ross	X		
Ms. Myrick	X						
Mr. Sullivan	X						
Mr. Murphy	X						
Mr. Burgess	X						
Ms. Blackburn	X						

4/12/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 11

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Davis, No. 19, to strike section 330.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 19 yeas to 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman			
Mr. Bilirakis	X			Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns			
Mr. Gillmor				Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood				Mr. Rush	X		
Ms. Cubin				Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel			
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green		X	
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. Allen	X		
Mr. Pitts		X		Mr. Davis	X		
Ms. Bono	X			Ms. Schakowsky			
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez		X	
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross		X	
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

4/12/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 12

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Ms. DeGette, No. 22, to provide for a National Academy of Sciences review of the Environmental Protection Agency's (EPA) June 2004 report evaluating the impacts of hydraulic fracturing in coal bed methane reservoirs on underground sources of drinking water, and an EPA determination on whether regulation is necessary to ensure that hydraulic fracturing does not endanger underground drinking water sources.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 16 yeas to 30 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns			
Mr. Gillmor				Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin				Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel			
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green		X	
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. Allen	X		
Mr. Pitts		X		Mr. Davis			
Ms. Bono		X		Ms. Schakowsky			
Mr. Walden	X			Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez		X	
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

4/12/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 13

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Ms. Solis, No. 23, to prohibit the injection of diesel fuel into underground sources of drinking water.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 14 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey			
Mr. Upton		X		Mr. Boucher			
Mr. Stearns				Mr. Towns			
Mr. Gillmor				Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin				Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel			
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green		X	
Mr. Fossella		X		Mr. Strickland			
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich				Mr. Doyle		X	
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts		X		Mr. Davis			
Ms. Bono		X		Ms. Schakowsky			
Mr. Walden	X			Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez		X	
Mr. Ferguson				Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter				Mr. Ross		X	
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

4/12/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 14

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Ms. Baldwin, No. 25, to grant authority to the Department of Energy (DOE) to defer purchases of petroleum for the Strategic Petroleum Reserve above the 700 million barrel capacity level and in making any such deferral: (1) require DOE to utilize the market-based analysis it used prior to 2002 and (2) require DOE to analyze and report how such purchases of petroleum will impact domestic/foreign supply and prices, and report the implications to our national security if purchases are deferred.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 21 yeas to 24 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns				Mr. Towns			
Mr. Gillmor				Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin				Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel			
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
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. Allen	X		
Mr. Pitts		X		Mr. Davis			
Ms. Bono		X		Ms. Schakowsky			
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson				Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter				Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

4/12/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 15

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Markey, No. 26, to strike section 320.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 18 yeas to 35 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns		X	
Mr. Gillmor				Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon		X	
Mr. Norwood		X		Mr. Rush		X	
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn		X	
Mr. Pickering		X		Mr. Green		X	
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. Allen	X		
Mr. Pitts		X		Mr. Davis	X		
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez		X	
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross		X	
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn							

4/12/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 16

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Ms. Solis, No. 27, to strike section 371 through 379, Subtitle D, Refining Revitalization.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 22 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns				Mr. Towns			
Mr. Gillmor				Mr. Pallone	X		
Mr. Deal				Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood				Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson	X			Mr. Engel			
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green		X	
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. Allen	X		
Mr. Pitts		X		Mr. Davis	X		
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross		X	
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

4/12/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 17

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Markey, No. 35, to. Direct the Secretary of Energy to create a peer-reviewed, competitively selected grant program to assess whether there are health impacts associated with living near nuclear reactors or other nuclear facilities, and to provide authorizations.

DISPOSITION: **NOT AGREED TO,** by a roll call vote of 16 yeas to 23 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton				Mr. Boucher			
Mr. Stearns				Mr. Towns			
Mr. Gillmor				Mr. Pallone			
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood				Mr. Rush	X		
Ms. Cubin				Ms. Eshoo	X		
Mr. Shimkus	X			Mr. Stupak		X	
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg				Mr. Wynn		X	
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland			
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich				Mr. Doyle		X	
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts				Mr. Davis			
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson				Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross		X	
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn							

4/13/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 18

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Markey, No. 36, to require a National Academy of Sciences study of the securing of spent nuclear waste and direct the Nuclear Regulatory Commission to hold a rulemaking to upgrade spent nuclear fuel storage standards based on the results of the study.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 13 yeas to 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton				Mr. Boucher			
Mr. Stearns				Mr. Towns			
Mr. Gillmor				Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon		X	
Mr. Norwood				Mr. Rush			
Ms. Cubin				Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak		X	
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg				Mr. Wynn		X	
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella				Mr. Strickland		X	
Mr. Blunt				Ms. DeGette			
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle		X	
Mr. Bass				Mr. Allen			
Mr. Pitts				Mr. Davis			
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson				Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross		X	
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

4/13/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 19

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Markey No. 41, to save 10% of oil that would be used by cars and light trucks by model year 2015 and beyond if the fuel economy standards stayed the same as they are projected to be in model year 2007 by directing NHTSA to promulgate fuel economy regulations starting in model year 2008 that ensure (1) that the average fuel economy of automobiles manufactured by a manufacturer in model year 2015 and beyond is at least 33 miles per gallon, (2) that improvements to fuel economy do not degrade automobile safety and, (3) that the retention of jobs in the US automobile manufacturing sector is maximized.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 10 yeas to 36 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell		X	
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher		X	
Mr. Stearns				Mr. Towns		X	
Mr. Gillmor				Mr. Pallone			
Mr. Deal		X		Mr. Brown			
Mr. Whitfield		X		Mr. Gordon		X	
Mr. Norwood				Mr. Rush			
Ms. Cubin				Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak		X	
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn		X	
Mr. Pickering		X		Mr. Green		X	
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. Allen	X		
Mr. Pitts		X		Mr. Davis			
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis			
Mr. Terry		X		Mr. Gonzalez		X	
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross		X	
Ms. Myrick							
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

4/13/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 20

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Dingell, No. 47, to establish electric reliability standards, improve operation of the electric transmission system through open access, amend PURPA, authorize the Federal Energy Regulatory Commission to bar fraudulent behavior in electricity and natural gas markets, increase penalties under the Federal Power Act, require audit trails and provide for greater transparency in gas and electricity markets, direct the Securities and Exchange Commission to review PUHCA exemptions, and provide for consumer protections.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 22 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns		X		Mr. Towns	X		
Mr. Gillmor				Mr. Pallone			
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin				Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg				Mr. Wynn	X		
Mr. Pickering		X		Mr. Green			
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. Allen	X		
Mr. Pitts		X		Mr. Davis			
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 21

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Boucher, No. 51, to strike section 1221, regarding the Federal Energy Regulatory Commission's backup siting authority of electric transmission facilities.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 13 yeas to 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns				Mr. Towns		X	
Mr. Gillmor				Mr. Pallone			
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin				Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel			
Mr. Shadegg				Mr. Wynn		X	
Mr. Pickering		X		Mr. Green			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt		X		Ms. DeGette			
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich				Mr. Doyle		X	
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts		X		Mr. Davis			
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis			
Mr. Terry		X		Mr. Gonzalez		X	
Mr. Ferguson		X		Mr. Inslee			
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross		X	
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 22

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Ms. Eshoo, No. 52, to require the Federal Energy Regulatory Commission to order the refund of unjust and unreasonable electricity rates paid by the State of California in 2001.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 20 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns				Mr. Towns	X		
Mr. Gillmor				Mr. Pallone			
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin				Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green		X	
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt		X		Ms. DeGette			
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass				Mr. Allen	X		
Mr. Pitts		X		Mr. Davis			
Ms. Bono	X			Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis			
Mr. Terry		X		Mr. Gonzalez			
Mr. Ferguson		X		Mr. Inslee			
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 23

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Strickland, No. 53, to strike certain language in section 1211 to eliminate the spending caps on the Electric Reliability Organization and authorization.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 16 yeas to 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey			
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns				Mr. Towns		X	
Mr. Gillmor				Mr. Pallone			
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin				Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt		X		Ms. DeGette			
Mr. Buyer		X		Ms. Capps			
Mr. Radanovich		X		Mr. Doyle			
Mr. Bass				Mr. Allen	X		
Mr. Pitts		X		Mr. Davis			
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis			
Mr. Terry		X		Mr. Gonzalez			
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 24

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Inslee, No. 62, to strike section 1286, regarding sanctity of contract.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 18 yeas to 30 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns				Mr. Towns	X		
Mr. Gillmor				Mr. Pallone			
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood		X		Mr. Rush		X	
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn			
Mr. Pickering		X		Mr. Green		X	
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. Allen	X		
Mr. Pitts		X		Mr. Davis			
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez		X	
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers				Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross		X	
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 25

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Markey, No. 63, to protect consumers and investors from the adverse effects of failed utility holding company diversifications into unregulated businesses by requiring "ring fencing" to insulate utility operations from being burdened by debts or other financial obligations of unregulated businesses.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 15 yeas to 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton				Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns				Mr. Towns		X	
Mr. Gillmor				Mr. Pallone			
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon		X	
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin				Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn			
Mr. Pickering		X		Mr. Green		X	
Mr. Fossella		X		Mr. Strickland			
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich				Mr. Doyle			
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts		X		Mr. Davis		X	
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden				Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez		X	
Mr. Ferguson		X		Mr. Inslee			
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross		X	
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn							

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COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 26

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Allen, No. 65, to strike section 1443 relating to attainment dates for downwind ozone nonattainment areas.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 19 yeas to 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns				Mr. Towns			
Mr. Gillmor				Mr. Pallone			
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood				Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn		X	
Mr. Pickering		X		Mr. Green		X	
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. Allen	X		
Mr. Pitts		X		Mr. Davis	X		
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez		X	
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 27

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Inslee, No. 67, to express a sense of the Congress on climate change.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 18 yeas to 30 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell		X	
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher		X	
Mr. Stearns				Mr. Towns			
Mr. Gillmor				Mr. Pallone			
Mr. Deal		X		Mr. Brown			
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood				Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering				Mr. Green	X		
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. Allen	X		
Mr. Pitts		X		Mr. Davis	X		
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross		X	
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 28

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Ms. Capps, No. 69, to strike methyl tertiary butyl ether, or MTBE, in each place it appears in section 1502. Eliminates MTBE from the fuels safe harbor.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 20 yeas to 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns		X		Mr. Towns			
Mr. Gillmor				Mr. Pallone			
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood				Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green		X	
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. Allen	X		
Mr. Pitts		X		Mr. Davis	X		
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez		X	
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross		X	
Ms. Myrick							
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 29

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An en bloc amendment to the Committee Print by Ms. Capps, No. 71, to (1) strike section 1503; 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 23 yeas to 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns				Mr. Towns	X		
Mr. Gillmor				Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood				Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green		X	
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. Allen	X		
Mr. Pitts		X		Mr. Davis	X		
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez		X	
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn							

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COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 30

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Stupak Amendment by Mr. Fossella, No. 77a, to give States the option to either: (1) require secondary containment of new installations of underground storage tank systems or secondary containment of replaced underground storage tanks or piping if the system is within 1000 feet of a community drinking water system or a potable drinking water well, or (2) require tank manufactures and installers to meet professional or state standards and show evidence of financial responsibility for cleanups due to releases related to faulty installation or products.

DISPOSITION: **AGREED TO**, by a roll call vote of 27 yeas to 25 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton	X			Mr. Dingell		X	
Mr. Hall	X			Mr. Waxman			
Mr. Bilirakis	X			Mr. Markey		X	
Mr. Upton		X		Mr. Boucher		X	
Mr. Stearns				Mr. Towns		X	
Mr. Gillmor				Mr. Pallone		X	
Mr. Deal	X			Mr. Brown		X	
Mr. Whitfield	X			Mr. Gordon	X		
Mr. Norwood				Mr. Rush		X	
Ms. Cubin	X			Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Stupak		X	
Ms. Wilson	X			Mr. Engel		X	
Mr. Shadegg	X			Mr. Wynn		X	
Mr. Pickering	X			Mr. Green		X	
Mr. Fossella	X			Mr. Strickland			
Mr. Blunt	X			Ms. DeGette		X	
Mr. Buyer	X			Ms. Capps		X	
Mr. Radanovich	X			Mr. Doyle		X	
Mr. Bass		X		Mr. Allen		X	
Mr. Pitts	X			Mr. Davis		X	
Ms. Bono	X			Ms. Schakowsky		X	
Mr. Walden	X			Ms. Solis		X	
Mr. Terry	X			Mr. Gonzalez		X	
Mr. Ferguson	X			Mr. Inslee		X	
Mr. Rogers	X			Ms. Baldwin		X	
Mr. Otter	X			Mr. Ross		X	
Ms. Myrick	X						
Mr. Sullivan	X						
Mr. Murphy	X						
Mr. Burgess	X						
Ms. Blackburn	X						

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COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 31

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Stupak, No. 77, requiring secondary containment for new and replacement tanks installed within 1,000 feet of any existing community water system or existing potable drinking water well or other sensitive place, as amended by the Fossella amendment #77a, to give states the option to either: (1) require secondary containment of new installations of underground storage tank systems or secondary containment of replaced underground storage tanks or piping if the system is within 1000 feet of a community drinking water system or a potable drinking water well, or (2) require tank manufactures and installers to meet professional or state standards and show evidence of financial responsibility for cleanups due to releases related to faulty installation or products.

DISPOSITION: **AGREED TO**, by a roll call vote of 27 yeas to 25 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton	X			Mr. Dingell		X	
Mr. Hall	X			Mr. Waxman			
Mr. Bilirakis	X			Mr. Markey		X	
Mr. Upton		X		Mr. Boucher		X	
Mr. Stearns				Mr. Towns		X	
Mr. Gillmor				Mr. Pallone		X	
Mr. Deal	X			Mr. Brown		X	
Mr. Whitfield	X			Mr. Gordon	X		
Mr. Norwood				Mr. Rush		X	
Ms. Cubin	X			Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Stupak		X	
Ms. Wilson	X			Mr. Engel		X	
Mr. Shadegg	X			Mr. Wynn		X	
Mr. Pickering	X			Mr. Green		X	
Mr. Fossella	X			Mr. Strickland			
Mr. Blunt	X			Ms. DeGette		X	
Mr. Buyer	X			Ms. Capps		X	
Mr. Radanovich	X			Mr. Doyle		X	
Mr. Bass		X		Mr. Allen		X	
Mr. Pitts	X			Mr. Davis		X	
Ms. Bono	X			Ms. Schakowsky		X	
Mr. Walden	X			Ms. Solis		X	
Mr. Terry	X			Mr. Gonzalez		X	
Mr. Ferguson	X			Mr. Inslee		X	
Mr. Rogers	X			Ms. Baldwin		X	
Mr. Otter	X			Mr. Ross		X	
Ms. Myrick	X						
Mr. Sullivan	X						
Mr. Murphy	X						
Mr. Burgess	X						
Ms. Blackburn	X						

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COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 32

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Ms. Capps, No. 78, to establish a periodic inspection requirement of three years for underground storage tanks regulated under the Solid Waste Disposal Act.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 24 yeas to 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns		X		Mr. Towns	X		
Mr. Gillmor				Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood				Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland			
Mr. Blunt		X		Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts		X		Mr. Davis	X		
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

4/13/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 33

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Mr. Markey, No. 79, to strike paragraph (1) in section 924(c) and strike section 926 striking the Advanced Fuel Cycle Initiative.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 15 yeas to 37 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns	X		
Mr. Gillmor				Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon		X	
Mr. Norwood				Mr. Rush		X	
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus				Mr. Stupak		X	
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn		X	
Mr. Pickering		X		Mr. Green		X	
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. Allen	X		
Mr. Pitts		X		Mr. Davis		X	
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez		X	
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross		X	
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

4/13/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 34

Bill: Committee Print, Energy Policy Act of 2005.

AMENDMENT: An amendment to the Committee Print by Ms. Wilson, No. 82, to add a new title to the bill entitled Indian Energy.

DISPOSITION: **AGREED TO**, by a roll call vote of 33 yeas to 20 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton	X			Mr. Dingell		X	
Mr. Hall	X			Mr. Waxman			
Mr. Bilirakis	X			Mr. Markey		X	
Mr. Upton	X			Mr. Boucher			
Mr. Stearns		X		Mr. Towns	X		
Mr. Gillmor				Mr. Pallone	X		
Mr. Deal	X			Mr. Brown		X	
Mr. Whitfield	X			Mr. Gordon		X	
Mr. Norwood	X			Mr. Rush		X	
Ms. Cubin	X			Ms. Eshoo		X	
Mr. Shimkus				Mr. Stupak		X	
Ms. Wilson	X			Mr. Engel	X		
Mr. Shadegg	X			Mr. Wynn	X		
Mr. Pickering	X			Mr. Green	X		
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. Allen		X	
Mr. Pitts	X			Mr. Davis		X	
Ms. Bono	X			Ms. Schakowsky		X	
Mr. Walden	X			Ms. Solis		X	
Mr. Terry	X			Mr. Gonzalez		X	
Mr. Ferguson	X			Mr. Inslee		X	
Mr. Rogers	X			Ms. Baldwin		X	
Mr. Otter	X			Mr. Ross		X	
Ms. Myrick	X						
Mr. Sullivan	X						
Mr. Murphy	X						
Mr. Burgess	X						
Ms. Blackburn	X						

4/13/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 35

Bill: Committee Print, Energy Policy Act of 2005.

MOTION: A motion by Mr. Barton to order the Committee Print reported to the House, amended.

DISPOSITION: **AGREED TO,** by a roll call vote of 39 yeas to 16 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton	X			Mr. Dingell		X	
Mr. Hall	X			Mr. Waxman			
Mr. Bilirakis	X			Mr. Markey		X	
Mr. Upton	X			Mr. Boucher	X		
Mr. Stearns	X			Mr. Towns	X		
Mr. Gillmor				Mr. Pallone		X	
Mr. Deal	X			Mr. Brown		X	
Mr. Whitfield	X			Mr. Gordon	X		
Mr. Norwood	X			Mr. Rush	X		
Ms. Cubin	X			Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Stupak		X	
Ms. Wilson	X			Mr. Engel		X	
Mr. Shadegg	X			Mr. Wynn	X		
Mr. Pickering	X			Mr. Green	X		
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. Allen		X	
Mr. Pitts	X			Mr. Davis		X	
Ms. Bono	X			Ms. Schakowsky		X	
Mr. Walden	X			Ms. Solis		X	
Mr. Terry	X			Mr. Gonzalez	X		
Mr. Ferguson	X			Mr. Inslee		X	
Mr. Rogers	X			Ms. Baldwin		X	
Mr. Otter	X			Mr. Ross	X		
Ms. Myrick	X						
Mr. Sullivan	X						
Mr. Murphy	X						
Mr. Burgess	X						
Ms. Blackburn	X						

4/13/2005

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held legislative and oversight hearings and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of the Energy Policy Act of 2005 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. 1640, the Energy Policy Act of 2005, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 19, 2005.

Hon. JOE BARTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1640, the Energy Policy Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lisa Cash Driskill.

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 1640—Energy Policy Act of 2005

Summary: H.R. 1640 would authorize funding for several programs aimed at energy production, conservation, and research and development. It would authorize the use of energy savings performance contracts (ESPCs), make several changes to the regulatory framework governing the nation's electricity system, reauthorize the Low-Income Home Energy Assistance Program (LIHEAP), and

establish a program for hydrogen and other alternative fuel-powered cars.

Most of the bill's estimated costs would stem from changes in spending subject to appropriation. We estimate that implementing H.R. 1640 would cost $5.4 billion in 2006, and $33.5 billion over the 2006–2010 period, assuming appropriation of the necessary amounts.

CBO estimates that enacting H.R. 1640 also would increase direct spending by $159 million in 2006, by $1.2 billion over the 2006–2010 period, and by $1.7 billion over the 2006–2015 period. CBO estimates that enacting the bill would increase revenues by $38 million in 2006, by $190 million over the 2006–2010 period, and by $380 million over the 2006–2015 period.

H.R. 1640 contains numerous mandates as defined in the Unfunded Mandates Reform Act (UMRA) that would affect both intergovernmental and private-sector entities. Based on its review of the bill, CBO expects that the mandates (new requirements, limits on existing rights, and preemptions) contained in the bill's titles on motor fuels (title XV), nuclear energy (title VI), electricity (title XII), and energy efficiency (title I) would have the greatest impact on state and local governments and private-sector entities.

CBO estimates that the cost of complying with intergovernmental mandates, in aggregate, could be significant and likely would exceed the threshold established in UMRA ($62 million in 2005, adjusted annually for inflation) at some point over the next five years because we expect that future damage awards for state and local governments under the bill's safe harbor provision would likely be reduced. That provision would shield manufacturers of motor fuels and other persons from liability for claims based on defective product relating to motor fuels containing methyl tertiary butyl ether or renewable fuel.

CBO cannot determine whether the aggregate cost of the private-sector mandates in the bill would exceed the threshold established in UMRA primarily for two reasons. First, some of the requirements established by the bill would hinge on future regulatory action, about which information is not available. Second, UMRA does not specify whether CBO should measure the cost of extending a mandate relative to the mandate's current costs or assume that the mandate will expire and measure the costs of the mandate's extension as if the requirement were new. The bill would extend the existing mandate that requires licensees to pay fees to offset roughly 90 percent of the Nuclear Regulatory Commission's (NRC's) annual appropriation. Measured against the costs that would be incurred if current law remains in place, the cost to the private sector of extending this mandate would exceed the annual threshold established in UMRA ($123 million in 2005, adjusted annually for inflation).

Estimated Cost to the Federal Government: The estimated budgetary impact of H.R. 1640 is shown in Table 1. The costs of this legislation fall within budget functions 270 (energy), 300 (natural resources and environment), 350 (agriculture), and 800 (general government).

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF H.R. 1640

	By fiscal year, in millions of dollars—				
	2006	2007	2008	2009	2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	11,256	11,723	6,759	6,224	5,756
Estimated Outlays	5,359	8,551	6,956	6,466	6,130
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority	214	450	300	150	100
Estimated Outlays	159	378	343	160	120
CHANGES IN REVENUES					
Estimated Revenues	38	38	38	38	38

Basis of Estimate: For this estimate, CBO assumes that H.R. 1640 will be enacted near the end of fiscal year 2005. Additionally, CBO assumes that the full estimated amounts will be appropriated for each year and that spending will follow historical rates for ongoing activities. Table 2 details the components of estimated spending subject to appropriation under H.R. 1640. (Table 3, provided later, details the bill's direct spending effects.)

TABLE 2.—ESTIMATED EFFECTS ON H.R. 1640 ON SPENDING SUBJECT TO APPROPRIATION

	By fiscal year, in millions of dollars—					
	2005	2006	2007	2008	2009	2010
SPENDING SUBJECT TO APPROPRIATION						
Discretionary Spending Under Current Law:						
Authorization Level [1]	4,604	0	0	0	0	0
Estimated Outlays	4,104	1,736	434	91	29	29
Proposed Changes:						
Specified Authorization Level	0	10,890	11,302	6,311	5,893	5,367
Estimated Outlays	0	5,140	8,228	6,629	6,107	5,729
Estimated Authorizations:						
Energy Conservation Measures (Title I):						
Estimated Authorization Level	0	74	95	88	72	72
Estimated Outlays	0	61	95	88	73	72
Renewable Energy Production Incentive (Title II):						
Estimated Authorization Level	0	100	23	13	8	27
Estimated Outlays	0	70	46	16	10	21
Loan Guarantees for Coal Projects (Title IV):						
Estimated Authorization Level	0	1	125	125	75	75
Estimated Outlays	0	1	10	30	64	105
Energy Development on Indian Land (Title V):						
Estimated Authorization Level	0	83	98	93	83	73
Estimated Outlays	0	31	63	90	94	86
Nuclear Energy Provisions (Title VI):						
Estimated Authorization Level	0	45	71	71	86	86
Estimated Outlays	0	42	72	71	86	86
Loan Guarantees for Ethanol Production (Title XV):						
Estimated Authorization Level	0	50	0	50	0	50
Estimated Outlays	0	5	25	25	25	25
Other Provisions:						
Estimated Authorization Level	0	13	9	8	8	7
Estimated Outlays	0	10	12	8	8	7
Subtotal, Estimated Authorizations:						
Estimated Authorization Level	0	366	421	448	331	389
Estimated Outlays	0	219	323	327	359	402
Total Proposed Changes:						
Estimated Authorization Level	0	11,256	11,723	6,759	6,224	5,756
Estimated Outlays	0	5,359	8,551	6,956	6,466	6,130
Discretionary Spending Under H.R. 1640:						
Estimated Authorization Level	4,604	11,256	11,723	6,759	6,224	5,756

TABLE 2.—ESTIMATED EFFECTS ON H.R. 1640 ON SPENDING SUBJECT TO APPROPRIATION—Continued

	By fiscal year, in millions of dollars—					
	2005	2006	2007	2008	2009	2010
Estimated Outlays	4,104	7,095	8,985	7,047	6,495	6,159

[1] The 2005 amount is the sum appropriated for that year for energy research and development programs and for LIHEAP.

Spending subject to appropriation—overview

H.R. 1640 contains several provisions that specify amounts authorized to be appropriated for the Low-Income Home Energy Assistance Program (LIHEAP), energy research and development programs, and energy conservation. Additionally, the bill would authorize unspecified amounts to be appropriated for incentives to use renewable energy, loan guarantees for certain types of energy facilities, and several other energy programs, studies, and reports. Assuming appropriation of the necessary amounts, CBO estimates that implementing these provisions would cost $5.4 billion in 2006 and $33.5 billion over the 2006–2010 period. The following two sections detail the costs of specified and estimated authorizations. (A discussion of direct spending and revenue effects follows the next two sections.)

Spending subject to appropriation: specified authorizations

CBO estimates that implementing the bill's programs with specified authorizations would cost about $32 billion over the 2006–2010 period. That estimate assumes that all amounts authorized to be appropriated for these programs—about $40 billion over the next five years—will be provided each year.

Low-Income Home Energy Assistance Program (LIHEAP). LIHEAP is the largest program that would be authorized by the legislation. The bill would authorize funding of $5.1 billion for each of the next two years. Assuming appropriation of the authorized amounts, CBO estimates that implementing this provision would cost about $7.9 billion over the 2006–2010 period.

Under current law, a total of $2.2 billion was appropriated for fiscal year 2005. These funds' include $1.9 billion for the basic formula grant for states to provide energy assistance for low-income households, and $300 million for additional energy assistance for emergency needs. Implementing H.R. 1640 would increase the authorization for the basic formula grant for states to $5.1 billion in fiscal year 2006 and extend this authorized level through fiscal year 2007. The extension of the basic formula grant would automatically extend the authorization of emergency funding through fiscal year 2007 at $600 million per year. The emergency funds are made available only after a formal request by the President that includes a designation of the amount requested as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act.

Other Specified Program Authorizations. The bill also would specifically authorize funds "to be appropriated for several other energy-related programs. CBO estimates that over the 2006–2010 period implementing H.R. 1640 would cost:

- Nearly $2 billion for the Department of Energy's (DOE's) energy conservation programs (title I);

- $1.5 billion for renewable energy grants and research projects (title II);
- $1.4 billion to research and demonstrate new technologies that use coal (title IV);
- $390 million for research on nuclear energy technologies, including a new program to research, develop, design, construct, and operate an Advanced Reactor Hydrogen Cogeneration Project (title VI);
- $1.4 billion for research and demonstration of vehicles that use alternative transportation fuels (title VII);
- $3.4 billion for research, development, and demonstration of hydrogen-based fuel technologies and infrastructure for hydrogen fuels (title VIII);
- $9.5 billion to research energy efficiency technologies, renewable energy sources, fossil energy development, and other energy sources and new technologies (title IX);
- $400 million for research and regulation to enhance the reliability of the nation's electricity system as well as incentive payments for advanced power technologies (title XII);
- $300 million for research, construction, and support of electricity generation units using oxygen-fuel technology (title XIV); and
- $3.8 billion for grants to fund clean up of the motor fuel additive methyl tertiary butyl ether (MTBE), to assist producers in eliminating the use of the additive, and to research other fuel additives (title XV).

Spending subject to appropriation: estimated authorizations

(g) Based on information from DOE, the Environmental Protection Agency (EPA), other affected agencies, and industry sources, CBO estimates that H.R. 1640 would authorize the appropriation of an additional $366 million in 2006 and $2 billion over the 2006–2010 period. Key components of this estimate are described below.

Energy Conservation at Federal Agencies. H.R. 1640 would amend several energy conservation goals and requirements that apply to the federal government. CBO estimates that implementing those provisions would cost $389 million over the 2006–2010 period, subject to appropriation of the necessary amounts. Most of those goals, such as reducing energy use by 2 percent per year relative to 2003 consumption and purchasing energy-efficient products when economical, are being pursued under current executive orders. Where practical, the bill would require that hourly electricity meters be installed at all federal buildings by 2012. Such meters would provide data at least once daily and measure hourly consumption of electricity. The data would be available to facility energy managers.

Based on information from the Department of Energy, we assume that it would only be economical to meter 20 percent of the government's inventory of 500,000 buildings and that installing meters would cost, on average, $4,000 per building. We assume that meters would be installed in 20,000 buildings per year until 2012, when the project would be complete. We estimate that implementing the metering provisions of H.R. 1640 would cost $57 million in 2006 and $323 million over the 2006–2010 period. CBO estimates that other requirements in this title, such as monitoring the

equipment installed using energy savings performance contracts, and establishing new programs and rules for making products more energy efficient, would cost $66 million over the next five years.

Based on experience in the private sector, metering the hourly electricity use of buildings can lead to reduced energy consumption and reduce costs enough to recoup the cost of installing meters within two to four years. It is possible that this requirement could lead to a future reduction in appropriations for federal building energy use, but any such savings would depend on how metering information is used by federal agencies. Additionally, metering can reveal where energy use is high, but capital investment and other changes in how federal buildings consume energy would likely be needed to achieve savings. In any case, any savings are not likely to be significant over the next five years because most of the new metering and required capital investment would not be completed until the end of that period or after 2010.

Renewable Energy Production Incentive (REPI). The REPI program currently provides cash payments to public utilities and electric cooperatives that generate energy using renewable sources. The payment is based on the annual kilowatt-hours of electricity generated using qualified renewable energy sources. Section 202 of the bill would reauthorize the REPI program for an additional 20 years, and make Indian tribes eligible for the program. Annual funding appropriated for the program has not kept pace with applications for payment from eligible utilities. Specifically, eligible utilities have generated electricity from renewable resources since 1994 in an amount that qualifies for about $76 million in REPI payments that have not been appropriated. Based on information from DOE, CBO estimates that fully funding this program, including the backlog of applications, would cost $70 million in 2006 and $163 million over the 2006–2010 period.

Loan Guarantees for Coal Projects. Title IV would authorize DOE to guarantee loans for coal gasification power plants. Assuming appropriation of the necessary amounts, CBO estimates that implementing this provision would cost about $210 million over the 2006–2010 period.

Under credit reform procedures, funds must be appropriated in advance to cover the subsidy cost of such loan guarantees, measured on a present-value basis. The costs of such subsidies could vary widely depending on the terms of the contracts and the financial and technical risk associated with the different types of projects. According to Standard and Poors, the cumulative default risk for projects rated as speculative investments can range from about 20 percent to almost 60 percent, depending on a project's cash flows and contractual terms. Subsidy costs also are affected by amounts recovered by the government in the event of default, which in turn depend on the value of the security backing the guarantee as well as contractual protections.

H.R. 1640 would authorize DOE to guarantee loans for gasification projects that use coal and petroleum coke as feedstocks. Section 412 would allow DOE to provide a loan guarantee for a 400 megawatt project that uses integrated gasification combined-cycle technology and sells power in deregulated energy markets at competitive rates without subsidies from ratepayers. Section 414 would

authorize the department to guarantee loans for five or more projects that use petroleum coke gasification technology. Neither provision sets any limits on the amount or terms of the loan guarantees.

Gasification projects would require large capital investments, ranging from over $500 million for a 400 megawatt gasification plant to $800 million or more for a plant that would produce power and possibly other fuels using petroleum coke. Such gasification technologies are not new—they have been tested and deployed to some extent in other countries—but they have not been economically competitive in the United States. Profitability would depend on numerous factors, including future electricity and fuel prices; the price, quality, and availability of feedstocks; and various regulatory approvals.

For this estimate, CBO assumes that DOE would guarantee investments totaling about $2 billion over the next five years, which would allow for the planning and construction of the coal gasification plant and at least two petroleum coke facilities. Given the current outlook for energy prices, CBO expects that the credit risk of gasification loans would likely fall within the middle of the range for speculative investments, but the risk of default could be higher or lower depending on the contract terms. CBO estimates that loan guarantees under this section would involve a 20 percent subsidy (on average), assuming only modest recoveries in the absence of any statutory requirements for collateral. Thus, we estimate that implementing this provision would cost $210 million over the 2006–2010 period, assuming appropriation of the necessary amounts. Additional outlays of $190 million would occur after 2010 as construction progressed on such projects.

Indian Energy Programs. Title V would authorize the Department of the Interior (DOI) to provide grants and loans to Indian tribes for energy resource development projects. That title also would authorize DOE to provide competitive grants for energy development projects on Indian land and to establish an Office of Indian Energy Policy and Programs. In total, CBO estimates that these programs would cost $31 million in 2006, and $364 million over the 2006–2010 period.

DOI Grants and Loans. The bill would authorize DOI to provide loans and grants to Indian tribes for energy resource development and to provide grants to Indian tribes and tribal consortia for the development of tribal energy resources, feasibility studies, and the enforcement of tribal laws to protect the environment. Based on information from DOI, CBO estimates that such grants and loans would cost about $20 million in 2006 and $170 million over the 2006–2010 period.

DOE Loan Guarantees. Title V would authorize the Secretary of Energy to guarantee up to $2 billion in loans for energy projects on Indian lands. Based on information from the Council of Energy Resource Tribes, CBO expects that DOE would provide loan guarantees for a variety of projects on Indian lands, including electricity transmission lines, fossil fuel electricity generation, and renewable fuels. CBO expects that the subsidy cost of loans guaranteed under this program could range from 2 or 3 percent for routine conventional projects to 50 percent or more for unproven technologies.

For this estimate, CBO assumes that about half of the program would provide loan guarantees for electricity transmission lines, which should pose relatively little credit risk under standard contract terms. We assume that the remaining half would be divided between fossil fuel electricity generation and renewable fuels. Under these assumptions, we estimate that the average subsidy cost for loans guaranteed under the program would be 10 percent. CBO expects that loans would be disbursed over the next 10 years, and we estimate that the loan guarantee program would cost $3 million in 2006 and $136 million over the 2006–2010 period, assuming appropriation of the necessary amounts for the estimated subsidy costs.

DOE Grants. This title would authorize DOE to distribute grants to Indian tribes under two new programs. One would help tribes with regulatory aspects of their energy resources while the other would help tribes to develop tribal energy resource agreements through leases, business agreements, and rights-of-way. CBO estimates that the cost for grants and administration of the programs would average about $9 million annually.

Office of Indian Energy Policy and Programs. The bill also would authorize DOE to establish a new office that would be responsible for various grant and loan programs authorized under title V. Based on information from DOE, CBO estimates that the salaries, expenses, benefits, space, and travel costs of the DOE employees that would administer such programs would be about $3 million annually.

Nuclear Energy Provisions. Section 638 would allow the Department of Energy to create a national stockpile of low-enriched uranium. Title VI would amend the Nuclear Regulatory Commission's authority to collect fees, and modify its security and licensing programs. CBO estimates that implementing those provisions would cost $357 million over the 2006–2010 period, subject to appropriation of the necessary amounts.

Uranium Stockpile. The stockpile would constitute a reserve supply of low-enriched uranium that could be used by commercial nuclear power plants, but could only be sold or transferred under certain restrictions and conditions. The bill would allow DOE to obtain material for the stockpile from highly enriched uranium recovered from dismantled nuclear warheads from Russia and naturally mined or enriched uranium from U.S. companies.

For this estimate, CBO assumes that DOE would purchase about 1.5 tons of highly enriched uranium from Russia each year over the 2006–2010 period for delivery to and storage by DOE at one or more national stockpile sites. The highly enriched uranium would be converted to low-enriched uranium by Russia prior to purchase by DOE. The conversion process involves diluting the highly enriched uranium with natural uranium. After conversion, DOE would receive about 50 tons of low-enriched uranium a year that would be held as a long-term reserve. Obtaining that amount is similar to what DOE proposed to the Congress in 2003.

Assuming that negotiations between the United States and Russia to purchase the low-enriched uranium might take up to a year, CBO estimates that DOE would only purchase 25 tons of low-enriched uranium in 2006 but would make additional purchases of 50 tons a year over the 2007–2010 period. CBO estimates that the cost

for the roughly 50 tons of low-enriched uranium would total about $60 million a year over the 2007–2010 period. This amount includes the costs for the dilution services (about $30 million), the costs for the natural uranium (about $30 million), and shipping costs (less than $1 million). The unit of measurement for the dilution services is commonly referred to as a separative work unit or SWU. Based on information provided by industry, CBO estimates that it would take about 275,000 SWUs to convert 1.5 tons of highly enriched uranium to 50 tons of low-enriched uranium. Assuming a market price of about $110 per SWU, CBO estimates that the cost for diluting the highly enriched uranium would total about $30 million a year.

Based on conversion factors provided by industry, roughly one million pounds of natural uranium would be used in the dilution process to produce 50 tons of low-enriched uranium. Assuming a market price of roughly $30,000 per pound, CBO estimates that the cost of the natural uranium would total another $30 million a year over the 2006–2010 period.

Thus, CBO estimates that the costs to obtain the low-enriched uranium would total $30 million in 2006 and $270 million over the 2006–2010 period. CBO estimates that there would be no significant costs to store the low-enriched uranium because there is sufficient storage capacity at existing DOE sites, such as the Savannah River Site in South Carolina and the Paducah Plant in Kentucky.

Nuclear Regulatory Commission Fees, and Security and Licensing Programs. H.R. 1640 would require the Nuclear Regulatory Commission update its security programs for the facilities it regulates, establish that it would be the licensing and regulatory authority for the Advanced Reactor Hydrogen Co-generation Project established under the bill, and change the fee collection system currently used by the agency. Based on information from NRC, CBO estimates that these provisions would cost $12 million in 2006 and $87 million over the 2006–2010 period.

Security Programs. The bill would require that NRC update and initiate several studies, rulemakings, and programs related to security at the nation's nuclear power plants. It would require NRC to study the potential threats to nuclear facilities posed by terrorists and update security rules based on those findings; update the "design basis threat"—the attack scenario nuclear facilities must be capable of defeating; require federal security coordinators in each of the NRC's four regions; establish a training program for federal agencies, the National Guard, and state and local law enforcement and emergency personnel; establish a system to ensure the secure transfer of nuclear materials; and issue rulemakings related to fingerprinting employees of nuclear facilities, safeguarding classified information, and weapons in nuclear facilities. Overall, CBO estimates that these requirements would cost $8 million in 2006 and $37 million over the 2006–2010 period.

Advanced Reactor Hydrogen Co-generation Project Licensing. H.R. 1640 also would require that the NRC license and regulate the Advanced Reactor Hydrogen Co-generation project established in section 654 of the bill. Based on information from the NRC, CBO assumes the agency would need significant additional resources to review site permits, reactor design, and the license applications needed to get such a project approved. Assuming the full author-

ized appropriations are provided to DOE to implement this program on the timeline outlined in the bill, CBO estimates that NRC's licensing and regulatory activities related to the project would cost $2 million in 2006 and $40 million over the 2006–2010 period.

NRC Fee Collection. Under current law, the NRC collects fees from its private licensees that offset its annual appropriation. Such fee collection includes the cost of issuing licenses to some government agencies. In 2005, the NRC was authorized to collect 90 percent of most of its appropriation (CBO estimates such fee collections will total $537 million for the fiscal year). Under current law, fee collections are authorized at 33 percent of the agency's budget for each year after 2005. H.R. 1640 would set fee collection at 90 percent of most of the agency's budget after 2005, establish that licensees not be charged fees for homeland security activities, and require that government agencies pay their licensing and regulatory activity fees, rather than the private sector. The authority to increase future fee assessments would result in lower net appropriations for the NRC. Currently, NRC charges private licensees about $2 million per year for licenses issued to government agencies. Because under H.R. 1640 those fees would come from appropriated funds rather than the private sector, the government would incur a net cost relative to current law to pay them. We estimate that such additional costs would be $2 million in 2006 and $10 million over the 2006–2010 period.

Loan Guarantees for Ethanol Production. Section 1511 would authorize loan guarantees for the construction of facilities to produce ethanol or other commercial byproducts from agricultural residue or municipal solid waste, subject to certain terms and conditions. The bill would not limit the volume or portion of the loans that could be guaranteed, but it would set criteria for project approval, require certain levels of collateral, impose a fee for administrative costs, and terminate the program after 10 years.

CBO expects that projects would be debt-financed and sponsors would recover costs through the sale of ethanol and other recyclable materials. The technology used to process ethanol from such sources is new and not well proven. In addition, prices for the plants' output—ethanol and recycled glass, metal, and paper—have a history of fluctuating widely. Moreover, the profitability of these projects also would depend on the cost of purchased feedstock and, for solid waste facilities, on revenues from "tipping fees" (i.e., those fees charged by the plant to accept municipal solid-waste feedstock). According to DOE, a plant's reliance on feedstock from these sources would increase the credit risk because prices for feedstock can become competitive if demand for such products increases. Likewise, revenues from tipping fees may also fluctuate.

Based on information from DOE, CBO expects that the department would guarantee loans for three projects over the next five years, each with a total construction cost of about $250 million. The types of credit risks associated with producing and marketing ethanolrelated products differ from those for gasification facilities, but CBO expects that the net subsidy rates for both programs would be about the same. Thus, CBO estimates that loans guaranteed under section 1511 would have about a 20 percent subsidy, requiring about $150 million in appropriated funds in the subsidy

costs, with outlays of about $105 million over the 2006–2010 period, assuming appropriation of the necessary amounts.

Electricity Regulations. Title XII would require the Federal Energy Regulatory Commission (FERC) to establish several new rules for managing the nation's electricity system and governing the business practices of the electricity industry. Such rules would affect transmission services, construction and siting permits for building new transmission lines, and the reliability of the nation's electricity transmission infrastructure. The bill also would repeal the Public Utility Holding Company Act of 1935, require FERC to take over certain regulatory procedures currently undertaken by the Securities and Exchange Commission, and amend the Public Utilities Regulatory Policies Act.

Based on information from FERC, CBO estimates that implementing these provisions would cost $11 million in 2006 and $47 million over the 2006–2010 period. Such costs would cover additional data processing and storage, additional staff, and travel related to the agency's new duties. Because FERC recovers 100 percent of its costs through user fees, such additional costs would be offset by an equal change in fees that the commission charges. Hence, these provisions would have no net budgetary impact.

Other Provisions. H.R. 1640 includes several provisions that would authorize various new studies, reports, and activities related to energy consumption and production. These provisions would require federal agencies to:

- Coodinate permitting of new refineries in the United States;
- Study and report to the Congress on air emissions, aviation fuels, and credits for alternative-fueled vehicles;
- Report to the Congress on the degree of energy dependence by the United States;
- Participate in an ozone demonstration project;
- Issue regulations on certain unfair trade and consumer privacy issues;
- Conduct annual surveys on the market share of renewable fuels; and
- Prepare several other reports on energy resources and efficiency.

Based on information from the agencies that would be responsible for implementing these provisions, CBO estimates that these activities would cost $10 million in 2006 and $45 million over the 2006–2010 period, subject to the availability of appropriated funds.

Direct spending and revenues

H.R. 1640 has five provisions that would have a measurable impact on direct spending and revenues. The estimated effects of these provisions are shown in Table 3. The bill would provide permanent authorization for the use of energy savings performance contracts and cap their use at $500 million; establish an Electric Reliability Organization (ERO) to manage the reliability of the nation's electricity system; establish a research and development program to drill for ultra-deep water natural gas and unconventional petroleum resources; allow the Western Area and Southwestern Power Administrations to accept up to $100 million in financing from private sources for electricity transmission projects; and direct

the Department of Energy to reimburse private contractors for certain employee benefits. The bill also would establish a specified minimum level of renewable fuel content for motor fuels sold by refiners, blenders, or importers, but CBO estimates this provision would have a negligible effect on direct spending.

CBO estimates that enacting H.R. 1640 would increase direct spending by $159 million in 2006 and $1.7 billion over the 2006–2015 period. We estimate that enacting the bill would increase net revenues by $38 million in 2006 and by $380 million over the 2006–2015 period. In addition, we estimate that new civil penalties imposed by the bill would result in an increase in revenues of less than $500,000 annually.

TABLE 3.—ESTIMATED DIRECT SPENDING AND REVENUE EFFECTS OF H.R. 1640

	By fiscal year, in millions of dollars—									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN DIRECT SPENDING										
Energy Savings Performance Contracts:										
Estimated Budget Authority	0	300	200	0	0	0	0	0	0	0
Estimated Outlays	0	255	215	30	0	0	0	0	0	0
Electric Reliability Organization (ERO):										
Estimated Budget Authority	50	50	50	50	50	50	50	50	50	50
Estimated Outlays	50	50	50	50	50	50	50	50	50	50
Ultra-deep Water Natural Gas and Unconventional Petroleum Resources:										
Estimated Budget Authority	100	50	50	50	50	50	50	50	50	0
Estimated Outlays	45	63	58	50	50	50	50	50	50	28
Financing of Federal Electricity Transmissions Projects:										
Estimated Budget Authority	0	50	0	50	0	0	0	0	0	0
Estimated Outlays	0	10	20	30	20	20	0	0	0	0
DOE Payment for Employee Benefits:										
Estimated Budget Authority	64	0	0	0	0	0	0	0	0	0
Estimated Outlays	64	0	0	0	0	0	0	0	0	0
Total Changes in Direct Spending Under H.R. 1640:										
Estimated Budget Authority	214	450	300	150	100	100	100	100	100	50
Estimated Outlays	159	378	343	160	120	120	100	100	100	78
CHANGES IN REVENUES										
Fees charged by ERO on Electricity Consumers:										
Estimated Revenues [1]	38	38	38	38	38	38	38	38	38	38

[1] Net of income and payroll tax offsets.

Energy Savings Performance Contracts (ESPCs). Section 105 would permanently extend the authority to enter into ESPCs but would cap total payments under such contracts at $500 million and specify that only DOE, the Department of Defense, and the Department of Veterans Affairs would be eligible to use such contracts, beginning on October 1, 2006. CBO estimates that such agencies would quickly use this authority up to the authorized amount, and thus, the provision would increase direct spending by $500 million over the 2007–2009 period.

ESPCs enable federal agencies to enter into long-term contracts with an energy savings , company (ESCO), for the acquisition of energy-efficient equipment, such as new windows, lighting, and heating, ventilation, and air conditioning systems. Using such equipment can reduce the energy costs for a facility, and the savings from reduced utility payments can be used to pay the con-

tractor for the equipment over time. Because the government does not pay for the equipment at the time it is acquired, the ESCO borrows money from a nonfederal lender to finance the acquisition and installation of the equipment. When it signs the ESPC, the government commits to paying for the full cost of the equipment, as well as the interest costs on the ESCO's borrowing for the project. Since the ESCO faces higher borrowing costs than the U.S. Treasury, total interest payments for the equipment acquisition will be higher than if the government financed the acquisition of the equipment directly with appropriated funds.

The obligation to make payments for the equipment and the financing costs is incurred when the government signs the ESPC. Under the current authority, agencies can use ESPCs to acquire new equipment, paying over a period of up to 25 years, without an appropriation for the full amount of the purchase price. Thus, consistent with governmentwide accounting principles, CBO believes that the budget should reflect that commitment as new obligations at the time that an ESPC is signed, and the authority to enter into these contracts without budget authority for the full amount of the purchase price constitutes direct spending.

CBO's estimate of direct spending reflects an amount equal to the cost of the energy conservation measures as installed, plus the portion of borrowing costs attributable to contract interest rates that exceed U.S. Treasury interest rates. (Borrowing costs equivalent to the amount of Treasury interest that would be paid if the equipment were financed with appropriated funds are not counted against this authority, consistent with the budget scorekeeping of regular interest costs associated with federal spending. That is, Treasury interest effects are not counted as a direct cost or savings to any particular legislative provision.)

Electric Reliability Organization. H.R. 1640 would authorize the Federal Energy Regulatory Commission to exercise authority over the reliability of the nation's electricity transmission system through the establishment of an Electric Reliability Organization (ERO). Under the bill, FERC would select an organization to become the ERO based on several criteria, including the ability of the organization to charge fees to end users of the electricity system to cover its costs. CBO believes the ERO's collections and spending should be included in the federal budget because this new entity would conduct inherently governmental activities that could not be undertaken by a purely private organization.

H.R. 1640 would cap the amount of dues, fees, and other charges collected by the ERO at $50 million per year, until 2015. Thus, we estimate that spending by the ERO would total $50 million in 2006 and $500 million over the next 10 years.

Because the ERO and the regional organizations created by it would be governmental in nature, CBO believes that the collection of these fees should be recorded as revenues in the budget. The increased revenue from the assessments would be offset by 25 percent to reflect reduced receipts of income and payroll taxes. The assessments would add to the costs of the industry, which would be expected to pass them forward to consumers in higher prices. As consumers spend less in other sectors of the economy, wages and profits—and resulting income and payroll taxes—would shrink accordingly. CBO estimates that net revenues collected by an ERO

and its regional organizations would total $38 million in 2006, $190 million over the 2006–2010 period, and $380 million over the 2006–2015 period.

Currently, the federal power marketing administrations, including the Tennessee Valley Authority and the Bonneville Power Administration, pay dues to the regional affiliates of the North American Electric Reliability Council (NERC). We would expect that those payments would continue and would increase under the new regulatory scheme established by the ERO. Any increase in those fees would be offset by changes in the rates charged to customers of the federal agencies.

Ultra-deep Water Natural Gas and Unconventional Petroleum Resources. H.R. 1640 would provide $50 million per year over the 2005–2014 period to establish a new program to research and develop drilling technologies in waters greater than 1,500 meters on the Outer Continental Shelf and for unconventional petroleum resources onshore, such as gas shales or natural gas in tight sand. If successful, such research could eventually lead to greater oil and gas production (and royalty collections) from federal lands. The program would be funded from royalties, rents, and bonuses received by the government for oil and gas drilling on federal land. Such funds are currently deposited into the Treasury and are available for appropriation. CBO estimates that the new program would cost $45 million in 2006 and $494 million over the 2006–2015 period.

Financing of Federal Electricity Transmission Projects. Section 1222 of the bill would authorize DOE's Western Area and Southwestern Power Administrations to accept up to $100 million to assist in the design, development, construction, and operation of transmission projects that would contribute to reducing congestion on existing electricity lines. CBO considers such financing to be equivalent to incurring new federal debt, and thus the spending of such borrowed amounts should be recorded in the budget as direct spending. We estimate that such spending would cost $10 million in 2007 and $100 million over the 2007–2015 period.

DOE Payments for Employee Benefits. Section 640 of the bill would require DOE to ensure that employees of its contractors at certain facilities maintain their retirement and health benefits. Currently, DOE is changing contractors for infrastructure and environmental remediation activities at its Portsmouth and Paducah facilities. Employees working under current contracts are not guaranteed continuity of benefits under the new contracts. This section would require the department to ensure that such employees maintain their benefits. Based on information from DOE and the potential new contractor, up to 500 employees would be eligible for continued benefits under this provision. Based on previous payments to contractors under similar circumstances, we expect that DOE would make an immediate transfer of funds to the new contractor for the estimated future benefits related to pensions, medical, dental, and life insurance benefits for each employee. Based on information from DOE, CBO estimates that this provision would increase direct spending by $64 million in 2006.

Renewable Fuels Mandate. CBO estimates that enacting title XV of H.R. 1640 would not have any significant effect on direct spending or revenues over the 2006–2015 period.

Section 1501 of the bill would require that motor fuels sold by a refiner, blender, or importer contain specified amounts of renewable fuel. The required volume of renewable fuel would start at 3.1 billion gallons in 2005 and escalate to 5 billion gallons for 2012 and increase at the growth in gasoline consumption thereafter. Those amounts are generally less than the amounts of renewable fuels that CBO projects will be used for several years. The bill also would amend the Clean Air Act to eliminate the requirement for gasoline that is sold in certain regions of the country to contain 2 percent oxygen by weight. This provision might lower demand for gasoline oxygenates (including ethanol), because the mandated use of renewable fuels is below CBO's baseline for the use of fuels.

However, the bill also provides for the generation of credits towards meeting the renewable fuel requirement, which can be used to satisfy future years' requirements. Because of the ability of a refiner, blender, or importer to save ethanol-use credits generated in one year to satisfy requirements in a future year, CBO does not expect that the use of renewable fuels would be significantly affected. Accordingly, the costs of federal programs to support farm prices and provide income support would not be significantly affected, with these levels of renewable fuel requirements.

Civil Penalties. H.R. 1640 also could affect governmental receipts and direct spending by establishing and increasing certain civil and criminal penalties. CBO estimates that any resulting increase in receipts and spending would be less than $500,000 annually. Such penalties would be established for violations of regulations relating to:

- Violations of the Price-Anderson Act,
- Nuclear safety at nonprofit institutions,
- Willful destruction of a nuclear facility,
- The reliability of the nation's electricity system,
- Market trading of electricity, and
- The sale of renewable fuels.

Intergovernmental and private-sector impact: H.R. 1640 contains numerous mandates as defined in UMRA that would affect both intergovernmental and private-sector entities.

CBO estimates that the cost of complying with intergovernmental mandates, in aggregate, could be significant and likely would exceed the threshold established in UMRA ($62 million in 2005, adjusted annually for inflation) at some point over the next five years because we expect that future damage awards for state and local governments under the bill's safe harbor provision would likely be reduced. That provision would shield the motor fuels industry from liability under certain conditions.

CBO cannot determine whether the aggregate cost of the private-sector mandates in the bill would exceed the threshold established in UMRA, primarily for two reasons. First, some of the requirements established by the bill would hinge on future regulatory action about which information is not available. Second, UMRA does not specify whether CBO should measure the cost of extending a mandate relative to the mandate's current costs or assume that the mandate will expire and measure the costs of the mandate's extension as if the requirement were new. The bill would extend the existing mandate that requires licensees to pay fees to offset roughly 90 percent of the Nuclear Regulatory Commission's annual appro-

priation. Measured against the costs that would be incurred if current law remains in place, the cost to the private sector of extending this mandate would exceed the annual threshold established in UMRA ($123 million in 2005, adjusted annually for inflation).

Based on its review of the bill, CBO expects that the mandates (new requirements, limits on existing rights, and preemptions) contained in the bill's titles on motor fuels (title XV), nuclear energy (title VI), electricity (title XII), and energy efficiency (title I) would have the greatest impact on state and local governments and private-sector entities.

Ethanol and motor fuels (Title XV)

Safe Harbor. Section 1502 would shield manufacturers of motor fuels and other persons from liability for claims based on defective product relating to motor vehicle fuel containing methyl tertiary butyl ether or renewable fuel. That protection would be in effect as long as the fuel is in compliance with other applicable federal requirements. The provision would impose both an intergovernmental and private-sector mandate as it would limit existing rights to seek compensation under current law. (The provision would not affect other causes of action such as nuisance or negligence.)

Uunder current law, plaintiffs in existing and future cases may stand to receive significant amounts in damage awards, based, at least in part, on claims of defective product. Because section 1502 would apply to all such claims filed on or after September 5, 2003, it would affect more than 100 existing claims filed by local communities, states, and some private companies against oil companies. Individual Judgments and settlements for similar lawsuits over the past several years have ranged from several million dollars to well over $100 million. Based on the size of damages already awarded and on information from industry experts, CBO anticipates that precluding existing and future claims based on defective product would reduce the size of judgments in favor of state and local governments over the next five years. CBO estimates that those reductions would exceed the threshold established in UMRA in at least one of those years. Because significantly fewer such cases are pending for private-sector claimants, CBO does not have a sufficient basis for estimating expected reductions in damage awards for the private sector.

Renewable Fuels Standard. Section 1501 would require domestic refiners, blenders, and importers of gasoline to ensure that gasoline sold or dispensed to consumers in the contiguous United States contains a minimum volume of renewable fuels. The required volume of renewable fuel would start at 3.1 billion gallons in 2005 and increase to 5.0 billion gallons by 2012. Section 1501 also would allow refineries, blenders, and importers to accumulate and trade credits for quantities of renewable fuels. Excess credits from one year could be used in the next. CBO expects that the motor fuels industry would be able to meet the renewable fuels requirement in the first five years that the mandate is in effect (2005 through 2009) without significant additional costs to the industry.

MTBE Ban. Section 1504 would ban the use of methyl tertiary butyl ether (MTBE) in gasoline effective no later than December 31, 2014. At the same time, the bill would allow any state to authorize MTBE use in motor fuels by notifying the EPA. A nation-

wide ban with states opting to continue use of MTBE may not be fundamentally different from the current situation in which states impose their own local bans. Therefore, it is possible that MTBE use would not be greatly affected by the ban under the bill. Moreover, CBO anticipates that the renewable fuels standard established in section 1501 could, on its own, greatly reduce incentives to use MTBE.

CBO cannot determine in which states, if any, the federal MTBE ban would be more constraining than the renewable fuel standard and, therefore, cannot determine the cost of the mandate. In states where the federal ban would be more constraining, the ban could impose costs on refiners and merchant producers. Gasoline refiners would need to replace MTBE with higher-cost blendstocks, and merchant producers would likely convert their operations to the production of less-profitable blendstocks, such as alkylates or isooctane. The bill would authorize appropriations of $250 million annually for fiscal years 2005 through 2012 for federal transition grants to merchant producers to convert their facilities.

Seasonal Variation in Renewable Fuel Use. Section 1501 would direct the Energy Information Administration (EIA) to determine if there are excessive seasonal variations in the amount of renewable fuel blended into gasoline. Refiners might have an incentive to use more of the annual requirement for renewable fuel (mostly ethanol) in the winter months, when evaporative emissions from gasoline are less of a concern. Sharp seasonal changes in the demand for ethanol could lead to large swings in ethanol and gasoline prices. If EIA determines that there are excessive seasonal fluctuations, EPA would impose regulations requiring that at least 35 percent of the renewable fuel standard be blended into gasoline in summer months and another 35 percent be blended in winter months. At this time EPA does not have any information on excessive seasonal variation in renewable fuel use, but expects that such requirements will not be likely. In the event that a determination by EIA triggers additional EPA regulations, the duty to comply with those regulations would constitute a private-sector mandate.

VOC Region Consolidation. Section 1506 would consolidate the regional regulations that limit the emissions of volatile organic compounds (VOCs) from gasoline, by applying the more stringent standards for gasoline sold in the southern United States to gasoline sold in the northern United States. Applying the more-stringent standards would impose a private-sector mandate. According to industry experts, the difference in the stringency of the two standards is small, and therefore, the mandate is not likely to increase industry costs.

Boutique Fuels. Section 1541 would require EPA to promulgate a list of boutique fuels approved by the federal government. The Clean Air Act allows individual states to implement their own clean fuel programs to address local or regional concerns about air quality. The term "boutique fuels" refers to the various specialized gasoline blends made to meet those air quality standards. Section 1541 would limit the total number of fuels on the approved list and would prohibit the addition of new fuels to the list without the removal of an older fuel. The federal list of fuels would supersede any list currently allowed under state implementation plans. In effect, the section would require any refinery currently producing a bou-

tique fuel that is not on the federal list of boutique fuels to cease production of that fuel. According to various industry contacts, most refineries are capable of producing the fuels that are slated to be on the initial list of boutique fuels. CBO estimates that the costs associated with any retooling necessary to comply with the provisions of this section would be minimal, if any.

Underground Storage Tank (UST) Compliance for States. Section 1524 would require the EPA to specify training requirements for operators of USTs and would require states to develop and implement a training strategy for UST operators that is consistent with the EPA requirements. The bill also would require each state and tribe to develop an implementation report that lists each publicly owned underground storage tank out of compliance with regulations, past actions taken toward listed tanks, and future steps that will be taken to bring those tanks into compliance. CBO estimates that the cost of these requirements could be significant, but that states would be eligible for grants from EPA to implement them.

In states where the EPA oversees regulation of USTs directly, this provision would constitute a private-sector mandate on private owners of USTs. Currently, only USTs in Idaho are regulated directly by the EPA. While CBO has no information on what training the EPA may require, the industry does not expect the requirements to differ greatly from existing industry and state training requirements. CBO anticipates that the cost of the private-sector mandate would not be large.

Additional Groundwater Protection Requirements. Section 1530 would direct the EPA to require states that receive federal funding for UST programs to impose new groundwater protection requirements on manufacturers and installers of USTs. This would constitute a private-sector mandate, since states receiving grants must implement the new requirements and the EPA is expected to impose these requirements regardless of the states' action. CBO has no information at this time on how the requirements would be implemented and, therefore, cannot determine the cost of the mandate.

Nuclear matters (Title VI)

Increase in the Annual Premium. Under current law, in the event that losses from a nuclear incident exceed the required amount of private insurance, NRC licensees (both public and private) are assessed a charge to cover the shortfall in damage coverage. Section 603 would increase the maximum annual premium from $10 million to $15 million. CBO has determined that raising the maximum annual premium would increase the costs of existing mandates and would thereby impose both intergovernmental and private-sector mandates under UMRA. Because the probability of a nuclear accident resulting in losses exceeding the amount of private insurance coverage is low, CBO estimates that the annual costs for public and private entities of complying with the mandates (in expected value terms) would not be substantial over the next five years.

Security Upgrades and Background Checks. Sections 661 and 666 would direct the NRC to issue new security regulations for the operation of nuclear facilities and the transport of nuclear materials. The duty to comply with the new regulations governing nu-

clear material transport and facility operations would constitute both private-sector and intergovernmental mandates. Under section 661, the rules governing the operation of nuclear facilities would be based upon future study by the NRC and consultation with other federal, state, and local agencies and the private sector. At this time, the agency could not give any indication as to the scope of the new regulations. Consequently, CBO cannot determine the costs of compliance. However, based on the small number of public nuclear facilities and the security upgrades that have already occurred in response to the events of September 11, 2001, CBO expects that the cost of these requirements would not be large for state and local governments.

In addition, the bill would require fingerprinting of additional individuals connected with nuclear facilities as part of criminal background checks done through the U.S. Attorney General's Office. The increased costs for those background checks would be the responsibility of the licensee. The duty to pay the increased cost would be both a private-sector and intergovernmental mandate under UMRA, but the cost of the mandate would be small.

NRC User Fees and Annual Charges. Under current law, the NRC is authorized to collect annual fees from its licensees (public and private) to offset 90 percent of a major portion of its general fund appropriation. CBO estimates that those collections would amount about $500 million in fiscal year 2005. Those fee collections include the cost of issuing licenses to some federal agencies. The NRC's authority to collect that level of fees expires at the end of fiscal year 2005. When that authority expires, the NRC will be authorized to collect annual fees up to only 33 percent of its budget. Section 668 would extend the NRC's current authority to charge annual fees to offset 90 percent of its net appropriation indefinitely. The duty to pay such an increase in fees would be a mandate as defined in UMRA.

The total amount of fees collected under this provision would depend on the level of future appropriations. Assuming appropriations in the amount authorized for 2005, CBO estimates that extending the fees could result in additional collections of roughly $300 million in 2006 from industries regulated by the NRC (primarily electric utilities) and similar amounts for fiscal years 2007 through 2010. CBO estimates that most of the annual fees would be paid by private, investor-owned nuclear utilities (less than 5 percent would be paid by nonfederal, publicly owned utilities.)

In the case of a mandate that has not yet expired, UMRA does not specify whether CBO should measure the cost of the extension relative to the mandate's current costs or assume that the mandate will expire and that it must measure the costs of the mandate's extension as if the requirement were new. Measured against the costs that would be incurred if current law remains in place and the annual fee declines, the total cost to the private sector of extending this mandate could be close to $300 million annually, beginning in fiscal year 2006. Measured that way, the cost of the mandate would exceed the annual threshold for the private sector as defined in UMRA. By contrast, measured against the fees paid for fiscal year 2005, the mandate would impose no additional costs on the private sector because the fees under the bill would not differ much from those currently in effect. In any case, CBO estimates that the total

costs to state, local, and tribal governments would be small relative to the threshold for intergovernmental mandates.

Electricity (Title XII)

Mandatory Reliability Standards. The bill would require users of the bulk-power system to comply with standards issued by the newly established Electric Reliability Organization as designated by the Federal Energy Regulatory Commission. Those users include intergovernmental entities such as municipally owned utilities as well as private-sector entities, including utilities, nonutility generators, and marketers. Currently, the North American Electric Reliability Council, a voluntary organization, promotes electricity reliability. According to several industry experts, almost all public and private-sector users of the bulk power system voluntarily comply with standards issued by NERC. The mandate would impose no significant additional costs in the short term relative to current practice since the ERO is not expected to significantly change current standards. In the future, market conditions may prompt the ERO to impose stricter standards to maintain reliability. In that case, costs for users of the bulk power system—that could otherwise elect to disregard NERC standards under current law—could increase substantially.

Mandatory Assessments. The bill would direct the ERO to assess fees and dues to cover the costs of implementing and enforcing ERO standards. Although there is some uncertainty as to how those fees would be assessed, the most likely scenario is that the ERO would assess fees on its members, which is the current practice of NERC. As NERC members include both public and private entities, such fees would constitute intergovernmental and private sector mandates as defined in UMRA.

The bill would cap the amount of fees and other charges collected by the ERO at $50 million per year. Based on information from NERC, the membership fees collected in 2004 amounted to about $50 million. Consequently, CBO estimates that the increment in fee collections for the proposed compliance, monitoring, and enforcement activities under the bill would be negligible, if any. Based on industry data, CBO assumes that roughly 80 percent to 85 percent of the collections would be borne by the private sector and another 10 percent to 14 percent would be borne by state and local government entities. The remainder would be paid by federally owned entities.

Regulatory Fees. The bill would require FERC to assume certain regulatory procedures that are currently under the jurisdiction of the Securities and Exchange Commission. Under current law, FERC has the authority to collect fees from investor-owned utility companies to offset its costs. The duty to pay those fee increases would impose a private-sector mandate on those entities. Based on information from FERC, CBO expects that investor-owned utilities would have to pay $11 million in 2006 and $47 million over the 2006–2010 period.

Requirements for State Review. Sections 1251, 1252, and 1254 would require state regulators to review the use of net metering, time-based metering, demand response systems, and interconnection services before permitting electric utilities to implement these federal standards. The sections contain intergovernmental man-

dates because they would increase states' responsibilities under the existing mandates in the Public Utilities Regulatory Policies Act. However, CBO estimates that the states' costs to review additional standards would not be significant.

Energy efficiency (Title I)

Section 133 would direct the Secretary of Energy to prescribe energy conservation standards restricting standby mode energy consumption of household appliances. According to industry sources and DOE, up to 9,000 types of household appliances could be affected by this provision, and further, many such products may require significant modification to meet the standard for energy consumption in standby mode. DOE could not say how they would implement this provision, and CBO cannot determine the products that would be affected. Therefore, we cannot estimate the incremental cost to the industry of meeting such requirements.

If DOE applies standards to the majority of products potentially affected, costs to industry could be substantial. The magnitude of the costs also depend on the stringency of new standards that would affect the appliance manufacturers. For example, the bill would require DOE to apply new energy conservation standards to certain furnaces. Roughly three million oil, gas, and electric furnaces would have to comply with the new standards. According to a DOE report, the incremental costs to manufacturers of improving energy efficiency could range from $5 to $175 per unit depending on the level of the standard that must be met. If the DOE applies relatively high efficiency standards to the appliances covered under the bill, the incremental costs to the industry could be large, and thus could exceed UMRA's threshold for private-sector mandates.

Preemptions of State and local authority

In addition to the mandates discussed above, H.R. 1640 contains several explicit preemptions of state and local authority. Such preemptions are considered intergovernmental mandates under UMRA. CBO estimates that those preemptions would not impose significant additional costs on state, local, or tribal governments as regulators:

- Section 110 would extend an existing intergovernmental mandate by changing when daylight-saving time (DST) begins and ends. Under current law, states are required to follow federal guidelines for DST and may only opt-out by passing legislation.
- Section 133 would create national standards for the energy efficiency of ceiling fans and would supercede existing state standards. Currently two states—California and Maryland—have more strict standards and five other states have legislation pending; those standards would be preempted.
- Section 663 would preempt state laws restricting the use and transport of certain firearms. That provision would expand an existing NRC duty and allow the commission to authorize certain security employees to use and transport several types of firearms, regardless of state or local regulations.
- Section 1211 would preempt the authority of states to take action to ensure the safety, adequacy, and reliability of electric

service within that state if those actions are inconsistent with federal reliability standards.

• Section 1221 would authorize FERC to issue construction permits for electric transmission facilities in "interstate congestion areas" when a state has not acted on or has rejected a permit request.

• Section 1502 would preempt state liability laws as they relate to renewable fuels and MTBE.

Estimate prepared by: Federal Costs: Energy Savings Performance Contracts: Lisa Cash Driskill and David Newman. Uranium Stockpile: Kathleen Gramp and Ray Hall. Loan Guarantees for Coal Projects: Kathy Gramp. LIHEAP: Mathew Kapuscinski. Indian Energy: Mike Waters. EPA Provisions and Loan Guarantee for Ethanol Production: Susanne Mehlman. Trade and Consumer Privacy: Melissa Zimmerman. All Other Federal Costs: Lisa Cash Driskill.

Revenues: Annabelle Bartsch.

Impact on State, Local, and Tribal Governments: Theresa Gullo, Melissa Merrell, and Sarah Puro.

Impact on the Private Sector: Craig Cammarata, Jean Talarico, Selena Caldera and Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis, and G. Thomas Woodward, Assistant Director for Tax Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

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 EFFICIENCY

Subtitle A—Federal Programs

Section 101. Energy and water saving measures in congressional buildings

Section 101 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. Section 101 authorizes $2,000,000 per year from 2006 through 2010 to be appropriated to carry out the section.

Section 102. Energy management requirements

Section 102 amends current law, which requires federal agencies to consume 20 percent less energy per square foot in federal buildings in fiscal year 2000 than in fiscal year 1985, by requiring a 20 percent reduction in energy use from year 2003 levels by the year 2015. Energy performance requirements for 2016 to 2025 are to be recommended by the Secretary before 2015. This 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 102 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 103. Energy use measurement and accountability

Section 103 requires metering or sub-metering of Federal buildings by October 1, 2012, using advanced meters to the maximum extent practicable. The Secretary of Energy, in consultation with the Defense Department and the General Services Administration (GSA), and others, 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 104. Procurement of energy efficient products

Section 104 directs federal agencies and Congress to purchase, with specified exceptions, energy-consuming products that meet the energy efficiency 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 105. Energy Savings Performance Contracts

Section 105 makes the authority for the Departments of Energy, Defense and Veterans Affairs (the "federal agencies"), to enter into energy savings performance contracts (ESPCs), which sunsets at the end of fiscal year 2006, permanent by repealing the sunset provision. In addition, this section provides for a cap of 100 ESPCs with payments no more than $500,000,000, and a condition that the federal agencies appoint coordinators to monitor the caps. Section 105 defines "energy or water conservation measure," among other terms. Finally, section 105 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 107. Voluntary commitments to reduce industrial energy intensity

Section 107 provides for voluntary commitments to reduce industrial energy intensity. This section authorizes the Secretary of Energy to enter into agreements with industry to reduce significantly energy intensity. Industry participants would receive public recognition of their achievements.

Section 108. Advanced Building Efficiency Testbed

Section 108 directs the Secretary of Energy to establish an Advanced Building Efficiency Testbed program to enable energy efficient building technologies. 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 2006 through 2008.

Section 109. Federal building performance standards

Section 109 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 110. Daylight savings

Section 110 changes the start of daylight savings time from the first Sunday in April to the first Sunday in March and it changes the end of daylight savings time from the last Sunday in October to the last Sunday in November.

Subtitle B—Energy Assistance and State Programs

Section 121. Low Income Home Energy Assistance Program

Section 121 authorizes $5.1 billion for LIHEAP for each of fiscal years 2005 through 2007. It also expands the program to include renewable fuels, including biomass.

Section 122. Weatherization assistance

For weatherization assistance (to aid low-income families in improving energy efficiency of their homes), the section authorizes $500 million for fiscal year 2006, $600 million for 2007, and $700 million for 2008. It also changes the definition of "low income" from at or below 125% of poverty level to at or below 150% of poverty level.

Section 123. State energy programs

Section 123 authorizes $100 million for each of fiscal years 2006 and 2007 and $125 million for fiscal year 2008 for state energy programs. Section 123 also provides for a process for revisions to state energy conservation plans. It further requires that state energy conservation plans contain a goal of an improvement of 25% in state energy efficiency by 2012 as compared to 1990 levels.

Section 124. Energy efficient appliance rebate programs

Section 124 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 2006 through 2010.

Section 125. Energy efficient public buildings

Section 125 authorizes the Secretary of Energy to make grants to States to assist local governments, including school districts, to improve the energy efficiency 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 by 30% certain requirements set forth in the section. Funding of $30 million for the program is authorized for fiscal years 2006 through 2010, with the qualification that not more than 10 percent of appropriated funds shall be used for administration of the program.

Section 126. Low income community energy efficiency pilot program

Section 126 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 2006 through 2008.

Subtitle C—Energy Efficient Products

Section 131. Energy Star Program

Section 131 authorizes the Energy Star Program, a program previously established by administrative actions by DOE and the Environmental Protection Agency (EPA) 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 and directs the agencies to promote the Energy Star program, protect its integrity, establish new standards, seek input on those standards, provide reasonable notice and adequate lead times for now standards.

Section 132. HVAC maintenance consumer education program

Section 132 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 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 133. Energy conservation standards for additional products

Section 133 defines terms, provides for test procedures, and establishes minimum energy efficiency standards for seven products (exit signs, torchiere lamps, low-voltage dry-type transformers, traffic signals, unit heaters, medium base compact fluorescent lamps, and ceiling fans). This section requires DOE rulemakings to develop efficiency standards for three products (ceiling fans, vending machines, and commercial refrigerators and freezers). Section 133 also requires an expedited rulemaking for standby energy use in battery chargers and external power supplies; and, requires a process to determine whether efficiency standards should be established for the standby mode of other appliances.

Section 134. Energy labeling

Section 134 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 DOE consumer products energy conservation program under the Energy Policy and Conservation Act, as amended by this Act.

Section 135. Preemption

Section 135 preempts state ceiling fan and ceiling fan light kit standards.

Section 136. State consumer product energy efficiency standards

Section 136 provides that Federal preemption of state energy efficiency standards will not apply before a Federal standard is set or three years after the date that a Federal standard was required to be established or revised.

Subtitle D—Public Housing

Section 145. Grants for energy-conserving improvements for assisted housing

Section 145 provides for grants for energy and water conserving fixtures and fittings in assisted housing.

Section 147. Energy-efficient appliances

Section 147 requires public housing agencies to purchase energy efficient appliances that are Energy Star or FEMP rated products.

Section 149. Energy strategy for HUD

Section 149 requires the Secretary of Housing and Urban Development to develop and implement an integrated strategy to reduce utility expenses at public and assisted housing and to report to Congress within one year and regularly thereafter on status of implementing the strategy.

TITLE II—RENEWABLE ENERGY

Subtitle A—General Provisions

Section 201. Assessment of renewable energy resources

Section 201 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. Funding of $10 million per year is authorized for fiscal years 2006 through 2010.

Section 202. Renewable energy production incentive

Section 202 reauthorizes the Renewable Energy Production Incentive (REPI), which provides payments for production of certain renewables. This section also expands the program to include landfill gas, livestock methane, and ocean power.

Section 203. Federal purchase requirement

Section 203 requires that the Secretary of Energy seek to ensure, to the extent economically feasible and technically practical, that the Federal Government purchase renewable energy in the following amounts: not less than 3% in fiscal years 2007 through 2009, not less than 5% in fiscal years 2010 through 2012, and not less than 7.5% in fiscal year 2013 and after. This section expands the program to include ocean power.

Section 204. Insular areas energy security

Section 204 requires the Secretary of the Interior, in consultation with the Secretary of Energy and the head of government of each insular area, to develop plans to protect the insular area's electric transmission infrastructure from damage due to hurricanes and typhoons. It also authorizes the Secretary of Interior to make grants to eligible projects. The section has an authorization of $5 million per fiscal year.

Section 205. Use of photovoltaic energy in public buildings

Section 205 allows the Secretary of Energy to establish a photovoltaic commercialization program with the objective of promoting the use of and installing photovoltaic solar systems on new and existing public buildings. This section authorizes $50 million for each of the fiscal years 2006 through 2010 to promote and install such systems, and it further authorizes $10 million for each of the fiscal years 2006 through 2010 to evaluate such systems.

Section 206. Grants to improve the commercial value of forest biomass for electric energy, useful heat, transportation fuels, petroleum-based product substitutes, and other commercial purposes

Section 206 authorizes either the Secretary of Agriculture or the Secretary of the Interior to make grants up to $500,000 to businesses that use forest biomass to generate electricity, sensible heat, transportation fuels or petroleum substitutes.

Section 207. Biobased products

Section 207 amends the Farm Security and Rural Investment Act of 2002 to include degradable products.

Section 208. Renewable energy security

Section 208 authorizes the Secretary of Energy to provide incentives in the form of rebates to consumers for the installation of renewable energy systems in their homes and small businesses. Renewable energy systems include solar, wind, geothermal, and biomass power production systems. It authorizes $150 million for fiscal years 2006 and 2007, $200 million for fiscal year 2008, and $250 million for fiscal years 2009 and 2010.

Subtitle C—Hydroelectric

PART I—ALTERNATIVE CONDITIONS

Section 231. Alternative conditions and fishways

Section 231 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.

Section 231 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 standards in the bill. The new section requires the Secretary to provide a written statement for the record containing specific information with respect to each condition, fishway, or alternative. Further, the new 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.

PART II—ADDITIONAL HYDROPOWER

Section 241. Hydroelectric production incentives

Section 241 provides that the Secretary of Energy shall make incentive payments of 1.8 cents per kWh (to be adjusted for inflation) for electric energy produced at qualified hydroelectric facilities put

into service at existing dams or conduits within 10 years of the date of enactment of the section. Incentive payments may not exceed $750,000 per year to any one facility. The section authorizes $10 million for fiscal years 2006 through 2015 for the program.

Section 242. Hydroelectric efficiency improvement

Section 242 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. The section authorizes $10 million for each of the fiscal years 2006 through 2015 for the program.

Section 243. Small hydroelectric power projects

Section 243 amends the Public Utility Regulatory Policies Act of 1978 to make newer small hydroelectric power projects eligible for low-interest Federal loans and other programs.

Section 244. Increased hydroelectric generation at existing Federal facilities

Section 244 directs the Secretary of Energy and the Secretary of the Interior, in consultation with the Secretary of the Army, to conduct studies of opportunities to increase hydropower production and operational efficiency at Federal dams.

Section 245. Shift of project loads to off-peak periods

Section 245 directs the Secretary of the Interior to review the pumping of water for irrigation by the Bureau of Reclamation and, with consent of irrigation customers, adjust such pumping so as to minimize pumping during periods of peak electric consumption.

TITLE III—OIL AND GAS

Subtitle A—Petroleum Reserve and Home Heating Oil

Section 301. Permanent authority to operate the Strategic Petroleum Reserve and other energy programs

Section 301 permanently authorizes the Strategic Petroleum Reserve and the Northeast Home Heating Oil Reserve, requires that the Secretary of Energy fill the Strategic Petroleum Reserve to its authorized capacity as expeditiously as practicable, and makes technical amendments.

Section 302. National Oilheat Research Alliance

Section 302 authorizes the National Oilheat Research Alliance until 2009.

Section 303. Site selection

Section 303 requires the Secretary of Energy within one year of enactment to complete a proceeding to select, from sites the Secretary has previously studied, sites necessary to enable acquisition of the Strategic Petroleum Reserve's authorized capacity.

Section 304. Suspension of Strategic Petroleum Reserve deliveries

Section 304 requires the Secretary of Energy to suspend deliveries of royalty-in-kind oil to the Strategic Petroleum Reserve until

the price of oil falls below $40 per barrel for two consecutive weeks on the New York Mercantile Exchange.

Subtitle B—Production Incentives

Section 320. Liquefaction or gasification natural gas terminals

Section 320 provides that no person may construct, expand or operate a liquefaction or gasification natural gas terminal without an authorizing order from the Federal Energy Regulatory Commission (FERC). Section 320 makes clear that FERC has preemptive authority to site liquefaction or gasification natural gas terminals to the extent the terminal involves foreign or interstate commerce. The defined term "liquefaction or gasification natural gas terminal" is generally intended to be inclusive of all facilities required to provide terminal services and includes any natural gas pipeline connecting the terminal's natural gas supply up to but not including a pipeline subject to the jurisdiction of the Commission under section 7 of the Natural Gas Act or an intrastate natural gas pipeline (any pipeline that provides natural gas supply to non-terminal owners or customers).

This section is also intended to provide a statutory framework for the efficient approval of a proposed liquefaction or gasification natural gas terminal. For any proposed terminal, FERC is to be the lead agency for the purposes of the National Environmental Policy Act of 1969 and coordinating all applicable Federal authorizations required. FERC is required to establish a schedule for all administrative proceedings required under authority of Federal law, accommodating the applicable schedules established by Federal law. This section also requires FERC to maintain a complete consolidated record of all decisions made or actions taken by FERC or any agency acting pursuant to Federal law regarding a proposed terminal and any administrative appeal or review of Federal authority for such terminal shall use this record developed by FERC. This section also provides that the court of original and exclusive jurisdiction for all claims brought under Section 3(d) of the Natural Gas Act shall be the United States Court of Appeals for the District of Columbia Circuit.

Section 320 also requires FERC to consult with the State commission of the state in which the liquefaction or gasification natural gas terminal is located regarding local safety considerations during the authorization process. This section provides further authority for the State commission to perform safety and security inspections of any terminal after the terminal is operational provided that the State commission has given notice to FERC that it intends to perform such inspections and provided any such inspections follow Federal safety and security rules and regulations.

In addition, this section provides that any FERC authorizing order for a liquefaction or gasification natural gas terminal issued after the Act's enactment but before January 1, 2011, shall not be conditioned on: (i) a requirement that the terminal be offered to persons other than the applicant or an affiliate thereof or (ii) any regulation of the terminal's rates, charges, terms, or conditions of service.

Section 327. Hydraulic fracturing

Section 327 excludes hydraulic fracturing from the definition of underground injection as set forth in the Safe Drinking Water Act.

Section 330. Appeals relating to pipeline construction or offshore mineral development projects

Section 330 provides that any Federal administrative agency proceeding under Section 319 of the Coastal Zone Management Act (CZMA) that is an appeal or review of Federal authority for an interstate natural gas pipeline construction project, shall use the record developed by FERC. This section also provides that any Federal administrative agency proceeding under Section 319 of the Coastal Zone Management Act (CZMA) that is an appeal or review of Federal authority for an energy project, including projects to explore, develop, or produce mineral resources in the Outer Continental Shelf shall use the record developed by the lead Federal agency for the project.

This section also provides a sense of Congress that all Federal and State agencies with jurisdiction over interstate natural gas pipelines coordinate their proceedings within the timeframes established by FERC.

Section 333. Natural gas market transparency

Section 333 requires the FERC to issue rules within 180 days of the Act's enactment directing all entities subject to FERC jurisdiction timely report to FERC information about the availability and prices of natural gas sold at wholesale in interstate commerce, such information to be evaluated by FERC for price transparency and accuracy. FERC enforcement of the section is subject to a 3-year statute of limitations.

This section also provides that FERC, in exercising its authority pursuant to the section, shall not regulate, impose requirements on, compete with, or displace price publishers and further cannot condition access to interstate pipeline transportation upon the reporting requirements authorized under this section.

Further, this section provides that the reporting requirements of this section shall not apply to natural gas produced and sold by a producer or those with de minimis market presence.

Subtitle C—Access to Federal Land

Section 344. Consultation regarding oil and gas leasing on public land

Section 344 directs the Secretary of Interior and Secretary of Agriculture to enter into a Memorandum of Understanding regarding procedures for processing oil and gas lease applications, coordinating planning and environmental compliance efforts and the use of lease stipulations.

This section further requires the Secretaries to construct a joint data system capable of tracking lease requests and applications.

Section 346. Compliance with Executive Order 13211; actions concerning regulations that significantly affect energy supply, distribution, or use

Section 346 requires compliance with Presidential Executive Order 13211, when Federal agency action would have an significant adverse effect on the supply of domestic energy resources from Federal public land.

Section 350. Energy facility rights-of-way and corridors on Federal land

Section 350 requires a joint report to Congress on existing rights-of-way and designated and de facto corridors for oil and gas pipelines and electric transmission and distribution lines on Federal land.

This section also requires an analysis of opportunities for expanding capacity within such rights-of-way and corridors and a plan for sharing that information with those involved in the siting, subject to limitations for national security.

Further, section 350 provides a 2-year deadline for designation of corridors across Federal lands in the eleven contiguous Western States for transmission rights-of-way and pipelines and provides 4 years for an evaluation of the merits of identifying and proposing corridors across federal lands in all other states.

In addition, this section sets forth a definition for corridors.

Section 355. Encouraging Great Lakes oil and gas drilling ban

Section 355 encourages no Federal or State permit or lease to be issued for new oil and gas slant, directional, or offshore drilling in one or more of the Great Lakes.

Section 358. Federal coalbed methane regulation

Section 358 allows any State currently on the list of Affected States established under section 1339(b) of the Energy Policy Act of 1992 to be removed from the list if appropriate action for removal is taken within 3 years of enactment of the Act.

Subtitle D—Refining Revitalizaton

Section 371. Short title

Section 371 establishes the short title as the "United States Refinery Revitalization Act of 2005."

Section 372. Findings

Section 372 includes the findings.

Section 373. Purpose

Section 373 establishes the purpose.

Section 374. Designation of Refinery Revitalization Zones

Section 374 directs the Secretary of Energy to designate as a Refinery Revitalization Zone any area that: (1) has experienced mass layoffs at manufacturing facilities or contains an idle refinery; and, (2) has an unemployment rate that exceeds the national average by at 10 percent of the national average, as set forth at the time of designation as a Refinery Revitalization Zone.

Section 375. Memorandum of understanding

Section 375 directs the Secretary of Energy and the Administrator of the Environmental Protection Agency (EPA) to enter into a memorandum of understanding for the purposes of the subtitle.

Section 376. State environmental permitting assistance

Section 376 directs the Secretary of Energy and the Administrator of EPA to designate one or more employees to any Qualified State with technical and legal expertise relating to the siting and operation of refineries.

Section 377. Coordination and expeditious review of permitting process

Section 377 designates DOE as lead agency for coordinating Federal authorizations and related environmental reviews of a proposed refinery facility. It directs the DOE, as lead agency, to prepare a single environmental review document to be used as the basis for all decisions on the proposed refinery facility. The section also sets forth an appeals process through the Secretary of Energy in the event the Federal authorization required to site and construct a refinery facility has been either denied, or an agency has failed to act by the deadline established by the Secretary. Any appeal of the Secretary's determination must be filed with the United States Court of Appeals for the District of Columbia. Section 377 directs the Secretary of Energy to issue regulations necessary to implement the subtitle.

Section 378. Compliance with all environmental regulations required

Section 378 provides that nothing in the subtitle shall be construed to waive the applicability of environmental laws and regulations to any refinery facility.

Section 379. Definitions

Section 379 provides definitions for certain terms.

TITLE IV—COAL

Subtitle A—Clean Coal Power Initiative

Section 401. Authorization of appropriations

Section 401 authorizes $200 million for each fiscal year 2006 through 2014. The Secretary of Energy is required to submit a report that consists of a 10-year plan for the Clean Coal Power Initiative. The Report is to include an assessment of whether aggregate funding levels are appropriate, a description of how proposals will be solicited and evaluated, including a list of projects expected to be undertaken, a list of technical milestones, and a description of the manner in which the program will avoid problems described by the Government Accountability Office.

Section 402. Project criteria

Section 402 establishes technical and financial criteria for the Clean Coal Power Initiative regarding gasification projects and other projects funded under the Initiative. Subsection (f) specifies

that the use of a certain technology by any facility assisted under this subtitle or the achievement of certain emission reduction levels by any such facility will not result in that technology or emission reduction level being considered achievable, achievable in practice, or "adequately demonstrated" for purposes of sections 111, 169 or 171 of the Clean Air Act.

Section 403. Report

Section 403 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 404. Clean coal centers of excellence

Section 404 authorizes competitive, merit-based grants for the establishment of Centers of Excellence for Energy Systems of the Future.

Subtitle B—Coal Power Projects

Section 411. Coal technology loan

Section 411 authorizes $125 million for a coal technology loan to the owner of an experimental plant constructed under an agreement with DOE.

Section 412. Coal gasification

Section 412 authorizes the Secretary to provide loan guarantees for a 400MW project using integrated gasification combined cycle technology to produce power at competitive rates in deregulated markets not subsidized by ratepayers.

Section 414. Petroleum coke gasification

Section 414 authorizes the Secretary of Energy to provide loan guarantees for 5 petroleum coke gasification polygeneration projects.

Section 416. Electron scrubbing demonstration

Section 416 directs the Secretary of Energy to use $5 million to initiate a project to demonstrate the viability of high-energy electron scrubbing technology on commercial scale electric generation using high-sulfur coal.

Subtitle D—Coal and Related Programs

Section 441. Clean air coal program

Section 441 amends the Energy Policy Act of 1992 by directing the Secretary of Energy to establish a program to enhance the deployment of fully developed and commercially demonstrated clean coal technologies including pollution control equipment. The section authorizes for pollution control projects $300,000,000 for fiscal year 2006, $100,000,000 for fiscal year 2007, $40,000,000 for fiscal year 2008, $30,000,000 for fiscal year 2009, and $30,000,000 for fiscal year 2010. Further, section 441 authorizes for generation projects $250,000,000 for fiscal year 2007, $350,000,000 for fiscal year 2008, $400,000,000 for each fiscal year 2009 through 2012, and $300,000,000 for fiscal year 2013. Air pollution control projects are

to facilitate compliance with Federal and State environmental regulations. Generation projects are required to meet thermal efficiency milestones that increase over the lifetime of the program. This section requires financial assistance be provided only to those financially viable, for projects that achieve overall cost reductions and increase the cost competitiveness of coal. Subsection (f) specifies that the use of a certain technology by any facility assisted under this subtitle or the achievement of certain emission reduction levels by any such facility will not result in that technology or emission reduction level being considered achievable, achievable in practice, or "adequately demonstrated" for purposes of sections 111, 169 or 171 of the Clean Air Act.

TITLE V—INDIAN ENERGY

Section 501. Short title

Section 501 establishes the short title for title V as the "Indian Tribal Energy Development and Self-Determination Act of 2005."

Section 502. Office of Indian Energy Policy and Programs

Section 502 establishes within DOE an Office of Indian Energy Policy and Programs.

Section 503. Indian energy

Section 503 provides a complete new substitute for title 26 of the Energy Policy Act of 1992. New sections 2602 and 2603 authorize the Secretary of the Interior to provide grants to tribes to develop and utilize their energy resources and to enhance the legal and administrative ability of tribes to manage their resources. New section 2604 establishes a process by which an Indian tribe, upon demonstrating its technical and financial resources, could negotiate and execute energy resource development leases, agreements and rights-of-way with third parties without first obtaining the approval of the Secretary of the Interior. New section 2605 directs the Secretary of the Interior to review activities authorized under the Indian Mineral Development Act.

Section 504. Four Corners transmission line project

Section 504 makes Dine Power Authority, a Navajo Nation enterprise, eligible for funding under this title.

Section 505. Energy efficiency in federally assisted housing

Section 505 requires the Secretary of Housing and Urban Development to promote energy conservation in housing located on Indian lands.

Section 506. Consultation with Indian tribes

Section 506 requires the Secretaries of the Interior and Energy to involve and consult with the Tribes as appropriate and to the maximum extent practicable.

TITLE VI—NUCLEAR MATTERS

Subtitle A—Price-Anderson Act Amendments

Section 601. Short title

Section 601 provides the short title of the legislation, the "Price-Anderson Reauthorization Act of 2005."

Section 602. Extension of indemnification authority

Section 602 extends Price-Anderson indemnification authority, to December 31, 2025, for Nuclear Regulatory Commission (NRC) licensees, Department of Energy (DOE) contractors, and DOE nonprofit educational institutions.

Section 603. Maximum assessment

Section 603 provides an inflation adjustment for the maximum premium assessment from $10 million to $15 million. Both the annual and maximum premium will be adjusted for inflation going forward from August 20, 2003, not less than once every five years.

Section 604. Department of Energy liability limit

Section 604 sets the limitation on aggregate public liability for DOE contractors for a single nuclear incident. This section 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 605. Incidents outside the United States

Section 605 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 606. Reports

Section 606 requires the NRC and DOE, by December 31, 2021, to submit detailed reports to Congress concerning the Price-Anderson Act and related matters, such as the availability of private insurance.

Section 607. Inflation adjustment

Section 607 creates a new July 1, 2003 baseline for future inflation adjustments to the $10 billion DOE indemnification amount created in section 604, and requires an inflation adjustment not less than once every five years going forward from July 1, 2003.

Section 608. Treatment of modular reactors

Section 608 allows 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 of the Atomic Energy Act. This new definition of "facility" in this section applies only for purposes of section 170 financial protection requirements.

Section 609. Applicability

Section 609 ensures that the amendments made by sections 603, 604, and 605 do not apply to a nuclear incident that occurs before the date of enactment of the Act.

Section 610. Prohibition on assumption by United States Government of liability for certain foreign accidents

Section 610 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 611. Civil penalties

Section 611 ends the automatic remission of civil penalties for nonprofit institutions listed in section 234A(d) of the Atomic Energy Act. 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. Civil penalties are limited to the amount of any earned fee paid to the contractor under the contract under which the nuclear safety violation occurs, as determined by the Secretary.

Section 612. Financial accountability

Section 612 authorizes the Attorney General to bring an action to recover from a DOE contractor, subcontractor, or supplier amounts paid by the Federal government under an 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.

Subtitle B—General Nuclear Matters

Section 621. Licenses

Section 621 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.

Section 622. NRC training program

Section 622 establishes a training and fellowship program to address shortages of individuals with critical nuclear safety regu-

latory skills. For fiscal years 2005 through 2009, $1 million per year is authorized to be appropriated to carry out this program.

Section 623. Cost recovery from government agencies

Section 623 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. The replacement of section 483a with section 9701 is a correction to the proper United State Code reference.

Section 624. Elimination of pension offset

Section 624 allows retired NRC employees with critical skills to receive full pay from NRC for any consulting services.

Section 625. Antitrust review

Section 625 eliminates the Atomic Energy Act section 105 antitrust review provisions for any application for a utilization facility or production facility under section 103 or 104 b. of that Act that is filed on or after the date of enactment of this section.

Section 626. Decommissioning

Section 626 clarifies that NRC's general authorities listed in section 161 of the Atomic Energy Act include the authority to ensure sufficient funds are available for the decommissioning of any production or utilization facility listed under section 104 or 104 b. of that Act.

Section 627. Limitation on legal fee reimbursement

Section 627 limits DOE from reimbursing the legal fees of its contractors subsequent to an adverse determination or judgment against a contractor for acts of whistleblower retaliation. If the adverse determination is later reversed, DOE may reimburse the contractor's legal fees.

Section 629. Report on feasibility of developing commercial nuclear energy generation facilities at existing Department of Energy sites

Section 629 requires the Secretary of Energy to report to Congress within 1 year on the feasibility of developing commercial nuclear energy generation facilities at DOE sites.

Section 630. Uranium sales

Section 630 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 2005 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 uranium to the United States Enrichment Corporation (USEC). Further, section 630 authorizes DOE to terminate, waive, or modify its June 17, 2002 Agreement with USEC.

Section 631. Cooperative research and development and special demonstration projects for the uranium mining industry

Section 631 authorizes $10,000,000 per year for three years beginning in 2006, 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.

Section 632. Whistleblower protection

Section 632 expands the definition of employer under section 211(a)(2) of the Energy Reorganization Act (ERA) to include all contractor and subcontractor employees of the 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 540 days from the date the complaint is filed.

Section 633. Medical isotope production

Section 633 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 634. Fernald byproduct material

Section 634 designates certain wastes stored at Fernald as Atomic Energy Act 11e.(2) byproduct material. DOE may dispose of the material in a facility regulated by the NRC or an NRC Agreement State.

Section 635. Safe disposal of greater-than-class c radioactive waste

Section 635 requires the Secretary of Energy to designate an office within the Department with responsibility to establish a facility for safely disposing of waste with concentrations of radionuclides that exceed the limits established by NRC for Class C radioactive waste. The section also requires the Secretary develop a comprehensive plan for permanent disposal of these wastes, including a disposal facility.

Section 636. Prohibition on nuclear exports to countries that sponsor terrorism

Section 636 restricts the export or transfer of nuclear materials and equipment or sensitive nuclear technology to any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities. The President may waive these restrictions under certain criteria listed in the section.

Section 638. National uranium stockpile

Section 638 authorizes the Secretary of Energy to create a national low-enriched uranium stockpile intended to enhance national energy security, and reduce global proliferation threats.

Section 639. Nuclear Regulatory Commission meetings

Section 639 makes 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 further 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.

Section 640. Employee benefits

Section 640 ensures the protection of workers' rights with respect to pension and welfare benefits of employees currently working for a Department of Energy (DOE) contractor (or its first or second tier subcontractors), or the United States Enrichment Corporation (USEC) at the Portsmouth, Ohio or Paducah, Kentucky facilities. This section provides that when DOE changes its contractors at the facilities, or when hourly employees transfer from USEC to a DOE contractor, the employees do not lose their accrued service credit or rights to transfer into the DOE contractors' Multiple Employer Pension Plan or the Multiple Employer Welfare Arrangement (retiree health care plan).

The section provides the Secretary of Energy with 30 days to make all necessary modifications to contracts and benefit plan documents to the extent appropriations are provided in advance for this purpose, or are otherwise available.

Subtitle C—Additional Hydrogen Provisions

Section 651. Hydrogen production programs

Section 651 authorizes research, development, design, construction and operation of an advanced reactor hydrogen cogeneration project. The Idaho National Laboratory is the lead lab for the project. The section also authorizes the establishment of 5 projects to demonstrate the commercial production of hydrogen at existing nuclear power plants, including one demonstration project at a national laboratory or institute of higher education. Section 651 also requires NRC prioritize licensing of a utilization facility that is collocated with a hydrogen production facility. The section requires NRC issue a final decision approving or disapproving a license to construct and operate a utilization facility within 3 years after submission of such application, if the application references an NRC certified reactor design and an early site permit.

Section 652. Definitions

Section 652 provides definitions for purposes of the subtitle.

Subtitle D—Nuclear Security

Section 661. Nuclear facility threats

Section 661 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 (1) the events of September 11, 2001; (2) physical, cyber, biochemical, and other terrorist threats; (3) the potential for attack on facilities and spent fuel shipments by multiple coordinated teams of a large number of individuals; (4) the potential for assistance in an attack from several employees 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 of long duration; (10) the potential for attacks on spent fuel shipments; (11) the adequacy of planning to protect public health and safety; and, (12) the potential for diversion of nuclear materials.

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 may issue rules revising 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 may promulgate such regulations not later than 180 days after the President transmits his initial report to the Commission and Congress. The NRC shall establish an operational safeguards response and evaluation program to ensure that protection and response capabilities are periodically tested. The NRC shall assign Federal security coordinators for each region of the Commission. The President shall establish a program to provide training for Federal agencies, the National Guard, and state and local law enforcement and emergency response agencies in responding to threats against nuclear facilities.

Section 662. Fingerprinting for criminal history record checks

Section 662 expands the class of persons that are required fingerprinting for criminal history record checks under section 149 of the Atomic Energy Act. Persons required to conduct fingerprinting include NRC licensees and certificate holders, applicants for an NRC license or certificate, and any person that notifies

NRC in writing of an intent to file an application for licensing, certification, or approval of a product or activity subject to regulation by NRC. Biometric methods may be used in place of fingerprinting if approved by the Attorney General and NRC.

Section 663. Use of firearms by security personnel of licensees and certificate holders of the commission

Section 663 authorizes guards at certain facilities licensed or certified by NRC to carry and use certain weapons, ammunition, or devices where necessary to discharge the security personnel's official duties. Guards are subject to background checks by the Attorney General.

Section 664. Unauthorized introduction of dangerous weapons

Section 664 expands current law authorizing the NRC to regulate the introduction of dangerous weapons at its own facilities to include facilities licensed or certified by the Commission.

Section 665. Sabotage of nuclear facilities or fuel

Section 665 amends current law prescribing penalties for sabotage or attempted sabotage of nuclear facilities by expanding the type of facilities covered and increasing existing fines and other penalties.

Section 666. Secure transfer of nuclear materials

Section 666 directs the Nuclear Regulatory Commission (NRC) to establish a system to ensure that shipments of certain radioactive materials carry a manifest describing the type and amount of materials being transported and individuals receiving or accompanying such shipments are subject to background checks.

Section 667. Department of homeland security consultation

Section 667 requires NRC to consult with the Department of Homeland Security concerning the potential vulnerabilities of the location of the proposed utilization facility to terrorist attack.

Section 668. Authorization of appropriations

Section 668 makes permanent NRC's 90 percent fee recovery requirement for user fees established in the Omnibus Budget Reconciliation Act of 1990. The section also provides for the exclusion of NRC appropriations for homeland security activities (except fingerprinting and background checks required by section 149 of the Atomic Energy Act) from the annual fee collected from licensees and certificate holders.

TITLE VII—VEHICLES AND FUELS

Subtitle A—Existing Programs

Section 701. Use of alternative fuels by dual-fueled vehicles

Section 701 amends the Energy Policy and Conservation Act (42 U.S.C. 6374(a)(3)(E)) by requiring dual fueled vehicles to operate on alternative fuels unless the Secretary determines that an agency qualifies for a waiver. A waiver may be granted if the alternative fuel is not reasonably available to retail purchasers, or the cost of

the alternative fuel is unreasonably more expensive compared to gasoline. The Secretary shall monitor compliance by all fleets and shall report annually to Congress on its achievement.

Section 704. Incremental cost allocation

Section 704 amends the Energy Policy and Conservation Act 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 encourage the purchase of new alternative fueled vehicles in the federal fleet.

Section 705. Lease condensates

Section 705(a) amends the Energy Policy Act of 1992 to allow mixtures containing 50 percent or more by volume of lease condensate or fuels extracted from lease condensate to be considered an "alternative fuel" as well as a "replacement fuel", and defines the term "lease condensate.

Section 705(b) provides lease condensate fuel use credits under the Energy Policy Act of 1992. The language allows one credit for a fleet or covered person for each qualifying volume of lease condensate containing at least 50 percent lease condensate or fuels extracted from lease condensate. Section 705(b) requires the Secretary to issue a regulation establishing requirements and procedures to implement the credits and shall include a determination of an appropriate qualifying volume for lease condensate, but it may not be less than 1,125 gallons. Section 705(b) applies unless the Secretary finds that the use of lease condensate as an alternative fuel would adversely affect public health or safety or ambient air quality or the environment. Finally, section 705(c) provides for an emergency exemption for vehicles used in emergency repair of transmission lines and in the restoration of electricity service following power outages.

Section 706. Review of Energy Policy Act of 1992 programs

Section 706(a) requires the Secretary to complete a study to determine the effect that Titles III, IV, and V of the Energy Policy Act of 1992 have on the development of alternative fueled vehicle technology, the availability of that technology in the market, and the cost of alternative fueled vehicles. Section 706(b) requires the Secretary to identify the number of alternative fueled vehicles acquired by fleets required to make such purchases, the quantity, by type, of alternative fuel actually used in such vehicles, the quantity of petroleum displaced by the use of alternative fueled vehicles, the direct and indirect costs of compliance, the existence of obstacles preventing compliance, and the projected impact of this Act. Section 706(c) requires the Secretary to transmit this study to Congress with any recommendations.

Section 707. Report concerning compliance with alternative fueled vehicle purchasing requirements

Section 707 amends the Energy Policy Act of 1992 (42 U.S.C. 13218(b)(1)) by extending the date of compliance to February 15, 2006.

Subtitle B—Hybrid Vehicles, Advanced Vehicles, and Fuel Cell Buses

PART I—HYBRID VEHICLES

Section 711. Hybrid vehicles

Section 711 directs the Secretary to accelerate efforts directed toward the improvement of batteries and other rechargeable energy storage systems, power electronics, hybrid systems integration, and other hybrid vehicles technologies.

Section 712. Hybrid retrofit and electric conversion program

Section 712 requires the Administrator of the EPA to establish a competitive grant program for the installation of hybrid retrofit and electric conversion technologies for combustion engine vehicles. Eligible grant recipients are to include local or state entities, for-profit or nonprofit corporations, and contracting entities that service combustion engine vehicles for the eligible recipients. The section authorizes $20,000,000 for fiscal year 2005, $35,000,000 for fiscal year 2006, $45,000,000 for fiscal year 2007, and sums as are necessary for fiscal years 2008 and 2009.

PART II—ADVANCED VEHICLES

Section 721. Definitions

Section 721 provides definitions for purposes of the subtitle.

Section 722. Pilot program

Section 722 directs the Secretary of Energy, in consultation with the Secretary of Transportation, to establish a competitive grant program, administered through DOE Clean Cities Program, to provide up to 15 geographically dispersed project grants to State and local governments or metropolitan transportation authorities for acquisition of alternative fueled vehicles, hybrid vehicles, or fuel cell vehicles, including the necessary infrastructure to support such vehicles. The section provides various selection criteria and grant requirements.

Section 723. Reports to Congress

Section 723 requires a report to Congress, from the Secretary of Energy, identifying grant recipients, grant applicants, and other information.

Section 724. Authorization of appropriations

Section 724 authorizes $200,000 for this program to remain available until expended.

PART III—FUEL CELL BUSES

Section 731. Fuel cell transit bus demonstration

Section 731 directs the Secretary of Energy to establish a program to make competitive, merit-based awards for 5-year projects to demonstrate not more than 25 fuel cell transit buses and the necessary infrastructure in 5 geographically dispersed localities. In the selection of projects under the program, preference is given to projects most likely to mitigate congestion and improve air quality.

Subtitle C—Clean School Buses

Section 741. Definitions

Section 741 provides definitions for purposes of the subtitle.

Section 742. Program for replacement of certain school buses with clean school buses

Section 742 establishes a competitive program, within the EPA, for the awarding to eligible entities, grants for the replacement of existing school buses manufactured before model year 1991 with alternative fuel school buses and ultra-low sulfur diesel school buses. Grants may be made to state or local governments, contract entities that provide bus services for public schools, or a nonprofit school transportation association that has notified and received the approval of a school system served by the buses. Emissions standards are specified for the different types of buses qualified to participate in the program. This section authorizes $45,000,000 in fiscal year 2005, $65,000,000 in fiscal year 2006, $90,000,000 in fiscal year 2007, and such sums as necessary in fiscal years 2008 and 2009.

Section 743. Diesel retrofit program

Section 743 establishes a competitive program, within the EPA, for the awarding to eligible entities, grants for the installation of retrofit technologies for diesel school buses manufactured in model year 1991 or later. Grants may be awarded to state or local governments, contract entities that provide bus services for public schools, or a nonprofit school transportation association that has notified and received the approval of a school system served by the buses. This section provides that in making awards of grants under this program the Administrator shall give preference to proposals that achieve the greatest reductions in emissions or involve the use of emissions control retrofit technology on diesel school buses operating solely on ultra-low sulfur diesel fuel. Section 743 authorizes $20,000,000 for fiscal year 2005, $35,000,000 for fiscal year 2006, $45,000,000 for fiscal year 2007, and such sums as necessary in fiscal years 2008 and 2009.

Section 744. Fuel cell school buses

Section 744 instructs DOE to establish a program for cooperative agreements with private sector fuel cell bus developers and local governments to facilitate the use of fuel cell-powered buses.

Subtitle D—Miscellaneous

Section 751. Railroad efficiency

Section 751 directs the Secretary of Energy to establish a cost-shared public-private research partnership with the goal of developing and demonstrating locomotive technologies that increase fuel economy, reduce emissions and lower costs. The section authorizes $25,000,000 for fiscal year 2005, $35,000,000 for fiscal year 2007, and $50,000,000 for fiscal year 2008 for this purpose.

Section 752. Mobile emissions reductions trading and crediting

Section 752 requires the EPA 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 753. Aviation fuel conservation and emissions

Section 753 instructs the EPA and the Federal Aviation Administration to conduct a joint study of the impact of aircraft emissions on air quality in nonattainment areas and to identify ways to promote fuel conservation measures for aviation to enhance fuel efficiency and reduce emissions.

Section 754. Diesel fueled vehicles

Section 754 requires the Secretary of Energy to accelerate efforts to improve diesel combustion and after-treatment technologies with a goal of, not later than 2010, developing technologies that meet compliance with "Tier 2" emission standards, the heavy duty emissions standards and the development of next generation low-emission, high efficiency diesel engine technologies.

Section 757. Biodiesel engine testing program

Section 757 instructs the Secretary of Energy to initiate a partnership with diesel engine, diesel fuel injection system, and diesel vehicle manufacturers along with diesel and biodiesel fuel providers to include biodiesel testing in advanced diesel engine and fuel system technology. The program is to include testing to determine the impact of biodiesel from different sources on current and future emissions control technologies. This section authorizes $5,000,000 for each of fiscal years 2006 through 2010.

Section 759. Ultra-efficient engine technology for aircraft

Section 759 requires the Secretary of Energy to enter into a cooperative agreement with the National Aeronautics and Space Administration (NASA) for the development of ultra efficient engine technology for aircraft. This section instructs the Secretary to establish specific performance objectives, and authorizes $45,000,000 for each of the fiscal years 2006 through 2010.

Subtitle E—Automobile Efficiency

Section 771. Authorization of appropriations for implementation and enforcement of fuel economy standards

Section 771 authorizes the National Highway Traffic Safety Administration (NHTSA) an additional $2 million to implement and enforce fuel economy standards for fiscal years 2006 through 2008.

Section 772. Revised considerations for decisions on maximum feasible average fuel economy

Section 772 adds two new factors NHTSA must consider when setting the maximum feasible fuel economy, including the effects of fuel economy standards on passenger automobiles, nonpassenger automobiles, and occupant safety, and the effects of compliance with average fuel economy standards on levels of automobile industry employment in the United States.

Section 773. Extension of maximum fuel economy increase for alternative fueled vehicles

Section 773 extends the sunset date for Corporate Average Fuel Economy (CAFE) credits currently available for dual fueled vehicles. Section 773 extends the maximum 1.2 CAFE credit to model year 2010 and if the Secretary, pursuant to existing law and regulation, extends the CAFE credit program for an additional four years, the 0.9 CAFE credit for dual fueled vehicles is extended to 2014.

Section 774. Study of feasibility and effects of reducing use of fuel for automobiles

Section 774 directs NHTSA, 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 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 XIII—HYDROGEN

Section 801. Definitions

Section 801 includes the definitions.

Section 802. Plan

Section 802 requires the Secretary of Energy to work with other federal agencies to prepare a comprehensive interagency coordination plan for activities under the title. This plan may be provided as part of the President's annual budget submission. Section 802 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 title.

Section 803. Programs

Section 803(a) requires the Secretary of Energy to work with the private sector to conduct activities to address the production of hydrogen from sources including fossil fuels, hydrogen-carrier fuels, renewable energy resources, and nuclear energy, the use of hydrogen for commercial, industrial, and residential uses, the safe delivery of hydrogen, advanced vehicle technologies, storage of hydrogen, development of safe durable, affordable, and efficient fuel cells, development of codes and standards, public education, and the ability of the domestic automobile manufacturers to manufacture commercially available competitive hybrid technologies, such as batteries, in the United States.

Section 803(b) sets out the goals for the hydrogen program. The goals for vehicles include a commitment by automakers to offer a safe, affordable and viable hydrogen fuel cell vehicle by 2015 in the

mass market, and to enable production, delivery, and acceptance of hydrogen-powered vehicles that have a range of 300 miles, have improved performance and ease of driving; meet all safety and performance technologies, and have higher fuel economy, lower emissions and equal or improved fuel system crash integrity and occupant protection.

Section 802(b) also includes hydrogen infrastructure goals that must include a commitment by 2015 to enable the deployment by 2020 of infrastructure to provide safe and convenient refueling, improved overall efficiency, widespread availability of hydrogen through production, delivery, and storage, hydrogen for fuel cells, and other technologies. Finally, section 803(b) sets goals for fuel cells to be used in portable, stationary and transportation applications.

Section 803(c) requires the Secretary to fund a limited number of demonstration projects that involve using hydrogen at existing facilities, depend on hydrogen to carry out essential activities, lead to the replication of hydrogen technologies into the market, include vehicle, portable, and stationary demonstrations of fuel cells and hydrogen technologies, raise public awareness, facilitate identification of best technologies, address distributed generation using renewable sources, and address applications of rural or remote locations.

Section 803(d) requires the Secretary of Energy to work with the private sector to conduct a program to facilitate deployment of hydrogen energy and energy infrastructure, fuel cells, and advanced vehicle technologies.

Section 803(e) requires the Secretary to use a competitive, merit-based review process that may be carried out by funding nationally recognized universities or national laboratory research centers. For research and development, the Secretary shall require a 20 percent financial commitment from nonfederal sources. For demonstration and commercial application projects, the Secretary shall require at least a 50 percent financial commitment from nonfederal sources. This figure may be reduced upon a determination that the reduction is necessary and appropriate in light of the technological risks and objectives of this title.

Section 803(g) states that Section 623 of the Energy Policy Act of 1992 (42 U.S.C. 13293) governs the protection of information.

Section 804. Interagency task force

Section 804 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, EPA, 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, uniform hydrogen codes and standards, and vehicle hydrogen fuel system integrity safety performance. The task force shall also coordinate interagency information sharing to further the develop-

ment of hydrogen technologies through fostering exchange of generic, nonproprietary information, developing an inventory and assessment of hydrogen, fuel cell and other advanced technologies, integrating technical information, promoting a hydrogen marketplace, and conducting education programs.

Section 805. Advisory Committee

Section 805 requires the creation of an "Advisory Committee" to advise the Secretary of Energy on the programs and activities under the title comprised of between 12–25 members from industry, academia, government, professional groups, and any other appropriate organizations. The Committee shall review and make recommendations to the Secretary on the implementation of the programs, the safety, economical, and environmental consequences of the technologies, and the plan under section 802. The Secretary shall consider, but need not adopt, the recommendations from the Advisory Committee. The Secretary shall complete a biannual report to Congress describing the recommendations made by the Advisory Committee.

Section 806. External review

Section 806(a) requires the Secretary to enter into an arrangement with the National Academy of Sciences (NAS) to review the plan prepared under section 802. The Secretary shall transmit the NAS review to Congress along with a plan to implement the review's recommendations or an explanation of the reasons that a recommendation will not be implemented.

Section 806(b) requires the Secretary to enter into an arrangement with the NAS to review the programs under section 803 during the fourth year following the date of enactment of this Act. The Secretary shall transmit this review to Congress along with a plan to implement the review's recommendations or an explanation of the reasons that a recommendation will not be implemented.

Section 807. Miscellaneous provisions

Section 807(a) allows the Secretary to represent the United States with respect to activities and programs under this title, in coordination with the Department of Transportation, the National Institute of Standards and Technology, and other relevant agencies before governments and nongovernmental organizations. Section 807(b) states that nothing in this title shall be construed to alter the regulatory authority of the Department.

Section 808. Savings clause

Section 808 states that nothing in this title shall be construed to affect the authority of the Secretary of Transportation for specific programs.

Section 809. Authorization of appropriations

Section 809 authorizes appropriations of $546,000,000 in fiscal year 2006, $750,000,000 in fiscal year 2007, $850,000,000 in fiscal year 2008, $900,000,000 in fiscal year 2009, and, $1,000,000,000 in fiscal year 2010.

Section 810. Solar and wind technologies

Section 810(a) requires the Secretary to (1) prepare a detailed roadmap to carry out the demonstration projects listed in the section and for implementing the recommendations related to solar energy technologies in the report under subsection (c); (2) provide for five solar projects in diverse geographic areas to demonstrate the production of hydrogen from solar facilities, including one at a national laboratory or institution of higher education; (3) establish a research and development program to develop concentrating solar power devices for the production of electricity and hydrogen, and to evaluate the use of thermochemical cycles for hydrogen production at temperatures attainable with solar power devices; (4) coordinate with the DOE Office of Nuclear Energy, Science, and Technology on high temperature materials, thermochemical cycles, and economic issues related to solar energy; (5) provide for the construction and operation of new solar power devices or solar cogeneration facilities which produce hydrogen with electricity; (6) support existing facilities and research programs for solar power; and, (7) establish a program to research and develop methods that use electricity from photovoltaic devices for the onsite production of hydrogen, evaluate the economies of small-scale electrolysis for hydrogen, and to research the potential for modular photovoltaic devices to develop hydrogen infrastructure, security, and the benefits of hydrogen infrastructure.

Section 810(b) requires the Secretary to (1) prepare a detailed roadmap to carry out the demonstration projects listed in the section and for implementing the recommendations related to wind energy technologies in the report under subsection (c); and (2) provide for five wind projects in diverse geographic areas to demonstrate the production of hydrogen from wind facilities, including one at a national laboratory or institution of higher education.

Section 810(c) requires the Secretary to support research programs at institutions of higher education to develop solar and wind energy technologies to produce hydrogen. The programs shall (1) enhance fellowship and faculty assistance; (2) provide fundamental research; (3) encourage collaborative research among all researchers; (4) support communication and outreach; and, (5) to be located in diverse geographic areas and be located at part B institutions, minority institutions, and institutions at higher education in States participating in the Experimental Program to Stimulate Competitive Research of the DOE.

Section 810(d) requires the Secretary to develop sabbatical, fellowship, and visiting scientist programs to encourage national laboratories and higher education institutions to share and exchange personnel.

Section 810(e) includes definitions for the section.

TITLE IX—STUDIES AND PROGRAM SUPPORT

Section 901. Goals

Section 901 establishes goals for the studies and program support activities in Act. The section requires the Secretary of Energy (hereinafter referred to as "the Secretary") to publish 5-year performance goals with budget submissions for certain energy areas.

Section 902. Definitions

Section 902 defines terms.

Subtitle A—Energy Efficiency

Section 904. Energy efficiency

Section 904 authorizes appropriations for fiscal years 2006–2010 for energy efficiency activities including those set out in the subtitle.

Section 905. Next generation lighting initiative

Section 905 directs the Secretary to carry out a Next Generation Lighting Initiative for advanced solid-state lighting technologies based on white light emitting diodes to achieve greater energy efficiency in lighting.

Section 906. National building performance initiative

Section 906 directs the President to establish an interagency group to develop National Building Performance Initiative to help develop more energy efficient buildings.

Section 907. Secondary electric vehicle battery use program

Section 907 requires the Secretary to establish a program of study of the secondary use of electric vehicle batteries.

Section 908. Energy efficiency study initiative

Section 908 requires the Secretary to establish an Energy Efficiency Science Initiative to award competitive grants.

Section 909. Electric motor control technology

Section 909 requires the Secretary to conduct a program of study on advanced control devices to improve the energy efficiency of certain electric motors.

Subtitle B—Distributed Energy and Electric Energy Systems

Section 911. Distributed energy and electric energy systems

Section 911 authorizes appropriations for fiscal years 2006–2010 for distributed energy and electric systems activities, including those set forth in the subtitle. The section contains specific authorization language for micro-generation energy technology.

Section 913. High power density industry program

Section 913 requires the Secretary to establish a comprehensive program of study to improve energy efficiency of high power density facilities.

Section 916. Reciprocating power

Section 916 requires the Secretary to establish a program of study concerning reciprocating power engines.

Section 917. Advanced portable power devices

Section 917 requires the Secretary to establish a program concerning models for advanced portable power device and provides a specific authorization of appropriations for this purpose.

Subtitle C—Renewable Energy

Section 918. Renewable energy

Section 918 authorizes appropriations for fiscal years 2006–2010 for distributed energy and electric systems activities, including those set forth in the subtitle.

Section 919. Bioenergy programs

Section 919 requires the Secretary to conduct a program of study regarding bioenergy, including biofuels.

Section 920. Concentrating solar power study program

Section 920 requires the Secretary to conduct a program of study to evaluate the potential of concentrating solar power for hydrogen production.

Section 921. Miscellaneous projects

Section 921 provides that the Secretary may study ocean energy, including wave energy, and the combined use of renewable energy technologies.

Section 922. Renewable energy in public buildings

Section 922 requires the Secretary to establish a program for the transfer of innovative technologies for solar and other renewable energy sources in public buildings.

Section 923. University biodiesel program

Section 923 requires the Secretary to establish a program regarding the feasibility of the operation of diesel electric power generators.

Subtitle D—Nuclear Energy

Section 929. Alternatives to industrial radioactive sources

Section 929 requires the Secretary to conduct a study and provide a report to Congress by 2006 concerning industrial applications of large radioactive sources and both existing programs and alternatives for their disposal. The section also requires the Secretary to establish research and development program regarding such alternatives.

Section 930. Geological isolation of spent fuel

Section 930 requires the Secretary to conduct a study to determine the feasibility of deep borehole disposal of spent nuclear fuel.

Subtitle E—Fossil Energy

PART I—STUDIES AND PROGRAM SUPPORT

Section 931. Fossil energy

Section 931 authorizes appropriations for fiscal years 2006–2010 for fossil energy activities, including activities authorized under this Part.

Section 932. Oil and gas studies

Section 932 requires the Secretary to conduct programs of studies concerning certain oil and gas-related issues and fuel cells. This section also requires reports to Congress concerning estimates of natural gas and oil reserves. Further, section 932 requires the Secretary to establish a national center or consortium for excellence in clean energy and power generation.

Section 933. Technology transfer

Section 933 requires the Secretary to establish a competitive program to a nonprofit entity for the purpose of transferring technologies developed with public funds.

Section 934. Coal mining technologies

Section 934 requires the Secretary to establish a program of studies on coal mining technologies.

Section 935. Coal and related technologies program

Section 935 requires the Secretary to establish a program of studies on coal and power systems and to address cost and performance goals.

Section 936. Complex well technology testing facility

Section 936 requires the Secretary to establish a complex well technology testing facility to increase the range of extended drilling technologies.

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

Section 941. Program authority

Section 941 mandates the Secretary to carry out a program regarding technologies for ultra-deepwater and unconventional natural gas and other petroleum resource exploration and production.

Section 942. Ultra-deepwater program

Section 942 directs the Secretary to implement section 941 goals to maximize ultra-deep water natural gas and other petroleum resources, while minimizing costs and improving safety and environmental impacts. It also provides for the oversight and operation of awards for the ultra-deepwater program.

Section 943. Unconventional natural gas and other petroleum resources program

Section 943 provides for the oversight and operation of the unconventional natural gas and other petroleum resources program.

Section 944. Additional requirements for awards

Section 944 provides for the requirements for any awards granted pursuant to this part.

Section 945. Advisory committees

Section 945 provides for an Ultra-Deepwater Advisory Committee and an Unconventional Resources Technology Advisory Committee.

Section 946. Limits on participation

Section 946 provides limitations for any awards granted pursuant to this part.

Section 947. Sunset

Section 947 provides that the authority provided for by the part sunsets on September 31, 2014.

Section 948. Definitions

Section 948 provides definitions for certain terms.

Section 949. Funding

Section 949 establishes and authorizes funding for fiscal year 2005 for the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund.

Subtitle F—Energy Sciences

Section 953. Plan for Fusion Energy Sciences Program

Section 953 declares a policy of the United States to conduct a program of activities to ensure the United States is competitive with other nations in fusion energy and requires the Secretary to implement a plan for this policy.

Section 954. Spallation neutron source

Section 954 requires the Secretary to report on the Spallation Neutron Source project as part of the budget submission.

Section 962. Nitrogen fixation

Section 962 requires the Secretary to conduct studies on nitrogen fixation.

Subtitle G—Energy and Environment

Section 966. Waste reduction and use of alternatives

Section 966 provides authorization for a single grant to examine burning post-consumer carpet in cement kilns as an alternative energy source.

Section 967. Report on fuel cell test center

Section 967 requires the Secretary to report to Congress regarding a test center for next-generation fuel cells.

Section 968. Arctic Engineering Research Center

Section 968 authorizes the Secretary to provide annual grants to a university research center concerning infrastructure in the Arctic region.

Section 970. Western Michigan demonstration project

Section 970 requires the Administrator of the EPA to conduct a demonstration project to address the effect of transported ozone and ozone precursors in Southwestern Michigan.

Section 971. Low-cost hydrogen propulsion and infrastructure

Section 971 requires the Secretary to establish a program with respect to using hydrogen propulsion in light-weight vehicles.

Section 972. Carbon-based fuel cell development

Section 972 authorizes the Secretary to provide a single grant to design and fabricate a 5-kilowatt prototype coal-based fuel cell.

Subtitle H—International Cooperation

Section 981. United States-Israel coordination

Section 981 requires the Secretary to report on cooperation between the United States and Israel in energy research and development activities.

TITLE X—DEPARTMENT OF ENERGY MANAGEMENT

Section 1001. Additional Assistant Secretary position

Section 1001 creates a new Assistant Secretary of Energy, and expresses the sense of Congress that the new position be used to improve management of nuclear energy at DOE.

Section 1002. Other transactions authority

Section 1002 grants the Secretary of Energy authority to enter into other transactions as appropriate to further research, development, or demonstration goals of the Department.

Section 1003. University collaboration

Section 1003 directs the Secretary of Energy to report to Congress on the feasibility of promoting collaboration between major universities and other colleges and universities on energy projects.

Section 1004. Sense of Congress

Section 1004 expresses the sense of Congress that the Secretary of Energy should implement more stringent controls on the DOE purchase card program to prevent waste and fraud.

TITLE XII—ELECTRICITY

Section 1201. Short title

Section 1201 establishes the short title for title XII as the "Electric Reliability Act of 2005."

Subtitle A—Reliability Standards

Section 1211. Electric reliability standards

Section 1211 provides for the establishment of mandatory, enforceable electric reliability standards, including cybersecurity protection, 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. Section

1211 provides for a rebuttable presumption 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 also 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. In addition, this section provides for enforcement of FERC-approved reliability standards. The section also limits direct spending by the ERO to $50 million per year and provides an authorization for an additional $50 million per year. 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. Finally, section 1211 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 B—Transmission Infrastructure Modernization

Section 1221. Siting of interstate electric transmission facilities

Section 1221 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, or other approval authority, 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. The 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 the House Committees on Energy and Commerce and Resources. Section 1211 also requires Federal land management agencies to develop a Memorandum of Understanding to coordinate permitting decisions and environmental reviews.

Section 1222. Third-party finance

Section 1222 allows the Secretary of Energy, acting through the Administrators of the Western Area Power Administration (WAPA) or the Southwest Power Administration (SWPA), to participate with other parties to design, develop, construct, operate, maintain or own upgrades to existing transmission facilities owned by WAPA

or SWPA or new transmission facilities if those facilities are needed to meet actual or projected increases in demand and meet certain other conditions. The section also allows the Secretary of Energy to use funds contributed by a third party for the purposes of this section.

Section 1223. Transmission system monitoring

Section 1223 provides that within six months of the date of enactment, the Secretary of Energy and the FERC shall submit a report to Congress on the steps that must be taken to provide all transmission owners and Regional Transmission Organizations real-time information on the status of the transmission system.

Section 1224. Advanced transmission technologies

Section 1224 provides that the FERC shall encourage the deployment of advanced transmission technologies.

Section 1225. Electric transmission and distribution programs

Section 1225 provides that the Secretary of Energy shall establish a comprehensive program to promote improved reliability and efficiency of electrical transmission and distribution systems. Within one year of enactment, the Secretary of Energy shall submit a five-year program plan to Congress and provide status reports within two years of transmitting the program plan. In addition, the Secretary of Energy shall establish an initiative specifically focused on power delivery utilizing components incorporating high-temperature superconductivity. The section authorizes $15 million for fiscal year 2006, $20 million for fiscal year 2007, $30 million for fiscal year 2008, $35 million for fiscal year 2009, and $40 million for fiscal year 2010.

Section 1226. Advanced Power System Technology Incentive Program

Section 1226 authorizes the Secretary of Energy to establish an Advanced Power System Technology Incentive Program to support, through incentives, the deployment of certain advanced power system technologies to increase power generation through enhanced operational, economic and environmental performance. The section authorizes $10 million for each of the fiscal years 2006 through 2012.

Section 1227. Office of Electric Transmission and Distribution

Section 1227 authorizes the creation within DOE an Office of Electric Transmission and Distribution.

Subtitle C—Transmission Operation Improvements

Section 1231. Open nondiscriminatory access

Section 1231 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 1232. Sense of Congress on Regional Transmission Organizations

Section 1232 provides that it is the sense of Congress, for the reasons enumerated, that all transmitting utilities in interstate commerce should voluntarily become a member of a Regional Transmission Organization.

Section 1233. Regional Transmission Organization applications progress report

Section 1233 provides that FERC shall provide a report to Congress on all regional transmission organization applications submitted to FERC and the status of such applications. The report shall also include a discussion of the impact of the regional transmission organization on consumers, other entities, wholesale competition, and rates.

Section 1234. Federal utility participation in Regional Transmission Organizations

Section 1234 permits appropriate Federal regulatory authorities (Federal power marketing agencies and the Tennessee Valley Authority) to join a Regional Transmission Organization or an Independent System Operator. The section does not grant FERC any other authority over the Federal utility.

Section 1235. Standard market design

Section 1235 remands to FERC its Standard Electricity Market Design Order, RM01–12–00, and prohibits FERC from issuing a final rule in that docket before October 31, 2006, or issuing a final rule that takes effect before December 31, 2006.

Section 1236. Native load service obligation

Section 1236 requires FERC to ensure that load serving entities 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. The section clarifies that reservation of transmission capacity for native load shall not be considered unduly discriminatory or preferential under the Federal Power Act. Section 1236 states that the section shall not affect the allocation of transmission rights by certain transmission organizations under certain conditions and that nothing in this section provides a basis to abrogate existing contracts or service agreements for firm transmission service. The section also provides that FERC will issue a rule or order enabling load serving entities to secure firm transmission rights (or equivalent financial or tradable rights), on a long-term basis for long-term power supply arrangements in FERC-approved RTOs or ISOs with organized electricity markets.

Section 1237. Study on the benefits of economic dispatch

Section 1237 requires the Secretary of Energy, in coordination and consultation with the states, to conduct a study on the procedures and potential benefits of economic dispatch, and report to the Congress and the States on the results of the study on a regular basis.

Subtitle D—Transmission Rate Reform

Section 1241. Transmission infrastructure investment

Section 1241 promotes needed investment in transmission by requiring FERC to issue a rule establishing just and reasonable incentive-based and performance-based transmission rates, and incentives for joining a Regional Transmission Organization or Independent System Operator.

Subtitle E—Amendments to PURPA

Section 1251. Net metering and additional standards

Section 1251 requires each state and non-regulated electric utility to consider whether to require each electric utility to make available upon request net metering service as set forth under Section 111 of the Public Utilities Regulatory Policies Act of 1978 (PURPA). The section requires state regulatory authorities to consider standards for such service with certain exceptions.

Section 1252. Smart metering

Section 1252 requires each state and non-regulated electric utility to consider whether to require each electric utility to make available upon request time-based metering service as set forth under Section 111 of PURPA. The section requires state regulatory authorities to consider standards for such service, including time of use, critical peak and real-time pricing, and peak load reduction plans with customers with large electric loads with certain exceptions. The Secretary of Energy shall provide technical assistance on demand response.

Section 1253. Cogeneration and small power production purchase and sale requirements

Section 1253 amends section 210 of PURPA by (1) adding conditions under which the mandatory purchase obligation of utilities may be relieved; (2) establishes procedures for utilities to apply to the Commission for relief if such conditions are met, and for qualifying facilities, state agencies, or other affected persons 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.

The section directs the Commission to revise the rules for new qualifying cogeneration facilities eligible for the purchase requirements under Section 210 of the Federal Power Act to 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 the continuing progress in the development of efficient electric energy generating technology. It also clarifies that the rule revisions do not apply to existing qualifying small power production facilities or existing qualifying cogeneration facilities.

Finally, section 1253(b) eliminates existing ownership restrictions on qualifying small power production facilities and qualifying cogeneration facilities.

Section 1254. Interconnection

Section 1254 provides that states and non-regulated electric utilities will consider standards for the interconnection of onsite generation to the local electric distribution grid as set forth under Section 111(d) of PURPA with certain exceptions.

Subtitle F—Repeal of PUHCA

Section 1261. Short title

Section 1261 establishes the short title of subtitle F as the "Public Utility Holding Company Act of 2005."

Section 1262. Definitions

Section 1262 defines certain terms used in this subtitle.

Section 1263. Repeal of the Public Utility Holding Company Act of 1935

Section 1263 repeals the Public Utility Holding Company Act of 1935 (PUHCA).

Section 1264. Federal access to books and records

Section 1264 directs holding companies and associate companies to maintain and make available to FERC such books and other records as it 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 FERC 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 FERC to protect the confidentiality of books and other records acquired under this section, except as may be directed by FERC or a court of competent jurisdiction.

Section 1265. State access to books and records

Section 1265 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, associate or affiliate company is directed to produce for inspection books and other records that have been identified in reasonable detail by the state commission, determined by the state 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 1266. Exemption authority

Section 1266 directs FERC to exempt certain companies from the requirements of section 1264.

Section 1267. Affiliate transactions

Section 1267 provides that nothing in this subtitle shall limit the existing authority of FERC under the Federal Power Act to ensure that rates are just and reasonable, and, to whatever extent FERC 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 FERC or a state commission under otherwise applicable law from allowing recovery of costs in jurisdictional rates.

Section 1268. Applicability

Section 1268 prohibits application of this subtitle to the Federal government, states, and foreign governments, except as otherwise specifically provided.

Section 1269. Effect on other regulations

Section 1269 provides that nothing in this subtitle precludes FERC or a state commission from exercising its jurisdiction under otherwise applicable law to protect utility consumers.

Section 1270. Enforcement

Section 1270 specifies the powers available to FERC to enforce this subtitle.

Section 1271. Savings provisions

Section 1271 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 FERC under the Federal Power Act or the Natural Gas Act.

Section 1272. Implementation

Section 1272 directs FERC, within 12 months, to promulgate regulations necessary to implement this subtitle and submit to Congress recommendations for technical or conforming amendments.

Section 1273. Transfer of resources

Section 1273 provides for the transfer of all books and records related to the functions of FERC under this subtitle from the Securities and Exchange Commission to FERC.

Section 1274. Effective date

Section 1274 provides that this subtitle shall take effect 12 months after the date of enactment, with certain exceptions.

Section 1275. Service allocation

Section 1275 provides that FERC, at the request of the holding company system or state commission, shall review and authorize cost allocations for non-power goods or administrative or management services provided by an associate company that was organized specifically for providing such goods or services. Nothing in this section precludes FERC or a state commission from exercising its authority under other applicable laws. FERC is required to issue rules exempting companies that operate substantially within one state, and certain other transactions.

Section 1276. Authorization of appropriations

Section 1276 authorizes to be appropriated such sums as necessary to carry out this subtitle.

Section 1277. Conforming amendments to the Federal Power Act

Section 1277 makes conforming amendments to the Federal Power Act.

Subtitle G—Market Transparency, Enforcement, and Consumer Protection

Section 1281. Market transparency rules

Section 1281 directs FERC to establish rules establishing an electronic information system to improve transparency in wholesale electric power markets. FERC shall have the authority to obtain the information it needs from any electric or transmitting utility.

Section 1282. Market manipulation

Section 1282 prohibits filing false information and round-trip (or "wash") trades of electric power with intent to fraudulently affect revenues, trading volumes or prices.

Section 1283. Enforcement

Section 1283 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. It also expands sections 306, 307, and 313 of the Federal Power Act.

Section 1284. Refund effective date

Section 1284 changes the refund 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 1285. Refund authority

Section 1285 provides that certain short-term market sales of wholesale power by certain non-FERC jurisdictional entities are subject to FERC-ordered refunds for sales above just and reasonable rates.

Section 1286. Sanctity of contract

Section 1286 provides that FERC, before abrogating or modifying certain market-based rate contracts, must meet a public interest standard, unless the contract expressly provides for a different

standard. This provision applies only prospectively (i.e., to contracts executed on or after the date of enactment).

Section 1287. Consumer privacy and unfair trade practices

Section 1287 authorizes the Federal Trade Commission to establish rules regarding consumer privacy. The section also allows the Federal Trade Commission to establish rules prohibiting "slamming" and "cramming" in retail electricity markets.

Subtitle H—Merger Reform

Section 1291. Merger review reform and accountability

Subsection (a) of section 1291 directs the Secretary of Energy, in consultation with FERC and the Department of Justice, to report to Congress on (1) duplicative authorities vested in 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 FERC to report annually to Congress on conditions imposed on mergers and other dispositions of property reviewed under section 203.

Section 1292. Electric utility mergers

Section 1292 amends the Federal Power Act by increasing the limit that triggers a FERC merger proceeding from $50,000 to $10 million. It also provides for FERC review of certain holding company mergers. The section also provides standards that FERC is to apply to determine whether a merger is in the public interest and directs FERC to issue a rule on certain classes of mergers that may be reviewed expeditiously.

Subtitle I—Definitions

Section 1295. Definitions

Section 1295 amends or provides specific definitions used in the Federal Power Act.

Subtitle J—Technical and Conforming Amendments

Section 1297. Conforming amendments

Section 1297 provides amendments to the Federal Power Act to conform to this title.

Subtitle K—Economic Dispatch

Section 1298. Economic dispatch

Section 1298 requires FERC to establish a joint board with the States to study the issue of security constrained economic dispatch for a market region. The joint board must report to Congress its findings and any consensus recommendations within one year.

TITLE XIV—MISCELLANEOUS

Subtitle C—Other Provisions

Section 1441. Continuation of transmission security order

Section 1441 provides that Department of Energy Order No. 202–03–2 concerning the cross sound cable shall remain in effect unless rescinded by Federal statute.

Section 1442. Review of agency determinations

Section 1442 provides the court of original and exclusive jurisdiction for all claims brought under Section 7 of the Natural Gas Act shall be the United States Court of Appeals for the District of Columbia Circuit.

Section 1443. Attainment dates for downwind ozone nonattainment areas

Section 1443 amends the Clean Air Act by granting the Administrator of the EPA the authority to extend the attainment date in lieu of reclassification if the Administrator determines another area significantly contributes to nonattainment in the downwind area and all other conditions of the section are met. In addition, in order to be granted an attainment date extension, Section 1443 also requires that a State submit a SIP revision that complies with all applicable requirements that exist for the area's current classification and that includes any additional measures needed to demonstrate attainment by the extended attainment date. In such a case, where all the required conditions of the section are met, the Administrator shall grant the extension. Furthermore, any attainment date that is extended must provide for attainment as expeditiously as practicable, but in no case later than the date on which the last reductions in pollution transport necessary for attainment are required to be achieved in the contributing upwind area.

Section 1444. Energy production incentives

Section 1444 provides that a state may provide state tax incentives to any entity for production in state of electricity from coal mined within the state (where any such electricity generation facility uses scrubbers or other forms of clean coal technology), renewable sources such as wind, solar, or biomass or ethanol. Any action taken by a state pursuant to this section is not to be considered an undue burden on interstate commerce.

Section 1446. Regulation of certain oil used in transformers

Section 1446 provides that soybean oil used in transformers as thermal insulation shall not be regulated like petroleum oil.

Section 1447. Risk assessment

Section 1447 requires that Federal agencies conducting assessments of risk to human health and the environment from energy technology, production, transport, transmission, distribution, storage, use, or conservation activities shall use sound and objective scientific practices in assessing such risks, shall consider the best available science (including peer-reviewed studies), and shall in-

clude a description of the weight of the scientific evidence concerning such risks.

Section 1448. Oxygen-fuel

Section 1448 requires the Secretary to establish a program on oxygen fuels systems and provides authorization of appropriations for this activity.

Section 1449. Petrochemical and oil refinery facility health assessment

Section 1449 requires the Secretary to conduct a study of direct and significant health impacts to persons resulting from living in proximity to petrochemical and oil refining facilities based on sound and objective scientific practices.

TITLE XV—ETHANOL AND MOTOR FUELS

Subtitle A—Genral Provisions

Section 1501. Renewable content of motor vehicle fuel

Section 1501 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 3.1 billion gallons in 2005, rising in steps to 5.0 billion gallons in 2012. After 2012 the amount of the requirement will be adjusted each year to account for growth in the volume of gasoline sold or dispensed. Under this section, 1 gallon of cellulosic biomass ethanol or waste derived ethanol is equivalent to 1.5 gallons of renewable fuel for purposes of meeting the renewable content requirement. Cellulosic biomass ethanol or waste derived ethanol derived from agricultural residue or wood residue or is an agricultural byproduct is equivalent to 2.5 gallons of renewable fuel. A credit program, which allows for the transfer of renewable fuel credits, is also established.

Section 1501 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 requirement in 2005 and allows for a waiver of the initial year of the requirement if there are significant adverse consumer impacts on a national, regional, or state basis. The section requires a determination by the Administrator of the EPA, in consultation with the Secretary of Energy and the Secretary of Agriculture, prior to each increase in the renewable content requirement, whether there is sufficient renewable fuel production capacity, 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 Administrator may waive in whole or in part, the renewable fuel requirement if there is a significant adverse impact. The section also provides for an extension of the renewable fuel requirement for small refineries.

In addition, section 1501 requires the Federal Trade Commission to perform a market concentration analysis and report annually, beginning in 2005, of the ethanol production industry. Further-

more, the EPA in consultation with the Energy Information Administration shall annually conduct a survey of the market shares of conventional gasoline and reformulated gasoline containing ethanol or renewable fuel.

Section 1502. Fuels safe harbor

Section 1502 provides for a fuels safe harbor for renewable fuel, methyl tertiary butyl ether (MTBE) used or intended to be used as a motor vehicle fuel, and motor vehicle fuel containing such renewable fuel or MTBE. This safe harbor applies only to the product being deemed defective by virtue of the fact that it is or contains, such renewable fuel or MTBE. This safe harbor is not applicable to other liability among which is included, environmental remediation costs, drinking water contamination, public or private nuisance and trespass.

Section 1503. Findings and MTBE transition assistance

Section 1503 includes findings and authorization for transition assistance to MTBE eligible production facilities. The section authorizes $250,000,000 for each of fiscal years 2005 through 2012. This assistance is to aid in the transition from MTBE production to the production of other fuel additives or renewable fuels.

Section 1504. Use of MTBE

Section 1504 proscribes the use of MTBE, no later than 2014, in motor vehicle fuel.

Section 1505. National Academy of Sciences review and presidential determination

Section 1505 requires the National Academy of Sciences to review the use of MTBE in fuel and fuel additives. The review is to examine the effects of MTBE use on environmental quality and public health, including the costs and benefits and the effect of prohibitions on the use of MTBE on fuel availability and price. After the completion of this review the President may make a determination that restrictions on the use of MTBE as provided for in section 1504, shall not take place.

Section 1506. Elimination of oxygen content requirement for reformulated gasoline

Section 1506 eliminates the oxygenate requirement for reformulated gasoline. The elimination of the requirement is effective 270 days after enactment for all states except, California, which is granted elimination from the requirement upon date of enactment. Further, the section provides for the maintenance of toxic air pollutant emissions reductions. Not later than 270 days after enactment the Administrator of the EPA shall establish standards for each refinery or importer based on a baseline for calendar years 1999 and 2000. Certain reformulated gasoline regulations are consolidated under the section.

Section 1507. Analyses of motor vehicle fuel changes

Section 1507 requires that the Administrator of the EPA conduct an "antibacksliding 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 the implementation of the amendments made by general provisions of this title.

Section 1508. Data collection

Section 1508 amends the Department of Energy Organization Act by requiring the Administrator of the Energy Information Agency to conduct and publish the results of a survey of renewable fuels demand in the motor fuels market in order to evaluate the effectiveness of the new renewable fuels requirement.

Section 1509. Reducing the proliferation of state fuel controls

Section 1509 limits the authority of the Administrator of the EPA to approve under Section 211(c)(4)(C) of the Clean Air Act any control or prohibition regarding a fuel or fuel additive unless the Administrator, after consultation with DOE, publishes in the Federal Register a finding that such approval will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas. The section also outlines a study, by EPA in cooperation with DOE, of the projected effects on air quality, the proliferation of fuel blends, fuel availability, and fuels costs of providing preference treatment to certain fuel blends.

Section 1510. Fuel system requirements harmonization study

Section 1510 requires a joint study by the Administrator of the EPA and the Secretary of Energy of the Federal, state, and local requirements concerning motor fuels and the effect of these requirements on the supply, quality and price of motor fuels.

Section 1511. Commercial byproducts from municipal solid waste and cellulosic biomass loan guarantee program

Section 1511 provides the Secretary of Energy the authority, for a 10–year period, to establish a program to provide loan guarantees by private institutions for the construction of facilities for the processing and conversion of municipal solid waste and cellulosic biomass into fuel ethanol and other commercial byproducts.

Section 1512. Cellulosic biomass and waste-derived ethanol conversion assistance

Section 1512 amends the Clean Air Act by providing the Secretary of Energy with the authority to provide grants to United States merchant producers of cellulosic biomass ethanol and waste-derived ethanol to build ethanol production facilities.

Section 1513. Blending of compliant reformulated gasolines

Section 1513 amends the Clean Air Act to cite that under specified circumstances it shall not be a violation of the Act for a gasoline retailer to blend at a retail location batches of ethanol-blended and non-ethanol blended reformulated gasoline.

Subtitle B—Underground Storage Tank Compliance

Section 1521. Short title

Section 1521 establishes the short title as the "Underground Storage Tank Compliance Act of 2005."

Section 1522. Leaking underground storage tanks

Section 1522 amends the Solid Waste Disposal Act to direct the Administrator of EPA to distribute to the states at least 80 percent of the funds from the Underground Storage Tank Trust Fund for use in paying the reasonable costs for state enforcement efforts pertaining to underground storage tanks. In addition, this section establishes guidelines for revisions to the funding allocation process that the Administrator may revise after consulting with state agencies responsible for overseeing corrective actions for releases from underground storage tanks.

In seeking a cost recovery action, under this section the Administrator (or state) shall consider the owner or operator's ability to pay by weighing the ability of the owner or operator to pay all corrective action costs and still maintain its basic business operations, including consideration of the overall financial condition of the owner or operator and demonstrable constraints on the ability of the owner or operator to raise revenues. In requesting consideration under these provisions, the owner or operator shall promptly provide the Administrator (or state) with all relevant information needed to determine the owner's ability to pay corrective action costs. The Administrator may allow for alternative payment methods as may be necessary or appropriate, if the Administrator (or state) determines that the owner or operator cannot pay all or a portion of the costs in a lump sum payment. Owners and operators are to be held fully accountable in the cases of misrepresentation or fraud and the Administrator (or state) is authorized to seek full recovery of all the costs from the corrective action without consideration of the factors in this section.

Section 1523. Inspection of underground storage tanks

Section 1523 prescribes inspection requirements for underground storage tanks. This section requires every state conduct routine inspections of every underground storage tank (UST) every three years. The section allows the states no more than an initial 2–year "grace period" to start their inspection programs. During this 2–year period, the provisions establish that the states must eliminate their backlog of un-inspected tank systems that have been out of compliance with federal regulations issued 16 years ago.

After the conclusion of the "grace period," the section also requires states conduct on-site inspections of every underground storage tank located within their state that is regulated under Subtitle I of the Solid Waste Disposal Act at least once every three (3) years. The section allows the state to contract with third-party inspectors to carry out these inspections.

The section allows a state to petition the EPA for a one-time grant of a one-year extension to the first mandatory three (3) year inspection cycle in order to meet the requirement of inspecting all tanks.

Section 1524. Operator training

Section 1524 instructs the Administrator of the EPA, with the cooperation of the states, to publish guidelines for use by the states that specify training requirements for persons having primary responsibility for on-site operation and maintenance of underground storage tanks, persons having daily on-site responsibility for the

operation and maintenance of underground storage tanks, and daily on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system.

Section 1525. Remediation from oxygenated fuel additives

Section 1525 creates a new dedicated authorization of Federal LUST Trust Fund dollars to be used to carry out corrective actions with respect to release of a fuel containing an oxygenated fuel additive that presents a threat to human health or welfare or the environment. Oxygenated fuel additives include, but is not limited to, MTBE, ethanol, ethyl tertiary butyl ether (ETBE), tertiary amyl methyl ether (TAME), and di isopropyl ether (DIPE).

Section 1526. Release prevention, compliance, and enforcement

Section 1526 authorizes funds to be used to conduct inspections, issue orders, or bring actions under this subtitle by a state and to carry out state regulations pertaining to underground storage tanks under this subtitle, or by the EPA Administrator, for tanks regulated under this subtitle. The section establishes right-to-know reporting requirements for all government-owned tanks. In these reports, the states submit to the Administrator a list identifying the location and owner of each underground storage tank that is not in compliance with section 9003 of the Solid Waste Disposal Act, specifies the date of the last inspection, and describes the actions that have been and will be taken to ensure compliance of the underground storage tank with this subtitle. The Administrator shall require each state that receives Federal funds to make available to the public a record of underground storage tanks under this subtitle. The Administrator shall prescribe, after consultation with the states, the best manner and form to make available and maintain this record, considering the most practical and efficient means to maintain its intended purpose. This section also establishes incentives for performance measures that may be taken into consideration in determining the terms of a civil penalty under Section 9006 of the Solid Waste Disposal Act.

Section 1527. Delivery prohibition

Section 1527 makes it unlawful two years after the date of enactment to deliver to, deposit into, or accept a regulated substance into an underground storage tank at a facility that has been identified as ineligible for fuel delivery or deposit. EPA and states that receive funding under this subtitle must publish guidelines detailing the different process and procedures they will use to implement the delivery prohibition. For each state that receives funding from the Leaking Underground Storage Tank program, the section also mandates the use of state-managed Delivery Prohibition Rosters that would be posted and updated on state websites for gasoline marketers and petroleum delivery services to reference in order to have notice of which tanks are ineligible for fuel delivery. The section provides protection to those persons from violations of the prohibition if notice of ineligibility was not posted on the website. In addition, the section requires the use of a device, such as a lockout tag as a physical manifestation of a states' prohibition of delivery, deposit, or acceptance of fuel at an underground storage tank

system and prescribes civil penalties for persons that damage or seek an unauthorized removal of this lockout tag.

Section 1528. Federal facilities

Section 1528 requires Federal agencies with jurisdiction over underground storage tanks or systems, or engaged in any activity that may result in specified actions regarding such tanks or regulated substances related to them, including release response activities, to comply with all Federal, state, interstate, and local regulatory programs. Specifically, these agencies must report to Congress on their compliance with UST requirements. The section also expressly waives claims of sovereign immunity with respect to substantive or procedural state and local requirements, including all administrative orders, all civil and administrative penalties and fines, injunctive relief, and reasonable service charges. The section continues the President's authority to exempt any Federal tank from compliance with such requirements when the exemption is in the "paramount interests of the United States."

Section 1529. Tanks on tribal lands

Section 1529 instructs the EPA Administrator, in coordination with Indian tribes, to develop and implement a strategy, giving priority to releases that present the greatest threat to human health or the environment, to implement and take necessary corrective actions in response to releases from leaking underground storage tanks on tribal lands, and to report within two years to Congress on the status of these programs on tribal lands.

Section 1530. Additional measures to protect groundwater

Section 1530 requires a state to choose between either secondary containment requirements or installer and manufacturer financial responsibility requirements as an additional means of protecting groundwater against leaks from underground storage tanks. If a state chooses secondary containment, any new installation of an underground storage tank that is within 1,000 feet of a community water system or potable water well must be secondarily contained. In addition, any tank or piping that is replaced on an underground storage tank that is within 1,000 feet of a community water system or potable water well must be secondarily contained. Repairs to an underground storage tank system or dispenser do not trigger any secondary containment requirements.

If a state chooses installer and manufacturer certification, as well as financial responsibility requirements, this section requires tank installers and manufacturers to follow professional guidelines for tank products or comply with one of the new statutory requirements that are similar to subsections (d) and (e) of 40 CFR 280.20. In addition, this section requires installers and manufacturers to maintain evidence of financial assurance to help pay corrective action costs that are directly relatable to a faulty tank part or installation.

Section 1531. Authorization of appropriations

Section 1531 authorizes $50 million per fiscal year from 2005–2009 from the General Treasury to cover administrative expenses and those areas in the bill that are not specifically authorized to

receive direct appropriations from the Leaking Underground Storage Tank Trust Fund. In addition, from the Leaking Underground Storage Tank Trust Fund, $1 billion (or $200 million per year) is authorized for cleanups of releases from leaking underground storage tanks, $1 billion (or $200 million per year) is authorized for the cleanup of releases of oxygenated fuel additives from leaking underground storage tanks, $500 million (or $100 million per year) for on-site inspections and enforcement, and $275 million (or $55 million per year) for delivery prohibition and State tank program disclosure and operator training improvements.

Section 1532. Conforming amendments

Section 1532 provides amendments to the Solid Waste disposal Act to conform to this title.

Section 1533. Technical amendments

Section 1533 provides amendments to the Solid Waste disposal Act to conform to this title.

Subtitle C—Boutique Fuels

Section 1541. Reducing the proliferation of boutique fuels

Section 1541 amends the Clean Air Act to authorize the Administrator of the EPA, in consultation with the Secretary of Energy, to temporarily waive requirements during fuel supply emergencies. In addition, section 1541 requires the Administrator to publish a list of existing boutique fuels. This section requires that the Administrator when approving a State Implementation Plan may not approve a fuel that would increase the total number of fuels approved as of September 1, 2004, but may approve a new fuel in a State Implementation Plan if it completely replaces a fuel on the list. The Administrator and the Secretary of Energy must determine that approval of a new fuel will not cause fuel supply interruptions or a significant adverse impact on fuel producibility. This section directs that the Administrator shall remove a fuel from the list under specified circumstances but shall not reduce the total number of fuels authorized under the list. In addition, the Administrator shall not approve any fuel in a State's Implementation Plan unless that fuel was approved in at least one state in the petitioning State's Petroleum Administration for Defense District.

Section 1541 requires the Administrator and the Secretary of Energy to study jointly and report to Congress the effects on air quality, the number of fuel blends, fuel fungibility, and fuel costs of State Implementation Plans adopted pursuant to the Clean Air Act. This section authorizes a joint appropriation of $500,000 to the EPA and DOE for completion of the required study.

TITLE XVI—STUDIES

Section 1601. Study on inventory of petroleum and natural gas storage

Section 1601 directs the Secretary of Energy to conduct a study on petroleum and natural gas storage capacity and operational inventory levels across the country. This section also requires the Secretary to report to Congress within a year with results of the

study and recommendations for preventing future supply shortages.

Section 1605. Study of energy efficiency standards

Section 1605 directs Secretary of Energy to study whether energy efficiency standards should focus on the site of consumption or more generally beginning at production and throughout the entire fuel cycle.

Section 1606. Telecommuting study

Section 1606 requires the Secretary of Energy, along with FERC, the Director of the Office of Personnel Management, the Administrator of General Services and the Administrator of NTIA to conduct a study into the energy conservation implications from more widespread adoption of telecommuting by Federal employees.

Section 1607. LIHEAP report

Section 1607 directs the Secretary of Health and Human Services to transmit to Congress, within one year, a study on how Low-Income Home Energy Assistance Program funds could be more effectively used to prevent loss of life from extreme temperatures.

Section 1608. Oil bypass filtration technology

Section 1608 directs the Secretary of Energy and the Administrator of the EPA to conduct a study into the benefits and feasibility of oil bypass filtration technology in reducing demand for oil and protecting the environment.

Section 1609. Total integrated thermal systems

Section 1609 directs the Secretary of Energy to conduct a study into the benefits and feasibility of total integrated thermal systems in reducing demand for oil and protecting the environment.

Section 1610. University collaboration

Section 1610 directs the Secretary of Energy to transmit a report to Congress examining the feasibility of promoting collaboration between large and small institutions of higher learning through grants, contracts and cooperative agreements in energy projects.

Section 1611. Reliability and consumer protection assessment

Section 1611 directs FERC to assess the effects of exempting electric cooperatives and federally-owned utilities from FERC regulation under Section 201(f) of the Federal Power Act on transmission grid reliability, benefits to customers and efficiency, just and reasonable rates, and ability of FERC to protect electricity consumers. If FERC finds that these exemptions create adverse effects on customers and electric reliability, it shall make recommendations to Congress pursuant to Section 311 of the Federal Power Act.

Section 1612. Report on energy integration with Latin America

Section 1612 directs the Secretary of Energy to report to Congress on the status of energy export development in Latin America and efforts by the Secretary and other departments and agencies

of the United States to promote energy integration with Latin America.

Section 1613. Low-volume gas reservoir study

Section 1613 directs the Secretary of Energy to make a grant to an organization of oil and gas producing States, specifically those containing significant numbers of marginal oil and natural gas wells, for conducting a study of low-volume natural gas reservoirs.

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

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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.

PART 4—FEDERAL PHOTOVOLTAIC UTILIZATION

Sec. 561. Short title of part.

* * * * * * *

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

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PART 4—MISCELLANEOUS

SEC. 251. ENERGY-CONSERVING IMPROVEMENTS FOR ASSISTED HOUSING.

(a) * * *

(b) GRANTS.—(1) The Secretary of Housing and Urban Development is authorized to make grants to finance energy conserving improvements (as defined in subparagraph (2) of the last paragraph of section 2(a) of the National Housing Act) to projects which are [financed with loans] *assisted* under section 202 of the Housing Act of 1959, *which are eligible multifamily housing projects (as*

such term is defined in section 512 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note)) and are subject to mortgage restructuring and rental assistance sufficiency plans under such Act, or which are subject to mortgages insured under section 221(d)(3) or section 236 of the National Housing Act. *Such improvements may also include the installation of energy and water conserving fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2–1998 and A112.18.1–2000, or any revision thereto, applicable at the time of installation.* The Secretary shall make assistance available under this subsection on a priority basis to those projects which are in financial difficulty as a result of high energy costs. In carrying out the program authorized by this subsection, the Secretary shall issue regulations requiring that any grant made under this subsection shall be made only on the condition that the recipient of such grant shall take steps (prescribed by the Secretary) to assure that the benefits derived from such grants in terms of lower energy costs shall accrue to tenants in the form of lower operating subsidy if such a subsidy is being paid to such recipient.

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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 2006 through 2015 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in fiscal year 2003, by the percentage specified in the following table:*

Fiscal Year	***Percentage reduction***
2006	*2*
2007	*4*
2008	*6*
2009	*8*
2010	*10*

Fiscal Year	*Percentage reduction*
2011	*12*
2012	*14*
2013	*16*
2014	*18*
2015	*20.*

* * * * * * *

(3) Not later than December 31, 2014, 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 2016 through 2025.

* * * * * * *

(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] *requirements of subsections (a) and (b)(1)* 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, 2012, 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, energy efficiency advocacy organizations, 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 1 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.—Not 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) * * *

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

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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 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 of the Capitol 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) AGENCY.—The term "agency" has the meaning given that term in section 7902(a) of title 5, United States Code.

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

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

(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 agency for an energy consuming product, the head of the 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 agency is not required to procure an Energy Star product or FEMP designated product under paragraph (1) if the head of the 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 agency.

(3) PROCUREMENT PLANNING.—The head of an 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) SPECIFIC PRODUCTS.—(1) 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 not later than 120 days after the date of the enactment of this section, after considering the recommendations of associated electric motor manufacturers and energy efficiency groups.

(2) All Federal agencies are encouraged to take actions to maximize the efficiency of air conditioning and refrigeration equipment, including appropriate cleaning and maintenance, including the use of any system treatment or additive that will reduce the electricity consumed by air conditioning and refrigeration equipment. Any such treatment or additive must be—

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

(B) determined by the Administrator of the Environmental Protection Agency to be environmentally safe; and

(C) shown to increase seasonal energy efficiency ratio (SEER) or energy efficiency ratio (EER) when tested by the National In-

stitute of Standards and Technology according to Department of Energy test procedures without causing any adverse impact on the system, system components, the refrigerant or lubricant, or other materials in the system.

Results of testing described in subparagraph (C) shall be published in the Federal Register for public review and comment. For purposes of this section, a hardware device or primary refrigerant shall not be considered an additive.

(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.

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SEC. 570. USE OF PHOTOVOLTAIC ENERGY IN PUBLIC BUILDINGS.

(a) PHOTOVOLTAIC ENERGY COMMERCIALIZATION PROGRAM.—

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

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

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

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

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

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

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

(3) ACQUISITION OF PHOTOVOLTAIC SOLAR ELECTRIC SYSTEMS.—

(A) IN GENERAL.—The program shall provide for the acquisition of photovoltaic solar electric systems and associated storage capability for use in public buildings.

(B) ACQUISITION LEVELS.—The acquisition of photovoltaic electric systems shall be at a level substantial enough to allow use of low-cost production techniques with at least 150 megawatts (peak) cumulative acquired during the 5 years of the program.

(4) ADMINISTRATION.—The Secretary shall administer the program and shall—

(A) issue such rules and regulations as may be appropriate to monitor and assess the performance and operation of photovoltaic solar electric systems installed pursuant to this subsection;

(B) develop innovative procurement strategies for the acquisition of such systems; and

(C) transmit to Congress an annual report on the results of the program.

(b) PHOTOVOLTAIC SYSTEMS EVALUATION PROGRAM.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this section, the Secretary shall establish a photovoltaic solar energy systems evaluation program to evaluate such photovoltaic solar energy systems as are required in public buildings.

(2) PROGRAM REQUIREMENT.—In evaluating photovoltaic solar energy systems under the program, the Secretary shall ensure that such systems reflect the most advanced technology.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) PHOTOVOLTAIC ENERGY COMMERCIALIZATION PROGRAM.—There are authorized to be appropriated to carry out subsection (a) $50,000,000 for each of fiscal years 2006 through 2010. Such sums shall remain available until expended.

(2) PHOTOVOLTAIC SYSTEMS EVALUATION PROGRAM.—There are authorized to be appropriated to carry out subsection (b) $10,000,000 for each of fiscal years 2006 through 2010. Such sums shall remain available until expended.

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TITLE VIII—ENERGY SAVINGS PERFORMANCE CONTRACTS

SEC. 801. AUTHORITY TO ENTER INTO CONTRACTS.

(a) IN GENERAL.—(1) * * *

(2)(A) * * *

* * * * * * *

(E) All Federal agencies combined may not, after the date of enactment of the Energy Policy Act of 2005, enter into more than a total of 100 contracts under this title. Payments made by the Federal Government under all contracts permitted by this subparagraph combined shall not exceed a total of $500,000,000. Each Federal agency shall appoint a coordinator for Energy Savings Performance Contracts with the responsibility to monitor the number of such contracts for that Federal agency and the investment value of each contract. The coordinators for each Federal agency shall meet monthly to ensure that the limits specified in this subparagraph on the number of contracts and the payments made for the contracts are not exceeded.

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[(c) SUNSET AND REPORTING REQUIREMENTS.—The authority to enter into new contracts under this section shall cease to be effective on October 1, 2006.]

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SEC. 804. DEFINITIONS.

For purposes of this title, the following definitions apply:

[(1) The term "Federal agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency.]

(1) The term "Federal agency" means the Department of Defense, the Department of Veterans Affairs, and the Department of Energy.

* * * * * * *

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

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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 2003 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—

(i) if life-cycle 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 version current as of the date of enactment of this paragraph of the ASHRAE Standard or 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; and

(ii) where water is used to achieve energy efficiency, water conservation technologies shall be applied to the extent they are life-cycle cost effective.

(B) ADDITIONAL REVISIONS.—Not later than 1 year after the date of approval of each subsequent revision of the ASHRAE Standard or the International Energy Conservation Code, as appropriate, 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.

TITLE IV—ENERGY CONSERVATION AND RENEWABLE-RESOURCE ASSISTANCE FOR EXISTING BUILDINGS

* * * * * * *

PART A—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

* * * * * * *

DEFINITIONS

SEC. 412. As used in this part:

(1) * * *

* * * * * * *

(7) The term "low-income" means that income in relation to family size which (A) is at or below [125] *150* percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, except that the Administrator may establish a higher level if the Administrator, after consulting with the Secretary of Agriculture and the Director of the Community Services Administration, determines that such a higher level is necessary to carry out the purposes of this part and is consistent with the eligibility criteria established for the weatherization program under section 222(a)(12) of the Economic Opportunity Act of 1964, (B) is the basis on which cash assistance payments have been paid during the preceding 12-month period under titles IV and XVI of the Social Security Act or applicable State or local law, or (C) if a State elects, is the basis for eligibility for assistance under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621), provided that such basis is at least [125] *150* percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget.

* * * * * * *

LIMITATIONS

SEC. 415. (a) * * *

* * * * * * *

(c)(1) Except as provided [in paragraph (3)] *in paragraphs (3) and (4)*, the expenditure of financial assistance provided under this part for labor, weatherization materials, and related matters shall not exceed an average of $2,500 per dwelling unit weatherized in that State. Labor, weatherization materials, and related matter includes, but is not limited to—

(A) * * *

* * * * * * *

(3) Beginning with fiscal year 2000, the [$2,500 per dwelling unit average provided in paragraph (1)] *dwelling unit averages provided in paragraphs (1) and (4)* shall be adjusted annually by increasing the average amount by an amount equal to—

(A) * * *

* * * * * * *

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

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

(i) establish the criteria which are to be used in prescribing performance and quality standards under paragraph (6)(A)(ii) or in specifying any form of renewable energy under paragraph (6)(A)(i)(I); and

(ii) establish a procedure under which a manufacturer of an item may request the Secretary to certify that the item will be treated, for purposes of this paragraph, as a renewable energy system.

(B) The Secretary shall make a final determination with respect to any request filed under subparagraph (A)(ii) within 1 year after the filing of the request, together with any information required to be filed with such request under subparagraph (A)(ii).

(C) Each month the Secretary shall publish a report of any request under subparagraph (A)(ii) which has been denied during the preceding month and the reasons for the denial.

(D) The Secretary shall not specify any form of renewable energy under paragraph (6)(A)(i)(I) unless the Secretary determines that—

(i) there will be a reduction in oil or natural gas consumption as a result of such specification;

(ii) such specification will not result in an increased use of any item which is known to be, or reasonably suspected to be, environmentally hazardous or a threat to public health or safety; and

(iii) available Federal subsidies do not make such specification unnecessary or inappropriate (in the light of the most advantageous allocation of economic resources).

(6) In this subsection—

(A) the term "renewable energy system" means a system which—

(i) when installed in connection with a dwelling, transmits or uses—

(I) solar energy, energy derived from the geothermal deposits, energy derived from biomass, or any other form of renewable energy which the Secretary specifies by regulations, for the purpose of heating or cooling such dwelling or providing hot water or electricity for use within such dwelling; or

(II) wind energy for nonbusiness residential purposes;

(ii) meets the performance and quality standards (if any) which have been prescribed by the Secretary by regulations;

(iii) in the case of a combustion rated system, has a thermal efficiency rating of at least 75 percent; and

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

(B) the term "biomass" means any organic matter that is available on a renewable or recurring basis, including agricultural crops and trees, wood and wood wastes and residues,

plants (including aquatic plants), grasses, residues, fibers, and animal wastes, municipal wastes, and other waste materials.

* * * * * * *

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] *$500,000,000 for fiscal year 2006, $600,000,000 for fiscal year 2007, and $700,000,000 for fiscal year 2008*.

* * * * * * *

SECTION 3 OF THE UNIFORM TIME ACT OF 1966

SEC. 3. (a) During the period commencing at 2 o'clock antemeridian on the first Sunday of [April] *March* of each year and ending at 2 o'clock antemeridian on the last Sunday of [October] *November* of each year, the standard time of each zone established by the Act of March 19, 1918 (15 U.S.C. 261–264), as modified by the Act of March 4, 1921 (15 U.S.C. 265), shall be advanced one hour and such time as so advanced shall for the purposes of such Act of March 19, 1918, as so modified, be the standard time of such zone during such period; however, (1) any State that lies entirely within one time zone may by law exempt itself from the provisions of this subsection providing for the advancement of time, but only if that law provides that the entire State (including all political subdivisions thereof) shall observe the standard time otherwise applicable during that period, and (2) any State with parts thereof in more than one time zone may by law exempt either the entire State as provided in (1) or may exempt the entire area of the State lying within any time zone.

* * * * * * *

LOW-INCOME HOME ENERGY ASSISTANCE ACT OF 1981

TITLE XXVI—LOW-INCOME HOME ENERGY ASSISTANCE

SHORT TITLE

SEC. 2601. This title may be cited as 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] *and $5,100,000,000 for each of fiscal years 2005 through 2007*. The authorizations of appro-

priations contained in this subsection are subject to the program year provisions of subsection (c).

* * * * * * *

RENEWABLE FUELS

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

ENERGY POLICY AND CONSERVATION ACT

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 "Energy Policy and Conservation Act".

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TITLE III—IMPROVING ENERGY EFFICIENCY

* * * * * * *

PART B—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS OTHER THAN AUTOMOBILES

* * * * * * *

Sec. 324A. Energy Star program.

* * * * * * *

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.

* * * * * * *

PART D—NORTHEAST HOME HEATING OIL RESERVE

* * * * * * *

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] *by more than 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) * * *

* * * * * * *

(30)(A) * * *

* * * * * * *

(S) The term "medium base compact fluorescent lamp" means an integrally ballasted fluorescent lamp with a medium screw base and a rated input voltage of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp[.] *but does not include any lamp specifically designed to be used for special purpose applications and that is unlikely to be used in general purpose applications such as those described in subparagraph (D), and also does not include any lamp not described in subparagraph (D) that is excluded by the Secretary, by rule, because the lamp is designed for special applications and is unlikely to be used in general purpose applications.*

* * * * * * *

(32) The term "battery charger" means a device that charges batteries for consumer products and includes battery chargers embedded in other consumer products.

(33) The term "commercial refrigerators, freezers, and refrigerator-freezers" means refrigerators, freezers, or refrigerator-freezers that—

(A) are not consumer products regulated under this Act; and

(B) incorporate 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 an electrically powered integral light source that illuminates the legend "EXIT" and any directional indicators and provides contrast between the legend, any directional indicators, and the background.

(36)(A) Except as provided in subparagraph (B), the term "distribution transformer" means a transformer that—

(i) has an input voltage of 34.5 kilovolts or less;

(ii) has an output voltage of 600 volts or less; and

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

(B) The term "distribution 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, such as those commonly known as drive transformers, rectifier transformers, auto-transformers, Uninterruptible Power System transformers, impedance transformers, regulating transformers, sealed and nonventilating transformers, machine tool transformers, welding transformers, grounding transformers, or testing transformers, that are designed to be used in a special purpose application and are unlikely to be used in general purpose applications; or

(iii) any transformer not listed in clause (ii) that is excluded by the Secretary by rule because—

(I) the transformer is designed for a special application;

(II) the transformer is unlikely to be used in general purpose applications; and

(III) the application of standards to the transformer would not result in significant energy savings.

(37) The term "low-voltage dry-type distribution transformer" means a distribution transformer that—

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

(B) is air-cooled; and

(C) does not use oil as a coolant.

(38) The term "standby mode" means the lowest power consumption mode that—

(A) cannot be switched off or influenced by the user; and

(B) may persist for an indefinite time when an appliance is connected to the main electricity supply and used in accordance with the manufacturer's instructions,

as defined on an individual product basis by the Secretary.

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

(40) 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.

(41) The term "transformer" means a device consisting of 2 or more coils of insulated wire that transfers alternating current by electromagnetic induction from 1 coil to another to change the original voltage or current value.

(42) 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.

(43) The term "ceiling fan" means a non-portable device that is suspended from a ceiling for circulating air via the rotation of fan blades.

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

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

(B) attachable, such that at the time of retail sale the equipment is not physically attached to the ceiling fan, but may be included inside the ceiling fan package at the time of sale or sold separately for subsequent attachment to the fan.

* * * * * * *

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 distribution transformers and 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. For purposes of section 346(a), this test procedure shall be deemed to be testing requirements prescribed by the Secretary under section 346(a)(1) for distribution transformers for which the Secretary makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings.

(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.

(12) Test procedures for medium base compact fluorescent lamps shall be based on the test methods used under the August 9, 2001, version of the Energy Star program of the Environmental Protection Agency and Department of Energy for compact fluorescent lamps. Covered products shall meet all test requirements for regulated parameters in section 325(bb). However, covered products may be mar-

keted prior to completion of lamp life and lumen maintenance at 40 percent of rated life testing provided manufacturers document engineering predictions and analysis that support expected attainment of lumen maintenance at 40 percent rated life and lamp life time.

(13) The Secretary shall, not later than 18 months after the date of enactment of this paragraph, prescribe testing requirements for ceiling fans and ceiling fan light kits.

* * * * * * *

(f) ADDITIONAL CONSUMER AND COMMERCIAL PRODUCTS.—The Secretary shall, not later than 24 months after the date of enactment of this subsection, prescribe testing requirements for suspended ceiling fans, refrigerated bottled or canned beverage vending machines, 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 not later than 2 years after the date of enactment of this subparagraph.

(G)(i) Not later than 18 months after date of enactment of this subparagraph, the Commission shall prescribe by rule, pursuant to this section, labeling requirements for the electricity used by ceiling fans to circulate air in a room.

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

(I) January 1, 2009; or

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

* * * * * * *

(5) The Secretary or the Commission, as appropriate, may, for covered products referred to in subsections (u) through (aa) 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. In the case of products to which TP–1 standards under section 325(y) apply, labeling requirements shall be based on the "Standard for the Labeling of Distribution Transformer Efficiency" prescribed by the National Electrical Manufacturers Association (NEMA TP–3) as in effect upon the date of enactment of this paragraph.

* * * * * * *

SEC. 324A. ENERGY STAR PROGRAM.

There is established at the Department of Energy and the Environmental Protection Agency a voluntary program to identify and promote energy-efficient products and buildings in order to reduce energy consumption, improve energy security, and reduce pollution through voluntary labeling of or 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 2 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;

(4) solicit comments from interested parties prior to establishing or revising an Energy Star product category, specification, or criterion (or effective dates for any of the foregoing);

(5) upon adoption of a new or revised product category, specification, or criterion, provide reasonable notice to interested parties of any changes (including effective dates) in product categories, specifications, or criteria along with an explanation of such changes and, where appropriate, responses to comments submitted by interested parties; and

(6) provide appropriate lead time (which shall be 9 months, unless the Agency or Department determines otherwise) prior to the effective date for a new or a significant revision to a product category, specification, or criterion, taking into account the timing requirements of the manufacturing, product marketing, and distribution process for the specific product addressed.

ENERGY CONSERVATION STANDARDS

SEC. 325. (a) * * *

* * * * * * *

(f) STANDARDS FOR FURNACES.—(1) * * *

* * * * * * *

(3)(A) * * *

* * * * * * *

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

* * * * * * *

(u) BATTERY CHARGER AND EXTERNAL POWER SUPPLY 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 and test procedures for the power use of battery chargers and external power supplies. In establishing these test procedures, the Secretary shall consider, among other factors, existing definitions and test procedures

used for measuring energy consumption in standby mode and other modes 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 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 issued 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 energy use that—

(i) meets the criteria and procedures 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) 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 that 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, standby mode power consumption compared to overall product energy consumption.

(3) RULEMAKING.—The Secretary shall not propose a standard under this section unless the Secretary has issued applicable test procedures for each product pursuant to section 323.

(4) EFFECTIVE DATE.—Any standard issued under this subsection shall be applicable to products manufactured or imported 3 years after the date of issuance.

(5) VOLUNTARY PROGRAMS.—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, that are designed to reduce standby mode energy use.

(v) SUSPENDED CEILING FANS, VENDING MACHINES, AND COMMERCIAL REFRIGERATORS, FREEZERS, AND REFRIGERATOR-FREEZERS.—The Secretary shall not later than 36 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, and commercial refrigerators, freezers, and refrigerator-freezers. In establishing standards under this subsection, the Secretary shall use the criteria and procedures contained in subsections (o) and (p). 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, 2006, shall meet the Version 2.0 En-

ergy Star Program performance requirements for illuminated exit signs prescribed by the Environmental Protection Agency.

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

(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 DISTRIBUTION TRANSFORMERS.—The efficiency of low voltage dry-type distribution transformers manufactured on or after January 1, 2006, shall be the Class I Efficiency Levels for distribution 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–1–2002).

(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 subsection, and shall be installed with compatible, electrically connected signal control interface devices and conflict monitoring systems.

(aa) UNIT HEATERS.—Unit heaters manufactured on or after the date that is 3 years after the date of enactment of this subsection shall be equipped with an intermittent ignition device and shall have either power venting or an automatic flue damper.

(bb) MEDIUM BASE COMPACT FLUORESCENT LAMPS.—Bare lamp and covered lamp (no reflector) medium base compact fluorescent lamps manufactured on or after January 1, 2006, shall meet the following requirements prescribed by the August 9, 2001, version of the Energy Star Program Requirements for Compact Fluorescent Lamps, Energy Star Eligibility Criteria, Energy-Efficiency Specification issued by the Environmental Protection Agency and Department of Energy: minimum initial efficacy; lumen maintenance at 1000 hours; lumen maintenance at 40 percent of rated life; rapid cycle stress test; and lamp life. The Secretary may, by rule, establish requirements for color quality (CRI); power factor; operating frequency; and maximum allowable start time based on the requirements prescribed by the August 9, 2001, version of the Energy Star Program Requirements for Compact Fluorescent Lamps. The Secretary may, by rule, revise these requirements or establish other requirements considering energy savings, cost effectiveness, and consumer satisfaction.

(cc) EFFECTIVE DATE.—Section 327 shall apply—

(1) to products for which standards are to be established under subsections (u) and (v) on the date on which a final rule is issued by the Department of Energy, except that any State or local standards prescribed or enacted for any such product prior to the date on which such final rule is issued shall not be preempted until the standard established under subsection (u) or (v) for that product takes effect; and

(2) to products for which standards are established under subsections (w) through (bb) on the date of enactment of those subsections, except that any State or local standards prescribed or enacted prior to the date of enactment of those subsections

shall not be preempted until the standards established under subsections (w) through (bb) take effect.

(dd) CEILING FANS.—

(1) FEATURES.—All ceiling fans manufactured on or after January 1, 2006, shall have the following features:

(A) Lighting controls operate independently from fan speed controls.

(B) Adjustable speed controls (either more than 1 speed or variable speed).

(C) The capability of reversible fan action, except for fans sold for industrial applications, outdoor applications, and where safety standards would be violated by the use of the reversible mode. The Secretary may promulgate regulations to define in greater detail the exceptions provided under this subparagraph but may not substantively expand the exceptions.

(2) REVISED STANDARDS.—

(A) IN GENERAL.—Notwithstanding any provision of this Act, if the requirements of subsections (o) and (p) are met, the Secretary may consider and prescribe energy efficiency or energy use standards for electricity used by ceiling fans to circulate air in a room.

(B) SPECIAL CONSIDERATION.—If the Secretary sets such standards, the Secretary shall consider—

(i) exempting or setting different standards for certain product classes for which the primary standards are not technically feasible or economically justified; and

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

(C) APPLICATION.—Any air movement standard prescribed under this subsection shall apply to products manufactured on or after the date that is 3 years after the date of publication of a final rule establishing the standard.

* * * * * * *

EFFECT ON OTHER LAW

SEC. 327. (a) * * *

* * * * * * *

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

(h) LIMITATION ON PREEMPTION.—Subsections (a) and (b) shall not apply with respect to State regulation of energy consumption or water use of any covered product during any period of time—

(1) after the date which is 3 years after a Federal standard is required by law to be established or revised, but has not been established or revised; and

(2) before the date on which such Federal standard is established or revised.

* * * * * * *

CONSUMER EDUCATION

SEC. 337. (a) * * *

* * * * * * *

(c) HVAC MAINTENANCE.—For the purpose of ensuring that installed air conditioning and heating systems operate at their maximum rated efficiency levels, the Secretary shall, not later than 180 days after 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. The Secretary shall carry out the program in a cost-shared manner 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 businesses 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 of the Small Business Administration shall make the program information available directly to small businesses and through other Federal agencies, including the Federal Emergency Management Program and the Department of Agriculture.

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PART D—STATE ENERGY CONSERVATION PLANS

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STATE ENERGY CONSERVATION PLANS

SEC. 362. (a) * * *

* * * * * * *

(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 2005 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 2012 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 2006 and 2007 and $125,000,000 for fiscal year 2008.*

* * * * * * *

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) * * *

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[(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 qualifies for a waiver of such requirement for vehicles operated by the agency in a particular geographic area in which—

(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 to the Secretary by the head of the agency.

(ii) The Secretary shall monitor compliance with this subparagraph by all such fleets and shall report annually to Congress on the extent to which the requirements of this subparagraph are being achieved. The report shall include information on annual reductions achieved from the use of petroleum-based fuels and the problems, if any, encountered in acquiring alternative fuels.

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ENERGY POLICY ACT OF 1992

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—

TITLE I—ENERGY EFFICIENCY

Subtitle A—Buildings

Sec. 101. Building energy efficiency standards.

* * * * * * *

TITLE III—ALTERNATIVE FUELS—GENERAL

Sec. 301. Definitions.

* * * * * * *

Sec. 313. Lease condensate use credits.

* * * * * * *

TITLE XXVI—INDIAN ENERGY RESOURCES

[Sec. 2601. Definitions.
[Sec. 2602. Tribal consultation.
[Sec. 2603. Promoting energy resource development and energy vertical integration on Indian reservations.
[Sec. 2604. Indian energy resource regulation.
[Sec. 2605. Indian Energy Resource Commission.
[Sec. 2606. Tribal government energy assistance program.]
Sec. 2601. Definitions.
Sec. 2602. Indian tribal energy resource development.
Sec. 2603. Indian tribal energy resource regulation.
Sec. 2604. Leases, business agreements, and rights-of-way involving energy development or transmission.
Sec. 2605. Indian mineral development review.

* * * * * * *

TITLE XXXI—CLEAN AIR COAL PROGRAM

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

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TITLE I—ENERGY EFFICIENCY

* * * * * * *

Subtitle G—Miscellaneous

* * * * * * *

SEC. 172. DISTRICT HEATING AND COOLING PROGRAMS.

(a) IN GENERAL.—The Secretary, in consultation with appropriate industry organizations, shall conduct a study to—

(1) * * *

* * * * * * *

(3) evaluate the cost-effectiveness, including the economic value referred to in paragraph (2), of cogenerated district heating and cooling technologies compared to other alternatives for generating or conserving electricity; [and]

(4) assess and make recommendations for reducing institutional and other constraints on the implementation of district heating and cooling systems[.]*; and*

(5) evaluate the use of renewable energy systems (as such term is defined in section 415(c) of the Energy Conservation and Production Act (42 U.S.C. 6865(c))) in residential buildings.

(b) REPORT.—Not later than 2 years after the date of the enactment of [this Act] *the Energy Policy Act of 2005*, the Secretary shall transmit to the Congress a report containing the findings, conclusions and recommendations, if any, of the Secretary for carrying out Federal, State, and local programs as a result of the study conducted under subsection (a).

* * * * * * *

TITLE III—ALTERNATIVE FUELS—GENERAL

SEC. 301. DEFINITIONS.

For purposes of this title, title IV, and title V (unless otherwise specified)—

(1) * * *

(2) the term "alternative fuel" means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas, including liquid fuels domestically produced from natural gas; liquefied petroleum gas; *mixtures containing 50 percent or more by volume of lease condensate or fuels extracted from lease condensate;* hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits;

* * * * * * *

(9) the term "fleet" means a group of 20 or more light duty motor vehicles, used primarily in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000, that are centrally fueled or capable of being centrally fueled and are owned, operated, leased, or otherwise controlled by a governmental entity or other person who owns, operates, leases, or otherwise controls 50 or more such vehicles, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person, except that such term does not include—

(A) * * *

* * * * * * *

(E) emergency motor vehicles*, including vehicles directly used in the emergency repair of transmission lines and in the restoration of electricity service following power outages, as determined by the Secretary*;

* * * * * * *

(13) the term "motor vehicle" has the meaning given such term under section 216(2) of the Clean Air Act (42 U.S.C. 7550(2)); [and]

(14) the term "replacement fuel" means the portion of any motor fuel that is methanol, ethanol, or other alcohols, natural gas, liquefied petroleum gas, *mixtures containing 50 percent or more by volume of lease condensate or fuels extracted from lease condensate,* hydrogen, coal derived liquid fuels, fuels (other than alcohol) derived from biological materials, electricity (including electricity from solar energy), ethers, or any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits[.]*; and*

(15) the term "lease condensate" means a mixture, primarily of pentanes and heavier hydrocarbons, that is recovered as a liquid from natural gas in lease separation facilities.

* * * * * * *

SEC. 303. MINIMUM FEDERAL FLEET REQUIREMENT.

(a) * * *

* * * * * * *

(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.

* * * * * * *

SEC. 310. REPORTS.

(a) * * *

(b) COMPLIANCE REPORT.—

(1) IN GENERAL.—Not later than [1 year after the date of enactment of this subsection] *February 15, 2006*, and annually thereafter for the next 14 years, the head of each Federal agency which is subject to this Act and Executive Order No. 13031 shall prepare, and submit to Congress, a report that—

(A) * * *

* * * * * * *

SEC. 313. LEASE CONDENSATE USE CREDITS.

(a) IN GENERAL.—Subject to subsection (d), the Secretary shall allocate 1 credit under this section to a fleet or covered person for each qualifying volume of the lease condensate component of fuel containing at least 50 percent lease condensate, or fuels extracted from lease condensate, after the date of enactment of this section for use by the fleet or covered person in vehicles owned or operated by the fleet or covered person that weigh more than 8,500 pounds gross vehicle weight rating.

(b) REQUIREMENTS.—A credit allocated under this section—

(1) shall be subject to the same exceptions, authority, documentation, and use of credits that are specified for qualifying volumes of biodiesel in section 312; and

(2) shall not be considered a credit under section 508.

(c) REGULATION.—

(1) IN GENERAL.—Subject to subsection (d), not later than January 1, 2006, after the collection of appropriate information and data that consider usage options, uses in other industries, products, or processes, potential volume capacities, costs, air emissions, and fuel efficiencies, the Secretary shall issue a regulation establishing requirements and procedures for the implementation of this section.

(2) QUALIFYING VOLUME.—The regulation shall include a determination of an appropriate qualifying volume for lease condensate, except that in no case shall the Secretary determine that the qualifying volume for lease condensate is less than 1,125 gallons.

(d) APPLICABILITY.—This section applies unless the Secretary finds that the use of lease condensate as an alternative fuel would adversely affect public health or safety or ambient air quality or the environment.

* * * * * * *

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 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 non-

profit 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 or subdivision thereof,* and which generates electric energy for sale in, or affecting, interstate commerce using solar, wind, biomass, *landfill gas, livestock methane, ocean (tidal, wave, current, and thermal),* 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, 2005, and before October 1, 2015.*

* * * * * * *

(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, livestock methane, ocean (tidal, wave, current, and thermal),* 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, 2025*, 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 2005 through 2025.

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

* * * * * * *

TITLE XXVI—INDIAN ENERGY

SEC. 2601. DEFINITIONS.

For purposes of this title:

(1) The term "Director" means the Director of the Office of Indian Energy Policy and Programs, Department of Energy.

(2) The term "Indian land" means—

(A) any land located within the boundaries of an Indian reservation, pueblo, or rancheria;

(B) any land not located within the boundaries of an Indian reservation, pueblo, or rancheria, the title to which is held—

(i) in trust by the United States for the benefit of an Indian tribe or an individual Indian;

(ii) by an Indian tribe or an individual Indian, subject to restriction against alienation under laws of the United States; or

(iii) by a dependent Indian community; and

(C) land that is owned by an Indian tribe and was conveyed by the United States to a Native Corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or that was conveyed by the United States to a Native Corporation in exchange for such land.

(3) The term "Indian reservation" includes—

(A) an Indian reservation in existence in any State or States as of the date of enactment of this paragraph;

(B) a public domain Indian allotment; and

(C) a dependent Indian community located within the borders of the United States, regardless of whether the community is located—

(i) on original or acquired territory of the community; or

(ii) within or outside the boundaries of any particular State.

(4) The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), except that the term "Indian tribe", for the purpose of paragraph (11) and sections 2603(b)(3) and 2604, shall not include any Native Corporation.

(5) The term "integration of energy resources" means any project or activity that promotes the location and operation of a facility (including any pipeline, gathering system, transportation system or facility, or electric transmission or distribution facility) on or near Indian land to process, refine, generate electricity from, or otherwise develop energy resources on, Indian land.

(6) The term "Native Corporation" has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(7) The term "organization" means a partnership, joint venture, limited liability company, or other unincorporated association or entity that is established to develop Indian energy resources.

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

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

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

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

SEC. 2602. INDIAN TRIBAL ENERGY RESOURCE DEVELOPMENT.

(a) DEPARTMENT OF THE INTERIOR PROGRAM.—

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

(2) In carrying out the Program, the Secretary shall—

(A) provide development grants to Indian tribes and tribal energy resource development organizations for use in developing or obtaining the managerial and technical capacity needed to develop energy resources on Indian land, and to properly account for resulting energy production and revenues;

(B) provide grants to Indian tribes and tribal energy resource development organizations for use in carrying out projects to promote the integration of energy resources, and to process, use, or develop those energy resources, on Indian land; and

(C) provide low-interest loans to Indian tribes and tribal energy resource development organizations for use in the promotion of energy resource development on Indian land and integration of energy resources.

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

(b) DEPARTMENT OF ENERGY INDIAN ENERGY EDUCATION PLANNING AND MANAGEMENT ASSISTANCE PROGRAM.—

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

(2) In carrying out this subsection, the Director may provide grants, on a competitive basis, to an Indian tribe or tribal energy resource development organization for use in carrying out—

(A) energy, energy efficiency, and energy conservation programs;

(B) studies and other activities supporting tribal acquisitions of energy supplies, services, and facilities;

(C) planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities located on Indian land; and

(D) development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities.

(3)(A) The Director may develop, in consultation with Indian tribes, a formula for providing grants under this subsection.

(B) In providing a grant under this subsection, the Director shall give priority to an application received from an Indian

tribe with inadequate electric service (as determined by the Director).

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

(5) There are authorized to be appropriated to carry out this subsection $20,000,000 for each of fiscal years 2006 through 2016.

(c) DEPARTMENT OF ENERGY LOAN GUARANTEE PROGRAM.—

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

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

(A) a financial institution subject to examination by the Secretary of Energy; or

(B) an Indian tribe, from funds of the Indian tribe.

(3) The aggregate outstanding amount guaranteed by the Secretary of Energy at any time under this subsection shall not exceed $2,000,000,000.

(4) The Secretary of Energy may issue such regulations as the Secretary of Energy determines are necessary to carry out this subsection.

(5) There are authorized to be appropriated such sums as are necessary to carry out this subsection, to remain available until expended.

(6) Not later than 1 year from the date of enactment of this section, the Secretary of Energy shall report to Congress on the financing requirements of Indian tribes for energy development on Indian land.

(d) FEDERAL AGENCIES-INDIAN ENERGY PREFERENCE.—

(1) In purchasing electricity or any other energy product or byproduct, a Federal agency or department may give preference to an energy and resource production enterprise, partnership, consortium, corporation, or other type of business organization the majority of the interest in which is owned and controlled by 1 or more Indian tribes.

(2) In carrying out this subsection, a Federal agency or department shall not—

(A) pay more than the prevailing market price for an energy product or byproduct; or

(B) obtain less than prevailing market terms and conditions.

SEC. 2603. INDIAN TRIBAL ENERGY RESOURCE REGULATION.

(a) GRANTS.—The Secretary may provide to Indian tribes, on an annual basis, grants for use in accordance with subsection (b).

(b) USE OF FUNDS.—Funds from a grant provided under this section may be used—

(1) by an Indian tribe for the development of a tribal energy resource inventory or tribal energy resource on Indian land;

(2) by an Indian tribe for the development of a feasibility study or other report necessary to the development of energy resources on Indian land;

(3) by an Indian tribe (other than an Indian Tribe in Alaska except the Metlakatla Indian Community) for the development and enforcement of tribal laws (including regulations) relating to tribal energy resource development and the development of technical infrastructure to protect the environment under applicable law; or

(4) by a Native Corporation for the development and implementation of corporate policies and the development of technical infrastructure to protect the environment under applicable law; and

(5) by an Indian tribe for the training of employees that—

(A) are engaged in the development of energy resources on Indian land; or

(B) are responsible for protecting the environment.

(c) OTHER ASSISTANCE.—In carrying out the obligations of the United States under this title, the Secretary shall ensure, to the maximum extent practicable and to the extent of available resources, that upon the request of an Indian tribe, the Indian tribe shall have available scientific and technical information and expertise, for use in the Indian tribe's regulation, development, and management of energy resources on Indian land. The Secretary may fulfill this responsibility either directly, through the use of Federal officials, or indirectly, by providing financial assistance to the Indian tribe to secure independent assistance.

SEC. 2604. LEASES, BUSINESS AGREEMENTS, AND RIGHTS-OF-WAY INVOLVING ENERGY DEVELOPMENT OR TRANSMISSION.

(a) LEASES AND BUSINESS AGREEMENTS.—Subject to the provisions of this section—

(1) an Indian tribe may, at its discretion, enter into a lease or business agreement for the purpose of energy resource development on tribal land, including a lease or business agreement for—

(A) exploration for, extraction of, processing of, or other development of the Indian tribe's energy mineral resources located on tribal land; and

(B) construction or operation of an electric generation, transmission, or distribution facility located on tribal land or a facility to process or refine energy resources developed on tribal land; and

(2) such lease or business agreement described in paragraph (1) shall not require the approval of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81) or any other provision of law, if—

(A) the lease or business agreement is executed pursuant to a tribal energy resource agreement approved by the Secretary under subsection (e);

(B) the term of the lease or business agreement does not exceed—

(i) 30 years; or

(ii) in the case of a lease for the production of oil resources, gas resources, or both, 10 years and as long thereafter as oil or gas is produced in paying quantities; and

(C) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in sub-

section (e), relating to the development of energy resources on tribal land (including the periodic review and evaluation of the activities of the Indian tribe under the agreement, to be conducted pursuant to the provisions required by subsection (e)(2)(D)(i)).

(b) RIGHTS-OF-WAY FOR PIPELINES OR ELECTRIC TRANSMISSION OR DISTRIBUTION LINES.—An Indian tribe may grant a right-of-way over tribal land for a pipeline or an electric transmission or distribution line without approval by the Secretary if—

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

(2) the term of the right-of-way does not exceed 30 years;

(3) the pipeline or electric transmission or distribution line serves—

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

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

(4) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including the periodic review and evaluation of the Indian tribe's activities under such agreement described in subparagraphs (D) and (E) of subsection (e)(2)).

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

(d) VALIDITY.—No lease, business agreement, or right-of-way relating to the development of tribal energy resources pursuant to the provisions of this section shall be valid unless the lease, business agreement, or right-of-way is authorized by the provisions of a tribal energy resource agreement approved by the Secretary under subsection (e)(2).

(e) TRIBAL ENERGY RESOURCE AGREEMENTS.—

(1) On issuance of regulations under paragraph (8), an Indian tribe may submit to the Secretary for approval a tribal energy resource agreement governing leases, business agreements, and rights-of-way under this section.

(2)(A) Not later than 180 days after the date on which the Secretary receives a tribal energy resource agreement submitted by an Indian tribe under paragraph (1), or not later than 60 days after the Secretary receives a revised tribal energy resource agreement submitted by an Indian tribe under paragraph (4)(C), (or such later date as may be agreed to by the Secretary and the Indian tribe), the Secretary shall approve or disapprove the tribal energy resource agreement.

(B) The Secretary shall approve a tribal energy resource agreement submitted under paragraph (1) if—

(i) the Secretary determines that the Indian tribe has demonstrated that the Indian tribe has sufficient capacity to regulate the development of energy resources of the Indian tribe;

(ii) the tribal energy resource agreement includes provisions required under subparagraph (D); and

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

(I) ensure the acquisition of necessary information from the applicant for the lease, business agreement, or right-of-way;

(II) address the term of the lease or business agreement or the term of conveyance of the right-of-way;

(III) address amendments and renewals;

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

(V) address technical or other relevant requirements;

(VI) establish requirements for environmental review in accordance with subparagraph (C);

(VII) ensure compliance with all applicable environmental laws;

(VIII) identify final approval authority;

(IX) provide for public notification of final approvals;

(X) establish a process for consultation with any affected States concerning off-reservation impacts, if any, identified pursuant to the provisions required under subparagraph (C)(i);

(XI) describe the remedies for breach of the lease, business agreement, or right-of-way;

(XII) require each lease, business agreement, and right-of-way to include a statement that, in the event that any of its provisions violates an express term or requirement set forth in the tribal energy resource agreement pursuant to which it was executed—

(aa) such provision shall be null and void; and

(bb) if the Secretary determines such provision to be material, the Secretary shall have the authority to suspend or rescind the lease, business agreement, or right-of-way or take other appropriate action that the Secretary determines to be in the best interest of the Indian tribe;

(XIII) require each lease, business agreement, and right-of-way to provide that it will become effective on the date on which a copy of the executed lease, business agreement, or right-of-way is delivered to the Secretary in accordance with regulations adopted pursuant to this subsection; and

(XIV) include citations to tribal laws, regulations, or procedures, if any, that set out tribal remedies that must be exhausted before a petition may be submitted to the Secretary pursuant to paragraph (7)(B).

(C) Tribal energy resource agreements submitted under paragraph (1) shall establish, and include provisions to ensure compliance with, an environmental review process that, with respect to a lease, business agreement, or right-of-way under this section, provides for—

(i) the identification and evaluation of all significant environmental impacts (as compared with a no-action alternative), including effects on cultural resources;

(ii) the identification of proposed mitigation;

(iii) a process for ensuring that the public is informed of and has an opportunity to comment on the environmental impacts of the proposed action before tribal approval of the lease, business agreement, or right-of-way; and

(iv) sufficient administrative support and technical capability to carry out the environmental review process.

(D) A tribal energy resource agreement negotiated between the Secretary and an Indian tribe in accordance with this subsection shall include—

(i) provisions requiring the Secretary to conduct a periodic review and evaluation to monitor the performance of the Indian tribe's activities associated with the development of energy resources under the tribal energy resource agreement; and

(ii) when such review and evaluation result in a finding by the Secretary of imminent jeopardy to a physical trust asset arising from a violation of the tribal energy resource agreement or applicable Federal laws, provisions authorizing the Secretary to take appropriate actions determined by the Secretary to be necessary to protect such asset, which actions may include reassumption of responsibility for activities associated with the development of energy resources on tribal land until the violation and conditions that gave rise to such jeopardy have been corrected.

(E) The periodic review and evaluation described in subparagraph (D) shall be conducted on an annual basis, except that, after the third such annual review and evaluation, the Secretary and the Indian tribe may mutually agree to amend the tribal energy resource agreement to authorize the review and evaluation required by subparagraph (D) to be conducted once every 2 years.

(3) The Secretary shall provide notice and opportunity for public comment on tribal energy resource agreements submitted for approval under paragraph (1). The Secretary's review of a tribal energy resource agreement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall be limited to the direct effects of that approval.

(4) If the Secretary disapproves a tribal energy resource agreement submitted by an Indian tribe under paragraph (1), the Secretary shall, not later than 10 days after the date of disapproval—

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

(B) identify what changes or other actions are required to address the concerns of the Secretary; and

(C) provide the Indian tribe with an opportunity to revise and resubmit the tribal energy resource agreement.

(5) If an Indian tribe executes a lease or business agreement or grants a right-of-way in accordance with a tribal energy resource agreement approved under this subsection, the Indian tribe shall, in accordance with the process and requirements set

forth in the Secretary's regulations adopted pursuant to paragraph (8), provide to the Secretary—

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

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

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

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

(ii) act in good faith and in the best interests of the Indian tribes.

(B) Subject to the provisions of subsections (a)(2), (b), and (c) waiving the requirement of Secretarial approval of leases, business agreements, and rights-of-way executed pursuant to tribal energy resource agreements approved under this section, and the provisions of subparagraph (D), nothing in this section shall absolve the United States from any responsibility to Indians or Indian tribes, including, but not limited to, those which derive from the trust relationship or from any treaties, statutes, and other laws of the United States, Executive Orders, or agreements between the United States and any Indian tribe.

(C) The Secretary shall continue to have a trust obligation to ensure that the rights and interests of an Indian tribe are protected in the event that—

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

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

(D) Notwithstanding subparagraph (B), the United States shall not be liable to any party (including any Indian tribe) for any of the negotiated terms of, or any losses resulting from the negotiated terms of, a lease, business agreement, or right-of-way executed pursuant to and in accordance with a tribal energy resource agreement approved by the Secretary under paragraph (2). For the purpose of this subparagraph, the term "negotiated terms" means any terms or provisions that are negotiated by an Indian tribe and any other party or parties to a lease, business agreement, or right-of-way entered into pursuant to an approved tribal energy resource agreement.

(7)(A) In this paragraph, the term "interested party" means any person or entity the interests of which have sustained or

will sustain a significant adverse environmental impact as a result of the failure of an Indian tribe to comply with a tribal energy resource agreement of the Indian tribe approved by the Secretary under paragraph (2).

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

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

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

(iii) Subject to subparagraph (D), if the Secretary determines that the Indian tribe is not in compliance with the tribal energy resource agreement as alleged in the petition, the Secretary shall take such action as is necessary to ensure compliance with the provisions of the tribal energy resource agreement, which action may include—

(I) temporarily suspending some or all activities under a lease, business agreement, or right-of-way under this section until the Indian tribe or such activities are in compliance with the provisions of the approved tribal energy resource agreement; or

(II) rescinding approval of all or part of the tribal energy resource agreement, and if all of such agreement is rescinded, reassuming the responsibility for approval of any future leases, business agreements, or rights-of-way described in subsections (a) and (b).

(D) Prior to seeking to ensure compliance with the provisions of the tribal energy resource agreement of an Indian tribe under subparagraph (C)(iii), the Secretary shall—

(i) make a written determination that describes the manner in which the tribal energy resource agreement has been violated;

(ii) provide the Indian tribe with a written notice of the violations together with the written determination; and

(iii) before taking any action described in subparagraph (C)(iii) or seeking any other remedy, provide the Indian tribe with a hearing and a reasonable opportunity to attain compliance with the tribal energy resource agreement.

(E) An Indian tribe described in subparagraph (D) shall retain all rights to appeal as provided in regulations issued by the Secretary.

(8) Not later than 1 year after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act

of 2005, the Secretary shall issue regulations that implement the provisions of this subsection, including—

(A) criteria to be used in determining the capacity of an Indian tribe described in paragraph (2)(B)(i), including the experience of the Indian tribe in managing natural resources and financial and administrative resources available for use by the Indian tribe in implementing the approved tribal energy resource agreement of the Indian tribe;

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

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

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

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

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

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

(1) any Federal environment law;

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

(3) except as otherwise provided in this title, the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as are necessary for each of fiscal years 2006 through 2016 to implement the provisions of this section and to make grants or provide other appropriate assistance to Indian tribes to assist the Indian tribes in developing and implementing tribal energy resource agreements in accordance with the provisions of this section.

SEC. 2605. INDIAN MINERAL DEVELOPMENT REVIEW.

(a) IN GENERAL.—The Secretary shall conduct a review of all activities being conducted under the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.) as of that date.

(b) REPORT.—Not later than 1 year after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act of 2005, the Secretary shall submit to Congress a report that includes—

(1) the results of the review;

(2) recommendations to ensure that Indian tribes have the opportunity to develop Indian energy resources; and

(3) an analysis of the barriers to the development of energy resources on Indian land (including legal, fiscal, market, and

other barriers), along with recommendations for the removal of those barriers.

* * * * * * *

TITLE XXX—MISCELLANEOUS

* * * * * * *

Subtitle B—Other Miscellaneous Provisions

* * * * * * *

SEC. 3022. RISK ASSESSMENT.

Federal agencies conducting assessments of risks to human health and the environment from energy technology, production, transport, transmission, distribution, storage, use, or conservation activities shall use sound and objective scientific practices in assessing such risks, shall consider the best available science (including peer reviewed studies), and shall include a description of the weight of the scientific evidence concerning such risks.

TITLE XXXI—CLEAN AIR COAL PROGRAM

SEC. 3101. FINDINGS; PURPOSES; DEFINITIONS.

(a) FINDINGS.—The Congress finds that—

(1) new environmental regulations present additional challenges for coal-fired electrical generation in the private marketplace; and

(2) the Department of Energy, in cooperation with industry, has already fully developed and commercialized several new clean-coal technologies that will allow the clean use of coal.

(b) PURPOSES.—The purposes of this title are to—

(1) promote national energy policy and energy security, diversity, and economic competitiveness benefits that result from the increased use of coal;

(2) mitigate financial risks, reduce the cost, and increase the marketplace acceptance of the new clean coal technologies; and

(3) advance the deployment of pollution control equipment to meet the current and future obligations of coal-fired generation units regulated under the Clean Air Act (42 U.S.C. 7402 and following).

SEC. 3102. AUTHORIZATION OF PROGRAM.

The Secretary shall carry out a program to facilitate production and generation of coal-based power and the installation of pollution control equipment.

SEC. 3103. AUTHORIZATION OF APPROPRIATIONS.

(a) POLLUTION CONTROL PROJECTS.—There are authorized to be appropriated to the Secretary $300,000,000 for fiscal year 2006, $100,000,000 for fiscal year 2007, $40,000,000 for fiscal year 2008, $30,000,000 for fiscal year 2009, and $30,000,000 for fiscal year

2010, to remain available until expended, for carrying out the program for pollution control projects, which may include—

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

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

(3) pollution control equipment and processes for the mitigation or collection of more than one pollutant;

(4) advanced combustion technology for the control of at least two pollutants, including mercury, particulate matter, nitrogen oxides, and sulfur dioxide, which may also be designed to improve the energy efficiency of the unit; and

(5) advanced pollution control equipment and processes designed to allow use of the waste byproducts or other byproducts of the equipment or an electrical generation unit designed to allow the use of byproducts.

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

(b) GENERATION PROJECTS.—There are authorized to be appropriated to the Secretary $250,000,000 for fiscal year 2007, $350,000,000 for fiscal year 2008, $400,000,000 for fiscal year 2009, $400,000,000 for fiscal year 2010, $400,000,000 for fiscal year 2011, $400,000,000 for fiscal year 2012, and $300,000,000 for fiscal year 2013, to remain available until expended, for generation projects and air pollution control projects. Such projects may include—

(1) coal-based electrical generation equipment and processes, including gasification combined cycle or other coal-based generation equipment and processes;

(2) associated environmental control equipment, that will be cost-effective and that is designed to meet anticipated regulatory requirements;

(3) coal-based electrical generation equipment and processes, including gasification fuel cells, gasification coproduction, and hybrid gasification/combustion projects; and

(4) advanced coal-based electrical generation equipment and processes, including oxidation combustion techniques, ultra-supercritical boilers, and chemical looping, which the Secretary determines will be cost-effective and could substantially contribute to meeting anticipated environmental or energy needs.

(c) LIMITATION.—Funds placed at risk during any fiscal year for Federal loans or loan guarantees pursuant to this title may not exceed 30 percent of the total funds obligated under this title.

SEC. 3104. AIR POLLUTION CONTROL PROJECT CRITERIA.

The Secretary shall pursuant to authorizations contained in section 3103 provide funding for air pollution control projects designed to facilitate compliance with Federal and State environmental regulations, including any regulation that may be established with respect to mercury.

SEC. 3105. CRITERIA FOR GENERATION PROJECTS.

(a) CRITERIA.—The Secretary shall establish criteria on which selection of individual projects described in section 3103(b) should be based. The Secretary may modify the criteria as appropriate to reflect improvements in equipment, except that the criteria shall not

be modified to be less stringent. These selection criteria shall include—

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

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

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

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

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

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

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

except that energy used for coproduction or cogeneration shall not be counted in calculating the thermal efficiency under this paragraph; and

(5) equipment and processes beginning in 2012 and 2013 that are projected to achieve an thermal efficiency of—

(A) 45 percent for coal of more than 9,000 Btu per pound based on higher heating values;

(B) 44 percent for coal of 7,000 to 9,000 Btu per pound based on higher heating values; and

(C) 40 percent for coal of less than 7,000 Btu per pound based on higher heating values,

except that energy used for coproduction or cogeneration shall not be counted in calculating the thermal efficiency under this paragraph.

(b) SELECTION.—(1) In selecting the projects, up to 25 percent of the projects selected may be either coproduction or cogeneration or other gasification projects, but at least 25 percent of the projects shall be for the sole purpose of electrical generation, and priority should be given to equipment and projects less than 600 MW to foster and promote standard designs.

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

SEC. 3106. FINANCIAL CRITERIA.

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

(1) achieve overall cost reductions in the utilization of coal to generate useful forms of energy; and

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

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

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

(2) the recipient provides sufficient information to the Secretary for the Secretary to ensure that the award funds are spent efficiently and effectively.

(c) EQUAL ACCESS.—The Secretary shall, to the extent practical, utilize cooperative agreement, loan guarantee, and direct Federal loan mechanisms designed to ensure that all electrical generation owners have equal access to these technology deployment incentives. The Secretary shall develop and direct a competitive solicitation process for the selection of technologies and projects under this title.

SEC. 3107. FEDERAL SHARE.

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

SEC. 3108. APPLICABILITY.

No technology, or level of emission reduction, shall be treated as adequately demonstrated for purposes of section 111 of the Clean Air Act (42 U.S.C. 7411), achievable for purposes of section 169 of the Clean Air Act (42 U.S.C. 7479), or achievable in practice for purposes of section 171 of the Clean Air Act (42 U.S.C. 7501) 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.

* * * * * * *

SECTION 604 OF THE ACT OF DECEMBER 24, 1980

AN ACT to authorize appropriations for certain insular areas of the United States, and for other purposes.

SEC. 604. (a) The Congress finds that—

(1) * * *

* * * * * * *

(4) appropriate technologies are presently available to develop the renewable energy resources of these insular areas but that comprehensive energy plans have not been adequately developed to meet the energy demands of these areas from renewable energy resources**[.]***;*

(5) electric power transmission and distribution lines in insular areas are inadequate to withstand damage caused by the hurricanes and typhoons which frequently occur in insular areas and such damage often costs millions of dollars to repair; and

(6) the refinement of renewable energy technologies since the publication of the 1982 Territorial Energy Assessment prepared pursuant to subsection (c) reveals the need to reassess the state of energy production, consumption, infrastructure, reliance on imported energy, opportunities for energy conservation and increased energy efficiency, and indigenous sources in regard to the insular areas.

* * * * * * *

[(e) Within tow years from the date of enactment of this Act, the Secretary of Energy or any administrative official who may succeed him shall submit the comprehensive energy plan for each insular area to the Congress.]

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

(A) updating the contents required by subsection (c);

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

(C) drafting long-term energy transmission line plans for such insular areas with the objective that the maximum percentage feasible of electric power transmission and distribution lines in each insular area be protected from damage caused by hurricanes and typhoons.

(2) Not later than December 31, 2007, the Secretary of the Interior shall submit to Congress the updated plans for each insular area required by this subsection.

* * * * * * *

(g) FINANCIAL ASSISTANCE.—(1) * * *

* * * * * * *

[(4) Notwithstanding the requirements of section 501(d) of Public Law 95–134 (48 U.S.C. 1469a(d)), the Secretary shall require at least 20 percent of the costs of any project under this subsection to be provided from non-Federal sources. Such cost sharing may be in the form of in-kind services, donated equipment, or any combination thereof.]

(4) POWER LINE GRANTS FOR INSULAR AREAS.—

(A) IN GENERAL.—The Secretary of the Interior is authorized to make grants to governments of insular areas of the United States to carry out eligible projects to protect electric power transmission and distribution lines in such insular areas from damage caused by hurricanes and typhoons.

(B) ELIGIBLE PROJECTS.—The Secretary may award grants under subparagraph (A) only to governments of insular areas of the United States that submit written project plans to the Secretary for projects that meet the following criteria:

(i) The project is designed to protect electric power transmission and distribution lines located in 1 or more of the insular areas of the United States from damage caused by hurricanes and typhoons.

(ii) The project is likely to substantially reduce the risk of future damage, hardship, loss, or suffering.

(iii) The project addresses 1 or more problems that have been repetitive or that pose a significant risk to public health and safety.

(iv) The project is not likely to cost more than the value of the reduction in direct damage and other negative impacts that the project is designed to prevent or

mitigate. The cost benefit analysis required by this criterion shall be computed on a net present value basis.

(v) The project design has taken into consideration long-term changes to the areas and persons it is designed to protect and has manageable future maintenance and modification requirements.

(vi) The project plan includes an analysis of a range of options to address the problem it is designed to prevent or mitigate and a justification for the selection of the project in light of that analysis.

(vii) The applicant has demonstrated to the Secretary that the matching funds required by subparagraph (D) are available.

(C) PRIORITY.—When making grants under this paragraph, the Secretary shall give priority to grants for projects which are likely to—

(i) have the greatest impact on reducing future disaster losses; and

(ii) best conform with plans that have been approved by the Federal Government or the government of the insular area where the project is to be carried out for development or hazard mitigation for that insular area.

(D) MATCHING REQUIREMENT.—The Federal share of the cost for a project for which a grant is provided under this paragraph shall not exceed 75 percent of the total cost of that project. The non-Federal share of the cost may be provided in the form of cash or services.

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

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

* * * * * * *

SECTION 9002 OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002

SEC. 9002. FEDERAL PROCUREMENT OF BIOBASED PRODUCTS.

(a) * * *

* * * * * * *

(c) PROCUREMENT PREFERENCE.—(1) Except as provided in paragraph (2), after the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each Federal agency which procures any items designated in such guidelines shall, in making procurement decisions, give preference to such items composed of the highest percentage of biobased products practicable *or such items that comply with the regulations issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1)*, consistent with

maintaining a satisfactory level of competition, considering such guidelines.

* * * * * * *

SECTION 203 OF THE BIOMASS ENERGY AND ALCOHOL FUELS ACT OF 1980

DEFINITIONS

SEC. 203. As used in this title—

(1) * * *

[(2)(A) The term "biomass" means any organic matter which is available on a renewable basis, including agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, animal wastes, municipal wastes, and aquatic plants.

[(B) For purposes of subtitle A, such term does not include municipal wastes; and for purposes of subtitle C, such term does not include aquatic plants and municipal wastes.]

(2) The term "biomass" means any organic matter that is available on a renewable or recurring basis, including agricultural crops and trees, wood and wood wastes and residues, plants (including aquatic plants), grasses, residues, fibers, and animal wastes, municipal wastes, and other waste materials.

* * * * * * *

FEDERAL POWER ACT

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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) * * *

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[(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 require-

ments respecting fuel use, fuel efficiency, and reliability) 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;

* * * * * * *

[(22) "electric utility" means any person or State agency (including any municipality) which sells electric energy; such term includes the Tennessee Valley Authority, but does not include any Federal power marketing agency.

[(23) TRANSMITTING UTILITY.—The term "transmitting utility" means any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale.]

(22) ELECTRIC UTILITY.—The term "electric utility" means any person or Federal or State agency (including any entity described in section 201(f)) that sells electric energy; such term includes the Tennessee Valley Authority and each Federal power marketing administration.

(23) TRANSMITTING UTILITY.—The term "transmitting utility" means an entity, including any entity described in section 201(f), that owns, operates, or controls facilities used for the transmission of electric energy—

(A) in interstate commerce; or

(B) for the sale of electric energy at wholesale.

* * * * * * *

(26) ELECTRIC COOPERATIVE.—The term "electric cooperative" means a cooperatively owned electric utility.

(27) RTO.—The term "Regional Transmission Organization" or "RTO" means an entity of sufficient regional scope approved by the Commission to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce and to ensure nondiscriminatory access to such facilities.

(28) ISO.—The term "Independent System Operator" or "ISO" means an entity approved by the Commission to exercise operational or functional control of facilities used for the trans-

mission of electric energy in interstate commerce and to ensure nondiscriminatory access to such facilities.

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 expedited agency trial-type hearing of any disputed issues of material fact, with respect to such conditions. Such hearing may be conducted in accordance with procedures established by agency regulation in consultation with the Federal Energy Regulatory Commission. 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 pro-

tection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, 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 expedited agency trial-type hearing of any disputed issues of material fact, with respect to such fishways. Such hearing may be conducted in accordance with procedures established by agency regulation in consultation with the Federal Energy Regulatory Commission.* 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 provide for the adequate protection and utilization of 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.

(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 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 be less protective than the fishway initially prescribed by the Secretary. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.

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PART II—REGULATION OF ELECTRIC UTILITY COMPANIES ENGAGED IN INTERSTATE COMMERCE

DECLARATION OF POLICY; APPLICATION OF PART; DEFINITIONS

SECTION 201. (a) * * *

(b)(1) * * *

(2) **[**The**]** *Notwithstanding section 201(f), the* provisions of sections **[**210, 211, and 212**]** *203(a)(2), 206(e), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, and 222* 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 *or rule* of the Commission under the provisions of section **[**210 or 211**]** *203(a)(2), 206(e), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, and 222*, 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 section **[**210, 211, or 212**]** *206(e), 206(f), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, and 222*).

(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, *an electric cooperative that has financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) or that sells less than 4,000,000 megawatt hours of electricity per year,* 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,

employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(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] *2005*.

* * * * * * *

DISPOSITION OF PROPERTY; CONSOLIDATION; 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.]

(a)(1) No public utility shall, without first having secured an order of the Commission authorizing it to do so—

(A) 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 $10,000,000;

(B) merge or consolidate, directly or indirectly, such facilities or any part thereof with those of any other person, by any means whatsoever; or

(C) purchase, acquire, or take any security with a value in excess of $10,000,000 of any other public utility.

(2) No holding company in a holding company system that includes a public utility shall purchase, acquire, or take any security with a value in excess of $10,000,000 of, or, by any means whatsoever, directly or indirectly, merge or consolidate with, a public utility or a holding company in a holding company system that includes a public utility with a value in excess of $10,000,000 without first having secured an order of the Commission authorizing it to do so.

(3) Upon receipt of an 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.

(4) After notice and opportunity for hearing, the Commission shall approve the proposed disposition, consolidation, acquisition, or change in control, if it finds that the proposed transaction will be

consistent with the public interest. In evaluating whether a transaction will be consistent with the public interest, the Commission shall consider whether the proposed transaction—

(A) will adequately protect consumer interests;

(B) will be consistent with competitive wholesale markets;

(C) will impair the financial integrity of any public utility that is a party to the transaction or an associate company of any party to the transaction; and

(D) satisfies such other criteria as the Commission considers consistent with the public interest.

(5) The Commission shall, by rule, adopt procedures for the expeditious consideration of applications for the approval of dispositions, consolidations, or acquisitions under this section. Such rules shall identify classes of transactions, or specify criteria for transactions, that normally meet the standards established in paragraph (4). The Commission shall provide expedited review for such transactions. The Commission shall grant or deny any other application for approval of a transaction not later than 180 days after the application is filed. If the Commission does not act within 180 days, such application shall be deemed granted unless the Commission finds, based on good cause, that further consideration is required to determine whether the proposed transaction meets the standards of paragraph (4) and issues an order tolling the time for acting on the application for not more than 180 days, at the end of which additional period the Commission shall grant or deny the application.

(6) For purposes of this subsection, the terms "associate company", "holding company", and "holding company system" have the meaning given those terms in the Public Utility Holding Company Act of 2005.

* * * * * * *

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 inten-

tion 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 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.] *If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, 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) Except as provided in paragraph (2), if an entity described in section 201(f) voluntarily makes a short-term sale of electric energy and the sale violates Commission rules in effect at the time of the 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—

(A) any entity that sells less than 8,000,000 megawatt hours of electricity per year; or

(B) any electric cooperative.

(3) For purposes of this subsection, the term "short-term sale" means an agreement for the sale of electric energy at wholesale in interstate commerce that is for a period of 31 days or less (excluding monthly contracts subject to automatic renewal).

(4) The Commission shall have refund authority under subsection (e)(1) with respect to a voluntary short-term sale of electric energy by the Bonneville Power Administration (in this section "Bonneville") only if the sale is at an unjust and unreasonable rate and, in that event, may order a refund only for short-term sales made by Bonneville at rates that are higher than the highest just and reason-

able rate charged by any other entity for a short-term sale of electric energy in the same geographic market for the same, or most nearly comparable, period as the sale by Bonneville.

(5) With respect to any Federal power marketing agency or the Tennessee Valley Authority, the Commission shall not assert or exercise any regulatory authority or powers under subsection (e)(1) other than the ordering of refunds to achieve a just and reasonable rate.

* * * * * * *

CERTAIN WHEELING AUTHORITY

SEC. 211. (a) * * *

* * * * * * *

(c)[(2)] No order may be issued under subsection (a) or (b) which requires the transmitting utility subject to the order to transmit, during any period, an amount of electric energy which replaces any amount of electric energy—

[(A)] *(1)* required to be provided to such applicant pursuant to a contract during such period, or

[(B)] *(2)* currently provided to the applicant by the utility subject to the order pursuant to a rate schedule on file during such period with the Commission: *Provided,* That nothing in this subparagraph shall prevent an application for an order hereunder to be filed prior to [termination of modification] *termination or modification* of an existing rate schedule: *Provided,* That such order shall not become effective until termination of such rate schedule or the modification becomes effective.

(d)(1) Any transmitting utility ordered under subsection (a) or (b) to provide transmission services may apply to the Commission for an order permitting such transmitting utility to cease providing all, or any portion of, such services. After public notice, notice to each affected State regulatory authority, each affected Federal power marketing agency, each affected transmitting utility, and each affected electric utility, and after an opportunity for an evidentiary hearing, the Commission shall issue an order terminating or modifying the order issued under subsection (a) or (b), if the [electric utility] *transmitting utility* providing such transmission services has demonstrated, and the Commission has found, that—

(A) * * *

* * * * * * *

SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES.

(a) TRANSMISSION SERVICES.—Subject to section 212(h), the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

(1) at rates that are comparable to those that the unregulated transmitting utility charges itself; and

(2) on terms and conditions (not relating to rates) that are comparable to those under which such unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential.

(b) EXEMPTION.—The Commission shall exempt from any rule or order under this section any unregulated transmitting utility that—

(1) sells no more than 4,000,000 megawatt hours of electricity per year; or

(2) does not own or operate any transmission facilities that are necessary for operating an interconnected transmission system (or any portion thereof); or

(3) meets other criteria the Commission determines to be in the public interest.

(c) LOCAL DISTRIBUTION FACILITIES.—The requirements of subsection (a) shall not apply to facilities used in local distribution.

(d) EXEMPTION TERMINATION.—Whenever the Commission, after an evidentiary hearing held upon a complaint and after giving consideration to reliability standards established under section 215, finds on the basis of a preponderance of the evidence that any exemption granted pursuant to subsection (b) unreasonably impairs the continued reliability of an interconnected transmission system, it shall revoke the exemption granted to that transmitting utility.

(e) APPLICATION TO UNREGULATED TRANSMITTING UTILITIES.—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.

(f) REMAND.—In exercising its authority under paragraph (1) of subsection (a), the Commission may remand transmission rates to an unregulated transmitting utility for review and revision where necessary to meet the requirements of subsection (a).

(g) OTHER REQUESTS.—The provision of transmission services under subsection (a) does not preclude a request for transmission services under section 211.

(h) LIMITATION.—The Commission may not require a State or municipality to take action under this section that would violate a private activity bond rule for purposes of section 141 of the Internal Revenue Code of 1986 (26 U.S.C. 141).

(i) TRANSFER OF CONTROL OF TRANSMITTING FACILITIES.—Nothing in this section authorizes the Commission to require an unregulated transmitting utility to transfer control or operational control of its transmitting facilities to an RTO or any other Commission-approved independent transmission organization designated to provide nondiscriminatory transmission access.

(j) DEFINITION.—For purposes of this section, the term "unregulated transmitting utility" means an entity that—

(1) owns or operates facilities used for the transmission of electric energy in interstate commerce; and

(2) is an entity described in section 201(f).

* * * * * * *

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] *2005*.

SEC. 215. 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, including cybersecurity protection, 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, including a cybersecurity incident, 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 1 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).

(8) The term "cybersecurity incident" means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communication networks including hardware, software and data that are essential to the reliable operation of the bulk power system.

(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. The Commission may certify 1 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; and

(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.

The total amount of all dues, fees, and other charges collected by the ERO in each of the fiscal years 2006 through 2015 and allocated under subparagraph (B) shall not exceed $50,000,000.

(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 ERO 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 Com-

mission, after notice and opportunity for hearing (which hearing may consist solely of the record before the ERO 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 ERO 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 issue 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 ELECTRIC 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 ERO. 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 ERO 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 ERO in the United States and Canada or Mexico.

(i) SAVINGS PROVISIONS.—(1) The ERO shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system.

(2) This section does not authorize the ERO 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 ERO.

(5) The Commission, after consultation with the ERO 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 2/3 of the States within a region that have more than 1/2 of their electric load served within the region. A regional advisory body shall be composed of 1 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) ALASKA AND HAWAII.—The provisions of this section do not apply to Alaska or Hawaii.

SEC. 216. SITING OF INTERSTATE ELECTRIC TRANSMISSION FACILITIES.

(a) DESIGNATION OF NATIONAL INTEREST ELECTRIC TRANSMISSION CORRIDORS.—

(1) TRANSMISSION CONGESTION STUDY.—Within 1 year after the enactment of this section, and every 3 years thereafter, the Secretary of Energy, in consultation with affected States, shall conduct a study of electric transmission congestion. After considering alternatives and recommendations from interested parties, including an opportunity for comment from affected States, the Secretary shall issue a report, based on such study, which may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a national interest electric transmission corridor. The Secretary shall conduct the study and issue the report in consultation with any appropriate regional entity referenced in section 215 of this Act.

(2) CONSIDERATIONS.—In determining whether to designate a national interest electric transmission corridor referred to in paragraph (1) under this section, the Secretary may consider whether—

(A) the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity;

(B)(i) economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and

(ii) a diversification of supply is warranted;

(C) the energy independence of the United States would be served by the designation;

(D) the designation would be in the interest of national energy policy; and

(E) the designation would enhance national defense and homeland security.

(b) CONSTRUCTION PERMIT.—Except as provided in subsection (i), the Commission is authorized, after notice and an opportunity for hearing, to issue a permit or permits for the construction or modification of electric transmission facilities in a national interest electric transmission corridor designated by the Secretary under subsection (a) if the Commission finds that—

(1)(A) a State in which the transmission facilities are to be constructed or modified is without authority to—

(i) approve the siting of the facilities; or

(ii) consider the interstate benefits expected to be achieved by the proposed construction or modification of transmission facilities in the State;

(B) the applicant for a permit is a transmitting utility under this Act but does not qualify to apply for a permit or siting approval for the proposed project in a State because the applicant does not serve end-use customers in the State; or

(C) a State commission or other entity that has authority to approve the siting of the facilities has—

(i) withheld approval for more than 1 year after the filing of an application pursuant to applicable law seeking ap-

proval or 1 year after the designation of the relevant national interest electric transmission corridor, whichever is later; or

(ii) conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission congestion in interstate commerce or is not economically feasible;

(2) the facilities to be authorized by the permit will be used for the transmission of electric energy in interstate commerce;

(3) the proposed construction or modification is consistent with the public interest;

(4) the proposed construction or modification will significantly reduce transmission congestion in interstate commerce and protects or benefits consumers; and

(5) the proposed construction or modification is consistent with sound national energy policy and will enhance energy independence.

(c) PERMIT APPLICATIONS.—Permit applications under subsection (b) shall be made in writing to the Commission. The Commission shall issue rules setting forth the form of the application, the information to be contained in the application, 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 or modifying any transmission facility pursuant to State law.

(g) 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 ac-

quired 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 the construction or modification of electric transmission facilities within a reasonable period of time after the acquisition. Other than construction, modification, operation, or maintenance of electric transmission facilities and related facilities, property acquired under subsection (e) may not be used for any purpose (including use for any heritage area, recreational trail, or park) without the consent of the owner of the parcel from whom the property was acquired (or the owner's heirs or assigns).

(h) COORDINATION OF FEDERAL AUTHORIZATIONS FOR TRANSMISSION AND DISTRIBUTION FACILITIES.—

(1) LEAD AGENCY.—If an applicant, or prospective applicant, for a Federal authorization related to an electric transmission or distribution facility so requests, the Department of Energy (DOE) shall act as the lead agency for purposes of coordinating all applicable Federal authorizations and related environmental reviews of the facility. For purposes of this subsection, the term "Federal authorization" means 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 agencies responsible for Federal authorizations 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 considers 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.—As lead agency head, 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. The Secretary of Energy and the heads of 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 relating to the corridors. 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, 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 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 of 1969, and the Federal Land Policy and Management Act.

(5) CONFORMING REGULATIONS AND MEMORANDA OF UNDERSTANDING.—Not later than 18 months after the date of enactment of this section, the Secretary of Energy shall issue any regulations necessary to implement this subsection. Not later than 1 year after the date of enactment of this section, the Secretary and the heads of all Federal agencies with authority to issue Federal authorizations shall enter into Memoranda of Understanding to ensure the timely and coordinated review and permitting of electricity transmission and distribution facilities. The head of each Federal agency with authority to issue a Federal authorization shall designate a senior official responsible for, and dedicate sufficient other staff and resources to ensure, full implementation of the DOE regulations and any Memoranda. Interested Indian tribes, multi-State entities, and State agencies may enter such Memoranda of Understanding.

(6) DURATION AND RENEWAL.—Each Federal land use authorization for an electricity transmission or distribution facility shall be issued—

(A) for a duration, as determined by the Secretary of Energy, commensurate with the anticipated use of the facility, and

(B) with appropriate authority to manage the right-of-way for reliability and environmental protection.

Upon the expiration of any such authorization (including an authorization issued prior to enactment of this section), the authorization 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), FERC-approved electric reliability organizations (including related regional entities), and FERC-approved Regional Transmission Organizations and Independent System Operators.

(i) INTERSTATE COMPACTS.—The consent of Congress is hereby given for 3 or more contiguous States to enter into an interstate compact, subject to approval by Congress, establishing regional transmission siting agencies to facilitate siting of future electric energy transmission facilities within such States and to carry out the electric energy transmission siting responsibilities of such States. The Secretary of Energy may provide technical assistance to regional transmission siting agencies established under this subsection. Such regional transmission siting agencies shall have the authority to review, certify, and permit siting of transmission facilities, including facilities in national interest electric transmission corridors (other than facilities on property owned by the United States). The Commission shall have no authority to issue a permit for the construction or modification of electric transmission facilities within a State that is a party to a compact, unless the members of a compact are in disagreement and the Secretary makes, after notice and an opportunity for a hearing, the finding described in subsection (b)(1)(C).

(j) 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. Subsection (h)(4) of this section shall not apply to any Congressionally-designated components of the National Wilderness Preservation System, the National Wild and Scenic Rivers System, or the National Park system (including National Monuments therein).

(k) ERCOT.—This section shall not apply within the area referred to in section 212(k)(2)(A).

SEC. 217. NATIVE LOAD SERVICE OBLIGATION.

(a) MEETING SERVICE OBLIGATIONS.—(1) Any load-serving entity that, as of the date of enactment of this section—

(A) owns generation facilities, markets the output of Federal generation facilities, or holds rights under 1 or more wholesale contracts to purchase electric energy, for the purpose of meeting a service obligation, and

(B) by reason of ownership of transmission facilities, or 1 or more contracts or service agreements for firm transmission serv-

ice, holds firm transmission rights for delivery of the output of such generation facilities or such purchased energy to meet such service obligation,

is entitled to use such firm transmission rights, or, equivalent tradable or financial transmission rights, in order to deliver such output or purchased energy, or the output of other generating facilities or purchased energy to the extent deliverable using such rights, to the extent required to meet its service obligation.

(2) To the extent that all or a portion of the service obligation covered by such firm transmission rights or equivalent tradable or financial transmission rights is transferred to another load-serving entity, the successor load-serving entity shall be entitled to use the firm transmission rights or equivalent tradable or financial transmission rights associated with the transferred service obligation. Subsequent transfers to another load-serving entity, or back to the original load-serving entity, shall be entitled to the same rights.

(3) The Commission shall exercise its authority under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy their service obligations, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long term basis for long term power supply arrangements made, or planned, to meet such needs.

(b) ALLOCATION OF TRANSMISSION RIGHTS.—Nothing in subsections (a)(1) and (a) (2) of this section shall affect any existing or future methodology employed by an RTO or ISO for allocating or auctioning transmission rights if such RTO or ISO was authorized by the Commission to allocate or auction financial transmission rights on its system as of January 1, 2005, and the Commission determines that any future allocation or auction is just, reasonable and not unduly discriminatory or preferential, provided, however, that if such an RTO or ISO never allocated financial transmission rights on its system that pertained to a period before January 1, 2005, with respect to any application by such RTO or ISO that would change its methodology the Commission shall exercise its authority in a manner consistent with the Act and the policies expressed in subsections (a)(1) and (a)(2) as applied to firm transmission rights held by a load serving entity as of January 1, 2005, to the extent the associated generation ownership or power purchase arrangements remain in effect.

(c) CERTAIN TRANSMISSION RIGHTS.—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 just, reasonable, and not unduly discriminatory or preferential.

(d) OBLIGATION TO BUILD.—Nothing in this Act shall relieve a load-serving entity from any obligation under State or local law to build transmission or distribution facilities adequate to meet its service obligations.

(e) CONTRACTS.—Nothing in this section shall provide a basis for abrogating any contract or service agreement for firm transmission service or rights in effect as of the date of the enactment of this subsection. If an ISO in the Western Interconnection had allocated financial transmission rights prior to the date of enactment of this section but had not done so with respect to one or more load-serving

entities' firm transmission rights held under contracts to which the preceding sentence applies (or held by reason of ownership of transmission facilities), such load-serving entities may not be required, without their consent, to convert such firm transmission rights to tradable or financial rights, except where the load-serving entity has voluntarily joined the ISO as a participating transmission owner (or its successor) in accordance with the ISO tariff.

(f) WATER PUMPING FACILITIES.—The Commission shall ensure that any entity described in section 201(f) that owns transmission facilities used predominately to support its own water pumping facilities shall have, with respect to such facilities, protections for transmission service comparable to those provided to load-serving entities pursuant to this section.

(g) FERC RULEMAKING ON LONG-TERM TRANSMISSION RIGHTS IN ORGANIZED MARKETS.—Within one year after the date of enactment of this section and after notice and an opportunity for comment, the Commission shall by rule or order implement subsection (a)(3) in Commission-approved RTOs and ISOs with organized electricity markets.

(h) ERCOT.—This section shall not apply within the area referred to in section 212(k)(2)(A).

(i) JURISDICTION.—This section does not authorize the Commission to take any action not otherwise within its jurisdiction.

(j) EFFECT OF EXERCISING RIGHTS.—An entity that lawfully exercises rights granted under subsection (a) shall not be considered by such action as engaging in undue discrimination or preference under this Act.

(k) TVA AREA.—For purposes of subsection (a)(1)(B), a load-serving entity that is located within the service area of the Tennessee Valley Authority and that has a firm wholesale power supply contract with the Tennessee Valley Authority shall be deemed to hold firm transmission rights for the transmission of such power.

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

(1) The term "distribution utility" means an electric utility that has a service obligation to end-users or to a State utility or electric cooperative that, directly or indirectly, through 1 or more additional State utilities or electric cooperatives, provides electric service to end-users.

(2) The term "load-serving entity" means a distribution utility or an electric utility that has a service obligation.

(3) The term "service obligation" means a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.

(4) The term "State utility" means a State or any political subdivision of a State, or any agency, authority, or instrumentality of any 1 or more of the foregoing, or a corporation which is wholly owned, directly or indirectly, by any 1 or more of the foregoing, competent to carry on the business of developing, transmitting, utilizing or distributing power.

SEC. 218. TRANSMISSION INFRASTRUCTURE INVESTMENT.

(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) rate

treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefiting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion. Such rule shall—

(1) promote reliable and economically efficient transmission and generation of electricity by promoting capital investment in the enlargement, improvement, maintenance and operation of facilities for the transmission of electric energy in interstate commerce;

(2) provide a return on equity that attracts new investment in transmission facilities (including related transmission technologies);

(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; and

(4) allow recovery of all prudently incurred costs necessary to comply with mandatory reliability standards issued pursuant to section 215 of this Act.

The Commission may, from time to time, revise such rule.

(b) ADDITIONAL INCENTIVES FOR RTO PARTICIPATION.—In the rule issued under this section, the Commission shall, to the extent within its jurisdiction, provide for incentives to each transmitting utility or electric utility that joins a Regional Transmission Organization or Independent System Operator. Incentives provided by the Commission pursuant to such rule shall include—

(1) recovery of all prudently incurred costs to develop and participate in any proposed or approved RTO, ISO, or independent transmission company;

(2) recovery of all costs previously approved by a State commission which exercised jurisdiction over the transmission facilities prior to the utility's participation in the RTO or ISO, including costs necessary to honor preexisting transmission service contracts, in a manner which does not reduce the revenues the utility receives for transmission services for a reasonable transition period after the utility joins the RTO or ISO;

(3) recovery as an expense in rates of the costs prudently incurred to conduct transmission planning and reliability activities, including the costs of participating in RTO, ISO and other regional planning activities and design, study and other precertification costs involved in seeking permits and approvals for proposed transmission facilities;

(4) a current return in rates for construction work in progress for transmission facilities and full recovery of prudently incurred costs for constructing transmission facilities;

(5) formula transmission rates; and

(6) a maximum 15 year accelerated depreciation on new transmission facilities for rate treatment purposes.

The Commission shall ensure that any costs recoverable pursuant to this subsection may be recovered by such utility through the transmission rates charged by such utility or through the transmission rates charged by the RTO or ISO that provides transmission service to such utility.

(c) JUST AND REASONABLE RATES.—All rates approved under the rules adopted pursuant to this section, including any revisions to

such rules, are subject to 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. 220. MARKET TRANSPARENCY RULES.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules establishing an electronic information system to provide the Commission and the public with access to such information as is necessary or appropriate to facilitate price transparency and participation in markets subject to the Commission's jurisdiction under this Act. Such systems shall provide information about the availability and market price of wholesale electric energy and transmission services to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public on a timely basis. The Commission shall have authority to obtain such information from any electric utility or transmitting utility, including any entity described in section 201(f).

(b) EXEMPTIONS.—The Commission shall exempt from disclosure information it determines would, if disclosed, be detrimental to the operation of an effective market or jeopardize system security. This section shall not apply to transactions for the purchase or sale of wholesale electric energy or transmission services within the area described in section 212(k)(2)(A). In determining the information to be made available under this section and time to make such information available, the Commission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anti-competitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.

(c) COMMODITY FUTURES TRADING COMMISSION.—This section shall not affect the exclusive jurisdiction of the Commodity Futures Trading Commission with respect to accounts, agreements, contracts, or transactions in commodities under the Commodity Exchange Act (7 U.S.C. 1 et seq.).

(d) SAVINGS PROVISION.—In exercising its authority under this section, the Commission shall not—

(1) compete with, or displace from the market place, any price publisher; or

(2) regulate price publishers or impose any requirements on the publication of information.

SEC. 221. PROHIBITION ON FILING FALSE INFORMATION.

No person or other entity (including an entity described in section 201(f)) shall willfully and knowingly report any information relating to the price of electricity sold at wholesale or availability of transmission capacity, which information the person or any other entity knew to be false at the time of the reporting, to a Federal agency with intent to fraudulently affect the data being compiled by such Federal agency.

SEC. 222. PROHIBITION ON ROUND TRIP TRADING.

(a) PROHIBITION.—No person or other entity (including an entity described in section 201(f)) shall willfully and knowingly 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.—For the purposes of this section, the term "round trip trade" means a transaction, or combination of transactions, in which a person or any 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 or arrangement described in paragraph (1), arranges a financially offsetting trade with such other person or entity for the same such electric energy, at the same location, price, quantity and terms so that, collectively, the purchase and sale transactions in themselves result in no financial gain or loss; and

(3) enters into the contract or arrangement with a specific intent to fraudulently affect reported revenues, trading volumes, or prices.

SEC. 223. JOINT BOARD ON ECONOMIC DISPATCH.

(a) IN GENERAL.—The Commission shall convene a joint board pursuant to section 209 of this Act to study the issue of security constrained economic dispatch for a market region.

(b) MEMBERSHIP.—The Commission shall request each State to nominate a representative for such joint board.

(c) POWERS.—The board's sole authority shall be to consider issues relevant to what constitutes "security constrained economic dispatch" and how such a mode of operating an electric energy system affects or enhances the reliability and affordability of service to customers.

(d) REPORT TO THE CONGRESS.—The board shall issue a report on these matters within one year of enactment of this section, including any consensus recommendations for statutory or regulatory reform.

PART III—LICENSEES AND PUBLIC UTILITIES; PROCEDURAL AND ADMINISTRATIVE PROVISIONS

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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, *electric utility,* 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.

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GENERAL FORFEITURE PROVISION; VENUE

SEC. 315. (a) * * *

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(c) This [subsection] *section* 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.

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] *5 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.

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[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

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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) NET METERING.—Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term "net metering service" 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.

(12) FUEL SOURCES.—Each electric utility shall develop a plan to minimize dependence on 1 fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.

(13) FOSSIL FUEL GENERATION EFFICIENCY.—Each electric utility shall develop and implement a 10-year plan to increase the efficiency of its fossil fuel generation.

(16) INTERCONNECTION.—Each electric utility shall make available, upon request, interconnection service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term "interconnection service" means service to an electric consumer under which an on-site generating facility on the consumer's premises shall be connected to the local distribution facilities. Interconnection services shall be offered based upon the standards developed by the Institute of Electrical and Electronics Engineers: IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Sys-

tems, as they may be amended from time to time. In addition, agreements and procedures shall be established whereby the services are offered shall promote current best practices of interconnection for distributed generation, including but not limited to practices stipulated in model codes adopted by associations of state regulatory agencies. All such agreements and procedures shall be just and reasonable, and not unduly discriminatory or preferential.

SEC. 112. OBLIGATIONS TO CONSIDER AND DETERMINE.

(a) * * *

(b) TIME LIMITATIONS.—(1) * * *

* * * * * * *

(3)(A) Not later than 2 years after the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to each standard established by paragraphs (11) through (13) of section 111(d).

(B) Not later than 3 years after the date of the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to each standard established by paragraphs (11) through (13) of section 111(d).

(4)(A) Not later than 1 year after the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to the standard established by paragraph (14) of section 111(d).

(B) Not later than 2 years after the date of the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to the standard established by paragraph (14) of section 111(d).

(5)(A) Not later than one year after the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated utility shall commence the consideration referred to in section 111, or set a hearing date for consideration, with respect to the standard established by paragraph (16) of section 111(d).

(B) Not later than two years after the date of the enactment of the this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to each standard established by paragraph (16) of section 111(d).

(c) FAILURE TO COMPLY.—Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall undertake the consideration, and make the determination, referred to in section 111 with respect to each standard established by section 111(d) in the first rate proceeding commenced after the date three years after the date of enactment of this Act respecting the rates of such utility if such State regulatory authority or nonregulated electric utility has not, before such date, complied with subsection (b)(2) with respect to such standard. *In the case of each standard established by paragraphs (11) through (13) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraphs (11) through (13). In the case of the standard established by paragraph (14) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraph (14).*

(d) PRIOR STATE ACTIONS.—Subsections (b) and (c) of this section shall not apply to the standards established by paragraphs (11) through (13) of section 111(d) in the case of any electric utility in a State if, before the enactment of this subsection—

(1) the State has implemented for such utility the standard concerned (or a comparable standard);

(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility; or

(3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility. In the case of the standard established by paragraph (16), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of paragraph (16).

(e) PRIOR STATE ACTIONS.—Subsections (b) and (c) of this section shall not apply to the standard established by paragraph (14) of section 111(d) in the case of any electric utility in a State if, before the enactment of this subsection—

(1) the State has implemented for such utility the standard concerned (or a comparable standard);

(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility within the previous 3 years; or

(3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility within the previous 3 years.

(f) PRIOR STATE ACTIONS.—Subsections (b) and (c) of this section shall not apply to the standards established by paragraphs (16) of section 111(d) in the case of any electric utility in a State if, before the enactment of this subsection—

(1) the State has implemented for such utility the standard concerned (or a comparable standard);

(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to con-

sider implementation of the standard concerned (or a comparable standard) for such utility; or

(3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility.

* * * * * * *

Subtitle C—Intervention and Judicial Review

* * * * * * *

SEC. 124. PRIOR AND PENDING PROCEEDINGS.

For purposes of subtitle A and B, and this subtitle, proceedings commenced by State regulatory authorities (with respect to electric utilities for which it has ratemaking authority) and nonregulated electric utilities before the date of the enactment of this Act and actions taken before such date in such proceedings shall be treated as complying with the requirements of subtitles A and B, and this subtitle if such proceedings and actions, substantially conform to such requirements. For purposes of subtitles A and B, and this subtitle, any such proceeding or action commenced before the date of enactment of this Act, but not completed before such date, shall comply with the requirements of subtitles A and B, and this subtitle, to the maximum extent practicable, with respect to so much of such proceeding or action as takes place after such date, except as otherwise provided in section 121(c). *In the case of each standard established by paragraphs (11) through (13) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraphs (11) through (13). In the case of the standard established by paragraph (14) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraph (14). In the case of each standard established by paragraph (16) of section 111(d), the reference contained in this subsection to the date of enactment of the Act shall be deemed to be a reference to the date of enactment of paragraph (16).*

* * * * * * *

Subtitle D—Administrative Provisions

* * * * * * *

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—

(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) not later than 180 days after the date of enactment of the Energy Policy Act of 2005, providing Congress with a report that identifies and quantifies the national benefits of demand response and makes a recommendation on achieving specific levels of such benefits by January 1, 2007.

* * * * * * *

TITLE II—CERTAIN FEDERAL ENERGY REGULATORY COMMISSION AND DEPARTMENT OF ENERGY AUTHORITIES

* * * * * * *

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 the qualifying cogeneration facility or qualifying small power production facility has nondiscriminatory access to—

(A)(i) independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and (ii) wholesale markets for long-term sales of capacity and electric energy; or

(B)(i) transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and (ii) competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful op-

portunity to sell exists, the Commission shall consider, among other factors, evidence of transactions within the relevant market; or

(C) wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in subparagraphs (A) and (B).

(2) REVISED PURCHASE AND SALE OBLIGATION FOR NEW FACILITIES.—(A) After the date of enactment of this subsection, no electric utility shall be required pursuant to this section to enter into a new contract or obligation to purchase from or sell electric energy to a facility that is not an existing qualifying cogeneration facility unless the facility meets the criteria for qualifying cogeneration facilities established by the Commission pursuant to the rulemaking required by subsection (n).

(B) For the purposes of this paragraph, the term "existing qualifying cogeneration facility" means a facility that—

(i) was a qualifying cogeneration facility on the date of enactment of subsection (m); or

(ii) had filed with the Commission a notice of self-certification, self recertification or an application for Commission certification under 18 C.F.R. 292.207 prior to the date on which the Commission issues the final rule required by subsection (n).

(3) COMMISSION REVIEW.—Any electric utility may file an application with the Commission for relief from the mandatory purchase obligation pursuant to this subsection on a service territory-wide basis. Such application shall set forth the factual basis upon which relief is requested and describe why the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) of this subsection have been met. After notice, including sufficient notice to potentially affected qualifying cogeneration facilities and qualifying small power production facilities, and an opportunity for comment, the Commission shall make a final determination within 90 days of such application regarding whether the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) have been met.

(4) REINSTATEMENT OF OBLIGATION TO PURCHASE.—At any time after the Commission makes a finding under paragraph (3) relieving an electric utility of its obligation to purchase electric energy, a qualifying cogeneration facility, a qualifying small power production facility, a State agency, or any other affected person 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 factual basis upon which the application is based and describe why the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) of this subsection are no longer met. After notice, including sufficient notice to potentially affected utilities, and opportunity for comment, the Commission shall issue an order within 90 days of such application reinstating the electric utility's obligation to purchase electric energy under this section if the Commission finds that the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) which relieved the obligation to purchase, are no longer met.

(5) 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 under this section if the Commission finds that—

(A) competing retail electric suppliers are willing and able to sell and deliver 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.

(6) 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 non-regulated 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 qualifying cogeneration facility or qualifying small power production facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

(7) RECOVERY OF COSTS.—(A) The Commission shall issue and enforce such regulations as are necessary to ensure that an electric utility that purchases electric energy or capacity from a qualifying cogeneration facility or qualifying small power production facility in accordance with any legally enforceable obligation entered into or imposed under this section recovers all prudently incurred costs associated with the purchase.

(B) 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 QUALIFYING FACILITIES.—(1)(A) Not later than 180 days after the date of enactment of this section, the Commission shall issue a rule revising the criteria in 18 C.F.R. 292.205 for new qualifying cogeneration facilities seeking to sell electric energy pursuant to section 210 of this Act to ensure—

(i) that the thermal energy output of a new qualifying cogeneration facility is used in a productive and beneficial manner;

(ii) the electrical, thermal, and chemical output of the cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as State laws applicable to sales of electric energy from a qualifying facility to its host facility; and

(iii) continuing progress in the development of efficient electric energy generating technology.

(B) The rule issued pursuant to paragraph (1)(A) of this subsecvtion shall be applicable only to facilities that seek to sell electric energy pursuant to section 210 of this Act. For all other purposes, except as specifically provided in subsection (m)(2)(A), qualifying facility status shall be determined in accordance with the rules and regulations of this Act.

(2) Notwithstanding rule revisions under paragraph (1), the Commission's criteria for qualifying cogeneration facilities in effect prior to the date on which the Commission issues the final rule required by paragraph (1) shall continue to apply to any cogeneration facility that—

(A) was a qualifying cogeneration facility on the date of enactment of subsection (m), or

(B) had filed with the Commission a notice of self-certification, self-recertification or an application for Commission certification under 18 C.F.R. 292.207 prior to the date on which the Commission issues the final rule required by paragraph (1).

* * * * * * *

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;

* * * * * * *

SECTION 713 OF THE ENERGY ACT OF 2000

SEC. 713. SUNSET.

This title shall cease to be effective as of the date that is [4] *9* years after the date on which the Alliance is established.

NATURAL GAS ACT

* * * * * * *

NECESSITY FOR REGULATION OF NATURAL GAS COMPANIES

SECTION 1. (a) * * *

(b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural gas companies engaged in such transportation or sale, *and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation,* but shall not apply to any other transportation or sale of natural gas or to the

local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

* * * * * * *

SEC. 2. When used in this Act, unless the context otherwise requires—

(1) * * *

* * * * * * *

(11) "Liquefaction or gasification natural gas terminal" includes all facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by waterborne tanker, but does not include—

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

(B) any pipeline or storage facility subject to the jurisdiction of the Commission under section 7.

EXPORTATION OR IMPORTATION OF NATURAL GAS*; LIQUEFACTION OR GASIFICATION NATURAL GAS TERMINALS*

SEC. 3. (a) * * *

* * * * * * *

(d) AUTHORIZATION FOR CONSTRUCTION, EXPANSION, OR OPERATION OF LIQUEFACTION OR GASIFICATION NATURAL GAS TERMINALS.—

(1) COMMISSION AUTHORIZATION REQUIRED.—No person shall construct, expand, or operate a liquefaction or gasification natural gas terminal without an order from the Commission authorizing such person to do so.

(2) AUTHORIZATION PROCEDURES.—

(A) NOTICE AND HEARING.—Upon the filing of any application to construct, expand, or operate a liquefaction or gasification natural gas terminal, the Commission shall—

(i) set the matter for hearing;

(ii) give reasonable notice of the hearing to all interested persons, including the State commission of the State in which the liquefaction or gasification natural gas terminal is located;

(iii) decide the matter in accordance with this subsection; and

(iv) issue or deny the appropriate order accordingly.

(B) DESIGNATION AS LEAD AGENCY.—

(i) IN GENERAL.—The Commission shall act as the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4312 et seq.) for a liquefaction or gasification natural gas terminal.

(ii) OTHER AGENCIES.—Each Federal agency considering an aspect of the construction, expansion, or operation of a liquefaction or gasification natural gas ter-

minal shall cooperate with the Commission and comply with the deadlines established by the Commission.

(C) SCHEDULE.—

(i) COMMISSION AUTHORITY TO SET SCHEDULE.—The Commission shall establish a schedule for all Federal and State administrative proceedings required under authority of Federal law to construct, expand, or operate a liquefaction or gasification natural gas terminal. In establishing the schedule, the Commission shall—

(I) ensure expeditious completion of all such proceedings; and

(II) accommodate the applicable schedules established by Federal law for such proceedings.

(ii) FAILURE TO MEET SCHEDULE.—If a Federal or State administrative agency does not complete a proceeding for an approval that is required before a person may construct, expand, or operate the liquefaction or gasification natural gas terminal, in accordance with the schedule established by the Commission under this subparagraph, and if—

(I) a determination has been made by the Court pursuant to section 19(d) that such delay is unreasonable; and

(II) the agency has failed to act on any remand by the Court within the deadline set by the Court, that approval may be conclusively presumed by the Commission.

(D) EXCLUSIVE RECORD.—The Commission shall, with the cooperation of Federal and State administrative agencies and officials, maintain a complete consolidated record of all decisions made or actions taken by the Commission or by a Federal administrative agency or officer (or State administrative agency or officer acting under delegated Federal authority) with respect to the construction, expansion, or operation of a liquefaction or gasification natural gas terminal. Such record shall be the exclusive record for any Federal administrative proceeding that is an appeal or review of any such decision made or action taken.

(E) STATE AND LOCAL SAFETY CONSIDERATIONS.—

(i) IN GENERAL.—The Commission shall consult with the State commission of the State in which the liquefaction or gasification natural gas terminal is located regarding State and local safety considerations prior to issuing an order pursuant to this subsection and consistent with the schedule established under subparagraph (C).

(ii) STATE SAFETY INSPECTIONS.—The State commission of the State in which a liquefaction or gasification natural gas terminal is located may, after the terminal is operational, conduct safety inspections with respect to the liquefaction or gasification natural gas terminal if—

(I) the State commission provides written notice to the Commission of its intention to do so; and

(II) the inspections will be carried out in conformance with Federal regulations and guidelines.

Enforcement of any safety violation discovered by a State commission pursuant to this clause shall be carried out by Federal officials. The Commission shall take appropriate action in response to a report of a violation not later that 90 days after receiving such report.

(iii) STATE AND LOCAL SAFETY CONSIDERATIONS.—For the purposes of this subparagraph, State and local safety considerations include—

(I) the kind and use of the facility;

(II) the existing and projected population and demographic characteristics of the location;

(III) the existing and proposed land use near the location;

(IV) the natural and physical aspects of the location;

(V) the medical, law enforcement, and fire prevention capabilities near the location that can respond at the facility; and

(VI) the feasibility of remote siting.

(3) ISSUANCE OF COMMISSION ORDER.—

(A) IN GENERAL.—The Commission shall issue an order authorizing, in whole or in part, the construction, expansion, or operation covered by the application to any qualified applicant—

(i) unless the Commission finds such actions or operations will not be consistent with the public interest; and

(ii) if the Commission has found that the applicant is—

(I) able and willing to carry out the actions and operations proposed; and

(II) willing to conform to the provisions of this Act and any requirements, rules, and regulations of the Commission set forth under this Act.

(B) TERMS AND CONDITIONS.—The Commission may by its order grant an application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate.

(C) LIMITATIONS ON TERMS AND CONDITIONS TO COMMISSION ORDER.—

(i) IN GENERAL.—Any Commission order issued pursuant to this subsection before January 1, 2011, shall not be conditioned on—

(I) a requirement that the liquefaction or gasification natural gas terminal offer service to persons other than the person, or any affiliate thereof, securing the order; or

(II) any regulation of the liquefaction or gasification natural gas terminal's rates, charges, terms, or conditions of service.

(ii) INAPPLICABLE TO TERMINAL EXIT PIPELINE.—Clause (i) shall not apply to any pipeline subject to the

jurisdiction of the Commission under section 7 exiting a liquefaction or gasification natural gas terminal.

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

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

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

(III) undue discrimination against the regulated terminal users.

(iv) EXPIRATION.—This subparagraph shall cease to have effect on January 1, 2021.

(4) DEFINITION.—For the purposes of this subsection, the term "Federal authorization" means any authorization required under Federal law in order to construct, expand, or operate a liquefaction or gasification natural gas terminal, including such permits, special use authorizations, certifications, opinions, or other approvals as may be required, whether issued by a Federal or State agency.

* * * * * * *

EXTENSION OF FACILITIES; ABANDONMENT OF SERVICE

SEC. 7. (a) * * *

* * * * * * *

(i)(1) The United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction over any civil action—

(A) for review of any order or action of any Federal or State administrative agency or officer to issue, condition, or deny any permit, license, concurrence, or approval issued under authority of any Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), required for the construction of a natural gas pipeline for which a certificate of public convenience and necessity is issued by the Commission under this section;

(B) alleging unreasonable delay by any Federal or State administrative agency or officer in entering an order or taking other action described in subparagraph (A); or

(C) challenging any decision made or action taken under this subsection.

(2)(A) If the Court finds that the order, action, or failure to act is not consistent with the public convenience and necessity (as determined by the Commission under this section), or would prevent the construction and operation of natural gas facilities authorized by the certificate of public convenience and necessity, the permit, license, concurrence, or approval that is the subject of the order, action, or failure to act shall be deemed to have been issued subject to any conditions set forth in the reviewed order or action that the

Court finds to be consistent with the public convenience and necessity.

(B) For purposes of paragraph (1)(B), the failure of an agency or officer to issue any such permit, license, concurrence, or approval within the later of 1 year after the date of filing of an application for the permit, license, concurrence, or approval or 60 days after the date of issuance of the certificate of public convenience and necessity under this section, shall be considered to be unreasonable delay unless the Court, for good cause shown, determines otherwise.

(C) The Court shall set any action brought under paragraph (1) for expedited consideration.

* * * * * * *

REHEARING; COURT REVIEW OF ORDERS

SEC. 19. (a) * * *

* * * * * * *

(d) JUDICIAL REVIEW.—

(1) IN GENERAL.—The United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction over any civil action—

(A) for review of any order, action, or failure to act of any Federal or State administrative agency to issue, condition, or deny any permit, license, concurrence, or approval required under Federal law for the construction, expansion, or operation of a liquefaction or gasification natural gas terminal;

(B) alleging unreasonable delay, in meeting a schedule established under section 3(d)(2)(C) or otherwise, by any Federal or State administrative agency in entering an order or taking other action described in subparagraph (A); or

(C) challenging any decision made or action taken by the Commission under section 3(d).

(2) COMMISSION ACTION.—For any action described in this subsection, the Commission shall file with the Court the consolidated record maintained under section 3(d)(2)(D).

(3) COURT ACTION.—If the Court finds under paragraph (1)(A) or (B) that an order, action, failure to act, or delay is inconsistent with applicable Federal law, and would prevent the construction, expansion, or operation of a liquefaction or gasification natural gas terminal, the order or action shall be deemed to have been issued or taken, subject to any conditions established by the Federal or State administrative agency upon remand from the Court, such conditions to be consistent with the order of the Court. If the Court remands the order or action to the Federal or State agency, the Court shall set a reasonable deadline for the agency to act on remand.

(4) UNREASONABLE DELAY.—For the purposes of paragraph (1)(B), the failure of an agency to issue a permit, license, concurrence, or approval within the later of—

(A) 1 year after the date of filing of an application for the permit, license, concurrence, or approval; or

(B) 60 days after the date of issuance of the order under section 3(d),

shall be considered unreasonable delay unless the Court, for good cause shown, determines otherwise.

(5) EXPEDITED REVIEW.—The Court shall set any action brought under this subsection for expedited consideration.

* * * * * * *

SEC. 24. NATURAL GAS MARKET TRANSPARENCY.

(a) AUTHORIZATION.—(1) Not later than 180 days after the date of enactment of the Energy Policy Act of 2005, the Federal Energy Regulatory Commission shall issue rules directing all entities subject to the Commission's jurisdiction as provided under this Act to timely report information about the availability and prices of natural gas sold at wholesale in interstate commerce to the Commission and price publishers.

(2) The Commission shall evaluate the data for adequate price transparency and accuracy.

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

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

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

(B) regulate price publishers or impose any requirements on the publication of information.

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

(c) LIMITATION ON COMMISSION AUTHORITY.—(1) The Commission shall not condition access to interstate pipeline transportation upon the reporting requirements authorized under this section.

(2) Natural gas sales by a producer that are attributable to volumes of natural gas produced by such producer shall not be subject to the rules issued pursuant to this section.

(3) The Commission shall not require natural gas producers, processors, or users who have a de minimis market presence to participate in the reporting requirements provided in this section.

SEC. ⟦24⟧ *25*. This act may be cited as the "Natural Gas Act."

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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) UNDERGROUND INJECTION.—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 202 OF THE NATIVE AMERICAN HOUSING AND SELF-DETERMINATION ACT OF 1996

SEC. 202. ELIGIBLE AFFORDABLE HOUSING ACTIVITIES.

Affordable housing activities under this title are activities, in accordance with the requirements of this title, to develop or to support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing, through the following activities:

(1) * * *

(2) DEVELOPMENT.—The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development of utilities and utility services, conversion, demolition, financing, administration and planning, *improvement to achieve greater energy efficiency,* and other related activities.

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ATOMIC ENERGY ACT OF 1954

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ATOMIC ENERGY ACT OF 1954

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CHAPTER 14. GENERAL AUTHORITY

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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.

* * * * * * *

g. The Commission shall give priority to the licensing of a utilization facility that is collocated with a hydrogen production facility. The Commission shall issue a final decision approving or disapproving the issuance of a license to construct and operate a utilization facility not later than the expiration of 3 years after the date of the submission of such application, if the application references a Commission-certified design and an early site permit, unless the Commission determines that the applicant has proposed material and substantial changes to the design or the site design parameters.

* * * * * * *

SEC. 105. ANTITRUST PROVISIONS.—

a. * * *

* * * * * * *

c. (1) * * *

* * * * * * *

(9) APPLICABILITY.—This subsection does not apply to an application for a license to construct or operate a utilization facility or production facility under section 103 or 104 b. that is filed on or after the date of enactment of this paragraph.

* * * * * * *

CHAPTER 11. INTERNATIONAL ACTIVITIES

* * * * * * *

SEC. 129. CONDUCT RESULTING IN TERMINATION OF NUCLEAR EXPORTS.—

a. No nuclear materials and equipment or sensitive nuclear technology shall be exported to—

(1) * * *

* * * * * * *

b.(1) Notwithstanding any other provision of law, including specifically section 121 of this Act, and except as provided in paragraphs (2) and (3), no nuclear materials and equipment or sensitive nuclear technology, including items and assistance authorized by section 57 b. of this Act and regulated under part 810 of title 10, Code of Federal Regulations, and nuclear-related items on the Commerce Control List maintained under part 774 of title 15 of the Code of Federal Regulations, shall be exported or reexported, or transferred or retransferred whether directly or indirectly, and no Federal agency shall issue any license, approval, or authorization for the export or reexport, or transfer, or retransfer, whether directly or indirectly, of these items or assistance (as defined in this paragraph) to any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activi-

ties (specifically including any country the government of which has been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)) to have repeatedly provided support for acts of international terrorism).

(2) This subsection shall not apply to exports, reexports, transfers, or retransfers of radiation monitoring technologies, surveillance equipment, seals, cameras, tamper-indication devices, nuclear detectors, monitoring systems, or equipment necessary to safely store, transport, or remove hazardous materials, whether such items, services, or information are regulated by the Department of Energy, the Department of Commerce, or the Nuclear Regulatory Commission, except to the extent that such technologies, equipment, seals, cameras, devices, detectors, or systems are available for use in the design or construction of nuclear reactors or nuclear weapons.

(3) The President may waive the application of paragraph (1) to a country if the President determines and certifies to Congress that the waiver will not result in any increased risk that the country receiving the waiver will acquire nuclear weapons, nuclear reactors, or any materials or components of nuclear weapons and—

(A) the government of such country has not within the preceding 12-month period willfully aided or abetted the international proliferation of nuclear explosive devices to individuals or groups or willfully aided and abetted an individual or groups in acquiring unsafeguarded nuclear materials;

(B) in the judgment of the President, the government of such country has provided adequate, verifiable assurances that it will cease its support for acts of international terrorism;

(C) the waiver of that paragraph is in the vital national security interest of the United States; or

(D) such a waiver is essential to prevent or respond to a serious radiological hazard in the country receiving the waiver that may or does threaten public health and safety.

* * * * * * *

SEC. 134. FURTHER RESTRICTIONS ON EXPORTS.—

[a. The Commission] *a. IN GENERAL.—Except as provided in subsection b., the Commission* may issue a license for the export of highly enriched uranium to be used as a fuel or target in a nuclear research or test reactor only if, in addition to any other requirement of this Act, the Commission determines that—

(1) * * *

* * * * * * *

b. MEDICAL ISOTOPE PRODUCTION.—

(1) DEFINITIONS.—In this subsection:

(A) HIGHLY ENRICHED URANIUM.—The term "highly enriched uranium" means uranium enriched to include concentration of U–235 above 20 percent.

(B) MEDICAL ISOTOPE.—The term "medical isotope" includes Molybdenum 99, Iodine 131, Xenon 133, and other radioactive materials used to produce a radiopharmaceutical for diagnostic, therapeutic procedures or for research and development.

(C) RADIOPHARMACEUTICAL.—The term "radiopharmaceutical" means a radioactive isotope that—

(i) contains byproduct material combined with chemical or biological material; and

(ii) is designed to accumulate temporarily in a part of the body for therapeutic purposes or for enabling the production of a useful image for use in a diagnosis of a medical condition.

(D) RECIPIENT COUNTRY.—The term "recipient country" means Canada, Belgium, France, Germany, and the Netherlands.

(2) LICENSES.—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 (except subsection a.), the Commission determines that—

(A) a recipient country that supplies an assurance letter to the United States Government in connection with the consideration by the Commission 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 the highly enriched uranium solely to produce medical isotopes; and

(B) the highly enriched uranium for medical isotope production will be irradiated only in a reactor in a recipient country that—

(i) uses an alternative nuclear reactor fuel; or

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

(3) REVIEW OF PHYSICAL PROTECTION REQUIREMENTS.—

(A) IN GENERAL.—The Commission shall review the adequacy of physical protection requirements that, as of the date of an application under paragraph (2), are applicable to the transportation and storage of highly enriched uranium for medical isotope production or control of residual material after irradiation and extraction of medical isotopes.

(B) IMPOSITION OF ADDITIONAL REQUIREMENTS.—If the Commission determines that additional physical protection requirements are necessary (including a limit on the quantity of highly enriched uranium that may be contained in a single shipment), the Commission shall impose such requirements as license conditions or through other appropriate means.

(4) FIRST REPORT TO CONGRESS.—

(A) NAS STUDY.—The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct a study to determine—

(i) the feasibility of procuring supplies of medical isotopes from commercial sources that do not use highly enriched uranium;

(ii) the current and projected demand and availability of medical isotopes in regular current domestic use;

(iii) the progress that is being made by the Department of Energy and others to eliminate all use of highly enriched uranium in reactor fuel, reactor targets, and medical isotope production facilities; and

(iv) the potential cost differential in medical isotope production in the reactors and target processing facilities if the products were derived from production systems that do not involve fuels and targets with highly enriched uranium.

(B) FEASIBILITY.—For the purpose of this subsection, the use of low enriched uranium to produce medical isotopes shall be determined to be feasible if—

(i) low enriched uranium targets have been developed and demonstrated for use in the reactors and target processing facilities that produce significant quantities of medical isotopes to serve United States needs for such isotopes;

(ii) sufficient quantities of medical isotopes are available from low enriched uranium targets and fuel to meet United States domestic needs; and

(iii) the average anticipated total cost increase from production of medical isotopes in such facilities without use of highly enriched uranium is less than 10 percent.

(C) REPORT BY THE SECRETARY.—Not later than 5 years after the date of enactment of the Energy Policy Act of 2005, the Secretary shall submit to Congress a report that—

(i) contains the findings of the National Academy of Sciences made in the study under subparagraph (A); and

(ii) discloses the existence of any commitments from commercial producers to provide domestic requirements for medical isotopes without use of highly enriched uranium consistent with the feasibility criteria described in subparagraph (B) not later than the date that is 4 years after the date of submission of the report.

(5) SECOND REPORT TO CONGRESS.—If the study of the National Academy of Sciences determines under paragraph (4)(A)(i) that the procurement of supplies of medical isotopes from commercial sources that do not use highly enriched uranium is feasible, but the Secretary is unable to report the existence of commitments under paragraph (4)(C)(ii), not later than the date that is 6 years after the date of enactment of the Energy Policy Act of 2005, the Secretary shall submit to Congress a report that describes options for developing domestic supplies of medical isotopes in quantities that are adequate to meet domestic demand without the use of highly enriched uranium consistent with the cost increase described in paragraph (4)(B)(iii).

(6) CERTIFICATION.—At such time as commercial facilities that do not use highly enriched uranium are capable of meeting

domestic requirements for medical isotopes, within the cost increase described in paragraph (4)(B)(iii) and without impairing the reliable supply of medical isotopes for domestic utilization, the Secretary shall submit to Congress a certification to that effect.

(7) SUNSET PROVISION.—After the Secretary submits a certification under paragraph (6), the Commission shall, by rule, terminate its review of export license applications under this subsection.

[b.] *c.* As used in this section—

(1) * * *

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CHAPTER 12. CONTROL OF INFORMATION

* * * * * * *

SEC. 149. FINGERPRINTING FOR CRIMINAL HISTORY RECORD CHECKS.—

[a. The Nuclear Regulatory Commission (in this section referred to as the "Commission") shall require each licensee or applicant for a license to operate a utilization facility under section 103 or 104 b. to fingerprint each individual who is permitted unescorted access to the facility or is permitted access to safeguards information under section 147. All fingerprints obtained by a licensee or applicant as required in the preceding sentence]

a. IN GENERAL.—

(1) REQUIREMENTS.—

(A) IN GENERAL.—The Commission shall require each individual or entity—

(i) that is licensed or certified to engage in an activity subject to regulation by the Commission;

(ii) that has filed an application for a license or certificate to engage in an activity subject to regulation by the Commission; or

(iii) that has notified the Commission, in writing, of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to regulation by the Commission,

to fingerprint each individual described in subparagraph (B) before the individual is permitted unescorted access or access, whichever is applicable, as described in subparagraph (B).

(B) INDIVIDUALS REQUIRED TO BE FINGERPRINTED.—The Commission shall require to be fingerprinted each individual who—

(i) is permitted unescorted access to—

(I) a utilization facility; or

(II) radioactive material or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks; or

(ii) is permitted access to safeguards information under section 147.

(2) SUBMISSION TO THE ATTORNEY GENERAL.—All fingerprints obtained by an individual or entity as required in paragraph (1) shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check. [The costs of any identification and records check conducted pursuant to the preceding sentence shall be paid by the licensee or applicant.]

(3) COSTS.—The costs of any identification and records check conducted pursuant to paragraph (1) shall be paid by the individual or entity required to conduct the fingerprinting under paragraph (1)(A). [Notwithstanding any other provision of law, the Attorney General may provide all the results of the search of the Commission, and, in accordance with regulations prescribed under this section, the Commission may provide such results to the licensee or applicant submitting such fingerprints.]

(4) PROVISION TO INDIVIDUAL OR ENTITY REQUIRED TO CONDUCT FINGERPRINTING.—Notwithstanding any other provision of law, the Attorney General may provide all the results of the search to the Commission, and, in accordance with regulations prescribed under this section, the Commission may provide such results to the individual or entity required to conduct the fingerprinting under paragraph (1)(A).

* * * * * * *

c. For purposes of administering this section, the Commission shall prescribe[, subject to public notice and comment, regulations—] *requirements—*

(1) * * *

(2) to establish the conditions for use of information received from the Attorney General, in order—

(A) * * *

(B) to ensure that such information is used solely for the purpose of determining whether an individual shall be permitted [unescorted access to the facility of a licensee or applicant] *unescorted access to a utilization facility, radioactive material, or other property described in subsection a.(1)(B)* or shall be permitted access to safeguards information under section 147;

d. USE OF OTHER BIOMETRIC METHODS.—The Commission may satisfy any requirement for a person to conduct fingerprinting under this section using any other biometric method for identification approved for use by the Attorney General, after the Commission has approved the alternative method by rule.

[c.] *e.* * * *

* * * * * * *

CHAPTER 14. GENERAL AUTHORITY

SEC. 161. GENERAL PROVISIONS.—In the performance of its functions the Commission is authorized to—

a. * * *

* * * * * * *

i. prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in

connection with any activity authorized pursuant to this Act, (2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 53 or produced by any person in connection with any activity authorized pursuant to this Act, to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, including regulations or orders designating activities, involving quantities of special nuclear material which in the opinion of the Commission are important to the common defense and security, that may be conducted only by persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to conduct the activity will not be inimical to the common defense and security, [and] (3) to govern any activity authorized pursuant to this Act, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property*, and (4) to ensure that sufficient funds will be available for the decommissioning of any production or utilization facility licensed under section 103 or 104 b., including standards and restrictions governing the control, maintenance, use, and disbursement by any former licensee under this Act that has control over any fund for the decommissioning of the facility*;

* * * * * * *

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.

(z)(1) notwithstanding section 922(o), (v), and (w) of title 18, United States Code, or any similar provision of any State law or any similar rule or regulation of a State or any political subdivision of a State prohibiting the transfer or possession of a handgun, a rifle or shotgun, a short-barreled shotgun, a short-barreled rifle, a machinegun, a semiautomatic assault weapon, ammunition for the foregoing, or a large capacity ammunition feeding device, authorize security personnel of licensees and certificate holders of the Commission (including employees of contractors of licensees and certificate holders) to receive, possess,

transport, import, and use 1 or more of those weapons, ammunition, or devices, if the Commission determines that—

(A) such authorization is necessary to the discharge of the security personnel's official duties; and

(B) the security personnel—

(i) are not otherwise prohibited from possessing or receiving a firearm under Federal or State laws pertaining to possession of firearms by certain categories of persons;

(ii) have successfully completed requirements established through guidelines implementing this subsection for training in use of firearms and tactical maneuvers;

(iii) are engaged in the protection of—

(I) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission; or

(II) radioactive material or other property owned or possessed by a person that is a licensee or certificate holder of the Commission, or that is being transported to or from a facility owned or operated by such a licensee or certificate holder, and that has been determined by the Commission to be of significance to the common defense and security or public health and safety; and

(iv) are discharging their official duties.

(2) Such receipt, possession, transportation, importation, or use shall be subject to—

(A) chapter 44 of title 18, United States Code, except for section 922(a)(4), (o), (v), and (w);

(B) chapter 53 of title 26, United States Code, except for section 5844; and

(C) a background check by the Attorney General, based on fingerprints and including a check of the system established under section 103(b) of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note) to determine whether the person applying for the authority is prohibited from possessing or receiving a firearm under Federal or State law.

(3) This subsection shall become effective upon the issuance of guidelines by the Commission, with the approval of the Attorney General, to govern the implementation of this subsection.

(4) In this subsection, the terms "handgun", "rifle", "shotgun", "firearm", "ammunition", "machinegun", "semiautomatic assault weapon", "large capacity ammunition feeding device", "short-barreled shotgun", and "short-barreled rifle" shall have the meanings given those terms in section 921(a) of title 18, United States Code.

* * * * * * *

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] *$95,800,000* (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] *2025*, 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] *2025*, the requirements of this subsection shall apply to any license issued for such facility subsequent to December 31, [2003] *2025*.

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, [2006] *2025*, 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 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 2005, 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] *December 31, 2025*, for which the Commission grants such exemption:

(1) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in excess of $250,000 arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, including such legal costs of the licensee as are approved by the Commission;

(2) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity; and shall include damage to property of persons indemnified, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

(3) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make payments under the contract on account of activities of the licensee in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency.

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] *December 31, 2025*, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 2002.

* * * * * * *

p. REPORTS TO CONGRESS.—The Commission and the Secretary shall submit to the Congress by [August 1, 1998] *December 31, 2021*, 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] *August 20, 2003*, in accordance with the aggregate percentage change in the Consumer Price Index since—

(A) [such date of enactment] *August 20, 2003*, 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, 2003,

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 INCIDENTS.—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 incidents 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 (22 U.S.C. 2371(a)), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)) to have repeatedly provided support for acts of international terrorism). This subsection shall not apply to nuclear incidents occurring as a result of missions, carried out under the direction of the Secretary of Energy, the Secretary of Defense, or the Secretary of State, that are necessary to safely secure, store, transport, or remove nuclear materials for nuclear safety or nonproliferation purposes.

v. 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 materials described in subsection b., when transferred or received in the United States by any party pursuant to an import or export license issued pursuant to this Act, are accompanied by a manifest describing the type and amount of materials being transferred or received. Each individual receiving or accompanying the transfer of such materials shall be subject to a security background check conducted by appropriate Federal entities.

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))).

* * * * * * *

CHAPTER 18. ENFORCEMENT

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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. Every such regulation of the Commission shall be posted conspicuously at the location involved *or subject to the licensing authority of the Commission or to certification by the Commission under this Act or any other Act*.

* * * * * * *

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 National 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;]

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

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

* * * * * * *

SEC. 236. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.—

a. Any person who intentionally and willfully destroys or causes physical damage to—

(1) * * *

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

(3) any nuclear fuel for [such a utilization facility] *a utilization facility licensed under this Act*, or any spent nuclear fuel from such a facility; [or]

(4) any uranium enrichment [facility licensed], *uranium conversion, or nuclear fuel fabrication facility licensed or certified* by the Nuclear Regulatory Commission[,]*;*

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

(6) any primary facility or backup facility from which a radiological emergency preparedness alert and warning system is activated; or

(7) any radioactive material or other property subject to regulation by the Nuclear Regulatory Commission that, before the date of the offense, the Nuclear Regulatory Commission determines, by order or regulation published in the Federal Register, is of significance to the public health and safety or to common defense and security.

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] *$1,000,000 or imprisoned for up to life without parole*.

b. Any person who intentionally and willfully causes an interruption of normal operation of any such facility through the unauthor-

ized use of or tampering with the machinery, components, or controls of any such facility, 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] *$1,000,000 or imprisoned for up to life without parole*.

* * * * * * *

ENERGY REORGANIZATION ACT OF 1974

* * * * * * *

TITLE II—NUCLEAR REGULATORY COMMISSION; NUCLEAR WHISTLEBLOWER PROTECTION

* * * * * * *

SEC. 211. (a)(1) * * *

(2) For purposes of this section, the term "employer" includes—

(A) a licensee of the Commission or of an agreement State under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021);

(B) an applicant for a license from the Commission or such an agreement State;

(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[.]*; and*

(E) a contractor or subcontractor of the Commission.

* * * * * * *

(b)(1) * * *

* * * * * * *

(4) If the Secretary has not issued a final decision within 540 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 person seeking relief under this paragraph, such person 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.

* * * * * * *

LIMITATION ON LEGAL FEE REIMBURSEMENT

SEC. 212. The Department of Energy shall not, except as required under a contract entered into before the date of enactment of this section, 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 part 708 of title 10, Code of Federal Regulations, or by a Department of Labor Administrative Law Judge pursuant to section 211 of this Act; 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 this Act, or any comparable State law,

unless the adverse determination or final judgment is reversed upon further administrative or judicial review.

* * * * * * *

USEC PRIVATIZATION ACT

* * * * * * *

SEC. 3110. EMPLOYEE PROTECTIONS.

(a) CONTRACTOR EMPLOYEES.—(1) * * *

* * * * * * *

(8) CONTINUITY OF BENEFITS.—Not later than 30 days after the date of enactment of this paragraph, the Secretary shall implement such actions as are necessary to ensure that any employee who—

(A) is involved in providing infrastructure or environmental remediation services at the Portsmouth, Ohio, or the Paducah, Kentucky, Gaseous Diffusion Plant;

(B) has been an employee of the Department of Energy's predecessor management and integrating contractor (or its first or second tier subcontractors), or of the Corporation, at the Portsmouth, Ohio, or the Paducah, Kentucky, facility; and

(C) was eligible as of April 1, 2005, to participate in or transfer into the Multiple Employer Pension Plan or the associated multiple employer retiree health care benefit plans, as defined in those plans,

shall continue to be eligible to participate in or transfer into such pension or health care benefit plans.

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.

[(e) GOVERNMENT TRANSFERS.—Notwithstanding subsection (d)(2), the Secretary may transfer or sell enriched uranium—

[(1) to a Federal agency if the material is transferred for the use of the receiving agency without any resale or transfer to another entity and the material does not meet commercial specifications;

[(2) to any person for national security purposes, as determined by the Secretary; or

[(3) to any State or local agency or nonprofit, charitable, or educational institution for use other than the generation of electricity for commercial use.

[(f) SAVINGS PROVISION.—Nothing in this subchapter shall be read to modify the terms of the Russian HEU Agreement.]

(3) The Secretary may transfer to the Corporation, notwithstanding subsections (b)(2) and (d), natural uranium in amounts sufficient to fulfill the Department of Energy's commitments under Article 4(B) of the Agreement between the Department and the Corporation dated June 17, 2002.

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

(2) Except as provided in subsections (b) and (c) and paragraph (5) of this subsection, no sale or transfer of uranium shall be made under this subsection by the United States Government unless—

(A) the President determines that the material is not necessary for national security needs and the sale or transfer has no adverse impact on implementation of existing government-to-government agreements;

(B) the price paid to the appropriate Federal agency, 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 commercial nuclear power end users is made pursuant to a contract of at least 3 years' duration.

(3) Except as provided in paragraph (5), the United States Government shall not make any transfer or sale of uranium in any form under this subsection that would cause the total amount of uranium transferred or sold pursuant to this subsection that is delivered for consumption by commercial nuclear power end users to exceed—

(A) 3,000,000 pounds of U_3 O_8 equivalent in fiscal year 2005, 2006, 2007, 2008, or 2009;

(B) 5,000,000 pounds of U_3O_8 equivalent in fiscal year 2010 or 2011;

(C) 7,000,000 pounds of U_3O_8 equivalent in fiscal year 2012; and

(D) 10,000,000 pounds of U_3O_8 equivalent in fiscal year 2013 or any fiscal year thereafter.

(4) Except for sales or transfers under paragraph (5), for the purposes of this subsection, the recovery of uranium from uranium bearing materials transferred or sold by the United States Govern-

ment 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 forth in this section, when such uranium is sold to end users.

(5) The United States Government may make the following sales and transfers:

(A) Sales or transfers to a Federal agency if the material is transferred for the use of the receiving agency without any resale or transfer to another entity and the material does not meet commercial specifications.

(B) Sales or transfers to any person for national security purposes, as determined by the Secretary.

(C) Sales or transfers to any State or local agency or nonprofit, charitable, or educational institution for use other than the generation of electricity for commercial use.

(D) Sales or transfers to the Department of Energy research reactor sales program.

(E) Sales or transfers, at fair market value, for emergency purposes in the event of a disruption in supply to commercial nuclear power end users in the United States.

(F) Sales or transfers, at fair market value, for use in a commercial reactor in the United States with nonstandard fuel requirements.

(G) Sales or transfers provided for under law for use by the Tennessee Valley Authority in relation to the Department of Energy's highly enriched uranium or tritium programs.

(6) For purposes of this subsection, the term "United States Government" does not include the Tennessee Valley Authority.

(e) SAVINGS PROVISION.—Nothing in this subchapter modifies the terms of the Russian HEU Agreement.

(f) SERVICES.—Notwithstanding any other provision of this section, if the Secretary determines that 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 Congress, in such a manner that affords Congress 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.

* * * * * * *

SEC. 3118. NATIONAL URANIUM STOCKPILE.

(a) STOCKPILE CREATION.—The Secretary of Energy may create a national low-enriched uranium stockpile with the goals to—

(1) enhance national energy security; and

(2) reduce global proliferation threats.

(b) SOURCE OF MATERIAL.—The Secretary shall obtain material for the stockpile from—

(1) material derived from blend-down of Russian highly enriched uranium derived from weapons materials; and

(2) domestically mined and enriched uranium.

(c) LIMITATION ON SALES OR TRANSFERS.—Sales or transfer of materials in the stockpile shall occur pursuant to section 3112.

* * * * * * *

NUCLEAR WASTE POLICY ACT OF 1982

* * * * * * *

TITLE I—DISPOSAL AND STORAGE OF HIGH-LEVEL RADIOACTIVE WASTE, SPENT NUCLEAR FUEL, AND LOW-LEVEL RADIOACTIVE WASTE

* * * * * * *

SUBTITLE D—LOW-LEVEL RADIOACTIVE WASTE

* * * * * * *

SAFE DISPOSAL OF GREATER-THAN-CLASS C RADIOACTIVE WASTE

SEC. 152. (a) DESIGNATION OF RESPONSIBILITY.—The Secretary shall designate an Office within the Department to have the responsibility for activities needed to develop a new, or use an existing, facility for safely disposing of all low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Commission for Class C radioactive waste (referred to in this section as "GTCC waste").

(b) COMPREHENSIVE PLAN.—The Secretary shall develop a comprehensive plan for permanent disposal of GTCC waste which includes plans for a disposal facility. This plan shall be transmitted to Congress in a series of reports, including the following:

(1) REPORT ON SHORT-TERM PLAN.—Not later than 180 days after the date of enactment of this section, the Secretary shall submit to Congress a plan describing the Secretary's operational strategy for continued recovery and storage of GTCC waste until a permanent disposal facility is available.

(2) UPDATE OF 1987 REPORT.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary shall submit to Congress an update of the Secretary's February 1987 report submitted to Congress that made comprehensive recommendations for the disposal of GTCC waste.

(B) CONTENTS.—The update under this paragraph shall contain—

(i) a detailed description and identification of the GTCC waste that is to be disposed;

(ii) a description of current domestic and international programs, both Federal and commercial, for management and disposition of GTCC waste;

(iii) an identification of the Federal and private options and costs for the safe disposal of GTCC waste;

(iv) an identification of the options for ensuring that, wherever possible, generators and users of GTCC waste bear all reasonable costs of waste disposal;

(v) an identification of any new statutory authority required for disposal of GTCC waste; and

(vi) in coordination with the Environmental Protection Agency and the Commission, an identification of any new regulatory guidance needed for the disposal of GTCC waste.

(3) REPORT ON COST AND SCHEDULE FOR COMPLETION OF ENVIRONMENTAL IMPACT STATEMENT AND RECORD OF DECISION.—Not later than 180 days after the date of submission of the update required under paragraph (2), the Secretary shall submit to Congress a report containing an estimate of the cost and schedule to complete a draft and final environmental impact statement and to issue a record of decision for a permanent disposal facility, utilizing either a new or existing facility, for GTCC waste.

* * * * * * *

TITLE III—OTHER PROVISIONS RELATING TO RADIOACTIVE WASTE

* * * * * * *

FERNALD BYPRODUCT MATERIAL

SEC. 307. Notwithstanding any other law, the material in the concrete silos at the Fernald uranium processing facility managed on the date of enactment of this section by the Department shall be considered byproduct material (as defined by section 11 e.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2))). The Department may dispose of the material in a facility regulated by the Commission or by an Agreement State. If the Department disposes of the material in such a facility, the Commission or the Agreement State shall regulate the material as byproduct material under that Act. This material shall remain subject to the jurisdiction of the Department until it is received at a commercial, Commission-licensed, or Agreement State-licensed facility, at which time the material shall be subject to the health and safety requirements of the Commission or the Agreement State with jurisdiction over the disposal site.

* * * * * * *

SECTION 6101 OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990

SEC. 6101. NRC USER FEES AND ANNUAL CHARGES.

(a) ANNUAL ASSESSMENT.—

(1) IN GENERAL.—[Except as provided in paragraph (3), the] *The* Nuclear Regulatory Commission (in this section referred to as the "Commission") shall annually assess and collect such fees and charges as are described in subsections (b) and (c).

* * * * * * *

[(3) LAST ASSESSMENT OF ANNUAL CHARGES.—The last assessment of annual charges under subsection (c) shall be made not later than September 30, 2000.]

* * * * * * *

(c) ANNUAL CHARGES.—

(1) * * *

(2) AGGREGATE AMOUNT OF CHARGES.—

(A) IN GENERAL.—The aggregate amount of the annual charges collected from all licensees and certificate holders in a fiscal year shall equal an amount that approximates the percentages of the budget authority of the Commission for the fiscal year stated in subparagraph (B), less—

(i) amounts collected under subsection (b) during the fiscal year; [and]

(ii) amounts appropriated to the Commission from the Nuclear Waste Fund for the fiscal year[.]*;*

(iii) amounts appropriated to the Commission for the fiscal year for implementation of section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005; and

(iv) amounts appropriated to the Commission for homeland security activities of the Commission for the fiscal year, except for the costs of fingerprinting and background checks required by section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169) and the costs of conducting security inspections.

(B) PERCENTAGES.—The percentages referred to in subparagraph (A) are—

(i) * * *

* * * * * * *

[(v) 90 percent for fiscal year 2005.]

(v) 90 percent for fiscal year 2005 and each fiscal year thereafter.

* * * * * * *

SECTION 7601 OF THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

[SEC. 7601. NUCLEAR REGULATORY COMMISSION ANNUAL CHARGES.

[(1) IN GENERAL.—The Nuclear Regulatory Commission shall assess and collect annual charges from its licensees on a fiscal year basis, except that—

[(A) the maximum amount of the aggregate charges assessed pursuant to this paragraph in any fiscal year may not exceed an amount that, when added to other amounts collected by the Commission for such fiscal year under other provisions of law, is estimated to be equal to 33 percent of the costs incurred by the Commission with respect to such fiscal year, except as otherwise provided by law; and

[(B) any such charge assessed pursuant to this paragraph shall be reasonably related to the regulatory service provided by the Commission and shall fairly reflect the cost to the Commission of providing such service.

[(2) ESTABLISHMENT OF AMOUNT BY RULE.—The amount of the charges assessed pursuant to this paragraph shall be established by rule.]

TITLE 49, UNITED STATES CODE

SUBTITLE VI—MOTOR VEHICLE AND DRIVER PROGRAMS

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PART C—INFORMATION, STANDARDS, AND REQUIREMENTS

* * * * * * *

CHAPTER 329—AUTOMOBILE FUEL ECONOMY

* * * * * * *

§ 32902. Average fuel economy standards

(a) * * *

* * * * * * *

[(f) CONSIDERATIONS ON DECISIONS ON MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.—When deciding maximum feasible average fuel economy under this section, the Secretary of Transportation shall consider technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy.]

(f) CONSIDERATIONS FOR DECISIONS ON MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.—When deciding maximum feasible average fuel economy under this section, the Secretary of Transportation shall consider the following matters:

(1) Technological feasibility.

(2) Economic practicability.

(3) The effect of other motor vehicle standards of the Government on fuel economy.

(4) The need of the United States to conserve energy.

(5) The effects of fuel economy standards on passenger automobiles, nonpassenger automobiles, and occupant safety.

(6) The effects of compliance with average fuel economy standards on levels of automobile industry employment in the United States.

* * * * * * *

§ 32905. Manufacturing incentives for alternative fuel automobiles

(a) * * *

(b) DUAL FUELED AUTOMOBILES.—Except as provided in subsection (d) of this section or section 32904(a)(2) of this title, for any model of dual fueled automobile manufactured by a manufacturer in model years [1993–2004] *1993–2010*, the Administrator of the Environmental Protection Agency shall measure the fuel economy for that model by dividing 1.0 by the sum of—

(1) * * *

* * * * * * *

(d) GASEOUS FUEL DUAL FUELED AUTOMOBILES.—For any model of gaseous fuel dual fueled automobile manufactured by a manufacturer in model years [1993–2004] *1993–2010*, the Administrator shall measure the fuel economy for that model by dividing 1.0 by the sum of—

(1) * * *

* * * * * * *

(f) EXTENDING APPLICATION OF SUBSECTIONS (B) AND (D).—Not later than December 31, [2001] *2007*, the Secretary of Transportation shall—

(1) extend by regulation the application of subsections (b) and (d) of this section for not more than 4 consecutive model years immediately after model year [2004] *2010* and explain the basis on which the extension is granted; or

* * * * * * *

§ 32906. Maximum fuel economy increase for alternative fuel automobiles

(a) MAXIMUM INCREASES.—(1)(A) For each of [the model years 1993–2004] *model years 1993–2010* for each category of automobile (except an electric automobile), the maximum increase in average fuel economy for a manufacturer attributable to dual fueled automobiles is 1.2 miles a gallon.

(B) If the application of section 32905(b) and (d) of this title is extended under section 32905(f) of this title, for each category of automobile (except an electric automobile) the maximum increase in average fuel economy for a manufacturer for each of [the model years 2005–2008] *model years 2011–2014* attributable to dual fueled automobiles is .9 mile a gallon.

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DEPARTMENT OF ENERGY ORGANIZATION ACT

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TITLE II—ESTABLISHMENT OF THE DEPARTMENT

* * * * * * *

ASSISTANT SECRETARIES

SEC. 203. (a) There shall be in the Department [six Assistant Secretaries] *7 Assistant Secretaries*, each of whom shall be appointed by the President, by and with the advice and consent of the Senate; who shall be compensated at the rate provided for at level IV of the Executive Schedule under section 5315 of title 5, United States Code; and who shall perform, in accordance with applicable law, such of the functions transferred or delegated to, or vested in, the Secretary as he shall prescribe in accordance with the provisions of this Act. The functions which the Secretary shall assign to the Assistant Secretaries include, but are not limited to, the following:

(1) * * *

* * * * * * *

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 each of the following:

(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.

(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 5 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).

* * * * * * *

OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

SEC. 217. (a) ESTABLISHMENT.—There is established within the Department an Office of Indian Energy Policy and Programs (referred to in this section as the "Office"). The Office shall be headed by a Director, who shall be appointed by the Secretary and compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) DUTIES OF DIRECTOR.—The Director, in accordance with Federal policies promoting Indian self-determination and the purposes of this Act, shall provide, direct, foster, coordinate, and implement

energy planning, education, management, conservation, and delivery programs of the Department that—

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

(2) reduce or stabilize energy costs;

(3) enhance and strengthen Indian tribal energy and economic infrastructure relating to natural resource development and electrification; and

(4) bring electrical power and service to Indian land and the homes of tribal members located on Indian lands or acquired, constructed, or improved (in whole or in part) with Federal funds.

SEC. 218. OFFICE OF ELECTRIC TRANSMISSION AND DISTRIBUTION.

(a) ESTABLISHMENT.—There is established within the Department an Office of Electric Transmission and Distribution. This Office shall be headed by a Director, subject to the authority of the Secretary. The Director shall be appointed by the Secretary. The Director shall be compensated at the annual rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) DIRECTOR.—The Director shall—

(1) coordinate and develop a comprehensive, multi-year strategy to improve the Nation's electricity transmission and distribution;

(2) implement or, where appropriate, coordinate the implementation of, the recommendations made in the Secretary's May 2002 National Transmission Grid Study;

(3) oversee research, development, and demonstration to support Federal energy policy related to electricity transmission and distribution;

(4) grant authorizations for electricity import and export pursuant to section 202(c), (d), (e), and (f) of the Federal Power Act (16 U.S.C. 824a);

(5) perform other functions, assigned by the Secretary, related to electricity transmission and distribution; and

(6) develop programs for workforce training in power and transmission engineering.

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TITLE VI—ADMINISTRATIVE PROVISIONS

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PART C—GENERAL ADMINISTRATIVE PROVISIONS

* * * * * * *

CONTRACTS

SEC. 646. (a) * * *

* * * * * * *

(g)(1) In addition to other authorities granted to the Secretary under law, the Secretary may enter into other transactions on such terms as the Secretary may deem appropriate in furtherance of research, development, or demonstration functions vested in the Secretary. Such other transactions shall not be subject to the provisions

of section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908) or section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182).

(2)(A) The Secretary shall ensure that—

(i) to the maximum extent the Secretary determines practicable, no transaction entered into under paragraph (1) provides for research, development, or demonstration that duplicates research, development, or demonstration being conducted under existing projects carried out by the Department;

(ii) to the extent the Secretary determines practicable, the funds provided by the Government under a transaction authorized by paragraph (1) do not exceed the total amount provided by other parties to the transaction; and

(iii) to the extent the Secretary determines practicable, competitive, merit-based selection procedures shall be used when entering into transactions under paragraph (1).

(B) A transaction authorized by paragraph (1) may be used for a research, development, or demonstration project only if the Secretary makes a written determination that the use of a standard contract, grant, or cooperative agreement for the project is not feasible or appropriate.

(3)(A) The Secretary shall protect from disclosure, including disclosure under section 552 of title 5, United States Code, for up to 5 years after the date the information is received by the Secretary—

(i) a proposal, proposal abstract, and supporting documents submitted to the Department in a competitive or noncompetitive process having the potential for resulting in an award under paragraph (1) to the party submitting the information; and

(ii) a business plan and technical information relating to a transaction authorized by paragraph (1) submitted to the Department as confidential business information.

(B) The Secretary may protect from disclosure, for up to 5 years after the information was developed, any information developed pursuant to a transaction under paragraph (1) 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 obtained from a person other than a Federal agency.

(4) Not later than 90 days after the date of enactment of this subsection, the Secretary shall prescribe guidelines for using other transactions authorized by paragraph (1). Such guidelines shall be published in the Federal Register for public comment under rulemaking procedures of the Department.

(5) The authority of the Secretary under this subsection may be delegated only to an officer of the Department who is appointed by the President by and with the advice and consent of the Senate and may not be delegated to any other person.

(6)(A) Not later than September 31, 2006, the Comptroller General of the United States shall report to Congress on the Department's use of the authorities granted under this section, including the ability to attract nontraditional government contractors and whether additional safeguards are needed with respect to the use of such authorities.

(B) In this section, the term "nontraditional Government contractor" has the same meaning as the term "nontraditional defense contractor" as defined in section 845(e) of the National Defense Au-

thorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

* * * * * * *

SECTION 5315 OF TITLE 5, UNITED STATES CODE

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

* * * * * * *

[Assistant Secretaries of Energy (6)] *Assistant Secretaries of Energy (7).*

* * * * * * *

Inspector General, Department of Energy.

Director, Office of Electric Transmission and Distribution, Department of Energy.

Director, Office of Indian Energy Policy and Programs, Department of Energy.

* * * * * * *

SECTION 311 OF THE ACT OF OCTOBER 27, 2000

(Appendix B of Public Law 106–377)

AN ACT Making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2001, and for other purposes.

[SEC. 311. Notwithstanding any other law, and without fiscal year limitation, each Federal Power Marketing Administration is authorized to engage in activities and solicit, undertake and review studies and proposals relating to the formation and operation of a regional transmission organization.]

PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

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TITLE I—RETAIL REGULATORY POLICIES FOR ELECTRIC UTILITIES

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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) * * *

* * * * * * *

(14) TIME-BASED METERING AND COMMUNICATIONS.—

(A) Not later than 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, if any, in the utility's 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—

(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, based on the utility's cost of generating and/or purchasing such electricity at the wholesale level for the benefit of the consumer. 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/or 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, reflecting the utility's cost of generating and/or purchasing electricity at the wholesale level, and may change as often as hourly; and

(iv) credits for consumers with large loads who enter into pre-established peak load reduction agreements that reduce a utility's planned capacity obligations.

(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 the 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 18 months after the date of 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).

* * * * * * *

SEC. 115. SPECIAL RULES FOR STANDARDS.

(a) * * *

(b) TIME-OF-DAY RATES.—In undertaking the consideration and making the determination required under section 111 with respect to the standard for time-of-day rates established by section 111(d)(3) *and the standard for time-based metering and communications established by section 111(d)(14)*, a time-of-day rate charged by an electric utility for providing electric service to each class of electric consumers shall be determined to be cost-effective with respect to each such class if the long-run benefits of such rate to the electric utility and its electric consumers in the class concerned are likely to exceed the metering *and communications* costs and other costs associated with the use of such rates.

* * * * * * *

(i) TIME-BASED METERING AND COMMUNICATIONS.—In making a determination with respect to the standard established by section 111(d)(14), the investigation requirement of section 111(d)(14)(F) shall be as follows: Each State regulatory authority shall 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.

* * * * * * *

[PUBLIC UTILITY HOLDING COMPANY 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 dif-

ferent 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 outstanding 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, du-

ties, 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 com-

pany 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 company 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 oper-

ations 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 regula-

tions 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 com-

pany 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 company 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 conditions 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-utility 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 protection 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 company 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 reve-

nues 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 necessary 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-account-

ing 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 separate 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 copies 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 enactment 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, cor-

respondence, 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 ju-

risdiction 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 adapted 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 relevant 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".]

THE CLEAN AIR ACT

* * * * * * *

TITLE I—AIR POLLUTION PREVENTION AND CONTROL

* * * * * * *

PART D—PLAN REQUIREMENTS FOR NONATTAINMENT AREAS

* * * * * * *

Subpart 2—Additional Provisions for Ozone Nonattainment Areas

* * * * * * *

SEC. 181. CLASSIFICATIONS AND ATTAINMENT DATES.

(a) * * *

* * * * * * *

(d) EXTENDED ATTAINMENT DATE FOR CERTAIN DOWNWIND AREAS.—

(1) DEFINITIONS.—(A) The term "upwind area" means an area that—

(i) significantly contributes to nonattainment in another area, hereinafter referred to as a "downwind area"; and

(ii) is either—

(I) a nonattainment area with a later attainment date than the downwind area, or

(II) an area in another State that the Administrator has found to be significantly contributing to nonattainment in the downwind area in violation of section 110(a)(2)(D) and for which the Administrator has established requirements through notice and comment rulemaking to eliminate the emissions causing such significant contribution.

(B) The term "current classification" means the classification of a downwind area under this section at the time of the determination under paragraph (2).

(2) EXTENSION.—If the Administrator—

(A) determines that any area is a downwind area with respect to a particular national ambient air quality standard for ozone; and

(B) approves a plan revision for such area as provided in paragraph (3) prior to a reclassification under subsection (b)(2)(A),

the Administrator, in lieu of such reclassification, shall extend the attainment date for such downwind area for such standard in accordance with paragraph (5).

(3) REQUIRED APPROVAL.—In order to extend the attainment date for a downwind area under this subsection, the Adminis-

trator must approve a revision of the applicable implementation plan for the downwind area for such standard that—

(A) complies with all requirements of this Act applicable under the current classification of the downwind area, including any requirements applicable to the area under section 172(c) for such standard; and

(B) includes any additional measures needed to demonstrate attainment by the extended attainment date provided under this subsection.

(4) PRIOR RECLASSIFICATION DETERMINATION.—If, no more than 18 months prior to the date of enactment of this subsection, the Administrator made a reclassification determination under subsection (b)(2)(A) for any downwind area, and the Administrator approves the plan revision referred to in paragraph (3) for such area within 12 months after the date of enactment of this subsection, the reclassification shall be withdrawn and the attainment date extended in accordance with paragraph (5) upon such approval. The Administrator shall also withdraw a reclassification determination under subsection (b)(2)(A) made after the date of enactment of this subsection and extend the attainment date in accordance with paragraph (5) if the Administrator approves the plan revision referred to in paragraph (3) within 12 months of the date the reclassification determination under subsection (b)(2)(A) is issued. In such instances the 'current classification' used for evaluating the revision of the applicable implementation plan under paragraph (3) shall be the classification of the downwind area under this section immediately prior to such reclassification.

(5) EXTENDED DATE.—The attainment date extended under this subsection shall provide for attainment of such national ambient air quality standard for ozone in the downwind area as expeditiously as practicable but no later than the date on which the last reductions in pollution transport necessary for attainment in the downwind area are required to be achieved by the upwind area or areas.

* * * * * * *

TITLE II—EMISSION STANDARDS FOR MOVING SOURCES

PART A—MOTOR VEHICLE EMISSION AND FUEL STANDARDS

* * * * * * *

REGULATION OF FUELS

SEC. 211. (a) * * *

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(c)(1) * * *

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(4)(A) * * *

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(C)*(i)* A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine

if an applicable implementation plan for such State under section 110 so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable. The Administrator may make a finding of necessity under this subparagraph even if the plan for the area does not contain an approved demonstration of timely attainment. *The Administrator shall not approve a control or prohibition respecting the use of a fuel or fuel additive under this subparagraph unless the Administrator, after consultation with the Secretary of Energy, publishes in the Federal Register a finding that, in the Administrator's judgment, such control or prohibition will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas.*

(ii) The Administrator may temporarily waive a control or prohibition respecting the use of a fuel or fuel additive required or regulated by the Administrator pursuant to subsection (c), (h), (i), (k), or (m) of this section or prescribed in an applicable implementation plan under section 110 approved by the Administrator under clause (i) of this subparagraph if, after consultation with, and concurrence by, the Secretary of Energy, the Administrator determines that—

(I) extreme and unusual fuel or fuel additive supply circumstances exist in a State or region of the Nation which prevent the distribution of an adequate supply of the fuel or fuel additive to consumers;

(II) such extreme and unusual fuel and fuel additive supply circumstances are the result of a natural disaster, an Act of God, a pipeline or refinery equipment failure, or another event that could not reasonably have been foreseen or prevented and not the lack of prudent planning on the part of the suppliers of the fuel or fuel additive to such State or region; and

(III) it is in the public interest to grant the waiver (for example, when a waiver is necessary to meet projected temporary shortfalls in the supply of the fuel or fuel additive in a State or region of the Nation which cannot otherwise be compensated for).

(iii) If the Administrator makes the determinations required under clause (ii), such a temporary extreme and unusual fuel and fuel additive supply circumstances waiver shall be permitted only if—

(I) the waiver applies to the smallest geographic area necessary to address the extreme and unusual fuel and fuel additive supply circumstances;

(II) the waiver is effective for a period of 20 calendar days or, if the Administrator determines that a shorter waiver period is adequate, for the shortest practicable time period necessary to permit the correction of the extreme and unusual fuel and fuel additive supply circumstances and to mitigate impact on air quality;

(III) the waiver permits a transitional period, the exact duration of which shall be determined by the Administrator, after the termination of the temporary waiver to permit wholesalers and retailers to blend down their wholesale and retail inventory;

(IV) the waiver applies to all persons in the motor fuel distribution system; and

(V) the Administrator has given public notice to all parties in the motor fuel distribution system, and local and State regulators, in the State or region to be covered by the waiver.

The term "motor fuel distribution system" as used in this clause shall be defined by the Administrator through rulemaking.

(iv) Within 180 days of the date of enactment of this clause, the Administrator shall promulgate regulations to implement clauses (ii) and (iii).

(v) Nothing in this subparagraph shall—

(I) limit or otherwise affect the application of any other waiver authority of the Administrator pursuant to this section or pursuant to a regulation promulgated pursuant to this section; and

(II) subject any State or person to an enforcement action, penalties, or liability solely arising from actions taken pursuant to the issuance of a waiver under this subparagraph.

(vi)(I) The Administrator shall have no authority, when considering a State implementation plan or a State implementation plan revision, to approve under this paragraph any fuel included in such plan or revision if the effect of such approval increases the total number of fuels approved under this paragraph as of September 1, 2004, in all State implementation plans.

(II) The Administrator, in consultation with the Secretary of Energy, shall determine the total number of fuels approved under this paragraph as of September 1, 2004, in all State implementation plans and shall publish a list of such fuels, including the states and Petroleum Administration for Defense District in which they are used, in the Federal Register for public review and comment no later than 90 days after enactment.

(III) The Administrator shall remove a fuel from the list published under subclause (II) if a fuel ceases to be included in a State implementation plan or if a fuel in a State implementation plan is identical to a Federal fuel formulation implemented by the Administrator, but the Administrator shall not reduce the total number of fuels authorized under the list published under subclause (II).

(IV) Subclause (I) shall not limit the Administrator's authority to approve a control or prohibition respecting any new fuel under this paragraph in a State implementation plan or revision to a State implementation plan if such new fuel:

(aa) completely replaces a fuel on the list published under subclause (II); or

(bb) does not increase the total number of fuels on the list published under subclause (II) as of September 1, 2004.

In the event that the total number of fuels on the list published under subclause (II) at the time of the Administrator's consideration of a control or prohibition respecting a new fuel is lower than the total number of fuels on such list as of September 1, 2004, the Administrator may approve a control or prohibition respecting a new

fuel under this subclause if the Administrator, after consultation with the Secretary of Energy, publishes in the Federal Register after notice and comment a finding that, in the Administrator's judgment, such control or prohibition respecting a new fuel will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas.

(V) The Administrator shall have no authority under this paragraph, when considering any particular State's implementation plan or a revision to that State's implementation plan, to approve any fuel unless that fuel was, as of the date of such consideration, approved in at least one State implementation plan in the applicable Petroleum Administration for Defense District. However, the Administrator may approve as part of a State implementation plan or State implementation plan revision a fuel with a summertime Reid Vapor Pressure of 7.0 psi. In no event shall such approval by the Administrator cause an increase in the total number of fuels on the list published under subclause (II).

(VI) Nothing in this clause shall be construed to have any effect regarding any available authority of States to require the use of any fuel additive registered in accordance with subsection (b), including any fuel additive registered in accordance with subsection (b) after the enactment of this subclause.

(5) MTBE MERCHANT PRODUCER CONVERSION ASSISTANCE.—

(A) IN GENERAL.—

(i) GRANTS.—The Secretary of Energy, in consultation with the Administrator, may make grants to merchant producers of methyl tertiary butyl ether (hereinafter in this subsection referred to as "MTBE") 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, iso-octene, alkylates, or renewable fuels.

(ii) DETERMINATION.—The Administrator, in consultation with the Secretary of Energy, may determine that transition assistance for the production of iso-octane, iso-octene, alkylates, or renewable fuels is inconsistent with the provisions of subparagraph (B) and, on that basis, may deny applications for grants authorized by this paragraph.

(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 (unless the Administrator determines that such fuel additives may reasonably be anticipated to endanger public health or the environment) that, consistent with this subsection—

(i) have been registered and have been tested or are being tested in accordance with the requirements of this section; and

(ii) will contribute to replacing gasoline volumes lost as a result of amendments made to subsection (k) of

this section by section 1504(a) and 1506 of the Energy Policy Act of 2005.

(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 MTBE for consumption before April 1, 2003 and ceased production at any time after the date of enactment of this paragraph.

(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this paragraph $250,000,000 for each of fiscal years 2005 through 2012, 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.

* * * * * * *

(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 re-

ductions, 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 an-

nual 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, 2005, 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) except 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) ETHANOL.—(i) 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; and

(VI) fibers.

(ii) The term "waste derived ethanol" means ethanol derived from—

(I) animal wastes, including poultry fats and poultry wastes, and other waste materials; or

(II) 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, waste derived 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 after the enactment of this subsection, the Administrator shall promulgate regulations ensuring that motor vehicle fuel 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 renewable fuel can be used, or impose any per-gallon obligation for the use of renewable fuel. If the Administrator does not promulgate such regulations, the applicable percentage referred to in paragraph (4), on a volume percentage of gasoline basis, shall be 2.2 in 2005.

(B) APPLICABLE VOLUME.—

(i) CALENDAR YEARS 2005 THROUGH 2012.—For the purpose of subparagraph (A), the applicable volume for any of calendar years 2005 through 2012 shall be determined in accordance with the following table:

Calendar year	***Applicable volume of renewable fuel (in billions of gallons)***
2005	*3.1*
2006	*3.3*
2007	*3.5*
2008	*3.8*
2009	*4.1*
2010	*4.4*
2011	*4.7*
2012	*5.0*

(ii) CALENDAR YEAR 2013 AND THEREAFTER.—For the purpose of subparagraph (A), the applicable volume for calendar year 2013 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 2012.

(3) NON-CONTIGUOUS STATE OPT-IN.—Upon the petition of a non-contiguous State, the Administrator may allow the renewable fuel program established by subtitle A of title XV of the

Energy Policy Act of 2005 to apply in such non-contiguous State at the same time or any time after the Administrator promulgates regulations under paragraph (2). The Administrator may promulgate or revise regulations under paragraph (2), establish applicable percentages under paragraph (4), provide for the generation of credits under paragraph (6), and take such other actions as may be necessary to allow for the application of the renewable fuels program in a non-contiguous State.

(4) APPLICABLE PERCENTAGES.—

(A) PROVISION OF ESTIMATE OF VOLUMES OF GASOLINE SALES.—Not later than October 31 of each of calendar years 2005 through 2011, the Administrator of the Energy Information Administration shall provide to the Administrator of the Environmental Protection Agency an estimate of the volumes of gasoline that will be sold or introduced into commerce in the United States during the following calendar year.

(B) DETERMINATION OF APPLICABLE PERCENTAGES.—

(i) IN GENERAL.—Not later than November 30 of each of the calendar years 2005 through 2011, based on the estimate provided under subparagraph (A), the Administrator shall determine and publish in the Federal Register, with respect to the following calendar year, the renewable fuel obligation that ensures that the requirements of paragraph (2) are met.

(ii) REQUIRED ELEMENTS.—The renewable fuel obligation determined for a calendar year under clause (i) shall—

(I) be applicable to refiners, blenders, and importers, as appropriate;

(II) be expressed in terms of a volume percentage of gasoline sold or introduced into commerce; and

(III) subject to subparagraph (C)(i), consist of a single applicable percentage that applies to all categories of persons specified in subclause (I).

(C) ADJUSTMENTS.—In determining the applicable percentage for a calendar year, the Administrator shall make adjustments—

(i) to prevent the imposition of redundant obligations to any person specified in subparagraph (B)(ii)(I); and

(ii) to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt under paragraph (11).

(5) EQUIVALENCY.—For the purpose of paragraph (2), 1 gallon of either cellulosic biomass ethanol or waste derived ethanol—

(A) shall be considered to be the equivalent of 1.5 gallon of renewable fuel; or

(B) if the cellulostic biomass ethanol or waste derived ethanol is derived from agricultural residue or wood residue or is an agricultural byproduct (as that term is used in section 919 of the Energy Policy Act of 2005), shall be considered to be the equivalent of 2.5 gallons of renewable fuel.

(6) 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 paragraph (11), 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 (7).

(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 renewable fuel deficit provided that, in the calendar year following the year in which the renewable fuel deficit is created, such person shall achieve compliance with the renewable fuel requirement under paragraph (2), and shall generate or purchase additional renewable fuel credits to offset the renewable fuel deficit of the previous year.

(7) SEASONAL VARIATIONS IN RENEWABLE FUEL USE.—

(A) STUDY.—For each of the calendar years 2005 through 2012, 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 percent 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).

(8) 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 severely harm the economy or environment of a State, a region, or the United States; 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.

(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.

(9) STUDY AND WAIVER FOR INITIAL YEAR OF PROGRAM.—Not later than 180 days after the enactment of this subsection, 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 after the enactment of this subsection, 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 paragraph shall not be interpreted as limiting the Administrator's authority to waive the requirements of paragraph (2) in whole, or in part, under paragraph (8) or paragraph (10), pertaining to waivers.

(10) ASSESSMENT AND WAIVER.—The Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, shall evaluate the requirement of paragraph (2) and determine, prior to January 1, 2007, and 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 Administrator 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 of paragraph (2);

(B) the potential of the requirement of paragraph (2) to significantly raise the price of gasoline, food (excluding the net price impact on the requirement in paragraph (2) on commodities used in the production of ethanol), 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 such requirement;

(C) the potential of the requirement of 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 of paragraph (2) to cause or promote exceedances of Federal, State, or local air quality standards.

If the Administrator determines, by clear and convincing information, 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, public health, or environment of any significant area or region of the country, the Administrator may waive, in whole or in part, the requirement of paragraph (2) in any one year for which the determination is made for that area or region of the country, except that any such waiver shall not have the effect of reducing the applicable volume of renewable fuel specified in paragraph (2)(B) with respect to any year for which the determination is made. In determining economic impact under this paragraph, the Adminis-

trator shall not consider the reduced revenues available from the Highway Trust Fund (section 9503 of the Internal Revenue Code of 1986) as a result of the use of ethanol.

(11) 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, 2007, 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).

(12) ETHANOL MARKET CONCENTRATION ANALYSIS.—

(A) ANALYSIS.—

(i) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, and annually thereafter, the Federal Trade Commission shall perform a market concentration analysis of the ethanol production industry using the Herfindahl-Hirschman Index to determine whether there is sufficient competition among industry participants to avoid price setting and other anticompetitive behavior.

(ii) SCORING.—For the purpose of scoring under clause (i) using the Herfindahl-Hirschman Index, all marketing arrangements among industry participants shall be considered.

(B) REPORT.—Not later than December 1, 2005, and annually thereafter, the Federal Trade Commission shall submit to Congress and the Administrator a report on the re-

sults of the market concentration analysis performed under subparagraph (A)(i).

(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 subsection, 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 subtitle A of title XV of the Energy Policy Act of 2005.

(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.

(r) CELLULOSIC BIOMASS AND WASTE-DERIVED ETHANOL CONVERSION ASSISTANCE.—

(1) IN GENERAL.—The Secretary of Energy may provide grants to merchant producers of cellulosic biomass ethanol and waste-derived ethanol in the United States to assist the producers in building eligible production facilities described in paragraph (2) for the production of ethanol.

(2) ELIGIBLE PRODUCTION FACILITIES.—A production facility shall be eligible to receive a grant under this subsection if the production facility—

(A) is located in the United States; and

(B) uses cellulosic biomass or waste-derived feedstocks derived from agricultural residues, wood residues, municipal solid waste, or agricultural byproducts as that term is used in section 919 of the Energy Policy Act of 2005.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated the following amounts to carry out this subsection:

(A) $100,000,000 for fiscal year 2005.

(B) $250,000,000 for fiscal year 2006.

(C) $400,000,000 for fiscal year 2007.

(s) BLENDING OF COMPLIANT REFORMULATED GASOLINES.—

(1) IN GENERAL.—Notwithstanding subsections (h) and (k) and subject to the limitations in paragraph (2) of this subsection, it shall not be a violation of this subtitle for a gasoline retailer, during any month of the year, to blend at a retail location batches of ethanol-blended and non-ethanol-blended reformulated gasoline, provided that—

(A) each batch of gasoline to be blended has been individually certified as in compliance with subsections (h) and (k) prior to being blended;

(B) the retailer notifies the Administrator prior to such blending, and identifies the exact location of the retail station and the specific tank in which such blending will take place;

(C) the retailer retains and, as requested by the Administrator or the Administrator's designee, makes available for inspection such certifications accounting for all gasoline at the retail outlet; and

(D) the retailer does not, between June 1 and September 15 of each year, blend a batch of VOC-controlled, or "summer", gasoline with a batch of non-VOC-controlled, or "winter", gasoline (as these terms are defined under subsections (h) and (k)).

(2) LIMITATIONS.—

(A) FREQUENCY LIMITATION.—A retailer shall only be permitted to blend batches of compliant reformulated gasoline under this subsection a maximum of two blending periods between May 1 and September 15 of each calendar year.

(B) DURATION OF BLENDING PERIOD.—Each blending period authorized under subparagraph (A) shall extend for a period of no more than 10 consecutive calendar days.

(3) SURVEYS.—A sample of gasoline taken from a retail location that has blended gasoline within the past 30 days and is in compliance with subparagraphs (A), (B), (C), and (D) of paragraph (1) shall not be used in a VOC survey mandated by 40 C.F.R. Part 80.

(4) STATE IMPLEMENTATION PLANS.—A State shall be held harmless and shall not be required to revise its State implementation plan under section 110 to account for the emissions from blended gasoline authorized under paragraph (1).

(5) PRESERVATION OF STATE LAW.—Nothing in this subsection shall—

(A) preempt existing State laws or regulations regulating the blending of compliant gasolines; or

(B) prohibit a State from adopting such restrictions in the future.

(6) REGULATIONS.—The Administrator shall promulgate, after notice and comment, regulations implementing this subsection within one year after the date of enactment of this subsection.

(7) EFFECTIVE DATE.—This subsection shall become effective 15 months after the date of its enactment and shall apply to blended batches of reformulated gasoline on or after that date, regardless of whether the implementing regulations required by paragraph (6) have been promulgated by the Administrator by that date.

(8) LIABILITY.—No person other than the person responsible for blending under this subsection shall be subject to an enforcement action or penalties under subsection (d) solely arising from the blending of compliant reformulated gasolines by the retailers.

(9) FORMULATION OF GASOLINE.—This subsection does not grant authority to the Administrator or any State (or any subdivision thereof) to require reformulation of gasoline at the refinery to adjust for potential or actual emissions increases due to the blending authorized by this subsection.

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.

* * * * * * *

Subtitle I—Regulation of Underground Storage Tanks

Sec. 9001. Definitions.

* * * * * * *

Sec. 9010. Authorization of appropriations.
Sec. 9010. Operator training.
Sec. 9011. Use of funds for release prevention and compliance.
Sec. 9012. Delivery prohibition.
Sec. 9013. Tanks on Tribal lands.
Sec. 9014. Authorization of appropriations.

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Subtitle I—Regulation of Underground Storage Tanks

DEFINITIONS AND EXEMPTIONS

SEC. 9001. **[**For the purposes of this subtitle—**]** *In this subtitle:*

(1) INDIAN TRIBE.—

(A) IN GENERAL.—The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community that is recognized as being eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(B) INCLUSIONS.—The term "Indian tribe" includes an Alaska Native village, as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

[(7)**]** *(2)* The term "nonoperational storage tank" means any underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after the date of the enactment of the Hazardous and Solid Waste Amendments of 1984.

[(4)**]** *(3)* The term "operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

[(3)**]** *(4)* The term "owner" means—

(A) in the case of an underground storage tank in use on the date of enactment of the Hazardous and Solid Waste Amendments of 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated [sustances] *substances*, and

* * * * * * *

[(6)] *(5)* The term "person" has the same meaning as provided in section 1004(15), except that such term includes a consortium, a joint venture, and a commercial entity, and the United States Government.

[(8)] *(6)* The term "petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

[(2)] *(7)* The term "regulated substance" means—

(A) * * *

* * * * * * *

[(5)] *(8)* The term "release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water or subsurface soils.

(9) TRUST FUND.—The term "Trust Fund" means the Leaking Underground Storage Tank Trust Fund established by section 9508 of the Internal Revenue Code of 1986.

[(1)] *(10)* The term "underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any—

(A) * * *

* * * * * * *

NOTIFICATION

SEC. 9002. (a) * * *

* * * * * * *

(d) PUBLIC RECORD.—

(1) IN GENERAL.—The Administrator shall require each State that receives Federal funds to carry out this subtitle to maintain, update at least annually, and make available to the public, in such manner and form as the Administrator shall prescribe (after consultation with States), a record of underground storage tanks regulated under this subtitle.

(2) CONSIDERATIONS.—To the maximum extent practicable, the public record of a State, respectively, shall include, for each year—

(A) the number, sources, and causes of underground storage tank releases in the State;

(B) the record of compliance by underground storage tanks in the State with—

(i) this subtitle; or

(ii) an applicable State program approved under section 9004; and

(C) data on the number of underground storage tank equipment failures in the State.

RELEASE DETECTION, PREVENTION, AND CORRECTION REGULATIONS

SEC. 9003. (a) * * *

* * * * * * *

(f) EFFECTIVE DATES.—(1) Regulations issued pursuant to [subsection (c) and (d) of this section] *subsections (c) and (d)*, and standards issued pursuant to subsection (e) of this section, for underground storage tanks containing regulated substances defined in section [9001(2)(B)] *9001(7)(B)* (petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure) shall be effective not later than thirty months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984.

(2) Standards issued pursuant to subsection (e) of this section (entitled "New Tank Performance Standards") for underground storage tanks containing regulated substances defined in section [9001(2)(A)] *9001(7)(A)* shall be effective not later than thirty-six months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984.

(3) Regulations issued pursuant to subsection (c) of this section (entitled "Requirements") and standards issued pursuant to subsection (d) of this section (entitled "Financial Responsibility") for underground storage tanks containing regulated substances defined in section [9001(2)(A)] *9001(7)(A)* shall be effective not later than forty-eight months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984.

* * * * * * *

(h) EPA RESPONSE PROGRAM FOR PETROLEUM.—

(1) BEFORE REGULATIONS.—Before the effective date of regulations under subsection (c), the Administrator (or a State pursuant to paragraph (7)) is authorized to—

(A) * * *

* * * * * * *

The corrective action undertaken or required by this paragraph shall be such as may be necessary to protect human health and the environment. The Administrator shall use funds in the [Leaking Underground Storage Tank Trust Fund] *Trust Fund* for payment of costs incurred for corrective action under subparagraph (B), enforcement action under subparagraph (A), and cost recovery under paragraph (6) of this subsection. Subject to the priority requirements of paragraph (3), the Administrator (or the State) shall give priority in undertaking such actions under subparagraph (B) to cases where the Administrator (or the State) cannot identify a solvent owner or operator of the tank who will undertake action properly.

(2) AFTER REGULATIONS.—Following the effective date of regulations under subsection (c), all actions or orders of the Administrator (or a State pursuant to paragraph (7)) described in

paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date, the Administrator (or the State) may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment and one or more of the following situations exists:

(A) * * *

* * * * * * *

(C) Corrective action costs at a facility exceed the amount of coverage required by the Administrator pursuant to the provisions of subsections (c) and (d)(5) of this section and, considering the class or category of underground storage tank from which the release occurred, expenditures from the [Leaking Underground Storage Tank Trust Fund] *Trust Fund* are necessary to assure an effective corrective action.

* * * * * * *

(6) RECOVERY OF COSTS.—

(A) * * *

* * * * * * *

(E) INABILITY OR LIMITED ABILITY TO PAY.—

(i) IN GENERAL.—In determining the level of recovery effort, or amount that should be recovered, the Administrator (or the State pursuant to paragraph (7)) shall consider the owner or operator's ability to pay. An inability or limited ability to pay corrective action costs must be demonstrated to the Administrator (or the State pursuant to paragraph (7)) by the owner or operator.

(ii) CONSIDERATIONS.—In determining whether or not a demonstration is made under clause (i), the Administrator (or the State pursuant to paragraph (7)) shall take into consideration the ability of the owner or operator to pay corrective action costs and still maintain its basic business operations, including consideration of the overall financial condition of the owner or operator and demonstrable constraints on the ability of the owner or operator to raise revenues.

(iii) INFORMATION.—An owner or operator requesting consideration under this subparagraph shall promptly provide the Administrator (or the State pursuant to paragraph (7)) with all relevant information needed to determine the ability of the owner or operator to pay corrective action costs.

(iv) ALTERNATIVE PAYMENT METHODS.—The Administrator (or the State pursuant to paragraph (7)) shall consider alternative payment methods as may be necessary or appropriate if the Administrator (or the State pursuant to paragraph (7)) determines that an owner or operator cannot pay all or a portion of the costs in a lump sum payment.

(iii) MISREPRESENTATION.—If an owner or operator provides false information or otherwise misrepresents their financial situation under clause (ii), the Administrator (or the State pursuant to paragraph (7)) shall seek full recovery of the costs of all such actions pursuant to the provisions of subparagraph (A) without consideration of the factors in subparagraph (B).

* * * * * * *

(7) STATE AUTHORITIES.—

(A) GENERAL.—A State may exercise the authorities in [paragraphs (1) and (2) of this subsection] *paragraphs (1), (2), and (12)*, subject to the terms and conditions of paragraphs (3), (5), (9), (10), and (11), [and including the authorities of paragraphs (4), (6), and (8) of this subsection] *and the authority under sections 9011 and 9012 and paragraphs (4), (6), and (8),* if—

(i) the Administrator determines that the State has the capabilities to carry out effective corrective actions and enforcement activities; and

(ii) the Administrator enters into a cooperative agreement with the State setting out the actions to be undertaken by the State.

The Administrator may provide funds from the [Leaking Underground Storage Tank Trust Fund] *Trust Fund* for the reasonable costs of the State's actions under the cooperative agreement.

* * * * * * *

(11) FACILITIES WITHOUT FINANCIAL RESPONSIBILITY.—At any facility where the owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established by subsection (d)(5)(A) of this section (or a lesser amount if such amount is applicable to such facility as a result of subsection (d)(5)(B) of this section) for whatever reason the Administrator shall expend no monies from the [Leaking Underground Storage Tank Trust Fund] *Trust Fund* to clean up releases at such facility pursuant to the provisions of paragraph (1) or (2) of this subsection. At such facilities the Administrator shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection and section 9006 of this subtitle to order corrective action to clean up such releases. States acting pursuant to paragraph (7) of this subsection shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection to order corrective action to clean up such releases. Notwithstanding the provisions of this paragraph, the Administrator may use monies from the fund to take the corrective actions authorized by paragraph (5) of this subsection to protect human health at such facilities and shall seek full recovery of the costs of all such actions pursuant to the provisions of paragraph (6)(A) of this subsection and without consideration of the factors in paragraph (6)(B) of this subsection. Nothing in this paragraph shall prevent the Administrator (or a State pursuant to paragraph (7) of this subsection) from taking corrective action at a facility where there is no solvent

owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.

(12) REMEDIATION OF OXYGENATED FUEL CONTAMINATION.—

(A) IN GENERAL.—The Administrator and the States may use funds made available under section 9014(2)(B) to carry out corrective actions with respect to a release of a fuel containing an oxygenated fuel additive that presents a threat to human health or welfare or the environment.

(B) APPLICABLE AUTHORITY.—The Administrator or a State shall carry out subparagraph (A) in accordance with paragraph (2), and in the case of a State, in accordance with a cooperative agreement entered into by the Administrator and the State under paragraph (7).

(i) GOVERNMENT-OWNED TANKS.—

(1) STATE COMPLIANCE REPORT.—(A) Not later than 2 years after the date of enactment of this subsection, each State that receives funding under this subtitle shall submit to the Administrator a State compliance report that—

(i) lists the location and owner of each underground storage tank described in subparagraph (B) in the State that, as of the date of submission of the report, is not in compliance with section 9003; and

(ii) specifies the date of the last inspection and describes the actions that have been and will be taken to ensure compliance of the underground storage tank listed under clause (i) with this subtitle.

(B) An underground storage tank described in this subparagraph is an underground storage tank that is—

(i) regulated under this subtitle; and

(ii) owned or operated by the Federal, State, or local government.

(C) The Administrator shall make each report, received under subparagraph (A), available to the public through an appropriate media.

(2) FINANCIAL INCENTIVE.—The Administrator may award to a State that develops a report described in paragraph (1), in addition to any other funds that the State is entitled to receive under this subtitle, not more than $50,000, to be used to carry out the report.

(3) NOT A SAFE HARBOR.—This subsection does not relieve any person from any obligation or requirement under this subtitle.

(i) ADDITIONAL MEASURES TO PROTECT GROUNDWATER FROM CONTAIMINATION.—The Administrator shall require each State that receives funding under this subtitle to require one of the following:

(1) TANK AND PIPING SECONDARY CONTAINMENT.—(A) Each new underground storage tank, or piping connected to any such new tank, installed after the effective date of this subsection, or any existing underground storage tank, or existing piping connected to such existing tank, that is replaced after the effective date of this subsection, shall be secondarily contained and monitored for leaks if the new or replaced underground storage tank or piping is within 1,000 feet of any existing community water system or any existing potable drinking water well.

(B) In the case of a new underground storage tank system consisting of one or more underground storage tanks and connected by piping, subparagraph (A) shall apply to all underground storage tanks and connected pipes comprising such system.

(C) In the case of a replacement of an existing underground storage tank or existing piping connected to the underground storage tank, subparagraph (A) shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes comprising such system.

(D) Each installation of a new motor fuel dispenser system, after the effective date of this subsection, shall include under-dispenser spill containment if the new dispenser is within 1,000 feet of any existing community water system or any existing potable drinking water well.

(E) This paragraph shall not apply to repairs to an underground storage tank, piping, or dispenser that are meant to restore a tank, pipe, or dispenser to operating condition

(F) As used in this subsection:

(i) The term "secondarily contained" means a release detection and prevention system that meets the requirements of 40 CFR 280.43(g), but shall not include under-dispenser spill containment or control systems.

(ii) The term "underground storage tank" has the meaning given to it in section 9001, except that such term does not include tank combinations or more than a single underground pipe connected to a tank.

(iii) The term "installation of a new motor fuel dispenser system" means the installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the underground storage tank system, but does not mean the installation of a motor fuel dispenser installed separately from the equipment need to connect the dispenser to the underground storage tank system.

(G) The Administrator may issue regulations or guidelines implementing the requirements of this subsection.

(2) EVIDENCE OF FINANCIAL RESPONSIBILITY AND CERTIFICATION.—

(A) MANUFACTURER AND INSTALLER FINANCIAL RESPONSIBILITY.—A person that manufactures an underground storage tank or piping for an underground storage tank system or that installs an underground storage tank system is required to maintain evidence of financial responsibility under section 9003(d) in order to provide for the costs of corrective actions directly related to releases caused by improper manufacture or installation unless the person can demonstrate themselves to be already covered as an owner or operator of an underground storage tank under section 9003.

(B) INSTALLER CERTIFICATION.—The Administrator and each State that receives funding under this subtitle, as appropriate, shall require that a person that installs an underground storage tank system is—

(i) certified or licensed by the tank and piping manufacturer;

(ii) certified or licensed by the Administrator or a State, as appropriate;

(iii) has their underground storage tank system installation certified by a registered professional engineer with education and experience in underground storage tank system installation;

(iv) has had their installation of the underground storage tank inspected and approved by the Administrator or the State, as appropriate;

(v) compliant with a code of practice developed by a nationally recognized association of independent testing laboratory and in accordance with the manufacturers instructions; or

(vi) compliant with another method that is determined by the Administrator or a State, as appropriate, to be no less protective of human health and the environment.

APPROVAL OF STATE PROGRAMS

SEC. 9004. (a) ELEMENTS OF STATE PROGRAM.—Beginning 30 months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984, any State may, submit an underground storage tank release detection, prevention, and correction program for review and approval by the Administrator. The program may cover tanks used to store regulated substances referred to [in 9001(2) (A) or (B) or both] *in subparagraph (A) or (B) of section 9001(7)*. A State program may be approved by the Administrator under this section only if the State demonstrates that the State program includes the following requirements and standards and provides for adequate enforcement of compliance with such requirements and standards—

(1) * * *

* * * * * * *

(7) standards of performance for new underground storage tanks; [and]

(8) requirements—

(A) * * *

(B) for providing the information required on the form issued pursuant to section 9002(b)(2)[.]*; and*

(9) State-specific training requirements as required by section 9010.

* * * * * * *

(c) FINANCIAL RESPONSIBILITY.—(1) * * *

* * * * * * *

(6) WITHDRAWAL OF APPROVAL.—After an opportunity for good faith, collaborative efforts to correct financial deficiencies with a State fund, the Administrator may withdraw approval of any State fund or State assurance program to be used as a financial

responsibility mechanism without withdrawing approval of a State underground storage tank program under section 9004(a).

* * * * * * *

(f) TRUST FUND DISTRIBUTION.—

(1) IN GENERAL.—

(A) AMOUNT AND PERMITTED USES OF DISTRIBUTION.—The Administrator shall distribute to States not less than 80 percent of the funds from the Trust Fund that are made available to the Administrator under section 9014(2)(A) for each fiscal year for use in paying the reasonable costs, incurred under a cooperative agreement with any State for—

(i) corrective actions taken by the State under section 9003(h)(7)(A);

(ii) necessary administrative expenses, as determined by the Administrator, that are directly related to State fund or State assurance programs under subsection (c)(1); or

(iii) enforcement, by a State or a local government, of State or local regulations pertaining to underground storage tanks regulated under this subtitle.

(B) USE OF FUNDS FOR ENFORCEMENT.—In addition to the uses of funds authorized under subparagraph (A), the Administrator may use funds from the Trust Fund that are not distributed to States under subparagraph (A) for enforcement of any regulation promulgated by the Administrator under this subtitle.

(C) PROHIBITED USES.—Funds provided to a State by the Administrator under subparagraph (A) shall not be used by the State to provide financial assistance to an owner or operator to meet any requirement relating to underground storage tanks under subparts B, C, D, H, and G of part 280 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subsection).

(2) ALLOCATION.—

(A) PROCESS.—Subject to subparagraphs (B) and (C), in the case of a State with which the Administrator has entered into a cooperative agreement under section 9003(h)(7)(A), the Administrator shall distribute funds from the Trust Fund to the State using an allocation process developed by the Administrator.

(B) DIVERSION OF STATE FUNDS.—The Administrator shall not distribute funds under subparagraph (A)(iii) of subsection (f)(1) to any State that has diverted funds from a State fund or State assurance program for purposes other than those related to the regulation of underground storage tanks covered by this subtitle, with the exception of those transfers that had been completed earlier than the date of enactment of this subsection.

(C) REVISIONS TO PROCESS.—The Administrator may revise the allocation process referred to in subparagraph (A) after—

(i) consulting with State agencies responsible for overseeing corrective action for releases from underground storage tanks; and

(ii) taking into consideration, at a minimum, each of the following:

(I) The number of confirmed releases from federally regulated leaking underground storage tanks in the States.

(II) The number of federally regulated underground storage tanks in the States.

(III) The performance of the States in implementing and enforcing the program.

(IV) The financial needs of the States.

(V) The ability of the States to use the funds referred to in subparagraph (A) in any year.

(3) DISTRIBUTIONS TO STATE AGENCIES.—Distributions from the Trust Fund under this subsection shall be made directly to a State agency that—

(A) enters into a cooperative agreement referred to in paragraph (2)(A); or

(B) is enforcing a State program approved under this section.

* * * * * * *

INSPECTIONS, MONITORING, TESTING, AND CORRECTIVE ACTION

SEC. 9005. (a) FURNISHING INFORMATION.—For the purposes of developing or assisting in the development of any regulation, conducting any [study taking] *study, taking* any corrective action, or enforcing the provisions of this subtitle, any owner or operator of an underground storage tank (or any tank subject to study under section 9009 that is used for storing regulated substances) shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee, or representative of a State acting parsuant to subsection (h)(7) of section 9003 or with an approved program, furnish information relating to such tanks, their associated equipment, their contents, conduct monitoring or testing, permit such officer at all reasonable times to have access to, and to copy all records relating to such tanks and permit such officer to have access for corrective action. For the purposes of developing or assisting in the development of any regulation, conducting any study, taking corrective action, or enforcing the provisions of this subtitle, such officers, employees, or representatives are authorized—

(1) * * *

* * * * * * *

(b) CONFIDENTIALITY.—(1) Any records, reports, or information obtained from any persons under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or a particular part thereof, to which the Administrator (or the State, as the case may be) or any officer, employee, or representative thereof has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18 of the United States Code, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except

that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when [relevent] *relevant* in any proceeding under this Act.

* * * * * * *

(4) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to, or otherwise obtained, by the Administrator (or any representative of the Administrator) under this Act shall be made available, upon written request of any duly authorized committee of the Congress, to such committee (including records, reports, or information obtained by representatives of the [Evironmental] *Environmental* Protection Agency).

(c) INSPECTION REQUIREMENTS.—

(1) UNINSPECTED TANKS.—In the case of underground storage tanks regulated under this subtitle that have not undergone an inspection since December 22, 1998, not later than 2 years after the date of enactment of this subsection, the Administrator or a State that receives funding under this subtitle, as appropriate, shall conduct on-site inspections of all such tanks to determine compliance with this subtitle and the regulations under this subtitle (40 C.F.R. 280) or a requirement or standard of a State program developed under section 9004.

(2) PERIODIC INSPECTIONS.—After completion of all inspections required under paragraph (1), the Administrator or a State that receives funding under this subtitle, as appropriate, shall conduct on-site inspections of each underground storage tank regulated under this subtitle at least once every 3 years to determine compliance with this subtitle and the regulations under this subtitle (40 C.F.R. 280) or a requirement or standard of a State program developed under section 9004. The Administrator may extend for up to one additional year the first 3-year inspection interval under this paragraph if the State demonstrates that it has insufficient resources to complete all such inspections within the first 3-year period.

(3) INSPECTION AUTHORITY.—Nothing in this section shall be construed to diminish the Administrator's or a State's authorities under section 9005(a).

* * * * * * *

FEDERAL ENFORCEMENT

SEC. 9006. (a) * * *

* * * * * * *

(d) CIVIL PENALTIES.—(1) * * *

(2) Any owner or operator of an underground storage tank who fails to comply with—

(A) any requirement or standard promulgated by the Administrator under section 9003;

(B) any requirement or standard of a State program approved pursuant to section 9004; [or]

* * * * * * *

(D) the training requirements established by States pursuant to section 9010 (relating to operator training); or

(E) the delivery prohibition requirement established by section 9012,

(D) the requirements established in section 9003(i),

shall be subject to a civil penalty not to exceed $10,000 for each tank for each day of violation. *Any person making or accepting a delivery or deposit of a regulated substance to an underground storage tank at an ineligible facility in violation of section 9012 shall also be subject to the same civil penalty for each day of such violation.*

(e) INCENTIVE FOR PERFORMANCE.—Both of the following may be taken into account in determining the terms of a civil penalty under subsection (d):

(1) The compliance history of an owner or operator in accordance with this subtitle or a program approved under section 9004.

(2) Any other factor the Administrator considers appropriate.

[SEC. 9007. (a) APPLICATION OF SUBTITLE.—Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any underground storage tank shall be subject to and comply with all Federal, State, interstate, and local requirements, applicable to such tank, both substantive and procedural, in the same manner, and to the same extent, as any other person is subject to such requirements, including payment of reasonable service charges. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any such injunctive relief.

[(b) PRESIDENTIAL EXEMPTION.—The President may exempt any underground storage tanks of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriations. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.]

FEDERAL FACILITIES

SEC. 9007. FEDERAL FACILITIES.

(a) IN GENERAL.—Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any underground storage tank or underground storage tank system, or (2) engaged in any activity resulting, or which may result, in the installation, operation, management, or closure of any underground storage tank, release response activities related thereto, or in the delivery, acceptance, or

deposit of any regulated substance to an underground storage tank or underground storage tank system shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting underground storage tanks in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local underground storage tank regulatory program. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local law concerning underground storage tanks with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State law concerning underground storage tanks, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any underground storage tank of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) REVIEW OF AND REPORT ON FEDERAL UNDERGROUND STORAGE TANKS.—

(1) REVIEW.—Not later than 12 months after the date of enactment of the Underground Storage Tank Compliance Act of 2005, each Federal agency that owns or operates 1 or more underground storage tanks, or that manages land on which 1 or more underground storage tanks are located, shall submit to the Administrator, the Committee on Energy and Commerce of the United States House of Representatives, and the Committee on the Environment and Public Works of the United States Senate a compliance strategy report that—

(A) lists the location and owner of each underground storage tank described in this paragraph;

(B) lists all tanks that are not in compliance with this subtitle that are owned or operated by the Federal agency;

(C) specifies the date of the last inspection by a State or Federal inspector of each underground storage tank owned or operated by the agency;

(D) lists each violation of this subtitle respecting any underground storage tank owned or operated by the agency;

(E) describes the operator training that has been provided to the operator and other persons having primary daily on-site management responsibility for the operation and maintenance of underground storage tanks owned or operated by the agency; and

(F) describes the actions that have been and will be taken to ensure compliance for each underground storage tank identified under subparagraph (B).

(2) NOT A SAFE HARBOR.—This subsection does not relieve any person from any obligation or requirement under this subtitle.

* * * * * * *

STUDY OF UNDERGROUND STORAGE TANKS

SEC. 9009. (a) PETROLEUM TANKS.—Not later than twelve months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984, the Administrator shall complete a study of underground storage tanks used for the storage of regulated substances defined in section [9001(2)(B)] *9001(7)(B)*.

* * * * * * *

(d) FARM AND HEATING OIL TANKS.—Not later than thirty-six months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984, the Administrator shall conduct a study regarding the tanks referred to in [section 9001(1) (A) and (B)] *subparagraphs (A) and (B) of section 9001(10)*. Such study shall include estimates of the number and location of such tanks and an analysis of the extent to which there may be releases or threatened releases from such tanks into the environment.

* * * * * * *

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 9010. For authorization of appropriations to carry out this subtitle, see section 2007(g).]

SEC. 9010. OPERATOR TRAINING.

(a) GUIDELINES.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Underground Storage Tank Compliance Act of 2005, in consultation and cooperation with States and after public notice and opportunity for comment, the Administrator shall publish guidelines that specify training requirements for—

(A) persons having primary responsibility for on-site operation and maintenance of underground storage tank systems;

(B) persons having daily on-site responsibility for the operation and maintenance of underground storage tanks systems; and

(C) daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system.

(2) CONSIDERATIONS.—The guidelines described in paragraph (1) shall take into account—

(A) State training programs in existence as of the date of publication of the guidelines;

(B) training programs that are being employed by tank owners and tank operators as of the date of enactment of the Underground Storage Tank Compliance Act of 2005;

(C) the high turnover rate of tank operators and other personnel;

(D) the frequency of improvement in underground storage tank equipment technology;

(E) the nature of the businesses in which the tank operators are engaged;

(F) the substantial differences in the scope and length of training needed for the different classes of persons described in subparagraphs (A), (B), and (C) of paragraph (1); and

(G) such other factors as the Administrator determines to be necessary to carry out this section.

(b) STATE PROGRAMS.—

(1) IN GENERAL.—Not later than 2 years after the date on which the Administrator publishes the guidelines under subsection (a)(1), each State that receives funding under this subtitle shall develop State-specific training requirements that are consistent with the guidelines developed under subsection (a)(1).

(2) REQUIREMENTS.—State requirements described in paragraph (1) shall—

(A) be consistent with subsection (a);

(B) be developed in cooperation with tank owners and tank operators;

(C) take into consideration training programs implemented by tank owners and tank operators as of the date of enactment of this section; and

(D) be appropriately communicated to tank owners and operators.

(3) FINANCIAL INCENTIVE.—The Administrator may award to a State that develops and implements requirements described in paragraph (1), in addition to any funds that the State is enti-

tled to receive under this subtitle, not more than $200,000, to be used to carry out the requirements.

(c) TRAINING.—All persons that are subject to the operator training requirements of subsection (a) shall—

(1) meet the training requirements developed under subsection (b); and

(2) repeat the applicable requirements developed under subsection (b), if the tank for which they have primary daily on-site management responsibilities is determined to be out of compliance with—

(A) a requirement or standard promulgated by the Administrator under section 9003; or

(B) a requirement or standard of a State program approved under section 9004.

SEC. 9011. USE OF FUNDS FOR RELEASE PREVENTION AND COMPLIANCE.

Funds made available under section 9014(2)(D) from the Trust Fund may be used to conduct inspections, issue orders, or bring actions under this subtitle—

(1) by a State, in accordance with a grant or cooperative agreement with the Administrator, of State regulations pertaining to underground storage tanks regulated under this subtitle; and

(2) by the Administrator, for tanks regulated under this subtitle (including under a State program approved under section 9004).

SEC. 9012. DELIVERY PROHIBITION.

(a) REQUIREMENTS.—

(1) PROHIBITION OF DELIVERY OR DEPOSIT.—Beginning 2 years after the date of enactment of this section, it shall be unlawful to deliver to, deposit into, or accept a regulated substance into an underground storage tank at a facility which has been identified by the Administrator or a State implementing agency to be ineligible for fuel delivery or deposit.

(2) GUIDANCE.—Within 1 year after the date of enactment of this section, the Administrator and States that receive funding under this subtitle shall, in consultation with the underground storage tank owner and product delivery industries, for territory for which they are the primary implementing agencies, publish guidelines detailing the specific processes and procedures they will use to implement the provisions of this section. The processes and procedures include, at a minimum—

(A) the criteria for determining which underground storage tank facilities are ineligible for delivery or deposit;

(B) the mechanisms for identifying which facilities are ineligible for delivery or deposit to the underground storage tank owning and fuel delivery industries;

(C) the process for reclassifying ineligible facilities as eligible for delivery or deposit; and

(D) a delineation of, or a process for determining, the specified geographic areas subject to paragraph (4).

(3) DELIVERY PROHIBITION NOTICE.—

(A) ROSTER.—The Administrator and each State implementing agency that receives funding under this subtitle

shall establish within 24 months after the date of enactment of this section a Delivery Prohibition Roster listing underground storage tanks under the Administrator's or the State's jurisdiction that are determined to be ineligible for delivery or deposit pursuant to paragraph (2).

(B) NOTIFICATION.—The Administrator and each State, as appropriate, shall make readily known, to underground storage tank owners and operators and to product delivery industries, the underground storage tanks listed on a Delivery Prohibition Roster by:

(i) posting such Rosters, including the physical location and street address of each listed underground storage tank, on official web sites and, if the Administrator or the State so chooses, other electronic means;

(ii) updating these Rosters periodically; and

(iii) installing a tamper-proof tag, seal, or other device blocking the fill pipes of such underground storage tanks to prevent the delivery of product into such underground storage tanks.

(C) ROSTER UPDATES.—The Administrator and the State shall update the Delivery Prohibition Rosters as appropriate, but not less than once a month on the first day of the month.

(D) TAMPERING WITH DEVICE.—

(i) PROHIBITION.—It shall be unlawful for any person, other than an authorized representative of the Administrator or a State, as appropriate, to remove, tamper with, destroy, or damage a device installed by the Administrator or a State, as appropriate, under subparagraph (B)(iii) of this subsection.

(ii) CIVIL PENALTIES.—Any person violating clause (i) of this subparagraph shall be subject to a civil penalty not to exceed $10,000 for each violation.

(4) LIMITATION.—

(A) RURAL AND REMOTE AREAS.—Subject to subparagraph (B), the Administrator or a State shall not include an underground storage tank on a Delivery Prohibition Roster under paragraph (3) if an urgent threat to public health, as determined by the Administrator, does not exist and if such a delivery prohibition would jeopardize the availability of, or access to, fuel in any rural and remote areas.

(B) APPLICABILITY OF LIMITATION.—The limitation under subparagraph (A) shall apply only during the 180-day period following the date of a determination by the Administrator or the appropriate State that exercising the authority of paragraph (3) is limited by subparagraph (A).

(b) EFFECT ON STATE AUTHORITY.—Nothing in this section shall affect the authority of a State to prohibit the delivery of a regulated substance to an underground storage tank.

(c) DEFENSE TO VIOLATION.—A person shall not be in violation of subsection (a)(1) if the underground storage tank into which a regulated substance is delivered is not listed on the Administrator's or the appropriate State's Prohibited Delivery Roster 7 calendar days prior to the delivery being made.

SEC. 9013. TANKS ON TRIBAL LANDS.

(a) STRATEGY.—The Administrator, in coordination with Indian tribes, shall, not later than 1 year after the date of enactment of this section, develop and implement a strategy—

(1) giving priority to releases that present the greatest threat to human health or the environment, to take necessary corrective action in response to releases from leaking underground storage tanks located wholly within the boundaries of—

(A) an Indian reservation; or

(B) any other area under the jurisdiction of an Indian tribe; and

(2) to implement and enforce requirements concerning underground storage tanks located wholly within the boundaries of—

(A) an Indian reservation; or

(B) any other area under the jurisdiction of an Indian tribe.

(b) REPORT.—Not later than 2 years after the date of enactment of this section, the Administrator shall submit to Congress a report that summarizes the status of implementation and enforcement of this subtitle in areas located wholly within—

(1) the boundaries of Indian reservations; and

(2) any other areas under the jurisdiction of an Indian tribe. The Administrator shall make the report under this subsection available to the public.

(c) NOT A SAFE HARBOR.—This section does not relieve any person from any obligation or requirement under this subtitle.

(d) STATE AUTHORITY.—Nothing in this section applies to any underground storage tank that is located in an area under the jurisdiction of a State, or that is subject to regulation by a State, as of the date of enactment of this section.

SEC. 9014. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Administrator the following amounts:

(1) To carry out subtitle I (except sections 9003(h), 9005(c), 9011 and 9012) $50,000,000 for each of fiscal years 2005 through 2009.

(2) From the Trust Fund, notwithstanding section 9508(c)(1) of the Internal Revenue Code of 1986:

(A) to carry out section 9003(h) (except section 9003(h)(12)) $200,000,000 for each of fiscal years 2005 through 2009;

(B) to carry out section 9003(h)(12), $200,000,000 for each of fiscal years 2005 through 2009;

(C) to carry out sections 9004(f) and 9005(c) $100,000,000 for each of fiscal years 2005 through 2009; and

(D) to carry out sections 9011 and 9012 $55,000,000 for each of fiscal years 2005 through 2009.

DISSENTING VIEWS

DISSENTING VIEWS ON CLEAN AIR ACT ATTAINMENT DATE EXTENSIONS

Section 1443 of the bill provides attainment date extensions for ozone nonattainment areas under section 181 of the Clean Air Act. Under this provision, an area may obtain an extension if another area makes a "significant contribution" to its nonattainment status. The extension may be granted until such time as the contributing area makes its "last reductions necessary for attainment in the downwind area."

This provision may no longer be necessary to address their originally intended purpose. It has not been examined in a legislative hearing, and the Environmental Protection Agency (EPA) has already stated that the provision needs to be "refined" in order to maintain consistency with EPA's latest rule changes. The provision could result in sweeping changes to Clean Air policy and undermine ongoing efforts at EPA to attain ozone standards as soon as possible. The provision is opposed by national environmental organizations such as the American Lung Association, Public Citizen, Clean Air Task Force, Clear the Air, Earthjustice, Friends of the Earth, League of Conservation Voters, National Environmental Trust, Natural Resources Defense Council, the Sierra Club and U.S. PIRG.

This provision was originally designed to address the possibility of "bump-ups" under section 181(b) of the Clean Air Act. Section 181(b) provides that when an area fails to meet its attainment date, it is "bumped-up" to a higher classification. The result is that an area receives an extended attainment date, and must adopt additional control measures; no sanctions are triggered. This system was designed to provide an incentive for areas to meet their attainment deadlines, and it provides a remedy if they fail by requiring implementation of additional controls to ensure that the health-based standards are ultimately attained.

During the 1990s, an issue arose regarding whether it was equitable for areas that were affected by "overwhelming transport" to be "bumped-up" in accordance with section 181(b). EPA issued guidance documents and policies addressing this issue, once in 1994 and once in 1998. These policies were eventually overturned in court. (*See Sierra Club* v. *EPA* 294 F.3d 155 (D.C. Cir. July 2, 2002) (invalidating the extension for Washington, D.C.); *Sierra Club* v. *EPA* 314 F.3d 735 (5th Cir. Dec. 11th, 2002) (Baton Rouge); *Sierra Club* v. *EPA* 311 F.3d 853 (7th. Cir, November 25th, 2002) (St. Louis) and *Sierra Club* v. *EPA* Nos. 02–13486, 0213705, Slip op. June 17, 2003 (11th Cir.)).

On July 22, 2003, the Committee held an oversight hearing relating to the "bump-up" policy. Hearing Before the Subcommittee on Energy and Air Quality "Bump-Up" Policy Under Title I of the Clean Air Act, July 22, 2003, Serial No. 108–62. At that time, no legislative language had been introduced in the House. The language of section 1443 first appeared at Conference during the 108th Congress.

In the time since section 1443 was included in the Conference Report, two relevant events have occurred regarding ozone nonattainment under the Clean Air Act. On April 15, 2004, EPA redesignated all ozone nonattainment areas under the new 8-hour ozone standard, giving all areas (except those in California) new attainment dates of 2007, 2009, or 2010. In addition, on March 10, 2005, EPA issued its Clean Air Interstate Rule (CAIR). The CAIR rule found that 25 states east of the Mississippi make "significant contributions" to ozone nonattainment in other states. CAIR established a national "cap and trade" system with a final set of reductions required in 2015 (or beyond, due to banking).

The effect of these developments is twofold. First, the need for legislative provisions to address potential "bump-ups" is greatly reduced, or possibly even eliminated, since many areas have received a lower classification and therefore face little threat of increased mandatory controls anytime in the near future. Moreover, no area will face a "bump-up" until 2007 at the earliest, and for many areas, "bump-up" cannot now occur until 2010 or beyond.

The second, and potentially more significant, effect is that under the CAIR rule, EPA has found that areas across the eastern United States receive "significant contributions" of pollution from other areas. EPA has also established that the last set of transport reductions may not occur until 2015 (or later, due to banking). The combined effect of these changes is that section 1443 could apply to many more areas than it did in 2003 and the length of extensions to be granted is substantially increased as well.

EPA was recently asked by the Senate Environment Committee about its views regarding section 1443. EPA responded on December 9, 2004, and stated that: "EPA continues to support the concept underlying the former attainment date extension policy. Because of differences between the 1-hour ozone implementation and 8-hour ozone implementation, the policy would need to be refined for purposes of 8-hour implementation." December 9, 2004, Letter from EPA Associate Administrator Charles Ingebretson to Senator Thomas Carper, Response to Senator Jeffords at page 50.

This provision needs to be examined much more carefully. It affects many areas with large populations at risk of increased health effects. It could have many unintended consequences, including substantially delaying local controls that would provide health benefits and are necessary for attainment. It seeks to address a problem that has largely been rendered moot. It may seriously undermine progress toward attainment of the new ozone standard. And it has little or nothing to do with energy policy.

Changes of this magnitude should take place through the process of regular order, bringing to bear the advice and expertise of EPA and other interested parties regarding actual legislative language. That process has yet to take place with regard to section 1443. In-

stead, the passage of time has altered the effect of this language in important ways and called into question the original justification for legislation. Before we pass major amendments to the Clean Air Act, we must at least comprehend their full meaning and determine if the changes are a necessary improvement on current law. This provision, and the host of policy issues that it raises, should not be passed by this Committee at this time.

JOHN D. DINGELL.
EDWARD J. MARKEY.
SHERROD BROWN.
FRANK PALLONE, Jr.
HILDA L. SOLIS.
ELIOT L. ENGEL.
DIANA DEGETTE.
LOIS CAPPS.
BART STUPAK.
ANNA G. ESHOO.
TAMMY BALDWIN.
TOM ALLEN.
JIM DAVIS.
JAY INSLEE.
JAN SCHAKOWSKY.
HENRY A. WAXMAN.

DISSENTING VIEWS ON TITLE III, OIL AND GAS PROVISIONS

SECTION 320—LIQUEFACTION OR GASIFICATION NATURAL GAS TERMINALS

The language in section 320 was not in last year's House bill nor was it included in the conference report to H.R. 6 in the 108th Congress. This language made its debut in the Committee print on March 31, 2005. It has not been the subject of a hearing.

Section 320 contains broad changes to the Natural Gas Act affecting both the Federal Energy Regulatory Commission (FERC) and the role of the states in Liquefied Natural Gas (LNG) issues. This section, among other things, modifies Section 3 of the Natural Gas Act to give FERC exclusive jurisdiction over the construction, expansion, or operation of LNG facilities; establishes an unreasonable delay/backstop standard that presumes approval by Federal and state agencies if they do not comply with FERC time lines; and defines unreasonable delay as one year after an application has been filed. The bill establishes the FERC record as the exclusive record for administrative proceedings, and makes the D.C. Circuit Court of Appeals the exclusive court for civil appeals of this section.

Proponents of this provision argue that it allows a greater role for States by requiring FERC to consult with them prior to granting an order under the new section and by allowing States to inspect LNG facilities. It must be noted, however, that consultation is a loose standard that does not guarantee collaboration or cooperation. As for a State's ability to conduct safety inspections, the bill requires the State to submit notification in writing to FERC, which raises the question of whether FERC has the ability to deny permission to inspect. The bill further requires that inspections by State officials "be carried out in conformance with Federal regulations and guidelines" which is undefined in the bill.

The siting, construction, and expansion of LNG facilities is an issue of growing national importance, as well as controversy. The Committee would be well served by conducting extensive hearings so that all views may be expressed and examined before such sweeping legislative changes are made.

Democrats, led by Representative Ed Markey (D–MA), offered an amendment to strike this section from the bill. The amendment was defeated by a vote of 18–35.

SUBTITLE D—REFINING REVITALIZATION

Subtitle D contains language that is similar, but not identical, to a bill from the 108th Congress. The subtitle authorizes the Secretary of Energy to designate "refinery revitalization zones," which are areas that have experienced mass layoffs or contain an idle re-

finery and have an unemployment rate that exceeds the national average by 10 percent.

The language establishes the Department of Energy (DOE) as the lead agency for an expedited permitting process that is defined as six months during which all Federal permit decisions and environmental reviews are to be completed. It directs that DOE maintain the exclusive record for all administrative proceedings, and establishes an appeals process for refinery applicants or States that allow an appeal to the Secretary of Energy, who may override the concerns of other Federal and State agencies and grant approval of a permit that had been denied.

A version of the refinery revitalization provisions (H.R. 4517) was brought directly to the House floor last June during the "Energy Week." H.R. 4517 passed the House as an amendment to the energy bill by a vote of 239–192 on June 16, 2004. On July 15, 2004, after the bill passed the House, the Subcommittee on Energy and Air Quality held a hearing entitled "The Status of the U.S. Refining Industry."

Proponents of this provision argue that there are large numbers of closed or idle refineries seeking to reopen and that both these facilities and new refineries are having difficulties obtaining environmental permits.

Following the July 2004 hearing, Ranking Member Dingell sent a letter to EPA Administrator Leavitt along with a list of over 200 closed refineries. He asked the Administrator how many of these refineries had permit applications pending that would re-open or re-start these refineries. Three months later EPA provided the following response:

> Upon further review and consultation with the appropriate state and local agencies, we are not aware of any pending permits under the Clean Water Act, the Resource Conservation and Recovery Act, the Safe Drinking Water Act and the Toxic Substances Control Act for the restart of refineries on your list.

A previous response indicated there were no permits pending under the Clean Air Act either.

Proponents of this provision have also cited attempts by a facility in Yuma, Arizona, to receive a permit over the last ten years. Democratic committee staff obtained a chronology from the State of Arizona that revealed an initial permit was granted to the applicant in 1992 for a facility in Maricopa County, but the company chose not to construct for seven years. After several incomplete permit applications were submitted between 1999–2003, the facility announced in 2003 that it had decided to move to Yuma, Arizona. A complete permit application was submitted in July of 2004. That permit has now been granted, in less than a year.

Since the bill defines the term "Federal Authorization" as "any authorization required under federal law," it will allow the Secretary of Energy on appeal to override the decisions not only of the EPA Administrator and state officials under the federal environmental laws but also the Secretary of Defense and Secretary of Interior in the following circumstances:

- Military agency approvals if military facilities are involved;
- Access permits by the Bureau of Land Management or the U.S. Army Corps of Engineers;
- National Environmental Policy Act (NEPA) Compliance from a controlling agency such as the Bureau of Land Management; and
- National Historic Preservation Act Compliance authorizations.

This subtitle cites the year 1981 as the high-water mark for the number of refineries in the United States. In 1981, President Reagan ordered the elimination of the refinery allocation programs that favored small refiners, thus leading to several closures.

Refinery companies themselves have mothballed refineries. A recent Government Accountability Office (GAO) report entitled "Energy Markets: Effects of Mergers and Market Concentration in U.S. Petroleum Industry" offers the following:

> Partially or fully vertically integrated oil companies have sold or mothballed some refineries. As a result, some of these companies now have only enough refinery capacity to supply their own branded needs . . .

This highly concentrated market has resulted in higher prices. According to GAO:

> Mergers and increased market concentration generally led to higher U.S. wholesale gasoline prices.

In addition, the Congressional Research Service has found that while a number of refineries have closed, the capacity of the industry has increased:

> Domestic refining capacity has increased incrementally since 1992, with total growth of about 7%.

According to the Energy Information Administration (EIA) Annual Energy Outlook 2005 report released this past February:

> Distillation capacity is projected to grow from the 2003 year-end level of 16.8 million barrels per day to 22.3 million barrels per day in 2025.

EIA's analysis also confirms that refining capacity will increase in all their projections and that refining costs are expected to "remain stable or decline." EIA also notes that the price of "crude oil continues as the largest part of product prices."

Because of the obvious discrepancy between the facts and the claims of this provision's proponents, Democrats, led by Rep. Hilda Solis (D–CA), offered a motion to strike this provision from the bill. The amendment was defeated by a vote of 22–27.

SECTION 327—HYDRAULIC FRACTURING AND SAFE DRINKING WATER

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 con-

stitute 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 coalbeds. 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 conducted a narrowly focused study to address hydraulic fracturing of coal bed methane wells, but not all hydraulic fracturing practices. The final report released in June of 2004 did not find confirmed evidence that drinking water wells have been contaminated by hydraulic fracturing fluid injection into coal bed methane wells. The EPA Final Report, however, has become a source of controversy with its scope, objectivity, and conclusions challenged by a senior EPA engineer from Region 8. On March 11, 2005, the EPA Inspector General announced that she would review the concerns being raised with the Final Report.

Section 327 of the bill 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 production activities from the term "underground injection" in Section 1421. This is very significant because virtually all people living in rural areas and more than 50 percent of all Americans rely on groundwater for their drinking water.

The majority provision in Section 327 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 based on the completed study and review by the National Academy of Sciences. 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.

The EPA's initial findings indicated 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.

In the Final Report, EPA determined that, in some cases, constituents of potential concern are injected directly into underground sources of drinking water during the course of normal fracturing operations. The use of diesel fuel in fracturing fluids introduces benzene, toluene, ethly benzene, and xylenes into underground sources of drinking water.

Given the concerns associated with the use of diesel fuel and the introduction of these contaminants into underground sources of drinking water, EPA entered into a Memorandum of Agreement with three major service companies to voluntarily eliminate diesel fuel from hydraulic fracturing fluids that are injected directly into

underground drinking water sources for coalbed methane production.

Under this bill, however, EPA would have no residual authority to enforce this agreement under the Safe Drinking Water Act.

Some have argued that the emergency powers authority of Section 1431 of the SDWA remains available. The emergency powers of Section 1431 do not, however, provide the necessary regulatory authority. The emergency power authority only applies on a case-by-case basis and requires an imminent and substantial endangerment to a person's "health." Section 1431 does not apply to protecting the environment such as underground aquifers that are sources of underground drinking water.

Representative Diana DeGette (D–CO) offered an amendment to section 327. In summary, the DeGette amendment provided for:

- An 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 in the 107th Congress. We believe this approach—preserving authority under the Safe Drinking Water Act to protect underground sources of drinking water but addressing industry fears of lawsuits that force regulation—is a far sounder public policy than the one set forth in Section 327 of the bill. Rep. DeGette's amendment was defeated by a vote of 16 to 30.

Representative Hilda Solis (D–CA) offered an amendment to ban the injection of diesel fuel into an underground source of drinking water. This amendment was defeated by a vote of 14 to 27.

OTHER PROVISIONS

Representative Jim Davis (D–FL) offered an amendment to Section 330 that strikes the section that redefines the states' role in the appeals process for consistency under the Coastal Zone Management Act. The bill limits the Secretary of Commerce's review to the records of FERC only, impairing the state's ability to present their views. The amendment was defeated by a vote of 19–29.

Representative Bart Stupak (D–MI) also offered an amendment to prohibit any Federal or state permit or lease for new oil and gas slant, directional or offshore drilling in or under the Great Lakes. That amendment was adopted after Representative Mike Rogers (R–MI) weakened it with a substitute amendment that merely encourages States to ban drilling. The substitute mirrored language already in the bill.

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DISSENTING VIEWS ON ELECTRICITY AND HYDROELECTRIC RELICENSING

The bill reported by the Committee on Energy and Commerce is substantially similar to the flawed and ultimately failed energy bill conference report from the 108th Congress, with several notable new additions that regrettably did not add to the bill's attractiveness.

In both process and substance this bill and the product from the 108th Congress stand in marked contrast to the bipartisan energy bill reported by the Committee in the 107th Congress when only five Democrats voted against it; this year 16 Democrats voted "no."

While this bill retained some portions of the widely-supported product from the 107th Congress, there are new provisions that were not contained in last year's conference report and have not had the benefit of extensive legislative hearings. Democrats repeatedly made requests to the Republicans that extensive hearings be held preceding any markup. The Republicans responded with two days of wide-ranging hearings that by design could not allow members to fully explore the myriad of complex issues contained in the bill.

While many of our Democratic colleagues take issue with a variety of provisions in this bill, these Dissenting Views will address two of the worst problems in the bill relating to electricity and hydroelectric relicensing.

ELECTRICITY

The electricity provisions of Title XII exhibit both sins of commission and omission. They ignore the lessons of 2000–2001, when Enron and other unscrupulous power marketers manipulated electricity prices in west coast power markets and undermined the financial credibility of the utility industry. The title represents a victory for various special interests at the expense of citizens whom our federal energy laws are supposed to safeguard, and combines the worst of deregulation with favors to a select few.

Despite the fact that millions of consumers were forced to pay inflated costs, the bill does nothing to ensure that they will receive refunds of overcharges resulting from purposeful withholding of electricity and related gaming of natural gas transportation markets. Nor does the bill reform current law to provide the Federal Energy Regulatory Commission (FERC) and the Securities and Exchange Commission (SEC) the tools and direction they need to prevent a repetition of this debacle.

The title includes an incomprehensible "native load" provision altering FERC's authority over interstate transmission lines, the full impact of which is unclear. Indeed, because this language was available only hours before being voted on in the Committee, members did not have the benefit of hearings, the Commission's views,

or any other means of understanding whether it would benefit or harm consumers.

The electricity title continues to hold hostage a crucial reform needed to help improve the reliability of our transmission system and prevent future blackouts. This section is one of the few consensus items in the title, and is supported by the Administration, FERC, consumer groups, and private industry. Sadly, though common sense suggests this provision should have been enacted immediately after the massive 2003 summer blackout, it remains enmeshed in this controversial comprehensive energy bill. Moreover, this bill adds a spending cap on reliability councils that threatens to make blackouts more likely.

Among other objectionable features of Title XII is the outright repeal of the Public Utility Holding Company Act of 1935 (PUHCA), which is administered by the SEC. This law has operated for years to protect consumers and investors. Title XII fails to include appropriate compensatory protections to ensure that investors and consumers are not at the mercy of unconstrained market power. Its few "reforms" barely 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 a system that once was without peer.

The title displaces the traditional "just and reasonable" standard for modifying unfair contracts with a far less protective standard that will tie FERC's hands and make it more difficult to modify agreements that harm consumers.

Finally, the title includes transmission-siting provisions that preempt not only state decisions about whether new or expanded lines should be built, but also decisions by federal land agencies 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 amendment offered by Ranking Member Dingell, similar to H.R. 1272 that he sponsored along with Representatives Waxman, Markey, Boucher, and 13 other cosponsors from the Committee on Energy and Commerce during the 108th Congress. The amendment would protect consumers by setting aside deregulatory efforts such as PUHCA repeal, and instead instituting reforms to prevent the type of market manipulation practiced by Enron. A recent FERC report observed that the Commission has limited tools to deter fraud. This amendment would authorize the Commission to take preventative measures to ensure markets operate for the benefit of consumers rather than unscrupulous industry participants.

The Dingell amendment also set aside divisive questions about industry "restructuring" in favor of targeted, sensible reforms. It banned fraudulent, manipulative, or deceptive 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 requiring 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 increased the Federal Power Act's civil and criminal penalties to help deter future misconduct. It directed the SEC to review existing PUHCA exemptions, to prevent a future Enron from wrongly claiming "exempt" status permitting it to exploit investors and consumers. The amendment required FERC to issue rules against affiliate abuse and authorized the Commission to issue refunds for "unjust and unreasonable rates" from the date they were first charged. It reformed the market-based rate policy of FERC to ensure it lives up to the Federal Power Act's requirement that electricity rates are "just and reasonable." Finally, the amendment incorporated several of the provisions of the electricity title that helped consumers, most notably the reliability provisions. The amendment was defeated on a straight party-line vote.

Title XII does not provide the reforms needed to prevent a future Enron disaster, and 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 the responsibility of Congress to stabilize this critical industry.

Other Democratic amendments included an amendment by Representative Ed Markey (D–MA) to protect consumers and investors of utilities within holding companies deregulated by PUHCA repeal, and an amendment by Rep. Ted Strickland (D–OH) to strike caps on private spending needed to improve transmission reliability. Others would strike preemptive transmission siting provisions and a section making it harder for FERC to modify unjust contracts. An amendment by Rep. Anna Eshoo (D–CA) would have ensured that California consumers harmed during electricity market turmoil of 2000–2001 can receive refunds. An amendment by Representative Frank Pallone (D–NJ) would have established a renewable portfolio standard to help diversify our energy supplies. These amendments were all rejected, as well.

HYDROELECTRIC RELICENSING

The provisions relating to hydroelectric relicensing found in Title II, Section 231, are identical to those included in the conference report that died in the 108th Congress. In the name of "reform" these provisions give preferential treatment to electric utilities at the expense of other legitimate parties to licensing proceedings including states, Indian tribes, conservationists, irrigators, ranchers, and sportsmen.

The bill entitles utilities alone to request trial-type hearings before the resource agencies charged with protecting rivers, lands, and fish and wildlife. Other parties are not given this right. The bill entitles utilities alone the special right to offer alternatives to the resource protections required by the resource agencies, which the agencies must accept under certain conditions. These rights are not afforded to others with a legitimate interest in relicensing. The bill also requires the resource agencies to justify their mandatory conditions based on a laundry list of non-resource related issues that are beyond their expertise and are redundant, given the fact that the Federal Energy Regulatory Commission is charged with considering power development factors.

These provisions place the concerns of power companies well above the needs of the general public and fly in the face of basic,

fundamental fairness. They also undermine an agreement between electric utilities and the Committee prior to passage of the Electric Consumers Protection Act of 1986.

In the hearings conducted last month on this bill, and in a subsequent submission to Subcommittee on Energy and Air Quality Chairman Ralph Hall, the industry offered precious little evidence for the need for the changes contemplated by the bill beyond the vague concern that the process for relicensing is somehow broken. No evidence of widespread or excessive delays; no evidence of conditions being imposed without a basis in fact; no evidence of even a marginal loss of generation due to resource conditions. One is left with the distinct impression that the industry simply finds it bothersome that they have to protect the resources from which they derive their profit.

The hearings did reveal that both the industry and conservationists support FERC's administrative actions to make the licensing process less onerous. We learned that the agency has twice issued rulemakings, supported by all, that have led to less delay, less cost, and less litigation with regard to licensing. We have not given FERC's most recent administrative reform—the Integrated Licensing Process (ILP)—adequate time to work, so that we may know if legislative changes are necessary. Yet in contravention of the facts, we have this language.

Now of course, the industry thinks this language is just wonderful—and how could they not? They get all sorts of special considerations that are not given to other parties with legitimate standing.

Democrats introduced letters last week in opposition to this language, including one with over 78 state and local conservation organizations, a letter from six prominent sportfishing organizations, as well as letters from the Yakima Indian Nation, the Nez Perce Tribe, and the Northwest Indian Fish Commission, and numerous other conservation and environmental groups opposed to this language. The Democrats are also in possession of past letters signed by no less than 25 state Attorneys General opposed to language that gives preferential treatment to license applicants, as well as a past letter from the Conference of Western Attorneys General opposed to trial-type hearing provisions similar to those in the bill and signed by Attorneys General from Arizona, Colorado, Montana, New Mexico, Oregon, and Washington.

Despite the egregious nature of this title, Republicans rejected repeated attempts to give some voice to the concerns of states, Indian tribes, conservationists, and sportsmen. Republicans rejected a bipartisan compromise that had been included in the Committee's energy bill in the 107th Congress. This compromise had been supported in writing by conservationists and the industry.

Republicans also rejected two additional proffers designed to provide a more tolerable level of equality for all parties to a licensing proceeding, while avoiding unnecessary delay in the relicensing process. These offers were rejected without the benefit of thoughtful discussion.

There are few things more precious than the natural resources endowed upon this country. By siding so completely with the industry, Republicans have endorsed the foolish and misguided view that

rivers are the special dominion of electric utilities and that the public at-large should be relegated to second-class status.

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DISSENTING VIEWS ON MTBE LIABILITY WAIVER AND RELATED ISSUES

Sections 1502–1505 of the bill contain numerous provisions addressing methyl tertiary butyl ether or MTBE. These provisions include: (1) liability protection for defective product lawsuits; (2) a waivable prohibition on the use of MTBE by 2014; and (3) "transition assistance" for MTBE manufacturers. The ultimate effect of these provisions is to aid MTBE manufacturers and encourage further MTBE use at the expense of national, state, and local drinking water suppliers and taxpayers. These provisions are opposed by a wide range of state and local interest groups, including the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, the American Public Works Association, the American Water Works Association, the Association of Metropolitan Water Agencies, and the Association of California Water Agencies, among others.

BACKGROUND ON MTBE

MTBE is a gasoline additive developed by the oil industry in the 1970s to replace octane lost as a result of the removal of lead from gasoline. MTBE can be produced from natural gas and petroleum by-products. From an air quality standpoint, MTBE is a relatively clean, toxics-free source of oxygen (and octane).

In 1990, Congress created the Reformulated Gasoline (RFG) program under section 211(k) of the Clean Air Act. Under this provision, Congress required the use of Reformulated Gasoline (RFG) in 10 specific ozone nonattainment areas and allowed other areas to "opt in" to the RFG program. The Act specified that RFG must contain two percent oxygen by weight, which was thought to be helpful in reducing ozone precursors. The primary fuel additives used to meet the two percent oxygenate requirement have been MTBE and ethanol, which were also the principal oxygenates in use in 1990. As a result of the 1990 Clean Air Act Amendments, MTBE use increased dramatically. While it is fair to say that Congress was aware that MTBE use would increase substantially as a result of the two percent oxygenate mandate, nothing in the language of section 211(k) specifically mentions MTBE or prescribes a particular oxygenate.

Courts have specifically ruled on the issue of whether Congress mandated MTBE and have determined that MTBE was not mandated (*Oxygenated Fuels Ass'n Inc.* v. *Davis*, 331 F.3d 665 (9th Cir. 2003) (upholding California's ban on MTBE and emphasizing CAA's "neutrality" among oxygenates; *Oxygenated Fuels Assoc.* v. *Davis*, 163 F.Supp.2d 1182, 1188 (E.D.Cal.2001) (CAA "neither requires nor forbids the use of any particular oxygenate. Its 'goal' is to assure a particular oxygen content").

In addition, Committee documents reach similar conclusions. A 1995 memo from the Committee on Energy and Commerce staff written by Republican counsel involved in the 1990 Clean Air Act amendments states that: "the May 17th 1990 Report of the Committee on Energy and Commerce could not have been more clear . . . it is intended that this be a fuel neutral program . . . the committee intends no such preference . . . all should compete." (Memorandum Re: June 7, 1995 Hearing on Implementation of the Reformulated Gasoline Program Under Title II of the Clean Air Act Amendments (June 5, 1995) at p. 9.) Other statements to similar effect include a letter to the Environmental Protection Agency (EPA) dated March 25, 1994, and signed by 115 Members of the U.S. House of Representatives, which favorably quotes a Senate letter for the proposition that "the Act is entirely fuel neutral and only requires achievement of the specified emissions reductions. The point can be no more clear." (Letter to EPA Administrator Carol Browner, dated March 25, 1994, reprinted in Hearing before the Subcommittee on Oversight and Investigations, (103rd Cong.) June 22, 1994, Serial No. 103–155 at p. 239.)

MTBE Hazards and Liability Issues

Although from the standpoint of air quality MTBE is a relatively clean, toxics-free source of oxygen and octane, MTBE's properties pose special hazards to groundwater. MTBE contamination is not like ordinary gasoline contamination. MTBE moves very quickly through water and does not adhere to soil. A very small amount can contaminate large amounts of groundwater. According to the product safety bulletin of Lyondell Chemical, the largest producer of MTBE, every release into the environment has the potential for damaging groundwater supplies. Once in the groundwater, MTBE tends to migrate faster and farther than most other hydrocarbons . . . MTBE may not biodegrade as promptly as other gasoline components and may require additional and more costly remediation procedures."

In recent years, numerous suits have been filed against MTBE makers alleging defective product theories. These defective product theories center on the argument that MTBE makers knew about the contamination characteristics of MTBE and knowingly introduced a defective product. Records from these court proceedings indicate that MTBE manufacturers were aware of the characteristics of MTBE.

When presented with these documents, a jury in California found that MTBE manufacturers acted "with malice in selling MTBE that was defective in design." Ultimately this suit was settled for $68 million, of which 75 percent was used directly for groundwater remediation. A similar suit was brought and settled in Santa Monica for a minimum of $300 million, with $212 million or more going to remediation. Since that time, numerous suits have been brought throughout the United States, most notably in New England and California. These suits demonstrate the very large amount of liability exposure that MTBE manufacturers face. MTBE cleanup costs are currently estimated by the water utilities to be between $12 billion and $63 billion, with the most widely cited estimate being $29 billion.

The liability waiver in section 1502 is retroactively effective to September 5, 2003. This feature of the bill will eliminate many existing lawsuits filed after that date and prior to enactment. That feature alone is cause for serious concern. Given that the full extent of MTBE contamination is not yet known, however, and MTBE continues to be released into the environment, the retroactive portion of the liability wavier may not be its most significant feature, since it only applies to the subset of cases filed between September 5, 2003, and enactment.

The principal objection to the liability waiver relates to the prospective immunity that the waiver affords to all future MTBE contamination cases. Upon enactment of this legislation, the oxygenate mandate would be repealed and at that time there can no longer be any argument about an MTBE mandate. Nor does serious dispute remain today regarding the contamination characteristics of MTBE. Because the energy bill allows MTBE use until 2014, the liability waiver will allow MTBE manufacturers to use MTBE with immunity for nearly another decade.

EXTENDING THE USE OF MTBE

Also of significant concern is the very long phase-out time for MTBE. Section 1504 prohibits the use of MTBE "not later than December 31, 2014." Under section 1505, however, the President may render such prohibition "null and void" at any time prior to December 31, 2014. No standards are set for such a determination. In a hearing before this Committee in 2001, a representative of the American Petroleum Institute (API) testified that phasing out MTBE in gasoline in four years would be a "virtual walk in the park." (Hearing before the Subcommittee on Oversight and Investigations, Nov. 1, 2001, "Issues Concerning the Use of MTBE In Reformulated Gasoline," Serial No. 107–73 at p. 63.) Given what we now know about MTBE in groundwater and its failure to biodegrade, even after a decade or more, allowing the use of MTBE until 2014 is inviting unnecessary damage to our drinking water supplies.

PROVIDING $2 BILLION TO MTBE MAKERS

Finally, the $2 billion transition assistance program in section 1503 represents an unjustifiable subsidy. Serious questions remain regarding the failure of the MTBE makers to inform Congress in 1990 that MTBE would contaminate groundwater. Recent requests to the American Petroleum Institute to document any evidence that MTBE makers warned Congress during enactment of the Clean Air Act Amendments of 1990 were met with the following response:

> Now some 14 years after the passage of the CAAA, API does not have documentation of what API or its members may have brought to the attention of Congress regarding MTBE's potential to contaminate groundwater prior to enactment of the 1990 Amendments.

The slow phase-in of the MTBE prohibition in section 1504, and substantial questions regarding the MTBE makers role in creating this problem suggest that there is little justification for this Com-

mittee to authorize giving $2 billion of taxpayer funds to MTBE makers. MTBE makers will not be forced to suddenly abandon their businesses, and it is notable that the substances that they will be given funds to "transition" into manufacturing (iso-octanes, iso-octenes and alkylates) were oxygenates available in 1990.

CONCLUSION

The overall effect of these MTBE provisions is to transfer an enormous amount of potential liability from MTBE makers to consumers and providers of drinking water, to continue creating liability by failing to prohibit further use of MTBE as soon as possible, and to provide $2 billion dollars in corporate handouts to MTBE producers.

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DISSENTING VIEWS ON LEAKING UNDERGROUND STORAGE TANK AMENDMENTS TITLE XV, SUBTITLE B

BACKGROUND

Throughout this country, states, local governments, and ratepayers face a crisis from the contamination of drinking water supplies from methyl tertiary butyl ether (MTBE) and other hazardous contaminants that are leaking from underground storage tank systems. MTBE, a fuel additive, is particularly troublesome in that it migrates quickly through the soil into groundwater and even small amounts can render the groundwater undrinkable. It is estimated by drinking water utilities that current MTBE cleanup costs alone run between $29–$40 billion.

According to the Environmental Protection Agency (EPA) 2006 Congressional Justification and Annual Performance plan, MTBE contamination can increase cleanup costs from 25 percent to more than 100 percent. EPA reports that states face multimillion-dollar cleanup costs at sites with widespread MTBE contamination such as Santa Monica, CA, Long Island, NY, Pascoag, RI, and Hopkins, SC.

As of October 1, 2004, the backlog of sites that require remedial action was 129,828 sites. Thousands of new releases are being detected annually. In the past five years, confirmed new releases averaged 12,641 per year. EPA projects an average of 6,000 to 12,000 new releases will be reported per year over the next 10 years.

In the mid-1980s, Congress created the Leaking Underground Storage Tank (LUST) program to provide technical standards and corrective action authority for underground storage tanks. In 1986, Congress created a trust fund for the program that is replenished primarily through a one-tenth of a cent per gallon federal tax on gasoline and other fuels. The Trust Fund had a balance of $2.147 billion at the end of fiscal year 2004.

As we reach the 20th anniversary of the program, we believe that Congress must seriously strengthen the program to improve the inspection and enforcement authorities available to EPA and the states, and act to require real preventive measures to keep MTBE and other contaminants from reaching our groundwater. Groundwater is the source of drinking water for half of the Nation's population and for virtually all people living in rural areas.

In addition, Congressional appropriations have been and continue to be seriously deficient, notwithstanding the large surplus in the Trust Fund. We are also aware that many state cleanup funds are insolvent or have stopped accepting new claims.

Despite a request from all Democratic Members of the Subcommittee on Environment and Hazardous Materials, the Committee leadership refused to hold any legislative hearings on the

amendments to the leaking underground storage program contained in Subtitle B of Title XV. Committee Members were therefore denied the benefit of hearing from the state agencies and the EPA that administer and enforce the program.

EPA budget documents and state reports, however, reveal the following:

- Last year, completed cleanups nationwide declined 23 percent from 18,518 in FY2003 to 14,285 in FY2004.
- Last year, the Republican-controlled Congress cut the LUST appropriation by $6 million or 8 percent (from $75 million in FY2004 to $69.4 million in FY2005).
- Over the last five years the actual appropriation for the LUST program averaged only $72 million.
- Of the total annual appropriation, approximately $58 million goes to the 50 states but only $19 million is actually used to clean up leaks of MTBE or other contaminants.
- The Tennessee Department of Environment and Conservation reported on December 1, 2004, that "the problem facing the state is that the fund is insolvent."
- The Michigan Department of Environmental Quality reported in March 2003 that there are more than 4,000 facilities that will require public funding in the amount of $1.7 billion. Michigan's state financial assurance fund is insolvent.
- Eleven states—Alabama, North Carolina, Connecticut, California, Tennessee, Virginia, West Virginia, Ohio, Pennsylvania, Massachusetts, and Colorado—have state funds with outstanding claims that exceed their balance, according to a June 21, 2004, state survey.

COMMITTEE CONSIDERATION

During Committee markup Democratic Members offered four amendments to cure deficiencies in the Committee Print and improve the LUST provisions. Two of the amendments were adopted: An amendment by Representative Hilda Solis (D–CA) to eliminate a limitation on the EPA's ability to recover federal cleanup costs from liable tank owners and operators, and an amendment by Representative Tammy Baldwin (D–WI) to improve the operator training provisions.

Two other important strengthening amendments, however, were rejected largely along partisan lines:

Inspections: Section 1523 of the bill adds a new periodic inspection requirement for underground storage tanks. If a tank, however, was last inspected in 1999, under this bill the tank may not be required to be inspected again until 2010 or 2011, because the 2-year and the 3-year deadline (with an opportunity for a one-year extension) run consecutively. This is weaker than the 2-year minimum inspection frequency recommended by the EPA and the 3-year minimum inspection requirement recommended by the Government Accountability Office.

In its June 2000 Report to Congress on a Compliance Plan for the Underground Storage Tank Program, the EPA stated:

> Inspecting every facility within two years would rapidly improve the compliance rates in many states, and contin-

> ued biennial inspections would ensure continued diligence on the part of LUST owners and operators, thus increasing the probability of sustaining high compliance rates. EPA believes the two-year cycle provides the best compromise between effectiveness and practicality.

Representative Lois Capps (D–CA) offered an amendment to require a three-year mandatory inspection requirement, which was defeated by a vote of 24 to 29.

Secondary Containment: Representative Bart Stupak (D–MI) offered an amendment to require new or replacement underground storage tank systems to be secondarily contained if they are within 1,000 feet of existing community water systems or an existing potable drinking water well or other sensitive area as determined by the EPA administrator or a state implementing agency. Under the amendment, EPA is required to issue implementing regulations or guidelines and states retain authority to establish more stringent requirements.

More than twenty states already require secondary containment in various circumstances. Many states like Texas require secondary containment for sensitive hydrogeologic formations. Secondary containment helps achieve rapid detection of leaks and prevents contamination of drinking water supplies. A recent EPA study of underground storage tank facilities in Florida found that tanks with secondary containment were four to ten times less likely to leak into the environment.

Secondary containment is not new technology or a novel concept. According to the Petroleum Equipment Institute, on average, 56 percent of all tank owners will install a secondary containment system when building a new station or upgrading an existing tank system in states that do not now require secondary containment.

During the Committee proceedings, Representative Vito Fossella (R–NY) offered a substitute amendment to the Stupak amendment. Under the substitute, the EPA Administrator must require a state to adopt secondary containment similar in scope to the Stupak amendment (except for coverage of sensitive areas) *or* impose financial responsibility requirements on manufacturers and installers of tanks that will require evidence of financial responsibility of at least $1 million as a minimum for each occurrence with an appropriate aggregate requirement.

Overall the Fossella amendment fails to require secondary containment and sets up a curious choice between secondary containment to prevent leaks and new financial responsibility requirements to provide costs of corrective action. We also opposed the provisions of the Fossella amendment contained in Section 1530(a)(i)(1) for failing to allow the states the flexibility to designate "sensitive areas" where secondary containment can be required to protect drinking water supplies or other sensitive ecological areas.

In addition, we opposed the provisions of the Fossella amendment contained in Section 1530(a)(i)(2) as a recipe for litigation and delay. There is no provision that allows cleanups to go forward while disputes between tank owners and operators and manufacturers and installers are litigating. At best, unnecessary uncertainty is created in the cleanup process. Further, the Committee

has no evidence before it in a legislative hearing record that manufacturers and installers bear the principal or even major responsibility for the leaking tanks. Indeed, we doubt that any manufacturer or installer anywhere in the country was aware that the Committee majority intended to subject them to such a requirement. The Fossella amendment appears to be an ill-considered effort to shift the culpability of petroleum marketers and convenience store owners with leaking tanks onto manufacturers and installers, many of who are small business owners. The Committee adopted the Fossella amendment by a vote of 27 to 25.

We also have strong concerns about the preemptive effect of Section 1527 (adding Section 9012(a)(3)) on the 24 state laws that, according to the Government Accountability Office, already provide for fuel delivery prohibition with some form of red tag or green tag system. Section 1527 would deny federal funding to the state fuel delivery prohibition programs currently in operation.

We regret that the jurisdictional Subcommittee on Environment and Hazardous Materials did not hold a proper legislative hearing on the LUST provisions and that there were not bipartisan agreements on the important inspection, fuel delivery prohibition, and secondary containment provisions.

JOHN D. DINGELL.
EDWARD J. MARKEY.
SHERROD BROWN.
FRANK PALLONE, Jr.
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ALBERT R. WYNN.

ADDITIONAL DISSENTING VIEWS OF MR. MARKEY OF MASSACHUSETTS

In addition to the concerns I have about other objectionable provisions of the bill approved by the Committee, I would also like to lay out my concerns about the Deal Amendment to Title I. This amendment would preempt state energy efficiency standards for ceiling fans. Unlike other provisions in the bill setting efficiency standards for various products and equipment, the Deal Amendment will not actually save energy. Instead, it actually nullifies ceiling fan efficiency requirements that have already been adopted in Maryland and California, and would negate the legislation now pending in at least 5 other states to adopt similar efficiency measures.

Having stripped the states of their ability to establish meaningful efficiency standards for ceiling fans, what does the Deal Amendment offer in its place? Essentially nothing. Its language setting requirements on fan controls and switches is virtually meaningless, since it purports to require features that nearly all new fans sold today already employ.

In reality, the principal factors affecting the energy consumption of ceiling fans are the efficiency of air circulation and the efficiency of lighting. For ceiling fans with lights, the greatest opportunities for efficiency improvements relate to lighting—perhaps 90% of potential energy savings.

Regarding air circulation, the Deal Amendment authorizes, but does not require, the Secretary to adopt an efficiency standard in the future. DOE has already missed legal deadlines for nearly two dozen standards it is currently required to set—a matter addressed by the amendment that I offered to the bill during the Committee's markup.

The fact of the matter is that an optional standard is really no standard at all. Regarding the efficiency of ceiling fan lighting—90% of potential energy savings—the Secretary is given no new authority or direction whatsoever. This provision takes the responsibility for regulating ceiling fan lighting away from the states while doing nothing with it at the federal level—a classic example of what has previously been termed a "non-standard standard." Back in the 1980s, the Energy Department was successfully sued for its attempts to put in place such no-standard standards. Congress then stepped in and passed bipartisan legislation to direct DOE to adopted specific standards. Now, with the adoption of the Deal amendment, Congress is going backwards.

The Deal Amendment contrasts sharply with the ceiling fan provisions of H.R. 6 in the 108th Congress. There, the Secretary was directed to set ceiling fan standards, standards could address both air circulation and lighting, and states were not preempted until a federal standard was actually adopted.

In one other respect, the Deal Amendment is quite different from the other energy efficiency standards in the bill, and indeed, from all other appliance efficiency standards enacted by Congress in the last two decades. Until now, Congress has embraced proposed efficiency standards when presented by diverse stakeholders, whose endorsements have indicated at least a rough consensus on performance metrics and timetables. We have declined to act where technical or financial issues remained hotly contested. There is no consensus in support of the Deal Amendment, and the committee's endorsement of such a one-sided proposal sets a poor precedent that threatens to derail progress in energy efficiency for years to come.

I strongly oppose this language and urge that it be deleted from the bill as it moves forward.

EDWARD J. MARKEY.

EXCHANGE OF COMMITTEE CORRESPONDENCE

DONALD A. MANZULLO, ILLINOIS
CHAIRMAN

NYDIA M. VELÁZQUEZ, NEW YORK

Congress of the United States
House of Representatives
109th Congress
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515–6315

April 18, 2005

The Honorable Joe Barton
Chairman
Committee on Energy and Commerce
Washington, DC 20515

Dear Chairman Barton:

I am writing to you concerning the jurisdictional interest of the Committee on Small Business in H.R. 6, the "Energy Policy Act of 2005."

Our Committee recognizes the importance of H.R. 6 and the need for the House to consider the legislation this week. Therefore, while the Committee has a valid claim to jurisdiction over certain provisions of the bill, including but not limited to, § 132(d) of the bill, I will not seek or request sequential referral. This is conditional on our mutual understanding that nothing in H.R. 6 or my decision to forgo a sequential referral waives, reduces, or otherwise affects the jurisdiction of the Committee on Small Business, and that a copy of this letter and your response acknowledging our valid jurisdictional interest will be included in the *Congressional Record* during consideration of H.R. 6 by the House.

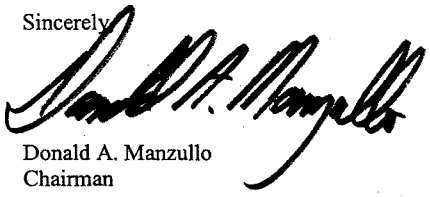
The Committee on Small Business also asks that you support our request to be conferees on the provisions over which we have jurisdiction during any House-Senate conference.

Finally, the Committee is aware that many small businesses face significant competition from utilities entering other businesses through unregulated affiliates. Small businesses are not afraid of competition. However, that competition must be fair. To ensure fair competition, Congress should take appropriate actions to prevent cross-subsidization of unregulated utility affiliates through their regulated affiliates. One mechanism for doing so is to have the Federal Energy Regulatory Commission draft separations rules between the regulated and unregulated actions of utilities. There may

be other ways to achieve the same objective. I am requesting that our staffs continue to work on the best method for ensuring fair competition and preventing improper cross-subsidization of utilities' unregulated activities by their regulated subsidiaries.

Thank you for your cooperation in this matter.

Sincerely,



Donald A. Manzullo
Chairman

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The Honorable John D. Dingell
The Honorable Nydia M. Velázquez

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June 17, 2005

The Honorable Donald A. Manzullo
Chairman
Committee on Small Business
U.S. House of Representatives
2361 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Manzullo:

Thank you for your letter in regards to H.R. 6, the Energy Policy Act of 2005.

While the Committee on Small Business did not receive a referral of the bill upon introduction, I appreciate your willingness not to seek a referral on H.R. 6. I agree that your decision to forego action on the bill will not prejudice the Committee on Small Business with respect to its jurisdictional prerogatives on this legislation.

I will include your letter and this response in the Committee's report on H.R. 1640, and I look forward to working with you as we prepare to go to bring comprehensive energy legislation to the American people.

Sincerely,

Joe Barton

Joe Barton
Chairman

WJT/res

cc: The Honorable John D. Dingell
Mr. John Sullivan, Parliamentarian

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April 19, 2005

The Honorable Joe Barton
Chairman
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Barton:

H.R. 1640 the "Energy Policy Act of 2005" contains several provisions within the Committee on the Judiciary's subject matter jurisdiction. For example, Section 302(d)("Judicial Review") falls within the Committee's rule X(1)(l)(1) jurisdiction ("The judiciary and judicial proceedings, civil and criminal"). Section 332 of the legislation ("Commission Administrative and Civil Action") falls within the Committee's rule X(1)(l)(1) jurisdiction ("The judiciary and judicial proceedings, civil and criminal"). Section 604 of the legislation ("Department of Energy Liability Limit") falls within the Committee's rule X(1)(l)(1) jurisdiction ("The judiciary and judicial proceedings, civil and criminal"). Section 605 ("Incidents Outside the United States") falls within the Committee's rule X(1)(l)(1) jurisdiction ("The judiciary and judicial proceedings, civil and criminal").

Section 612 of the legislation falls within the Committee's rule X(1)(l)(1) jurisdiction ("The judiciary and judicial proceedings, civil and criminal"). Section 625 ("Antitrust Review") falls within the Committee's rule X(1)(l)(16) jurisdiction ("Protection of trade and commerce against unlawful restraints and monopolies"). Section 632 ("Whistleblower Protection Judicial Review") falls within the Committee's rule X(1)(l)(1) jurisdiction ("The judiciary and judicial proceedings, civil and criminal"). Section 663 ("Use of Firearms by Security Personnel of Licensees") falls within the Committee's rule X(1)(l)(7) ("law enforcement") and rule X(1)(l)(19) jurisdiction ("Subversive activities affecting the internal security affecting the internal security of the United States.") Section 905 ("Intellectual Property") falls within the Committee's rule X(1)(l)(14)("Patents, the Patent and Trademark Office, copyrights, and trademarks").

The Honorable Joe Barton
April 18, 2005
Page 2

Section 1291 ("Merger Reform") falls within the Committee's rule X(1)(l)(16) jurisdiction ("Protection of trade and commerce against unlawful restraints and monopolies"). Section 1502 ("Fuels Safe Harbor") falls within Committee's rule X(1)(l)(1) jurisdiction ("The judiciary and judicial proceedings, civil and criminal").

In recognition of the desire to expedite floor consideration of H.R. 1640, the Committee on the Judiciary will not seek a sequential referral of this legislation. The Committee takes this action with the understanding that the Committee's jurisdiction over these and other provisions of H.R. 1640 within the Committee's jurisdiction is in no way altered or diminished. I would appreciate your including this letter in your Committee's report on this legislation and in the *Congressional Record* during consideration of the legislation on the House floor.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Chairman

cc: The Honorable J. Dennis Hastert
The Honorable John Conyers, Jr.
The Honorable Joe Barton
The Honorable John Sullivan, Parliamentarian

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June 17, 2005

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Sensenbrenner:

Thank you for your letter in regards to H.R. 1640, the Energy Policy Act of 2005.

While the Committee on the Judiciary did not receive a referral of the bill upon introduction, I appreciate your willingness not to seek a referral on H.R. 1640. I agree that your decision to forego action on the bill will not prejudice the Committee on the Judiciary with respect to its jurisdictional prerogatives on this legislation.

I will include your letter and this response in the Committee's report on H.R. 1640, and I look forward to working with you as we prepare to go to bring comprehensive energy legislation to the American people.

Sincerely,

Joe Barton

Joe Barton
Chairman

WJT/res

cc: The Honorable John D. Dingell
Mr. John Sullivan, Parliamentarian

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April 19, 2005

The Honorable Joe Barton
Chairman, Committee on Energy and Commerce
2125 Rayburn HOB
Washington, D.C. 20515

Dear Chairman Barton:

I am writing regarding our mutual understanding of H.R. 6, the *Energy Policy Act of 2005,* which was introduced yesterday and referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and the Workforce, Financial Services, Agriculture, Resources, Science, Ways and Means, and Transportation and Infrastructure. The following provisions are within the jurisdiction of the Committee on Education and the Workforce: Sec. 121, Low Income Home Energy Assistance Program; Sec. 632, Whistleblower Protection; Sec. 640, Employee Benefits; Sec. 662, Fingerprinting for Criminal History Record Checks; Sec. 742, Program for Replacement of Certain School Buses with Clean School Buses (specifically (j), Reduction of School Bus Idling); Sec. 1607, LIHEAP Report; Sec. 2206, Lease Terms and Conditions (dealing with Project Labor Agreements); and Sec. 2009, Federal and State Distribution of Revenues (Use of Bonus Payments for Low-Income Home Energy Assistance).

As you know, these provisions are within the jurisdiction of the Education and the Workforce Committee. While I do not intend to markup H.R. 6, the Committee does hold an interest in preserving its future jurisdiction with respect to issues raised in the aforementioned provisions and its jurisdictional prerogatives should the provisions of this bill or any Senate amendments thereto be considered in a conference with the Senate. We would expect to be appointed as conferees on these provisions should a conference with the Senate arise. Again, I thank you and look forward to working with you on these issues in the future.

Sincerely,

JOHN A. BOEHNER
Chairman

JAB/jms
cc: The Honorable J. Dennis Hastert
The Honorable Tom DeLay
The Honorable George Miller
Mr. John Sullivan, Parliamentarian

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June 17, 2005

The Honorable John Boehner
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Boehner:

Thank you for your letter in regards to H.R. 6, the Energy Policy Act of 2005.

As the Committee on Education and the Workforce was named as an additional Committee of jurisdiction upon the bills introduction, I acknowledge and appreciate your willingness to not exercise your full referral on the bill. In doing so, I agree that your decision to forgo further action on the bill will not prejudice the Committee on Science with respect to its jurisdictional prerogatives on this legislation or similar legislation. Further, I recognize your right to request conferees on those provisions within the Committee on Education and the Workforce's jurisdiction should they be the subject of a House-Senate conference on this or similar legislation.

I will include your letter and this response in the Committee's report on H.R. 1640, and I look forward to working with you as we prepare to go to bring comprehensive energy legislation to the American people.

Sincerely,

Joe Barton
Chairman

WJT/res

cc: The Honorable John D. Dingell
Mr. John Sullivan, Parliamentarian

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE
SUITE 2320 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6301
(202) 225–6371
TTY: (202) 226–4410
http://www.house.gov/science/welcome.htm

May 24, 2005

The Honorable Joe Barton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Barton:

On April 14, 2005, you introduced H.R. 1640, a bill to ensure jobs for our future with secure and reliable energy. The bill was referred to the Committee on Energy and Commerce, and in addition to the Committee on Science (among others). The bill contains provisions that fall within the jurisdiction of the Committee on Science.

In deference to your desire to bring this legislation before the House in an expeditious manner as part of H.R. 6, I did not exercise this Committee's right to consider H.R. 1640. Despite waiving consideration of H.R. 1640, the Committee on Science did not waive its jurisdiction over those provisions in H.R. 1640, as introduced, that fall within our Committee's jurisdiction. Specifically:

- Science has sole jurisdiction over the following provisions: §§ 107-108; 302; 416; 631; 651-652; 711-712; 731; 744; 751; 759; 810; Title IX (except section 949); 1003; 1225; 1227; 1447-1448; 1610.
- Science has sole jurisdiction over the following provisions, but recognizes that they have yet to be definitively litigated: §§ 401-404; 721-724; 741-743.
- Science shares jurisdiction over the following provisions: §§ 109; 126; 131; 205-207; 411; 601-612; 622; 629; 661; 665; 753-754; 757; 801-809; 949; 1001-1002; 1004; 1224; 1226; 1505; 1510; 1605; 1608-1609; 1613.

Additionally, the Committee on Science expressly reserves its authority to seek conferees on any provisions that are within its jurisdiction during any House-Senate conference that may be convened on this legislation, H.R. 6, or similar legislation

which falls within this Committee's jurisdiction. I also ask for your commitment to support any request by the Science Committee for conferees on those provisions within this legislation, H.R. 6, or similar legislation that fall within Science's jurisdiction.

I request that you include this letter as part of the report for H.R. 1640 and we will likewise include our exchange of letters within the report to be filed for the Science Committee's Energy bill - H.R. 610. In a related letter, I have written the Parliamentarian asserting the Committee's jurisdictional claims over numerous provisions in H.R. 6.

Thank you for your consideration and attention regarding these matters.

Sincerely,

SHERWOOD BOEHLERT
Chairman

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MICHAEL BILIRAKIS, FLORIDA
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CLIFF STEARNS, FLORIDA
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BUD ALBRIGHT, STAFF DIRECTOR

ONE HUNDRED NINTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

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June 17, 2005

The Honorable Sherwood L. Boehlert
Chairman
Committee on Science
U.S. House of Representatives
2320 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Boehlert:

Thank you for your letter in regards to H.R. 1640, the Energy Policy Act of 2005.

As the Committee on Science was named as an additional Committee of jurisdiction upon the bills introduction, I acknowledge and appreciate your willingness to not exercise your full referral on the bill. In doing so, I agree that your decision to forgo further action on the bill will not prejudice the Committee on Science with respect to its jurisdictional prerogatives on this legislation or similar legislation. Further, I recognize your right to request conferees on those provisions within the Committee on the Science's jurisdiction should they be the subject of a House-Senate conference on this or similar legislation.

I will include your letter and this response in the Committee's report on H.R. 1640, and I look forward to working with you as we prepare to go to bring comprehensive energy legislation to the American people.

Sincerely,

Joe Barton

Joe Barton
Chairman

WJT/res

cc: The Honorable John D. Dingell
Mr. John Sullivan, Parliamentarian

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