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111TH CONGRESS
1ST SESSION

H. R. 2454

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

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2009

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

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''American Clean Energy and Security Act of 2009''.

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

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For purposes of this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) STATE.—The term ''State'' has the meaning given that term in section 700 of the Clean Air Act, as added by section 312 of this Act.

TITLE I—CLEAN ENERGY

Subtitle A—Combined Efficiency and Renewable Electricity Standard

SEC. 101. COMBINED EFFICIENCY AND RENEWABLE ELECTRICITY STANDARD.

(a) IN GENERAL.—Title VI of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 and following) is amended by adding at the end the following:

''SEC. 610. COMBINED EFFICIENCY AND RENEWABLE ELECTRICITY STANDARD.

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

''(1) CHP SAVINGS.—The term 'CHP savings' means—

"(A) CHP system savings from a combined heat and power system that commences operation after the date of enactment of this section; and

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

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

"(3) COMBINED HEAT AND POWER SYSTEM.—The term 'combined heat and power system' means a system that uses the same energy source both for the generation of electrical or mechanical power and the production of steam or another form of useful thermal energy, provided that—

"(A) the system meets such requirements relating to efficiency and other operating characteristics as the Commission may promulgate by regulation; and

"(B) the net sales of electricity by the facility to customers not consuming the thermal output from that facility will not exceed 50 percent of total annual electric generation by the facility.

"(4) CUSTOMER FACILITY SAVINGS.—The term 'customer facility savings' means a reduction in end-use electricity consumption (including recycled energy savings) at a facility of an end-use consumer of electricity served by a retail electric supplier, as compared to—

"(A) in the case of a new facility, consumption at a reference facility of average efficiency;

"(B) in the case of an existing facility, consumption at such facility during a base period, except as provided in subparagraphs (C) and (D);

"(C) in the case of new equipment that replaces existing equipment with remaining useful life, the projected consumption of the existing

equipment for the remaining useful life of such equipment, and thereafter, consumption of new equipment of average efficiency of the same equipment type; and

"(D) in the case of new equipment that replaces existing equipment at the end of the useful life of the existing equipment, consumption by new equipment of average efficiency of the same equipment type.

"(5) DISTRIBUTED RENEWABLE GENERATION FACILITY.—The term 'distributed renewable generation facility' means a facility that—

"(A) generates renewable electricity;

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

"(C) is no larger than 2 megawatts in capacity.

"(6) ELECTRICITY SAVINGS.—The term 'electricity savings' means reductions in electricity consumption, relative to business-as-usual projections, achieved through measures implemented after the date of enactment of this section, limited to—

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

"(B) reductions in distribution system losses of electricity achieved by a retail electricity distributor, as compared to losses attributable to new or replacement distribution system equipment of average efficiency;

"(C) CHP savings; and

"(D) fuel cell savings.

"(7) FEDERAL LAND.—The term 'Federal land' means land owned by the United States, other than land held in trust for an Indian or Indian tribe.

"(8) FEDERAL RENEWABLE ELECTRICITY CREDIT.—The term 'Federal renewable electricity credit' means a credit, representing one megawatt hour of renewable electricity, issued pursuant to subsection (e).

"(9) FUEL CELL.—The term 'fuel cell' means a device that directly converts the chemical energy of a fuel and an oxidant into electricity by electrochemical processes occurring at separate electrodes in the device.

"(10) FUEL CELL SAVINGS.—The term 'fuel cell savings' means the electricity saved by a fuel cell that is installed after the date of enactment of this section, or by upgrading a fuel cell that commenced operation on or before the date of enactment of this

section, as a result of the greater efficiency with which the fuel cell transforms fuel into electricity as compared with sources of electricity delivered through the grid, provided that—

"(A) the fuel cell meets such requirements relating to efficiency and other operating characteristics as the Commission may promulgate by regulation; and

"(B) the net sales of electricity from the fuel cell to third parties that do not receive thermal service from the fuel cell do not exceed 50 percent of the total annual electricity generation by the fuel cell.

"(11) HIGH CONSERVATION PRIORITY LAND.—The term 'high conservation priority land' means land that is not Federal land and is—

"(A) globally or State ranked as critically imperiled or imperiled under a State Natural Heritage Program; or

"(B) old-growth or late-successional forest, as defined by the office of the relevant State Forester or relevant State agency with regulatory jurisdiction over forestry activities.

"(12) OTHER QUALIFYING ENERGY RESOURCE.—The term 'other qualifying energy resource' means any of the following:

"(A) Landfill gas.

"(B) Wastewater treatment gas.

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

"(D) Qualified waste-to-energy.

"(13) QUALIFIED HYDROPOWER.—The term 'qualified hydropower' means—

"(A) energy produced from increased efficiency achieved, or additions of capacity made, on or after January 1, 1992, at a hydroelectric facility that was placed in service before that date and does not include additional energy generated as a result of operational changes not directly associated with efficiency improvements or capacity additions; or

"(B) energy produced from generating capacity added to a dam on or after January 1, 1992, provided that the Commission certifies that—

"(i) the dam was placed in service before the date of the enactment of this section and was operated for flood control,

navigation, or water supply purposes and was not producing hydroelectric power prior to the addition of such capacity;

"(ii) the hydroelectric project installed on the dam is licensed (or is exempt from licensing) by the Commission and is in compliance with the terms and conditions of the license or exemption, and with other applicable legal requirements for the protection of environmental quality, including applicable fish passage requirements; and

"(iii) the hydroelectric project installed on the dam is operated so that the water surface elevation at any given location and time that would have occurred in the absence of the hydroelectric project is maintained, subject to any license or exemption requirements that require changes in water surface elevation for the purpose of improving the environmental quality of the affected waterway.

"(14) QUALIFIED WASTE-TO-ENERGY.—The term 'qualified waste-to-energy' means energy from the combustion of municipal solid waste or construction, demolition, or disaster debris, or from the gas-

ification or pyrolization of such waste or debris and the combustion of the resulting gas at the same facility, provided that—

"(A) such term shall include only the energy derived from the non-fossil biogenic portion of such waste or debris;

"(B) the Commission determines, with the concurrence of the Administrator of the Environmental Protection Agency, that the total lifecycle greenhouse gas emissions attributable to the generation of electricity from such waste or debris are lower than those attributable to the likely alternative method of disposing of such waste or debris; and

"(C) the owner or operator of the facility generating electricity from such energy provides to the Commission, on an annual basis—

"(i) a certification that the facility is in compliance with all applicable State and Federal environmental permits;

"(ii) in the case of a facility that commenced operation before the date of the enactment of this section, a certification that the facility meets emissions standards promulgated under sections 112 or 129 of

the Clean Air Act (42 U.S.C. 7412 or 7429) that apply as of the date of the enactment of this section to new facilities within the relevant source category; and

"(iii) in the case of the combustion, pyrolization, or gasification of municipal solid waste, a certification that each local government unit from which such waste originates operates, participates in the operation of, contracts for, or otherwise provides for, recycling services for its residents.

"(15) RECYCLED ENERGY SAVINGS.—The term 'recycled energy savings' means a reduction in electricity consumption that results from a modification of an industrial or commercial system that commenced operation before the date of enactment of this section, in order to recapture electrical, mechanical, or thermal energy that would otherwise be wasted.

"(16) RENEWABLE BIOMASS.—The term 'renewable biomass' means any of the following:

"(A) Plant material, including waste material, harvested or collected from actively managed agricultural land that was in cultivation,

cleared, or fallow and nonforested on the date of enactment of this section;

''(B) Plant material, including waste material, harvested or collected from pastureland that was nonforested on such date of enactment;

''(C) Nonhazardous vegetative matter derived from waste, including separated yard waste, landscape right-of-way trimmings, construction and demolition debris or food waste (but not municipal solid waste, recyclable waste paper, painted, treated or pressurized wood, or wood contaminated with plastic or metals);

''(D) Animal waste or animal byproducts, including products of animal waste digesters;

''(E) Algae;

''(F) Trees, brush, slash, residues, or any other vegetative matter removed from within 600 feet of any building, campground, or route designated for evacuation by a public official with responsibility for emergency preparedness, or from within 300 feet of a paved road, electric transmission line, utility tower, or water supply line;

"(G) Residues from or byproducts of milled logs;

"(H) Any of the following removed from forested land that is not Federal and is not high conservation priority land:

"(i) Trees, brush, slash, residues, interplanted energy crops, or any other vegetative matter removed from an actively managed tree plantation established—

"(I) prior to the date of enactment of this section; or

"(II) on land that, as of the date of enactment of this section, was cultivated or fallow and non-forested.

"(ii) Trees, logging residue, thinnings, cull trees, pulpwood, and brush removed from naturally regenerated forests or other non-plantation forests, including for the purposes of hazardous fuel reduction or preventative treatment for reducing or containing insect or disease infestation.

"(iii) Logging residue, thinnings, cull trees, pulpwood, brush and species that are non-native and noxious, from stands that were planted and managed after the date

of enactment of this section to restore or maintain native forest types.

"(iv) Dead or severely damaged trees removed within 5 years of fire, blowdown, or other natural disaster, and badly infested trees;

"(I) Materials, pre-commercial thinnings, or removed invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)), including those that are byproducts of preventive treatments (such as trees, wood, brush, thinnings, chips, and slash), that are removed as part of a federally recognized timber sale, or that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health, and that are—

"(i) not from components of the National Wilderness Preservation System, Wilderness Study Areas, Inventoried Roadless Areas, old growth or mature forest stands, components of the National Landscape Conservation System, National Monuments, National Conservation Areas,

Designated Primitive Areas, or Wild and Scenic Rivers corridors;

"(ii) harvested in environmentally sustainable quantities, as determined by the appropriate Federal land manager; and

"(iii) harvested in accordance with Federal and State law and applicable land management plans.

"(17) RENEWABLE ELECTRICITY.—The term 'renewable electricity' means electricity generated (including by means of a fuel cell) from a renewable energy resource or other qualifying energy resources.

"(18) RENEWABLE ENERGY RESOURCE.—The term 'renewable energy resource' means each of the following:

"(A) Wind energy.

"(B) Solar energy.

"(C) Geothermal energy.

"(D) Renewable biomass.

"(E) Biogas derived exclusively from renewable biomass.

"(F) Biofuels derived exclusively from renewable biomass.

"(G) Qualified hydropower.

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

"(19) RETAIL ELECTRIC SUPPLIER.—

"(A) IN GENERAL.—The term 'retail electric supplier' means, for any given year, an electric utility that sold not less than 4,000,000 megawatt hours of electric energy to electric consumers for purposes other than resale during the preceding calendar year.

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

"(i) the sales of any affiliate of an electric utility to electric consumers, other than sales to the affiliate's lessees or tenants, for purposes other than resale shall be considered to be sales of such electric utility; and

"(ii) sales by any electric utility to an affiliate, lessee, or tenant of such electric utility shall not be treated as sales to electric consumers.

"(C) AFFILIATE.—For purposes of this paragraph, the term 'affiliate' when used in relation to a person, means another person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, such person, as determined under regulations promulgated by the Commission.

"(20) RETAIL ELECTRIC SUPPLIER'S BASE AMOUNT.—The term 'retail electric supplier's base amount' means the total amount of electric energy sold by the retail electric supplier, expressed in megawatt hours, to electric customers for purposes other than resale during the relevant calendar year, excluding—

"(A) electricity generated by a hydroelectric facility that is not qualified hydropower;

"(B) electricity generated by a nuclear generating unit placed in service after the date of enactment of this section; and

"(C) the proportion of electricity generated by a fossil-fueled generating unit that is equal to the proportion of greenhouse gases produced by such unit that are captured and geologically sequestered.

"(21) RETIRE AND RETIREMENT.—The terms 'retire' and 'retirement' with respect to a Federal renewable electricity credit, means to disqualify such credit for any subsequent use under this section, regardless of whether the use is a sale, transfer, exchange, or submission in satisfaction of a compliance obligation.

"(22) THIRD-PARTY EFFICIENCY PROVIDER.—The term 'third-party efficiency provider' means any retailer, building owner, energy service company, financial institution or other commercial, industrial or nonprofit entity that is capable of providing electricity savings in accordance with the requirements of this section.

"(23) TOTAL ANNUAL ELECTRICITY SAVINGS.—The term 'total annual electricity savings' means electricity savings during a specified calendar year from measures that were placed into service since date of the enactment of this section, taking into account verified measure lifetimes or verified annual savings attrition rates, as determined in accordance with such regulations as the Commission may promulgate and measured in megawatt hours.

"(b) ANNUAL COMPLIANCE OBLIGATION.—

"(1) IN GENERAL.—For each of calendar years 2012 through 2039, not later than March 31 of the following calendar year, each retail electric supplier shall submit to the Commission an amount of Federal renewable electricity credits and demonstrated total annual electricity savings that, in the aggregate, is equal to such retail electric supplier's annual combined target as set forth in subsection (d), except as otherwise provided in subsection (g).

"(2) DEMONSTRATION OF SAVINGS.—For purposes of this subsection, submission of demonstrated total annual electricity savings means submission of a report that demonstrates, in accordance with the requirements of subsection (f), the total annual electricity savings achieved by the retail electricity supplier within the relevant compliance year.

"(3) RENEWABLE ELECTRICITY CREDITS PORTION.—Except as provided in paragraph (4), each retail electric supplier must submit Federal renewable electricity credits equal to at least three quarters of the retail electric supplier's annual combined target.

"(4) STATE PETITION.—

"(A) IN GENERAL.—Upon written request from the Governor of any State (including, for

purposes of this paragraph, the Mayor of the District of Columbia), the Commission shall increase, to not more than two fifths, the proportion of the annual combined targets of retail electric suppliers located within such State that may be met through submission of demonstrated total annual electricity savings, provided that such increase shall be effective only with regard to the portion of a retail electric supplier's annual combined target that is attributable to electricity sales within such State.

"(B) CONTENTS.—A Governor's request under this paragraph shall include an explanation of the Governor's rationale for determining, after consultation with the relevant State regulatory authority and other retail electricity ratemaking authorities within the State, to make such request. The request shall specify the maximum proportion of annual combined targets (not more than two fifths) that can be met through demonstrated total annual electricity savings, and the period for which such proportion shall be effective.

"(C) REVISION.—The Governor of any State may, after consultation with the relevant

State regulatory authority and other retail electricity ratemaking authorities within the State, submit a written request for revocation or revision of a previous request submitted under this paragraph. The Commission shall grant such request, provided that—

"(i) any revocation or revision shall not apply to the combined annual target for any year that is any earlier than 2 calendar years after the calendar year in which such request is submitted, so as to provide retail electric suppliers with adequate notice of such change; and

"(ii) any revision shall meet the requirements of subparagraph (A).

"(c) ESTABLISHMENT OF PROGRAM.—Not later than 1 year after the date of enactment of this section, the Commission shall promulgate regulations to implement and enforce the requirements of this section. In promulgating such regulations, the Commission shall, to the extent practicable—

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

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

"(3) cooperate with the States to facilitate coordination between State and Federal renewable electricity and energy efficiency programs and to minimize administrative burdens and costs to retail electric suppliers.

"(d) ANNUAL COMPLIANCE REQUIREMENT.—

"(1) ANNUAL COMBINED TARGETS.—For each of calendar years 2012 through 2039, a retail electric supplier's annual combined target shall be the product of—

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

"(B) the retail electric supplier's base amount for such year.

"(2) REQUIRED ANNUAL PERCENTAGE.—For each of calendar years 2012 through 2039, the required annual percentage shall be as follows:

"Calendar year	Required annual percentage
2012	6.0
2013	6.0
2014	9.5
2015	9.5
2016	13.0
2017	13.0
2018	16.5
2019	16.5

"Calendar year	Required annual percentage
2020	20.0
2021 through 2039	20.0

1 "(e) FEDERAL RENEWABLE ELECTRICITY CRED-
2 ITS.—
3 "(1) IN GENERAL.—The regulations promul-
4 gated under this section shall include provisions gov-
5 erning the issuance, tracking, and verification of
6 Federal renewable electricity credits. Except as pro-
7 vided in paragraphs (2), (3), and (4) of this sub-
8 section, the Commission shall issue to each gener-
9 ator of renewable electricity, 1 Federal renewable
10 electricity credit for each megawatt hour of renew-
11 able electricity generated by such generator after
12 December 31, 2011. The Commission shall assign a
13 unique serial number to each Federal renewable
14 electricity credit.
15 "(2) GENERATION FROM CERTAIN STATE RE-
16 NEWABLE ELECTRICITY PROGRAMS.—Where renew-
17 able electricity is generated with the support of pay-
18 ments from a retail electric supplier pursuant to a
19 State renewable electricity program (whether
20 through State alternative compliance payments or
21 through payments to a State renewable electricity
22 procurement fund or entity), the Commission shall
23 issue Federal renewable electricity credits to such re-

tail electric supplier for the proportion of the relevant renewable electricity generation that is attributable to the retail electric supplier's payments, as determined pursuant to regulations issued by the Commission. For any remaining portion of the relevant renewable electricity generation, the Commission shall issue Federal renewable electricity credits to the generator, as provided in paragraph (1), except that in no event shall more than 1 Federal renewable electricity credit be issued for the same megawatt hour of electricity. In determining how Federal renewable electricity credits will be apportioned among retail electric suppliers and generators in such circumstances, the Commission shall consider information and guidance furnished by the relevant State or States.

"(3) CERTAIN POWER SALES CONTRACTS.—When a generator has sold renewable electricity to a retail electric supplier under a contract for power from a facility placed in service before the date of enactment of this section, and the contract does not provide for the determination of ownership of the Federal renewable electricity credits associated with such generation, the Commission shall issue such

1 Federal renewable electricity credits to the retail
2 electric supplier for the duration of the contract.
3 "(4) CREDIT MULTIPLIER FOR DISTRIBUTED
4 RENEWABLE GENERATION.—
5 "(A) IN GENERAL.—Except as provided in
6 subparagraph (B), the Commission shall issue 3
7 Federal renewable electricity credits for each
8 megawatt hour of renewable electricity gen-
9 erated by a distributed renewable generation fa-
10 cility.
11 "(B) ADJUSTMENT.—Except as provided
12 in subparagraph (C), not later than January 1,
13 2014, and not less frequently than every 4
14 years thereafter, the Commission shall review
15 the effect of this paragraph and shall, as nec-
16 essary, reduce the number of Federal renewable
17 electricity credits per megawatt hour issued
18 under this paragraph for any given energy
19 source or technology, but not below 1, to ensure
20 that such number is no higher than the Com-
21 mission determines is necessary to make dis-
22 tributed renewable generation facilities using
23 such source or technology cost competitive with
24 other sources of renewable electricity genera-
25 tion.

"(C) FACILITIES PLACED IN SERVICE AFTER ENACTMENT.—For any distributed renewable generation facility placed in service after the date of enactment of this section, subparagraph (B) shall not apply for the first 10 years after the date on which the facility is placed in service. For each year during such 10-year period, the Commission shall issue to the facility the same number of Federal renewable electricity credits per megawatt hour as are issued to that facility in the year in which such facility is placed in service. After such 10-year period, the Commission shall issue Federal renewable energy credits to the facility in accordance with the current multiplier as determined pursuant to subparagraph (B).

"(5) CREDITS BASED ON QUALIFIED HYDROPOWER.—For purposes of this subsection, the number of Federal renewable electricity credits issued for qualified hydropower shall be calculated—

"(A) based solely on the increase in average annual generation directly resulting from the efficiency improvements or capacity additions described in subsection (a)(13)(A); and

"(B) using the same water flow information used to determine a historic average annual generation baseline for the hydroelectric facility, as certified by the Commission.

"(6) GENERATION FROM MIXED RENEWABLE AND NONRENEWABLE RESOURCES.—If electricity is generated using both a renewable energy resource or other qualifying energy resource and an energy source that is not a renewable energy resource or other qualifying energy resource (as, for example, in the case of co-firing of renewable biomass and fossil fuel), the Commission shall issue Federal renewable electricity credits based son the proportion of the electricity that is attributable to the renewable energy resource or other qualifying energy resource.

"(7) PROHIBITION AGAINST DOUBLE-COUNTING.—Except as provided in paragraph (4) of this subsection, the Commission shall ensure that no more than 1 Federal renewable electricity credit will be issued for any megawatt hour of renewable electricity and that no Federal renewable electricity credit will be used more than once for compliance with this section.

"(8) TRADING.—The lawful holder of a Federal renewable electricity credit may sell, exchange,

transfer, submit for compliance in accordance with subsection (b), or submit such credit for retirement by the Commission.

"(9) BANKING.—A Federal renewable electricity credit may be submitted in satisfaction of the compliance obligation set forth in subsection (b) for the compliance year in which the credit was issued or for any subsequent compliance year.

"(10) RETIREMENT.—The Commission shall retire a Federal renewable electricity credit immediately upon submission by the lawful holder of such credit, whether in satisfaction of a compliance obligation under subsection (b) or on some other basis.

"(f) ELECTRICITY SAVINGS.—

"(1) STANDARDS FOR MEASUREMENT OF SAVINGS.—As part of the regulations promulgated under this section, the Commission shall prescribe standards and protocols for defining and measuring electricity savings and total annual electricity savings that can be counted towards the compliance obligation set forth in subsection (b). Such protocols and standards shall, at minimum—

"(A) specify the types of energy efficiency and energy conservation measures that can be counted;

"(B) require that energy consumption estimates for customer facilities or portions of facilities in the applicable base and current years be adjusted, as appropriate, to account for changes in weather, level of production, and building area;

"(C) account for the useful life of measures;

"(D) include deemed savings values for specific, commonly used measures;

"(E) allow for savings from a program to be estimated based on extrapolation from a representative sample of participating customers;

"(F) include procedures for counting CHP savings, recycled energy savings, and fuel cell savings;

"(G) avoid double-counting of savings used for compliance with this section, including savings that are transferred pursuant to paragraph (3);

"(H) ensure that, except as provided in subparagraph (J), the retail electric supplier claiming the savings played a significant role in achieving the savings (including through the ac-

tivities of a designated agent of the supplier or through the purchase of transferred savings);

"(I) include savings from programs administered by a retail electric supplier (or a retail electricity distributor that is not a retail electric supplier) that are funded by State, Federal, or other sources; and

"(J) in any State in which the State regulatory authority has designated 1 or more entities to administer electric ratepayer-funded efficiency programs approved by such State regulatory authority, provide that electricity savings achieved through such programs shall be distributed equitably among retail electric suppliers in accord with the direction of the relevant State regulatory authority.

"(2) STANDARDS FOR THIRD-PARTY VERIFICATION OF SAVINGS.—The regulations promulgated under this section shall establish procedures and standards requiring third-party verification of all reported electricity savings, including requirements for accreditation of third-party verifiers to ensure that such verifiers are professionally qualified and have no conflicts of interest.

"(3) TRANSFERS OF SAVINGS.—

"(A) BILATERAL CONTRACTS FOR SAVINGS TRANSFERS.—Subject to the limitations of this paragraph, a retail electric supplier may use electricity savings transferred, pursuant to a bilateral contract, from another retail electric supplier, an owner of an electric distribution facility that is not a retail electric supplier, a State, or a third-party efficiency provider to meet the applicable compliance obligation under subsection (b).

"(B) REQUIREMENTS.—Electricity savings transferred and used for compliance pursuant to this paragraph shall be—

"(i) measured and verified in accordance with the procedures specified under this subsection;

"(ii) reported in accordance with paragraph (4) of this subsection; and

"(iii) achieved within the same State as is served by the retail electric supplier.

"(C) REGULATORY APPROVAL.—Nothing in this paragraph shall limit or affect the authority of a State regulatory authority to require a retail electric supplier that is regulated by such authority to obtain such authority's au-

thorization or approval of a contract for transfer of savings under this paragraph.

"(4) REPORTING SAVINGS.—

"(A) REQUIREMENTS.—The regulations promulgated under this section shall establish requirements governing the submission of reports to demonstrate, in accord with the protocols and standards for measurement and third-party verification established under this subsection, the total annual electricity savings achieved by a retail electric supplier within the relevant year.

"(B) REVIEW AND APPROVAL.—The Commission shall review each report submitted to the Commission by a retail electric supplier and shall exclude any electricity savings that have not been adequately demonstrated in accordance with the requirements of this subsection.

"(5) STATE ADMINISTRATION.—

"(A) DELEGATION OF AUTHORITY.—Upon receipt of an application from the Governor of a State (including, for purposes of this subsection, the Mayor of the District of Columbia), the Commission may delegate to the State the authority to review and verify reported elec-

tricity savings for purposes of determining demonstrated total annual electricity savings that may be counted towards a retail electric supplier's compliance obligation under subsection (b). The Commission shall make a substantive determination approving or disapproving a State application under this subparagraph, after notice and comment, within 180 days of receipt of a complete application.

"(B) ALTERNATIVE MEASUREMENT AND VERIFICATION PROCEDURES AND STANDARDS.—As part of an application submitted under subparagraph (A), a State may request to use alternative measurement and verification procedures and standards to those specified in paragraphs (1) and (2), provided the State demonstrates that such alternative procedures and standards provide a level of accuracy of measurement and verification at least equivalent to the Federal procedures and standards promulgated under paragraphs (1) and (2) of this subsection.

"(C) REVIEW OF STATE IMPLEMENTATION.—The Commission shall periodically review State implementation of delegated author-

ity under this paragraph to ensure conformance with the requirements of this section. The Commission may, at any time, revoke the delegation of authority under this section upon a finding that the State is not implementing its delegated responsibilities in conformity with this paragraph. As a condition of maintaining its delegated authority under this paragraph, the Commission may require a State to submit a revised application under subparagraph (A) if the Commission has—

"(i) promulgated new or substantially revised measurement and verification procedures and standards under this subsection; or

"(ii) otherwise substantially revised the program established under this section.

"(g) ALTERNATIVE COMPLIANCE PAYMENTS.—

"(1) IN GENERAL.—A retail electric supplier may satisfy the requirements of subsection (b) in whole or in part by submitting in accord with this subsection, in lieu of each Federal renewable electricity credit or megawatt hour of demonstrated total annual electricity savings that would otherwise be due, a payment equal to $25, adjusted for infla-

tion on January 1 of each year following calendar year 2009, in accord with such regulations as the Commission may promulgate.

"(2) PAYMENT TO STATE FUNDS.—Payments made under this subsection shall be made directly to the State in which the retail electric supplier is located, provided that such payments are deposited directly into a fund within the State's treasury for use pursuant to paragraph (3).

"(3) STATE USE OF FUNDS.—States receiving payments under this subsection shall use such funds exclusively for the purposes of—

"(A) deploying technologies that generate electricity from renewable energy resources; or

"(B) cost-effective energy efficiency measures and programs.

"(4) REPORTING.—Any State that receives a payment under this subsection shall, within 12 months of receipt of such payment, provide a report to the Commission giving a full accounting of the use of such payments, including a detailed description of the activities funded thereby.

"(h) INFORMATION COLLECTION.—The Commission may require any retail electric supplier, renewable electricity generator, or such other entities as the Commission

deems appropriate, to provide any information the Commission determines appropriate to carry out this section. Failure to submit such information or submission of false or misleading information under this subsection shall be a violation of this section.

"(i) ENFORCEMENT AND JUDICIAL REVIEW.—

"(1) FAILURE TO SUBMIT CREDITS OR DEMONSTRATE SAVINGS.—If any person fails to comply with the requirements of subsection (b) or (g), such person shall be liable to pay to the Commission a civil penalty equal to the product of—

"(A) double the alternative compliance payment calculated under subsection (g)(1), and

"(B) the aggregate quantity of Federal renewable electricity credits, total annual electricity savings, or equivalent alternative compliance payments that the person failed to submit in violation of the requirements of subsections (b) and (g).

"(2) ENFORCEMENT.—The Secretary shall assess a civil penalty under paragraph (1) in accordance with the procedures described in section 31(d) of the Federal Power Act (16 U.S.C. 823b(d)).

"(3) VIOLATION OF REQUIREMENT OF REGULATIONS OR ORDERS.—Any person who violates, or fails or refuses to comply with, any requirement of a regulation promulgated or order issued under this section shall be subject to a civil penalty under section 316A(b) of the Federal Power Act. Such penalty shall be assessed by the Commission in the same manner as in the case of a violation referred to in section 316A(b) of such Act.

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

"(k) SAVINGS PROVISIONS.—Nothing in this section shall—

"(1) diminish or qualify any authority of a State or political subdivision of a State to—

"(A) adopt or enforce any law or regulation respecting renewable electricity or energy

efficiency, including any law or regulation establishing requirements more stringent than those established by this section, provided that no such law or regulation may relieve any person of any requirement otherwise applicable under this section; or

"(B) regulate the acquisition and disposition of Federal renewable electricity credits by retail electric suppliers within the jurisdiction of such State or political subdivision, including the authority to require such retail electric supplier to acquire and submit to the Secretary for retirement Federal renewable electricity credits in excess of those submitted under this section; or

"(2) affect the application of, or the responsibility for compliance with, any other provision of law or regulation, including environmental and licensing requirements.

"(l) SUNSET.—This section expires on December 31, 2040.".

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

"Sec. 610. Combined efficiency and renewable electricity standard.".

Subtitle B—Carbon Capture and Sequestration

SEC. 111. NATIONAL STRATEGY.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Energy and the heads of such other relevant Federal agencies as the President may designate, shall submit to Congress a report setting forth a unified and comprehensive strategy to address the key legal, regulatory and other barriers to the commercial-scale deployment of carbon capture and sequestration.

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

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

(2) identify regulatory implementation challenges, including those related to approval of State programs and delegation of authority for permitting; and

(3) recommend rulemakings, Federal legislation, or other actions that should be taken to further evaluate and address such barriers.

SEC. 112. REGULATIONS FOR GEOLOGIC SEQUESTRATION SITES.

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

"SEC. 813. GEOLOGIC SEQUESTRATION SITES.

"(a) COORDINATED PROCESS.—The Administrator shall establish a coordinated approach to certifying and permitting geologic sequestration, taking into consideration all relevant statutory authorities. In establishing such approach, the Administrator shall—

"(1) take into account, and reduce redundancy with, the requirements of section 1421 of the Safe Drinking Water Act (42 U.S.C. 300h), as amended by section 112(b) of the American Clean Energy and Security Act of 2009, including the rulemaking for geologic sequestration wells described at 73 Fed. Reg. 43491–541 (July 25, 2008); and

"(2) to the extent practicable, reduce the burden on certified entities and implementing authorities.

"(b) REGULATIONS.—Not later than 2 years after the date of enactment of this title, the Administrator shall promulgate regulations to protect human health and the environment by minimizing the risk of escape to the atmosphere of carbon dioxide injected for purposes of geologic sequestration.

"(c) REQUIREMENTS.—The regulations under subsection (b) shall include—

"(1) a process to obtain certification for geologic sequestration under this section; and

"(2) requirements for—

"(A) monitoring, record keeping, and reporting for emissions associated with injection into, and escape from, geologic sequestration sites, taking into account any requirements or protocols developed under section 713;

"(B) public participation in the certification process that maximizes transparency;

"(C) the sharing of data between States, Indian tribes, and the Environmental Protection Agency; and

"(D) other elements or safeguards necessary to achieve the purpose set forth in subsection (b).

"(d) REPORT.—Not later than 2 years after the promulgation of regulations under subsection (b), and at 3-year intervals thereafter, the Administrator shall deliver to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on geologic sequestration in the United States, and, to the extent relevant, other countries in North America. Such report shall include—

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

"(2) an evaluation of the performance of relevant Federal environmental regulations and programs in ensuring environmentally protective geologic sequestration practices;

"(3) recommendations on how such programs and regulations should be improved or made more effective; and

"(4) other relevant information.".

(b) SAFE DRINKING WATER ACT STANDARDS.—Section 1421 of the Safe Drinking Water Act (42 U.S.C.

300h) is amended by inserting after subsection (d) the following:

"(e) CARBON DIOXIDE GEOLOGIC SEQUESTRATION WELLS.—

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Administrator shall promulgate regulations under subsection (a) for carbon dioxide geologic sequestration wells.

"(2) FINANCIAL RESPONSIBILITY.—The regulations referred to in paragraph (1) shall include requirements for maintaining evidence of financial responsibility, including financial responsibility for emergency and remedial response, well plugging, site closure, and post-injection site care. Financial responsibility may be established for carbon dioxide geologic sequestration wells in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, trust, standby trust, surety bond, letter of credit, qualification as a self-insurer, or any other method satisfactory to the Administrator.".

SEC. 113. STUDIES AND REPORTS.

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

(1) ESTABLISHMENT OF TASK FORCE.—As soon as practicable, but not later than 6 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall establish a task force to be composed of an equal number of subject matter experts, nongovernmental organizations with expertise in environmental policy, academic experts with expertise in environmental law, State officials with environmental expertise, representatives of State Attorneys General, and members of the private sector, to conduct a study of—

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

(B) the existing statutory framework, including Federal and State laws, that apply to harm and damage to the environment or public health at closed sites where carbon dioxide injection has been used for enhanced hydrocarbon recovery;

(C) the statutory framework, environmental health and safety considerations, implementation issues, and financial implications of potential models for Federal, State, or private sector assumption of liabilities and financial responsibilities with respect to closed geologic sequestration sites;

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

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

(2) REPORT.—Not later than 18 months after the date of enactment of this Act, the task force established under paragraph (1) shall submit to Congress a report describing the results of the study conducted under that paragraph including any consensus recommendations of the task force.

(b) ENVIRONMENTAL STATUTES.—

(1) STUDY.—The Administrator of the Environmental Protection Agency shall conduct a study examining how, and under what circumstances, the environmental statutes for which the Environmental

Protection Agency has responsibility would apply to carbon dioxide injection and geologic sequestration activities.

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

SEC. 114. CARBON CAPTURE AND SEQUESTRATION DEMONSTRATION AND EARLY DEPLOYMENT PROGRAM.

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

(1) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(2) DISTRIBUTION UTILITY.—The term ''distribution utility'' means an entity that distributes electricity directly to retail consumers under a legal, regulatory, or contractual obligation to do so.

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

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

(5) FOSSIL FUEL.—The term ''fossil fuel'' means coal, petroleum, natural gas or any derivative of coal, petroleum, or natural gas.

(6) CORPORATION.—The term ''Corporation'' means the Carbon Storage Research Corporation established in accordance with this section.

(7) QUALIFIED INDUSTRY ORGANIZATION.—The term ''qualified industry organization'' means the Edison Electric Institute, the American Public Power Association, the National Rural Electric Cooperative Association, a successor organization of such organizations, or a group of owners or operators of distribution utilities delivering fossil fuel-based electricity who collectively represent at least 20 percent of the volume of fossil fuel-based electricity delivered by distribution utilities to consumers in the United States.

(8) RETAIL CONSUMER.—The term ''retail consumer'' means an end-user of electricity.

(b) CARBON STORAGE RESEARCH CORPORATION.—

(1) ESTABLISHMENT.—

(A) REFERENDUM.—Qualified industry organizations may conduct, at their own expense, a referendum among the owners or operators of distribution utilities delivering fossil fuel-based

electricity for the creation of a Carbon Storage Research Corporation. Such referendum shall be conducted by an independent auditing firm agreed to by the qualified industry organizations. Voting rights in such referendum shall be based on the quantity of fossil fuel-based electricity delivered to consumers in the previous calendar year or other representative period as determined by the Secretary pursuant to subsection (f). Upon approval of those persons representing two-thirds of the total quantity of fossil fuel-based electricity delivered to retail consumers, the Corporation shall be established unless opposed by the State regulatory authorities pursuant to subparagraph (B). All distribution utilities voting in the referendum shall certify to the independent auditing firm the quantity of fossil fuel-based electricity represented by their vote.

(B) STATE REGULATORY AUTHORITIES.—Upon its own motion or the petition of a qualified industry organization, each State regulatory authority shall consider its support or opposition to the creation of the Corporation under subparagraph (A). State regulatory au-

thorities may notify the independent auditing firm referred to in subparagraph (A) of their views on the creation of the Corporation within 180 days after the date of enactment of this Act. If 40 percent or more of the State regulatory authorities submit to the independent auditing firm written notices of opposition, the Corporation shall not be established notwithstanding the approval of the qualified industry organizations as provided in subparagraph (A).

(2) TERMINATION.—The Corporation shall be authorized to collect assessments and conduct operations pursuant to this section for a 10-year period from the date 6 months after the date of enactment of this Act. After such 10-year period, the Corporation is no longer authorized to collect assessments and shall be dissolved on the date 15 years after such date of enactment, unless the period is extended by an Act of Congress.

(3) GOVERNANCE.—The Corporation shall operate as a division or affiliate of the Electric Power Research Institute (referred to in this section as ''EPRI'') and be managed by a Board of not more than 15 voting members responsible for its operations, including compliance with this section. EPRI,

in consultation with the Edison Electric Institute, the American Public Power Association and the National Rural Electric Cooperative Association shall appoint the Board members under clauses (i), (ii), and (iii) of subparagraph (A) from among candidates recommended by those organizations. At least a majority of the Board members appointed by EPRI shall be representatives of distribution utilities subject to assessments under subsection (d).

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

(i) Investor-owned utilities.

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

(iii) Rural electric cooperatives.

(iv) Fossil fuel producers.

(v) Non-profit environmental organizations.

(vi) Independent generators or wholesale power providers.

(vii) Consumer groups.

(B) NONVOTING MEMBERS.—The Board shall also include as additional non-voting Members the Secretary of Energy or his designee

and 2 representatives of State regulatory authorities as defined in section 3(17) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(17)), each designated by the National Association of State Regulatory Utility Commissioners from States that are not within the same transmission interconnection.

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

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

(6) STATUS OF CORPORATION.—The Corporation shall not be considered to be an agency, department, or instrumentality of the United States, and no officer or director or employee of the Corporation

shall be considered to be an officer or employee of the United States Government, for purposes of title 5 or title 31 of the United States Code, or for any other purpose, and no funds of the Corporation shall be treated as public money for purposes of chapter 33 of title 31, United States Code, or for any other purpose.

(c) FUNCTIONS AND ADMINISTRATION OF THE CORPORATION.—

(1) IN GENERAL.—The Corporation shall establish and administer a program to accelerate the commercial availability of carbon dioxide capture and storage technologies and methods, including technologies which capture and store, or capture and convert, carbon dioxide. Under such program competitively awarded grants, contracts, and financial assistance shall be provided and entered into with eligible entities. Except as provided in paragraph (8), the Corporation shall use all funds derived from assessments under subsection (d) to issue grants and contracts to eligible entities.

(2) PURPOSE.—The purposes of the grants, contracts, and assistance under this subsection shall be to support commercial-scale demonstrations of carbon capture or storage technology projects capa-

ble of advancing the technologies to commercial readiness. Such projects should encompass a range of different coal and other fossil fuel varieties, be geographically diverse, involve diverse storage media, and employ capture or storage, or capture and conversion, technologies potentially suitable either for new or for retrofit applications. The Corporation shall seek, to the extent feasible, to support at least 5 commercial-scale demonstration projects integrating carbon capture and sequestration or conversion technologies.

(3) ELIGIBLE ENTITIES.—Entities eligible for grants, contracts or assistance under this subsection may include distribution utilities, electric utilities and other private entities, academic institutions, national laboratories, Federal research agencies, State research agencies, non-profit organizations, or consortiums of 2 or more entities. Pilot-scale and similar small-scale projects are not eligible for support by the Corporation. Owners or developers of projects supported by the Corporation shall, where appropriate, share in the costs of such projects.

(4) GRANTS FOR EARLY MOVERS.—Fifty percent of the funds raised under this section shall be provided in the form of grants to electric utilities

that had, prior to the award of any grant under this section, committed resources to deploy a large scale electricity generation unit with integrated carbon capture and sequestration or conversion applied to a substantial portion of the unit's carbon dioxide emissions. Grant funds shall be provided to defray costs incurred by such electricity utilities for at least 5 such electricity generation units.

(5) ADMINISTRATION.—The members of the Board of Directors of the Corporation shall elect a Chairman and other officers as necessary, may establish committees and subcommittees of the Corporation, and shall adopt rules and bylaws for the conduct of business and the implementation of this section. The Board shall appoint an Executive Director and professional support staff who may be employees of the Electric Power Research Institute (EPRI). After consultation with the Technical Advisory Committee established under subsection (j), the Secretary, and the Director of the National Energy Technology Laboratory to obtain advice and recommendations on plans, programs, and project selection criteria, the Board shall establish priorities for grants, contracts, and assistance; publish requests for proposals for grants, contracts and assistance;

award grants, contracts and assistance competitively, on the basis of merit, after the establishment of procedures that provide for scientific peer review by the Technical Advisory Committee. The Board shall give preference to applications that reflect the best overall value and prospect for achieving the purposes of the section, such as those which demonstrate an integrated approach for capture and storage or capture and conversion technologies. The Board members shall not participate in making grants or awards to entities with whom they are affiliated.

(6) USES OF GRANTS, CONTRACTS, AND ASSISTANCE.—A grant, contract, or other assistance provided under this subsection may be used to purchase carbon dioxide when needed to conduct tests of carbon dioxide storage sites, in the case of established projects that are storing carbon dioxide emissions, or for other purposes consistent with the purposes of this section. The Corporation shall make publicly available at no cost information learned as a result of projects which it supports financially.

(7) INTELLECTUAL PROPERTY.—The Board shall establish policies regarding the ownership of intellectual property developed as a result of Corpora-

tion grants and other forms of technology support. Such policies shall encourage individual ingenuity and invention.

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

(9) PROGRAMS AND BUDGET.—Before August 1 each year, the Corporation, after consulting with the Technical Advisory Committee and the Secretary and the Director of the Department's National Energy Technology Laboratory and other interested parties to obtain advice and recommendations, shall publish for public review and comment its proposed plans, programs, project selection criteria, and projects to be funded by the Corporation for the next calendar year. The Corporation shall also publish for public review and comment a budget plan for the next calendar year, including the probable costs of all programs, projects, and contracts and a recommended rate of assessment sufficient to cover such costs. The Secretary may recommend program and activities the Secretary considers appropriate.

The Corporation shall include in the first publication it issues under this paragraph a strategic plan or roadmap for the achievement of the purposes of the Corporation, as set forth in paragraph (2).

(10) RECORDS; AUDITS.—The Corporation shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the Corporation and make public such information. The books of the Corporation shall be audited by a certified public accountant at least once each fiscal year and at such other times as the Corporation may designate. Copies of each audit shall be provided to the Congress, all Corporation board members, all qualified industry organizations, each State regulatory authority and, upon request, to other members of the industry. If the audit determines that the Corporation's practices fail to meet generally accepted accounting principles the assessment collection authority of the Corporation under subsection (d) shall be suspended until a certified public accountant renders a subsequent opinion that the failure has been corrected. The Corporation shall make its books and records available for review by the Secretary or the Comptroller General of the United States.

(11) PUBLIC ACCESS.—The Corporation Board's meetings shall be open to the public and shall occur after at least 30 days advance public notice. Meetings of the Board of Directors may be closed to the public where the agenda of such meetings includes only confidential matters pertaining to project selection, the award of grants or contracts, personnel matter, or the receipt of legal advice. The minutes of all meetings of the Corporation shall be made available to and readily accessible by the public.

(12) ANNUAL REPORT.—Each year the Corporation shall prepare and make publicly available a report which includes an identification and description of all programs and projects undertaken by the Corporation during the previous year. The report shall also detail the allocation or planned allocation of Corporation resources for each such program and project. The Corporation shall provide its annual report to the Congress, the Secretary, each State regulatory authority, and upon request to the public. The Secretary shall, not less than 60 days after receiving such report, provide to the President and Congress a report assessing the progress of the Corporation in meeting the objectives of this section.

(d) ASSESSMENTS.—

(1) AMOUNT.—(A) In all calendar years following its establishment, the Corporation shall collect an assessment on distribution utilities for all fossil fuel-based electricity delivered directly to retail consumers (as determined under subsection (f)). The assessments shall reflect the relative carbon dioxide emission rates of different fossil fuel-based electricity, and initially shall be not less than the following amounts for coal, natural gas, and oil:

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

(B) The Corporation is authorized to adjust the assessments on fossil fuel-based electricity to reflect changes in the expected quantities of such electricity from different fuel types, such that the assessments generate not less than $1.0 billion and not more than $1.1 billion annually. The Corporation is authorized to supplement assessments through additional financial commitments.

(2) INVESTMENT OF FUNDS.—Pending disbursement pursuant to a program, plan, or project, the Corporation may invest funds collected through assessments under this subsection, and any other

funds received by the Corporation, only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

(3) REVERSION OF UNUSED FUNDS.—If the Corporation does not disburse, dedicate or assign 75 percent or more of the available proceeds of the assessed fees in any calendar year 7 or more years following its establishment, due to an absence of qualified projects or similar circumstances, it shall reimburse the remaining undedicated or unassigned balance of such fees, less administrative and other expenses authorized by this section, to the distribution utilities upon which such fees were assessed, in proportion to their collected assessments.

(e) ERCOT.—

(1) ASSESSMENT, COLLECTION, AND REMITTANCE.—(A) Notwithstanding any other provision of this section, within ERCOT, the assessment provided for in subsection (d) shall be—

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

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

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

(B) The assessment amounts referred to in subparagraph (A) shall be—

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

(ii) take into account the number of renewable energy credits retired by the load-serving entities represented by a qualified scheduling entity within the prior calendar year.

(2) ADMINISTRATION EXPENSES.—Up to 1 percent of the funds collected in any fiscal year by ERCOT under the provisions of this subsection may be used for the administrative expenses incurred in

the determination, collection and remittance of the assessments to the Corporation.

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

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

(A) The term ''ERCOT'' means the Electric Reliability Council of Texas.

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

(C) The term ''qualified scheduling entities'' has the meaning adopted by ERCOT Protocols and in effect on the date of enactment of this Act.

(D) The term ''renewable energy credit'' has the meaning as promulgated and adopted by the Public Utility Commission of Texas pursuant to section 39.904(b) of the Public Utility Regulatory Act of 1999, and in effect on the date of enactment of this Act.

(f) DETERMINATION OF FOSSIL FUEL-BASED ELECTRICITY DELIVERIES.—

(1) FINDINGS.—The Congress finds that:

(A) The assessments under subsection (d) are to be collected based on the amount of fossil fuel-based electricity delivered by each distribution utility.

(B) Since many distribution utilities purchase all or part of their retail consumer's electricity needs from other entities, it may not be practical to determine the precise fuel mix for the power sold by each individual distribution utility.

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

(2) DOE PROPOSED RULE.—The Secretary, acting in close consultation with the Energy Information Administration, shall issue for notice and comment a proposed rule to determine the level of fossil fuel electricity delivered to retail customers by each distribution utility in the United States during the most recent calendar year or other period determined to be most appropriate. Such proposed rule shall balance the need to be efficient, reasonably precise, and timely, taking into account the nature and

cost of data currently available and the nature of markets and regulation in effect in various regions of the country. Different methodologies may be applied in different regions if appropriate to obtain the best balance of such factors.

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

(4) ANNUAL DETERMINATIONS.—Pursuant to the final rule issued under paragraph (3), the Secretary shall make annual determinations of the amounts and types for each such utility and publish such determinations in the Federal Register. Such

determinations shall be used to conduct the referendum under subsection (b) and by the Corporation in applying any assessment under this subsection.

(5) REHEARING AND JUDICIAL REVIEW.—The owner or operator of any distribution utility that believes that the Secretary has misapplied the methodology in the final rule in determining the amount and types of fossil fuel electricity delivered by such distribution utility may seek rehearing of such determination within 30 days of publication of the determination in the Federal Register. The Secretary shall decide such rehearing petitions within 30 days. The Secretary's determinations following rehearing shall be final and subject to judicial review in the United States Court of Appeals for the District of Columbia.

(g) COMPLIANCE WITH CORPORATION ASSESSMENTS.—The Corporation may bring an action in the appropriate court of the United States to compel compliance with an assessment levied by the Corporation under this section. A successful action for compliance under this subsection may also require payment by the defendant of the costs incurred by the Corporation in bringing such action.

(h) MIDCOURSE REVIEW.—Not later than 5 years following establishment of the Corporation, the Comptroller General of the United States shall prepare an analysis, and report to Congress, assessing the Corporation's activities, including project selection and methods of disbursement of assessed fees, impacts on the prospects for commercialization of carbon capture and storage technologies, adequacy of funding, and administration of funds. The report shall also make such recommendations as may be appropriate in each of these areas. The Corporation shall reimburse the Government Accountability Office for the costs associated with performing this midcourse review.

(i) RECOVERY OF COSTS.—

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

(2) RATEPAYER REBATES.—Regulatory authorities that approve cost recovery pursuant to paragraph (1) may order rebates to ratepayers to the extent that distribution utilities are reimbursed

undedicated or unassigned balances pursuant to subsection (d)(3).

(j) TECHNICAL ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—There is established an advisory committee, to be known as the ''Technical Advisory Committee''.

(2) MEMBERSHIP.—The Technical Advisory Committee shall be comprised of not less than 7 members appointed by the Board from among academic institutions, national laboratories, independent research institutions, and other qualified institutions. No member of the Committee shall be affiliated with EPRI or with any organization having members serving on the Board. At least one member of the Committee shall be appointed from among officers or employees of the Department of Energy recommended to the Board by the Secretary of Energy.

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

(4) COMPENSATION.—The Board shall provide compensation to members of the Technical Advisory

Committee for travel and other incidental expenses and such other compensation as the Board determines to be necessary.

(5) PURPOSE.—The Technical Advisory Committee shall provide independent assessments and technical evaluations, as well as make non-binding recommendations to the Board, concerning Corporation activities, including but not limited to the following:

(A) Reviewing and evaluating the Corporation's plans and budgets described in subsection (c)(8), as well as any other appropriate areas, which could include approaches to prioritizing technologies, appropriateness of engineering techniques, monitoring and verification technologies for storage, geological site selection, and cost control measures.

(B) Making annual non-binding recommendations to the Board concerning any of the matters referred to in subparagraph (A), as well as what types of investments, scientific research, or engineering practices would best further to the goals of the Corporation.

(6) PUBLIC AVAILABILITY.—All reports, evaluations, and other materials of the Technical Advisory

Committee shall be made available to the public by the Board, without charge, at time of receipt by the Board.

(k) LOBBYING RESTRICTIONS.—No funds collected by the Corporation shall be used in any manner for influencing legislation or elections, except that the Corporation may recommend to the Secretary and the Congress changes in this section or other statutes that would further the purposes of this section.

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

SEC. 115. COMMERCIAL DEPLOYMENT OF CARBON CAPTURE AND SEQUESTRATION TECHNOLOGIES.

(a) REGULATIONS.—Not later than 2 years after the date of enactment of this title, the Administrator shall promulgate regulations providing for the distribution of emission allowances allocated pursuant to section 782(f), pursuant to the requirements of this section, to support the commercial deployment of carbon capture and sequestration technologies in both electric power generation and industrial operations.

(b) ELIGIBILITY CRITERIA.—To be eligible to receive emission allowances under this section, the owner of a project must—

(1) implement carbon capture and sequestration technology—

(A) at an electric generating unit that—

(i) has a nameplate capacity of 200 megawatts or more;

(ii) derives at least 50 percent of its annual fuel input from coal, petroleum coke, or any combination of these 2 fuels; and

(iii) upon implementation of capture and sequestration technology, will capture and permanently sequester at least 50 percent of the carbon dioxide, measured on an annual basis, that would be emitted by the unit absent capture and sequestration technology; or

(B) at an industrial source that—

(i) injects for sequestration not less than 50,000 tons per year of carbon dioxide;

(ii) upon implementation, will capture and permanently sequester at least 50 per-

cent of the carbon dioxide produced by the source, measured on an annual basis, that would be emitted in the absence of capture and sequestration technology; and

(iii) does not produce a liquid transportation fuel from a solid fossil-based feedstock;

(2) permanently sequester carbon dioxide at a site that meets all applicable permitting and certification requirements for geologic sequestration, or, pursuant to such requirements as the Administrator may prescribe by regulation, convert captured carbon dioxide to a stable form that will safely and permanently sequester such carbon dioxide;

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

(4) be located in the United States.

(c) PHASE I DISTRIBUTION TO ELECTRIC GENERATING UNITS.—

(1) APPLICATION.—This subsection shall apply only to projects at the first 6 gigawatts of electric generating units, measured in cumulative generating capacity of such units.

(2) DISTRIBUTION.—The Administrator shall distribute emission allowances allocated under sec-

tion 782(a)(f) to each eligible project at an electric generating unit in a quantity equal to the quotient obtained by dividing—

(A) the product obtained by multiplying—

(i) the number of metric tons of carbon dioxide emissions avoided through capture and sequestration of emissions by the project, as determined pursuant to such methodology as the Administrator shall prescribe by regulation; and

(ii) a bonus allowance value, pursuant to paragraph (3); by

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

(3) BONUS ALLOWANCE VALUES.—

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

(B) The Administrator shall by regulation establish a bonus allowance value for each rate of lower capture and sequestration achieved by a generating unit, from a minimum of $50 per ton for a 50 percent rate and varying directly

with increasing rates of capture and sequestration up to $90 per ton for an 85 percent rate.

(C) For a generating unit that achieves the capture and sequestration of at least 50 percent of the carbon dioxide that otherwise would be emitted by such unit by not later than January 1, 2017, the otherwise applicable bonus allowance value under this paragraph shall be increased by $10, provided that the owner of such unit notifies the Administrator of its intent to achieve such rate of capture and sequestration by not later than January 1, 2012.

(D) For a carbon capture and sequestration project sequestering in a geological formation for purposes of enhanced hydrocarbon recovery, the Administrator shall, by regulation, reduce the applicable bonus allowance value under this paragraph to reflect the lower net cost of the project when compared to sequestration into geological formations solely for purposes of sequestration.

(E) All monetary values in this section shall be adjusted for inflation.

(d) PHASE II DISTRIBUTION TO ELECTRIC GENERATING UNITS.—

(1) APPLICATION.—This subsection shall apply only to the distribution of emission allowances to carbon capture and sequestration projects at electric generating units after the capacity threshold identified in subsection (c)(1) is reached.

(2) REGULATIONS.—Not later than 2 years prior to the date on which the capacity threshold identified in subsection (c)(1) is projected to be reached, the Administrator shall promulgate regulations to govern the distribution of emission allowances to eligible projects under this subsection.

(3) REVERSE AUCTIONS.—

(A) IN GENERAL.—Except as provided in paragraph (4), the regulations promulgated under paragraph (2) shall provide for the distribution of emission allowances to eligible projects under this subsection through reverse auctions, which shall be held no less frequently than once each calendar year. The Administrator may establish a separate auction for each of no more than 5 different project categories, defined on the basis of coal type, capture technology, geological formation type, new unit versus retrofit application, such other factors as the Administrator may prescribe, or any com-

bination thereof. The Administrator may establish appropriate minimum rates of capture and sequestration in implementing this paragraph.

(B) AUCTION PROCESS.—At each reverse auction—

(i) the Administrator shall solicit bids from eligible entities;

(ii) eligible entities participating in the auction shall submit a bid including the desired level of carbon dioxide sequestration incentive per ton and the estimated quantity of carbon dioxide that the project will permanently sequester over 10 years; and

(iii) the Administrator shall select bids, within each auction, for the sequestration amount submitted, beginning with the eligible entity submitting the bid for the lowest level of sequestration incentive on a per ton basis and meeting such other requirements as the Administrator may specify, until the amount of funds available for the reverse auction is committed.

(C) FORM OF DISTRIBUTION.—The Administrator shall provide deployment incentives

to eligible entities selected through a reverse auction under this paragraph pursuant to a formula equivalent to that described in subsection (c)(2), except that the incentive level that is bid by the entity shall be substituted for the bonus allowance value.

(4) ALTERNATIVE DISTRIBUTION METHOD.—

(A) IN GENERAL.—If the Administrator determines that reverse auctions would not provide for efficient and cost-effective commercial deployment of carbon capture and sequestration technologies, the Administrator may instead, through regulations promulgated under paragraph (2) or (5), prescribe a schedule for the award of bonus allowances to eligible projects under this subsection, in accord with the requirements of this paragraph.

(B) MULTIPLE TRANCHES.—The Administrator shall divide emission allowances available for distribution to eligible projects into a series of tranches, each supporting the deployment of a specified quantity of cumulative electric generating capacity utilizing carbon capture and sequestration technology, each of which shall not be greater than 6 gigawatts.

(C) METHOD OF DISTRIBUTION.—The Administrator shall distribute emission allowances within each tranche, on a first-come, first-served basis—

(i) based on the date of full-scale operation of capture and sequestration technology; and

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

(D) REQUIREMENTS.—For each tranche established pursuant to subparagraph (A), the Administrator shall establish a schedule for distributing emission allowances that—

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

(ii) for each capture and sequestration rate, establishes a bonus allowance value

that is lower than that established for such rate in the previous tranche (or, in the case of the first tranche, than that established for such rate under subsection (c)(1)); and

(iii) may establish different bonus allowance levels for no more than 5 different project categories, defined by coal type, capture technology, geological formation type, new unit versus retrofit application, such other factors as the Administrator may prescribe, or any combination thereof.

(E) CRITERIA FOR ESTABLISHING BONUS ALLOWANCE VALUES.—In setting bonus allowance values under this paragraph, the Administrator shall seek to cover no more than the reasonable incremental capital and operating costs of a project that are attributable to implementation of carbon capture, transportation, and sequestration technologies, taking into account—

(i) the reduced cost of compliance with section 722 of this Act;

(ii) the reduced cost associated with sequestering in a geological formation for

purposes of enhanced hydrocarbon recovery when compared to sequestration into geological formations solely for purposes of sequestration;

(iii) the relevant factors defining the project category; and

(iv) such other factors as the Administrator determines are appropriate.

(5) REVISION OF REGULATIONS.—The Administrator shall review, and as appropriate revise, the applicable regulations under this subsection no less frequently than every 8 years.

(e) LIMITS FOR CERTAIN ELECTRIC GENERATING UNITS.—

(1) DEFINITIONS.—For purposes of this subsection, the terms ''covered EGU'' and ''initially permitted'' shall have the meaning given those terms in section 812 of this Act.

(2) COVERED EGUS INITIALLY PERMITTED FROM 2009 THROUGH 2015.—For a covered EGU that is initially permitted on or after January 1, 2009, and before January 1, 2015, the Administrator shall reduce the quantity of emission allowances that such covered EGU would otherwise be eli-

gible to receive under this section by the product of—

(A) 20 percent; and

(B) the number of years between—

(i) the earlier of January 1, 2020, or the date that is 5 years after the commencement of operation of such covered EGU; and

(ii) the first year that such covered EGU achieves (and thereafter maintains) the capture and permanent sequestration of at least 50 percent of the carbon dioxide, measured on an annual basis, that such covered EGU would emit in the absence of carbon capture and sequestration technology.

(3) COVERED EGUS INITIALLY PERMITTED FROM 2015 THROUGH 2020.—A covered EGU that is initially permitted on or after January 1, 2015, and before January 1, 2020, shall be ineligible to receive emission allowances pursuant to this section if such unit, upon commencement of operations or thereafter, does not achieve and maintain the capture and permanent sequestration of at least 50 percent of the carbon dioxide, measured on an annual basis,

that such covered EGU would emit in the absence of capture and sequestration technology.

(f) INDUSTRIAL SOURCES.—

(1) ALLOWANCES.—The Administrator may distribute not more than 15 percent of the allowances allocated under section 782(a)(f) for any vintage year to eligible industrial sources to support the commercial-scale deployment of carbon capture and sequestration technologies at such sources.

(2) DISTRIBUTION.—The Administrator shall, by regulation, prescribe requirements for the distribution of emission allowances to industrial sources under this subsection, based on a bonus allowance formula that awards allowances to qualifying projects on the basis of tons of carbon dioxide captured and permanently sequestered. The Administrator may provide for the distribution of emission allowances pursuant to—

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

(B) an incentive schedule, similar to that described under subsection (d)(4), which shall ensure that incentives are set so as to satisfy

the requirement described in subsection (d)(4)(E).

(3) REVISION OF REGULATIONS.—The Administrator shall review, and as appropriate revise, the applicable regulations under this subsection no less frequently than every 8 years.

(g) LIMITATIONS.—A qualifying project may receive annual emission allowances under this section only for the first 10 years of operation. No greater than 72 gigawatts of total cumulative generating capacity (including industrial applications, measured by such equivalent metric as the Administrator may designate) may receive emission allowances under this section. Upon reaching the limit described in the preceding sentence, the Administrator shall auction, pursuant to section 791, any emission allowances that are allocated for carbon capture and sequestration deployment under section 782(a)(f) and are not yet obligated under this section.

(h) EXHAUSTION OF ACCOUNT AND ANNUAL ROLLOVER OF SURPLUS ALLOWANCES.—

(1) In distributing bonus allowances under this subsection, the Administrator shall ensure that qualifying projects receiving allowances receive distributions for 10 years.

(2) If the Administrator determines that the allowances allocated under section 782(a)(f) with a vintage year that matches the year of distribution will be exhausted once the estimated full 10-year distributions will be provided to current eligible participants, the Administrator shall provide to new eligible projects allowances from vintage years after the year of the distribution.

(i) DAVIS-BACON COMPLIANCE.—All laborers and mechanics employed on projects funded directly by or assisted in whole or in part by this section through the use of bonus allowances shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV, chapter 31, part A of subtitle II of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

SEC. 116. PERFORMANCE STANDARDS FOR COAL-FUELED POWER PLANTS.

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

"SEC. 812. PERFORMANCE STANDARDS FOR NEW COAL-FIRED POWER PLANTS.

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

"(1) COVERED EGU.—The term 'covered EGU' means a utility unit that is required to have a permit under section 503(a) and is authorized under state or federal law to derive at least 30 percent of its annual heat input from coal, petroleum coke, or any combination of these fuels.

"(2) INITIALLY PERMITTED.—The term 'initially permitted' means that the owner or operator has received a Clean Air Act preconstruction approval or permit, for the covered EGU as a new (not a modified) source, but administrative review or appeal of such approval or permit has not been exhausted. A subsequent modification of any such approval or permits, ongoing administrative or court review, appeals, or challenges, or the existence or tolling of any time to pursue further review, appeals, or challenges shall not affect the date on which a

1 covered EGU is considered to be initially permitted
2 under this paragraph.
3 "(b) STANDARDS.—(1) A covered EGU that is ini-
4 tially permitted on or after January 1, 2020, shall achieve
5 an emission limit that is a 65 percent reduction in emis-
6 sions of the carbon dioxide produced by the unit, as
7 measured on an annual basis, or meet such more stringent
8 standard as the Administrator may establish pursuant to
9 subsection (c). In determining compliance with this sub-
10 section, the Administrator shall assume an energy penalty
11 of the carbon dioxide capture system of no greater than
12 15 percent.
13 "(2) A covered EGU that is initially permitted after
14 January 1, 2009, and before January 1, 2020, shall, by
15 the applicable compliance date established under this
16 paragraph, shall achieve an emission limit that is a 50
17 percent reduction in emissions of the carbon dioxide pro-
18 duced by the unit, as measured on an annual basis. In
19 determining compliance with this subsection, the Adminis-
20 trator shall assume an energy penalty of the carbon diox-
21 ide capture system of no greater than 15 percent. Compli-
22 ance with the requirement set forth in this paragraph shall
23 be required by the earliest of the following:
24 "(A) Four years after the date the Adminis-
25 trator issues a determination that there are in com-

mercial operation in the United States electric generating units equipped with carbon capture and sequestration technology that, in the aggregate—

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

"(I) at least 3 gigawatts must be electric generating units; and

"(II) up to 1 gigawatt may be industrial applications, for which capture and sequestration of 3 million tons of carbon dioxide per year on an aggregate annualized basis shall be considered equivalent to 1 gigawatt;

"(ii) include at least 2 electric generating units, each with a nameplate generating capacity of 250 megawatts or greater, that inject carbon dioxide into geologic formations other than oil and gas fields; and

"(iii) are capturing and sequestering in the aggregate at least 12 million tons of carbon dioxide per year, calculated on an aggregate annualized basis.

"(B) January 1, 2025.

"(3) If the deadline for compliance with paragraph (2) is January 1, 2025, the Administrator may extend the

deadline for compliance by a covered EGU by up to 18 months if the Administrator makes a determination, based on a showing by the owner or operator of the unit, that it will be technically infeasible for the unit to meet the standard by the deadline. The owner or operator must submit a request for such an extension by no later than January 1, 2022, and the Administrator shall provide for public notice and comment on the extension request.

"(c) REVIEW AND REVISION OF STANDARDS.—Not later than 2025 and at 5-year intervals thereafter, the Administrator shall review the standards for new covered EGUs under this section and shall, by rule, reduce the maximum carbon dioxide emission rate for new covered EGUs to a rate which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.".

Subtitle C—Clean Transportation

SEC. 121. ELECTRIC VEHICLE INFRASTRUCTURE.

(a) AMENDMENT OF PURPA.—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:

"(20) PLUG-IN ELECTRIC DRIVE VEHICLE INFRASTRUCTURE.—

"(A) UTILITY PLAN FOR INFRASTRUCTURE.—Each electric utility shall develop a plan to support the use of plug-in electric drive vehicles, including heavy-duty hybrid electric vehicles. The plan may provide for deployment of electrical charging stations in public or private locations, including street parking, parking garages, parking lots, homes, gas stations, and highway rest stops. Any such plan may also include—

"(i) battery exchange, fast charging infrastructure and other services;

"(ii) triggers for infrastructure deployment based upon market penetration of plug-in electric drive vehicles; and

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

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

"(B) SUPPORT REQUIREMENTS.—Each State regulatory authority (in the case of each electric utility for which it has ratemaking authority) and each utility (in the case of a nonregulated utility) shall—

"(i) require that charging infrastructure deployed is interoperable with products of all auto manufacturers to the extent possible; and

"(ii) consider adopting minimum requirements for deployment of electrical charging infrastructure and other appropriate requirements necessary to support the use of plug-in electric drive vehicles.

"(C) COST RECOVERY.—Each State regulatory authority (in the case of each electric utility for which it has ratemaking authority) and each utility (in the case of a nonregulated utility) shall consider whether, and to what extent, to allow cost recovery for plans and implementation of plans.

"(D) SMART GRID INTEGRATION.—The State regulatory authority (in the case of each electric utility for which it has ratemaking authority) and each utility (in the case of a non-

regulated utility) shall, in accordance with regulations issued by the Federal Energy Regulatory Commission pursuant to section 1305(d) of the Energy Independence and Security Act of 2007—

"(i) establish any appropriate protocols and standards for integrating plug-in electric drive vehicles into an electrical distribution system, including Smart Grid systems and devices as described in title XIII of the Energy Independence and Security Act of 2007;

"(ii) include, to the extent feasible, the ability for each plug-in electric drive vehicle to be identified individually and to be associated with its owner's electric utility account, regardless of the location that the vehicle is plugged in, for purposes of appropriate billing for any electricity required to charge the vehicle's batteries as well as any crediting for electricity provided to the electric utility from the vehicle's batteries; and

"(iii) review the determination made in response to section 1252 of the Energy

Policy Act of 2005 in light of this section, including whether time-of-use pricing should be employed to enable the use of plug-in electric drive vehicles to contribute to meeting peak-load and ancillary service power needs.''.

(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 the following at the end thereof:

''(7)(A) Not later than 3 years after the date of 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 (20) of section 111(d).

''(B) Not later than 4 years after the date of 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, re-

ferred to in section 111 with respect to the standard established by paragraph (20) 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 the following at the end: ''In the case of the standards established by paragraph (20) 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.''.

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

SEC. 122. LARGE-SCALE VEHICLE ELECTRIFICATION PROGRAM.

(a) DEPLOYMENT PROGRAM.—The Secretary of Energy shall establish a program to deploy and integrate plug-in electric drive vehicles into the electricity grid in multiple regions. In carrying out the program, the Secretary may provide financial assistance described under subsection (d), consistent with the goals under subsection (b). The Secretary shall select regions based upon applications for assistance received pursuant to subsection (c).

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

(1) to demonstrate the viability of a vehicle-based transportation system that is not overly dependent on petroleum as a fuel and contributes to lower carbon emissions than a system based on conventional vehicles;

(2) to facilitate the integration of advanced vehicle technologies into electricity distribution areas to improve system performance and reliability;

(3) to demonstrate the potential benefits of coordinated investments in vehicle electrification on personal mobility and a regional grid;

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

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

(c) APPLICATIONS.—Any State, Indian tribe, or local government (or group of State, Indian tribe, or local governments) may apply to the Secretary of Energy for financial assistance in furthering the regional deployment and integration into the electricity grid of plug-in electric drive vehicles. Such applications may be jointly sponsored by electric utilities, automobile manufacturers, technology

1 providers, car sharing companies or organizations, or
2 other persons or entities.

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

7 (1) Assisting persons located in the regional de-
8 ployment area, including fleet owners, in the pur-
9 chase of new plug-in electric drive vehicles by offset-
10 ting in whole or in part the incremental cost of such
11 vehicles above the cost of comparable conventionally
12 fueled vehicles.

13 (2) Supporting the use of plug-in electric drive
14 vehicles by funding projects for the deployment of
15 any of the following:

16 (A) Electrical charging infrastructure for
17 plug-in electric drive vehicles, including battery
18 exchange, fast charging infrastructure, and
19 other services, in public or private locations, in-
20 cluding street parking, parking garages, park-
21 ing lots, homes, gas stations, and highway rest
22 stops.

23 (B) Smart Grid equipment and infrastruc-
24 ture, as described in title XIII of the Energy
25 Independence and Security Act of 2007, to fa-

cilitate the charging and integration of plug-in electric drive vehicles.

(3) Such other projects as the Secretary determines appropriate to support the large-scale deployment of plug-in electric drive vehicles in regional deployment areas.

(e) PROGRAM REQUIREMENTS.—The Secretary, in consultation with the Administrator and the Secretary of Transportation, shall determine design elements and requirements of the program established pursuant to subsection (a), including—

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

(2) criteria for evaluating applications submitted under subsection (c), including the anticipated ability to promote deployment and market penetration of vehicles that are less dependent on petroleum as fuel source; and

(3) reporting requirements for entities that receive financial assistance under this section, including a comprehensive set of performance data characterizing the results of the deployment program.

(f) INFORMATION CLEARINGHOUSE.—The Secretary shall, as part of the program established pursuant to subsection (a), collect and make available to the public infor-

mation regarding the cost, performance, and other technical data regarding the deployment and integration of plug-in electric drive vehicles.

(g) AUTHORIZATION.—There are authorized to be appropriated to carry out this section such sums as may be necessary.

SEC. 123. PLUG-IN ELECTRIC DRIVE VEHICLE MANUFACTURING.

(a) VEHICLE MANUFACTURING ASSISTANCE PROGRAM.—The Secretary of Energy shall establish a program to provide financial assistance to automobile manufacturers to facilitate the manufacture of plug-in electric drive vehicles, as defined in section 131(a)(5) of the Energy Independence and Security Act of 2007, that are developed and produced in the United States.

(b) FINANCIAL ASSISTANCE.—The Secretary of Energy may provide financial assistance to an automobile manufacturer under the program established pursuant to subsection (a) for—

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

(2) if appropriate, the purchase of domestically produced vehicle batteries to be used in the manu-

facture of vehicles manufactured pursuant to paragraph (1).

(c) REQUIREMENTS.—The Secretary may provide financial assistance under subsection (b) to an automobile manufacturer if—

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

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

(d) COORDINATION WITH REGIONAL DEPLOYMENT.—The Secretary may provide financial assistance under subsection (b) in conjunction with the award of financial assistance under the large scale vehicle electrification program established pursuant to section 122 of this Act.

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

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

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

(3) reporting requirements for automobile manufacturers that receive financial assistance under this section.

(f) CRITERIA.—In selecting recipients of financial assistance from among applicant automobile manufacturers, the Secretary shall give preference to proposals that—

(1) are most likely to be successful; and

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

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

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

SEC. 124. INVESTMENT IN CLEAN VEHICLES.

(a) DEFINITIONS.—In this section:

(1) ADVANCED TECHNOLOGY VEHICLES AND QUALIFYING COMPONENTS.—The terms ''advanced technology vehicles'' and ''qualifying components'' shall have the definition of such terms in section 136 of the Energy Independence and Security Act of

2007, except that for purposes of this section, the average base year as described section 136(a)(1)(C) shall be the following:

(A) in each of the years 2012 through 2016, the average base year shall be model year 2009; and

(B) in 2017, the Administrator shall, notwithstanding section 136(a)(1)(C), determine an appropriate baseline based on technological and economic feasibility.

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

(b) DISTRIBUTION OF ALLOWANCES.—The Administrator shall, in accordance with this section, distribute allowances allocated pursuant to section 782(i) of the Clean Air Act not later than October 31 of 2012 and each calendar year thereafter through 2025.

(c) PLUG-IN ELECTRIC DRIVE VEHICLE MANUFACTURING AND DEPLOYMENT.—

(1) IN GENERAL.—The Administrator shall, at the direction of the Secretary of Energy, provide allowances allocated pursuant to section 【782(i)】 to

applicants, joint sponsors and automobile manufacturers pursuant to sections 122 and 123 of this Act.

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

(A) one-eighth of the portion shall be available to carry out section 122; and

(B) one-eighth of the portion shall be available to carry out section 123.

(3) PREFERENCE.—In directing the provision of allowances under this subsection, the Secretary shall give preference to applications under section 122(c) that are jointly sponsored by one or more automobile manufacturers.

(4) MULTI-YEAR COMMITMENTS.—The Administrator shall commit to providing allowances to an applicant, joint sponsor or automobile manufacturer for up to five consecutive years if—

(A) an application under section 122 or 123 of this Act requests a multi-year commitment;

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

(C) the Administrator confirms to the Secretary that allowances will be available for a multi-year commitment;

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

(E) the Secretary of Energy directs the Administrator to make a multi-year commitment.

(5) INSUFFICIENT APPLICATIONS.—If, in any year, allowances available under paragraph (2) cannot be provided because of insufficient numbers of submitted applications that meet the criteria for support established by the Secretary of Energy under sections 122 or 123 of this Act, the remaining allowances shall be distributed according to subsection (d).

(d) ADVANCED TECHNOLOGY VEHICLES.—

(1) IN GENERAL.—The Administrator shall, at the direction of the Secretary of Energy, provide any allowances allocated pursuant to section 782(i) of

the Clean Air Act that are not provided under subsection (c) to automobile manufacturers and component suppliers to pay not more than 30 percent of the cost of—

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

(i) qualifying advanced technology vehicles; or

(ii) qualifying components; and

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

(2) PREFERENCE.—In directing the provision of allowances under this subsection during the years 2012 through 2017, the Secretary shall give preference to applications for projects that save the maximum number of gallons per vehicle.

Subtitle D—State Energy and Environment Development Accounts

SEC. 131. ESTABLISHMENT OF SEED ACCOUNTS.

(a) DEFINITIONS.—In this section:

(1) SEED ACCOUNT.—The term ''SEED Account'' means a State Energy and Environment De-

velopment Account established pursuant to this section.

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

(b) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program under which a State, through its State Energy Office or other State agency designated by the State, may create a State Energy and Environment Development Account.

(c) PURPOSE.—The purpose of each SEED Account is to serve as a common State-level repository for managing and accounting for emission allowances provided to States designated for renewable energy and energy efficiency purposes.

(d) REGULATIONS.—Not later than one year after the date of enactment of this Act, the Administrator shall promulgate regulations to carry out this section, including regulations—

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

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

(3) to indicate the emission allowances that may be deposited in a State's SEED Account pending distribution or use;

(4) to indicate the programs and objectives authorized by Federal law for which emission allowances in a SEED Account may be distributed or used;

(5) to identify the forms of financial assistance and incentives that States may provide through distribution or use of SEED Accounts; and

(6) to prescribe the form and content of reports that the States are required to submit under this section on the use of SEED Accounts.

(e) OPERATION.—

(1) DEPOSITS.—

(A) IN GENERAL.—Except as required pursuant to subparagraph (B), a State shall deposit into its SEED Account all allowances received from the Administrator for renewable energy and energy efficiency purposes, pursuant to this Act.

(B) A State may create a financial account associated with its SEED Account to deposit, retain, and manage any proceeds of any sale of any allowance provided pursuant to this Act

pending expenditure or disbursement of those proceeds for purposes permitted under this section. The funds in such an account shall not be commingled with other funds not derived from the sale of allowances provided to the State; however, loans made by the State from such funds pursuant to paragraph (2)(C)(i) may be repaid into such a financial account, including any interest charged.

(2) WITHDRAWALS.—

(A) IN GENERAL.—All allowances distributed or withdrawn from SEED Accounts, including the proceeds of any sale or such allowances, shall support renewable energy and energy efficiency programs authorized or approved by the Federal Government.

(B) DEDICATED ALLOWANCES.—Allowances deposited in a SEED Account that are required by law to be used for specific purposes for a specified period shall be used according to those requirements during that period.

(C) UNDEDICATED ALLOWANCES.—To the extent that allowances deposited in a SEED Account are not required by law to be used for specific purposes for a specified period as de-

scribed in subparagraph (B), such allowances or the proceeds of their sale may be used for any of the following purposes:

(i) LOANS.—Loans of allowances, or the proceeds from the sale of allowances, may be provided, interest on commercial loans may be subsidized at an interest rate as low as zero, and other credit support may be provided to support programs authorized to use SEED Account allowance value or any other renewable energy or energy efficiency purpose authorized or approved by the Federal Government.

(ii) GRANTS.—Grants of allowances or the proceeds of their sale may be provided to support programs authorized to use SEED Account allowance value or any other renewable energy or energy efficiency purpose authorized or approved by the Federal Government.

(iii) OTHER FORMS OF SUPPORT.—Allowances or the proceeds of the sale of allowances may be provided for other forms of support for programs authorized to use SEED Account allowance value or any

other renewable energy or energy efficiency purpose authorized or approved by the Federal Government.

(iv) ADMINISTRATIVE COSTS.—Except to the extent provided in Federal law authorizing or allocating allowances deposited in a SEED Account, not more than 5 percent of the allowance value in a SEED Account in any year may be used to cover administrative expenses of the SEED Account.

(D) SUBACCOUNTS.—A State may create and maintain subaccounts for local governments that request such subaccounts to hold allowances distributed to local governments for renewable energy or energy efficiency programs authorized or approved by the Federal Government.

(E) INTENDED USE PLANS.—

(i) IN GENERAL.—After providing for public review and comment, each State administering a SEED Account shall annually prepare a plan that identifies the intended uses of the allowances or proceeds

from the sale of allowances in its SEED Account.

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

(I) a list of the projects or programs for which withdrawals from the SEED Account are intended in the next fiscal year that begins after the date of the plan, including a description of each project;

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

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

(IV) the criteria and methods established for the distribution of allowances or allowance value;

(V) a description of the equivalent financial value and status of the SEED Account; and

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

(3) ACCOUNTABILITY AND TRANSPARENCY.—

(A) CONTROLS AND PROCEDURES.—Any State that has established a SEED Account shall establish fiscal controls and recordkeeping and accounting procedures for the SEED Account sufficient to ensure proper accounting during appropriate accounting periods for deposits into the SEED Account, withdrawals from the SEED Account, and SEED Account balances, including any subaccounts or related financial accounts. Such controls and procedures shall conform to generally accepted government accounting principles. Any State that has established a SEED Account shall retain records for a period of at least 5 years.

(B) AUDITS.—Any State that has established a SEED Account shall have an annual audit conducted of the SEED Account by an independent public accountant in accordance with generally accepted auditing standards, and shall transmit the results of that audit to the Administrator.

(C) STATE REPORT.—Each State administering a SEED Account shall make publicly available and submit to the Secretary a report

every 2 years on its activities related to its SEED Account.

(D) PUBLIC INFORMATION.—Any—

(i) controls and procedures established under subparagraph (A); and

(ii) information obtained through audits conducted under subparagraph (B), except to the extent that it would be protected from disclosure, if it were information held by the Federal Government, under section 552(b) of title 5, United States Code,

shall be made publicly available.

(E) OTHER PROTECTIONS.—The Administrator shall require such additional procedures and protections as are necessary to ensure that any State that has established a SEED Account will operate the SEED Account in an accountable and transparent manner.

(f) REQUIREMENTS FOR ELIGIBILITY.—A State's eligibility to receive allowances in its SEED Account shall depend on that State's compliance with the requirements of this Act (and the amendments made by this Act).

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator

such sums as may be necessary for SEED Account operations.

SEC. 132. SUPPORT OF STATE RENEWABLE ENERGY AND ENERGY EFFICIENCY PROGRAMS.

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

(1) COST-EFFECTIVE.—The term ''cost-effective'', with respect to an energy efficiency program, means that the program meets the Total Resource Cost Test, which requires that the net present value of economic benefits over the life of the program or measure, including avoided supply and delivery costs and deferred or avoided investments, is greater than the net present value of the economic costs over the life of the program, including program costs and incremental costs borne by the energy consumer.

(2) RENEWABLE ENERGY RESOURCE.—The term ''renewable energy resource'' shall have the meaning given that term in section 610 of the Public Utility Regulatory Policies Act of 1978 (as added by section 101 of this Act).

(3) STATE.—The term ''State'' shall have the meaning given that term in section 302(d) of the Clean Air Act (42 U.S.C. 7602(d)).

(b) DISTRIBUTION AMONG STATES.—The Administrator shall, in accordance with this section, distribute

emission allowances allocated pursuant to section 782(g)(1) not later than September 30, 2012, and each calendar year thereafter through 2050. The Administrator shall distribute the emission allowances to States for renewable energy and energy efficiency programs to be deposited in and administered through the State Energy and Environment Development (SEED) Accounts established pursuant to section 131 of the American Clean Energy and Security Act of 2009. The Administrator shall distribute allowances among the States under this section each year in accordance with the following formula:

(1) One third of the allowances shall be divided equally among the States.

(2) One third of the allowances shall be distributed ratably among the States based on the population of each State, as contained in the most recent reliable census data available from the Bureau of the Census, Department of Commerce, for all States at the time the Administrator calculates the formula for distribution.

(3) One third of the allowances for shall be distributed ratably among the States on the basis of the energy consumption of each State as contained in the most recent State Energy Data Report available from the Energy Information Administration

(or such alternative reliable source as the Administrator may designate).

(c) USES.—The allowances distributed to each State pursuant to this section shall be used exclusively for the purposes listed in this subsection, as set forth below:

(1) Not less than 12.5 percent shall be distributed by the State to units of local government within such State to be used exclusively to support the energy efficiency and renewable energy purposes listed in paragraphs (2) and (3).

(2) Not less than 20 percent shall be used exclusively for the following energy efficiency purposes—

(A) implementation and enforcement of building codes adopted in compliance with section 201 of the American Clean Energy and Security Act of 2009;

(B) implementation of the Retrofit for Energy and Environmental Performance (REEP) program established pursuant to section 202 of the American Clean Energy and Security Act of 2009;

(C) implementation of the energy efficient manufactured homes program established pur-

1 suant to section 203 of the American Clean En-
2 ergy and Security Act of 2009;
3 (D) implementation of the building energy
4 performance labeling program established pur-
5 suant to section 204 of the American Clean En-
6 ergy and Security Act of 2007;
7 (E) enabling the development of a Smart
8 Grid (as described in section 1301 of the En-
9 ergy Independence and Security Act of 2007
10 (42 U.S.C. 17381)), including integration of re-
11 newable energy resources and distributed gen-
12 eration, demand response, demand side man-
13 agement, and systems analysis;
14 (F) transportation planning pursuant to
15 section 841; and
16 (G) other cost-effective energy efficiency
17 programs for end-use consumers of electricity,
18 natural gas, home heating oil, or propane, in-
19 cluding, where appropriate, programs or mecha-
20 nisms administered by local governments and
21 entities other than the State.
22 (3) Not less than 20 percent shall be used ex-
23 clusively for capital grants, tax credits, production
24 incentives, loans, loan guarantees, forgivable loans,
25 and interest rate buy-downs for—

(A) re-equipping, expanding, or establishing a manufacturing facility that receives certification from the Secretary of Energy pursuant to section 1302 of the American Recovery and Reinvestment Act of 2009 for the production of—

(i) property designed to be used to produce energy from renewable energy sources; and

(ii) electricity storage systems; and

(B) deployment of technologies to generate electricity from renewable energy sources.

(4) The remaining 47.5 percent shall be used exclusively for any of the purposes described in subparagraphs (A) through (F) of paragraph (2) and in paragraph (3).

(d) REPORTING.—Each State receiving emission allowances under this section shall include in its biennial reports required under section 131 of the American Clean Energy and Security Act of 2009, in accordance with such requirements as the Administrator may prescribe—

(1) a list of entities receiving allowances or allowance value under this section;

(2) the amount and nature of allowances or allowance value received by each recipient;

(3) the specific purposes for which such allowances or allowance value was conveyed;

(4) the amount of energy savings, emission reductions, renewable energy deployment, or new or retooled manufacturing capacity resulting from such allowances or allowance value; and

(5) an assessment of the cost-effectiveness of any energy efficiency program supported under subsection (c)(2)(G).

(e) ENFORCEMENT.—If the Administrator determines that a State is not in compliance with this section, the Administrator may withhold a portion of the allowances, the value of which is equal to up to twice the value of the allowances that the State failed to use in accordance with the requirements of this section, that such State would otherwise be eligible to receive under this section in later years. Allowances withheld pursuant to this subsection shall be distributed among the remaining States in accordance with the requirements of subsection (b).

Subtitle E—Smart Grid Advancement

SEC. 141. DEFINITIONS.

For purposes of this subtitle:

(1) The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) The term ''applicable baseline'' means the average of the highest three annual peak demands a load-serving entity has experienced during the 5 years immediately prior to the date of enactment of this Act.

(3) The term''Commission'' means Federal Energy Regulatory Commission.

(4) The term ''load-serving entity'' means an entity that provides electricity directly to retail consumers with the responsibility to assure power quality and reliability, including such entities that are investor-owned, publicly owned, owned by rural electric cooperatives, or other entities.

(5) The term ''peak demand'' means the highest point of electricity demand, net of any distributed electricity generation or storage from sources on the load-serving entity's customers' premises, during any hour on the system of a load serving entity during a calendar year, expressed in Megawatts (MW), or more than one such high point as a function of seasonal demand changes.

(6) The term ''peak demand reduction'' means the reduction in annual peak demand as compared to a previous baseline year or period, expressed in Megawatts (MW), whether accomplished by dimin-

ishing the end-use requirements for electricity or by use of locally stored or generated electricity to meet those requirements from distributed resources on the load-serving entity's customers' premises and without use of high-voltage transmission.

(7) The term ''peak demand reduction plan'' means a plan developed by or for a load-serving entity that it will implement to meet its peak demand reduction goals.

(8) The term ''peak period'' means the time period on the system of a load-serving entity relative to peak demand that may warrant special measures or electricity resources to maintain system reliability while meeting peak demand.

(9) The term ''Secretary'' means the Secretary of Energy.

(10) The term ''Smart Grid'' has the meaning provided by section 1301 of the Energy Independence and Security Act of 2007 (15 U.S.C. 17381).

SEC. 142. ASSESSMENT OF SMART GRID COST EFFECTIVENESS IN PRODUCTS.

(a) ASSESSMENT.—Within one year after the date of enactment of this Act, the Secretary and the Administrator shall each assess the potential for cost-effective integration of Smart Grid technologies and capabilities in

all products that are reviewed by the Department of Energy and the Environmental Protection Agency, respectively, for potential designation as Energy Star products.

(b) ANALYSIS.—(1) Within 2 years after the date of enactment of this Act, the Secretary and the Administrator shall each prepare an analysis of the potential energy savings, greenhouse gas emission reductions, and electricity cost savings that could accrue for each of the products identified by the assessment in subsection (a) in the following optimal circumstances:

(A) The products possessed Smart Grid capability and interoperability that is tested and proven reliable.

(B) The products were utilized in an electricity utility service area which had Smart Grid capability and offered customers rate or program incentives to use the products.

(C) The utility's rates reflected national average costs, including average peak and valley seasonal and daily electricity costs.

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

(E) The utility avoided incremental investments and rate increases related to such savings.

(2) The analysis under paragraph (1) shall be considered the ''best case'' Smart Grid analysis. On the basis of such an analysis for each product, the Secretary and the Administrator shall determine whether the installation of Smart Grid capability for such a product would be cost effective. For purposes of this paragraph, the term ''cost effective'' means that the cumulative savings from using the product under the best case Smart Grid circumstances for a period of one-half of the product's expected useful life will be greater than the incremental cost of the Smart Grid features included in the product.

(3) To the extent that including Smart Grid capability in any products analyzed under paragraph (2) is found to be cost effective in the best case, the Secretary and the Administrator shall, not later than 3 years after the date of enactment of this Act take each of the following actions:

(A) Inform the manufacturer of such product of such finding of cost effectiveness.

(B) Assess the potential contributions the development and use of products with Smart Grid technologies bring to reducing peak demand and promoting grid stability.

(C) Assess the potential national energy savings and electricity cost savings that could be realized if

Smart Grid potential were installed in the relevant products reviewed by the Energy Star program.

(D) Assess and identify options for providing consumers information on products with Smart Grid capabilities, including the necessary conditions for cost-effective savings.

(E) Submit a report to Congress summarizing the results of the assessment for each class of products, and presenting the potential energy and greenhouse gas savings that could result if Smart Grid capability were installed and utilized on such products

SEC. 143. INCLUSIONS OF SMART GRID CAPABILITY ON APPLIANCE ENERGY GUIDE LABELS.

Section 324(a)(2) of the Energy Policy and Conservation Act (42 U.S.C. 6294(a)(2)) is amended by adding the following at the end:

"(J)(i) Not later than 3 years after the date of enactment of this subparagraph, the Federal Trade Commission shall initiate a rulemaking to consider making a special note in a prominent manner on any ENERGY GUIDE label for any product actually including Smart Grid capability that—

"(I) Smart Grid capability is a feature of that product;

"(II) the use and value of that feature depended on the Smart Grid capability of the utility system in which the product was installed and the active utilization of that feature by the customer; and

"(III) on a utility system with Smart Grid capability, the use of the product's Smart Grid capability could reduce the customer's cost of the product's annual operation by an estimated dollar amount range representing the result of incremental energy and electricity cost savings that would result from the customer taking full advantage of such Smart Grid capability.

"(ii) Not later than 3 years after the date of enactment of this subparagraph, the Commission shall complete the rulemaking initiated under clause (i).".

SEC. 144. SMART GRID PEAK DEMAND REDUCTION GOALS.

(a) GOALS.—Not later than one year after the date of enactment of this Act, load-serving entities, or, at their option, States with respect to load-serving entities that

they regulate, shall determine and publish peak demand reduction goals for any load-serving entities that have an applicable baseline in excess of 250 megawatts.

(b) BASELINES.—(1) The Commission, in consultation with the Secretary and the Administrator, shall develop and publish, after an opportunity for public comment, a methodology to provide for adjustments or normalization to a load-serving entity's applicable baseline over time to reflect changes in the number of customers served, weather conditions, general economic conditions, and any other appropriate factors external to peak demand management, as determined by the Commission.

(2) The Commission shall support load-serving entities (including any load-serving entities with an applicable baseline of less than 250 megawatts that volunteer to participate in achieving the purposes of this section) in determining their applicable baselines, and in developing their peak demand reduction goals.

(3) The Secretary, in consultation with the Commission, the Administrator, and the National Electric Reliability Corporation, shall develop a system and rules for measurement and verification of demand reductions.

(c) PEAK DEMAND REDUCTION GOALS.—(1) Peak demand reduction goals may be established for an individual load-serving entity, or, at the determination of a

State or regional entity, by that State or regional entity for a larger region that shares a common system peak demand and for which peak demand reduction measures would offer regional benefit.

(2) A State or regional entity establishing peak demand reduction goals shall cooperate, as necessary and appropriate, with the Commission, the Secretary, State regulatory commissions, State energy offices, the National Electric Reliability Corporation, and other relevant authorities.

(3) In determining the applicable peak demand reduction goals, States and other jurisdictional entities may utilize the results of the 2009 National Demand Response Potential Assessment, as authorized by section 571 of the National Energy Conservation Policy Act (42 U.S.C. 8279).

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

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

(B) load-serving entities will reduce or mitigate peak demand by a minimum percentage greater

amount from the applicable baseline to a lower peak demand during calendar year 2015; and

(C) the minimum percentage reductions established as peak demand reduction goals shall be the maximum reductions that are realistically achievable with an aggressive effort to deploy Smart Grid and peak demand reduction technologies and methods, including but not limited to those listed in subsection (d).

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

(1) Direct reduction in megawatts of peak demand through energy efficiency measures with reliable and continued application during peak demand periods.

(2) Demonstration that an amount of megawatts equal to a stated portion of the applicable goal is contractually committed to be available for peak reduction through one or more of the following:

(A) Megawatts enrolled in demand response programs.

(B) Megawatts subject to the ability of a load-serving entity to call on demand response

programs, smart appliances, smart electricity storage devices, distributed generation resources on the entity's customers' premises, or other measures directly capable of actively, controllably, reliably, and dynamically reducing peak demand (''dynamic peak management control'').

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

(D) Megawatts committed from dispatchable distributed generation demonstrated to be reliable under peak period conditions and in compliance with air quality regulations.

(E) Megawatts available from smart appliances and equipment with Smart Grid capability available for direct control by the utility through agreement with the customer owning the appliances or equipment.

(F) Megawatts from a demonstrated and assured minimum of distributed solar electric generation capacity in instances where peak period and peak demand conditions are directly

related to solar radiation and accompanying heat.

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

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

(e) EXISTING AUTHORITY AND REQUIREMENTS.—Nothing in this section diminishes or supersedes any authority of a State or political subdivision of a State to adopt or enforce any law or regulation respecting peak demand management, demand response, distributed storage, use of distributed generation, or the regulation of load-serving entities. The Commission, in consultation with States having such peak management, demand response and distributed storage programs, shall to the maximum extent practicable, facilitate coordination between the Federal program and such State programs.

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

(g) OTHER LAWS.—Except as provided in subsections (e) and (f), no law or regulation shall relieve any person of any requirement otherwise applicable under this section.

(h) COMPLIANCE.—(1) The Commission shall within one year after the date of enactment of this Act establish a public website where the Commission will provide information and data demonstrating compliance by States, regional entities, and load-serving entities with this section, including the success of load-serving entities in meeting applicable peak demand reduction goals.

(2) The Commission shall, by April 1 of each year beginning in 2012, provide a report to Congress on compliance with this section and success in meeting applicable peak demand reduction goals and, as appropriate, shall make recommendations as to how to increase peak demand reduction efforts.

(3) The Commission shall note in each such report any State, political subdivision of a State, or load-serving entity that has failed to comply with this section, or is not a part of any region or group of load-serving entities serving a region that has complied with this section.

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

(i) ASSISTANCE TO STATES AND FUNDING.—

(1) ASSISTANCE TO STATES.—Any costs incurred by States for activities undertaken pursuant to this section shall be supported by the use of emission allowances allocated to the States' SEED Accounts pursuant to section [_____] of this Act. To the extent that a State provides allowances to local governments within the State to implement this program, that shall be deemed a distribution of such allowances to units of local government pursuant to subsection (c)(1) of that section.

(2) FUNDING.—There are authorized to be appropriated such sums as may be necessary to the Commission, the Secretary, and the Administrator to carry out the provisions of this section.

SEC. 145. REAUTHORIZATION OF ENERGY EFFICIENCY PUBLIC INFORMATION PROGRAM TO INCLUDE SMART GRID INFORMATION.

(a) IN GENERAL.—Section 134 of the Energy Policy Act of 2005 (42 U.S.C. 15832) is amended as follows:

(1) By amending the section heading to read as follows: ''**ENERGY EFFICIENCY AND SMART GRID PUBLIC INFORMATION INITIATIVE**''.

(2) In paragraph (1) of subsection (a) by striking ''reduce energy consumption during the 4-year period beginning on the date of enactment of this Act'' and inserting ''increase energy efficiency and to adopt Smart Grid technology and practices''.

(3) In paragraph (2) of subsection (a) by striking ''benefits to consumers of reducing'' and inserting ''economic and environmental benefits to consumers and the United States of optimizing''.

(4) In subsection (a) by inserting at the beginning of paragraph (3) ''the effect of energy efficiency and Smart Grid capability in reducing energy and electricity prices throughout the economy, together with''.

(5) In subsection (a)(4) by redesignating subparagraph (D) as (E), by striking ''and'' at the end of subparagraph (C), and by inserting after subparagraph (C) the following:

''(D) purchasing and utilizing equipment that includes Smart Grid features and capability; and''.

(6) In subsection (c), by striking ''Not later than July 1, 2009,'' and inserting, ''For each year when appropriations pursuant to the authorization in this section exceed $10,000,000,''.

(7) In subsection (d) by striking ''2010'' and inserting ''2020''.

(8) In subsection (e) by striking ''2010'' and inserting ''2020''.

(b) TABLE OF CONTENTS.—The item relating to section 134 in the table of contents for the Energy Policy Act of 2005 (42 U.S.C. 15801 and following) is amended to read as follows:

''Sec. 134. Energy efficiency and Smart Grid public information initiative.''.

SEC. 146. INCLUSION OF SMART-GRID FEATURES IN APPLIANCE REBATE PROGRAM.

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

(1) By amending the section heading to read as follows: ''**ENERGY EFFICIENT AND SMART APPLIANCE REBATE PROGRAM**.''.

(2) By redesignating paragraphs (4) and (5) of subsection (a) as paragraphs (5) and (6), respectively, and inserting after paragraph (3) the following:

''(4) SMART APPLIANCE.—The term 'smart appliance' means a product that the Administrator of

the Environmental Protection Agency or the Secretary of Energy has determined qualifies for such a designation in the Energy Star program pursuant to section 142 of the American Clean Energy and Security Act of 2009, or that the Secretary or the Administrator has separately determined includes the relevant Smart Grid capabilities listed in section 1301 of the Energy Independence and Security Act of 2007 (15 U.S.C. 17381).''.

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

(4) In subsection (b)(3), by inserting ''the administration of'' after ''carry out''.

(5) In subsection (d), by inserting ''the administration of'' after ''carrying out'' and by inserting '', and up to 100 percent of the value of the rebates provided pursuant to this section'' before the period at the end.

(6) In subsection (e)(3), by inserting '', with separate consideration as applicable if the product is also a smart appliance,'' after ''Energy Star product'' the first place it appears and by inserting ''or smart appliance'' before the period at the end.

(7) In subsection (f), by striking "$50,000,000" through the period at the end and inserting "$100,000,000 for each fiscal year from 2010 through 2015.".

(b) TABLE OF CONTENTS.—The item relating to section 124 in the table of contents for the Energy Policy Act of 2005 (42 U.S.C. 15801 and following) is amended to read as follows:

"Sec. 124. Energy efficient and smart appliance rebate program.".

Subtitle F—Transmission Planning

SEC. 151. TRANSMISSION PLANNING.

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

"SEC. 216A. TRANSMISSION PLANNING.

"(a) FEDERAL POLICY.—

"(1) OBJECTIVES.—It is the policy of the United States that regional electric grid planning should facilitate the deployment of renewable and other zero-carbon energy sources for generating electricity to reduce greenhouse gas emissions while ensuring reliability, reducing congestion, ensuring cyber-security, and providing for cost-effective electricity services throughout the United States.

"(2) OPTIONS.—In addition to the policy under paragraph (1), it is the policy of the United States

that regional electric grid planning to meet these objectives should take into account all significant demand-side and supply-side options, including energy efficiency, distributed generation, renewable energy and zero-carbon electricity generation technologies, smart-grid technologies and practices, demand response, electricity storage, voltage regulation technologies, high capacity conductor and superconductor technologies, underground transmission technologies, and new conventional electric transmission capacity and corridors.

''(b) PLANNING.—

''(1) PLANNING PRINCIPLES.—Not later than 1 year after the date of enactment of this section, the Commission shall adopt, after notice and opportunity for comment, national electricity grid planning principles derived from the Federal policy established under subsection (a) to be applied in ongoing and future transmission planning that may implicate interstate transmission of electricity.

''(2) REGIONAL PLANNING ENTITIES.—Not later than 3 months after the date of adoption by the Commission of national electricity grid planning principles pursuant to paragraph (1), entities that conduct or may conduct transmission planning pur-

suant to State or Federal law or regulation, including States, entities designated by States, public utility transmission providers, operators and owners, regional organizations, and electric utilities, and that are willing to incorporate the national electricity grid planning principles adopted by the Commission in their electric grid planning, shall identify themselves and the regions for which they propose to develop plans to the Commission.

"(3) COORDINATION OF REGIONAL PLANNING ENTITIES.—The Commission shall encourage regional planning entities described under paragraph (2) to cooperate and coordinate across regions and to harmonize regional electric grid planning with planning in adjacent or overlapping jurisdictions to the maximum extent feasible. The Commission shall work with States, public utilities transmission providers, load-serving entities, transmission operators, and other organizations to resolve any conflict or competition among proposed planning entities in order to build consensus and promote the Federal policy established under subsection (a). The Commission shall seek to ensure that planning that is consistent with the national electricity grid planning principles adopted pursuant to paragraph (1) is con-

ducted in all regions of the United States and the territories.

"(4) RELATION TO EXISTING PLANNING POLICY.—In implementing the Federal policy established under subsection (a), the Commission shall—

"(A) incorporate any ongoing planning efforts undertaken pursuant to section 217; and

"(B) consult with and invite the participation of the Secretary of Energy in relationship to the Secretary's duties pursuant to section 216.

"(5) ASSISTANCE.—

"(A) IN GENERAL.—The Commission shall provide support to and participate in the regional grid planning processes conducted by regional planning entities. The Commission may provide planning resources and assistance as required or as requested by regional planning entities, including system data, cost information, system analysis, technical expertise, modeling support, dispute resolution services, and other assistance to regional planning entities, as appropriate.

"(B) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

"(6) CONFLICT RESOLUTION.—In the event that regional grid plans conflict, the Commission shall assist the regional planning entities in resolving such conflicts in order to achieve the objectives of the Federal policy established under subsection (a).

"(7) SUBMISSION OF PLANS.—The Commission shall require regional planning entities to submit initial regional electric grid plans to the Commission not later than 18 months after the date the Commission promulgates national electricity grid planning principles pursuant to paragraph (1). Regional electric grid plans should, in general, be developed from sub-regional requirements and plans, including planning input reflecting individual utility service areas. Regional plans may then in turn be combined into larger regional plans, up to interconnection-wide and national plans, as appropriate and necessary as determined by the Commission. The Commission shall review such plans for consistency with the national grid planning principles and may return a plan to one or more planning entities for further consideration, along with the Commission's own rec-

ommendations for resolution of any conflict or for improvement. To the extent practicable, all plans submitted to the Commission shall be public documents and available on the Commission's website.

"(8) MULTI-REGIONAL MEETINGS.—As regional grid plans are submitted to the Commission, the Commission may convene multi-regional meetings to discuss regional grid plan consistency and integration, including requirements for multi-regional projects, and to resolve any conflicts that emerge from such multi-regional projects. The Commission shall provide its recommendations for eliminating any inter-regional conflicts.

"(9) REPORT TO CONGRESS.—Not later than 3 years after the date of enactment of this section, the Commission shall provide a report to Congress containing the results of the regional grid planning process, including summaries of the adopted regional plans. The Commission shall provide an electronic version of its report on its website with links to all regional and sub-regional plans taken into account. The Commission shall note and provide its recommended resolution for any conflicts not resolved during the planning process. The Commission shall make any recommendations to Congress on the ap-

propriate Federal role or support required to address the needs of the electric grid, including recommendations for addressing any needs that are beyond the reach of existing State and Federal authority.''.

Subtitle G—Technical Corrections to Energy Laws

SEC. 161. TECHNICAL CORRECTIONS TO ENERGY INDEPENDENCE AND SECURITY ACT OF 2007.

(a) TITLE III—ENERGY SAVINGS THROUGH IMPROVED STANDARDS FOR APPLIANCE AND LIGHTING.—(1) Section 325(u) of the Energy Policy and Conservation Act (42 U.S.C. 6295(u)) (as amended by section 301(c) of the Energy Independence and Security Act of 2007 (121 Stat. 1550)) is amended—

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

(B) in paragraph (4) (as so redesignated), by striking ''supplies is'' and inserting ''supply is''.

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

(A) in subsection (a), by striking ''end of the paragraph'' and inserting ''end of subparagraph (A)''; and

(B) in subsection (b), by striking "6313(a)" and inserting "6314(a)".

(3) Section 343(a)(1) of the Energy Policy and Conservation Act (42 U.S.C. 6313(a)(1)) (as amended by section 302(b) of the Energy Independence and Security Act of 2007 (121 Stat. 1551)) is amended—

(A) by striking "TEST PROCEDURES" and all that follows through "At least once" and inserting "TEST PROCEDURES.—At least once"; and

(B) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively.

(4) Section 342(a)(6) of the Energy Policy and Conservation Act (42 U.S.C. 6313(a)(6)) (as amended by section 305(b)(2) of the Energy Independence and Security Act of 2007 (121 Stat. 1554)) is amended—

(A) in subparagraph (B)—

(i) by striking "If the Secretary" and inserting the following:

"(i) IN GENERAL.—If the Secretary";

(ii) by striking "clause (ii)(II)" and inserting "subparagraph (A)(ii)(II)";

(iii) by striking "clause (i)" and inserting "subparagraph (A)(i)"; and

(iv) by adding at the end the following:

"(ii) FACTORS.—In determining whether a standard is economically justified for the purposes of subparagraph (A)(ii)(II), the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed the burden of the proposed standard by, to the maximum extent practicable, considering—

"(I) the economic impact of the standard on the manufacturers and on the consumers of the products subject to the standard;

"(II) the savings in operating costs throughout the estimated average life of the product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the products that are likely to result from the imposition of the standard;

"(III) the total projected quantity of energy savings likely to result

1 directly from the imposition of the
2 standard;
3 ''(IV) any lessening of the utility
4 or the performance of the products
5 likely to result from the imposition of
6 the standard;
7 ''(V) the impact of any lessening
8 of competition, as determined in writ-
9 ing by the Attorney General, that is
10 likely to result from the imposition of
11 the standard;
12 ''(VI) the need for national en-
13 ergy conservation; and
14 ''(VII) other factors the Sec-
15 retary considers relevant.
16 ''(iii) ADMINISTRATION.—
17 ''(I) ENERGY USE AND EFFI-
18 CIENCY.—The Secretary may not pre-
19 scribe any amended standard under
20 this paragraph that increases the
21 maximum allowable energy use, or de-
22 creases the minimum required energy
23 efficiency, of a covered product.
24 ''(II) UNAVAILABILITY.—

"(aa) IN GENERAL.—The Secretary may not prescribe an amended standard under this subparagraph if the Secretary finds (and publishes the finding) that interested persons have established by a preponderance of the evidence that a standard is likely to result in the unavailability in the United States in any product type (or class) of performance characteristics (including reliability, features, sizes, capacities, and volumes) that are substantially the same as those generally available in the United States at the time of the finding of the Secretary.

"(bb) OTHER TYPES OR CLASSES.—The failure of some types (or classes) to meet the criterion established under this subclause shall not affect the determination of the Secretary on whether to prescribe a standard

for the other types or classes.''; and

(B) in subparagraph (C)(iv), by striking ''An amendment prescribed under this subsection'' and inserting ''Notwithstanding subparagraph (D), an amendment prescribed under this subparagraph''.

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

(A) by striking ''Section'' and all that follows through ''is amended'' and inserting ''Section 342(a)(6)(C) of the Energy Policy and Conservation Act (42 U.S.C. 6313(a)(6)(C)) (as amended by section 305(b)(2)) is amended''; and

(B) by redesignating clause (iii) of section 342(a)(6)(B) of the Energy Policy and Conservation Act (as added by section 306(c) of the Energy Independence and Security Act of 2007) as clause (vi) of section 342(a)(6)(C) of the Energy Policy and Conservation Act (as amended by section 305(b)(2) of the Energy Independence and Security Act of 2007).

(6) Section 340 of the Energy Policy and Conservation Act (42 U.S.C. 6311) (as amended by sections 312(a)(2) and 314(a) of the Energy Independence and Security Act of 2007 (121 Stat. 1564, 1569)) is amended by redesignating paragraphs (22) and (23) (as added by

1 section 314(a) of that Act) as paragraphs (23) and (24),
2 respectively.
3 (7) Section 345 of the Energy Policy and Conserva-
4 tion Act (42 U.S.C. 6316) (as amended by section 312(e)
5 of the Energy Independence and Security Act of 2007
6 (121 Stat. 1567)) is amended—
7 (A) by striking ''subparagraphs (B) through
8 (G)'' each place it appears and inserting ''subpara-
9 graphs (B), (C), (D), (I), (J), and (K)'';
10 (B) by striking ''part A'' each place it appears
11 and inserting ''part B''; and
12 (C) in subsection (h)(3), by striking ''section
13 342(f)(3)'' and inserting ''section 342(f)(4)''.
14 (8) Section 340(13) of the Energy Policy and Con-
15 servation Act (42 U.S.C. 6311(13)) (as amended by sec-
16 tion 313(a) of the Energy Independence and Security Act
17 of 2007 (121 Stat. 1568)) is amended—
18 (A) by striking subparagraphs (A) and (B) and
19 inserting the following:
20 ''(A) IN GENERAL.—The term 'electric
21 motor' means any motor that is—
22 ''(i) a general purpose T-frame, sin-
23 gle-speed, foot-mounting, polyphase squir-
24 rel-cage induction motor of the National
25 Electrical Manufacturers Association, De-

sign A and B, continuous rated, operating on 230/460 volts and constant 60 Hertz line power as defined in NEMA Standards Publication MG1–1987; or

"(ii) a motor incorporating the design elements described in clause (i), but is configured to incorporate one or more of the following variations—

"(I) U-frame motor;

"(II) NEMA Design C motor;

"(III) close-coupled pump motor;

"(IV) footless motor;

"(V) vertical solid shaft normal thrust motor (as tested in a horizontal configuration);

"(VI) 8-pole motor; or

"(VII) poly-phase motor with a voltage rating of not more than 600 volts (other than 230 volts or 460 volts, or both, or can be operated on 230 volts or 460 volts, or both)."; and

(B) by redesignating subparagraphs (C) through (I) as subparagraphs (B) through (H), respectively.

(9)(A) Section 342(b) of the Energy Policy and Conservation Act (42 U.S.C. 6313(b)) is amended—

(i) in paragraph (1), by striking ''paragraph (2)'' and inserting ''paragraph (3)'';

(ii) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4);

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

''(2) STANDARDS EFFECTIVE BEGINNING DECEMBER 19, 2010.—

''(A) IN GENERAL.—Except for definite purpose motors, special purpose motors, and those motors exempted by the Secretary under paragraph (3) and except as provided for in subparagraphs (B), (C), and (D), each electric motor manufactured with power ratings from 1 to 200 horsepower (alone or as a component of another piece of equipment) on or after December 19, 2010, shall have a nominal full load efficiency of not less than the nominal full load efficiency described in NEMA MG–1 (2006) Table 12–12.

''(B) FIRE PUMP ELECTRIC MOTORS.—Except for those motors exempted by the Secretary under paragraph (3), each fire pump

electric motor manufactured with power ratings from 1 to 200 horsepower (alone or as a component of another piece of equipment) on or after December 19, 2010, shall have a nominal full load efficiency that is not less than the nominal full load efficiency described in NEMA MG–1 (2006) Table 12–11.

"(C) NEMA DESIGN B ELECTRIC MOTORS.—Except for those motors exempted by the Secretary under paragraph (3), each NEMA Design B electric motor with power ratings of more than 200 horsepower, but not greater than 500 horsepower, manufactured (alone or as a component of another piece of equipment) on or after December 19, 2010, shall have a nominal full load efficiency of not less than the nominal full load efficiency described in NEMA MG–1 (2006) Table 12–11.

"(D) MOTORS INCORPORATING CERTAIN DESIGN ELEMENTS.—Except for those motors exempted by the Secretary under paragraph (3), each electric motor described in section 340(13)(A)(ii) manufactured with power ratings from 1 to 200 horsepower (alone or as a component of another piece of equipment) on or

after December 19, 2010, shall have a nominal full load efficiency of not less than the nominal full load efficiency described in NEMA MG–1 (2006) Table 12–11.''; and

(iv) in paragraph (3) (as redesignated by clause (ii)), by striking ''paragraph (1)'' each place it appears in subparagraphs (A) and (D) and inserting ''paragraphs (1) and (2)''.

(B) Section 313 of the Energy Independence and Security Act of 2007 (121 Stat. 1568) is repealed.

(C) The amendments made by—

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

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

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

(11) Section 321(30)(T) of the Energy Policy and Conservation Act (42 U.S.C. 6291(30)(T) (as amended by

section 321(a)(1)(B) of the Energy Independence and Security Act of 2007 (121 Stat. 1574)) is amended—

(A) in clause (i)—

(i) by striking the comma after ''household appliance'' and inserting ''and''; and

(ii) by striking ''and is sold at retail,''; and

(B) in clause (ii), by inserting ''when sold at retail,'' before ''is designated''.

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

''(i) GENERAL SERVICE FLUORESCENT LAMPS, GENERAL SERVICE INCANDESCENT LAMPS, INTERMEDIATE BASE INCANDESCENT LAMPS, CANDELABRA BASE INCANDESCENT LAMPS, AND INCANDESCENT REFLECTOR LAMPS.—

''(1) ENERGY EFFICIENCY STANDARDS.—

''(A) IN GENERAL.—Each of the following general service fluorescent lamps, general service incandescent lamps, intermediate base incandescent lamps, candelabra base incandescent lamps, and incandescent reflector lamps manufactured after the effective date specified in the

1 tables listed in this subparagraph shall meet or
2 exceed the following lamp efficacy, new max-
3 imum wattage, and CRI standards:

"FLUORESCENT LAMPS

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

"INCANDESCENT REFLECTOR LAMPS

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

"GENERAL SERVICE INCANDESCENT LAMPS

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

"MODIFIED SPECTRUM GENERAL SERVICE INCANDESCENT LAMPS

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

4 "(B) APPLICATION.—

"(i) APPLICATION CRITERIA.—This subparagraph applies to each lamp that—

"(I) is intended for a general service or general illumination application (whether incandescent or not);

"(II) has a medium screw base or any other screw base not defined in ANSI C81.61–2006;

"(III) is capable of being operated at a voltage at least partially within the range of 110 to 130 volts; and

"(IV) is manufactured or imported after December 31, 2011.

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

"(I) 80 for nonmodified spectrum lamps; or

"(II) 75 for modified spectrum lamps.

"(C) CANDELABRA INCANDESCENT LAMPS AND INTERMEDIATE BASE INCANDESCENT LAMPS.—

"(i) CANDELABRA BASE INCANDESCENT LAMPS.—Effective beginning January 1, 2012, a candelabra base incandescent lamp shall not exceed 60 rated watts.

"(ii) INTERMEDIATE BASE INCANDESCENT LAMPS.—Effective beginning January 1, 2012, an intermediate base incandescent lamp shall not exceed 40 rated watts.

"(D) EXEMPTIONS.—

"(i) STATUTORY EXEMPTIONS.—The standards specified in subparagraph (A) shall not apply to the following types of incandescent reflector lamps:

"(I) Lamps rated at 50 watts or less that are ER30, BR30, BR40, or ER40 lamps.

"(II) Lamps rated at 65 watts that are BR30, BR40, or ER40 lamps.

"(III) R20 incandescent reflector lamps rated 45 watts or less.

"(ii) ADMINISTRATIVE EXEMPTIONS.—

"(I) PETITION.—Any person may petition the Secretary for an exemption for a type of general service lamp from the requirements of this subsection.

"(II) CRITERIA.—The Secretary may grant an exemption under subclause (I) only to the extent that the Secretary finds, after a hearing and opportunity for public comment, that it is not technically feasible to serve a specialized lighting application (such as a military, medical, public safety, or certified historic lighting application) using a lamp that meets the requirements of this subsection.

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

"(E) EXTENSION OF COVERAGE.—

"(i) PETITION.—Any person may petition the Secretary to establish standards for lamp shapes or bases that are excluded from the definition of general service lamps.

"(ii) INCREASED SALES OF EXEMPTED LAMPS.—The petition shall include evidence that the availability or sales of exempted incandescent lamps have increased significantly since the date on which the standards on general service incandescent lamps were established.

"(iii) CRITERIA.—The Secretary shall grant a petition under clause (i) if the Secretary finds that—

"(I) the petition presents evidence that demonstrates that commercial availability or sales of exempted incandescent lamp types have increased significantly since the standards on general service lamps were established and likely are being widely used in general lighting applications; and

"(II) significant energy savings could be achieved by covering exempted products, as determined by the Secretary based in part on sales data provided to the Secretary from manufacturers and importers.

"(iv) NO PRESUMPTION.—The grant of a petition under this subparagraph shall create no presumption with respect to the determination of the Secretary with respect to any criteria under a rulemaking conducted under this section.

"(v) EXPEDITED PROCEEDING.—If the Secretary grants a petition for a lamp shape or base under this subparagraph, the Secretary shall—

"(I) conduct a rulemaking to determine standards for the exempted lamp shape or base; and

"(II) complete the rulemaking not later than 18 months after the date on which notice is provided granting the petition.

"(F) EFFECTIVE DATES.—

"(i) IN GENERAL.—In this paragraph, except as otherwise provided in a table contained in subparagraph (A) or in clause (ii), the term 'effective date' means the last day of the month specified in the table that follows October 24, 1992.

"(ii) SPECIAL EFFECTIVE DATES.—

"(I) ER, BR, AND BPAR LAMPS.—The standards specified in subparagraph (A) shall apply with respect to ER incandescent reflector lamps, BR incandescent reflector lamps, BPAR incandescent reflector lamps, and similar bulb shapes on and after January 1, 2008, or the date that is 180 days after the date of enactment of the Energy Independence and Security Act of 2007.

"(II) LAMPS BETWEEN 2.25–2.75 INCHES IN DIAMETER.—The standards specified in subparagraph (A) shall apply with respect to incandescent reflector lamps with a diameter of more than 2.25 inches, but not more than 2.75 inches, on and after

the later of January 1, 2008, or the date that is 180 days after the date of enactment of the Energy Independence and Security Act of 2007.

"(2) COMPLIANCE WITH EXISTING LAW.—Notwithstanding section 332(a)(5) and section 332(b), it shall not be unlawful for a manufacturer to sell a lamp that is in compliance with the law at the time the lamp was manufactured.

"(3) RULEMAKING BEFORE OCTOBER 24, 1995.—

"(A) IN GENERAL.—Not later than 36 months after October 24, 1992, the Secretary shall initiate a rulemaking procedure and shall publish a final rule not later than the end of the 54-month period beginning on October 24, 1992, to determine whether the standards established under paragraph (1) should be amended.

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

"(4) RULEMAKING BEFORE OCTOBER 24, 2000.—

"(A) IN GENERAL.—Not later than 8 years after October 24, 1992, the Secretary shall initiate a rulemaking procedure and shall publish a final rule not later than 9 years and 6 months after October 24, 1992, to determine whether the standards in effect for fluorescent lamps and incandescent lamps should be amended.

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

"(5) RULEMAKING FOR ADDITIONAL GENERAL SERVICE FLUORESCENT LAMPS.—

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

"(i) initiate a rulemaking procedure to determine whether the standards in effect for fluorescent lamps and incandescent

lamps should be amended so that the standards would be applicable to additional general service fluorescent lamps; and

"(ii) publish, not later than 18 months after initiating the rulemaking, a final rule including the amended standards, if any.

"(B) ADMINISTRATION.—The rule shall provide that the amendment shall apply to products manufactured after a date which is 36 months after the date on which the rule is published.

"(6) STANDARDS FOR GENERAL SERVICE LAMPS.—

"(A) RULEMAKING BEFORE JANUARY 1, 2014.—

"(i) IN GENERAL.—Not later than January 1, 2014, the Secretary shall initiate a rulemaking procedure to determine whether—

"(I) standards in effect for general service lamps should be amended; and

"(II) the exclusions for certain incandescent lamps should be main-

tained or discontinued based, in part, on excluded lamp sales collected by the Secretary from manufacturers.

"(ii) SCOPE.—The rulemaking—

"(I) shall not be limited to incandescent lamp technologies; and

"(II) shall include consideration of a minimum standard of 45 lumens per watt for general service lamps.

"(iii) AMENDED STANDARDS.—If the Secretary determines that the standards in effect for general service lamps should be amended, the Secretary shall publish a final rule not later than January 1, 2017, with an effective date that is not earlier than 3 years after the date on which the final rule is published.

"(iv) PHASED-IN EFFECTIVE DATES.—The Secretary shall consider phased-in effective dates under this subparagraph after considering—

"(I) the impact of any amendment on manufacturers, retiring and repurposing existing equipment,

stranded investments, labor contracts, workers, and raw materials; and

"(II) the time needed to work with retailers and lighting designers to revise sales and marketing strategies.

"(v) BACKSTOP REQUIREMENT.—If the Secretary fails to complete a rulemaking in accordance with clauses (i) through (iv) or if the final rule does not produce savings that are greater than or equal to the savings from a minimum efficacy standard of 45 lumens per watt, effective beginning January 1, 2020, the Secretary shall prohibit the manufacture of any general service lamp that does not meet a minimum efficacy standard of 45 lumens per watt.

"(vi) STATE PREEMPTION.—Neither section 327(c) nor any other provision of law shall preclude California or Nevada from adopting, effective beginning on or after January 1, 2018—

"(I) a final rule adopted by the Secretary in accordance with clauses (i) through (iv);

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

"(III) in the case of California, if a final rule described in subclause (I) has not been adopted, any California regulations relating to these covered products adopted pursuant to State statute in effect as of the date of enactment of the Energy Independence and Security Act of 2007.

"(B) RULEMAKING BEFORE JANUARY 1, 2020.—

"(i) IN GENERAL.—Not later than January 1, 2020, the Secretary shall initiate a rulemaking procedure to determine whether—

"(I) standards in effect for general service lamps should be amended; and

"(II) the exclusions for certain incandescent lamps should be maintained or discontinued based, in part, on excluded lamp sales data collected by the Secretary from manufacturers.

"(ii) SCOPE.—The rulemaking shall not be limited to incandescent lamp technologies.

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

"(iv) PHASED-IN EFFECTIVE DATES.—The Secretary shall consider phased-in effective dates under this subparagraph after considering—

"(I) the impact of any amendment on manufacturers, retiring and repurposing existing equipment, stranded investments, labor contracts, workers, and raw materials; and

"(II) the time needed to work with retailers and lighting designers to revise sales and marketing strategies.

"(7) FEDERAL ACTIONS.—

"(A) COMMENTS OF SECRETARY.—

"(i) IN GENERAL.—With respect to any lamp to which standards are applicable under this subsection or any lamp specified in section 346, the Secretary shall inform any Federal entity proposing actions that would adversely impact the energy consumption or energy efficiency of the lamp of the energy conservation consequences of the action.

"(ii) CONSIDERATION.—The Federal entity shall carefully consider the comments of the Secretary.

"(B) AMENDMENT OF STANDARDS.—Notwithstanding section 325(n)(1), the Secretary shall not be prohibited from amending any standard, by rule, to permit increased energy use or to decrease the minimum required energy efficiency of any lamp to which standards are applicable under this subsection if the ac-

tion is warranted as a result of other Federal action (including restrictions on materials or processes) that would have the effect of either increasing the energy use or decreasing the energy efficiency of the product.

"(8) COMPLIANCE.—

"(A) IN GENERAL.—Not later than the date on which standards established pursuant to this subsection become effective, or, with respect to high-intensity discharge lamps covered under section 346, the effective date of standards established pursuant to that section, each manufacturer of a product to which the standards are applicable shall file with the Secretary a laboratory report certifying compliance with the applicable standard for each lamp type.

"(B) CONTENTS.—The report shall include the lumen output and wattage consumption for each lamp type as an average of measurements taken over the preceding 12-month period.

"(C) OTHER LAMP TYPES.—With respect to lamp types that are not manufactured during the 12-month period preceding the date on which the standards become effective, the report shall—

"(i) be filed with the Secretary not later than the date that is 12 months after the date on which manufacturing is commenced; and

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

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

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

(A) in clause (i), by inserting "and" after the semicolon at the end;

(B) in clause (ii), by striking "; and" and inserting a period; and

(C) by striking clause (iii).

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

(A) in the matter preceding paragraph (1), by striking ''is amended'' and inserting ''(as amended by section 306(b)) is amended''; and

(B) by striking paragraphs (1) and (2) and inserting the following:

''(1) in paragraph (5), by striking 'or' after the semicolon at the end;

''(2) in paragraph (6), by striking the period at the end and inserting '; or'; and''.

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

(17) Section 321(30)(C)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6291(30)(C)(ii)) (as amended by section 322(a)(1)(B) of the Energy Independence and Security Act of 2007 (121 Stat. 1587)) is amended by inserting a period after ''40 watts or higher''.

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

(19) Section 327(c) of the Energy Policy and Conservation Act (42 U.S.C. 6297(c)) (as amended by sec-

tions 324(f) of the Energy Independence and Security Act of 2007 (121 Stat. 1594)) is amended—

(A) in paragraph (6), by striking ''or'' after the semicolon at the end;

(B) in paragraph (8)(B), by striking ''and'' after the semicolon at the end;

(C) in paragraph (9)—

(i) by striking ''except that—'' and all that follows through ''if the Secretary fails to issue'' and inserting ''except that if the Secretary fails to issue'';

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

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

(D) by adding at the end the following:

''(10) is a regulation for general service lamps that conforms with Federal standards and effective dates;

''(11) is an energy efficiency standard for general service lamps enacted into law by the State of Nevada prior to December 19, 2007, if the State has not adopted the Federal standards and effective dates pursuant to subsection (b)(1)(B)(ii); or''.

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

(b) TITLE IV—ENERGY SAVINGS IN BUILDINGS AND INDUSTRY.—(1) Section 401 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17061) is amended—

(A) in paragraph (2), by striking ''484'' and inserting ''494''; and

(B) in paragraph (13), by striking ''Agency'' and inserting ''Administration''.

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

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

(4) Section 305(a)(3)(D)(i) of the Energy Conservation and Production Act (42 U.S.C. 6834(a)(3)(D)(i)) (as

amended by section 433(a) of the Energy Independence and Security Act of 2007 (121 Stat. 1612)) is amended—

(A) in subclause (I)—

(i) by striking ''in fiscal year 2003 (as measured by Commercial Buildings Energy Consumption Survey or Residential Energy Consumption Survey data from the Energy Information Agency'' and inserting ''as measured by the calendar year 2003 Commercial Buildings Energy Consumption Survey or the calendar year 2005 Residential Energy Consumption Survey data from the Energy Information Administration''; and

(ii) in the table at the end, by striking ''Fiscal Year'' and inserting ''Calendar Year''; and

(B) in subclause (II)—

(i) by striking ''(II) Upon petition'' and inserting the following:

''(II) DOWNWARD ADJUSTMENT OF NUMERIC REQUIREMENT.—

''(aa) IN GENERAL.—On petition''; and

(ii) by striking the last sentence and inserting the following:

"(bb) EXCEPTIONS TO REQUIREMENT FOR CONCURRENCE OF SECRETARY.—

"(AA) IN GENERAL.—The requirement to petition and obtain the concurrence of the Secretary under this subclause shall not apply to any Federal building with respect to which the Administrator of General Services is required to transmit a prospectus to Congress under section 3307 of title 40, United States Code, or to any other Federal building designed, constructed, or renovated by the Administrator if the Administrator certifies, in writing, that meeting the applicable numeric requirement under subclause (I) with respect to the Federal building would be technically impracticable

in light of the specific functional needs for the building.

"(BB) ADJUSTMENT.—In the case of a building described in subitem (AA), the Administrator may adjust the applicable numeric requirement of subclause (I) downward with respect to the building.".

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

(6) Section 440 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17096) is amended by striking "and 482".

(7) Section 373(c) of the Energy Policy and Conservation Act (42 U.S.C. 6343(c)) (as amended by section 451(a) of the Energy Independence and Security Act of 2007 (121 Stat. 1628)) is amended by striking "Administrator" and inserting "Secretary".

(c) TITLE V—ENERGY SAVINGS IN GOVERNMENT AND PUBLIC INSTITUTIONS.—Section 541(3)(A)(i)(II) of the Energy Independence and Security Act of 2007 (42

U.S.C. 17151(3)(A)(i)(II)) is amended by striking ''and'' after the semicolon at the end and inserting ''or''.

(d) EFFECTIVE DATE.—This section and the amendments made by this section take effect as if included in the Energy Independence and Security Act of 2007 (Public Law 110–140; 121 Stat. 1492).

SEC. 162. TECHNICAL CORRECTIONS TO ENERGY POLICY ACT OF 2005.

(a) TITLE I—ENERGY EFFICIENCY.—Section 325(g)(8)(C)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6295(g)(8)(C)(ii)) (as added by section 135(c)(2)(B) of the Energy Policy Act of 2005) is amended by striking ''20°F'' and inserting ''−20°F''.

(b) EFFECTIVE DATE.—This section and the amendments made by this section take effect as if included in the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 594).

Subtitle H—Clean Energy Innovation Centers

SEC. 171. CLEAN ENERGY INNOVATION CENTERS.

(a) PURPOSE.—The Secretary shall carry out a program to establish Clean Energy Innovation Centers to enhance the Nation's economic, environmental, and energy security by promoting commercial deployment of clean, indigenous energy alternatives to oil and other fossil fuels,

reducing greenhouse gas emissions, and ensuring that the United States maintains a technological lead in developing and deploying state-of-the-art energy technologies. To achieve these purposes the program shall—

(1) leverage the expertise and resources of the university and private research communities, industry, venture capital, national laboratories, and other participants in energy innovation to support cross-disciplinary research and development in areas not being served by the private sector in order to develop and transfer innovative clean energy technologies into the marketplace;

(2) expand the knowledge base and human capital necessary to transition to a low-carbon economy; and

(3) promote regional economic development by cultivating clusters of clean energy technology firms, private research organizations, suppliers, and other complementary groups and businesses.

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

(1) ALLOWANCE.—The term ''allowance'' means an emission allowance under section 721 of the Clean Air Act.

(2) CENTER.—The term ''Center'' means a Clean Energy Innovation Center established in accordance with this section.

(3) CLEAN ENERGY TECHNOLOGY.—The term ''clean energy technology'' means a technology that—

(A) produces energy from solar, wind, geothermal, biomass, tidal, wave, ocean, and other renewable energy resources (as such term is defined in section 610 of the Public Utility Regulatory Policies Act of 1978);

(B) more efficiently transmits, distributes, or stores energy;

(C) enhances energy efficiency for buildings and industry, including combined heat and power;

(D) enables the development of a Smart Grid (as described in section 1301 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17381)), including integration of renewable energy resources and distributed generation, demand response, demand side management, and systems analysis;

(E) produces an advanced or sustainable material with energy or energy efficiency applications;

(F) enhances water security through improved water management, conservation, distribution, and end use applications; or

(G) improves energy efficiency for transportation, including electric vehicles.

(4) CLUSTER.—The term ''cluster'' means a concentration of firms directly involved in the research, development, finance, and commercialization of clean energy technologies whose geographic proximity facilitates utilization and sharing of skilled human resources, infrastructure, research facilities, educational and training institutions, venture capital, and input suppliers.

(5) PROJECT.—The term ''project'' means an activity with respect to which a Center provides support under subsection (e).

(6) QUALIFYING ENTITY.—The term ''qualifying entity'' means each of the following:

(A) A research university.

(B) A State institution with a focus on the advancement of clean energy technologies.

(C) A nongovernmental organization with research or commercialization expertise in clean energy technology development.

(7) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(8) TECHNOLOGY FOCUS.—The term ''technology focus'' means the unique technology area in which a Center will specialize, and may include solar electricity, fuels from solar energy, batteries and energy storage, electricity grid systems and devices, energy efficient building systems and design, advanced materials, modeling and simulation, and other clean energy technology areas designated by the Secretary.

(9) TRANSLATIONAL RESEARCH.—The term ''translational research'' means clean energy technology research to coordinate basic or applied research with technical and commercial applications to enable promising discoveries or inventions to attract investment sufficient for market penetration and diffusion.

(c) ROLE OF THE SECRETARY.—The Secretary shall—

(1) have ultimate responsibility for, and oversight of, all aspects of the program under this section;

(2) provide for the distribution of allowances to consortia for the establishment of 8 Centers pursuant to this section, with each Center designated a unique technology focus area;

(3) coordinate the innovation activities of Centers with those occurring through other Department of Energy entities, including the National Laboratories, the Advanced Research Projects Agency—Energy, and Energy Frontier Research Centers, and within industry, and to avoid duplication of research, by annually—

(A) issuing guidance regarding national energy research and development priorities and strategic objectives; and

(B) convening a conference of staff of the Department of Energy and representatives from such other entities to share research results, program plans, and opportunities for collaboration.

(d) CONSORTIUM.—A consortium shall be eligible to receive allowances to support the establishment of a Center under this section if—

(1) it is composed of—

(A) 2 research universities with a combined annual research budget of $500,000,000; and

(B) no fewer than 1 additional qualifying entity;

(2) its members have established a binding agreement that documents—

(A) the structure of the partnership agreement;

(B) the governance and management structure to enable cost-effective implementation of the program;

(C) an intellectual property management policy;

(D) conflicts of interest policy consistent with subsection (e)(4);

(E) an accounting structure that meets the requirements of the Department and can be audited under subsection (f)(3); and

(F) has an Advisory Board consistent with subsection (e)(3);

(3) it receives financial contributions from States, consortium participants, or other non-Federal sources, to be used pursuant to subsection (e)(2);

(4) it is part of an existing cluster or demonstrates high potential to develop a new cluster; and

(5) it operates as a nonprofit organization.

(e) CLEAN ENERGY INNOVATION CENTERS.—

(1) ROLE.—Centers shall provide support to activities leading to commercial deployment of clean energy technologies pursuant to the purposes of this section through issuance of awards to projects managed by qualifying entities and other entities meeting the Center's project criteria, including national laboratories. Each Center shall—

(A) develop and publish for public review and comment proposed plans, programs, and project selection criteria;

(B) submit an annual report to the Secretary summarizing the Center's activities, organizational expenditures, and Board members, which shall include a certification of compliance with conflict of interest policies and a description of each project in the research portfolio;

(C) establish policies—

(i) regarding intellectual property developed as a result of Center awards and other forms of technology support that en-

1 courage individual ingenuity and invention
2 while speeding knowledge transfer and fa-
3 cilitating the establishment of rapid com-
4 mercialization pathways;
5 (ii) to prevent resources provided to
6 the Center from being used to displace pri-
7 vate sector investment likely to otherwise
8 occur, including investment from private
9 sector entities which are members of the
10 consortium;
11 (iii) to facilitate the participation of
12 private investment firms or other private
13 entities that invest in clean energy tech-
14 nologies to perform due diligence on award
15 proposals, to participate in the award re-
16 view process, and to provide guidance to
17 projects supported by the Center; and
18 (iv) to facilitate the participation of
19 entrepreneurs with a demonstrated history
20 of commercializing clean energy tech-
21 nologies;
22 (D) oversee project solicitations, review
23 proposed projects, and select projects for
24 awards; and
25 (E) monitor project implementation.

(2) USE AND DISTRIBUTION OF AWARDS BY CENTERS.—A Center shall allocate awards and other support for—

(A) clean energy technology projects conducting translational research and related activities, at least 40 percent of which shall be utilized for projects related to the Center's technology focus; and

(B) administrative expenses, which may constitute no more than 10 percent of the award.

(3) ADVISORY BOARDS.—

(A) IN GENERAL.—Each Center shall establish an Advisory Board whose members shall have extensive and relevant scientific, technical, industry, financial, or research management expertise. The Advisory Board shall review the Center's proposed plans, programs, project selection criteria, and projects and shall ensure that projects selected for awards meet the conflict of interest policies of the Center. Advisory Board members other than those representing consortium members shall serve for no more than three years and must comply with conflict of interest provisions.

(B) MEMBERS.—Each Advisory Board shall consist of—

(i) 5 members selected by the consortium's research universities;

(ii) 2 members selected by the consortium's other qualifying entities; and

(iii) 2 members selected at large by other Board members to represent the entrepreneur and venture capital communities.

Individuals appointed under clause (iii) shall not be State or Federal employees or affiliated with the consortium's qualified entities.

(C) NONVOTING MEMBERS.—The Board shall also include 1 nonvoting member appointed by the Secretary.

(D) COMPENSATION.—Members of an Advisory Board may receive reimbursement for travel expenses and a reasonable stipend.

(4) CONFLICT OF INTEREST.—

(A) PROCEDURES.—Centers shall establish procedures to ensure that employees or consortia designees for Center activities who are in decisionmaking capacities shall—

(i) disclose any financial interests in, or financial relationships with, applicants for or recipients of awards under paragraph (1), including those of his or her spouse or minor child, unless such relationships or interests would be considered to be remote or inconsequential; and

(ii) recuse himself or herself from any funding decision for projects in which he or she has a personal financial interest.

(B) DISQUALIFICATION AND REVOCATION.—The Secretary may disqualify an application or revoke allowances distributed to the Center or awards provided under paragraph (1), if cognizant officials of the Center fail to comply with procedures required under subparagraph (A).

(f) DISTRIBUTION OF ALLOWANCES TO CLEAN ENERGY INNOVATION CENTERS.—

(1) SELECTION AND SCHEDULE.—Allowances to support the establishment of a Center shall be distributed through a competitive process. Not later than 120 days after the date of enactment of this Act, the Secretary shall solicit proposals from eligible consortia to establish Centers, which shall be

submitted not later than 180 days after the date of enactment of this Act. The Secretary shall select the program consortia not later than 270 days after the date of enactment of this Act pursuant to subsection (d). The Secretary shall award 3 grants for the establishment of 3 Centers of Excellence to be located on the campus of 1890 Land Grant Institution (as defined in section 2 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7061)).

(2) TERM AND USE OF ALLOWANCES.—Allowances distributed to Centers shall be used to provide awards pursuant to subsection (e)(1). The amount of allowances distributed to support the establishment of a Center under this section shall not be less than 10 and not more than 30 percent of the allowances allocated under section 782(h) of the Clean Air Act, each year for a 6 year period. Centers shall be eligible to compete for additional allowance distribution after the expiration of the initial period. Centers shall establish award periods for individual awards. The transfer of allowances to a Center shall occur at the start of each calendar year.

(3) AUDIT.—Each Center shall conduct an annual audit to determine the extent to which allow-

ances distributed to the Center, and awards under subsection (e) have been utilized in a manner consistent with this section. The auditor shall transmit a report of the results of the audit to the Secretary and to the Government Accountability Office. The Secretary shall include such report in the annual report to Congress, along with a plan to remedy any deficiencies cited in the report. The Government Accountability Office may review such audits as appropriate and shall have full access to the books, records, and personnel of the Center to ensure that allowances distributed to the Center, and awards made under subsection (e), have been utilized in a manner consistent with this section.

Subtitle I—Marine Spatial Planning

SEC. 181. STUDY OF OCEAN RENEWABLE ENERGY AND TRANSMISSION PLANNING AND SITING.

(a) DEFINITIONS.—In this section:

(1) MARINE SPATIAL PLAN.—The term ''marine spatial plan'' means the analysis and allocation of ocean space for various uses to achieve ecological, economic, and social objectives, based on the principle of ecosystem-based management.

(2) MARINE SPATIAL PLANNING.—The term ''marine spatial planning'' means the process of developing a marine spatial plan.

(3) ECOSYSTEM-BASED MANAGEMENT.—The term ''ecosystem-based management'' means a management approach that ensures the future ecological and economic sustainability of natural resources by—

(A) accounting for all ecosystem interactions and direct, indirect, and cumulative impacts of human activities on the ecosystem;

(B) emphasizing protection of ecosystem structure, functions, patterns, and processes; and

(C) maintaining ecosystems in a healthy and resilient condition.

(4) OFFSHORE RENEWABLE ENERGY.—The term ''offshore renewable energy'' means energy generated from offshore wind or offshore hydrokinetic (wave, tidal, ocean current, and tidal-current) energy technologies.

(5) OFFSHORE RENEWABLE ENERGY FACILITY.—The term ''offhsore renewable energy facility'' means a facility that generates offshore renewable

energy or any offshore transmission line associated with such facility.

(b) STUDY.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this section, the Federal Energy Regulatory Commission, the Secretary of the Interior, and the National Oceanic and Atmospheric Administration, in consultation with the Council on Environmental Quality and, as appropriate, coastal States, regional organizations of coastal States, and relevant nongovernmental organizations, shall jointly conduct a study of the potential for marine spatial planning to facilitate the development of offshore renewable energy facilities in a manner that protects and maintains coastal and marine ecosystem health.

(2) REQUIREMENTS.—The study under paragraph (1) shall include—

(A) identification of the steps involved in regional marine spatial planning for the siting of offshore renewable energy facilities;

(B) a recommended approach for the development of regional marine spatial plans for the siting of offshore renewable energy facilities that provides for—

(i) the participation of relevant Federal agencies and State governments;

(ii) coordination, to the maximum extent practicable, with any marine spatial planning undertaken by States;

(iii) public input; and

(iv) the periodic revision of such plans as necessary to account for significant new information and ensure achievement of plan objectives;

(C) identification of required elements of such regional marine spatial plans, including rules that Federal agencies shall apply to applications for any authorizations required under existing Federal law to construct or operate offshore renewable energy facilities within areas covered by such plans;

(D) an assessment of the adequacy of existing data, including baseline environmental data, to support such marine spatial planning and identification of gaps in such data and the studies needed to fill such gaps;

(E) an assessment of the resources required to carry out such marine spatial planning;

(F) recommended mechanisms for the formal adoption and implementation of regional marine spatial plans for the development of offshore renewable energy facilities by relevant Federal agencies;

(G) identification of any additional authority relevant Federal agencies would need to adopt and implement regional marine spatial plans for the development of offshore renewable energy facilities; and

(H) such other recommendations as appropriate.

(3) REPORT.—Not later than 6 months after the date of enactment of this section, the Federal Energy Regulatory Commission, the Secretary of the Interior, and the National Oceanic and Atmospheric Administration shall jointly publish the findings and recommendations of the study conducted pursuant to this subsection and shall accept public comment for at least 30 days after such publication. Following consideration of any public comments, and not later than 8 months after the date of enactment of this section, the Federal Energy Regulatory Commission, the Secretary of the Interior, and the National Oceanic and Atmospheric Administration shall jointly

submit to Congress and the Council on Environmental Quality the findings and recommendations of the study conducted pursuant to this subsection.

(c) ASSESSMENT OF REPORT.—

(1) IN GENERAL.—Not later than 4 months after the date of submission of the report required under subsection (b)(3), the Council on Environmental Quality shall assess the recommendations of such report, issue a written determination as to whether the recommended approach to marine spatial planning should be implemented, and transmit such written determination to the relevant Federal agencies and Congress.

(2) COORDINATION FOR RECOMMENDED APPROACH.—If the Council on Environmental Quality determines that the recommended approach to marine spatial planning should be implemented, the relevant Federal agencies shall implement such approach no later than 18 months after the written determination required by paragraph (1), and the Council on Environmental Quality shall coordinate such implementation. At the time of the written determination required by paragraph (1), the Council on Environmental Quality shall notify Congress if

the relevant Federal agencies lack authority to carry out any aspect of the recommended approach.

(3) ALTERNATIVE APPROACH.—If the Council on Environmental Quality determines that the recommended approach to marine spatial planning should not be implemented, the Council on Environmental Quality shall formulate an alternative approach and submit such alternative approach to the relevant Federal agencies and Congress at the time of the written determination required by paragraph (1).

(d) RELATIONSHIP TO EXISTING LAW.—Nothing in this section shall affect or be construed to affect any law, regulation, or memoranda of understanding governing the development of offshore renewable energy facilities in effect prior to the implementation of the recommended or alternative approach pursuant to subsection (c).

(e) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

TITLE II—ENERGY EFFICIENCY

Subtitle A—Building Energy Efficiency Programs

SEC. 201. GREATER ENERGY EFFICIENCY IN BUILDING CODES.

Section 304 of the Energy Conservation and Production Act (42 U.S.C. 6833) is amended to read as follows:

"SEC. 304. GREATER ENERGY EFFICIENCY IN BUILDING CODES.

"(a) ENERGY EFFICIENCY TARGETS.—

"(1) IN GENERAL.—Except as provided in paragraph (2) or (3), the national building code energy efficiency target for the national average percentage improvement of a building's energy performance when built to a code meeting the target shall be—

"(A) effective on the date of enactment of the American Clean Energy and Security Act of 2009, 30 percent reduction in energy use relative to a comparable building constructed in compliance with the baseline code;

"(B) effective January 1, 2014, for residential buildings, and January 1, 2015, for commercial buildings, 50 percent reduction in energy use relative to the baseline code; and

"(C) effective January 1, 2017, for residential buildings, and January 1, 2018, for commercial buildings, and every 3 years thereafter, respectively, through January 1, 2029, and January 1, 2030, 5 percent additional reduction in energy use relative to the baseline code.

"(2) CONSENSUS-BASED CODES.—If on any effective date specified in paragraph (1)(A), (B), or (C) a successor code to the baseline codes provides for greater reduction in energy use than is required under paragraph (1), the overall percentage reduction in energy use provided by that successor code shall be the national building code energy efficiency target.

"(3) TARGETS ESTABLISHED BY SECRETARY.—The Secretary may by rule establish a national building code energy efficiency target for residential or commercial buildings achieving greater reductions in energy use than the targets prescribed in paragraph (1) or (2) if the Secretary determines that such greater reductions in energy use can be achieved with a code that is life cycle cost-justified and technically feasible. The Secretary may by rule establish a national building code energy efficiency

target for residential or commercial buildings achieving a reduction in energy use that is greater than zero but less than the targets prescribed in paragraph (1) or (2) if the Secretary determines that such lesser target is the maximum reduction in energy use that can be achieved through a code that is life cycle cost-justified and technically feasible.

"(4) ADDITIONAL REDUCTIONS IN ENERGY USE.—Effective on January 1, 2033, and once every 3 years thereafter, the Secretary shall determine, after notice and opportunity for comment, whether further energy efficiency building code improvements for residential or commercial buildings, respectively, are life cycle cost-justified and technically feasible, and shall establish updated national building code energy efficiency targets that meet such criteria.

"(5) ZERO-NET-ENERGY BUILDINGS.—In setting targets under this subsection, the Secretary shall consider ways to support the deployment of distributed renewable energy technology, and shall seek to achieve the goal of zero-net-energy commercial buildings established in section 422 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17082).

"(6) BASELINE CODE.—For purposes of this section, the term 'baseline code' means—

"(A) for residential buildings, the 2006 International Energy Conservation Code (IECC) published by the International Code Council; and

"(B) for commercial buildings, the code published in ASHRAE Standard 90.1–2004.

"(7) CONSULTATION.—In establishing the targets required by this section, the Secretary shall consult with the Director of the National Institute of Standards and Technology.

"(b) NATIONAL ENERGY EFFICIENCY BUILDING CODES.—

"(1) REQUIREMENT.—

"(A) IN GENERAL.—There shall be established national energy efficiency building codes under this subsection, for residential and commercial buildings, sufficient to meet each of the national building code energy efficiency targets established under subsection (a), not later than the date that is one year after the deadline for establishment of each such target.

"(B) EXISTING CODE.—If the Secretary finds prior to the date one year after the dead-

line for establishing a target that one or more energy efficiency building codes published by a recognized consensus-based code development organization meet or exceed the established target, the Secretary shall select the code that meets the target with the highest efficiency in the most cost-effective manner, and such code shall be the national energy efficiency building code.

"(C) REQUIREMENT TO ESTABLISH CODE.—If the Secretary does not make a finding under subparagraph (B), the national energy efficiency building code shall be established by rule by the Secretary under paragraph (2).

"(2) ESTABLISHMENT BY SECRETARY.—

"(A) PROCEDURE.—In order to establish a national energy efficiency building code as required under paragraph (1)(C), the Secretary shall—

"(i) not later than six months prior to the effective date for each target, review existing and proposed codes published or under review by recognized consensus-based code development organizations;

"(ii) determine the percentage of energy efficiency improvements that are or would be achieved in such published or proposed code versions relative to the target;

"(iii) propose improvements to such published or proposed code versions sufficient to meet or exceed the target; and

"(iv) unless a finding is made under paragraph (1)(B) with respect to a code published by a recognized consensus-based code development organization, adopt a code that meets or exceeds the relevant national building code energy efficiency target by not later than one year after the effective date of such target.

"(B) CALCULATIONS.—Each code established by the Secretary under this paragraph shall be set at the maximum level the Secretary determines is life cycle cost-justified and technically feasible, in accordance with the following:

"(i) SAVINGS CALCULATIONS.—Calculations of energy savings shall take into account the typical lifetimes of different

products, measures, and system configurations.

"(ii) COST-EFFECTIVENESS CALCULATIONS.—Calculations of life cycle cost-effectiveness shall be based on life cycle cost methods and procedures under section 544 of the National Energy Conservation Policy Act (42 U.S.C. 8254), but shall incorporate to the extent feasible externalities such as impacts on climate change and on peak energy demand that are not already incorporated in assumed energy costs.

"(C) CONSIDERATIONS.—In developing a national energy efficiency building code under this paragraph, the Secretary shall consider—

"(i) for residential codes—

"(I) residential building standards published or proposed by ASHRAE;

"(II) residential building codes published or proposed in the International Energy Conservation Code (IECC);

"(III) data from the Residential Energy Services Network (RESNET)

on compliance measures utilized by consumers to qualify for the residential energy efficiency tax credits established under the Energy Policy Act of 2005;

"(IV) data and information from the Department of Energy's Building America Program;

"(V) data and information from the Energy Star New Homes program;

"(VI) data and information from the New Building Institute and similar organizations; and

"(VII) standards for practices and materials to achieve cool roofs in residential buildings, taking into consideration reduced air conditioning energy use as a function of cool roofs, the potential reduction in global warming from increased solar reflectance from buildings, and cool roofs criteria in State and local building codes and in national and local voluntary programs; and

1 "(ii) for commercial codes—
2 "(I) commercial building stand-
3 ards proposed by ASHRAE;
4 "(II) commercial building codes
5 proposed in the International Energy
6 Conservation Code (IECC);
7 "(III) the Core Performance Cri-
8 teria published by the New Buildings
9 Institute;
10 "(IV) data and information de-
11 veloped by the Director of the Com-
12 mercial High-Performance Green
13 Building Office of the Department of
14 Energy and any public-private part-
15 nerships established under that Office;
16 "(V) data and information from
17 the Energy Star for Buildings pro-
18 gram;
19 "(VI) data and information from
20 the New Building Institute,
21 RESNET, and similar organizations;
22 and
23 "(VII) standards for practices
24 and materials to achieve cool roofs in
25 commercial buildings, taking into con-

sideration reduced air conditioning energy use as a function of cool roofs, the potential reduction in global warming from increased solar reflectance from buildings, and cool roofs criteria in State and local building codes and in national and local voluntary programs.

"(D) CONSULTATION.—In establishing any national energy efficiency building code required by this section, the Secretary shall consult with the Director of the National Institute of Standards and Technology.

"(3) CONSENSUS STANDARD ASSISTANCE.—(A) To support the development of consensus standards that may provide the basis for national energy efficiency building codes, minimize duplication of effort, encourage progress through consensus, and facilitate the development of greater building efficiency, the Secretary shall provide assistance to recognized consensus-based code development organizations to develop, and where the relevant code has been adopted as the national code, disseminate consensus based energy efficiency building codes as provided in this paragraph.

"(B) Upon a finding by the Secretary that a code developed by such an organization meets a target established under subsection (a), the Secretary shall—

"(i) send notice of the Secretary's finding to all duly authorized or appointed State and local code agencies; and

"(ii) provide sufficient support to such an organization to make the code available on the Internet, or to accomplish distribution of such code to all such State and local code agencies at no cost to the State and local code agencies.

"(C) The Secretary may contract with such an organization and with other organizations with expertise on codes to provide training for State and local code officials and building inspectors in the implementation and enforcement of such code.

"(D) The Secretary may provide grants and other support to such an organization to—

"(i) develop appropriate refinements to such code; and

"(ii) support analysis of options for improvements in the code to meet the next scheduled target.

"(4) CODE DEVELOPED BY SECRETARY.—If the Secretary establishes a national energy efficiency building code under paragraph (2), the Secretary shall—

"(A) to the extent that such code is based on a prior code developed by a recognized consensus-based code development organization, negotiate and provide appropriate compensation to such organization for the use of the code materials that remain in the code established by the Secretary; and

"(B) disseminate the national energy efficiency building codes to State and local code officials, and support training and provide guidance and technical assistance to such officials as appropriate.

"(c) STATE ADOPTION OF ENERGY EFFICIENCY BUILDING CODES.—

"(1) REQUIREMENT.—Not later than 1 year after a national energy efficiency building code for residential or commercial buildings is established or revised under subsection (b), each State—

"(A) shall—

"(i) review and update the provisions of its building code regarding energy effi-

ciency to meet or exceed the target met in the new national code, to achieve equivalent or greater energy savings;

"(ii) document, where local governments establish building codes, that local governments representing not less than 80 percent of the State's urban population have adopted the new national code, or have adopted local codes that meet or exceed the target met in the new national code to achieve equivalent or greater energy savings; or

"(iii) adopt the new national code; and

"(B) shall provide a certification to the Secretary demonstrating that energy efficiency building code provisions that apply throughout the State meet or exceed the target met by the new national code, to achieve equivalent or greater energy savings.

"(2) CONFIRMATION.—

"(A) REQUIREMENT.—Not later than 90 days after a State certification is provided under paragraph (1)(B), the Secretary shall determine whether the State's energy efficiency

building code provisions meet the requirements of this subsection.

"(B) ACCEPTANCE BY SECRETARY.—If the Secretary determines under subparagraph (A) that the State's energy efficiency building code or codes meet the requirements of this subsection, the Secretary shall accept the certification.

"(C) DEFICIENCY NOTICE.—If the Secretary determines under subparagraph (A) that the State's building code or codes do not meet the requirements of this subsection, the Secretary shall identify the deficiency in meeting the national building code energy efficiency target, and, to the extent possible, indicate areas where further improvement in the State's code provisions would allow the deficiency to be eliminated.

"(D) REVISION OF CODE AND RECERTIFICATION.—A State may revise its code or codes and submit a recertification under paragraph (1)(B) to the Secretary at any time.

"(3) COMPLIANT CODE.—For the purposes of meeting the target described in subsection (a)(1)(A) for residential buildings, a State that adopts the

code represented in California's Title 24–2009 by the date two years after the date of enactment of the American Clean Energy and Security Act of 2009 shall be considered to have met the requirements of this subsection for the applicable period.

"(d) APPLICATION OF NATIONAL CODE TO STATE AND LOCAL JURISDICTIONS.—

"(1) IN GENERAL.—Upon the expiration of 1 year after a national energy efficiency building code is established under subsection (b), in any jurisdiction where the State has not had a certification relating to that code accepted by the Secretary under subsection (c)(2)(B), and the local government has not had a certification relating to that code accepted by the Secretary under subsection (e)(6)(B), the national code shall become the applicable energy efficiency building code for such jurisdiction.

"(2) STATE LEGISLATIVE ADOPTION.—In a State in which the relevant building energy code is adopted legislatively, the deadline in paragraph (1) shall not be earlier than 1 year after the first day that the legislature meets following establishment of a national energy efficiency building code.

"(3) VIOLATIONS.—It shall be a violation of this section for an owner or builder of a building to

knowingly occupy, permit occupancy of, or convey the building if the building is subject to the requirements of—

"(A) a State energy efficiency building code with respect to which a certification has been accepted by the Secretary under subsection (c)(2)(B);

"(B) a local energy efficiency building code with respect to which a certification has been accepted by the Secretary under subsection (e)(6)(B); or

"(C) a national energy efficiency building code adopted under subsection (c)(1)(A)(i) or made applicable under paragraph (1) of this subsection,

if the building was constructed out of compliance with such code.

"(e) STATE ENFORCEMENT OF ENERGY EFFICIENCY BUILDING CODES.—

"(1) IN GENERAL.—Each State, or where applicable under State law each local government, shall implement and enforce applicable State or local codes with respect to which a certification was accepted by the Secretary under subsection (c)(2)(B) or paragraph (6)(B) of this subsection, or the na-

tional energy efficiency building codes, as provided in this subsection.

"(2) STATE CERTIFICATION.—Not later than 2 years after the date of a certification under subsection (c)(1) or the establishment of a national energy efficiency building code under subsection (b), each State shall certify that it has—

"(A) achieved compliance with—

"(i) State codes, or, as provided under State law, local codes, with respect to which a certification was accepted by the Secretary under subsection (c)(2)(B); or

"(ii) the national energy efficiency building code, as applicable; or

"(B) for any certification submitted within 7 years after the date of enactment of the American Clean Energy and Security Act of 2009, made significant progress toward achieving such compliance.

"(3) ACHIEVING COMPLIANCE.—A State shall be considered to achieve compliance with a code described in paragraph (2)(A) if at least 90 percent of new and substantially renovated building space in that State in the preceding year upon inspection meets the requirements of the code. A certification

under paragraph (2) shall include documentation of the rate of compliance based on—

"(A) independent inspections of a random sample of the new and substantially renovated buildings covered by the code in the preceding year; or

"(B) an alternative method that yields an accurate measure of compliance as determined by the Secretary.

"(4) SIGNIFICANT PROGRESS.—A State shall be considered to have made significant progress toward achieving compliance with a code described in paragraph (2)(A) if—

"(A) the State has developed a plan, including for hiring enforcement staff, providing training, providing manuals and checklists, and instituting enforcement programs, designed to achieve full compliance within 5 years after the date of the adoption of the code;

"(B) the State is taking significant, timely, and measurable action to implement that plan;

"(C) the State has not reduced its expenditures for code enforcement; and

"(D) at least 50 percent of new and substantially renovated building space in the State

in the preceding year upon inspection meets the requirements of the code.

"(5) SECRETARY'S DETERMINATION.—Not later than 90 days after a State certification under paragraph (2), the Secretary shall determine whether the State has demonstrated that it has complied with the requirements of this subsection, including accurate measurement of compliance, or that it has made significant progress toward compliance. If such determination is positive, the Secretary shall accept the certification. If the determination is negative, the Secretary shall identify the areas of deficiency.

"(6) OUT OF COMPLIANCE.—

"(A) IN GENERAL.—Any State for which the Secretary has not accepted a certification under paragraph (5) by a deadline established under this subsection is out of compliance with this section.

"(B) LOCAL COMPLIANCE.—In any State that is out of compliance with this section as provided in subparagraph (A), a local government may be in compliance with this section by meeting all certification requirements applicable to the State.

"(C) NONCOMPLIANCE.—Any State that is not in compliance with this section, as provided in subparagraph (A), shall, until the State regains such compliance, be ineligible to receive—

"(i) emission allowances pursuant to subsection (h)(1);

"(ii) Federal funding in excess of that State's share (calculated according to the allocation formula in section 363 of the Energy Policy and Conservation Act (42 U.S.C. 6323)) of $125,000,000 each year; and

"(iii) for—

"(I) the first year for which the State is out of compliance, 25 percent of any additional funding or other items of monetary value otherwise provided under the American Clean Energy and Security Act of 2009;

"(II) the second year for which the State is out of compliance, 50 percent of any additional funding or other items of monetary value otherwise provided under the American

Clean Energy and Security Act of 2009;

"(III) the third year for which the State is out of compliance, 75 percent of any additional funding or other items of monetary value otherwise provided under the American Clean Energy and Security Act of 2009; and

"(IV) the fourth and subsequent years for which the State is out of compliance, 100 percent of any additional funding or other items of monetary value otherwise provided under the American Clean Energy and Security Act of 2009.

"(f) FEDERAL ENFORCEMENT.—Where a State fails and local governments in that State also fail to enforce the applicable State or national energy efficiency building codes, the Secretary shall enforce such codes, as follows:

"(1) The Secretary shall establish, by rule, within 2 years after the date of enactment of the American Clean Energy and Security Act of 2009, an energy efficiency building code enforcement capability.

"(2) Such enforcement capability shall be designed to achieve 90 percent compliance with such code in any State within 1 year after the date of the Secretary's determination that such State is out of compliance with this section.

"(3) The Secretary may set and collect reasonable inspection fees to cover the costs of inspections required for such enforcement. Revenue from fees collected shall be available to the Secretary to carry out the requirements of this section upon appropriation.

"(g) ENFORCEMENT PROCEDURES.—(1) The Secretary shall assess a civil penalty for violations of this section, pursuant to subsection (d)(3), in accordance with the procedures described in section 333(d) of the Energy Policy and Conservation Act (42 U.S.C. 6303). The United States district courts shall also have jurisdiction to restrain any violation of this section or rules adopted thereunder, in accordance with the procedures described in section 334 of the Energy Policy and Conservation Act (42 U.S.C. 6304).

"(2) Each day of unlawful occupancy shall be considered a separate violation.

"(3) In the event a building constructed out of compliance with the applicable code has been conveyed by a

knowing builder or knowing seller to an unknowing purchaser, the builder or seller shall be the violator.

"(h) FEDERAL SUPPORT.—

"(1) ALLOWANCE ALLOCATION FOR STATE COMPLIANCE.—Not later than June 1, 2011, and on that date in each year thereafter, the Administrator shall provide emission allowances to the SEED Account for each State that the Secretary identifies as a State from which he has accepted the State's certification under subsection (e)(5) for compliance with the then current national energy efficiency building codes. Such allowances shall be distributed from an amount of 0.5 percent of the allowances made available for each year pursuant to the American Clean Energy and Security Act of 2009 to each State in accordance with a formula established by the Secretary as follows:

"(A) One-fifth in an equal amount to each of the 50 States and United States territories.

"(B) Two-fifths as a function of the relative energy use in all buildings in each State in the most recent year for which data is available.

"(C) Two-fifths based on the number of building construction starts recorded in each

State, the number of new building permits applied for in each State, or other relevant available data indicating building activity in each State, in the judgment of the Secretary, for the year prior to the year of the allocation.

"(2) ALLOWANCE ALLOCATION TO LOCAL GOVERNMENTS.—In the instance that the Secretary certifies that one or more local governments are in compliance with this section pursuant to subsection (e)(6)(B), the Administrator shall provide to each such local government the portion of the emission allowances that would have been provided to that State as a function of the population of that locality as a proportion of the population of that State as a whole.

"(3) UNALLOCATED ALLOWANCES.—To the extent that allowances are not provided to State or local governments for lack of certification in any year, those allowances shall be added to the amount provided to those States and local governments that are certified as eligible in that year.

"(4) USE OF ALLOWANCES.—Each State or each local government shall use such emission allowances as it receives pursuant to this section exclusively for the purposes of this section, including cov-

ering a reasonable portion of the costs of the development, adoption, implementation, and enforcement of a State or local energy efficiency building code with respect to which a certification is accepted by the Secretary under subsection (c)(2)(B) or subsection (e)(6)(B), or the national energy efficiency building code.

''(i) ANNUAL REPORTS BY SECRETARY.—The Secretary shall annually submit to Congress, and publish in the Federal Register, a report on—

''(1) the status of national building energy efficiency codes;

''(2) the status of energy efficiency building code adoption and compliance in the States;

''(3) the implementation of this section; and

''(4) impacts of past action under this section, and potential impacts of further action, on lifetime energy use by buildings, including resulting energy and cost savings.''.

SEC. 202. BUILDING RETROFIT PROGRAM.

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

(1) NONRESIDENTIAL BUILDING.—The term ''nonresidential building'' means a building with a primary use or purpose other than residential housing, including commercial offices, schools, academic

and other public and private institutions, nonprofit organizations, hospitals, hotels, and houses of worship. Such buildings shall include mixed-use properties used for both residential and nonresidential purposes in which more than half of building floor space is nonresidential.

(2) PERFORMANCE-BASED BUILDING RETROFIT PROGRAM.—The term ''performance-based building retrofit program'' means a program that determines building energy efficiency success based on actual measured savings after a retrofit is complete, as evidenced by energy invoices or evaluation protocols.

(3) PRESCRIPTIVE BUILDING RETROFIT PROGRAM.—The term ''prescriptive building retrofit program'' means a program that projects building retrofit energy efficiency success based on the known effectiveness of measures prescribed to be included in a retrofit.

(4) RECOMMISSIONING; RETROCOMMISSIONING.—The terms ''recommissioning'' and ''retrocommissioning'' have the meaning given those terms in section 543(f)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8253(f)(1)).

(5) RESIDENTIAL BUILDING.—The term ''residential building'' means a building whose primary use is residential. Such buildings shall include single-family homes (both attached and detached), owner-occupied units in larger buildings with their own dedicated space-conditioning systems, and buildings used for both residential and nonresidential purposes in which more than half of building floor space is residential.

(6) STATE ENERGY PROGRAM.—The term ''State Energy Program'' means the program under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

(b) ESTABLISHMENT.—The Administrator shall develop and implement, in consultation with the Secretary of Energy, standards for a national energy and environmental building retrofit policy for single-family and multifamily residences. The Administrator shall develop and implement, in consultation with the Secretary of Energy and the Director of Commercial High-Performance Green Buildings, standards for a national energy and environmental building retrofit policy for nonresidential buildings. The programs to implement the residential and nonresidential policies based on the standards developed under this section shall together be known as the Retrofit for

1 Energy and Environmental Performance (REEP) pro-
2 gram.

3 (c) PURPOSE.—The purpose of the REEP program
4 is to facilitate the retrofitting of existing buildings across
5 the United States to achieve maximum cost-effective en-
6 ergy efficiency improvements and significant improve-
7 ments in water use and other environmental attributes.

8 (d) FEDERAL ADMINISTRATION.—

9 (1) EXISTING PROGRAMS.—In creating and op-
10 erating the REEP program—

11 (A) the Administrator shall make appro-
12 priate use of existing programs, including the
13 Energy Star program and in particular the En-
14 vironmental Protection Agency Energy Star for
15 Buildings program; and

16 (B) the Secretary of Energy shall make
17 appropriate use of existing programs, including
18 delegating authority to the Director of Commer-
19 cial High-Performance Green Buildings ap-
20 pointed under section 421 of the Energy Inde-
21 pendence and Security Act of 2007 (42 U.S.C.
22 17081), who shall designate and provide fund-
23 ing to support a high-performance green build-
24 ing partnership consortium pursuant to sub-

section (f) of such section to support efforts under this section.

(2) CONSULTATION AND COORDINATION.—The Administrator and the Secretary of Energy shall consult with and coordinate with the Secretary of Housing and Urban Development in carrying out the REEP program.

(3) ALLOCATION OF ALLOWANCES.—The Administrator shall support the REEP program by providing emission allowances to each State's SEED Account for the purposes of the program, and providing, as appropriate, emission allowances to a local government entity that carries out the purposes of this section in the absence of a State program. The Administrator shall support administration of the program through such existing State and local agencies or entities, including those regulated by the State, that the State designates to carry out the purposes of this section. The Administrator shall ensure accountability for allowances dispensed, and shall confirm measurement and verification of energy, water, and environmental savings achieved.

(4) ASSISTANCE.—The Administrator and the Secretary of Energy shall provide consultation and assistance to State and local agencies for the estab-

lishment of revolving loan funds, loan guarantees, or other forms of financial assistance under this section.

(e) STATE AND LOCAL ADMINISTRATION.—

(1) DELEGATION.—The designated State agency, agencies, or entities described in subsection (d)(3) may delegate performance of appropriate elements of the REEP program, upon their request and subject to State law, to counties, municipalities, appropriate public agencies, and other divisions of local government, as well as to entities regulated by the State. In making any such delegation, a State shall give priority to entities that administer existing comprehensive retrofit programs, including those under the supervision of State utility regulators. The State shall ensure accountability for the use of allowances provided under this section, and to the extent such allowances are sold by the State, for the proceeds. States shall maintain responsibility for meeting the standards and requirements of the REEP program. In any State that elects not to administer the REEP program, a unit of local government may propose to do so within its jurisdiction, and if the Administrator finds that such local government is capable of administering the program,

the Administrator may provide allowances to that local government, prorated according to the population of the local jurisdiction relative to the population of the State, for purposes of the REEP program.

(2) EMPLOYMENT.—States and local government entities may administer a REEP program in a manner that authorizes public or regulated investor-owned utilities, building auditors and inspectors, contractors, nonprofit organizations, for-profit companies, and other entities to perform audits and retrofit services under this section. A State may provide incentives for retrofits without direct participation by the State or its agents, so long as the resulting savings are measured and verified. A State or local administrator of a REEP program shall seek to ensure that sufficient qualified entities are available to support retrofit activities so that building owners have a competitive choice among qualified auditors, raters, contractors, and providers of services related to retrofits. Nothing in this section is intended to preclude or preempt the right of a building owner to choose the specific providers of retrofit services to engage for a retrofit project in that owner's building.

(3) EQUAL INCENTIVES FOR EQUAL IMPROVEMENT.—In general, the States should strive to offer the same levels of incentives for retrofits that meet the same efficiency improvement goals, regardless of whether the State, its agency or entity, or the building owner has conducted the retrofit achieving the improvement, provided the improvement is measured and verified.

(f) ELEMENTS OF REEP PROGRAM.—The Administrator, in consultation with the Secretary of Energy, shall establish goals, guidelines, practices, and standards for accomplishing the purpose stated in subsection (c), and shall annually review and, as appropriate, revise such goals, guidelines, practices, and standards. The program under this section shall include the following:

(1) Residential Energy Services Network (RESNET) or Building Performance Institute (BPI) analyst certification of residential building energy and environment auditors, inspectors, and raters, or an equivalent certification system as determined by the Administrator.

(2) BPI certification or licensing by States of residential building energy and environmental retrofit contractors, or an equivalent certification or licensing system as determined by the Administrator.

(3) Provision of BPI, RESNET, or other appropriate information on equipment and procedures, as determined by the Administrator, that contractors can use to test the energy and environmental efficiency of buildings effectively (such as infrared photography and pressurized testing, and tests for water use and indoor air quality).

(4) Provision of clear and effective materials to describe the testing and retrofit processes for typical buildings.

(5) Guidelines for offering and managing prescriptive building retrofit programs and performance-based building retrofit programs for residential and nonresidential buildings.

(6) Guidelines for applying recommissioning and retrocommissioning principles to improve a building's operations and maintenance procedures.

(7) A requirement that building retrofits conducted pursuant to a REEP program utilize, especially in all air-conditioned buildings, roofing materials with high solar energy reflectance, unless inappropriate due to green roof management, solar energy production, or for other reasons identified by the Administrator, in order to reduce energy consumption within the building, increase the albedo of

the building's roof, and decrease the heat island effect in the area of the building.

(8) Determination of energy savings in a performance-based building retrofit program through—

(A) for residential buildings, comparison of before and after retrofit scores on the Home Energy Rating System (HERS) Index, where the final score is produced by an objective third party;

(B) for nonresidential buildings, Environmental Protection Agency Portfolio Manager benchmarks; or

(C) for either residential or nonresidential buildings, use of an Administrator-approved simulation program by a contractor with the appropriate certification, subject to appropriate software standards and verification of at least 15 percent of all work done, or such other percentage as the Administrator may determine.

(9) Guidelines for utilizing the Energy Star Portfolio Manager, the Home Energy Rating System (HERS) rating system, Home Performance with Energy Star program approvals, and any other tools associated with the retrofit program.

(10) Requirements and guidelines for post-retrofit inspection and confirmation of work and energy savings.

(11) Detailed descriptions of funding options for the benefit of State and local governments, along with model forms, accounting aids, agreements, and guides to best practices.

(12) Guidance on opportunities for—

(A) rating or certifying retrofitted buildings as Energy Star buildings, or as green buildings under a recognized green building rating system;

(B) assigning Home Energy Rating System (HERS) or similar ratings; and

(C) completing any applicable building performance labels.

(13) Sample materials for publicizing the program to building owners, including public service announcements and advertisements.

(14) Processes for tracking the numbers and locations of buildings retrofitted under the REEP program, with information on projected and actual savings of energy and its value over time.

(g) REQUIREMENTS.—As a condition of receiving allowances for the REEP program pursuant to this Act, a State or qualifying local government shall—

(1) adopt the standards for training, certification of contractors, certification of buildings, and post-retrofit inspection as developed by the Administrator for residential and nonresidential buildings, respectively, except as necessary to match local conditions, needs, efficiency opportunities, or other local factors, or to accord with State laws or regulations, and then only after the Administrator approves such a variance; and

(2) establish fiscal controls and accounting procedures (which conform to generally accepted government accounting principles) sufficient to ensure proper accounting during appropriate accounting periods for payments received and disbursements, and for fund balances.

The Administrator shall conduct or require each State to have such independent financial audits of REEP-related funding as the Administrator considers necessary or appropriate to carry out the purposes of this section.

(h) OPTIONS TO SUPPORT REEP PROGRAM.—The emission allowances provided pursuant to this Act to the States' SEED Accounts shall support the implementation

through State REEP programs of alternate means of creating incentives for, or reducing financial barriers to, improved energy and environmental performance in buildings, consistent with this section, including—

(1) implementing prescriptive building retrofit programs and performance-based building retrofit programs;

(2) providing credit enhancement, interest rate subsidies, loan guarantees, or other credit support;

(3) providing initial capital for public revolving fund financing of retrofits, with repayments by beneficiary building owners over time through their tax payments, calibrated to create net positive cash flow to the building owner;

(4) providing funds to support utility-operated retrofit programs with repayments over time through utility rates, calibrated to create net positive cash flow to the building owner, and transferable from one building owner to the next with the building's utility services;

(5) providing funds to local government programs to provide REEP services and financial assistance; and

(6) other means proposed by State and local agencies, subject to the approval of the Administrator.

(i) SUPPORT FOR PROGRAM.—

(1) USE OF ALLOWANCES.—The REEP program shall be supported by the use of emission allowances allocated to the States' SEED Accounts pursuant to section 132 of this Act. To the extent that a State provides allowances to local governments within the State to implement elements of the REEP Program, that shall be deemed a distribution of such allowances to units of local government pursuant to subsection (c)(1) of that section.

(2) INITIAL AWARD LIMITS.—Except as provided in paragraph (3), State and local REEP programs may make per-building direct expenditures for retrofit improvements, or their equivalent in indirect or other forms of financial support, from funds derived from the sale of allowances received directly from the Administrator in amounts not to exceed the following:

(A) RESIDENTIAL BUILDING PROGRAM.—

(i) AWARDS.—For residential buildings—

(I) support for a free or low-cost detailed building energy audit that prescribes, as part of a energy-reducing measures sufficient to achieve at least a 20 percent reduction in energy use, by providing an incentive equal to the documented cost of such audit, but not more than $200, in addition to any earned by achieving a 20 percent or greater efficiency improvement;

(II) a total of $1,000 for a combination of measures, prescribed in an audit conducted under subclause (I), designed to reduce energy consumption by more than 10 percent, and $2,000 for a combination of measures prescribed in such an audit, designed to reduce energy consumption by more than 20 percent;

(III) $3,000 for demonstrated savings of 20 percent, pursuant to a performance-based building retrofit program; and

(IV) $1,000 for each additional 5 percentage points of energy savings achieved beyond savings for which funding is provided under subclause (II) or (III).

Funding shall not be provided under clauses (II) and (III) for the same energy savings.

(ii) MAXIMUM PERCENTAGE.—Awards under clause (i) shall not exceed 50 percent of retrofit costs for each building. For buildings with multiple residential units, awards under clause (i) shall not be greater than 50 percent of the total cost of retrofitting the building, prorated among individual residential units on the basis of relative costs of the retrofit.

(iii) ADDITIONAL AWARDS.—Additional awards may be provided for purposes of increasing energy efficiency, for buildings achieving at least 20 percent energy savings using funding provided under clause (i), in the form of grants of not more than $600 for measures projected or measured (using an appropriate method

approved by the Administrator) to achieve at least 35 percent potable water savings through equipment or systems with an estimated service life of not less than seven years, and not more than an additional $20 may be provided for each additional one percent of such savings, up to a maximum total grant of $1,200.

(B) NONRESIDENTIAL BUILDING PROGRAM.—

(i) AWARDS.—For nonresidential buildings—

(I) support for a free or low-cost detailed building energy audit that prescribes, as part of a energy-reducing measures sufficient to achieve at least a 20 percent reduction in energy use, by providing an incentive equal to the documented cost of such audit, but not more than $500, in addition to any award earned by achieving a 20 percent or greater efficiency improvement;

(II) $0.15 per square foot of retrofit area for demonstrated energy use

reductions from 20 percent to 30 percent;

(III) $0.75 per square foot for demonstrated energy use reductions from 30 percent to 40 percent;

(IV) $1.60 per square foot for demonstrated energy use reductions from 40 percent to 50 percent; and

(V) $2.50 per square foot for demonstrated energy use reductions exceeding 50 percent.

(ii) MAXIMUM PERCENTAGE.—Amounts provided under subclauses (II) through (V) of clause (i) combined shall not exceed 50 percent of the total retrofit cost of a building. In nonresidential buildings with multiple units, such awards shall be prorated among individual units on the basis of relative costs of the retrofit.

(iii) ADDITIONAL AWARDS.—Additional awards may be provided, for buildings achieving at least 20 percent energy savings using funding provided under clause (i), as follows:

(I) WATER.—For purposes of increasing energy efficiency, grants may be made for whole building potable water use reduction (using an appropriate method approved by the Secretary of Energy) for up to 50 percent of the total retrofit cost, including amounts up to—

(aa) $24.00 per thousand gallons per year of potable water savings of 40 percent or more;

(bb) $27.00 per thousand gallons per year of potable water savings of 50 percent or more; and

(cc) $30.00 per thousand gallons per year of potable water savings of 60 percent or more.

(II) ENVIRONMENTAL IMPROVEMENTS.—Additional awards of up to $1,000 may be granted for the inclusion of other environmental attributes that the Secretary, in consultation with the Administrator, identifies as contributing to energy efficiency. Such

attributes may include, but are not limited to waste diversion and the use of environmentally preferable materials (including salvaged, renewable, or recycled materials, and materials with no or low-VOC content). The Administrator may recommend that States develop such standards as are necessary to account for local or regional conditions that may affect the feasibility or availability of identified resources and attributes.

(iv) INDOOR AIR QUALITY MINIMUM.—Nonresidential buildings receiving incentives under this section must satisfy at a minimum the most recent version of ASHRAE Standard 62.1 for ventilation, or the equivalent as determined by the Administrator. A State may issue a waiver from this requirement to a building project on a showing that such compliance is infeasible due to the physical constraints of the building's existing ventilation system, or such other limitations as may be specified by the Administrator.

(C) HISTORIC BUILDINGS.—Notwithstanding subparagraphs (A) and (B), a building in or eligible for the National Register of Historic Places shall be eligible for awards under this paragraph in amounts up to 120 percent of the amounts set forth in subparagraphs (A) and (B).

(D) SUPPLEMENTAL SUPPORT.—State and local governments may supplement the per-building expenditures under this paragraph with funding from other sources.

(3) ADJUSTMENT.—The Administrator may adjust the specific dollar limits funded by the sale of allowances pursuant to paragraph (2) in years subsequent to the second year after the date of enactment of this Act, and every 2 years thereafter, as the Administrator determines necessary to achieve optimum cost-effectiveness and to maximize incentives to achieve energy efficiency within the total building award amounts provided in that paragraph, and shall publish and hold constant such revised limits for at least 2 years.

(j) REPORT TO CONGRESS.—The Administrator shall conduct an annual assessment of the achievements of the REEP program in each State, shall prepare an annual re-

port of such achievements and any recommendations for program modifications, and shall provide such report to Congress at the end of each fiscal year during which funding or other resources were made available to the States for the REEP Program.

(k) OTHER SOURCES OF FEDERAL SUPPORT.—

(1) ADDITIONAL STATE ENERGY PROGRAM FUNDS.—Any Federal funding provided to a State Energy Program that is not required to be expended for a different federally designated purpose may be used to support a REEP program.

(2) PROGRAM ADMINISTRATION.—State Energy Offices or designated State agencies may expend up to 10 percent of available funding provided under this section for program administration.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the purposes of this section, for each of fiscal years 2010, 2011, 2012, and 2013—

(A) $50,000,000 to the Administrator for program administration costs; and

(B) $20,000,000 to the Secretary of Energy for program administration costs.

SEC. 203. ENERGY EFFICIENT MANUFACTURED HOMES.

(a) DEFINITIONS.—In this section:

(1) MANUFACTURED HOME.—The term ''manufactured home'' has the meaning given such term in section 603 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402).

(2) ENERGY STAR QUALIFIED MANUFACTURED HOME.—The term ''Energy Star qualified manufactured home'' means a manufactured home that has been designed, produced, and installed in accordance with Energy Star's guidelines by an Energy Star certified plant.

(b) PURPOSE.—The purpose of this section is to assist low-income households residing in manufactured homes constructed prior to 1976 to save energy and energy expenditures by providing support toward the purchase of new Energy Star qualified manufactured homes.

(c) STATE IMPLEMENTATION OF PROGRAM.—

(1) MANUFACTURED HOME REPLACEMENT PROGRAM.—Any State may provide to the owner of a manufactured home constructed prior to 1976 a rebate to use toward the purchase of a new Energy Star qualified manufactured home pursuant to this section.

(2) USE OF ALLOWANCES.—The program established in this section shall be supported by the

use of emission allowances allocated to the States' SEED Accounts pursuant to section 782 of this Act. To the extent that a State provides allowances to local governments within the State to implement this program, that shall be deemed a distribution of such allowances to units of local government pursuant to subsection (c)(1) of that section.

(3) REBATES.—

(A) PRIMARY RESIDENCE REQUIREMENT.—A rebate described under paragraph (1) may only be made to an owner of a manufactured home constructed prior to 1976 that is used on a year-round basis as a primary residence.

(B) DISMANTLING AND REPLACEMENT.—A rebate described under paragraph (1) may be made only if the manufactured home constructed prior to 1976 will be—

(i) rendered unusable for human habitation (including appropriate recycling); and

(ii) replaced, in the same general location, as determined by the applicable State agency, with an Energy Star qualified manufactured home.

(C) SINGLE REBATE.—A rebate described under paragraph (1) may not be provided to any owner of a manufactured home constructed prior to 1976 that was or is a member of a household for which any other member of the household was provided a rebate pursuant to this section.

(D) ELIGIBLE HOUSEHOLDS.—To be eligible to receive a rebate described under paragraph (1), an owner of a manufactured home constructed prior to 1976 shall demonstrate to the applicable State agency that the total income of all members the owner's household does not exceed 200 percent of the Federal poverty level for income in the applicable area.

(E) ADVANCE AVAILABILITY.—A rebate may be provided under this section in a manner to facilitate the purchase of a new Energy Star qualified manufactured home.

(4) REBATE LIMITATION.—Rebates provided by States under this section shall not exceed $7,500 per manufactured home from any value derived from the use of emission allowances provided to the State pursuant to section 132.

(5) USE OF STATE FUNDS.—A State providing rebates under this section may supplement the amount of such rebates under paragraph (4) by any additional amount is from State funds and other sources, including private donations or grants from charitable organizations.

(6) COORDINATION WITH SIMILAR PROGRAMS.—

(A) STATE PROGRAMS.—A State conducting an existing program that has the purpose of replacing manufactured homes constructed prior to 1976 with Energy Star qualified manufactured homes, may use allowance value provided under section 782 to support such a program, provided such funding does not exceed the rebate limitation amount under paragraph (4).

(B) FEDERAL PROGRAMS.—The Secretary of Energy shall coordinate with and seek to achieve the purpose of this section through similar Federal programs including—

(i) the Weatherization Assistance Program under part A of title IV of the Energy Conservation and Production Act (42 U.S.C. 6861 et seq.); and

(ii) the program under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

(C) COORDINATION WITH OTHER STATE AGENCIES.—A State agency using allowance value to administer the program under this section may coordinate its efforts, and share funds for administration, with other State agencies involved in low-income housing programs.

(7) ADMINISTRATIVE EXPENSES.—A State using allowance value under this section may expend not more than 10 percent of such value for administrative expenses related to this program.

SEC. 204. BUILDING ENERGY PERFORMANCE LABELING PROGRAM.

(a) ESTABLISHMENT.—

(1) PURPOSE.—The Administrator shall establish a building energy performance labeling program with broad applicability to the residential and commercial markets to enable and encourage knowledge about building energy performance by owners and occupants and to inform efforts to reduce energy consumption nationwide.

(2) COMPONENTS.—In developing such program, the Administrator shall—

(A) consider existing programs, such as Environmental Protection Agency's Energy Star program, the Home Energy Rating System (HERS) Index, and programs at the Department of Energy;

(B) support the development of model performance labels for residential and commercial buildings; and

(C) utilize incentives and other means to spur use of energy performance labeling of public and private sector buildings nationwide.

(b) DATA ASSESSMENT FOR BUILDING ENERGY PERFORMANCE.—

(1) INITIAL REPORT.—Not later than 90 days after the date of enactment of this Act, the Administrator shall provide to Congress, as well as to the Secretary of Energy and the Office of Management and Budget, a report identifying—

(A) all principal building types for which statistically significant energy performance data exists to serve as the basis of measurement protocols and labeling requirements for achieved building energy performance; and

(B) those building types for which additional data are required to enable the development of such protocols and requirements.

(2) ADDITIONAL REPORTS.—Additional updated reports shall be provided under this subsection as often as The Administrator considers practicable, but not less than every 2 years.

(c) BUILDING DATA ACQUISITION.—

(1) RESOURCE REQUIREMENTS.—For all principal building types identified under subsection (b), the Secretary of Energy, not later than 90 days after a report by the Administrator under subsection (b), shall provide to Congress, the Administrator, and the Office of Management and Budget a statement of additional resources needed, if any, to fully develop the relevant data, as well as the anticipated timeline for data development.

(2) CONSULTATION.—The Secretary of Energy shall consult with the Administrator concerning the Administrator's ability to use data series for these additional building types to support the achieved performance component in the labeling program.

(3) IMPROVEMENTS TO BUILDING ENERGY CONSUMPTION DATABASES.—

(A) COMMERCIAL DATABASE.—The Secretary of Energy shall support improvements to the Commercial Buildings Energy Consumption Survey (CBECS) as authorized by section 205(k) of the Department of Energy Organization Act (42 U.S.C. 7135(k))—

(i) to enable complete and robust data for the actual energy performance of principal building types currently covered by survey;

(ii) to cover additional building types as identified by the Administrator under subsection (e)(1)(B), to enable the development of achieved performance measurement protocols are developed for at least 90 percent of all major commercial building types within 5 years after the date of enactment of this Act; and

(iii) to include third-party audits of random data samplings to ensure the quality and accuracy of survey information.

(B) RESIDENTIAL DATABASES.—The Administrator, in consultation with the Energy Information Administration and the Secretary of Energy, shall support improvements to the Res-

1 idential Energy Consumption Survey (RECS)
2 as authorized by section 205(k) of the Depart-
3 ment of Energy Organization Act (42 U.S.C.
4 7135(k)), or such other residential energy per-
5 formance databases as the Administrator con-
6 siders appropriate, to aid the development of
7 achieved performance measurement protocols
8 for residential building energy use for at least
9 90 percent of the residential market within 5
10 years after the date of enactment of this Act.
11 (C) CONSULTATION.—The Secretary of
12 Energy and the Administrator shall consult
13 with public, private, and nonprofit sector rep-
14 resentatives from the building industry and real
15 estate industry to assist in the evaluation and
16 improvement of building energy performance
17 databases and labeling programs.
18 (d) IDENTIFICATION OF MEASUREMENT PROTOCOLS
19 FOR ACHIEVED PERFORMANCE.—
20 (1) PROPOSED PROTOCOLS AND REQUIRE-
21 MENTS.—At the earliest practicable date, but not
22 later than 1 year after identifying a building type
23 under subsection (b)(1)(A), the Administrator shall
24 propose a measurement protocol for that building
25 type and a requirement detailing how to use that

protocol in completing applicable commercial or residential performance labels created pursuant to this section.

(2) FINAL RULE.—After providing for notice and comment, the Administrator shall publish a final rule containing a measurement protocol and the corresponding requirements for applying that protocol. Such a rule—

(A) shall define the minimum period for measurement of energy use by buildings of that type and other details for determining achieved performance, to include leased buildings or parts thereof;

(B) shall identify necessary data collection and record retention requirements; and

(C) may specify transition rules and exemptions for classes of buildings within the building type.

(e) PROCEDURES FOR EVALUATING DESIGNED PERFORMANCE.—The Administrator shall develop protocols for evaluating the designed performance of individual building types. The Administrator may conduct such feasibility studies and demonstration projects as are necessary to evaluate the sufficiency of proposed protocols for designed performance.

(f) CREATION OF BUILDING ENERGY PERFORMANCE LABELING PROGRAM.—

(1) MODEL LABEL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall propose a model building energy label that provides a format—

(A) to display achieved performance and designed performance data;

(B) that may be tailored for residential and commercial buildings, and for single-occupancy and multitenanted buildings; and

(C) to display other appropriate elements identified during the development of measurement protocols under subsections (d) and (e).

(2) INCLUSIONS.—Nothing in this section shall require the inclusion on such a label of designed performance data where impracticable or not cost effective, or to preclude the display of both achieved performance and designed performance data for a particular building where both such measures are available, practicable, and cost effective.

(3) EXISTING PROGRAMS.—In developing the model label, the Administrator shall consider existing programs, including—

(A) the Environmental Protection Agency's Energy Star Portfolio Manager program and the California HERS II Program Custom Approach for the achieved performance component of the label;

(B) the Home Energy Rating System (HERS) Index system for the designed performance component of the label; and

(C) other Federal and State programs, including the Department of Energy's related programs on building technologies and those of the Federal Energy Management Program.

(4) FINAL RULE.—After providing for notice and comment, the Administrator shall publish a final rule containing the label applicable to covered building types.

(g) DEMONSTRATION PROJECTS FOR LABELING PROGRAM.—

(1) IN GENERAL.—The Administrator shall conduct building energy performance labeling demonstration projects for different building types—

(A) to ensure the sufficiency of the current Commercial Buildings Energy Consumption Survey and other data to serve as the basis for new measurement protocols for the achieved

performance component of the building energy performance labeling program;

(B) to inform the development of measurement protocols for building types not currently covered by the Commercial Buildings Energy Consumption Survey; and

(C) to identify any additional information that needs to be developed to ensure effective use of the model label.

(2) PARTICIPATION.—Such demonstration projects shall include participation of—

(A) buildings from diverse geographical and climate regions;

(B) buildings in both urban and rural areas;

(C) single-family residential buildings;

(D) multihousing residential buildings with more than 50 units, including at least one project that provides affordable housing to individuals of diverse incomes;

(E) single-occupant commercial buildings larger than 30,000 square feet;

(F) multitenanted commercial buildings larger than 50,000 square feet; and

(G) buildings from both the public and private sectors.

(3) PRIORITY.—Priority in the selection of demonstration projects shall be given to projects that facilitate large-scale implementation of the labeling program for samples of buildings across neighborhoods, geographic regions, cities, or States.

(4) FINDINGS.—The Administrator shall report any findings from demonstration projects under this subsection, including an identification of any areas of needed data improvement, to the Department of Energy's Energy Information Administration and Building Technologies Program.

(5) COORDINATION.—The Administrator and the Secretary of Energy shall coordinate demonstration projects undertaken pursuant to this subsection with those undertaken as part of the Zero-Net-Energy Commercial Buildings Initiative adopted under section 422 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17082).

(h) IMPLEMENTATION OF LABELING PROGRAM.—

(1) IN GENERAL.—The Administrator, in consultation with the Secretary of Energy, shall work with all State Energy Offices established pursuant to part D of title III of the Energy Policy and Con-

servation Act (42 U.S.C. 6321 et seq.) or other State authorities as necessary for the purpose of implementing the labeling program established under this section for commercial and residential buildings.

(2) OUTREACH TO LOCAL AUTHORITIES.—The Administrator shall, acting in consultation and coordination with the respective States, encourage use of the labeling program by counties and other localities to broaden access to information about building energy use, for example, through disclosure of building label contents in tax, title, and other records those localities maintain. For this purpose, the Administrator shall develop an electronic version of the label and information that can be readily transmitted and read in widely available computer programs but is protected from unauthorized manipulation.

(3) MEANS OF IMPLEMENTATION.—In adopting the model labeling program established under this section, a State shall seek to ensure that labeled information be made accessible to the public in a manner so that owners, lenders, tenants, occupants, or other relevant parties can utilize it. Such accessibility may be accomplished through—

(A) preparation, and public disclosure of the label through filing with tax and title records at the time of—

(i) a building audit conducted with support from Federal or State funds;

(ii) a building energy-efficiency retrofit conducted in response to such an audit;

(iii) a final inspection of major renovations or additions made to a building in accordance with a building permit issued by a local government entity;

(iv) a sale that is recorded for title and tax purposes consistent with subsection (h)(8) of this section;

(v) a new lien recorded on the property for more than a set percentage of the assessed value of the property, if that lien reflects public financial assistance for energy-related improvements to that building; or

(vi) a change in ownership or operation of the building for purposes of utility billing; or

(B) other appropriate means.

(4) STATE IMPLEMENTATION OF PROGRAM.—

(A) ELIGIBILITY.—A State may become eligible to utilize allowance value to implement this program by—

(i) adopting by statute or regulation a requirement that buildings be assessed and labeled, consistent with the labeling requirements of the program established under this section; or

(ii) adopting a plan to implement a model labeling program consistent with this section within one year of enactment of this Act, including the establishment of that program within 3 years after the date of enactment of this Act, and demonstrating continuous progress under that plan.

(B) USE OF ALLOWANCES.—The program established in this section shall be supported by the use of emission allowances allocated to the States' SEED Accounts pursuant to section 132 of this Act. To the extent that a State provides allowances to local governments within the State to implement this program, that shall be deemed a distribution of such allowances to

units of local government pursuant to subsection (c)(1) of that section.

(5) GUIDANCE.—The Administrator may create or identify model programs and resources to provide guidance to offer to States and localities for creating labeling programs consistent with the model program established under this section.

(6) PROGRESS REPORT.—The Administrator, in consultation with the Secretary of Energy, shall provide a progress report to Congress not later than 3 years after the date of enactment of this Act that—

(A) evaluates the effectiveness of efforts to advance use of the model labeling program by States and localities;

(B) recommends any legislative changes necessary to broaden the use of the model labeling program; and

(C) identifies any changes to broaden the use of the model labeling program that the Administrator has made or intends to make that do not require additional legislative authority.

(7) STATE INFORMATION.—The Administrator may require States to report to the Administrator information that the Administrator requires to provide the report required under paragraph (6).

(8) PREVENTION OF DISRUPTION OF SALES TRANSACTIONS.—No State shall implement a new labeling program pursuant to this section in a manner that requires the labeling of a building to occur after a contract has been executed for the sale of that building and before the sales transaction is completed.

(i) IMPLEMENTATION OF LABELING PROGRAM IN FEDERAL BUILDINGS.—

(1) USE OF LABELING PROGRAM.—The Secretary of Energy and the Administrator shall use the labeling program established under this section to evaluate energy performance in the facilities of the Department of Energy and the Environmental Protection Agency, respectively, to the extent practicable, and shall encourage and support implementation efforts in other Federal agencies.

(2) ANNUAL PROGRESS REPORT.—The Secretary of Energy and Administrator shall provide an annual progress report to Congress and the Office of Management and Budget detailing efforts to implement this subsection, as well as any best practices or needed resources identified as a result of such efforts.

(j) PUBLIC OUTREACH.—The Secretary of Energy and the Administrator, in consultation with nonprofit and industry stakeholders with specialized expertise, and in conjunction with other energy efficiency public awareness efforts, shall establish a business and consumer education program to increase awareness about the importance of building energy efficiency and to facilitate widespread use of the labeling program established under this section.

(k) DEFINITIONS.—In this section:

(1) BUILDING TYPE.—The term ''building type'' means a grouping of buildings as identified by their principal building activities, or as grouped by their use, including office buildings, laboratories, libraries, data centers, retail establishments, hotels, warehouses, and educational buildings.

(2) MEASUREMENT PROTOCOL.—The term ''measurement protocol'' means the methodology, prescribed by the Administrator, for defining a benchmark for building energy performance for a specific building type and for measuring that performance against the benchmark.

(3) ACHIEVED PERFORMANCE.—The term ''achieved performance'' means the actual energy consumption of a building as compared to a baseline building of the same type and size, determined by

actual consumption data normalized for appropriate variables.

(4) DESIGNED PERFORMANCE.—The term ''designed performance'' means the energy consumption performance a building would achieve if operated consistent with its design intent for building energy use, utilizing a standardized set of operational conditions informed by data collected or confirmed during an energy audit.

(l) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

(1) to the Administrator $50,000,000 for implementation of this section for each fiscal year from 2010 through 2020; and

(2) to the Secretary of Energy $20,000,000 for implementation of this section for fiscal year 2010 and $10,000,000 for fiscal years 2011 through 2020.

Subtitle B—Lighting and Appliance Energy Efficiency Programs

SEC. 211. LIGHTING EFFICIENCY STANDARDS.

(a) OUTDOOR LIGHTING.—

(1) DEFINITIONS.—

(A) Section 340(1) of the Energy Policy and Conservation Act (42 U.S.C. 6311(1)) is

amended by striking subparagraph (L) and inserting the following:

"(L) Outdoor luminaires.

"(M) Outdoor high light output lamps.

"(N) Any other type of industrial equipment which the Secretary classifies as covered equipment under section 341(b).".

(B) Section 340 of the Energy Policy and Conservation Act (42 U.S.C. 6311) is amended as adding at the end the following:

"(25) The term 'luminaire' means a complete lighting unit consisting of one or more light sources and ballast(s), together with parts designed to distribute the light, to position and protect such lamps, and to connect such light sources to the power supply.

"(26) The term 'outdoor luminaire' means a luminaire that is listed as suitable for wet locations pursuant to Underwriters Laboratories Inc. standard UL 1598 and is labeled as 'Suitable for Wet Locations' consistent with section 410.4(A) of the National Electrical Code 2005, or is designed for roadway illumination and meets the requirements of Addendum A for IESNA TM–15–07: Backlight, Uplight, and Glare (BUG) Ratings, except for—

"(A) luminaires designed for outdoor video display images that cannot be used in general lighting applications;

"(B) portable luminaires designed for use at construction sites;

"(C) luminaires designed for continuous immersion in swimming pools and other water features;

"(D) seasonal luminaires incorporating solely individual lamps rated at 10 watts or less;

"(E) luminaires designed to be used in emergency conditions that incorporate a means of charging a battery and a device to switch the power supply to emergency lighting loads automatically upon failure of the normal power supply;

"(F) components used for repair of installed luminaries and that meet the requirements of section 342(h);

"(G) a luminaire utilizing an electrode-less fluorescent lamp as the light source;

"(H) decorative gas lighting systems;

"(I) luminaires designed explicitly for lighting for theatrical purposes, including per-

formance, stage, film production, and video production;

"(J) luminaires designed as theme elements in theme/amusement parks and that cannot be used in most general lighting applications;

"(K) luminaires designed explicitly for vehicular roadway tunnels designed to comply with ANSI/IESNA RP–22–05;

"(L) luminaires designed explicitly for hazardous locations meeting UL Standard 844;

"(M) searchlights;

"(N) luminaires that are designed to be recessed into a building, and that cannot be used in most general lighting applications;

"(O) a luminaire rated only for residential applications utilizing a light source or sources regulated under the amendments made by section 321 of the Energy Independence and Security Act of 2007 and with a light output no greater than 2,600 lumens;

"(P) a residential pole-mounted luminaire that is not rated for commercial use utilizing a light source or sources meeting the efficiency requirements of section 231 of the Energy

Independence and Security Act of 2007 and mounted on a post or pole not taller than 10.5 feet above ground and with a light output not greater than 2.600 lumens;

"(Q) a residential fixture with E12 (Candelabra) bases that is rated for not more than 300 watts total; or

"(R) a residential fixture with medium screw bases that is rated for not more than 145 watts.

"(27) The term 'outdoor high light outputlamp' means a lamp that—

"(A) has a rated lumen output not less than 2601 lumens;

"(B) is capable of being operated at a voltage not less than 110 volts and not greater than 300 volts, or driven at a constant current of 6.6 amperes;

"(C) is not a Parabolic Aluminized Reflector lamp; and

"(D) is not a J-type double-ended (T–3) halogen quartz lamp, utilizing R–7S bases, that is manufactured before January 1, 2015.

"(28) The term 'outdoor lighting control' means a device incorporated in a luminaire that receives a

signal, from either a sensor (such as an occupancy sensor, motion sensor, or daylight sensor) or an input signal (including analog or digital signals communicated through wired or wireless technology), and can adjust the light level according to the signal.''.

(2) STANDARDS.—Section 342 of the Energy Policy and Conservation Act (42 U.S.C. 6313) is amended by adding at the end the following:

''(g) OUTDOOR LUMINAIRES.—

''(1) Each outdoor luminaire manufactured on or after January 1, 2011, shall—

''(A) have an initial luminaire efficacy of at least 50 lumens per watt; and

''(B) be designed to use a light source with a lumen maintenance, calculated as mean rated lumens divided by initial lumens, of at least 0.6.

''(2) Each outdoor luminaire manufactured on or after January 1, 2013, shall—

''(A) have an initial luminaire efficacy of at least 70 lumens per watt; and

''(B) be designed to use a light source with a lumen maintenance, calculated as mean rated lumens divided by initial lumens, of at least 0.6.

"(3) Each outdoor luminaire manufactured on or after January 1, 2015, shall—

"(A) have an initial luminaire efficacy of at least 80 lumens per watt; and

"(B) be designed to use a light source with a lumen maintenance, calculated as mean rated lumens divided by initial lumens, of at least 0.65.

"(4) In addition to the requirements of paragraphs (1) through (3), each outdoor luminaire manufactured on or after January 1, 2011, shall have the capability of producing at least two different light levels, including 100 percent and 60 percent of full lamp output as tested with the maximum rated lamp per UL1598 or the manufacturer's maximum specified for the luminaire under test.

"(5)(A) Not later than January 1, 2017, the Secretary shall issue a final rule amending the applicable standards established in paragraphs (3) and (4) if technologically feasible and economically justified. Such a final rule shall be effective no later than January 1, 2020.

"(B) A final rule issued under subparagraph (A) shall establish efficiency standards at the maximum level that is technically feasible and economi-

cally justified, as provided in subsections (o) and (p) of section 325. The Secretary may also, in such rulemaking, amend or discontinue the product exclusions listed in section 340(26)(A) through (P), or amend the lumen maintenance requirements in paragraph (3) if the Secretary determines that such amendments are consistent with the purposes of this Act.

"(C) If the Secretary issues a final rule under subparagraph (A) establishing amended standards, the final rule shall provide that the amended standards apply to products manufactured on or after January 1, 2020, or one year after the date on which the final amended standard is published, whichever is later.

"(h) OUTDOOR HIGH LIGHT OUTPUT LAMPS.—Each outdoor high light output lamp manufactured on or after January 1, 2012, shall have a lighting efficiency of at least 45 lumens per watt.".

(3) TEST PROCEDURES.—Section 343(a) of the Energy Policy and Conservation Act (42 U.S.C. 6314(a)) is amended by adding at the end the following:

"(10) OUTDOOR LIGHTING.—

"(A) With respect to outdoor luminaires and outdoor high light output lamps, the test

procedures shall be based upon the test procedures specified in illuminating engineering society procedures LM–79 as of March 1, 2009, and LM–31, and/or other appropriate consensus test procedures developed by the Illuminating Engineering Society or other appropriate consensus standards bodies.

"(B) If illuminating engineering society procedure LM–79 is amended, the Secretary shall amend the test procedures established in subparagraph (A) as necessary to be consistent with the amended LM–79 test procedure, unless the Secretary determines, by rule, published in the Federal Register and supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures under paragraph (2).

"(C) The Secretary may revise the test procedures for outdoor luminaires or outdoor high light output lamps by rule consistent with paragraph (2), and may incorporate as appropriate consensus test procedures developed by the Illuminating Engineering Society or other appropriate consensus standards bodies.".

1 (4) PREEMPTION.—Section 345 of the Energy
2 Policy and Conservation Act (42 U.S.C. 6316) is
3 amended by adding at the end the following:
4 ''(i)(1) Except as provided in paragraph (2), section
5 327 shall apply to outdoor luminaires to the same extent
6 and in the same manner as the section applies under part
7 B.
8 ''(2) Any State standard that is adopted on or before
9 January 1, 2015, pursuant to a statutory requirement to
10 adopt efficiency standards for reducing outdoor lighting
11 energy use enacted prior to January 31, 2008, shall not
12 be preempted.''.
13 (5) ENERGY EFFICIENCY STANDARDS FOR CER-
14 TAIN LUMINAIRES.—Not later than 1 year after the
15 date of enactment of this Act, the Secretary of En-
16 ergy shall, in consultation with the National Elec-
17 trical Manufacturers Association, collect data for
18 United States sales of luminaires described in sec-
19 tion 340(26)(H) and (M) of the Energy Policy and
20 Conservation Act, to determine the historical growth
21 rate. If the Secretary finds that the growth in mar-
22 ket share of such luminaires exceeds twice the year
23 to year rate of the average of the previous three
24 years, then the Secretary shall within 12 months ini-
25 tiate a rulemaking to determine if such exclusion

should be eliminated, if substitute products exist that perform more efficiently and fulfill the performance functions of these luminaires.

(b) PORTABLE LIGHTING.—

(1) PORTABLE LIGHT FIXTURES.—

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

"(67) ART WORK LIGHT FIXTURE.—The term 'art work light fixture' means a light fixture designed only to be mounted directly to an art work and for the purpose of illuminating that art work.

"(68) LED LIGHT ENGINE.—The term 'LED light engine' or 'LED light engine with integral heat sink' means a subsystem of an LED light fixture that—

"(A) includes 1 or more LED components, including—

"(i) an LED driver power source with electrical and mechanical interfaces; and

"(ii) an integral heat sink to provide thermal dissipation; and

"(B) may be designed to accept additional components that provide aesthetic, optical, and environmental control.

"(69) LED LIGHT FIXTURE.—The term 'LED light fixture' means a complete lighting unit consisting of—

"(A) an LED light source with 1 or more LED lamps or LED light engines; and

"(B) parts—

"(i) to distribute the light;

"(ii) to position and protect the light source; and

"(iii) to connect the light source to electrical power.

"(70) LIGHT FIXTURE.—The term 'light fixture' means a product designed to provide light that includes—

"(A) at least 1 lamp socket; and

"(B) parts—

"(i) to distribute the light;

"(ii) position and protect 1 or more lamps; and

"(iii) to connect 1 or more lamps to a power supply.

"(71) PORTABLE LIGHT FIXTURE.—

"(A) IN GENERAL.—The term 'portable light fixture' means a light fixture that has a flexible cord and an attachment plug for connection to a nominal 120-volt circuit that—

"(i) allows the user to relocate the product without any rewiring; and

"(ii) typically can be controlled with a switch located on the product or the power cord of the product.

"(B) EXCLUSIONS.—The term 'portable light fixture' does not include—

"(i) direct plug-in night lights, sun or heat lamps, medical or dental lights, portable electric hand lamps, signs or commercial advertising displays, photographic lamps, germicidal lamps, or light fixtures for marine use or for use in hazardous locations (as those terms are defined in ANSI/NFPA 70 of the National Electrical Code); or

"(ii) decorative lighting strings, decorative lighting outfits, or electric candles or candelabra without lamp shades that are covered by Underwriter Laboratories (UL)

standard 588, 'Seasonal and Holiday Decorative Products'.''.

(B) COVERAGE.—

(i) IN GENERAL.—Section 322(a) of the Energy Policy and Conservation Act (42 U.S.C. 6292(a)) is amended—

(I) by redesignating paragraph (20) as paragraph (24); and

(II) by inserting after paragraph (19) the following:

''(20) Portable light fixtures.''.

(ii) CONFORMING AMENDMENTS.—Section 325(l) of the Energy Policy and Conservation Act (42 U.S.C. 6295(l)) is amended by striking ''paragraph (19)'' each place it appears in paragraphs (1) and (2) and inserting ''paragraph (21)''.

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

''(19) LED FIXTURES AND LED LIGHT ENGINES.—Test procedures for LED fixtures and LED light engines shall be based on Illuminating Engineering Society of North America (IESNA) test pro-

1 cedure LM–79, Approved Method for Electrical and
2 Photometric Testing of Solid-State Lighting Devices,
3 and IESNA-approved test procedure for testing
4 LED light engines.''.
5 (D) STANDARDS.—Section 325 of the En-
6 ergy Policy and Conservation Act (42 U.S.C.
7 6295) is amended—
8 (i) by redesignating subsection (ii) as
9 subsection (nn);
10 (ii) in subsection (nn)(2), as redesig-
11 nated in clause (i) of this subparagraph, by
12 striking ''(hh)'' each place it appears and
13 inserting ''(mm)''; and
14 (iii) by inserting after subsection (hh)
15 the following:
16 ''(ii) PORTABLE LIGHT FIXTURES.—
17 ''(1) IN GENERAL.—Subject to paragraphs (2)
18 and (3), portable light fixtures manufactured on or
19 after January 1, 2012, shall meet 1 or more of the
20 following requirements:
21 ''(A) Be a fluorescent light fixture that
22 meets the requirements of the Energy Star Pro-
23 gram for Residential Light Fixtures, Version
24 4.2.

"(B) Be equipped with only 1 or more GU–24 line-voltage sockets, not be rated for use with incandescent lamps of any type (as defined in ANSI standards), and meet the requirements of version 4.2 of the Energy Star program for residential light fixtures.

"(C) Be an LED light fixture or a light fixture with an LED light engine and comply with the following minimum requirements:

"(i) Minimum light output: 200 lumens (initial).

"(ii) Minimum LED light engine efficacy: 40 lumens/watt installed in fixtures that meet the minimum light fixture efficacy of 29 lumens/watt or, alternatively, a minimum LED light engine efficacy of 60 lumens/watt for fixtures that do not meet the minimum light fixture efficacy of 29 lumens/watt.

"(iii) All portable fixtures shall have a minimum LED light fixture efficacy of 29 lumens/watt and a minimum LED light engine efficacy of 60 lumens/watt by January 1, 2016.

"(iv) Color Correlated Temperature (CCT): 2700K through 4000K.

"(v) Minimum Color Rendering Index (CRI): 75.

"(vi) Power factor equal to or greater than 0.70.

"(vii) Portable luminaries that have internal power supplies shall have zero standby power when the luminaire is turned off.

"(viii) LED light sources shall deliver at least 70 percent of initial lumens for at least 25,000 hours.

"(D)(i) Be equipped with an ANSI-designated E12, E17, or E26 screw-based socket and be prepackaged and sold together with 1 screw-based compact fluorescent lamp or screw-based LED lamp for each screw-based socket on the portable light fixture.

"(ii) The compact fluorescent or LED lamps prepackaged with the light fixture shall be fully compatible with any light fixture controls incorporated into the light fixture (for example, light fixtures with dimmers shall be packed with dimmable lamps).

"(iii) Compact fluorescent lamps prepackaged with light fixtures shall meet the requirements of the Energy Star Program for CFLs Version 4.0.

"(iv) Screw-based LED lamps shall comply with the minimum requirements described in subparagraph (C).

"(E) Be equipped with 1 or more single-ended, non-screw based halogen lamp sockets (line or low voltage), a dimmer control or high-low control, and be rated for a maximum of 100 watts.

"(2) REVIEW.—

"(A) REVIEW.—The Secretary shall review the criteria and standards established under paragraph (1) to determine if revised standards are technologically feasible and economically justified.

"(B) COMPONENTS.—The review shall include consideration of—

"(i) whether a separate compliance procedure is still needed for halogen fixtures described in subparagraph (E) and, if necessary, what an appropriate standard for halogen fixtures shall be;

"(ii) whether the specific technical criteria described in subparagraphs (A), (C), and (D)(iii) should be modified; and

"(iii) which fixtures should be exempted from the light fixture efficacy standard as of January 1, 2016, because the fixtures are primarily decorative in nature (as defined by the Secretary) and, even if exempted, are likely to be sold in limited quantities.

"(C) TIMING.—

"(i) DETERMINATION.—Not later than January 1, 2014, the Secretary shall publish amended standards, or a determination that no amended standards are justified, under this subsection.

"(ii) STANDARDS.—Any standards under this paragraph shall take effect on January 1, 2016.

"(3) ART WORK LIGHT FIXTURES.—Art work light fixtures manufactured on or after January 1, 2012, shall—

"(A) comply with paragraph (1); or

"(B)(i) contain only ANSI-designated E12 screw-based line-voltage sockets;

"(ii) have not more than 3 sockets;

"(iii) be controlled with an integral high/low switch;

"(iv) be rated for not more than 25 watts if fitted with 1 socket; and

"(v) be rated for not more than 15 watts per socket if fitted with 2 or 3 sockets.

"(4) EXCEPTION FROM PREEMPTION.—Notwithstanding section 327, Federal preemption shall not apply to a regulation concerning portable light fixtures adopted by the California Energy Commission on or before January 1, 2014.".

(2) GU–24 BASE LAMPS.—

(A) DEFINITIONS.—Section 321 of the Energy Policy and Conservation Act (42 U.S.C. 6291) (as amended by paragraph (1)(A)) is amended by adding at the end the following:

"(72) GU–24.—The term 'GU–24' means the designation of a lamp socket, based on a coding system by the International Electrotechnical Commission, under which—

"(A) 'G' indicates a holder and socket type with 2 or more projecting contacts, such as pins or posts;

"(B) 'U' distinguishes between lamp and holder designs of similar type that are not interchangeable due to electrical or mechanical requirements; and

"(C) 24 indicates the distance in millimeters between the electrical contact posts.

"(73) GU–24 ADAPTOR.—

"(A) IN GENERAL.—The term 'GU–24 Adaptor' means a 1-piece device, pig-tail, wiring harness, or other such socket or base attachment that—

"(i) connects to a GU–24 socket on 1 end and provides a different type of socket or connection on the other end; and

"(ii) does not alter the voltage.

"(B) EXCLUSION.—The term 'GU–24 Adaptor' does not include a fluorescent ballast with a GU–24 base.

"(74) GU–24 BASE LAMP.—'GU–24 base lamp' means a light bulb designed to fit in a GU–24 socket.".

(B) STANDARDS.—Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295) (as amended by paragraph (1)(D)) is

amended by inserting after subsection (ii) the following:

"(jj) GU–24 BASE LAMPS.—

"(1) IN GENERAL.—A GU–24 base lamp shall not be an incandescent lamp as defined by ANSI.

"(2) GU–24 ADAPTORS.—GU–24 adaptors shall not adapt a GU–24 socket to any other line voltage socket.".

(3) STANDARDS FOR CERTAIN INCANDESCENT REFLECTOR LAMPS.—Section 325(i) of the Energy Policy and Conservation Act (42 U.S.C. 6293(i)), as amended by section 171(a)(12) of this Act, is amended by adding at the end the following:

"(9) CERTAIN INCANDESCENT REFLECTOR LAMPS.—(A) No later than 12 months after enactment of this paragraph, the Secretary shall publish a final rule establishing standards for incandescent reflector lamp types described in paragraph (1)(C). Such standards shall be effective on July 1, 2013.

"(B) Any rulemaking for incandescent reflector lamps completed after enactment of this section shall consider standards for all incandescent reflector lamps, inclusive of those specified in paragraph (1)(C).

"(10) REFLECTOR LAMPS.—No later than January 1, 2015, the Secretary shall publish a final rule establishing and amending standards for reflector lamps, including incandescent reflector lamps. Such standards shall be effective no sooner than three years after publication of the final rule. Such rulemaking shall consider incandescent and non-incandescent technologies. Such rulemaking shall consider a new metric other than lumens-per-watt based on the photometric distribution of light from such lamps.".

SEC. 212. OTHER APPLIANCE EFFICIENCY STANDARDS.

(a) STANDARDS FOR WATER DISPENSERS, HOT FOOD HOLDING CABINETS, AND PORTABLE ELECTRIC SPAS.—

(1) DEFINITIONS.—Section 321 of the Energy Policy and Conservation Act (42 U.S.C. 6291), as amended by section 211 of this Act, is further amended by adding at the end the following:

"(75) The term 'water dispenser' means a factory-made assembly that mechanically cools and heats potable water and that dispenses the cooled or heated water by integral or remote means.

"(76) The term 'bottle-type water dispenser' means a drinking water dispenser designated for dis-

pensing both hot and cold water that uses a removable bottle or container as the source of potable water.

"(77) The term 'commercial hot food holding cabinet' means a heated, fully enclosed compartment with one or more solid or glass doors that is designed to maintain the temperature of hot food that has been cooked in a separate appliance. Such term does not include heated glass merchandizing cabinets, drawer warmers, commercial hot food holding cabinets with interior volumes of less than 8 cubic feet, or cook-and-hold appliances.

"(78) The term 'portable electric spa' means a factory-built electric spa or hot tub, supplied with equipment for heating and circulating water.".

(2) COVERAGE.—Section 322(a) of the Energy Policy and Conservation Act (42 U.S.C. 6292(a)), as amended by section 211(b)(1)(B) of this Act, is further amended by inserting after paragraph (20) the following new paragraphs:

"(21) Bottle type water dispensers.

"(22) Commercial hot food holding cabinets.

"(23) Portable electric spas.".

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

6293(b)), as amended by section 211(b)(1)(C) of this Act, is further amended by adding at the end the following:

"(20) BOTTLE TYPE WATER DISPENSERS.—Test procedures for bottle type water dispensers shall be based on 'Energy Star Program Requirements for Bottled Water Coolers version 1.1' published by the Environmental Protection Agency. Units with an integral, automatic timer shall not be tested using section 4D, 'Timer Usage,' of the test criteria.

"(21) COMMERCIAL HOT FOOD HOLDING CABINETS.—Test procedures for commercial hot food holding cabinets shall be based on the test procedures described in ANSI/ASTM F2140–01 (Test for idle energy rate-dry test). Interior volume shall be based on the method shown in the Environmental Protection Agency's 'Energy Star Program Requirements for Commercial Hot Food Holding Cabinets' as in effect on August 15, 2003.

"(22) PORTABLE ELECTRIC SPAS.—Test procedures for portable electric spas shall be based on the test method for portable electric spas contained in section 1604, title 20, California Code of Regulations as amended on December 3, 2008. When the

American National Standards Institute publishes a test procedure for portable electric spas, the Secretary shall revise the Department of Energy's procedure.''.

(4) STANDARDS.—Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295), as amended by section 211 of this Act, is further amended by adding after subsection (jj) the following:

''(kk) BOTTLE TYPE WATER DISPENSERS.—Effective January 1, 2012, bottle-type water dispensers designed for dispensing both hot and cold water shall not have standby energy consumption greater than 1.2 kilowatt-hours per day.

''(ll) COMMERCIAL HOT FOOD HOLDING CABINETS.—Effective January 1, 2012, commercial hot food holding cabinets with interior volumes of 8 cubic feet or greater shall have a maximum idle energy rate of 40 watts per cubic foot of interior volume.

''(mm) PORTABLE ELECTRIC SPAS.—Effective January 1, 2012, portable electric spas shall not have a normalized standby power greater than $5(V^{2/3})$ Watts where V = the fill volume in gallons.

The Secretary of Energy shall consider revisions to the standards in subsections (kk), (ll), and (mm) in accord-

ance with subsection (o) and publish a final rule no later than January 1, 2013, establishing such revised standards, or make a finding that no revisions are technically feasible and economically justified. Any such revised standards shall take effect January 1, 2016.''.

(b) COMMERCIAL FURNACE EFFICIENCY STANDARDS.—Section 342(a) of the Energy Policy and Conservation Act (42 U.S.C. 6312(a)) is amended by inserting after paragraph (10) the following new paragraph:

''(11) WARM AIR FURNACES.—Each warm air furnace with an input rating of 225,000 Btu per hour or more and manufactured after January 1, 2011, shall meet the following standard levels:

''(A) GAS-FIRED UNITS.—

''(i) Minimum thermal efficiency of 80 percent.

''(ii) Include an interrupted or intermittent ignition device.

''(iii) Have jacket losses not exceeding 0.75 percent of the input rating.

''(iv) Have either power venting or a flue damper.

''(B) OIL-FIRED UNITS.—

''(i) Minimum thermal efficiency of 81 percent.

"(ii) Have jacket losses not exceeding 0.75 percent of the input rating.

"(iii) Have either power venting or a flue damper.".

SEC. 213. APPLIANCE EFFICIENCY DETERMINATIONS AND PROCEDURES.

(a) DEFINITION OF ENERGY CONSERVATION STANDARD.—Section 321(6) of the Energy Policy and Conservation Act (42 U.S.C. 6291(6)) is amended to read as follows:

"(6) ENERGY CONSERVATION STANDARD.—

"(A) IN GENERAL.—The term 'energy conservation standard' means 1 or more performance standards that—

"(i) for covered products (excluding clothes washers, dishwashers, showerheads, faucets, water closets, and urinals), prescribe a minimum level of energy efficiency or a maximum quantity of energy use, determined in accordance with test procedures prescribed under section 323;

"(ii) for showerheads, faucets, water closets, and urinals, prescribe a minimum level of water efficiency or a maximum quantity of water use, determined in ac-

cordance with test procedures prescribed under section 323; and

"(iii) for clothes washers and dishwashers—

"(I) prescribe a minimum level of energy efficiency or a maximum quantity of energy use, determined in accordance with test procedures prescribed under section 323; and

"(II) may include a minimum level of water efficiency or a maximum quantity of water use, determined in accordance with those test procedures.

"(B) INCLUSIONS.—The term 'energy conservation standard' includes—

"(i) 1 or more design requirements, if the requirements were established—

"(I) on or before the date of enactment of this subclause;

"(II) as part of a direct final rule under section 325(p)(4); or

"(III) as part of a final rule published on or after January 1, 2012, and

"(ii) any other requirements that the Secretary may prescribe under section 325(r).

"(C) EXCLUSION.—The term 'energy conservation standard' does not include a performance standard for a component of a finished covered product, unless regulation of the component is specifically authorized or established pursuant to this title.".

(b) ADOPTING CONSENSUS TEST PROCEDURES AND TEST PROCEDURES IN USE ELSEWHERE.—Section 323(b) of the Energy Policy and Conservation Act (42 U.S.C. 6293(b)), as amended by sections 211 and 212 of this Act, is further amended by adding the following new paragraph after paragraph (22):

"(23) CONSENSUS AND ALTERNATE TEST PROCEDURES.—

"(A) RECEIPT OF JOINT RECOMMENDATION OR ALTERNATE TESTING PROCEDURE.—On receipt of—

"(i) a statement that is submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and effi-

ciency advocates), as determined by the Secretary, and contains recommendations with respect to the testing procedure for a covered product; or

"(ii) a submission of a testing procedure currently in use for a covered product by a State, nation, or group of nations—

"(I) if the Secretary determines that the recommended testing procedure contained in the statement or submission is in accordance with subsection (b)(3), the Secretary may issue a final rule that establishes an energy or water conservation testing procedure that is published simultaneously with a notice of proposed rulemaking that proposes a new or amended energy or water conservation testing procedure that is identical to the testing procedure established in the final rule to establish the recommended testing procedure (referred to in this paragraph as a 'direct final rule'); or

"(II) if the Secretary determines that a direct final rule cannot be issued based on the statement or submission, the Secretary shall publish a notice of the determination, together with an explanation of the reasons for the determination.

"(B) PUBLIC COMMENT.—The Secretary shall solicit public comment for a period of at least 110 days with respect to each direct final rule issued by the Secretary under subparagraph (A)(ii)(I).

"(C) WITHDRAWAL OF DIRECT FINAL RULES.—

"(i) IN GENERAL.—Not later than 120 days after the date on which a direct final rule issued under subparagraph (A)(ii)(I) is published in the Federal Register, the Secretary shall withdraw the direct final rule if—

"(I) the Secretary receives 1 or more adverse public comments relating to the direct final rule under subparagraph (B)or any alternative joint recommendation; and

"(II) based on the rulemaking record relating to the direct final rule, the Secretary determines that such adverse public comments or alternative joint recommendation may provide a reasonable basis for withdrawing the direct final rule under paragraph (3) or any other applicable law.

"(ii) ACTION ON WITHDRAWAL.—On withdrawal of a direct final rule under clause (i), the Secretary shall—

"(I) proceed with the notice of proposed rulemaking published simultaneously with the direct final rule as described in subparagraph (A)(ii)(I); and

"(II) publish in the Federal Register the reasons why the direct final rule was withdrawn.

"(iii) TREATMENT OF WITHDRAWN DIRECT FINAL RULES.—A direct final rule that is withdrawn under clause (i) shall not be considered to be a final rule for purposes of subsection (b).

"(D) EFFECT OF PARAGRAPH.—Nothing in this paragraph authorizes the Secretary to issue a direct final rule based solely on receipt of more than 1 statement containing recommended test procedures relating to the direct final rule.".

(c) UPDATING TELEVISION TEST METHODS.—Section 323(b) of the Energy Policy and Conservation Act (42 U.S.C. 6293(b)), as amended by sections 211 and 212 of this Act, and subsection (b) of this section, is further amended by adding at the end the following new paragraph:

"(24) TELEVISIONS.—(A) On the date of enactment of this section, Appendix H to Subpart B of Part 430 of the United States Code of Federal Regulations, 'Uniform Test Method for Measuring the Energy Consumption of Television Sets', is repealed.

"(B) No later than 12 months after enactment of this paragraph the Secretary shall publish in the Federal Register a final rule prescribing a new test method for televisions.".

(d) CRITERIA FOR PRESCRIBING NEW OR AMENDED STANDARDS.—(1) Section 325(o)(2)(B)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6295(o)(2)(B)(i)) is amended as follows:

(A) By striking ''and'' at the end of subclause (VI).

(B) By and inserting the following new subclauses after subclause (VI):

''(VII) the estimated value of the carbon dioxide or other emission reductions that will be achieved by virtue of the higher energy efficiency of the covered products resulting from the imposition of the standard;

''(VIII) the estimated impact of standards for a particular product on average consumer energy prices;

''(IX) the increased energy efficiency that may be attributable to the installation of Smart Grid technologies or capabilities in the covered products, if applicable in the determination of the Secretary;

''(X) the availability in the United States or in other nations of examples or prototypes of covered products that achieve significantly higher efficiency standards for energy or for water; and''.

(C) By redesignating subclause (VII) as subclause (XI).

(2) Section 325(o)(2)(B)(iii) of such Act is amended as follows:

(A) By striking ''three'' and inserting ''5''.

(B) By inserting after the first sentence the following ''For products with an average expected useful life of less than 5 years, such rebuttable presumption shall be determined utilizing 75 percent of the product's average expected useful life as a multiplier instead of 5.''.

(C) By striking the last sentence and inserting the following: ''Such a presumption may be rebutted only if the Secretary finds, based on clear, convincing, and reliable evidence, that—

''(I) such standard level would cause serious and unavoidable hardship to the average consumer of the product, or to manufacturers supplying a significant portion of the market for the product, that substantially outweighs the standard level's benefits;

''(II) the standard and implementing regulations cannot be designed to avoid or mitigate the hardship identified under subparagraph (I), through the adoption of regional standards consistent with paragraph (6) of this subsection, or other reasonable means consistent with this chapter;

''(III) the same or substantially similar hardship would not occur under a standard adopted in the absence of the presumption, but that otherwise meets the requirements of this section; and

"(IV) the hardship cannot be avoided or mitigated pursuant the procedures specified in section 504 of the Department of Energy Organization Act (42 U.S.C. 7194).

A determination by the Secretary that the criteria triggering such presumption are not met, or that the criterion for rebutting the presumption are met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified.".

(e) OBTAINING APPLIANCE INFORMATION FROM MANUFACTURERS.—Section 326(d) of the Energy Policy and Conservation Act (42 U.S.C. 6295(d)) is amended to read as follows:

"(d) INFORMATION REQUIREMENTS.—(1) For purposes of carrying out this part, the Secretary shall publish proposed regulations not later than one year after the date of enactment of the American Clean Energy and Security Act of 2009, and after receiving public comment, final regulations not later than 18 months from such date of enactment under this part or other provision of law administered by the Secretary, which shall require each manufacturer of a covered product to submit information or reports to the Secretary on an annual basis in a form adopted by the Secretary. Such reports shall include information or data with respect to—

"(A) the manufacturers' compliance with all requirements applicable pursuant to this part;

"(B) the economic impact of any proposed energy conservation standard;

"(C) the manufacturers' annual shipments of each class or category of covered products, organized, to the maximum extent practicable, by—

"(i) energy efficiency, energy use, and, if applicable, water use;

"(ii) the presence or absence of such efficiency related or energy consuming operational characteristics or components as the Secretary determines are relevant for the purposes of carrying out this part; and

"(iii) the State or regional location of sale, for covered products for which the Secretary may adopt regional standards; and

"(D) such other categories of information as the Secretary deems relevant to carry out this part, including such other information as may be necessary to establish and revise test procedures, labeling rules, and energy conservation standards and to insure compliance with the requirements of this part.

"(2) In adopting regulations under this subsection, the Secretary shall consider existing public sources of information, including nationally recognized certification programs of trade associations.

"(3) The Secretary shall exercise authority under this section in a manner designed to minimize unnecessary burdens on manufacturers of covered products.

"(4) To the extent that they do not conflict with the duties of the Secretary in carrying out this part, the provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796(d)) shall apply with respect to information obtained under this subsection to the same extent and in the same manner as they apply with respect to other energy information obtained under such section.".

(f) STATE WAIVER.—Section 327(c) of the Energy Policy and Conservation Act (42 U.S.C. 6297(c)), as amended by section 171(a)(19) of this Act, is further amended by adding at the end the following:

"(12) is a regulation concerning standards for hot food holding cabinets, drinking water dispensers and portable electric spas adopted by the California Energy Commission on or before January 1, 2013.".

(g) WAIVER OF FEDERAL PREEMPTION.—Paragraph (1) of section 327(d) of the Energy Policy and Conservation Act (42 U.S.C. 6297(d)) is amended as follows:

(1) In subparagraph (A) by striking ''State regulation'' each place it appears and inserting ''State statute or regulation''.

(2) In subparagraph (B) by adding at the end the following new sentence: ''In making such a finding, the Secretary may not reject a petition for failure of the petitioning State or river basin commission to produce confidential information maintained by any manufacturer or distributor, or group or association of manufacturers or distributors, and which the petitioning party does not have the legal right to obtain.''.

(3) In clause (ii) of subparagraph (C) by striking ''costs'' each place it appears and inserting ''estimated costs''.

(4) In subparagraph (C) by striking ''within the context of the State's energy plan and forecast, and,''.

(h) INCLUSION OF CARBON OUTPUT ON APPLIANCE ''ENERGYGUIDE'' LABELS.—(1) Section 324(a)(2) of the Energy Policy and Conservation Act (42 U.S.C.

6294(a)(2)) is amended by adding the following at the end:

"(I)(i) Not later than 90 days after the date of enactment of this subparagraph, the Commission shall initiate a rulemaking to implement the additional labeling requirements specified in subsection (c)(1)(C) of this section with an effective date for the revised labeling requirement not later than 12 months from issuance of the final rule.

"(ii) Not later than 24 months after the date of enactment of this subparagraph, the Commission shall complete the rulemaking initiated under clause (i).

"(iii) Not later than 90 days after issuance of the final rule as provided in this subparagraph, the Secretary shall issue calculation methods required to effectuate the labeling requirements specified in subsection (c)(1)(C) of this section.".

(2) Section 324(c)(1) of the Energy Policy and Conservation Act (42 U.S.C. 6294(c)(1)) is amended—

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

(B) by striking the period at the end of subparagraph (B); and

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

"(C) for products or groups of products providing a comparable function (including the group of products comprising the heating function of heat pumps and furnaces) among covered products listed in paragraphs (3), (4), (5), (8), (9), (10), and (11) of section 322(a) of this part, and others designated by the Secretary, the estimated total annual atmospheric carbon dioxide emissions (or their equivalent in other greenhouse gases) associated with, or caused by, the product, calculated utilizing—

"(i) national average energy use for the product including energy consumed at the point of end use based on test procedures developed under section 323 of this part;

"(ii) national average energy consumed or lost in the production, generation, transportation, storage, and distribution of energy to the point of end use; and

"(iii) any direct emissions of greenhouse gases from the product during normal use;

"(D) in determining the national average energy consumption and total annual atmospheric carbon dioxide emissions, the Secretary shall utilize Federal Government sources, including the Energy Information Administration Annual Energy Review, the Environmental Protection Agency eGRID data base, Environmental Protection Agency AP–42 Emission Factors as amended, and other sources determined to be appropriate by the Secretary; and

"(E) information presenting, for each product (or group of products providing the comparable function) identified in section (c)(1)(C) of this section, the estimated annual carbon dioxide emissions calculated within the range of emissions calculated for all models of the product or group according to its function, including those models consuming fuels and those models not consuming fuels.".

(i) PERMITTING STATES TO SEEK INJUNCTIVE ENFORCEMENT.—Section 334 of the Energy Policy and Con-

servation Act (42 U.S.C. 6304(a)) is amended to read as follows:

"SEC. 334. JURISDICTION AND VENUE.

"(a) JURISDICTION.—The United States district courts shall have jurisdiction to restrain—

"(1) any violation of section 332; and

"(2) any person from distributing in commerce any covered product which does not comply with an applicable rule under section 324 or 325.

"(b) AUTHORITY.—Any action referred to in subsection (a) shall be brought by the Commission or by the attorney general of a State in the name of the State, except that—

"(1) any such action to restrain any violation of section 332(a)(3) which relates to requirements prescribed by the Secretary or any violation of section 332(a)(4) which relates to request of the Secretary under section 326(b)(2) shall be brought by the Secretary; and

"(2) any violation of section 332(a)(5) or 332(a)(7) shall be brought by the Secretary or by the attorney general of a State in the name of the State.

"(c) VENUE AND SERVICE OF PROCESS.—Any such action may be brought in the United States district court

for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court of the district wherein the defendant is found or transacts business. In any action under this section, process may be served on a defendant in any other district in which the defendant resides or may be found.''.

(j) TREATMENT OF APPLIANCES WITHIN BUILDING CODES.—(1) Section 327(f)(3) of the Energy Policy and Conservation Act (42 U.S.C. 6297(f)(3)) is amended by striking subparagraphs (B) through (E) and inserting the following:

''(B) The code meets at least one of the following requirements:

''(i) The code does not require that the covered product have an energy efficiency exceeding—

''(I) the applicable energy conservation standard established in or prescribed under section 325;

''(II) the level required by a regulation of that State for which the Secretary has issued a rule granting a waiver under subsection (d) of this section; or

"(III) the required level established in the International Energy Conservation Code or in a standard of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, or by the Secretary pursuant to section 304 of the Energy Conservation and Production Act.

"(ii) If the code uses one or more baseline building designs against which all submitted building designs are to be evaluated and such baseline building designs contain a covered product subject to an energy conservation standard established in or prescribed under section 325, the baseline building designs are based on an efficiency level for such covered product which meets but does not exceed one of the levels specified in clause (i).

"(iii) If the code sets forth one or more optional combinations of items which meet the energy consumption or conservation objective, in at least one combination that the State has found to be reasonably achievable using commercially available

technologies the efficiency of the covered product meets but does not exceed one of the levels specified in clause (i).

"(C) The credit to the energy consumption or conservation objective allowed by the code for installing covered products having energy efficiencies exceeding one of the levels specified in subparagraph (B)(i) is on a one-for-one equivalent energy use or equivalent energy cost basis, taking into account the typical lifetime of the product.

"(D) The energy consumption or conservation objective is specified in terms of an estimated total consumption of energy (which may be calculated from energy loss- or gain-based codes) utilizing an equivalent amount of energy (which may be specified in units of energy or its equivalent cost) and equivalent lifetimes.

"(E) The estimated energy use of any covered product permitted or required in the code, or used in calculating the objective, is determined using the applicable test procedures prescribed under section 323, except that the State may permit the estimated energy use calculation to be adjusted to reflect the conditions of

the areas where the code is being applied if such adjustment is based on the use of the applicable test procedures prescribed under section 323 or other technically accurate documented procedure.''.

(2) Section 327(f)(4)(B) of the Energy Policy and Conservation Act (42 U.S.C. 6297(f)(4)(B)) is amended to read as follows:

''(B) If a building code requires the installation of covered products with efficiencies exceeding the levels and requirements specified in paragraph (3)(B), such requirement of the building code shall not be applicable unless the Secretary has granted a waiver for such requirement under subsection (d) of this section.''.

SEC. 214. BEST-IN-CLASS APPLIANCES DEPLOYMENT PROGRAM.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Energy, in consultation with the Administrator, shall establish a program to be known as the ''Best-in-Class Appliances Deployment Program'' to—

(1) provide bonus payments to retailers or distributors under subsection (c) for sales of best-in-

class high-efficiency household appliance models, high-efficiency installed building equipment, and high-efficiency consumer electronics, with the goal of reducing life-cycle costs for consumers, encouraging innovation, and maximizing energy savings and public benefit;

(2) provide bounties under subsection (d) to retailers for the replacement, retirement, and recycling of old, inefficient, and environmentally harmful products; and

(3) provide premium awards under subsection (e) to manufacturers for developing and producing new Superefficient Best-in-Class Products.

(b) DESIGNATION OF BEST-IN-CLASS PRODUCT MODELS.—

(1) IN GENERAL.—The Secretary of Energy shall designate product models of appliances, equipment, or electronics as Best-in-Class Product models. The Secretary shall publicly announce the Best-in-Class Product models designated under this subsection. The Secretary shall define product classes broadly and, except as provided in paragraph (2), shall designate as Best-in-Class Product models no more than the most efficient 10 percent of the commercially available product models in a class that

demonstrate, as a group, a distinctly greater energy efficiency than the average energy efficiency of that class of appliances, equipment, or electronics. In designating models, the Secretary shall—

(A) identify commercially available models in the relevant class of products;

(B) identify the subgroup of those models that share the distinctly higher energy-efficiency characteristics that warrant designation as best-in-class; and

(C) add other models in that class to the list of Best-in-Class Product models as they demonstrate their ability to meet the higher-efficiency characteristics on which the designation was made.

(2) PERCENTAGE EXCEPTION.—If there are fewer than 10 product models in a class of products, the Secretary may designate one or more of such models as Best-in-Class Products.

(3) REVIEW OF BEST-IN-CLASS STANDARDS.—The Secretary shall review annually the product-specific criteria for designating, and the product models that qualify as, Best-in-Class Products and, after notice and a 30-day comment period, make upwards adjustments in the efficiency criteria as necessary to

maintain an appropriate ratio of such product models to the total number of product models in the product class.

(c) BONUSES FOR SALES OF BEST-IN-CLASS PRODUCTS.—

(1) IN GENERAL.—The Secretary of Energy shall make bonus payments to retailers or, as provided in paragraph (5)(B), distributors for the sale of Best-in-Class Products.

(2) BONUS PROGRAM.—The Secretary shall—

(A) publicly announce the availability and amount of the bonus to be paid for each sale of a Best-in-Class Product of a model designated under subsection (b); and

(B) make bonus payments in at least that amount for each Best-in-Class Product of that model sold during the 3-year period beginning on the date the model is designated under subsection (b).

(3) UPGRADE OF BEST-IN-CLASS PRODUCT ELIGIBILITY.—In conducting a review under subsection (b)(3), the Secretary shall—

(A) consider designating as a Best-in-Class Product model a Superefficient Best-in-Class

Product model that has been designated pursuant to subsection (e);

(B) announce any change in the bonus payment as necessary to increase the market share of Best-in-Class Product models;

(C) list models that will be eligible for bonuses in the new amount; and

(D) continue paying bonus payments at the original level, for the sale of any models that previously qualified as Best-in-Class Products but do not qualify at the new level, for the remainder of the 3-year period announced with the original designation.

(4) SIZE OF INDIVIDUAL BONUS PAYMENTS.—(A) The size of each bonus payment under this subsection shall be the product of—

(i) an amount determined by the Secretary; and

(ii) the difference in energy consumption between the Best-in-Class Product and the average product in the product class.

(B) The Secretary shall determine the amount under subparagraph (A)(i) for each product type, in consultation with State and utility efficiency pro-

gram administrators as well as the Administrator, based on estimates of the amount of bonus payment that would provide significant incentive to increase the market share of Best-in-Class Products.

(5) ELIGIBLE BONUS RECIPIENT.—(A) The Secretary shall ensure that not more than 1 bonus payment is provided under this subsection for each Best-in-Class Product.

(B) The Secretary may make distributors eligible to receive bonus payments under this subsection for sales that are not to the final end-user, to the extent that the Secretary determines that for a particular product category distributors are well situated to increase sales of Best-in-Class Products.

(d) BOUNTIES FOR REPLACEMENT, RETIREMENT, AND RECYCLING OF EXISTING LOW-EFFICIENCY PRODUCTS.—

(1) IN GENERAL.—The Secretary of Energy shall make bounty payments to retailers for the replacement, retirement, and recycling of older operating low-efficiency products that might otherwise continue in operation.

(2) BOUNTIES.—Bounties shall be payable upon documentation that the sale of a Best-in-Class Prod-

uct was accompanied by the replacement, retirement, and recycling of—

(A) an inefficient but still-functioning product; or

(B) a nonfunctioning product containing a refrigerant,

by the consumer to whom the Best-in-Class Product was sold.

(3) AMOUNT.—

(A) FUNCTIONING PRODUCTS.—The bounty payment payable under this subsection for a product described in paragraph (2)(A) shall be based on the difference between the estimated energy use of the product replaced and the energy use of an average new product in the product class, over the estimated remaining lifetime of the product that was replaced.

(B) NONFUNCTIONING PRODUCTS CONTAINING REFRIGERANTS.—The bounty payment payable under this subsection for a product described in paragraph (2)(B) shall be in the amount that the Secretary of Energy, in consultation with the Administrator, determines is sufficient to promote the recycling of such prod-

ucts, up to the amount of bounty for a comparable product described in paragraph (2)(A).

(4) RETIREMENT.—The Secretary shall ensure that no product for which a bounty is paid under this subsection is returned to active service, but that it is instead destroyed, and recycled to the extent feasible.

(5) RECYCLING APPLIANCES CONTAINING REFRIGERANTS.—The Secretary shall ensure that standards for environmentally responsible methods of recycling established by the Administrator pursuant to section 608 of the Clean Air Act are employed before a bounty payment is made under this subsection for a product containing a refrigerant. Nothing in this section shall be interpreted to alter the requirements of section 608 of the Clean Air Act or to relieve any person from complying with those requirements.

(e) PREMIUM AWARDS FOR DEVELOPMENT AND PRODUCTION OF SUPEREFFICIENT BEST-IN-CLASS PRODUCTS.—

(1) IN GENERAL.—(A) The Secretary of Energy shall provide premium awards to manufacturers for the development and production of Superefficient Best-in-Class Products. The Secretary shall set and

1 periodically revise standards for eligibility of prod-
2 ucts for designation as a Superefficient Best-in-
3 Class Product.

4 (B) The Secretary may establish a standard for
5 a Superefficient Best-in-Class Product even if no
6 product meeting that standard exists, if the Sec-
7 retary has reasonable grounds to conclude that a
8 mass-producible product could be made to meet that
9 standard.

10 (C) The Secretary may also establish a Super-
11 efficient Best-in-Class Product standard that is met
12 by one or more existing Best-in-Class Product mod-
13 els, if those product models have distinct energy effi-
14 ciency attributes and performance characteristics
15 that make them significantly better than other prod-
16 uct models qualifying as best-in-class. The Secretary
17 may not designate as Superefficient Best-in-Class
18 Products under this subparagraph models that rep-
19 resent more than 10 percent of the currently quali-
20 fying Best-in-Class Product models.

21 (2) PREMIUM AWARDS.—(A) The premium
22 award payment provided to a manufacturer under
23 this subsection shall be in addition to any bonus
24 payments made under subsection (c).

(B) The amount of the premium award paid per unit of Superefficient Best-in-Class Products sold to retailers or distributors shall be the product of—

(i) an amount determined by the Secretary; and

(ii) the difference in energy consumption between the Superefficient Best-in-Class Product and the average product in the product class.

(C) The Secretary shall determine the amount under subparagraph (B)(i) for each product type, in consultation with State and utility efficiency program administrators as well as the Administrator, based on consideration of the present value to the Nation of the energy (and water or other resources or inputs) saved over the useful life of the product. The Secretary may also take into consideration the methods used to increase sales of qualifying products in determining such amount.

(D) The Secretary may adjust the value described in subparagraph (C) upward or downward as appropriate, including based on the effect of the premium awards on the sales of products in different

1 classes that may be affected by the program under
2 this subsection.
3 (E) Premium award payments shall be applied
4 to sales of any Superefficient Best-in-Class Product
5 for the first 3 years after designation as a Superefficient Best-in-Class Product.
7 (3) COORDINATION OF INCENTIVES.—No product for which Federal tax credit is received under section 45M of the Internal Revenue Code of 1986 shall be eligible to receive premium award payments pursuant to this subsection.
12 (f) REPORTING.—The Secretary of Energy shall require, as a condition of receiving a bonus, bounty, or premium award under this section, that a report containing the following documentation be provided:
16 (1) For retailers and distributors, the number of units sold within each product type, and model-specific wholesale purchase prices and retail sale prices, on a monthly basis.
20 (2) For manufacturers, model-specific energy consumption data.
22 (3) For manufacturers, on an immediate basis, information concerning any product design or function changes that affect the energy consumption of the unit.

(4) The methods used to increase the sales of qualifying products.

(g) MONITORING AND VERIFICATION PROTOCOLS.—The Secretary of Energy shall establish monitoring and verification protocols for energy consumption tests for each product model and for sales of energy-efficient models.

(h) DISCLOSURE.—The Secretary of Energy may require that retailers and distributors disclose publicly and to consumers their participation in the program under this section.

(i) COST-EFFECTIVENESS REQUIREMENT.—

(1) REQUIREMENT.—The Secretary of Energy shall make cost-effectiveness a top priority in designing the program under, and administering, this section, except that the cost-effectiveness of providing premium awards to manufacturers under subsection (e), in aggregate, may be lower by this measure than that of the bonuses and bounties to retailers and distributors under subsections (c) and (d).

(2) DEFINITIONS.—In this subsection:

(A) COST-EFFECTIVENESS.—The term ''cost-effectiveness'' means a measure of aggregate savings in the cost of energy over the lifetime of a product in relation to the cost to the

Secretary of the bonuses, bounties, and premium awards provided under this section for a product.

(B) SAVINGS.—The term ''savings'' means the cumulative megawatt-hours of electricity or million British thermal units of other fuels saved by a product during the projected useful life of the product, in comparison to projected energy consumption of the average product in the same class, taking into consideration the impact of any documented measures to replace, retire, and recycle low-efficiency products at the time of purchase of highly efficient substitutes.

(j) DEFINITIONS.—In this section—

(1) the term ''distributor'' mean an individual, organization, or company that sells products in multiple lots and not directly to end-users;

(2) the term ''retailer'' means an individual, organization, or company that sells products directly to end-users; and

(3) the term ''Superefficient Best-in-Class Product'' means a product that—

(A) can be mass produced; and

(B) achieves the highest level of efficiency that the Secretary of Energy finds can, given

the current state of technology, be produced and sold commercially to mass-market consumers.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $300,000,000 for each of the fiscal years 2010 through 2014 to the Secretary of Energy for purposes of this section, of which not more than 10 percent for any fiscal year may be expended on program administration.

SEC. 215. PURPOSE OF ENERGY STAR.

Section 324A of the Energy Policy and Conservation Act (42 U.S.C. 6294a) is amended—

(1) by redesignating subsections (b) through (d) as subsections (c) through (e), respectively; and

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

''(b) PURPOSE.—The purpose of the Energy Star program for products is to assist consumers in selecting products for purchase that have demonstrated high energy efficiency and that are cost-effective from the consumer's perspective, ensuring that any incremental cost attributable to the energy-efficient features of such products will be more than recovered in the value of energy savings the products will make possible within several years of purchase, typically within 3 years but no more than 5 years.''.

Subtitle C—Transportation Efficiency

SEC. 221. EMISSIONS STANDARDS.

(a) MOTOR VEHICLE STANDARDS.—The President shall use statutory authorities in effect on the day before the date of enactment of this section to set motor vehicle standards that—

(1) are achievable by the automobile manufacturing companies;

(2) to the extent practicable, harmonize standards that may be set by the National Highway Traffic Safety Administration pursuant to the authority in chapter 329 of title 49, United States Code, standards that may be set by the Administrator of the Environmental Protection Agency pursuant to the authority in the Clean Air Act, and standards that have or may be set by the State of California;

(3) achieve at least as much emissions reductions as would be achieved by implementation of the California law AB 1493 if enforced in the State of California and the other States that have adopted the standard; and

(4) do not preempt California's legal authority to adopt and enforce its own mobile source emissions standards.

(b) GREENHOUSE GAS EMISSION STANDARDS FOR MOBILE SOURCES.—Title VIII of the Clean Air Act, as added by section 331 of this Act, is amended by inserting after part A the following new part:

"PART B—MOBILE SOURCES

"SEC. 821. GREENHOUSE GAS EMISSION STANDARDS FOR MOBILE SOURCES.

''(a) MOTOR VEHICLES AND ENGINES.—

''(1) Pursuant to section 202(a)(1), by December 31, 2010, the Administrator shall promulgate standards applicable to emissions of greenhouse gases from new heavy-duty vehicles and engines, excluding such vehicles covered by the Tier II standards (as established by the Administrator as of the date of enactment of this section). The Administrator may revise these standards from time to time.

''(2) Regulations issued under section 202(a)(1) applicable to emissions of greenhouse gases from new heavy-duty vehicles and engines, excluding such vehicles covered by the Tier II standards (as established by the Administrator as of the date of enactment of this section), shall contain standards that achieve the greatest degree of emissions reduction achievable based on the application of technology which the Administrator determines will be available

at the time such standards take effect, taking into consideration cost, energy, and safety factors associated with the application of such technology. Any such regulations shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology.

"(b) NONROAD VEHICLES AND ENGINES.—

"(1) Pursuant to section 213(a)(4), the Administrator shall promulgate standards applicable to emissions of greenhouse gases from new marine vessels and locomotives, and from new engines used in marine vessels and locomotives, by December 31, 2012. The Administrator shall also promulgate standards applicable to emissions of greenhouse gases for such other classes and categories of nonroad vehicles and engines as the Administrator determines appropriate and in the timeframe the Administrator determines appropriate. The Administrator shall base such determination, among other factors, on the relative contribution of greenhouse gas emissions, and the costs for achieving reductions, from such classes or categories of new nonroad engines and vehicles. The Administrator may revise these standards from time to time.

"(2) Standards under section 213(a)(4) applicable to emissions of greenhouse gases from new marine vessels and locomotives, and from new engines used in marine vessels and locomotives, shall achieve the greatest degree of emissions reduction achievable based on the application of technology which the Administrator determines will be available at the time such standards take effect, taking into consideration cost, energy, and safety factors associated with the application of such technology. Any such regulations shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology.

"(3) For purposes of this section and standards under section 213(a)(4) applicable to emissions of greenhouse gases, the term 'nonroad engines and vehicles' shall include non-internal combustion engines and the vehicles these engines power (such as electric engines and electric vehicles), for those non-internal combustion engines and vehicles which would be in the same category and have the same uses as nonroad engines and vehicles that are powered by internal combustion engines.

"(c) AIRCRAFT AND AIRCRAFT ENGINES.—

"(1) Pursuant to section 231(a), the Administrator shall promulgate standards applicable to emissions of greenhouse gases from new aircraft and new engines used in aircraft by December 31, 2012. Notwithstanding any requirement in section 231(a), the Administrator shall also promulgate standards applicable to emissions of greenhouse gases from other classes and categories of aircraft and aircraft engines for such classes and categories as the Administrator determines appropriate and in the timeframe the Administrator determines appropriate. The Administrator may revise these standards from time to time.

"(2) Standards under section 231(a) applicable to emissions of greenhouse gases from new aircraft and new engines used in aircraft, and any later revisions or additional standards, shall achieve the greatest degree of emissions reduction achievable based on the application of technology which the Administrator determines will be available at the time such standards take effect, taking into consideration cost, energy, and safety factors associated with the application of such technology. Any such standards shall take effect after such period as the Adminis-

trator finds necessary to permit the development and application of the requisite technology.

"(d) AVERAGING, BANKING, AND TRADING OF EMISSIONS CREDITS.—In establishing standards applicable to emissions of greenhouse gases pursuant to this section and sections 202(a), 213(a)(4), and 231(a), the Administrator may establish provisions for averaging, banking, and trading of greenhouse gas emissions credits within or across classes or categories of motor vehicles and motor vehicle engines, nonroad vehicles and engines (including marine vessels), and aircraft and aircraft engines, to the extent the Administrator determines appropriate and considering the factors appropriate in setting standards under those sections. Such provisions may include reasonable and appropriate provisions concerning generation, banking, trading, duration, and use of credits.

"(e) REPORTS.—The Administrator shall, from time to time, submit a report to Congress that projects the amount of greenhouse gas emissions from the transportation sector, including transportation fuels, for the years 2030 and 2050, based on the standards adopted under this section.".

SEC. 222. GREENHOUSE GAS EMISSIONS REDUCTIONS THROUGH TRANSPORTATION EFFICIENCY.

Title VIII of the Clean Air Act, as added by section 331 of this Act, is further amended by inserting after part C the following new part:

"PART D—PLANNING REQUIREMENTS

"SEC. 841. GREENHOUSE GAS EMISSIONS REDUCTIONS THROUGH TRANSPORTATION EFFICIENCY.

''(a) IN GENERAL.—Each State shall—

''(1) not later than 3 years after the date of enactment of this section, submit to the Administrator goals for transportation-related greenhouse gas emissions reductions; and

''(2) as part of each transportation plan or transportation improvement program developed under title 23 or title 49, United States Code, ensure that a plan to achieve such goals, or an updated version of such a plan, is submitted to the Administrator and to the Secretary of Transportation (in this section referred to as the 'Secretary') by each metropolitan planning organization in the State for an area with a population exceeding 200,000.

''(b) MODELS AND METHODOLOGIES.—

''(1) IN GENERAL.—The Administrator shall promulgate regulations to establish standards for use in developing goals, plans, and strategies under

this section and for monitoring progress toward such goals. Such standards shall include—

"(A) data collection techniques for assessing State and regional transportation-related greenhouse gas emissions;

"(B) methodologies for determining transportation-related greenhouse gas emissions baselines;

"(C) models and methodologies for scenario analysis; and

"(D) models and methodologies for estimating transportation-related greenhouse gas emissions reductions from the strategies considered under this section.

Such regulations may approve or improve existing models and methodologies.

"(2) TIMING.—The Administrator shall—

"(A) publish proposed regulations under paragraph (1) not later than 1 year after the date of enactment of this section; and

"(B) promulgate final regulations under paragraph (1) not later than 2 years after such date of enactment.

"(3) ASSESSMENT.—At least every 6 years after promulgating final regulations under para-

graph (1), the Administrator, in coordination with the Secretary, shall assess current and projected progress in reducing transportation-related greenhouse gas emissions. The assessment shall examine the contributions to emissions reductions attributable to improvements in vehicle efficiency, greenhouse gas performance of transportation fuels, and increased efficiency in utilizing transportation systems.

"(c) GREENHOUSE GAS REDUCTION GOALS.—

"(1) CONSULTATION.—Each State shall develop the goals referred to in subsection (a)(1)—

"(A) in concurrence with State agencies responsible for air quality and transportation;

"(B) in consultation with each metropolitan planning organization for an area in the State with a population exceeding 200,000 and applicable local air quality and transportation agencies; and

"(C) with public involvement, including public comment periods and meetings.

"(2) PERIOD.—The goals referred to in subsection (a)(1) shall be for 4-, 10-, and 20-year periods.

"(3) TARGETS; DESIGNATED YEAR.—The goals referred to in subsection (a)(1) shall establish targets to reduce transportation-related greenhouse gas emissions in the covered area. The targets shall be designed to ensure that the levels of such emissions stabilize and decrease after a designated year. The State shall consider designating 2010 as such designated year.

"(4) COVERED AREA.—The goals referred to in subsection (a)(1)—

"(A) shall be established on a statewide basis;

"(B) shall be established for each metropolitan planning organization in the State for an area with a population exceeding 200,000; and

"(C) may be established on a voluntary basis, in accordance with the provisions of this section, for any metropolitan planning organization not described in subparagraph (B).

"(5) REVISED GOALS.—Every 4 years, each State shall update and revise, as appropriate, the goals referred to in subsection (a)(1).

"(d) PLANNING.—A plan submitted under subsection (a)(2) shall—

"(1) be based upon the models and methodologies established by the Administrator under subsection (b);

"(2) use transportation and land use scenario analysis to address transportation-related greenhouse gas emissions and economic development impacts; and

"(3) be developed—

"(A) with public involvement, including public comment periods and meetings which provide opportunities for comment from a variety of stakeholders based on age, race, income, and disability;

"(B) with regional coordination, including with respect to—

"(i) metropolitan planning organizations;

"(ii) the localities comprising the metropolitan planning organization;

"(iii) the State in which the metropolitan planning organization is located; and

"(iv) air quality, environmental health, and transportation agencies for the State and region involved; and

"(C) in consultation with the State and local housing, public health, economic development, land use, environment, and public transportation agencies.

"(e) STRATEGIES.—In developing goals under subsection (a)(1) and a plan under subsection (a)(2), the State or metropolitan planning organization, as applicable, shall consider transportation and land use planning strategies to reduce transportation-related greenhouse gas emissions, including the following:

"(1) Efforts to increase or improve public transportation, including—

"(A) new public transportation systems, including new commuter rail systems;

"(B) expansion of existing public transportation systems;

"(C) employer-based subsidies;

"(D) cleaner locomotive technologies; and

"(E) quality of service improvements, including improved frequency of service.

"(2) Updates to zoning and other land use regulations and plans to support development that—

"(A) coordinates transportation and land use planning;

"(B) focuses future growth close to existing and planned job centers and public facilities;

"(C) uses existing infrastructure;

"(D) promotes walking, bicycling, and public transportation use; and

"(E) mixes land uses such as housing, retail, and schools.

"(3) Implementation of a policy (referred to as a 'complete streets policy') that—

"(A) ensures adequate accommodation of all users of transportation systems, including pedestrians, bicyclists, public transportation users, motorists, children, the elderly, and individuals with disabilities; and

"(B) adequately addresses the safety and convenience of all users of the transportation system.

"(4) Construction of bicycle and pedestrian infrastructure facilities, including facilities that improve the connections with networks that provide access to human services, employment, schools, and retail.

"(5) Projects to promote telecommuting, flexible work schedules, or satellite work centers.

"(6) Pricing measures, including tolling, congestion pricing, and pay-as-you-drive insurance.

"(7) Intermodal freight system strategies, including enhanced rail services, short sea shipping, and other strategies.

"(8) Parking policies.

"(9) Intercity rail service, including high speed rail.

"(10) Travel demand management projects.

"(11) Restriction of the use of certain roads, or lanes, by vehicles other than passenger buses and high-occupancy vehicles.

"(12) Reduction of vehicle idling, including idling associated with freight management, construction, transportation, and commuter operations.

"(13) Policies to encourage the use of retrofit technologies and early replacement of vehicles, engines and equipment to reduce transportation-related greenhouse gas emissions from existing mobile sources.

"(14) Other projects that the Administrator finds reduce transportation-related greenhouse gas emissions.

"(f) PUBLIC AVAILABILITY.—The Administrator shall publish, including by posting on the Environmental Protection Agency's website—

"(1) the goals and plans submitted under subsection (a); and

"(2) for each plan submitted under subsection (a)(2), an analysis of the anticipated effects of the plan on greenhouse gas emissions and oil consumption.

"(g) CERTIFICATION.—The Administrator, in consultation with the Secretary, shall certify a State or metropolitan planning organization greenhouse gas reduction plan submitted under subsection (a)(2) if the plan's implementation is likely to meet the corresponding greenhouse gas reduction goal referred to in subsection (a)(1). If the Administrator, in consultation with the Secretary, determines that a submitted plan cannot be certified, the State or metropolitan planning organization shall revise and resubmit the plan within 1 year.

"(h) ENFORCEMENT.—If the Administrator finds that a State has failed to submit goals under subsection (a)(1), has failed to ensure the submission of a plan under subsection (a)(2), or has failed to submit a revised plan under subsection (g), for any area in the State (irrespective of whether the area is a nonattainment area), the Ad-

ministrator shall impose a prohibition in accordance with section 179(b)(1) applicable to the area within 2 years of such a finding. The Administrator may not impose a prohibition under the preceding sentence, and no action may be brought by the Administrator or any other entity alleging a violation of this section, based on the content or adequacy of a goal or plan submitted under subsection (a)(1) or (a)(2) or failure to achieve the goal submitted under subsection (a)(1).

"(i) COMPETITIVE GRANTS.—

"(1) GRANTS.—The Administrator, in consultation with the Secretary, may—

"(A) award grants to support activities related to improving data collection, modeling, and monitoring systems to assess transportation-related greenhouse gas emissions and the effects of plans, policies, and strategies referenced in this section;

"(B) award grants to States and metropolitan planning organizations for the development of goals and plans to be submitted under sections (a)(1) or (a)(2); and

"(C) award grants, on a competitive basis, to implement plans certified under subsection (g) or elements thereof, provided that each

1 project thus funded includes a measurement
2 and evaluation component that meets the regu-
3 lations promulgated under subsection (b).
4 "(2) PRIORITY.—In making grants under para-
5 graph (1)(C), the Administrator shall give priority to
6 applicants based upon—
7 "(A) the amount of total greenhouse gas
8 emissions to be reduced as a result of imple-
9 mentation of a certified plan, within the covered
10 area, as determined by methods established
11 under subsection (b);
12 "(B) the amount of per capita greenhouse
13 gas emissions to be reduced as a result of im-
14 plementation of a certified plan, within the cov-
15 ered area, as determined by methods estab-
16 lished under subsection (b);
17 "(C) the cost effectiveness, in terms of dol-
18 lars per tons of greenhouse gas reductions, to
19 be achieved as a result of the implementation of
20 a certified plan;
21 "(D) the potential for both short- and
22 long-term reductions; and
23 "(E) such other factors as the Adminis-
24 trator determines appropriate.

1 "(3) AUTHORIZATION OF APPROPRIATIONS.—
2 To carry out this subsection, there are authorized to
3 be appropriated such sums as may be necessary.
4 "(j) DEFINITIONS.—In this section:
5 "(1) The term 'metropolitan planning organiza-
6 tion' means a metropolitan planning organization, as
7 such term is used in section 176.
8 "(2) The term 'scenario analysis' means an
9 analysis that is conducted by identifying different
10 trends and making projections based on those trends
11 to develop a range of scenarios and estimates of how
12 each scenario could improve access to goods and
13 services, including access to employment, education,
14 and health care (especially for elderly and economi-
15 cally disadvantaged communities), and could affect
16 rates of—
17 "(A) vehicle miles traveled;
18 "(B) vehicle hours traveled;
19 "(C) use of mobile source fuel by type, in-
20 cluding electricity; and
21 "(D) transportation-related greenhouse gas
22 emissions.
23 "(k) LAND USE AUTHORITY.—Nothing in this sec-
24 tion may be construed to—

"(1) infringe upon the existing authority of State or local governments to plan or control land use; or

"(2) provide or transfer authority over land use to any other entity.".

SEC. 223. SMARTWAY TRANSPORTATION EFFICIENCY PROGRAM.

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

"SEC. 822. SMARTWAY TRANSPORTATION EFFICIENCY PROGRAM.

"(a) IN GENERAL.—There is established within the Environmental Protection Agency a SmartWay Transport Program to quantify, demonstrate, and promote the benefits of technologies, products, fuels, and operational strategies that reduce petroleum consumption, air pollution, and greenhouse gas emissions from the mobile source sector.

"(b) GENERAL DUTIES.—Under the program established under this section, the Administrator shall carry out each of the following:

"(1) Development of measurement protocols to evaluate the energy consumption and greenhouse gas impacts from technologies and strategies in the mo-

bile source sector, including those for passenger transport and goods movement.

"(2) Development of qualifying thresholds for certifying, verifying, or designating energy-efficient, low-greenhouse gas SmartWay technologies and strategies for each mode of passenger transportation and goods movement.

"(3) Development of partnership and recognition programs to promote best practices and drive demand for energy-efficient, low-greenhouse gas transportation performance.

"(4) Promotion of the availability of, and encouragement of the adoption of, SmartWay certified or verified technologies and strategies, and publication of the availability of financial incentives, such as assistance from loan programs and other Federal and State incentives.

"(c) SMARTWAY TRANSPORT FREIGHT PARTNERSHIP.—The Administrator shall establish a SmartWay Transport Partnership program with shippers and carriers of goods to promote energy-efficient, low-greenhouse gas transportation. In carrying out such partnership, the Administrator shall undertake each of the following:

"(1) Certification of the energy and greenhouse gas performance of participating freight carriers, in-

1 cluding those operating rail, trucking, marine, and
2 other goods movement operations.
3 ''(2) Publication of a comprehensive energy and
4 greenhouse gas performance index of freight modes
5 (including rail, trucking, marine, and other modes of
6 transporting goods) and individual freight companies
7 so that shippers can choose to deliver their goods
8 more efficiently.
9 ''(3) Development of tools for—
10 ''(A) carriers to calculate their energy and
11 greenhouse gas performance; and
12 ''(B) shippers to calculate the energy and
13 greenhouse gas impacts of moving their prod-
14 ucts and to evaluate the relative impacts from
15 transporting their goods by different modes and
16 corporate carriers.
17 ''(4) Provision of recognition opportunities for
18 participating shipper and carrier companies dem-
19 onstrating advanced practices and achieving superior
20 levels of greenhouse gas performance.
21 ''(d) IMPROVING FREIGHT GREENHOUSE GAS PER-
22 FORMANCE DATABASES.—The Administrator shall, in co-
23 ordination with other appropriate agencies, define and col-
24 lect data on the physical and operational characteristics
25 of the Nation's truck population, with special emphasis on

data related to energy efficiency and greenhouse gas performance to inform the performance index published under subsection (c)(2) of this section, and other means of goods transport as necessary, at least every 5 years.

"(e) ESTABLISHMENT OF FINANCING PROGRAM.—The Administrator shall establish a SmartWay Financing Program to competitively award funding to eligible entities identified by the Administrator in accordance with the program requirements in subsection (g).

"(f) PURPOSE.—Under the SmartWay Financing Program, eligible entities shall—

"(1) use funds awarded by the Administrator to provide flexible loan and lease terms that increase approval rates or lower the costs of loans and leases in accordance with guidance developed by the Administrator; and

"(2) make such loans and leases available to public and private entities for the purpose of adopting low-greenhouse gas technologies or strategies for the mobile source sector that are designated by the Administrator.

"(g) PROGRAM REQUIREMENTS.—The Administrator shall determine program design elements and requirements, including—

"(1) the type of financial mechanism with which to award funding, in the form of grants or contracts;

"(2) the designation of eligible entities to receive funding, including State, tribal, and local governments, regional organizations comprised of governmental units, nonprofit organizations, or for-profit companies;

"(3) criteria for evaluating applications from eligible entities, including anticipated—

"(A) cost-effectiveness of loan or lease program on a metric-ton-of-greenhouse gas-saved-per-dollar basis;

"(B) ability to promote the loan or lease program and associated technologies and strategies to the target audience; and

"(4) reporting requirements for entities that receive awards, including—

"(A) actual cost-effectiveness and greenhouse gas savings from the loan or lease program based on a methodology designated by the Administrator;

"(B) the total number of applications and number of approved applications; and

"(C) terms granted to loan and lease recipients compared to prevailing market practices.

"(h) AUTHORIZATION OF APPROPRIATIONS.—Such sums as necessary are authorized to be appropriated to the Administrator to carry out this section.".

SEC. 224. STATE VEHICLE FLEETS.

Section 507(o) of the Energy Policy Act of 1992 (42 U.S.C. 13257) is amended by adding the following new paragraph at the end thereof:

"(3) The Secretary shall revise the rules under this subsection with respect to the types of alternative fueled vehicles required for compliance with this subsection to ensure those rules are consistent with any guidance issued pursuant to section 303 of this Act.".

Subtitle D—Industrial Energy Efficiency Programs

SEC. 241. INDUSTRIAL PLANT ENERGY EFFICIENCY STANDARDS.

The Secretary of Energy shall continue to support the development of the American National Standards Institute (ANSI) voluntary industrial plant energy efficiency certification program, pending International Standards Organization (ISO) consensus standard 50001, and other related ANSI/ISO standards. In addition, the Department

shall undertake complementary activities through the Department of Energy's Industry Technologies Program that support the voluntary implementation of such standards by manufacturing firms. There are authorized to be appropriated to the Secretary such sums as are necessary to carry out these activities. The Secretary shall report to Congress on the status of standards development and plans for further standards development pursuant to this Section by not later than 18 months after the date of enactment of this Act, and shall prepare a second such report 18 months thereafter.

SEC. 242. ELECTRIC AND THERMAL WASTE ENERGY RECOVERY AWARD PROGRAM.

(a) ELECTRIC AND THERMAL WASTE ENERGY RECOVERY AWARDS.—The Secretary of Energy shall establish a program to make monetary awards to the owners and operators of new and existing electric energy generation facilities or thermal energy production facilities using fossil or nuclear fuel, to encourage them to use innovative means of recovering any thermal energy that is a potentially useful byproduct of electric power generation or other processes to—

(1) generate additional electric energy; or

(2) make sales of thermal energy not used for electric generation, in the form of steam, hot water,

chilled water, or desiccant regeneration, or for other commercially valid purposes.

(b) AMOUNT OF AWARDS.—

(1) ELIGIBILITY.—Awards shall be made under subsection (a) only for the use of innovative means that achieve net energy efficiency at the facility concerned significantly greater than the current standard technology in use at similar facilities.

(2) AMOUNT.—The amount of an award made under subsection (a) shall equal an amount up to the value of 25 percent of the energy projected to be recovered or generated during the first 5 years of operation of the facility using the innovative energy recovery method, or such lesser amount that the Secretary determines to be the minimum amount that can cost-effectively stimulate such innovation.

(3) LIMITATION.—No person may receive an award under this section if a grant under the waste energy incentive grant program under section 373 of the Energy Policy and Conservation Act (42 U.S.C. 6343) is made for the same energy savings resulting from the same innovative method.

(c) REGULATORY STATUS.—The Secretary of Energy shall—

(1) assist State regulatory commissions to identify and make changes in State regulatory programs for electric utilities to provide appropriate regulatory status for thermal energy byproduct businesses of regulated electric utilities to encourage those utilities to enter businesses making the sales referred to in subsection (a)(2); and

(2) encourage self-regulated utilities to enter businesses making the sales referred to in subsection (a)(2).

(d) ELIGIBILITY FOR SEED LOANS.—Owners and operators of electric energy generation and thermal energy production facilities shall be eligible for SEED Fund loans under subtitle D of title I to provide initial capital for entering into businesses involving sales referred to in subsection (a)(2).

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy such sums as are necessary for the purposes of this section.

SEC. 243. CLARIFYING ELECTION OF WASTE HEAT RECOVERY FINANCIAL INCENTIVES.

Section 373(e) of the Energy Policy and Conservation Act (42 U.S.C. 6343(e)) is amended—

(1) by striking ''that qualifies for'' and inserting ''who elects to claim''; and

(2) by inserting ''from that project'' after ''for waste heat recovery''.

Subtitle E—Improvements in Energy Savings Performance Contracting

SEC. 251. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) COMPETITION REQUIREMENTS FOR TASK OR DELIVERY ORDERS UNDER ENERGY SAVINGS PERFORMANCE CONTRACTS.—

(1) COMPETITION REQUIREMENTS.—Subsection (a) of section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)) is amended by adding at the end the following paragraph:

''(3)(A) The head of a Federal agency may issue a task or delivery order under an energy savings performance contract by—

''(i) notifying all contractors that have received an award under such contract that the agency proposes to discuss energy savings performance services for some or all of its facilities, soliciting an expression of interest in performing site surveys or investigations and feasibility designs and studies and the submission of

qualifications from such contractors, and including in such notice summary information concerning energy use for any facilities that the agency has specific interest in including in such contract;

"(ii) reviewing all expressions of interest and qualifications submitted pursuant to the notice under clause (i);

"(iii) selecting two or more contractors (from among those reviewed under clause (ii)) to conduct discussions concerning the contractors' respective qualifications to implement potential energy conservation measures, including requesting references demonstrating experience on similar efforts and the resulting energy savings of such similar efforts;

"(iv) selecting and authorizing—

"(I) more than one contractor (from among those selected under clause (iii)) to conduct site surveys, investigations, feasibility designs and studies or similar assessments for the energy savings performance contract services (or for discrete portions of such services), for the purpose of allowing each such contractor to submit a firm,

fixed-price proposal to implement specific energy conservation measures; or

"(II) one contractor (from among those selected under clause (iii)) to conduct a site survey, investigation, a feasibility design and study or similar for the purpose of allowing the contractor to submit a firm, fixed-price proposal to implement specific energy conservation measures;

"(v) negotiating a task or delivery order for energy savings performance contracting services with the contractor or contractors selected under clause (iv) based on the energy conservation measures identified.; and

"(vi) issuing a task or delivery order for energy savings performance contracting services to such contractor or contractors.

"(B) The issuance of a task or delivery order for energy savings performance contracting services pursuant to subparagraph (A) is deemed to satisfy the task and delivery order competition requirements in section 2304c(d) of title 10, United States Code, and section 303J(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253j(d)).

"(C) The Secretary may issue guidance as necessary to agencies issuing task or delivery orders pursuant to subparagraph (A).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) is inapplicable to task or delivery orders issued before the date of enactment of this section.

(b) INCLUSION OF THERMAL RENEWABLE ENERGY.—Section 203 of the Energy Policy Act of 2005 (42 U.S.C. 15852) is amended—

(1) in subsection (a), by striking "electric"; and

(2) in subsection (b)(2), by inserting "or thermal" after "means electric".

(c) CREDIT FOR RENEWABLE ENERGY PRODUCED AND USED ON SITE.—Subsection (c) of section 203 of the Energy Policy Act of 2005 (42 U.S.C. 15852) is amended to read as follows:

"(c) CALCULATION.—Renewable energy produced at a Federal facility, on Federal lands, or on Indian lands (as defined in title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.)), shall be calculated separately from renewable energy consumed at a Federal facility, and each may be used to comply with the consumption requirement under subsection (a).".

(d) FINANCING FLEXIBILITY.—Section 801(a)(2)(F) of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)(2)(F)), as so redesignated by subsection (b)(1) of this section, is amended by striking ''In'' and inserting ''Notwithstanding any other provision of law, in''.

Subtitle F—Public Institutions

SEC. 261. PUBLIC INSTITUTIONS.

Section 399A of the Energy Policy and Conservation Act (42 U.S.C. 6371h–1) is amended—

(1) in subsection (a)(5), by striking ''or a designee'' and inserting ''a not-for-profit hospital or not-for-profit inpatient health care facility, or a designated agent'';

(2) in subsection (c)(1), by striking subparagraph (C);

(3) in subsection (f)(3)(A), by striking ''$1,000,000'' and inserting ''$2,500,000''; and

(4) in subsection (i)(1), by striking ''$250,000,000 for each of fiscal years 2009 through 2013'' and inserting ''such sums as may be necessary for each of fiscal years 2010 through 2015''.

SEC. 262. COMMUNITY ENERGY EFFICIENCY FLEXIBILITY.

Section 545(b)(3) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17155(b)(3)) is amended—

(1) by striking ''Indian tribe may use'' and all that follows through ''for administrative expenses'' and inserting ''Indian tribe may use for administrative expenses'';

(2) by striking subparagraphs (B) and (C);

(3) by redesignating the remaining clauses (i) and (ii) as subparagraphs (A) and (B), respectively and adjusting the margin of those subparagraphs accordingly; and

(4) by striking the semicolon at the end and inserting a period.

SEC. 263. SMALL COMMUNITY JOINT PARTICIPATION.

(a) Section 541(3)(A) of the Energy Independence and Security Act of 2007 is amended in clause (i) by changing the word ''and'' to ''or'' at the end of subclause (II), in subclause (ii)(II) by striking the period at the end of and inserting a semicolon and the word ''or'', and by inserting the following new clause (iii):

''(iii) a group of adjacent, contiguous, or geographically proximate units of local government that reach agreement to act jointly for purposes of this section and that

represent a combined population of not less than 35,000.''.

(b) Section 541(3)(B) of the Energy Independence and Security Act of 2007 is amended in subclause (ii)(II) by striking the period at the end of and inserting a semicolon and the word ''or'', and by inserting the following new clause (iii):

''(iii) a group of adjacent, contiguous, or geographically proximate units of local government that reach agreement to act jointly for purposes of this section and that represent a combined population of not less than 50,000.''.

SEC. 264. LOW INCOME COMMUNITY ENERGY EFFICIENCY PROGRAM.

(a) IN GENERAL.—The Secretary of Energy is authorized to make grants to private, non-profit, mission-driven community development organizations including community development corporations and community development financial institutions to provide financing to businesses and projects that improve energy efficiency; identify and develop alternative, renewable, and distributed energy supplies; provide technical assistance and promote job and business opportunities for low-income resi-

1 dents; and increase energy conservation in low income
2 rural and urban communities.

3 (b) GRANTS.—The purpose of such grants is to in-
4 crease the flow of capital and benefits to low income com-
5 munities, minority-owned and woman-owned businesses
6 and entrepreneurs and other projects and activities located
7 in low income communities in order to reduce environ-
8 mental degradation, foster energy conservation and effi-
9 ciency and create job and business opportunities for local
10 residents. The Secretary may make grants on a competi-
11 tive basis for—

12 (1) investments that develop alternative, renew-
13 able, and distributed energy supplies;

14 (2) capitalizing loan funds that lend to energy
15 efficiency projects and energy conservation pro-
16 grams;

17 (3) technical assistance to plan, develop and
18 manage an energy efficiency financing program; and

19 (4) technical and financial assistance to assist
20 small-scale businesses and private entities develop
21 new renewable and distributed sources of power or
22 combined heat and power generation.

23 (c) AUTHORIZATION OF APPROPRIATIONS.—For the
24 purposes of this section there is authorized to be appro-

priated $50,000,000 for each of the fiscal years 2010 through 2015.

TITLE III—REDUCING GLOBAL WARMING POLLUTION

SEC. 301. SHORT TITLE.

This title, and sections 112, 116, 121, 221, 222, and 223 of this Act, may be cited as the ''Safe Climate Act''.

Subtitle A—Reducing Global Warming Pollution

SEC. 311. REDUCING GLOBAL WARMING POLLUTION.

The Clean Air Act (42 U.S.C. and following) is amended by adding after title VI the following new title:

"TITLE VII—GLOBAL WARMING POLLUTION REDUCTION PROGRAM

"PART A—GLOBAL WARMING POLLUTION REDUCTION GOALS AND TARGETS

"SEC. 701. FINDINGS AND PURPOSE.

''(a) FINDINGS.—The Congress finds as follows:

''(1) Global warming poses a significant threat to the national security, economy, public health and welfare, and environment of the United States, as well as of other nations.

''(2) Reviews of scientific studies, including by the Intergovernmental Panel on Climate Change and

the National Academy of Sciences, demonstrate that global warming is the result of the combined anthropogenic greenhouse gas emissions from numerous sources of all types and sizes. Each increment of emission, when combined with other emissions, causes or contributes materially to the acceleration and extent of global warming and its adverse effects for the lifetime of such gas in the atmosphere. Accordingly, controlling emissions in small as well as large amounts is essential to prevent, slow the pace of, reduce the threats from, and mitigate global warming and its adverse effects.

"(3) Because they induce global warming, greenhouse gas emissions cause or contribute to injuries to persons in the United States, including—

"(A) adverse health effects such as disease and loss of life;

"(B) displacement of human populations;

"(C) damage to property and other interests related to ocean levels, acidification, and ice changes;

"(D) severe weather and seasonal changes;

"(E) disruption, costs, and losses to business, trade, employment, farms, subsistence,

aesthetic enjoyment of the environment, recreation, culture, and tourism;

"(F) damage to plants, forests, lands, and waters;

"(G) harm to wildlife and habitat;

"(H) scarcity of water and the decreased abundance of other natural resources;

"(I) worsening of tropospheric air pollution;

"(J) substantial threats of similar damage; and

"(K) other harm.

"(4) That many of these effects and risks of future effects of global warming are widely shared does not minimize the adverse effects individual persons have suffered, will suffer, and are at risk of suffering because of global warming.

"(5) That some of the adverse and potentially catastrophic effects of global warming are at risk of occurring and not a certainty does not negate the harm persons suffer from actions that increase the likelihood, extent, and severity of such future impacts.

"(6) Nations of the world look to the United States for leadership in addressing the threat of and

harm from global warming. Full implementation of the Safe Climate Act is critical to engage other nations in an international effort to mitigate the threat of and harm from global warming.

"(7) Global warming and its adverse effects are occurring and are likely to continue and increase in magnitude, and to do so at a greater and more harmful rate, unless the Safe Climate Act is fully implemented and enforced in an expeditious manner.

"(b) PURPOSE.—It is the general purpose of the Safe Climate Act to help prevent, reduce the pace of, mitigate, and remedy global warming and its adverse effects. To fulfill such purpose, it is necessary to—

"(1) require the timely fulfillment of all governmental acts and duties, both substantive and procedural, and the prompt compliance of covered entities with the requirements of the Safe Climate Act;

"(2) establish and maintain an effective, transparent, and fair market for emission allowances and preserve the integrity of the cap on emissions and of offset credits;

"(3) advance the production and deployment of clean energy and energy efficiency technologies; and

"(4) ensure effective enforcement of the Safe Climate Act by citizens, States, Indian tribes, and

all levels of government because each violation of the Safe Climate Act is likely to result in an additional increment of greenhouse gas emission and will slow the pace of implementation of the Safe Climate Act and delay the achievement of the goals set forth in section 702, and cause or contribute to global warming and its adverse effects.

"SEC. 702. ECONOMY-WIDE REDUCTION GOALS.

''The goals of the Safe Climate Act are to reduce steadily the quantity of United States greenhouse gas emissions such that—

''(1) in 2012, the quantity of United States greenhouse gas emissions does not exceed 97 percent of the quantity of United States greenhouse gas emissions in 2005;

''(2) in 2020, the quantity of United States greenhouse gas emissions does not exceed 80 percent of the quantity of United States greenhouse gas emissions in 2005;

''(3) in 2030, the quantity of United States greenhouse gas emissions does not exceed 58 percent of the quantity of United States greenhouse gas emissions in 2005; and

''(4) in 2050, the quantity of United States greenhouse gas emissions does not exceed 17 percent

of the quantity of United States greenhouse gas emissions in 2005.

"SEC. 703. REDUCTION TARGETS FOR SPECIFIED SOURCES.

"(a) IN GENERAL.—The regulations issued under section 721 shall cap and reduce annually the greenhouse gas emissions of capped sources each calendar year beginning in 2012 such that—

"(1) in 2012, the quantity of greenhouse gas emissions from capped sources does not exceed 97 percent of the quantity of greenhouse gas emissions from such sources in 2005;

"(2) in 2020, the quantity of greenhouse gas emissions from capped sources does not exceed 83 percent of the quantity of greenhouse gas emissions from such sources in 2005;

"(3) in 2030, the quantity of greenhouse gas emissions from capped sources does not exceed 58 percent of the quantity of greenhouse gas emissions from such sources in 2005; and

"(4) in 2050, the quantity of greenhouse gas emissions from capped sources does not exceed 17 percent of the quantity of greenhouse gas emissions from such sources in 2005.

"(b) DEFINITION.—For purposes of this section, the term 'greenhouse gas emissions from such sources in

2005' means emissions to which section 722 would have applied if the requirements of this title for the specified year had been in effect for 2005.

"SEC. 704. SUPPLEMENTAL POLLUTION REDUCTIONS.

"For the purposes of decreasing the likelihood of catastrophic climate change, preserving tropical forests, building capacity to generate offset credits, and facilitating international action on global warming, the Administrator shall set aside the percentage specified in section 781 of the quantity of emission allowances established under section 721(a) for each year, to be used to achieve a reduction of greenhouse gas emissions from deforestation in developing countries in accordance with part E. In 2020, activities supported under part E shall provide greenhouse gas reductions in an amount equal to an additional 10 percentage points of reductions from United States greenhouse gas emissions in 2005. The Administrator shall transfer these allowances with respect to activities in countries that enter into and implement agreements or arrangements relating to reduced deforestation as described in section 754(a)(2).

"SEC. 705. REVIEW AND PROGRAM RECOMMENDATIONS.

"(a) IN GENERAL.—The Administrator shall, in consultation with appropriate Federal agencies, submit to

1 Congress a report not later than July 1, 2013, and every
2 4 years thereafter, that includes—
3 "(1) an analysis of key findings based on the
4 latest scientific information and data relevant to
5 global climate change;
6 "(2) an analysis of capabilities to monitor and
7 verify greenhouse gas reductions on a worldwide
8 basis, including for the United States, as required
9 under the Safe Climate Act; and
10 "(3) an analysis of the status of worldwide
11 greenhouse gas reduction efforts, including imple-
12 mentation of the Safe Climate Act and other poli-
13 cies, both domestic and international, for reducing
14 greenhouse gas emissions, preventing dangerous at-
15 mospheric concentrations of greenhouse gases, pre-
16 venting significant irreversible consequences of cli-
17 mate change, and reducing vulnerability to the im-
18 pacts of climate change.
19 "(b) EXCEPTION.—Paragraph (3) of subsection (a)
20 shall not apply to the first report submitted under such
21 subsection.
22 "(c) LATEST SCIENTIFIC INFORMATION.—The anal-
23 ysis required under subsection (a)(1) shall—
24 "(1) address existing scientific information and
25 reports, considering, to the greatest extent possible,

the most recent assessment report of the Intergovernmental Panel on Climate Change, reports by the United States Global Change Research Program and Federal agencies, and the European Union's global temperature data assessment; and

"(2) review trends and projections for—

"(A) global and country-specific annual emissions of greenhouse gases, and cumulative emissions produced between 1850 and the present, including—

"(i) global cumulative emissions of anthropogenic greenhouse gases;

"(ii) global annual emissions of anthropogenic greenhouse gases; and

"(iii) by country, annual total, annual per capita, and cumulative anthropogenic emissions of greenhouse gases for the top 50 emitting nations;

"(B) significant changes, both globally and by region, in annual net non-anthropogenic greenhouse gas from natural sources, including permafrost, forests, or oceans;

"(C) global atmospheric concentrations of greenhouse gases, expressed in annual concentration units as well as carbon dioxide

equivalents based on 100-year global warming potentials;

"(D) major climate forcing factors, such as aerosols;

"(E) global average temperature, expressed as seasonal and annual averages in land, ocean, and land-plus-ocean averages; and

"(F) sea level rise;

"(3) assess the current and potential impacts of global climate change on—

"(A) human populations, including impacts on public health, economic livelihoods, subsistence, human infrastructure, and displacement or permanent relocation due to flooding, severe weather, extended drought, erosion, or other ecosystem changes;

"(B) freshwater systems, including water resources for human consumption and agriculture and natural and managed ecosystems, flood and drought risks, and relative humidity;

"(C) the carbon cycle, including impacts related to the thawing of permafrost, the frequency and intensity of wildfire, and terrestrial and ocean carbon sinks;

"(D) ecosystems and animal and plant populations, including impacts on species abundance, phenology, and distribution;

"(E) oceans and ocean ecosystems, including effects on sea level, ocean acidity, ocean temperatures, coral reefs, ocean circulation, fisheries, and other indicators of ocean ecosystem health;

"(F) the cryosphere, including effects on ice sheet mass balance, mountain glacier mass balance, and sea-ice extent and volume;

"(G) changes in the intensity, frequency, or distribution of severe weather events, including precipitation, tropical cyclones, tornadoes and severe heat waves;

"(H) agriculture and forest systems, including effects on growing season, distribution, and yield; and

"(I) any other indicators the Administrator deems appropriate;

"(4) summarize any significant socio-economic impacts of climate change in the United States, including the territories of the United States, drawing on work by Federal agencies and the academic literature, including impacts on—

"(A) public health;

"(B) human infrastructure, including coastal infrastructure vulnerability to extreme events and sea level rise, river floodplain infrastructure, and sewer and water management systems;

"(C) agriculture and forests, including effects on potential growing season, distribution, and yield;

"(D) water resources for human consumption, agriculture and natural and managed ecosystems, flood and drought risks and relative humidity;

"(E) energy supply and use; and

"(F) transportation;

"(5) in assessing risks and impacts, use a risk management framework, including both qualitative and quantitative measures, to assess the observed and projected impacts of current and future climate change, accounting for—

"(A) both monetized and non-monetized losses;

"(B) potential nonlinear, abrupt, or essentially irreversible changes in the climate system;

"(C) potential nonlinear increases in the cost of impacts;

"(D) potential low-probability, high impact events; and

"(E) whether impacts are transitory or essentially permanent;

"(6) based on the findings of the Administrator under this section, as well as assessments produced by the Intergovernmental Panel on Climate Change, the United States Global Change Research program, and other relevant scientific entities—

"(A) describe increased risks to natural systems and society that would result from an increase in global average temperature 3.6 degrees Fahrenheit (2 degrees Celsius) above the pre-industrial average or an increase in atmospheric greenhouse gas concentrations above 450 parts per million carbon dioxide equivalent; and

"(B) identify and assess—

"(i) significant residual risks not avoided by the thresholds described in subparagraph (A);

"(ii) alternative thresholds or targets that may more effectively limit the risks identified pursuant to clause (i); and

"(iii) thresholds in addition to those described in subparagraph (A) which significantly increase the risk of certain impacts or render them essentially permanent.

"(d) STATUS OF MONITORING AND VERIFICATION CAPABILITIES TO EVALUATE GREENHOUSE GAS REDUCTION EFFORTS.—The analysis required under subsection (a)(2) shall evaluate the capabilities of the monitoring, reporting, and verification systems used to quantify progress in achieving reductions in greenhouse gas emissions by the United States as described in section 702, including—

"(1) quantification of emissions and emission reductions by entities participating in the cap and trade program under this title;

"(2) quantification of emissions and emission reductions by entities participating in the offset program under this title;

"(3) quantification of emission and emissions reductions by entities regulated by performance standards;

"(4) quantification of aggregate net emissions and emissions reductions by the United States; and

"(5) quantification of global changes in net emissions and in sources and sinks of greenhouse gases.

"(e) STATUS OF GREENHOUSE GAS REDUCTION EFFORTS.—The analysis required under subsection (a)(3) shall address—

"(1) whether the programs under Safe Climate Act and other Federal statutes are resulting in sufficient United States greenhouse gas emissions reductions to meet the emissions reduction targets described in section 702, taking into account the use of offsets; and

"(2) whether United States actions, taking into account international actions, commitments, and trends, and considering the range of plausible emissions scenarios, are sufficient to avoid—

"(A) atmospheric greenhouse gas concentrations above 450 parts per million carbon dioxide equivalent;

"(B) global average surface temperature 3.6 degrees Fahrenheit (2 degrees Celsius) above the pre-industrial average, or such other temperature thresholds as the Administrator deems appropriate; and

"(C) other temperature or greenhouse gas thresholds identified pursuant to subsection (c)(6)(B).

"(f) RECOMMENDATIONS.—

"(1) LATEST SCIENTIFIC INFORMATION.—Based on the analysis described in subsection (a)(1), each report under subsection (a) shall identify actions that could be taken to—

"(A) improve the characterization of changes in the earth-climate system and impacts of global climate change;

"(B) better inform decision making and actions related to global climate change;

"(C) mitigate risks to natural and social systems; and

"(D) design policies to better account for climate risks.

"(2) MONITORING, REPORTING AND VERIFICATION.—Based on the analysis described in subsection (a)(2), each report under subsection (a) shall identify key gaps in measurement, reporting, and verification capabilities and make recommendations to improve the accuracy and reliability of those capabilities.

"(3) STATUS OF GREENHOUSE GAS REDUCTION EFFORTS.—Based on the analysis described in subsection (a)(3), taking into account international actions, commitments, and trends, and considering the range of plausible emissions scenarios, each report under subsection (a) shall identify—

"(A) the quantity of additional reductions required to meet the emissions reduction targets in section 702;

"(B) the quantity of additional reductions in global greenhouse gas emissions needed to avoid the identified concentration and temperature thresholds described in subsection (e); and

"(C) possible strategies and approaches for achieving additional reductions.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary.

"SEC. 706. NATIONAL ACADEMY REVIEW.

"(a) IN GENERAL.—Not later than 1 year after the date of enactment of this title, the Administrator shall offer to enter into a contract with the National Academy of Sciences (in this section referred to as the 'Academy') under which the Academy shall, not later than July 1,

2014, and every 4 years thereafter, submit to Congress and the Administrator a report that includes—

"(1) a review of the most recent report and recommendations issued under section 705; and

"(2) an analysis of technologies to achieve reductions in greenhouse gas emissions.

"(b) FAILURE TO ISSUE A REPORT.—In the event that the Administrator has not issued all or part of the most recent report required under section 705, the Academy shall conduct its own review and analysis of the required information.

"(c) TECHNOLOGICAL INFORMATION.—The analysis required under subsection (a)(2) shall—

"(1) review existing technological information and reports, including the most recent reports by the Department of Energy, the United States Global Change Research Program, the Intergovernmental Panel on Climate Change, and the International Energy Agency and any other relevant information on technologies or practices that reduce or limit greenhouse gas emissions;

"(2) include the participation of technical experts from relevant private industry sectors;

"(3) review the current and future projected deployment of technologies and practices in the United

States that reduce or limit greenhouse gas emissions, including—

"(A) technologies for capture and sequestration of greenhouse gases;

"(B) technologies to improve energy efficiency;

"(C) low- or zero-greenhouse gas emitting energy technologies;

"(D) low- or zero-greenhouse gas emitting fuels;

"(E) biological sequestration practices and technologies; and

"(F) any other technologies the Academy deems relevant; and

"(4) review and compare the emissions reduction potential, commercial viability, market penetration, investment trends, and deployment of the technologies described in paragraph (3), including—

"(A) the need for additional research and development, including publicly funded research and development;

"(B) the extent of commercial deployment, including, where appropriate, a comparison to the cost and level of deployment of conventional

fossil fuel-fired energy technologies and devices; and

"(C) an evaluation of any substantial technological, legal, or market-based barriers to commercial deployment.

"(d) RECOMMENDATIONS.—

"(1) LATEST SCIENTIFIC INFORMATION.—Based on the review described in subsection (a)(1), the Academy shall identify actions that could be taken to—

"(A) improve the characterization of changes in the earth-climate system and impacts of global climate change;

"(B) better inform decision making and actions related to global climate change;

"(C) mitigate risks to natural and social systems;

"(D) design policies to better account for climate risks; and

"(E) improve the accuracy and reliability of capabilities to monitor, report and verify greenhouse gas emissions reduction efforts.

"(2) TECHNOLOGICAL INFORMATION.—Based on the analysis described in subsection (a)(2), the Academy shall identify—

"(A) additional emissions reductions that may be possible as a result of technologies described in the analysis;

"(B) barriers to the deployment of such technologies; and

"(C) actions that could be taken to speed deployment of such technologies.

"(3) STATUS OF GREENHOUSE GAS REDUCTION EFFORTS.—Based on the review described in subsection (a)(1), the Academy shall identify—

"(A) the quantity of additional reductions required to meet the emissions reduction targets described in section 702; and

"(B) the quantity of additional reductions in global greenhouse gas emissions needed to avoid the concentration and temperature thresholds described in section 705(c)(6)(A) or identified pursuant to section 705(c)(6)(B).

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary.

"SEC. 707. PRESIDENTIAL RESPONSE AND RECOMMENDATIONS.

"Not later than July 1, 2017, and every 4 years thereafter—

"(1) the President shall direct relevant Federal agencies to use existing statutory authority to take appropriate actions identified in the report submitted under section 705 by the National Academy of Sciences in the previous year and to address any shortfalls identified in such report; and

"(2) in the event that the National Academy of Sciences has concluded, in the most recent report submitted under section 705, that the United States will not achieve the necessary domestic greenhouse gas emissions reductions, or that global actions will not maintain safe global average surface temperature and atmospheric greenhouse gas concentration thresholds, the President shall submit to Congress a plan identifying domestic and international actions that will achieve necessary additional greenhouse gas reductions, including any recommendations for legislative action.

"PART B—DESIGNATION AND REGISTRATION OF GREENHOUSE GASES

"SEC. 711. DESIGNATION OF GREENHOUSE GASES.

"(a) GREENHOUSE GASES.—For purposes of this title, the following are greenhouse gases:

"(1) Carbon dioxide.

"(2) Methane.

"(3) Nitrous oxide.

"(4) Sulfur hexafluoride.

"(5) Hydrofluorocarbons from a chemical manufacturing process at an industrial stationary source.

"(6) Any perfluorocarbon.

"(7) Nitrogen trifluoride.

"(8) Any other anthropogenic gas designated as a greenhouse gas by the Administrator under this section.

"(b) DETERMINATION ON ADMINISTRATOR'S INITIATIVE.—The Administrator shall, by rule—

"(1) determine whether 1 metric ton of another anthropogenic gas makes the same or greater contribution to global warming over 100 years as 1 metric ton of carbon dioxide;

"(2) determine the carbon dioxide equivalent value for each gas with respect to which the Administrator makes an affirmative determination under paragraph (1);

"(3) for each gas with respect to which the Administrator makes an affirmative determination under paragraph (1) and that is used as a substitute for a class I or class II substance under title VI, determine the extent to which to regulate that gas

under section 619 and specify appropriate compliance obligations under section 619;

"(4) designate as a greenhouse gas for purposes of this title each gas for which the Administrator makes an affirmative determination under paragraph (1), to the extent that it is not regulated under section 619; and

"(5) specify the appropriate compliance obligations under this title for each gas designated as a greenhouse gas under paragraph (4).

"(c) PETITIONS TO DESIGNATE A GREENHOUSE GAS.—

"(1) IN GENERAL.—Any person may petition the Administrator to designate as a greenhouse gas any anthropogenic gas 1 metric ton of which makes the same or greater contribution to global warming over 100 years as 1 metric ton of carbon dioxide.

"(2) CONTENTS OF PETITION.—The petitioner shall provide sufficient data, as specified by rule by the Administrator, to demonstrate that the gas is likely to be a greenhouse gas and is likely to be produced, imported, used, or emitted in the United States. To the extent practicable, the petitioner shall also identify producers, importers, distributors, users, and emitters of the gas in the United States.

1 "(3) REVIEW AND ACTION BY THE ADMINIS-
2 TRATOR.—Not later than 90 days after receipt of a
3 petition under paragraph (2), the Administrator
4 shall determine whether the petition is complete and
5 notify the petitioner and the public of the decision.
6 "(4) ADDITIONAL INFORMATION.—The Admin-
7 istrator may require producers, importers, distribu-
8 tors, users, or emitters of the gas to provide infor-
9 mation on the contribution of the gas to global
10 warming over 100 years compared to carbon dioxide.
11 "(5) TREATMENT OF PETITION.—For any sub-
12 stance used as a substitute for a class I or class II
13 substance under title VI, the Administrator may
14 elect to treat a petition under this subsection as a
15 petition to list the substance as a class II, group II
16 substance under section 619, and may require the
17 petition to be amended to address listing criteria
18 promulgated under that section.
19 "(6) DETERMINATION.—Not later than 2 years
20 after receipt of a complete petition, the Adminis-
21 trator shall, after notice and an opportunity for com-
22 ment—
23 "(A) issue and publish in the Federal Reg-
24 ister—

"(i) a determination that 1 metric ton of the gas does not make a contribution to global warming over 100 years that is equal to or greater than that made by 1 metric ton of carbon dioxide; and

"(ii) an explanation of the decision; or

"(B) determine that 1 metric ton of the gas makes a contribution to global warming over 100 years that is equal to or greater than that made by 1 metric ton of carbon dioxide, and take the actions described in subsection (b) with respect to such gas.

"(7) GROUNDS FOR DENIAL.—The Administrator may not deny a petition under this subsection solely on the basis of inadequate Environmental Protection Agency resources or time for review.

"(d) MANUFACTURING AND EMISSION NOTICES.—

"(1) NOTICE REQUIREMENT.—

"(A) IN GENERAL.—Effective 24 months after the date of enactment of this title, no person may manufacture or introduce into interstate commerce a fluorinated gas, or emit a significant quantity, as determined by the Administrator, of any fluorinated gas that is gen-

erated as a byproduct during the production or use of another fluorinated gas, unless—

"(i) the gas is designated as a greenhouse gas under this section or is an ozone-depleting substance listed as a class I or class II substance under title VI;

"(ii) the Administrator has determined that 1 metric ton of such gas does not make a contribution to global warming that is equal to or greater than that made by 1 metric ton of carbon dioxide; or

"(iii) the person manufacturing or importing the gas for distribution into interstate commerce, or emitting the gas, has submitted to the Administrator, at least 90 days before the start of such manufacture, importation, or emission, a notice of such person's manufacture, importation, or emission of such gas, and the Administrator has not determined that notice or a substantially similar notice is incomplete.

"(B) ALTERNATIVE COMPLIANCE.—For a gas that is a substitute for a class I or class II substance under title VI and either has been listed as acceptable for use under section 612

or is currently subject to evaluation under section 612, the Administrator may accept the notice and information provided pursuant to that section as fulfilling the obligation under clause (iii) of subparagraph (A).

"(2) REVIEW AND ACTION BY THE ADMINISTRATOR.—

"(A) COMPLETENESS.—Not later than 90 days after receipt of notice under paragraph (1)(A)(iii) or (B), the Administrator shall determine whether the notice is complete.

"(B) DETERMINATION.—If the Administrator determines that the notice is complete, the Administrator shall, after notice and an opportunity for comment, not later than 12 months after receipt of the notice—

"(i) issue and publish in the Federal Register a determination that 1 metric ton of the gas does not make a contribution to global warming over 100 years that is equal to or greater than that made by 1 metric ton of carbon dioxide and an explanation of the decision; or

"(ii) determine that 1 metric ton of the gas makes a contribution to global

warming over 100 years that is equal to or greater than that made by 1 metric ton of carbon dioxide, and take the actions described in subsection (b) with respect to such gas.

"(e) REGULATIONS.—Not later than one year after the date of enactment of this title, the Administrator shall promulgate regulations to carry out this section. Such regulations shall include—

"(1) requirements for the contents of a petition submitted under subsection (c);

"(2) requirements for the contents of a notice required under subsection (d); and

"(3) methods and standards for evaluating the carbon dioxide equivalent value of a gas.

"(f) GASES REGULATED UNDER TITLE VI.—The Administrator shall not designate a gas as a greenhouse gas under this section to the extent that the gas is regulated under title VI.

"(g) SAVINGS CLAUSE.—Nothing in this section shall be interpreted to relieve any person from complying with the requirements of section 612.

1 **"SEC. 712. CARBON DIOXIDE EQUIVALENT VALUE OF**
2 **GREENHOUSE GASES.**

3 "(a) MEASURE OF QUANTITY OF GREENHOUSE
4 GASES.—Any provision of this title or title VIII that refers
5 to a quantity or percentage of a quantity of greenhouse
6 gases shall mean the quantity or percentage of the green-
7 house gases expressed in carbon dioxide equivalents.

8 "(b) INITIAL VALUE.—Except as provided by the Ad-
9 ministrator under this section or section 711, the carbon
10 dioxide equivalent value of greenhouse gases for purposes
11 of this Act shall be as follows:

"CARBON DIOXIDE EQUIVALENT OF 1 TON OF LISTED GREENHOUSE GASES

Greenhouse gas (1 metric ton)	Carbon dioxide equivalent (metric tons)
Carbon dioxide	1
Methane	25
Nitrous oxide	298
HFC-23	14,800
HFC-125	3,500
HFC-134a	1,430
HFC-143a	4,470
HFC-152a	124
HFC-227ea	3,220
HFC-236fa	9,810
HFC-4310mee	1,640
CF_4	7,390
C_2F_6	12,200

"CARBON DIOXIDE EQUIVALENT OF 1 TON OF LISTED GREENHOUSE GASES—Continued

Greenhouse gas (1 metric ton)	Carbon dioxide equivalent (metric tons)
C_4F_{10}	8,860
C_6F_{14}	9,300
SF_6	22,800
NF_3	17,200

"(c) PERIODIC REVIEW.—

"(1) Not later than February 1, 2017, and (except as provided in paragraph (3)) not less than every 5 years thereafter, the Administrator shall—

"(A) review and, if appropriate, revise the carbon dioxide equivalent values established under this section or section 711(b)(2), based on a determination of the number of metric tons of carbon dioxide that makes the same contribution to global warming over 100 years as 1 metric ton of each greenhouse gas; and

"(B) publish in the Federal Register the results of that review and any revisions.

"(2) A revised determination published in the Federal Register under paragraph (1)(B) shall take effect for greenhouse gas emissions starting on January 1 of the first calendar year starting at least 9 months after the date on which the revised determination was published.

"(3) The Administrator may decrease the frequency of review and revision under paragraph (1) if the Administrator determines that such decrease is appropriate in order to synchronize such review and revision with any similar review process carried out pursuant to the United Nations Framework Convention on Climate Change, done at New York on May 9, 1992, or to an agreement negotiated under that convention, except that in no event shall the Administrator carry out such review and revision any less frequently than every 10 years.

"(d) METHODOLOGY.—In setting carbon dioxide equivalent values, for purposes of this section or section 711, the Administrator shall take into account publications by the Intergovernmental Panel on Climate Change or a successor organization under the auspices of the United Nations Environmental Programme and the World Meteorological Organization.

"SEC. 713. GREENHOUSE GAS REGISTRY.

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

"(1) CLIMATE REGISTRY.—The term 'Climate Registry' means the greenhouse gas emissions registry jointly established and managed by more than 40 States and Indian tribes in 2007 to collect high-quality greenhouse gas emission data from facilities,

1 corporations, and other organizations to support var-
2 ious greenhouse gas emission reporting and reduc-
3 tion policies for the member States and Indian
4 tribes.

5 ''(2) REPORTING ENTITY.—The term 'reporting
6 entity' means—

7 ''(A) a covered entity;

8 ''(B) an entity that—

9 ''(i) would be a covered entity if it had
10 emitted, produced, imported, manufac-
11 tured, or delivered in 2008 or any subse-
12 quent year more than the applicable
13 threshold level in the definition of covered
14 entity in paragraph (14) of section 700;
15 and

16 ''(ii) has emitted, produced, imported,
17 manufactured, or delivered in 2008 or any
18 subsequent year more than the applicable
19 threshold level in the definition of covered
20 entity in paragraph (14) of section 700,
21 provided that the figure of 25,000 tons of
22 carbon dioxide equivalent is read instead
23 as 10,000 tons of carbon dioxide equivalent
24 and the figure of 460,000,000 cubic feet is
25 read instead as 276,000,000 cubic feet;

"(C) any other entity that emits a greenhouse gas, or produces, imports, manufactures, or delivers material whose use results or may result in greenhouse gas emissions if the Administrator determines that reporting under this section by such entity will help achieve the purposes of this title or title VIII;

"(D) any vehicle fleet with emissions of more than 25,000 tons of carbon dioxide equivalent on an annual basis, if the Administrator determines that the inclusion of such fleet will help achieve the purposes of this title or title VIII; or

"(E) any entity that delivers electricity to an energy-intensive facility in an industrial sector that meets the energy or greenhouse gas intensity criteria in section 764(b)(2)(A)(i).

"(b) REGULATIONS.—

"(1) IN GENERAL.—Not later than 6 months after the date of enactment of this title, the Administrator shall issue regulations establishing a Federal greenhouse gas registry. Such regulations shall—

"(A) require reporting entities to submit to the Administrator data on—

"(i) greenhouse gas emissions in the United States;

"(ii) the production and manufacture in the United States, importation into the United States, and, at the discretion of the Administrator, exportation from the United States, of fuels and industrial gases the uses of which result or may result in greenhouse gas emissions;

"(iii) deliveries in the United States of natural gas, and any other gas meeting the specifications for commingling with natural gas for purposes of delivery, the combustion of which result or may result in greenhouse gas emissions; and

"(iv) the capture and sequestration of greenhouse gases;

"(B) require covered entities and, where appropriate, other reporting entities to submit to the Administrator data sufficient to ensure compliance with or implementation of the requirements of this title;

"(C) require reporting of electricity delivered to industrial sources in energy-intensive industries;

"(D) ensure the completeness, consistency, transparency, accuracy, precision, and reliability of such data;

"(E) take into account the best practices from the most recent Federal, State, tribal, and international protocols for the measurement, accounting, reporting, and verification of greenhouse gas emissions, including protocols from the Climate Registry and other mandatory State or multistate authorized programs;

"(F) take into account the latest scientific research;

"(G) require that, for covered entities with respect to greenhouse gases to which section 722 applies, and, to the extent determined to be appropriate by the Administrator, for covered entities with respect to other greenhouse gases and for other reporting entities, submitted data are based on—

"(i) continuous monitoring systems for fuel flow or emissions, such as continuous emission monitoring systems;

"(ii) alternative systems that are demonstrated as providing data with the same precision, reliability, accessibility, and

1 timeliness, or, to the extent the Adminis-
2 trator determines is appropriate for report-
3 ing small amounts of emissions, the same
4 precision, reliability, and accessibility and
5 similar timeliness, as data provided by con-
6 tinuous monitoring systems for fuel flow or
7 emissions; or
8 ''(iii) alternative methodologies that
9 are demonstrated to provide data with pre-
10 cision, reliability, accessibility, and timeli-
11 ness, or, to the extent the Administrator
12 determines is appropriate for reporting
13 small amounts of emissions, precision, reli-
14 ability, and accessibility, as similar as is
15 technically feasible to that of data gen-
16 erally provided by continuous monitoring
17 systems for fuel flow or emissions, if the
18 Administrator determines that, with re-
19 spect to a reporting entity, there is no con-
20 tinuous monitoring system or alternative
21 system described in clause (i) or (ii) that
22 is technically feasible;
23 ''(H) require that the Administrator, in de-
24 termining the extent to which the requirement
25 to use systems or methodologies in accordance

with subparagraph (G) is appropriate for reporting entities other than covered entities or for greenhouse gases to which section 722 does not apply, consider the cost of using such systems and methodologies, and of using other systems and methodologies that are available and suitable, for quantifying the emissions involved in light of the purposes of this title, including the goal of collecting consistent entity-wide data;

''(I) include methods for minimizing double reporting and avoiding irreconcilable double reporting of greenhouse gas emissions;

''(J) establish measurement protocols for carbon capture and sequestration systems, including those where enhanced hydrocarbon recovery operations occur, taking into consideration the regulations promulgated under section 813;

''(K) require that reporting entities provide the data required under this paragraph in reports submitted electronically to the Administrator, in such form and containing such information as may be required by the Administrator;

"(L) include requirements for keeping records supporting or related to, and protocols for auditing, submitted data;

"(M) establish consistent policies for calculating carbon content and greenhouse gas emissions for each type of fossil fuel with respect to which reporting is required;

"(N) subsequent to implementation of policies developed under subparagraph (M), provide for immediate dissemination, to States, Indian tribes, and on the Internet, of all data reported under this section as soon as practicable after electronic audit by the Administrator and any resulting correction of data, except that data shall not be disseminated under this subparagraph if—

"(i) its nondissemination is vital to the national security of the United States, as determined by the President; or

"(ii) it is confidential business information that cannot be derived from information that is otherwise publicly available and that would cause significant calculable competitive harm if published, except that—

1 "(I) data relating to greenhouse
2 gas emissions, including any upstream
3 or verification data from reporting en-
4 tities, shall not be considered to be
5 confidential business information; and
6 "(II) data that is confidential
7 business information shall be provided
8 to a State or Indian tribe within
9 whose jurisdiction the reporting entity
10 is located, if the Administrator deter-
11 mines that such State or Indian tribe
12 has in effect protections for confiden-
13 tial business information that are
14 equivalent to protections applicable to
15 the Federal Government;
16 "(O) prescribe methods by which the Ad-
17 ministrator shall, in cases in which satisfactory
18 data are not submitted to the Administrator for
19 any period of time, estimate emission, produc-
20 tion, importation, manufacture, or delivery lev-
21 els—
22 "(i) for covered entities with respect
23 to greenhouse gas emissions, production,
24 importation, manufacture, or delivery regu-
25 lated under this title to ensure that emis-

sions, production, importation, manufacture, or deliveries are not underreported, and to create a strong incentive for meeting data monitoring and reporting requirements—

"(I) with a conservative estimate of the highest emission, production, importation, manufacture, or delivery levels that may have occurred during the period for which data are missing; or

"(II) to the extent the Administrator considers appropriate, with an estimate of such levels assuming the unit is emitting, producing, importing, manufacturing, or delivering at a maximum potential level during the period, in order to ensure that such levels are not underreported and to create a strong incentive for meeting data monitoring and reporting requirements; and

"(ii) for covered entities with respect to greenhouse gas emissions to which section 722 does not apply and for other re-

porting entities, with a reasonable estimate of the emission, production, importation, manufacture, or delivery levels that may have occurred during the period for which data are missing;

"(P) require the designation of a designated representative for each reporting entity;

"(Q) require an appropriate certification, by the designated representative for the reporting entity, of accurate and complete accounting of greenhouse gas emissions, as determined by the Administrator; and

"(R) include requirements for other data necessary for accurate and complete accounting of greenhouse gas emissions, as determined by the Administrator, including data for quality assurance of monitoring systems, monitors and other measurement devices, and other data needed to verify reported emissions, production, importation, manufacture, or delivery.

"(2) TIMING.—

"(A) CALENDAR YEARS 2007 THROUGH 2010.—For a base period of calendar years 2007 through 2010, each reporting entity shall submit annual data required under this section

to the Administrator not later than March 31, 2011. The Administrator may waive or modify reporting requirements for calendar years 2007 through 2010 for categories of reporting entities to the extent that the Administrator determines that the reporting entities did not keep data or records necessary to meet reporting requirements. The Administrator may, in addition to or in lieu of such requirements, collect information on energy consumption and production.

"(B) SUBSEQUENT CALENDAR YEARS.—For calendar year 2011 and each subsequent calendar year, each reporting entity shall submit quarterly data required under this section to the Administrator not later than 60 days after the end of the applicable quarter, except when the data is already being reported to the Administrator on an earlier timeframe for another program.

"(3) WAIVER OF REPORTING REQUIREMENTS.—The Administrator may waive reporting requirements under this section for specific entities to the extent that the Administrator determines that sufficient and equally or more reliable verified and timely data are available to the Administrator and the pub-

lic on the Internet under other mandatory statutory requirements.

"(4) ALTERNATIVE THRESHOLD.—The Administrator may, by rule, establish applicability thresholds for reporting under this section using alternative metrics and levels, provided that such metrics and levels are easier to administer and cover the same size and type of sources as the threshold defined in this section.

"(c) INTERRELATIONSHIP WITH OTHER SYSTEMS.—In developing the regulations issued under subsection (b), the Administrator shall take into account the work done by the Climate Registry and other mandatory State or multistate programs. Such regulations shall include an explanation of any major differences in approach between the system established under the regulations and such registries and programs.

"PART C—PROGRAM RULES

"SEC. 721. EMISSION ALLOWANCES.

"(a) IN GENERAL.—The Administrator shall establish a separate quantity of emission allowances for each calendar year starting in 2012, in the amounts prescribed under subsection (e).

"(b) IDENTIFICATION NUMBERS.—The Administrator shall assign to each emission allowance established

1 under subsection (a) a unique identification number that
2 includes the vintage year for that emission allowance.

3 "(c) LEGAL STATUS OF EMISSION ALLOWANCES.—

4 "(1) IN GENERAL.—An allowance established
5 by the Administrator under this title does not con-
6 stitute a property right.

7 "(2) TERMINATION OR LIMITATION.—Nothing
8 in this Act or any other provision of law shall be
9 construed to limit or alter the authority of the
10 United States, including the Administrator acting
11 pursuant to statutory authority, to terminate or
12 limit allowances or offset credits.

13 "(3) OTHER PROVISIONS UNAFFECTED.—Ex-
14 cept as otherwise specified in this Act, nothing in
15 this Act relating to allowances or offset credits es-
16 tablished or issued under this title shall affect the
17 application of any other provision of law to a covered
18 entity, or the responsibility for a covered entity to
19 comply with any such provision of law.

20 "(d) SAVINGS PROVISION.—Nothing in this title shall
21 be construed as requiring a change of any kind in any
22 State law regulating electric utility rates and charges, or
23 as affecting any State law regarding such State regula-
24 tion, or as limiting State regulation (including any
25 prudency review) under such a State law. Nothing in this

1 title shall be construed as modifying the Federal Power
2 Act or as affecting the authority of the Federal Energy
3 Regulatory Commission under that Act. Nothing in this
4 title shall be construed to interfere with or impair any pro-
5 gram for competitive bidding for power supply in a State
6 in which such program is established.

7 "(e) ALLOWANCES FOR EACH CALENDAR YEAR.—

8 "(1) IN GENERAL.—Except as provided in para-
9 graph (2), the number of emission allowances estab-
10 lished by the Administrator under subsection (a) for
11 each calendar year shall be as provided in the fol-
12 lowing table:

"Calendar year	Emission allowances (in millions)
2012	4,627
2013	4,544
2014	5,099
2015	5,003
2016	5,482
2017	5,375
2018	5,269
2019	5,162
2020	5,056
2021	4,903
2022	4,751
2023	4,599
2024	4,446

"Calendar year	Emission allowances (in millions)
2025	4,294
2026	4,142
2027	3,990
2028	3,837
2029	3,685
2030	3,533
2031	3,408
2032	3,283
2033	3,158
2034	3,033
2035	2,908
2036	2,784
2037	2,659
2038	2,534
2039	2,409
2040	2,284
2041	2,159
2042	2,034
2043	1,910
2044	1,785
2045	1,660
2046	1,535
2047	1,410
2048	1,285
2049	1,160
2050 and each year thereafter	1,035

1 "(2) REVISION.—

"(A) IN GENERAL.—The Administrator may adjust, in accordance with subparagraph (B), the number of emission allowances established pursuant to paragraph (1) if, after notice and an opportunity for public comment, the Administrator determines that—

"(i) United States greenhouse gas emissions in 2005 were other than 7,206 million metric tons carbon dioxide equivalent;

"(ii) if the requirements of this title for 2012 had been in effect in 2005, section 722 would have required emission allowances to be held for other than 66.2 percent of United States greenhouse gas emissions in 2005;

"(iii) if the requirements of this title for 2014 had been in effect in 2005, section 722 would have required emission allowances to be held for other than 75.7 percent of United States greenhouse gas emissions in 2005; or

"(iv) if the requirements of this title for 2016 had been in effect in 2005, section 722 would have required emission al-

lowances to be held for other than 84.5 percent United States greenhouse gas emissions in 2005.

"(B) ADJUSTMENT FORMULA.—

"(i) IN GENERAL.—If the Administrator adjusts under this paragraph the number of emission allowances established pursuant to paragraph (1), the number of emission allowances the Administrator establishes for any given calendar year shall equal the product of—

"(I) United States greenhouse gas emissions in 2005, expressed in tons of carbon dioxide equivalent;

"(II) the percent of United States greenhouse gas emissions in 2005, expressed in tons of carbon dioxide equivalent, that would have been subject to section 722 if the requirements of this title for the given calendar year had been in effect in 2005; and

"(III) the percentage set forth for that calendar year in section

703(a), or determined under clause (ii) of this subparagraph.

"(ii) TARGETS.—In applying the formula under clause (i)(III) of this subparagraph, for calendar years for which a percentage is not listed in section 703(a), the Administrator shall use a uniform annual decline in the amount of emissions between the years that are specified.

"(iii) LIMITATION ON ADJUSTMENT TIMING.—Once a calendar year has started, the Administrator may not adjust the number of emission allowances to be established for that calendar year.

"(C) LIMITATION ON ADJUSTMENT AUTHORITY.—The Administrator may adjust under this paragraph the number of emission allowances to be established pursuant to paragraph (1) only once.

"(f) COMPENSATORY ALLOWANCE.—

"(1) IN GENERAL.—The regulations promulgated under subsection (g) shall provide for the establishment and distribution of compensatory allowances for—

"(A) the destruction, in 2012 or later, of fluorinated gases that are greenhouse gases if—

"(i) allowances or offset credits were retired for their production or importation; and

"(ii) such gases are not required to be destroyed under any other provision of law;

"(B) the nonemissive use, in 2012 or later, of petroleum-based or coal-based liquid or gaseous fuel, petroleum coke, natural gas liquid, or natural gas as a feedstock, if allowances or offset credits were retired for the greenhouse gases that would have been emitted from their combustion; and

"(C) the conversionary use, in 2012 or later, of fluorinated gases in a manufacturing process, including semiconductor research or manufacturing, if allowances or offset credits were retired for the production or importation of such gas.

"(2) ESTABLISHMENT AND DISTRIBUTION.—

"(A) IN GENERAL.—Not later than 90 days after the end of each calendar year, the Administrator shall establish and distribute to the entity taking the actions described in sub-

paragraph (A), (B), or (C) of paragraph (1) a quantity of compensatory allowances equivalent to the number of tons of carbon dioxide equivalent of avoided emissions achieved through such actions. In establishing the quantity of compensatory allowances, the Administrator shall take into account the carbon dioxide equivalent value of any greenhouse gas resulting from such action.

"(B) SOURCE OF ALLOWANCES.—Compensatory allowances established under this subsection shall not be emission allowances established under subsection (a).

"(C) IDENTIFICATION NUMBERS.—The Administrator shall assign to each compensatory allowance established under subparagraph (A) a unique identification number.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) the term 'destruction' means the conversion of a greenhouse gas by thermal, chemical, or other means to another gas or set of gases with little or no carbon dioxide equivalent value;

"(B) the term 'nonemissive use' means the use of fossil fuel as a feedstock in an industrial or manufacturing process to the extent that greenhouse gases are not emitted from such process, and to the extent that the products of such process are not intended for use as a fuel or are otherwise intended to be contained in a fuel; and

"(C) the term 'conversionary use' means the conversion during research or manufacturing of a fluorinated gas into another greenhouse gas or set of gases with a lower carbon dioxide equivalent value.

"(g) REGULATIONS.—Not later than 24 months after the date of enactment of this title, the Administrator shall promulgate regulations to carry out the provisions of this title.

"(h) FEEDSTOCK EMISSIONS STUDY.—

"(1) The Administrator may conduct a study to determine the extent to which petroleum-based or coal-based liquid or gaseous fuel, petroleum coke, natural gas liquid, or natural gas are used as feedstocks in manufacturing processes to produce products and the greenhouse gas emissions resulting from such uses.

"(2) If as a result of such a study, the Administrator determines that the use of such products by noncoverd sources results in substantial emissions of greenhouse gases or their precursors and that such emissions have not been adequately addressed under other requirements of this Act, the Administrator may, after notice and comment rulemaking, promulgate a regulation reducing compensatory allowances commensurately if doing so will not result in leakage.

"SEC. 722. PROHIBITION OF EXCESS EMISSIONS.

"(a) PROHIBITION.—Except as provided in subsection (c), effective January 1, 2012, each covered entity is prohibited from emitting greenhouse gases, and having attributable greenhouse gas emissions, in combination, in excess of its allowable emissions level. A covered entity's allowable emissions level for each calendar year is the number of emission allowances (or credits or other allowances as provided in subsection (d)) it holds as of 12:01 a.m. on April 1 (or a later date established by the Administrator under subsection (j)) of the following calendar year.

"(b) METHODS OF DEMONSTRATING COMPLIANCE.—Except as otherwise provided in this section, the owner or operator of a covered entity shall not be considered to

be in compliance with the prohibition in subsection (a) unless, as of 12:01 a.m. on April 1 (or a later date established by the Administrator under subsection (j)) of each calendar year starting in 2013, the owner or operator holds a quantity of emission allowances (or credits or other allowances as provided in subsection (d)) at least as great as the quantity calculated as follows:

"(1) ELECTRICITY SOURCES.—For a covered entity described in section 700(14)(A), 1 emission allowance for each ton of carbon dioxide equivalent of greenhouse gas that such covered entity emitted in the previous calendar year, excluding emissions resulting from the combustion of—

"(A) petroleum-based or coal-based liquid fuel;

"(B) natural gas liquid;

"(C) renewable biomass;

"(D) petroleum coke; or

"(E) any fluorinated gas that is a greenhouse gas purchased for use at that covered entity, except for nitrogen trifluoride.

"(2) FUEL PRODUCERS AND IMPORTERS.—For a covered entity described in section 700(14)(B), 1 emission allowance for each ton of carbon dioxide equivalent of greenhouse gas that would be emitted

from the combustion of any petroleum-based or coal-based liquid fuel, petroleum coke, or natural gas liquid, produced or imported by such covered entity during the previous calendar year for sale or distribution in interstate commerce, assuming no capture and sequestration of any greenhouse gas emissions.

"(3) INDUSTRIAL GAS PRODUCERS AND IMPORTERS.—For a covered entity described in section 700(14)(C), 1 emission allowance for each ton of carbon dioxide equivalent of fossil fuel-based carbon dioxide, nitrous oxide, or any other fluorinated gas that is a greenhouse gas (except for nitrogen trifluoride), or any combination thereof, produced or imported by such covered entity during the previous calendar year for sale or distribution in interstate commerce or released as fugitive emissions in the production of fluorinated gas.

"(4) GEOLOGICAL SEQUESTRATION SITES.—For a covered entity described in section 700(14)(D), 1 emission allowance for each ton of carbon dioxide equivalent of greenhouse gas that such covered entity emitted in the previous calendar year.

"(5) INDUSTRIAL STATIONARY SOURCES.—For a covered entity described in section 700(14)(E),

(F), or (G), 1 emission allowance for each ton of carbon dioxide equivalent of greenhouse gas that such covered entity emitted in the previous calendar year, excluding emissions resulting from the combustion of—

"(A) petroleum-based or coal-based liquid fuel;

"(B) natural gas liquid;

"(C) renewable biomass;

"(D) petroleum coke; or

"(E) any fluorinated gas that is a greenhouse gas purchased for use at that covered entity, except for nitrogen trifluoride.

"(6) INDUSTRIAL FOSSIL FUEL-FIRED COMBUSTION DEVICES.—For a covered entity described in section 700(14)(H), 1 emission allowance for each ton of carbon dioxide equivalent of greenhouse gas that the devices emitted in the previous calendar year, excluding emissions resulting from the combustion of—

"(A) petroleum-based or coal-based liquid fuel;

"(B) natural gas liquid;

"(C) renewable biomass; or

"(D) petroleum coke.

"(7) NATURAL GAS LOCAL DISTRIBUTION COMPANIES.—For a covered entity described in section 700(14)(I), 1 emission allowance for each ton of carbon dioxide equivalent of greenhouse gas that will be emitted from the combustion of the natural gas, and any other gas meeting the specifications for commingling with natural gas for purposes of deliver, that such entity delivered during the previous calendar year to customers that are not covered entities, assuming no capture and sequestration of that greenhouse gas.

"(8) NITROGEN TRIFLUORIDE SOURCES.—For a covered entity described in section 700(14)(J), 1 emission allowance for each ton of carbon dioxide equivalent of nitrogen trifluoride that such covered entity emitted in the previous calendar year.

"(9) ALGAE-BASED FUELS.—Where carbon dioxide (or another greenhouse gas) is used as an input in the production of fuels, the Administrator shall ensure that allowances are not required to be held both for the carbon dioxide used to grow algae and for the carbon dioxide emitted from combustion of the fuel produced from such algae.

"(10) FUGITIVE EMISSIONS.—The greenhouse gas emissions to which paragraphs (1), (5), (6), and

(8) apply shall not include fugitive emissions of greenhouse gas, except to the extent the Administrator determines that data on the carbon dioxide equivalent value of greenhouse gas in the fugitive emissions can be provided with sufficient precision, reliability, accessibility, and timeliness to ensure the integrity of emission allowances, the allowance tracking system, and the cap on emissions.

"(11) EXPORT EXEMPTION.—This section shall not apply to any petroleum-based or coal-based liquid fuel, petroleum coke, natural gas liquid, or fluorinated gas that is exported for any calendar year.

"(12) NATURAL GAS LIQUIDS.—Notwithstanding subsection (a), in the case where the owner or operator of a covered entity described in section 700(14)(B) that produces natural gas liquids does not take ownership of the liquids, nor is responsible for the distribution or use of the liquids in commerce, the owner of the liquids shall be responsible for compliance under this section. In such a case, the owner of the covered entity shall provide the Administrator, in a manner to be determined by the Administrator, information regarding the quantity

1 and ownership of liquids produced at the covered en-
2 tity.
3 "(13) APPLICATION OF MULTIPLE PARA-
4 GRAPHS.—For a covered entity to which more than
5 1 of paragraphs (1) through (8) apply, all applicable
6 paragraphs shall apply, except that not more than 1
7 emission allowance shall be required for the same
8 emission.
9 "(c) PHASE-IN OF PROHIBITION.—
10 "(1) INDUSTRIAL STATIONARY SOURCES.—The
11 prohibition under subsection (a) shall first apply to
12 a covered entity described in section 700(14)(E),
13 (F), (G), or (H) with respect to emissions occurring
14 during calendar year 2014.
15 "(2) NATURAL GAS LOCAL DISTRIBUTION COM-
16 PANIES.—The prohibition under subsection (a) shall
17 first apply to a covered entity described in section
18 700(14)(I) with respect to deliveries occurring dur-
19 ing calendar year 2016.
20 "(d) ADDITIONAL METHODS.—In addition to using
21 the method of compliance described in subsection (b), a
22 covered entity may do the following:
23 "(1) OFFSET CREDITS.—
24 "(A) IN GENERAL.—Covered entities col-
25 lectively may, in accordance with this para-

graph, use offset credits to demonstrate compliance for up to a maximum of 2 billion tons of greenhouse gas emissions annually. The ability to demonstrate compliance with offset credits shall be divided pro rata among covered entities by allowing each covered entity to satisfy a percentage of the number of allowances required to be held under subsection (b) to demonstrate compliance by holding 1 domestic offset credit or 1.25 international offset credits in lieu of an emission allowance, except as provided in subparagraph (D).

"(B) APPLICABLE PERCENTAGE.—The percentage referred to in subparagraph (A) for a given calendar year shall be determined by dividing 2 billion by the sum of 2 billion plus the number of emission allowances established under section 721(a) for the previous year, and multiplying that number by 100. Not more than one half of the applicable percentage under this paragraph may be used for a year by holding domestic offset credits, and not more than one half of the applicable percentage under this paragraph may be used for a year by holding

international offset credits, except as provided in subparagraph (C).

"(C) MODIFIED PERCENTAGES.—If the Administrator determines that domestic offset credits available for use in any calendar year at domestic offset prices generally equal to or less than allowance prices, are likely to offset less than 0.9 billion tons of greenhouse gas emissions measured in tons of carbon dioxide equivalents, the Administrator shall increase the percent of emissions that can be offset through the use of international offset credits (and decrease the percent of emissions that can be allowed through the use of domestic offset credits by the same amount) to reflect the amount that 1.0 billion exceeds the number of domestic offset credits the Administrator determines is available for that year, up to a maximum of 0.5 billion emissions.

"(D) INTERNATIONAL OFFSET CREDITS.—Notwithstanding subparagraph (A), to demonstrate compliance prior to calendar year 2018, a covered entity may use 1 international offset credit in lieu of an emission allowance up to the amount permitted under this paragraph.

"(E) PRESIDENT'S RECOMMENDATION.—The President may make a recommendation to Congress as to whether the number 2 billion specified in subparagraphs (A) and (B) should be increased or decreased.

"(2) INTERNATIONAL EMISSION ALLOWANCES.—To demonstrate compliance, a covered entity may hold an international emission allowance in lieu of an emission allowance, except as modified under section 728(d).

"(3) COMPENSATORY ALLOWANCES.—To demonstrate compliance, a covered entity may hold a compensatory allowance obtained under section 721(f) in lieu of an emission allowance.

"(d) RETIREMENT OF ALLOWANCES AND CREDITS.—As soon as practicable after a deadline established for covered entities to demonstrate compliance with this title, the Administrator shall retire the quantity of allowances or credits required to be held under this title.

"(e) ALTERNATIVE METRICS.—For categories of covered entities described in subparagraph (B), (C), (F), (G), or (H) of section 700(14), the Administrator may, by rule, establish an applicability threshold for inclusion under those subparagraphs using an alternative metric and level, provided that such metric and level are easier to admin-

ister and cover the same size and type of sources as the threshold defined in such subparagraphs.

"(f) THRESHOLD REVIEW.—For each category of covered entities described in subparagraph (B), (C), (F), (G), or (H) of section 700(14), the Administrator shall, in 2020 and once every 8 years thereafter, review the carbon dioxide equivalent emission thresholds that are used to define covered entities. After consideration of—

"(1) emissions from covered entities in each such category, and from other entities of the same type that emit less than the threshold amount for the category (including emission sources that commence operation after the date of enactment of this title that are not covered entities); and

"(2) whether greater greenhouse gas emission reductions can be cost-effectively achieved by lowering the applicable threshold,

the Administrator may by rule lower such threshold to not less than 10,000 tons of carbon dioxide equivalent emissions. In determining the cost effectiveness of potential reductions from lowering the threshold for covered entities, the Administrator shall consider alternative regulatory greenhouse gas programs, including setting standards under other titles of this Act.

"(g) DESIGNATED REPRESENTATIVES.—The regulations promulgated under section 721(g) shall require that each covered entity, and each entity holding allowances or credits or receiving allowances or credits from the Administrator under this title, select a designated representative.

"(h) EDUCATION AND OUTREACH.—

"(1) IN GENERAL.—The Administrator shall establish and carry out a program of education and outreach to assist covered entities, especially entities having little experience with environmental regulatory requirements similar or comparable to those under this title, in preparing to meet the compliance obligations of this title. Such program shall include education with respect to using markets to effectively achieve such compliance.

"(2) FAILURE TO RECEIVE INFORMATION.—A failure to receive information or assistance under this subsection may not be used as a defense against an allegation of any violation of this title.

"(i) ADJUSTMENT OF DEADLINE.—The Administrator may, by rule, establish a deadline for demonstrating compliance, for a calendar year, later than the date provided in subsection (a), as necessary to ensure the availability of emissions data, but in no event shall the deadline be later than June 1.

"(j) NOTICE REQUIREMENT FOR COVERED ENTITIES RECEIVING NATURAL GAS FROM NATURAL GAS LOCAL DISTRIBUTION COMPANIES.—The owner or operator of a covered entity that takes delivery of natural gas from a natural gas local distribution company shall, not later than September 1 of each calendar year, notify such natural gas local distribution company in writing that such entity will qualify as a covered entity under this title for that calendar year.

"(k) COMPLIANCE OBLIGATION.—For purposes of this title, the year of a compliance obligation is the year in which compliance is determined, not the year in which the greenhouse gas emissions occur or the covered entity has attributable greenhouse gas emissions.

"SEC. 723. PENALTY FOR NONCOMPLIANCE.

"(a) ENFORCEMENT.—A violation of any prohibition of, requirement of, or regulation promulgated pursuant to this title shall be a violation of this Act. It shall be a violation of this Act for a covered entity to emit greenhouse gases, and have attributable greenhouse gas emissions, in combination, in excess of its allowable emissions level as provided in section 722(a). Each ton of carbon dioxide equivalent for which a covered entity fails to demonstrate compliance under section 722(b) shall be a separate violation.

1 "(b) EXCESS EMISSIONS PENALTY.—

2 "(1) IN GENERAL.—The owner or operator of
3 any covered entity that fails for any year to comply,
4 on the deadline described in section 722(a) or (i),
5 shall be liable for payment to the Administrator of
6 an excess emissions penalty in the amount described
7 in paragraph (2).

8 "(2) AMOUNT.—The amount of an excess emis-
9 sions penalty required to be paid under paragraph
10 (1) shall be equal to the product obtained by multi-
11 plying—

12 "(A) the tons of carbon dioxide equivalent
13 for which the owner or operator of a covered
14 entity failed to comply under section 722(b) on
15 the deadline; by

16 "(B) twice the fair market value of emis-
17 sion allowances established for emissions occur-
18 ring in the calendar year for which the emission
19 allowances were due.

20 "(3) TIMING.—An excess emissions penalty re-
21 quired under this subsection shall be immediately
22 due and payable to the Administrator, without de-
23 mand, in accordance with regulations promulgated
24 by the Administrator, which shall be issued not later

than 2 years after the date of enactment of this title.

"(4) NO EFFECT ON LIABILITY.—An excess emissions penalty due and payable by the owners or operators of a covered entity under this subsection shall not diminish the liability of the owners or operators for any fine, penalty, or assessment against the owners or operators for the same violation under any other provision of this Act or any other law.

"(c) EXCESS EMISSIONS ALLOWANCES.—The owner or operator of a covered entity that fails for any year to comply on the deadline described in section 722(a) or (i) shall be liable to offset the covered entity's excess combination of greenhouse gases emitted and attributable greenhouse gas emissions by an equal quantity of emission allowances during the following calendar year, or such longer period as the Administrator may prescribe. During the year in which the covered entity failed to comply, or any year thereafter, the Administrator may deduct the emission allowances required under this subsection to offset the covered entity's excess actual or attributable emissions.

"SEC. 724. TRADING.

"(a) PERMITTED TRANSACTIONS.—Except as otherwise provided in this title, the lawful holder of an emission

allowance, compensatory allowance, or offset credit may, without restriction, sell, exchange, transfer, hold for compliance in accordance with section 722, or request that the Administrator retire the emission allowance or offset credit.

"(b) NO RESTRICTION ON TRANSACTIONS.—The privilege of purchasing, holding, selling, exchanging, transferring, and requesting retirement of emission allowances, compensatory allowances, or offset credits shall not be restricted to the owners and operators of covered entities, except as otherwise provided in this title.

"(c) EFFECTIVENESS OF ALLOWANCE TRANSFERS.—No transfer of an emission allowance, compensatory allowance, or offset credit shall be effective for purposes of this title until a certification of the transfer, signed by the designated representative of the transferor, is received and recorded by the Administrator in accordance with regulations promulgated under section 721(g).

"(d) ALLOWANCE TRACKING SYSTEM.—The regulations promulgated under section 721(g) shall include a system for issuing, recording, holding, and tracking allowances and offset credits that shall specify all necessary procedures and requirements for an orderly and competitive functioning of the allowance and offset credit market.

1 Such regulations shall provide for appropriate publication
2 of the information in the system on the Internet.

3 **"SEC. 725. BANKING AND BORROWING.**

4 "(a) BANKING.—An emission allowance may be used
5 to comply with section 722 or section 723 for emissions
6 in—

7 "(1) the vintage year for the allowance; or

8 "(2) any calendar year subsequent to the vin-
9 tage year for the allowance.

10 "(b) EXPIRATION.—

11 "(1) REGULATIONS.—The Administrator may
12 establish by regulation criteria and procedures for
13 determining whether, and for implementing a deter-
14 mination that, the expiration of an allowance or
15 credit established or issued by the Administrator
16 under this title, or expiration of the ability to use an
17 international emission allowance to comply with sec-
18 tion 722, is necessary to ensure the authenticity and
19 integrity of allowances or credits or the allowance
20 tracking system.

21 "(2) GENERAL RULE.—An allowance or credit
22 established or issued by the Administrator under
23 this title shall not expire unless—

24 "(A) it is retired by the Administrator as
25 required under this title; or

"(B) it is determined to expire or to have expired by a specific date by the Administrator in accordance with regulations promulgated under paragraph (1).

"(3) INTERNATIONAL EMISSION ALLOWANCES.—The ability to use an international emission allowance to comply with section 722 shall not expire unless—

"(A) the allowance is retired by the Administrator as required by this title; or

"(B) the ability to use such allowance to meet such compliance obligation requirements is determined to expire or to have expired by a specific date by the Administrator in accordance with regulations promulgated under paragraph (1).

"(c) BORROWING FUTURE VINTAGE YEAR ALLOWANCES.—

"(1) BORROWING WITHOUT INTEREST.—In addition to the uses described in subsection (a), an emission allowance may be used to comply with section 722(a) or section 723 for emissions, production, importation, manufacture, or deliveries in the calendar year immediately preceding the vintage year for the allowance.

"(2) BORROWING WITH INTEREST.—

"(A) IN GENERAL.—A covered entity may satisfy up to 15 percent of its compliance obligations under section 722(a) in a specific calendar year by holding emission allowances with a vintage year 1 to 5 years later than that calendar year.

"(B) LIMITATIONS.—An emission allowance borrowed pursuant to this paragraph shall be an emission allowance established by the Administrator for a specific future calendar year under section 721(a) and that is held by the borrower.

"(C) REPAYMENT WITH INTEREST.—For each emission allowance that an owner or operator of a covered entity borrows pursuant to this paragraph, such owner or operator shall, at the time it borrows the allowance, hold for retirement by the Administrator a quantity of emission allowances that is equal to the product obtained by multiplying—

"(i) 0.08; by

"(ii) the number of years between the calendar year in which the allowance is

being used to satisfy a compliance obligation and the vintage year of the allowance.

"SEC. 726. STRATEGIC RESERVE.

"(a) STRATEGIC RESERVE AUCTIONS.—

"(1) IN GENERAL.—Once each quarter of each calendar year for which allowances are established under section 721(a), the Administrator shall auction strategic reserve allowances.

"(2) RESTRICTION TO COVERED ENTITIES.—In each auction conducted under paragraph (1), only covered entities that the Administrator expects will be required to comply with section 722(a) in the following calendar year shall be eligible to make purchases.

"(b) POOL OF EMISSION ALLOWANCES FOR STRATEGIC RESERVE AUCTIONS.—

"(1) FILLING THE STRATEGIC RESERVE INITIALLY.—

"(A) IN GENERAL.—The Administrator shall, not later than 2 years after the date of enactment of this title, establish a strategic reserve account, and shall place in that account an amount of emission allowances established under section 721(a) for each calendar year

from 2012 through 2050 in the amounts specified in subparagraph (B) of this paragraph.

"(B) AMOUNT.—The amount referred to in subparagraph (A) shall be—

"(i) for each of calendar years 2012 through 2019, 1 percent of the quantity of emission allowances established for that year pursuant to section 721(e)(1);

"(ii) for each of calendar years 2020 through 2029, 2 percent of the quantity of emission allowances established for that year pursuant to section 721(e)(1); and

"(iii) for each of calendar years 2030 through 2050, 3 percent of the quantity of emission allowances established for that year pursuant to section 721(e)(1).

"(C) EFFECT ON OTHER PROVISIONS.—Any provision in this title (except for subparagraph (B) of this paragraph) that refers to a quantity or percentage of the emission allowances established for a calendar year under section 721(a) shall be considered to refer to the amount of emission allowances as determined pursuant to section 721(e), less any emission allowances established for that year that are

placed in the strategic reserve account under this paragraph.

"(2) SUPPLEMENTING THE STRATEGIC RESERVE.—The Administrator shall also—

"(A) at the end of each calendar year, transfer to the strategic reserve account each emission allowance that was offered for sale but not sold at any auction conducted under part H; and

"(B) transfer emission allowances established under subsection (g) from auction proceeds, and deposit them into the strategic reserve, to the extent necessary to maintain the reserve at its original size.

"(c) MINIMUM STRATEGIC RESERVE AUCTION PRICE.—

"(1) IN GENERAL.—At each strategic reserve auction, the Administrator shall offer emission allowances for sale beginning at a minimum price per emission allowance, which shall be known as the 'minimum strategic reserve auction price'.

"(2) INITIAL MINIMUM STRATEGIC RESERVE AUCTION PRICES.—The minimum strategic reserve auction price shall be [insert amount twice the EPA-modeled 2012 allowance price EPA provides to

the Committee] for the strategic reserve auctions held in 2012. For the strategic reserve auctions held in 2013 and 2014, the minimum strategic reserve auction price shall be the strategic reserve auction price for the previous year increased by 5 percent plus the rate of inflation (as measured by the Consumer Price Index for All Urban Consumers).

"(3) MINIMUM STRATEGIC RESERVE AUCTION PRICE IN SUBSEQUENT YEARS.—For each strategic reserve auction held in 2015 and each year thereafter, the minimum strategic reserve auction price shall be 60 percent above a rolling 36-month average of the daily closing price for that year's emission allowance vintage as reported on registered carbon trading facilities, calculated using constant dollars.

"(d) QUANTITY OF EMISSION ALLOWANCES RELEASED FROM THE STRATEGIC RESERVE.—

"(1) INITIAL LIMITS.—For each of calendar years 2012 through 2016, the annual limit on the number of emission allowances from the strategic reserve account that may be auctioned is an amount equal to 5 percent of the emission allowances established for that calendar year under section 721(a). This limit does not apply to international offset

1 credits sold on consignment pursuant to subsection
2 (h).
3 "(2) LIMITS IN SUBSEQUENT YEARS.—For cal-
4 endar year 2017 and each year thereafter, the an-
5 nual limit on the number of emission allowances
6 from the strategic reserve account that may be auc-
7 tioned is an amount equal to 10 percent of the emis-
8 sion allowances established for that calendar year
9 under section 721(a). This limit does not apply to
10 international offset credits sold on consignment pur-
11 suant to subsection (h).
12 "(3) ALLOCATION OF LIMITATION.—One-fourth
13 of each year's annual strategic reserve auction limit
14 under this subsection shall be made available for
15 auction in each quarter. Any allowances from the
16 strategic reserve account that are made available for
17 sale in a quarterly auction and not sold shall be
18 rolled over and added to the quantity available for
19 sale in the following quarter, except that allowances
20 not sold at auction in the fourth quarter of a year
21 shall not be rolled over to the following calendar
22 year's auctions, but shall be returned to the stra-
23 tegic reserve account.
24 "(e) PURCHASE LIMIT.—

"(1) IN GENERAL.—Except as provided in paragraph (2) or (3), the annual number of emission allowances that a covered entity may purchase at the strategic reserve auctions in each calendar year shall not exceed 20 percent of the covered entity's emissions during the most recent year for which allowances or credits were retired under section 722(a).

"(2) 2012 LIMIT.—For calendar year 2012, the maximum aggregate number of emission allowances that a covered entity may purchase from that year's strategic reserve auctions shall be 20 percent of the covered entity's greenhouse gas emissions that the covered entity reported to the registry established under section 713 for 2011 and that would be subject to section 722(a) if occurring in later calendar years.

"(3) NEW ENTRANTS.—The Administrator shall, by regulation, establish a separate limitation applicable to entities that expect to become a covered entity in the year of the auction, permitting them to purchase emission allowances at the strategic reserve auctions in their first calendar year of operation in an amount of at least 20 percent of their expected combined emissions and attributable greenhouse gas emissions for that year.

"(f) DELEGATION OR CONTRACT.—Pursuant to regulations under this section, the Administrator may, by delegation or contract, provide for the conduct of strategic reserve auctions under the Administrator's supervision by other departments or agencies of the Federal Government or by nongovernmental agencies, groups, or organizations.

"(g) USE OF AUCTION PROCEEDS.—

"(1) DEPOSIT IN STRATEGIC RESERVE FUND.—The proceeds from strategic reserve auctions shall be placed in the Strategic Reserve Fund established under section 782(c), and shall be available without further appropriation or fiscal year limitation for the purposes described in this subsection.

"(2) INTERNATIONAL OFFSET CREDITS FOR REDUCED DEFORESTATION.—The Administrator shall use the proceeds from each strategic reserve auction to purchase international offset credits issued for reduced deforestation activities pursuant to section 743(e). The Administrator shall retire those international offset credits and establish a number of emission allowances equal to 80 percent of the number of international offset credits so retired. Emission allowances established under this paragraph shall be in addition to those established under section 721(a).

"(3) EMISSION ALLOWANCES.—The Administrator shall deposit emission allowances established under paragraph (2) in the strategic reserve, except that, with respect to any such emission allowances in excess of the amount necessary to fill the strategic reserve to its original size, the Administrator shall—

"(A) except as provided in subparagraph (B), assign a vintage year to the emission allowance, which shall be no earlier than the year in which the allowance is established under paragraph (2), and make the emission allowances available for auction under section 791; and

"(B) to the extent any such allowances cannot be assigned a vintage year because of the limitation in paragraph (4), retire the allowances.

"(4) LIMITATION.—In no case may the Administrator assign under paragraph (3)(A) more emission allowances to a vintage year than the number of emission allowances from that vintage year that were placed in the strategic reserve account under subsection (b)(1).

"(h) AVAILABILITY OF INTERNATIONAL OFFSET CREDITS FOR AUCTION.—

"(1) IN GENERAL.—The regulations promulgated under section 721(g) shall allow any entity holding international offset credits from reduced deforestation issued under section 743(e) to request that the Administrator include such offset credits in an upcoming strategic reserve auction. The regulations shall provide that—

"(A) such international offset credits will be used to fill bid orders only after the supply of strategic reserve allowances available for sale at that auction has been depleted;

"(B) international offset credits may be sold at a strategic reserve auction under this subsection only if the Administrator determines that it is highly likely that covered entities will, to cover emissions occurring in the year the auction is held, use under section 722 offset credits in an amount equal to or greater than 80 percent of 2 billion tons of carbon dioxide equivalent;

"(C) upon sale of such international offset credits, the Administrator shall retire those international offset credits, and establish and provide to the purchasers a number of emission allowances equal to 80 percent of the number of

international offset credits so retired, which allowances shall be in addition to those established under section 721(a); and

"(D) for international offset credits sold pursuant to this subsection, the proceeds for the entity that offered the international offset credits for sale shall be the lesser of—

"(i) the average daily closing price for international offset credits sold on registered exchanges (or if such price is unavailable, the average price as determined by the Administrator) during the six months prior to the strategic reserve auction at which they were auctioned, with the remaining funds collected upon the sale of the international offset credits deposited in the Treasury; and

"(ii) the amount received for the international offset credits at the auction.

"(2) PROCEEDS.—For international offset credits auctioned pursuant to this subsection, notwithstanding section 3302 of title 31, United States Code, or any other provision of law, within 90 days of receipt, the United States shall transfer the proceeds from the auction, as defined in paragraph

(1)(D), to the entity which possessed the international offset credits auctioned. No funds transferred from a purchaser to a seller of international offset credits under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as public monies.

"(3) PRICING.—When the Administrator acts under this subsection as the agent of an entity in possession of international offset credits, the Administrator is not obligated to obtain the highest price possible for the international offset credits, and instead shall auction such international offset credits in the same manner and pursuant to the same rules (except as modified in paragraph (1)) as set forth for auctioning strategic reserve allowances. Entities requesting that such international offset credits be offered for sale at a strategic reserve auction may not set a minimum reserve price for their international offset credits.

"(i) INITIAL REGULATIONS.—Not later than 24 months after the date of enactment of this title, the Administrator shall promulgate regulations, in consultation with other appropriate agencies, governing the auction of allowances under this section. Such regulations shall include the following requirements:

"(1) FREQUENCY; FIRST AUCTION.—Auctions shall be held four times per year at regular intervals, with the first auction to be held no later than March 31, 2012.

"(2) AUCTION FORMAT.—Auctions shall follow a single-round, sealed-bid, uniform price format.

"(3) PARTICIPATION; FINANCIAL ASSURANCE.—Auctions shall be open to any covered entity eligible to purchase emission allowances under subsection (a)(2), except that the Administrator may establish financial assurance requirements to ensure that auction participants can and will perform on their bids.

"(4) DISCLOSURE OF BENEFICIAL OWNERSHIP.—Each bidder in an auction shall be required to disclose the person or entity sponsoring or benefitting from the bidder's participation in the auction if such person or entity is, in whole or in part, other than the bidder.

"(5) PURCHASE LIMITS.—No person may, directly or in concert with another participant, purchase more than 20 percent of the allowances offered for sale at any quarterly auction.

"(6) PUBLICATION OF INFORMATION.—After the auction, the Administrator shall, in a timely fashion, publish the identities of winning bidders,

the quantity of allowances obtained by each winning bidder, and the auction clearing price.

"(7) OTHER REQUIREMENTS.—The Administrator may include in the regulations such other requirements or provisions as the Administrator, in consultation with other agencies as appropriate, considers appropriate to promote effective, efficient, transparent, and fair administration of auctions under this section.

"(j) REVISION OF REGULATIONS.—The Administrator may, at any time, in consultation with other agencies as appropriate, revise the initial regulations promulgated under subsection (i). Such revised regulations need not meet the requirements identified in subsection (i) if the Administrator determines that an alternative auction design would be more effective, taking into account factors including costs of administration, transparency, fairness, and risks of collusion or manipulation. In determining whether and how to revise the initial regulations under this subsection, the Administrator shall not consider maximization of revenues to the Federal Government.

"SEC. 727. PERMITS.

"(a) PERMIT PROGRAM.—For stationary sources subject to title V of this Act, the provisions of this title shall be implemented by permits issued to covered entities

1 (and enforced) in accordance with the provisions of title
2 V, as modified by this title. Any such permit issued by
3 the Administrator, or by a State with an approved permit
4 program, shall require a covered entity to hold a number
5 of emission allowances at least equal to the total annual
6 amount of carbon dioxide equivalents for its combined
7 emissions and attributable greenhouse gas emissions to
8 which section 722 applies. No such permit shall be issued
9 that is inconsistent with the requirements of this title, and
10 title V as applicable. Nothing in this section regarding
11 compliance plans or in title V shall be construed as affect-
12 ing emission allowances. Submission of a statement by the
13 owner or operator, or the designated representative of the
14 owners and operators, of a covered entity that the owners
15 and operators will hold emission allowances not less than
16 the total amount of carbon dioxide equivalents for a year
17 for its combined emissions and attributable greenhouse
18 gas emissions to which section 722 applies shall be deemed
19 to meet the proposed and approved planning requirements
20 of title V. Recordation by the Administrator of transfers
21 of emission allowances shall amend automatically all appli-
22 cable proposed or approved permit applications, compli-
23 ance plans, and permits.

24 "(b) MULTIPLE OWNERS.—No permit shall be issued
25 under this section and no allowances or offset credits shall

be disbursed under this title to a covered entity or any other person until the designated representative of the owners or operators has filed a certificate of representation with regard to matters under this title, including the holding and distribution of emission allowances and the proceeds of transactions involving emission allowances. Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, such a covered entity or other entity or where a utility or industrial customer purchases power from an independent power producer, the certificate shall state—

"(1) that emission allowances and the proceeds of transactions involving emission allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement; or

"(2) if such multiple holders have expressly provided for a different distribution of emission allowances by contract, that emission allowances and the proceeds of transactions involving emission allowances will be deemed to be held or distributed in accordance with the contract.

A passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income

1 from the covered entity or other person shall not be
2 deemed to be a holder of a legal, equitable, leasehold, or
3 contractual interest for the purpose of holding or distrib-
4 uting emission allowances as provided in this subsection,
5 during either the term of such leasehold or thereafter, un-
6 less expressly provided for in the leasehold agreement. Ex-
7 cept as otherwise provided in this subsection, where all
8 legal or equitable title to or interest in a covered entity,
9 or other entity, is held by a single person, the certificate
10 shall state that all emission allowances received by the en-
11 tity are deemed to be held for that person.

12 ''(c) PROHIBITION.—It shall be unlawful for any per-
13 son to operate any covered entity [that is a stationary
14 source subject to title V] except in compliance with the
15 terms and requirements of a permit issued by the Admin-
16 istrator or a State with an approved permit program. For
17 purposes of this subsection, compliance, as provided in
18 section 504(f), with a permit issued under title V which
19 complies with this title for covered entities shall be deemed
20 compliance with this subsection as well as section 502(a).

21 **''SEC. 728. INTERNATIONAL EMISSION ALLOWANCES.**

22 ''(a) QUALIFYING PROGRAMS.—The Administrator,
23 in consultation with the Secretary of State, may by rule
24 designate an international climate change program as a
25 qualifying international program if—

"(1) the program is run by a national or supranational foreign government, and imposes a mandatory absolute tonnage limit on greenhouse gas emissions from 1 or more foreign countries, or from 1 or more economic sectors in such a country or countries; and

"(2) the program is at least as stringent as the program established by this title, including provisions to ensure at least comparable monitoring, compliance, enforcement, quality of offsets, and restrictions on the use of offsets.

"(b) DISQUALIFIED ALLOWANCES.—An international emission allowance may not be held under section 722(d)(2) if it is in the nature of an offset instrument or allowance awarded based on the achievement of greenhouse gas emission reductions or avoidance, or greenhouse gas sequestration, that are not subject to the mandatory absolute tonnage limits referred to in subsection (a)(1).

"(c) RETIREMENT.—

"(1) ENTITY CERTIFICATION.—The owner or operator of an entity that holds an international emission allowance under section 722(d)(2) shall certify to the Administrator that such international emission allowance has not previously been used to

1 comply with any foreign, international, or domestic
2 greenhouse gas regulatory program.
3 "(2) RETIREMENT.—
4 "(A) FOREIGN AND INTERNATIONAL REG-
5 ULATORY ENTITIES.—The Administrator, in
6 consultation with the Secretary of State, shall
7 seek, by whatever means appropriate, including
8 agreements and technical cooperation on allow-
9 ance tracking, to ensure that any relevant for-
10 eign, international, and domestic regulatory en-
11 tities—
12 "(i) are notified of the use, for pur-
13 poses of compliance with this title, of any
14 international emission allowance; and
15 "(ii) provide for the disqualification of
16 such international emission allowance for
17 any subsequent use under the relevant for-
18 eign, international, or domestic greenhouse
19 gas regulatory program, regardless of
20 whether such use is a sale, exchange, or
21 submission to satisfy a compliance obliga-
22 tion.
23 "(B) DISQUALIFICATION FROM FURTHER
24 USE.—The Administrator shall ensure that,
25 once an international emission allowance has

been disqualified or otherwise used for purposes of compliance with this title, such allowance shall be disqualified from any further use under this title.

"(d) USE LIMITATIONS.—The Administrator may, by rule, modify the percentage applicable to international emission allowances under section 722(d)(2), consistent with the purposes of the Safe Climate Act.

"PART D—OFFSETS

"SEC. 731. OFFSETS INTEGRITY ADVISORY BOARD.

"(a) ESTABLISHMENT.—Not later than 30 days after the date of enactment of this title, the Administrator shall establish an independent Offsets Integrity Advisory Board. The Advisory Board shall make recommendations to the Administrator for use in promulgating and revising regulations under this part and part E, and for ensuring the overall environmental integrity of the programs established pursuant to those regulations.

"(b) MEMBERSHIP.—The Advisory Board shall be comprised of at least nine members. Each member shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section. The Administrator shall appoint Advisory Board members, including a chair and vice-chair of the Advisory Board. Terms shall

be 3 years in length, except for initial terms, which may be up to 5 years in length to allow staggering. Members may be reappointed only once for an additional 3-year term, and such second term may follow directly after a first term.

"(c) ACTIVITIES.—The Advisory Board established pursuant to subsection (a) shall—

"(1) provide recommendations, not later than 90 days after the Advisory Board's establishment and periodically thereafter, to the Administrator regarding offset project types that should be considered for eligibility under section 733, taking into consideration relevant scientific and other issues, including—

"(A) the availability of a representative data set for use in developing the activity baseline;

"(B) the potential for accurate quantification of greenhouse gas reduction, avoidance, or sequestration for an offset project type;

"(C) the potential level of scientific and measurement uncertainty associated with an offset project type; and

"(D) any beneficial or adverse environmental, public health, welfare, social, economic,

or energy effects associated with an offset project type;

''(2) make available to the Administrator its advice and comments on offset methodologies that should be considered under regulations promulgated pursuant to section 734(a) and (b), including methodologies to address the issues of additionality, activity baselines, measurement, leakage, uncertainty, permanence, and environmental integrity;

''(3) make available the Administrator, and other relevant Federal agencies, its advice and comments regarding scientific, technical, and methodological issues specific to the issuance of international offset credits under section 743;

''(4) make available to the Administrator, and other relevant Federal agencies, its advice and comments regarding scientific, technical, and methodological issues associated with the implementation of part E;

''(5) make available to the Administrator its advice and comments on areas in which further knowledge is required to appraise the adequacy of existing, revised, or proposed methodologies for use under this part and part E, and describe the re-

search efforts necessary to provide the required information; and

"(6) make available to the Administrator its advice and comments on other ways to improve or safeguard the environmental integrity of programs established under this part and part E.

"(d) SCIENTIFIC REVIEW OF OFFSET AND DEFORESTATION REDUCTION PROGRAMS.—Not later than January 1, 2017, and at five-year intervals thereafter, the Advisory Board shall submit to the Administrator and make available to the public an analysis of relevant scientific and technical information related to this part and part E. The Advisory Board shall review approved and potential methodologies, scientific studies, offset project monitoring, offset project verification reports, and audits related to this part and part E, and evaluate the net emissions effects of implemented offset projects. The Advisory Board shall recommend changes to offset methodologies, protocols, or project types, or to the overall offset program under this part, to ensure that offset credits issued by the Administrator do not compromise the integrity of the annual emission reductions established under section 703, and to avoid or minimize adverse effects to human health or the environment.

"SEC. 732. ESTABLISHMENT OF OFFSETS PROGRAM.

"(a) REGULATIONS.—Not later than 2 years after the date of enactment of this title, the Administrator, in consultation with appropriate Federal agencies and taking into consideration the recommendations of the Advisory Board, shall promulgate regulations establishing a program for the issuance of offset credits in accordance with the requirements of this part. The Administrator shall periodically revise these regulations as necessary to meet the requirements of this part.

"(b) REQUIREMENTS.—The regulations described in subsection (a) shall—

"(1) authorize the issuance of offset credits with respect to qualifying offset projects that result in reductions or avoidance of greenhouse gas emissions, or sequestration of greenhouse gases;

"(2) ensure that such offset credits represent verifiable and additional greenhouse gas emission reductions or avoidance, or increases in sequestration;

"(3) ensure that offset credits issued for sequestration offset projects are only issued for greenhouse gas reductions that are permanent;

"(4) provide for the implementation of the requirements of this part; and

"(5) include as reductions in greenhouse gases reductions achieved through the destruction of methane and its conversion to carbon dioxide.

"(c) COORDINATION TO MINIMIZE NEGATIVE EFFECTS.—In promulgating and implementing regulations under this part, the Administrator shall act (including by rejecting projects, if necessary) to avoid or minimize, to the maximum extent practicable, adverse effects on human health or the environment resulting from the implementation of offset projects under this part.

"(d) OFFSET REGISTRY.—The Administrator shall establish within the allowance tracking system established under section 724(d) an Offset Registry for qualifying offset projects and offset credits issued with respect thereto under this part.

"(e) LEGAL STATUS OF OFFSET CREDIT.—An offset credit does not constitute a property right.

"(f) FEES.—The Administrator shall assess fees payable by offset project developer in an amount necessary to cover the administrative costs to the Environmental Protection Agency of carrying out the activities under this part. Amounts collected for such fees shall be available to the Administrator for carrying out the activities under this part to the extent provided in advance in appropriations Acts.

"SEC. 733. ELIGIBLE PROJECT TYPES.

"(a) LIST OF ELIGIBLE PROJECT TYPES.—

"(1) IN GENERAL.—As part of the regulations promulgated under section 732(a), the Administrator shall establish, and may periodically revise, a list of types of projects eligible to generate offset credits, including international offset credits, under this part.

"(2) ADVISORY BOARD RECOMMENDATIONS.—In determining the eligibility of project types, the Administrator shall take into consideration the recommendations of the Advisory Board. If a list established under this section differs from the recommendations of the Advisory Board, the regulations promulgated under section 732(a) shall include a justification for the discrepancy.

"(3) INITIAL DETERMINATION.—The Administrator shall establish the initial eligibility list under paragraph (1) not later than one year after the date of enactment of this title. The Administrator shall add additional project types to the list not later than 2 years after the date of enactment of this title. In determining the initial list, the Administrator shall give priority to consideration of offset project types that are recommended by the Advisory Board and for which there are well developed methodologies

that the Administrator determines would meet the criteria of section 734, with such modifications as the Administrator deems appropriate. In issuing methodologies pursuant to section 734, the Administrator shall give priority to methodologies for offset types included on the initial eligibility list.

"(b) MODIFICATION OF LIST.—The Administrator—

"(1) may at any time, by rule, add a project type to the list established under subsection (a) if the Administrator, in consultation with appropriate Federal agencies and taking into consideration the recommendations of the Advisory Board, determines that the project type can generate additional reductions or avoidance of greenhouse gas emissions, or sequestration of greenhouse gases, subject to the requirements of this part;

"(2) may at any time, by rule, determine that a project type on the list does not generate additional reductions or avoidance of greenhouse gas emissions, or sequestration of greenhouse gases, subject to the requirements of this part, and remove a project type from the list established under subsection (a), in consultation with appropriate Federal agencies and taking into consideration the recommendations of the Advisory Board; and

"(3) shall consider adding to or removing from the list established under subsection (a), at a minimum, project types proposed to the Administrator—

"(A) by petition pursuant to subsection (c); or

"(B) by the Advisory Board.

"(c) PETITION PROCESS.—Any person may petition the Administrator to modify the list established under subsection (a) by adding or removing a project type pursuant to subsection (b). Any such petition shall include a showing by the petitioner that there is adequate data to establish that the project type does or does not meet the requirements of this part. Not later than 12 months after receipt of such a petition, the Administrator shall either grant or deny the petition and publish a written explanation of the reasons for the Administrator's decision. The Administrator may not deny a petition under this subsection on the basis of inadequate Environmental Protection Agency resources or time for review.

"SEC. 734. REQUIREMENTS FOR OFFSET PROJECTS.

"(a) METHODOLOGIES.—As part of the regulations promulgated under section 732(a), the Administrator shall establish, for each type of offset project listed as eligible under section 733, the following:

"(1) ADDITIONALITY.—A standardized methodology for determining the additionality of greenhouse gas emission reductions or avoidance, or greenhouse gas sequestration, achieved by an offset project of that type. Such methodology shall ensure, at a minimum, that any greenhouse gas emission reduction or avoidance, or any greenhouse gas sequestration, is considered additional only to the extent that it results from activities that—

"(A) are not required by or undertaken to comply with any law, including any regulation or consent order;

"(B) were not commenced prior to January 1, 2009, except for offset project activities that commenced after January 1, 2001, and were registered as of the date of enactment of this title under an offset program with respect to which the Administrator has made an affirmative determination under section 740(a)(2);

"(C) are not receiving support under part E of this title or title IV, subtitle D of the American Clean Energy and Security Act of 2009; and

"(D) exceed the activity baseline established under paragraph (2).

"(2) ACTIVITY BASELINES.—A standardized methodology for establishing activity baselines for offset projects of that type. The Administrator shall set activity baselines to reflect a conservative estimate of business-as-usual performance or practices for the relevant type of activity such that the baseline provides an adequate margin of safety to ensure the environmental integrity of offsets calculated in reference to such baseline.

"(3) QUANTIFICATION METHODS.—A standardized methodology for determining the extent to which greenhouse gas emission reductions or avoidance, or greenhouse gas sequestration, achieved by an offset project of that type exceed a relevant activity baseline, including protocols for monitoring and accounting for uncertainty.

"(4) LEAKAGE.—A standardized methodology for accounting for and mitigating potential leakage, if any, from an offset project of that type, taking uncertainty into account.

"(b) ACCOUNTING FOR REVERSALS.—

"(1) IN GENERAL.—For each type of sequestration project listed under section 733, the Administrator shall establish requirements to account for and address reversals, including—

"(A) a requirement to report any reversal with respect to an offset project for which offset credits have been issued under this part;

"(B) provisions to require emission allowances to be held in amounts to fully compensate for greenhouse gas emissions attributable to reversals, and to assign responsibility for holding such emission allowances; and

"(C) any other provisions the Administrator determines necessary to account for and address reversals.

"(2) MECHANISMS.—The Administrator shall prescribe mechanisms to ensure that any sequestration with respect to which an offset credit is issued under this part results in a permanent net increase in sequestration, and that full account is taken of any actual or potential reversal of such sequestration, with an adequate margin of safety. The Administrator shall prescribe at least one of the following mechanisms to meet the requirements of this paragraph:

"(A) An offsets reserve, pursuant to paragraph (3).

"(B) Insurance that provides for purchase and provision to the Administrator for retire-

ment of an amount of offset credits or emission allowances equal in number to the tons of carbon dioxide equivalents of greenhouse gas emissions released due to reversal.

"(C) Another mechanism that the Administrator determines satisfies the requirements of this part.

"(3) OFFSETS RESERVE.—

"(A) IN GENERAL.—An offsets reserve referred to in paragraph (2)(A) is a program under which, before issuance of offset credits under this part, the Administrator shall subtract and reserve from the quantity to be issued a quantity of offset credits based on the risk of reversal. The Administrator shall—

"(i) hold these reserved offset credits in the offsets reserve; and

"(ii) register the holding of the reserved offset credits in the Offset Registry established under section 732(d).

"(B) PROJECT REVERSAL.—

"(i) IN GENERAL.—If a reversal has occurred with respect an offset project for which offset credits are reserved under this paragraph, the Administrator shall remove

offset credits from the offsets reserve and cancel them to fully account for the tons of carbon dioxide equivalent that are no longer sequestered.

"(ii) INTENTIONAL REVERSALS.—If the Administrator determines that a reversal was intentional, the offset project developer for the relevant offset project shall place into the offsets reserve a quantity of offset credits, or combination of offset credits and emission allowances, equal in number to the number of reserve offset credits that were canceled due to the reversal pursuant to clause (i).

"(iii) UNINTENTIONAL REVERSALS.—If the Administrator determines that a reversal was unintentional, the offset project developer for the relevant offset project shall place into the offsets reserve a quantity of offset credits, or combination of offset credits and emission allowances, equal in number to half the number of offset credits that were reserved for that offset project, or half the number of reserve offset credits that were canceled due to the

reversal pursuant to clause (i), whichever is less.

"(C) USE OF RESERVED OFFSET CREDITS.—Offset credits placed into the offsets reserve under this paragraph may not be used to comply with section 722.

"(c) CREDITING PERIODS.—

"(1) IN GENERAL.—For each offset project type, the Administrator shall specify a crediting period, and establish provisions for petitions for new crediting periods, in accordance with this subsection.

"(2) DURATION.—The crediting period shall be no less than 5 and no greater than 10 years for any project type other than those involving sequestration.

"(3) ELIGIBILITY.—An offset project shall be eligible to generate offset credits under this part only during the project's crediting period. During such crediting period, the project shall remain eligible to generate offset credits, subject to the methodologies and project type eligibility list that applied as of the date of project approval under section 735, except as provided in paragraph (4) of this subsection.

"(4) PETITION FOR NEW CREDITING PERIOD.—An offset project developer may petition for a new crediting period to commence after termination of a crediting period, subject to the methodologies and project type eligibility list in effect at the time when such petition is submitted. A petition may not be submitted under this paragraph more than 18 months before the end of the pending crediting period. The Administrator may limit the number of new crediting periods available for projects of particular project types.

"(d) ENVIRONMENTAL INTEGRITY.—In establishing the requirements under this section, the Administrator shall apply conservative assumptions or methods to maximize the certainty that the environmental integrity of the cap established under section 703 is not compromised.

"(e) PRE-EXISTING METHODOLOGIES.—In promulgating requirements under this section, the Administrator shall give due consideration to methodologies for offset projects existing as of the date of enactment of this title.

"(f) ADDED PROJECT TYPES.—The Administrator shall establish methodologies described in subsection (a), and, as applicable, requirements and mechanisms for reversals as described in subsection (b), for any project type that is added to the list pursuant to section 733.

"SEC. 735. APPROVAL OF OFFSET PROJECTS.

"(a) APPROVAL PETITION.—An offset project developer shall submit an offset project approval petition providing such information as the Administrator requires to determine whether the offset project is eligible for issuance of offset credits under rules promulgated pursuant to this part.

"(b) TIMING.—An approval petition shall be submitted to the Administrator under subsection (a) no later than the time at which an offset project's first verification report is submitted under section 736.

"(c) APPROVAL PETITION REQUIREMENTS.—As part of the regulations promulgated under section 732, the Administrator shall include provisions for, and shall specify, the required components of an offset project approval petition required under subsection (a), which shall include—

"(1) designation of an offset project developer; and

"(2) any other information that the Administrator considers to be necessary to achieve the purposes of this part.

"(d) APPROVAL AND NOTIFICATION.—Not later than 90 days after receiving a complete approval petition under subsection (a), the Administrator shall approve or deny the petition in writing and, if the petition is denied, provide the reasons for denial. After an offset project is ap-

proved, the offset project developer shall not be required to resubmit an approval petition during the offset project's crediting period, except as provided in section 734(c)(4).

"(e) APPEAL.—The Administrator shall establish procedures for appeal and review of determinations made under subsection (d).

"(f) VOLUNTARY PREAPPROVAL REVIEW.—The Administrator may establish a voluntary preapproval review procedure, to allow an offset project developer to request the Administrator to conduct a preliminary eligibility review for an offset project. Findings of such reviews shall not be binding upon the Administrator. The voluntary preapproval review procedure—

"(1) shall require the offset project developer to submit such basic project information as the Administrator requires to provide a meaningful review; and

"(2) shall require a response from the Administrator not later than 6 weeks after receiving a request for review under this subsection.

"SEC. 736. VERIFICATION OF OFFSET PROJECTS.

"(a) IN GENERAL.—As part of the regulations promulgated under section 732(a), the Administrator shall establish requirements, including protocols, for verification of the quantity of greenhouse gas emission reductions or avoidance, or sequestration of greenhouse gases, resulting

from an offset project. The regulations shall require that an offset project developer shall submit a report, prepared by a third-party verifier accredited under subsection (d), providing such information as the Administrator requires to determine the quantity of greenhouse gas emission reductions or avoidance, or sequestration of greenhouse gas, resulting from the offset project.

''(b) SCHEDULE.—The Administrator shall prescribe a schedule for the submission of verification reports under subsection (a).

''(c) VERIFICATION REPORT REQUIREMENTS.—The Administrator shall specify the required components of a verification report required under subsection (a), which shall include—

''(1) the name and contact information for a designated representative for the offset project developer;

''(2) the quantity of greenhouse gas reduced, avoided, or sequestered;

''(3) the methodologies applicable to the project pursuant to section 734;

''(4) a certification that the project meets the applicable requirements;

''(5) a certification establishing that the conflict of interest requirements in the regulations promul-

gated under subsection (d)(1) have been complied with; and

"(6) any other information that the Administrator considers to be necessary to achieve the purposes of this part.

"(d) VERIFIER ACCREDITATION.—

"(1) IN GENERAL.—As part of the regulations promulgated under section 732(a), the Administrator shall establish a process and requirements for periodic accreditation of third-party verifiers to ensure that such verifiers are professionally qualified and have no conflicts of interest.

"(2) STANDARDS.—

"(A) AMERICAN NATIONAL STANDARDS INSTITUTE ACCREDITATION.—The Administrator may accredit, or accept for purposes of accreditation under this subsection, verifiers accredited under the American National Standards Institute (ANSI) accreditation program in accordance with ISO 14065. The Administrator shall accredit, or accept for accreditation, verifiers under this subparagraph only if the Administrator finds that the American National Standards Institute accreditation program provides

sufficient assurance that the requirements of this part will be met.

"(B) EPA ACCREDITATION.—As part of the regulations promulgated under section 732(a), the Administrator may establish accreditation standards for verifiers under this subsection, and may establish related training and testing programs and requirements.

"(3) PUBLIC ACCESSIBILITY.—Each verifier meeting the requirements for accreditation in accordance with this subsection shall be listed in a publicly accessible database, which shall be maintained and updated by the Administrator.

"SEC. 737. ISSUANCE OF OFFSET CREDITS.

"(a) DETERMINATION AND NOTIFICATION.—Not later than 90 days after receiving a complete verification report under section 736, the Administrator shall—

"(1) make the report publicly available;

"(2) make a determination of the quantity of greenhouse gas emissions reduced or avoided, or greenhouse gases sequestered, resulting from an offset project approved under section 735; and

"(3) notify the offset project developer in writing of such determination.

"(b) ISSUANCE OF OFFSET CREDITS.—The Administrator shall issue one offset credit to an offset project developer for each ton of carbon dioxide equivalent that the Administrator has determined has been reduced, avoided, or sequestered during the period covered by a verification report submitted in accordance with section 736, only if—

"(1) the Administrator has approved the offset project pursuant to section 735; and

"(2) the relevant emissions reduction, avoidance, or sequestration has already occurred, during the offset project's crediting period.

"(c) APPEAL.—The Administrator shall establish procedures for appeal and review of determinations made under subsection (a).

"(d) TIMING.—Offset credits meeting the criteria established in subsection (b) shall be issued not later than 2 weeks following the verification determination made by the Administrator under subsection (a).

"(e) REGISTRATION.—The Administrator shall assign a unique serial number to and register each offset credit to be issued in the Offset Registry established under section 732(d).

"SEC. 738. AUDITS.

"(a) IN GENERAL.—The Administrator shall, on an ongoing basis, conduct random audits of offset projects,

offset credits, and practices of third-party verifiers. In each year, the Administrator shall conduct audits, at minimum, for a representative sample of project types and geographic areas.

"(b) DELEGATION.—The Administrator may delegate to a State or tribal government the responsibility for conducting audits under this section if the Administrator finds that the program proposed by the State or tribal government provides assurances equivalent to those provided by the auditing program of the Administrator, and that the integrity of the offset program under this part will be maintained. Nothing in this subsection shall prevent the Administrator from conducting any audit the Administrator considers necessary and appropriate.

"SEC. 739. PROGRAM REVIEW AND REVISION.

"At least once every 5 years, the Administrator shall review and, based on new or updated information and taking into consideration the recommendations of the Advisory Board, update and revise—

"(1) the list of eligible project types established under section 733;

"(2) the methodologies established, including specific activity baselines, under section 734(a);

"(3) the reversal requirements and mechanisms established or prescribed under section 734(b);

"(4) measures to improve the accountability of the offsets program; and

"(5) any other requirements established under this part to ensure the environmental integrity and effective operation of this part.

"SEC. 740. EARLY OFFSET SUPPLY.

"(a) PROJECTS REGISTERED UNDER OTHER GOVERNMENT-RECOGNIZED PROGRAMS.—Except as provided in subsection (b) or (c), the Administrator shall issue one offset credit for each ton of carbon dioxide equivalent emissions reduced, avoided, or sequestered—

"(1) under an offset project that was started after January 1, 2001;

"(2) for which a credit was issued under any regulatory or voluntary greenhouse gas emission offset program that the Administrator determines—

"(A) was established under State or tribal law or regulation prior to January 1, 2009;

"(B) has developed offset project type standards, methodologies, and protocols through a public consultation process or a peer review process;

"(C) has made available to the public standards, methodologies, and protocols that require that credited emission reductions, avoid-

ance, or sequestration are permanent, additional, verifiable, and enforceable;

"(D) requires that all emission reductions, avoidance, or sequestration be verified by a State regulatory agency or an accredited third-party independent verification body;

"(E) requires that all credits issued are registered in a publicly accessible registry, with individual serial numbers assigned for each ton of carbon dioxide equivalent emission reductions, avoidance, or sequestration; and

"(F) ensures that no credits are issued for activities for which the entity administering the program, or a program administrator or representative, has funded, solicited, or served as a fund administrator for the development of, the project or activity that caused the emission reduction, avoidance, or sequestration; and

"(3) for which the credit described in paragraph (2) is transferred to the Administrator.

"(b) INELIGIBLE CREDITS.—Subsection (a) shall not apply to offset credits that have expired or have been retired, canceled, or used for compliance under a program established under State or tribal law or regulation.

"(c) LIMITATION.—Notwithstanding subsection (a)(1), offset credits shall be issued under this section—

"(1) only for reductions or avoidance of greenhouse gas emissions, or sequestration of greenhouse gases, that occur after January 1, 2009; and

"(2) only until the date that is 3 years after the date of enactment of this title, or the date that regulations promulgated under section 732(a) take effect, whichever occurs sooner.

"(d) RETIREMENT OF CREDITS.—The Administrator shall seek to ensure that offset credits described in subsection (a)(2) are retired for purposes of use under a program described in subsection (b).

"(e) OTHER PROGRAMS.—(1) Offset programs that otherwise meet all of the criteria of subsection (a)(2), but do not meet one of the following criteria:

"(A) were not established under State or tribal law; or

"(B) were not established prior to January 1, 2001.

"(2) The Administrator shall approve any such program that the Administrator determines has criteria and methodologies of at least equal stringency to the criteria and methodologies of the programs established under State or tribal law that the Administrator determines meet

the criteria of subsection (a)(2). The Administrator may approve types of offsets under any such program that are subject to criteria and methodologies of at least equal stringency to the criteria and methodologies for such types of offsets applied under the programs established under State or tribal law that the Administrator determines meet the criteria of subsection (a)(2).

"SEC. 741. ENVIRONMENTAL CONSIDERATIONS.

''If the Administrator lists forestry projects as eligible offset project types under section 733, the Administrator, in consultation with appropriate Federal agencies, shall promulgate regulations for the selection and use of tree species in forestry offset projects—

''(1) to ensure that native species are given primary consideration in such projects;

''(2) to enhance biological diversity in such projects;

''(3) to prohibit the use of federally designated or State-designated noxious weeds;

''(4) to prohibit the use of a species listed by a regional or State invasive plant authority within the applicable region or State; and

''(5) in accordance with widely accepted, environmentally sustainable forestry practices.

"SEC. 742. TRADING.

"Section 724 shall apply to the trading of offset credits.

"SEC. 743. INTERNATIONAL OFFSET CREDITS.

"(a) IN GENERAL.—The Administrator, in consultation with the Secretary of State and the Administrator of the United States Agency for International Development, may issue, in accordance with this section, international offset credits based on activities that reduce or avoid greenhouse gas emissions, or increase sequestration of greenhouse gases, in a developing country. Such credits may be issued for projects pursuant to the requirements of this part or as provided in subsection (c), (d), or (e).

"(b) ISSUANCE.—

"(1) REGULATIONS.—Not later than 2 years after the date of enactment of this title, the Administrator, in consultation with the Secretary of State, the Administrator of the United States Agency for International Development, and any other appropriate Federal agency, and taking into consideration the recommendations of the Advisory Board, shall promulgate regulations for implementing this section. Except as otherwise provided in this section, the issuance of international offset credits under this section shall be subject to the requirements of this part.

"(2) REQUIREMENTS FOR INTERNATIONAL OFFSET CREDITS.—The Administrator may issue international offset credits only if—

"(A) the United States is a party to a bilateral or multilateral agreement or arrangement that includes the country in which the project or measure achieving the relevant greenhouse gas emission reduction or avoidance, or greenhouse gas sequestration, has occurred;

"(B) such country is a developing country; and

"(C) such agreement or arrangement—

"(i) ensures that all of the requirements of this part apply to the issuance of international offset credits under this section; and

"(ii) provides for the appropriate distribution of international offset credits issued.

"(c) SECTOR-BASED CREDITS.—

"(1) IN GENERAL.—In order to minimize the potential for leakage and to encourage countries to take nationally appropriate mitigation actions to reduce or avoid greenhouse gas emissions, or sequester

greenhouse gases, the Administrator, in consultation with the Secretary of State, shall—

"(A) identify sectors of specific countries with respect to which the issuance of international offset credits on a sectoral basis is appropriate; and

"(B) issue international offset credits for such sectors only on a sectoral basis.

"(2) IDENTIFICATION OF SECTORS.—

"(A) GENERAL RULE.—For purposes of paragraph (1)(A), a sectoral basis shall be appropriate for activities—

"(i) in countries that have comparatively high greenhouse gas emissions, or comparatively greater levels of economic development; and

"(ii) that, if located in the United States, would be within a sector subject to the compliance obligation under section 722.

"(B) FACTORS.—In determining the sectors and countries for which international offset credits should be awarded only on a sectoral basis, the Administrator, in consultation with

the Secretary of State, shall consider the following factors:

"(i) The country's gross domestic product.

"(ii) The country's total greenhouse gas emissions.

"(iii) Whether the comparable sector of the United States economy is covered by the compliance obligation under section 722.

"(iv) The heterogeneity or homogeneity of sources within the relevant sector.

"(v) Whether the relevant sector provides products or services that are sold in internationally competitive markets.

"(vi) The risk of leakage if international offset credits were issued on a project-level basis, instead of on a sectoral basis, for activities within the relevant sector.

"(vii) The capability of accurately measuring, monitoring, reporting, and verifying the performance of sources across the relevant sector.

"(viii) Such other factors as the Administrator, in consultation with the Secretary of State, determines are appropriate to—

"(I) ensure the integrity of the United States greenhouse gas emissions cap established under section 703; and

"(II) encourage countries to take nationally appropriate mitigation actions to reduce or avoid greenhouse gas emissions, or sequester greenhouse gases.

"(3) SECTORAL BASIS.—

"(A) DEFINITION.—In this subsection, the term 'sectoral basis' means the issuance international offset credits only for the quantity of sector-wide reductions or avoidance of greenhouse gas emissions, or sector-wide increases in sequestration of greenhouse gases, achieved across the relevant sector of the economy relative to a baseline level of performance established in an agreement or arrangement described in subsection (b)(2)(A) for the sector.

"(B) BASELINE.—The baseline for a sector shall be established at levels of greenhouse gas emissions lower than would occur under a business-as-usual scenario taking into account relevant domestic or international policies or incentives to reduce greenhouse gas emissions, among other factors, and additionality and performance shall be determined on the basis of such baseline.

"(d) CREDITS ISSUED BY AN INTERNATIONAL BODY.—

"(1) IN GENERAL.—The Administrator, in consultation with the Secretary of State, may issue international offset credits in exchange for instruments in the nature of offset credits that are issued by an international body established pursuant to the United Nations Framework Convention on Climate Change, to a protocol to such Convention, or to a treaty that succeeds such Convention. The Administrator may issue international offset credits under this subsection only if, in addition to the requirements of subsection (b), the Administrator has determined that the international body that issued the instruments has implemented substantive and procedural requirements for the relevant project type that

provide equal or greater assurance of the integrity of such instruments as is provided by the requirements of this part.

"(2) RETIREMENT.—The Administrator, in consultation with the Secretary of State, shall seek, by whatever means appropriate, including agreements, arrangements, or technical cooperation with the international issuing body described in paragraph (1), to ensure that such body—

"(A) is notified of the Administrator's issuance, under this subsection, of an international offset credit in exchange for an instrument issued by such international body; and

"(B) provides, to the extent feasible, for the disqualification of the instrument issued by such international body for subsequent use under any relevant foreign or international greenhouse gas regulatory program, regardless of whether such use is a sale, exchange, or submission to satisfy a compliance obligation.

"(e) OFFSETS FROM REDUCED DEFORESTATION.—

"(1) REQUIREMENTS.—The Administrator, in accordance with the regulations promulgated under subsection (b)(1) and an agreement or arrangement described in subsection (b)(2)(A), shall issue inter-

national offset credits for greenhouse gas emission reductions achieved through activities to reduce deforestation only if, in addition to the requirements of subsection (b)—

"(A) the activity occurs in—

"(i) a country listed by the Administrator pursuant to paragraph (2);

"(ii) a state or province listed by the Administrator pursuant to paragraph (5); or

"(iii) a country listed by the Administrator pursuant to paragraph (6);

"(B) except as provided in paragraph (5) or (6), the quantity of the international offset credits is determined by comparing the national emissions from deforestation relative to a national deforestation baseline for that country established, in accordance with an agreement or arrangement described in subsection (b)(2)(A), pursuant to paragraph (4);

"(C) the reduction in emissions from deforestation has occurred before the issuance of the international offset credit and, taking into consideration relevant international standards, has been demonstrated using ground-based in-

ventories, remote sensing technology, and other methodologies to ensure that all relevant carbon stocks are accounted;

"(D) the Administrator has made appropriate adjustments, such as discounting for any additional uncertainty, to account for circumstances specific to the country, including its technical capacity described in paragraph (2)(A);

"(E) the activity is designed, carried out, and managed—

"(i) in accordance with widely accepted, environmentally sustainable forest management practices;

"(ii) to promote or restore native forest species and ecosystems where practicable, and to avoid the introduction of invasive nonnative species;

"(iii) in a manner that gives due regard to the rights and interests of forest-dependent communities, indigenous peoples, and vulnerable social groups;

"(iv) with consultations with, and full participation of, forest-dependent communities and indigenous peoples in affected

areas, as partners and primary stakeholders, prior to and during the design, planning, implementation, and monitoring and evaluation of activities; and

"(v) with equitable sharing of profits and benefits derived from offset credits with forest-dependent communities and indigenous peoples; and

"(F) the reduction otherwise satisfies and is consistent with any relevant requirements established by an agreement reached under the auspices of the United Nations Framework Convention on Climate Change.

"(2) ELIGIBLE COUNTRIES.—The Administrator, in consultation with the Secretary of State and the Administrator of the United States Agency for International Development, and in accordance with an agreement or arrangement described in subsection (b)(2)(A), shall establish, and periodically review and update, a list of the developing countries that have the capacity to participate in deforestation reduction activities at a national level, including—

"(A) the technical capacity to monitor, measure, report, and verify forest carbon fluxes for all significant sources of greenhouse gas

emissions from deforestation with an acceptable level of uncertainty, as determined taking into account relevant international standards, such as those established by the Intergovernmental Panel on Climate Change;

"(B) the institutional capacity to reduce emissions from deforestation, including strong forest governance and mechanisms to equitably distribute deforestation resources for local actions; and

"(C) a land use or forest sector strategic plan that—

"(i) assesses national and local drivers of deforestation and forest degradation and identifies reforms to national policies needed to address them;

"(ii) estimates the country's emissions from deforestation and forest degradation;

"(iii) identifies improvements in data collection, monitoring, and institutional capacity necessary to implement a national deforestation reduction program; and

"(iv) establishes a timeline for implementing the program and transitioning to low-emissions development.

"(3) PROTECTION OF INTERESTS.—With respect to an agreement or arrangement described in subsection (b)(2)(A) with a country that addresses international offset credits under this subsection, the Administrator, in consultation with the Secretary of State and the Administrator of the United States Agency for International Development, shall seek to ensure the establishment and enforcement by such country of legal regimes, standards, and safeguards that—

"(A) give due regard to the rights and interests of forest-dependent communities, indigenous peoples, and vulnerable social groups;

"(B) promote consultations with, and full participation of, forest-dependent communities and indigenous peoples in affected areas, as partners and primary stakeholders, prior to and during the design, planning, implementation, and monitoring and evaluation of activities; and

"(C) facilitate sharing of profits and benefits derived from international offset credits with forest-dependent communities and indigenous peoples.

"(4) NATIONAL DEFORESTATION BASELINE.—A national deforestation baseline established under this subsection shall—

"(A) be national in scope;

"(B) be consistent with nationally appropriate mitigation commitments or actions with respect to deforestation, taking into consideration the average annual historical deforestation rates of the country during a period of at least 5 years, the applicable drivers of deforestation, and other factors to ensure additionality;

"(C) establish a trajectory that would result in zero net deforestation by not later than 20 years after the national deforestation baseline has been established;

"(D) be adjusted over time to take account of changing national circumstances;

"(E) be designed to account for all significant sources of greenhouse gas emissions from deforestation in the country; and

"(F) be consistent with the national deforestation baseline, if any, established for such country under section 754(d)(1).

"(5) STATE-LEVEL OR PROVINCE-LEVEL ACTIVITIES.—

"(A) ELIGIBLE STATES OR PROVINCES.—The Administrator, in consultation with the Secretary of State and the Administrator of the United States Agency for International Development, shall establish, and periodically review and update, a list of states or provinces in developing countries where—

"(i) the developing country is not included on the list of countries established pursuant to paragraph (6)(A);

"(ii) the state or province by itself is a major emitter of greenhouse gases from tropical deforestation on a scale commensurate to the emissions of other countries; and

"(iii) the state or province meets the eligibility criteria in paragraphs (2) and (3) for the geographic area under its jurisdiction.

"(B) ACTIVITIES.—The Administrator may issue international offset credits for greenhouse gas emission reductions achieved through activities to reduce deforestation at a state or provincial level that meet the requirements of this section. Such credits shall be determined by com-

paring the emissions from deforestation within that state or province relative to the state or province deforestation baseline for that state or province established, in accordance with an agreement or arrangement described in subsection (b)(2)(A), pursuant to subparagraph (C) of this paragraph.

"(C) STATE-LEVEL OR PROVINCE-LEVEL DEFORESTATION BASELINE.—A state-level or province-level deforestation baseline shall—

"(i) be consistent with any existing nationally appropriate mitigation commitments or actions for the country in which the activity is occurring, taking into consideration the average annual historical deforestation rates of the state or province during a period of at least 5 years, relevant drivers of deforestation, and other factors to ensure additionality;

"(ii) establish a trajectory that would result in zero net deforestation by not later than 20 years after the state-level or province-level deforestation baseline has been established; and

"(iii) be designed to account for all significant sources of greenhouse gas emissions from deforestation in the state or province and adjusted to fully account for emissions leakage outside the state or province.

"(D) PHASE OUT.—Beginning in 2017, the Administrator shall issue no further international offset credits for eligible state-level or province-level activities to reduce deforestation pursuant to this paragraph.

"(6) PROJECTS AND PROGRAMS TO REDUCE DEFORESTATION.—

"(A) ELIGIBLE COUNTRIES.—The Administrator, in consultation with the Secretary of State and the Administrator of the United States Agency for International Development, shall establish, and periodically review and update, a list of developing countries that—

"(i) the Administrator determines, based on recent, credible, and reliable emissions data, account for less than 1 percent of global greenhouse gas emissions and less than 3 percent of global forest-

sector and land use change greenhouse gas emissions; and

"(ii) have, or in the determination of the Administrator are making a good faith effort to develop, a land use or forest sector strategic plan that meets the criteria described in paragraph (2)(C).

"(B) ACTIVITIES.—The Administrator may issue international offset credits for greenhouse gas emission reductions achieved through project or program level activities to reduce deforestation in countries listed under subparagraph (A) that meet the requirements of this section. The quantity of international offset credits shall be determined by comparing the project-level or program-level emissions from deforestation to a deforestation baseline for such project or program established pursuant to subparagraph (C).

"(C) PROJECT-LEVEL OR PROGRAM-LEVEL BASELINE.—

"(i) A project-level or program-level deforestation baseline shall—

"(I) be consistent with any existing nationally appropriate mitigation

commitments or actions for the country in which the project or program is occurring, taking into consideration the average annual historical deforestation rates in the project or program boundary during a period of at least 5 years, applicable drivers of deforestation, and other factors to ensure additionality;

"(II) be designed to account for all significant sources of greenhouse gas emissions from deforestation in the project or program boundary; and

"(III) be adjusted to fully account for emissions leakage outside the project or program boundary.

"(D) PHASE OUT.—(i) Beginning in 2017, the Administrator shall issue no further international offset credits for project-level or program-level activities as described in this paragraph, except as provided in clause (ii).

"(ii) The Administrator may extend the phase out deadline for the issuance of international offset credits under this section to no later than 2025 with respect to eligible activi-

ties taking place in a least developed nation, which is a foreign country that the United Nations has identified as among the least developed of developing countries at the time that the Administrator determines to provide an extension, provided that the Administrator, in consultation with the Secretary of State and the Administrator of the United States Agency for International Development, determines the nation—

"(I) lacks sufficient capacity to adopt and implement effective programs to achieve reductions in deforestation measured against national baselines;

"(II) is receiving support under part E to develop such capacity; and

"(III) has developed and is working towards implementation of a credible national strategy or plan to reduce deforestation.

"(7) DEFORESTATION.—In implementing this subsection, the Administrator, taking into consideration the recommendations of the Advisory Board, may include forest degradation, or soil carbon losses

1 associated with forested wetlands or peatlands, with-
2 in the meaning of deforestation.

3 "(f) MODIFICATION OF REQUIREMENTS.—In promul-
4 gating regulations under subsection (b)(1) with respect to
5 the issuance of international offset credits under sub-
6 section (c), (d), or (e), the Administrator may modify or
7 omit a requirement of this part (excluding the require-
8 ments of this section) if the Administrator determines that
9 the application of that requirement to this subsection is
10 not feasible. In modifying or omitting such a requirement
11 on the basis of infeasibility, the Administrator shall en-
12 sure, with an adequate margin of safety, the integrity of
13 international offset credits issued under this section and
14 of the greenhouse gas emissions cap established pursuant
15 to section 703.

16 "(g) AVOIDING DOUBLE COUNTING.—The Adminis-
17 trator, in consultation with the Secretary of State, shall
18 seek, by whatever means appropriate, including agree-
19 ments, arrangements, or technical cooperation, to ensure
20 that activities on the basis of which international offset
21 credits are issued under this section are not used for com-
22 pliance with an obligation to reduce or avoid greenhouse
23 gas emissions, or increase greenhouse gas sequestration,
24 under a foreign or international regulatory system. In ad-
25 dition, no international offset credits shall be issued for

emission reductions from activities with respect to which emission allowances were allocated under section 781 for distribution under part E.

''(h) LIMITATION.—The Administrator shall not issue international offset credits generated by products based on the destruction of hydrofluorocarbons.

"PART E—SUPPLEMENTAL EMISSIONS REDUCTIONS FROM REDUCED DEFORESTATION

"SEC. 751. DEFINITIONS.

''In this part:

''(1) LEAKAGE PREVENTION ACTIVITIES.—The term 'leakage prevention activities' means activities in developing countries that are directed at preserving existing forest carbon stocks, including forested wetlands and peatlands, that might, absent such activities, be lost through leakage.

''(2) NATIONAL DEFORESTATION REDUCTION ACTIVITIES.—The term 'national deforestation reduction activities' means activities in developing countries that reduce a quantity of greenhouse gas emissions from deforestation that is calculated by measuring actual emissions against a national deforestation baseline established pursuant to section 754(d)(1) and (2).

"(3) SUBNATIONAL DEFORESTATION REDUCTION ACTIVITIES.—The term 'subnational deforestation reduction activities' means activities in developing countries that reduce a quantity of greenhouse gas emissions from deforestation that are calculated by measuring actual emissions using an appropriate baseline established by the Administrator that is less than national in scope.

"(4) SUPPLEMENTAL EMISSIONS REDUCTIONS.—The term 'supplemental emissions reductions' means greenhouse gas emissions reductions achieved from reduced or avoided deforestation under this part.

"(5) USAID.—The term 'USAID' means the United States Agency for International Development.

"SEC. 752. FINDINGS.

"Congress finds that—

"(1) as part of a global effort to mitigate climate change, it is in the national interest of the United States to assist developing countries to reduce and ultimately halt emissions from deforestation;

"(2) deforestation is one of the largest sources of greenhouse gas emissions in developing countries,

amounting to roughly 20 percent of overall emissions globally;

''(3) recent scientific analysis shows that it will be substantially more difficult to limit the increase in global temperatures to less than 2 degrees centigrade above preindustrial levels without reducing and ultimately halting net emissions from deforestation;

''(4) reducing emissions from deforestation is highly cost-effective, compared to many other sources of emissions reductions;

''(5) in addition to contributing significantly to worldwide efforts to address global warming, this assistance will generate significant environmental and social cobenefits, including protection of biodiversity, ecosystem services, and forest-related livelihoods; and

''(6) Under the Bali Action Plan, developed country parties to the United Nations Framework Convention on Climate Change, including the United States, committed to 'enhanced action on the provision of financial resources and investment to support action on mitigation and adaptation and technology cooperation,' including, inter alia, consideration of improved access to adequate, predictable, and sus-

tainable financial resources and financial and technical support, and the provision of new and additional resources, including official and concessional funding for developing country parties.

"SEC. 753. SUPPLEMENTAL EMISSIONS REDUCTIONS THROUGH REDUCED DEFORESTATION.

''(a) REGULATIONS.—Not later than 2 years after the date of enactment of this title, the Administrator, in consultation with the Administrator of USAID and any other appropriate agencies, shall promulgate regulations establishing a program to use emission allowances set aside for this purpose under section 781 to achieve the reduction of greenhouse gas emissions from deforestation in developing countries in accordance with the requirements of this part.

''(b) OBJECTIVES.—The objectives of the program established under this section shall be to—

''(1) achieve supplemental emissions reductions of at least 720,000,000 tons of carbon dioxide equivalent in 2020, a cumulative amount of at least 6,000,000,000 tons of carbon dioxide equivalent by December 31, 2025, and additional supplemental emissions reductions in subsequent years;

''(2) build capacity to reduce deforestation in developing countries experiencing deforestation, in-

cluding preparing developing countries to participate in international markets for international offset credits for reduced emissions from deforestation; and

''(3) preserve existing forest carbon stocks in countries where such forest carbon may be vulnerable to international leakage, particularly in developing countries with largely intact native forests.

"SEC. 754. REQUIREMENTS FOR INTERNATIONAL DEFORESTATION REDUCTION PROGRAM.

''(a) ELIGIBLE COUNTRIES.—The Administrator may support activities under this part only with respect to a developing country that—

''(1) the Administrator, in consultation with the Administrator of USAID, determines is experiencing deforestation or forest degradation or has standing forest carbon stocks that may be at risk of deforestation or degradation; and

''(2) has entered into a bilateral or multilateral agreement or arrangement with the United States establishing the conditions of its participation in the program established under this part, which shall include an agreement to meet the standards established under subsection (d) for the activities to which those standards apply.

1 "(b) ACTIVITIES.—(1) Subject to the requirements of
2 this part, the Administrator, in consultation with the Ad-
3 ministrator of USAID, may support activities to achieve
4 the objectives identified in section 753(b), including—
5 "(A) national deforestation reduction ac-
6 tivities;
7 "(B) subnational deforestation reduction
8 activities, including pilot activities that reduce
9 greenhouse gas emissions but are subject to sig-
10 nificant uncertainty;
11 "(C) activities to measure, monitor, and
12 verify deforestation, avoided deforestation, and
13 deforestation rates;
14 "(D) leakage prevention activities;
15 "(E) development of measurement, moni-
16 toring, and verification capacities to enable a
17 country to quantify supplemental emissions re-
18 ductions and to generate for sale offset credits
19 from reduced or avoided deforestation;
20 "(F) development of governance structures
21 to reduce deforestation and illegal logging;
22 "(G) enforcement of requirements for re-
23 duced deforestation or forest conservation;
24 "(H) efforts to combat illegal logging and
25 increase enforcement cooperation;

"(I) providing incentives for policy reforms to achieve the objectives identified in section 753(b); and

"(J) monitoring and evaluation of the results of the activities conducted under this section.

"(2) ACTIVITIES SELECTED BY USAID.—

"(A) The Administrator of USAID, in consultation with the Administrator, may select for support and implementation pursuant to subsection (c) any of the activities described in paragraph (1), consistent with this part and the regulations promulgated under subsection (d), and subject to the requirement to achieve the objectives listed in section 753(b)(1).

"(B) With respect to the activities listed in subparagraphs (iv) through (x) of this section, the Administrator of USAID, in consultation with the Administrator, shall have primary but not exclusive responsibility for selecting the activities to be supported and implemented.

"(3) INTERAGENCY COORDINATION.—The Administrator and the Administrator of USAID shall jointly develop and biennially update a strategic plan for meeting the objectives listed in section 753(b)

and shall execute a memorandum of understanding delineating the agencies' respective roles in implementing this part.

"(c) MECHANISMS.—

"(1) IN GENERAL.—The Administrator may support activities to achieve the objectives identified in section 753(b) by—

"(A) developing and implementing programs and projects that achieve such objectives; and

"(B) distributing emission allowances to a country that is eligible under subsection (a), to any private or public group (including international organizations), or to an international fund established by an international agreement to which the United States is a party, to carry out activities to achieve such objectives.

"(2) USAID ACTIVITIES.—With respect to activities selected and implemented by the Administrator of USAID pursuant to (b)(2), the Administrator shall distribute emission allowances as provided in subparagraph (1) based upon the direction of the Administrator of USAID, subject to the availability of allowances for such activities.

"(3) IMPLEMENTATION THROUGH INTERNATIONAL ORGANIZATIONS.—If support is distributed through an international organization, the agency responsible for selecting activities in accordance with subparagraph (b)(1) or (2), in consultation with the Secretary of State, shall ensure the establishment and implementation of adequate mechanisms to apply and enforce the eligibility requirements and other requirements of this section.

"(4) ROLE OF THE SECRETARY OF STATE.—The Administrator may not distribute emission allowances to the government of another country or to an international organization or international fund unless the Secretary of State has concurred with such distribution.

"(d) STANDARDS.—The Administrator, in consultation with the Administrator of USAID, shall promulgate standards to ensure that supplemental emissions reductions achieved through supported activities are additional, measurable, verifiable, permanent, monitored, and account for leakage and uncertainty. In addition, such standards shall—

"(1) require the establishment of a national deforestation baseline for each country with national

deforestation reduction activities that is used to account for reductions achieved from such activities;

"(2) provide that a national deforestation baseline established under paragraph (1) shall—

"(A) be national in scope;

"(B) be consistent with nationally appropriate mitigation commitments or actions with respect to deforestation, taking into consideration the average annual historical deforestation rates of the country during a period of at least 5 years and other factors to ensure additionality;

"(C) establish a trajectory that would result in zero net deforestation by not later than 20 years from the date the baseline is established;

"(D) be adjusted over time to take account of changing national circumstances;

"(E) be designed to account for all significant sources of greenhouse gas emissions from deforestation in the country; and

"(F) be consistent with the national deforestation baseline, if any, established for such country under section 743(e)(4);

"(3) with respect to support provided pursuant to subsection (b)(1) or (2), require supplemental emissions reductions to be achieved and verified prior to compensation through the distribution of emission allowances under this part;

"(4) with respect to accounting for subnational deforestation reduction activities that lack the standardized or precise measurement and monitoring techniques needed for a full accounting of changes in emissions or baselines, or are subject to other sources of uncertainty, apply a conservative discount factor to reflect the uncertainty regarding the levels of reductions achieved;

"(5) ensure that activities under this part shall be designed, carried out, and managed—

"(A) in accordance with widely accepted, environmentally sustainable forestry practices; and

"(B) to promote native species and conservation or restoration of native forests, if practicable, and to avoid the introduction of invasive nonnative species; and

"(6) with respect to support for all activities under this part, seek to ensure the establishment

and enforcement by the recipient country of legal regimes, standards, and safeguards that—

"(A) give due regard to the rights and interests of local communities, indigenous and forest-dependent peoples, and vulnerable social groups;

"(B) promote consultations with local communities and indigenous and forest-dependent peoples in affected areas, as partners and primary stakeholders, prior to and during the design, planning, implementation, monitoring, and evaluation of activities under this part; and

"(C) encourage sharing of profits from incentives for emissions reductions or leakage prevention with local communities and indigenous and forest-dependent peoples.

"(e) EXPANSION OF SCOPE.—The Administrator, in consultation with the Administrator of USAID, may decide, taking into account any advice from the Advisory Board, to expand, where appropriate, the scope of activities under this part to include—

"(1) reduced emissions from forest degradation; or

"(2) reduced soil carbon-derived emissions associated with deforestation and degradation of forested wetlands and peatlands.

"(f) ACCOUNTING.—The Administrator shall establish a publicly accessible registry of the supplemental emissions reductions achieved through support provided under this part each year, after appropriately discounting for uncertainty and other relevant factors as required by the standards established under subsection (d).

"(g) TRANSITION TO NATIONAL REDUCTIONS.—Beginning 5 years after the date that a country entered into the agreement or arrangement required under subsection (a)(2), the Administrator shall provide no further compensation through emission allowances to that country under this part for any subnational deforestation reduction activities, except that the Administrator may extend this period by an additional 5 years if the Administrator, in consultation with the Administrator of USAID, determines that—

"(1) the country is making substantial progress towards adopting and implementing a program to achieve reductions in deforestation measured against a national baseline;

"(2) the greenhouse gas emissions reductions achieved are not resulting in significant leakage; and

"(3) the greenhouse gas emissions reductions achieved are being appropriately discounted to account for any leakage that is occurring.

The limitation under this subsection shall not apply to support for activities to further the objectives listed in section 753(b)(2) or (3).

"(h) COORDINATION WITH U.S. FOREIGN ASSISTANCE.—Subject to the Direction of the President, the Administrator and the Administrator of USAID shall, to the extent practicable and consistent with the objectives of this program, seek to align activities under this section with broader development, poverty alleviation, or natural resource management objectives and initiatives in the recipient country.

"(i) SUPPORT AS SUPPLEMENT.—The provision of support for activities under this part shall be used to supplement, and not to supplant, any other Federal, State, or local support available to carry out such qualifying activities under this part.

"SEC. 755. REPORTS AND REVIEWS.

"(a) REPORTS.—Not later than January 1, 2014, and annually thereafter, the Administrator and the Administrator of USAID shall submit to the Committee on Energy and Commerce and the Committee on Foreign Affairs of the House of Representatives, and the Committee

on Environment and Public Works and the Committee on Foreign Relations of the Senate, and make available to the public, a report on the support provided under this part during the prior fiscal year. The report shall include—

"(1) a statement of the quantity of supplemental emissions reductions for which compensation was provided under this part during the prior fiscal year, as registered by the Administrator under section 754(f); and

"(2) a description of the national and subnational deforestation reduction activities, capacity-building activities, and leakage prevention activities supported under this part, including a statement of the quantity of emission allowances distributed to each recipient for each activity during the prior fiscal year, and a description of what was accomplished through each of the activities.

"(b) REVIEWS.—Not later than 4 years after the date of enactment of this title and every 5 years thereafter, the Administrator and the Administrator of USAID and taking into consideration any evaluation by or recommendations from the Advisory Board established under section 731, shall conduct a review of the activities undertaken pursuant to this part and make any appropriate

changes in the program established under this part based on the findings of the review. The review shall include the effects of the activities on—

"(1) total documented carbon stocks of each country that directly or indirectly received support under this part compared with such country's national deforestation baseline established under section 754(d)(1);

"(2) the number of countries with the capacity to generate for sale instruments in the nature of offset credits from forest-related activities, and the amount of such activities;

"(3) forest governance in each country that directly or indirectly received support under this part;

"(4) indigenous and forest-dependent peoples residing in areas affected by such activities;

"(5) biodiversity and ecosystem services within forested areas associated with the activities;

"(6) international leakage; and

"(7) any program or mechanism established under the United Nations Framework Convention on Climate Change related to greenhouse gas emissions from deforestation.

"SEC. 756. LEGAL EFFECT OF PART.

"(1) IN GENERAL.—Nothing in this part supersedes, limits, or otherwise affects any restriction imposed by Federal law (including regulations) on any interaction between an entity located in the United States and an entity located in a foreign country.

"(2) ROLE OF THE SECRETARY OF STATE.—Nothing in this part shall be construed as affecting the role of the Secretary of State or the responsibilities of the Secretary under section 622 (c) of the Foreign Assistance Act of 1961.".

SEC. 312. DEFINITIONS.

Title VII of the Clean Air Act, as added by section 311 of this Act, is amended by inserting before part A the following new section:

"SEC. 700. DEFINITIONS.

"In this title:

"(1) ADDITIONAL.—The term 'additional', when used with respect to reductions or avoidance of greenhouse gas emissions, or to sequestration of greenhouse gases, means reductions, avoidance, or sequestration that result in a lower level of net greenhouse gas emissions or atmospheric concentrations than would occur in the absence of an offset project.

"(2) ADDITIONALITY.—The term 'additionality' means the extent to which reductions or avoidance of greenhouse gas emissions, or sequestration of greenhouse gases, are additional.

"(3) ADVISORY BOARD.—The term 'Advisory Board' means the Offsets Integrity Advisory Board established under section 731.

"(4) AFFILIATED.—The term 'affiliated'—

"(A) when used in relation to an entity means owned or controlled by, or under common ownership or control with, another entity, as determined by the Administrator; and

"(B) when used in relation to a natural gas local distribution company, means owned or controlled by, or under common ownership or control with, another natural gas local distribution company, as determined by the Administrator.

"(5) ALLOWANCE.—The term 'allowance' means a limited authorization to emit, or have attributable greenhouse gas emissions in an amount of, 1 ton of carbon dioxide equivalent of a greenhouse gas in accordance with this title, including an emission allowance, a compensatory allowance, or an international emission allowance.

"(6) ATTRIBUTABLE GREENHOUSE GAS EMISSIONS.—The term 'attributable greenhouse gas emissions' means—

"(A) for a covered entity that is a fuel producer or importer described in section 700(14)(B), greenhouse gases that would be emitted from the combustion of any petroleum-based or coal-based liquid fuel, petroleum coke, or natural gas liquid, produced or imported by that covered entity for sale or distribution in interstate commerce, assuming no capture and sequestration of any greenhouse gas emissions;

"(B) for a covered entity that is an industrial gas producer or importer described in section 700(14)(C), the tons of carbon dioxide equivalent of carbon dioxide, nitrous oxide, any fluorinated gas, other than nitrogen trifluoride, that is a greenhouse gas, or any combination thereof—

"(i) produced or imported by such covered entity during the previous calendar year for sale or distribution in interstate commerce; or

"(ii) released as fugitive emissions in the production of fluorinated gas; and

"(C) for a natural gas local distribution company described in section 700(14)(I), greenhouse gases that would be emitted from the combustion of the natural gas, and any other gas meeting the specifications for commingling with natural gas for purposes of delivery, that such entity delivered during the previous calendar year to customers that are not covered entities, assuming no capture and sequestration of that greenhouse gas.

"(7) BIOLOGICAL SEQUESTRATION; BIOLOGICALLY SEQUESTERED.—The terms 'biological sequestration' and 'biologically sequestered' mean the removal of greenhouse gases from the atmosphere by terrestrial biological means, such as by growing plants, and the storage of those greenhouse gases in plants or soils.

"(8) CAPPED EMISSIONS.—The term 'capped emissions' means greenhouse gas emissions to which section 722 applies, including emissions from the combustion of natural gas, petroleum-based or coal-based liquid fuel, petroleum coke, or natural gas liquid to which section 722(a)(2) or (7) applies.

"(9) CAPPED SOURCE.—The term 'capped source' means a source that directly emits capped emissions.

"(10) CARBON DIOXIDE EQUIVALENT.—The term 'carbon dioxide equivalent' means the unit of measure, expressed in metric tons, of greenhouse gases as provided under section 711 or 712.

"(11) CARBON STOCK.—The term 'carbon stock' means the quantity of carbon contained in a biological reservoir or system which has the capacity to accumulate or release carbon.

"(12) COMPENSATORY ALLOWANCE.—The term 'compensatory allowance' means an allowance issued under section 721(f).

"(13) COVERED ENTITY.—The term 'covered entity' means each of the following:

"(A) Any electricity source.

"(B) Any stationary source that produces, and any entity that (or any group of two or more affiliated entities that, in the aggregate) imports, for sale or distribution in interstate commerce in 2008 or any subsequent year, petroleum-based or coal-based liquid fuel, petroleum coke, or natural gas liquid, the combustion of which would emit more than 25,000

tons of carbon dioxide equivalent, as determined by the Administrator.

"(C) Any stationary source that produces, and any entity that (or any group of two or more affiliated entities that, in the aggregate) imports, for sale or distribution in interstate commerce in bulk or products designated by the Administrator for sale or distribution in interstate commerce in 2008 or any subsequent year more than 25,000 tons of carbon dioxide equivalent of—

"(i) fossil fuel-based carbon dioxide;

"(ii) nitrous oxide;

"(iii) perfluorocarbons;

"(iv) sulfur hexafluoride;

"(v) any other fluorinated gas, except for nitrogen trifluoride, that is a greenhouse gas, as designated by the Administrator under section 711(b) or (c); or

"(vi) any combination of greenhouse gases described in clauses (i) through (vi).

"(D) Any geologic sequestration site.

"(E) Any stationary source in the following industrial sectors:

"(i) Adipic acid production.

"(ii) Primary aluminum production.

"(iii) Ammonia manufacturing.

"(iv) Cement production, excluding grinding-only operations.

"(v) Hydrochlorofluorocarbon production.

"(vi) Lime manufacturing.

"(vii) Nitric acid production.

"(viii) Petroleum refining.

"(ix) Phosphoric acid production.

"(x) Silicon carbide production.

"(xi) Soda ash production.

"(xii) Titanium dioxide production.

"(xiii) Coal-based liquid or gaseous fuel production.

"(F) Any stationary source in the chemical or petrochemical sector that, in 2008 or any subsequent year—

"(i) produces acrylonitrile, carbon black, ethylene, ethylene dichloride, ethylene oxide, or methanol; or

"(ii) produces a chemical or petrochemical product if producing that product results in annual combustion plus process

emissions of 25,000 or more tons of carbon dioxide equivalent.

"(G) Any stationary source that—

"(i) is in one of the following industrial sectors: ethanol production; ferroalloy production; fluorinated gas production; food processing; glass production; hydrogen production; iron and steel production; lead production; pulp and paper manufacturing; and zinc production; and

"(ii) has emitted 25,000 or more tons of carbon dioxide equivalent in 2008 or any subsequent year.

"(H) Any fossil fuel-fired combustion device (such as a boiler) or grouping of such devices that—

"(i) is all or part of an industrial source not specified in subparagraph (E), (F), or (G); and

"(ii) has emitted 25,000 or more tons of carbon dioxide equivalent in 2008 or any subsequent year.

"(I) Any natural gas local distribution company that (or any group of 2 or more affiliated natural gas local distribution companies

that, in the aggregate) in 2008 or any subsequent year, delivers 460,000,000 cubic feet or more of natural gas to customers that are not covered entities.

"(J) Any stationary source that has emitted 25,000 or more tons of carbon dioxide equivalent emission of nitrogen trifluoride in 2008 or any subsequent year.

"(14) CREDITING PERIOD.—The term 'crediting period' means the period with respect to which an offset project is eligible to earn offset credits under part D, as determined under section 734(c).

"(15) DESIGNATED REPRESENTATIVE.—The term 'designated representative' means, with respect to a covered entity, a reporting entity, an offset project developer, or any other entity receiving or holding allowances or offset credits under this title, an individual authorized, through a certificate of representation submitted to the Administrator by the owners and operators, to represent the owners and operators in all matters pertaining to this title (including the holding, transfer, or disposition of allowances or offset credits), and to make all submissions to the Administrator under this title.

"(16) DEVELOPING COUNTRY.—The term 'developing country' means a country eligible to receive official development assistance according to the income guidelines of the Development Assistance Committee of the Organization for Economic Cooperation and Development.

"(17) DOMESTIC OFFSET CREDIT.—The term 'domestic offset credit' means an offset credit issued under part D, other than an international offset credit.

"(18) ELECTRICITY SOURCE.—The term 'electricity source' means a stationary source that includes one or more utility units.

"(19) EMISSION.—The term 'emission' means the release of a greenhouse gas into the ambient air. Such term does not include gases that are captured and sequestered, except to the extent that they are later released into the atmosphere, in which case they shall be subject to section 722(a)(4).

"(20) EMISSION ALLOWANCE.—The term 'emission allowance' means an allowance established under section 721(a) or section 726(g)(2) or (h)(1)(C).

"(21) FAIR MARKET VALUE.—The term 'fair market value' means the average daily closing price

on registered exchanges or, if such a price is unavailable, the average price as determined by the Administrator, during a specified time period, of an emission allowance.

"(22) FEDERAL LAND.—The term 'Federal land' means land that is owned by the United States, other than land held in trust for an Indian or Indian tribe.

"(23) FOSSIL FUEL.—The term 'fossil fuel' means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material, including consumer products that are derived from such materials and are combusted.

"(24) FOSSIL FUEL-FIRED.—The term 'fossil fuel-fired' means powered by combustion of fossil fuel, alone or in combination with any other fuel, regardless of the percentage of fossil fuel consumed.

"(25) FUGITIVE EMISSIONS.—The term 'fugitive emissions' means emissions from leaks, valves, joints, or other small openings in pipes, ducts, or other equipment, or from vents.

"(26) GEOLOGIC SEQUESTRATION; GEOLOGICALLY SEQUESTERED.—The terms 'geologic sequestration' and 'geologically sequestered' mean the se-

1 questration of greenhouse gases in subsurface geo-
2 logic formations for purposes of permanent storage.
3 "(27) GEOLOGIC SEQUESTRATION SITE.—The
4 term 'geologic sequestration site' means a site where
5 carbon dioxide is geologically sequestered.
6 "(28) GREENHOUSE GAS.—The term 'green-
7 house gas' means any gas described in section
8 711(a) or designated under section 711(b), (c), or
9 (d), except to the extent that it is regulated under
10 title VI.
11 "(29) HIGH CONSERVATION PRIORITY LAND.—
12 The term 'high conservation priority land' means
13 land that is not Federal land and is—
14 "(A) globally or State ranked as critically
15 imperiled or imperiled under a State Natural
16 Heritage Program; or
17 "(B) old-growth or late-successional forest,
18 as identified by the office of the State Forester
19 or relevant State agency with regulatory juris-
20 diction over forestry activities.
21 "(30) HOLD.—The term 'hold' means, with re-
22 spect to an allowance or offset credit, to have in the
23 appropriate account in the allowance tracking sys-
24 tem, or submit to the Administrator for recording in
25 such account.

"(31) INDUSTRIAL SOURCE.—The term 'industrial source' means any stationary source that—

"(A) is not an electricity source; and

"(B) is in—

"(i) the manufacturing sector (as defined in North American Industrial Classification System codes 31, 32, and 33); or

"(ii) the natural gas processing or natural gas pipeline transportation sector (as defined in North American Industrial Classification System codes 211112 or 486210).

"(32) INTERNATIONAL EMISSION ALLOWANCE.—The term 'international emission allowance' means a tradable authorization to emit 1 ton of carbon dioxide equivalent of greenhouse gas that is issued by a national or supranational foreign government pursuant to a qualifying international program designated by the Administrator pursuant to section 728(a).

"(33) INTERNATIONAL FOREST CARBON ACTIVITIES.—The term 'international forest carbon activities' means national or subnational activities in countries other than the United States that are directed at—

"(A) reducing greenhouse gas emissions from deforestation or forest degradation; or

"(B) increasing sequestration of carbon through—

"(i) afforestation or reforestation of acreage not forested as of January 1, 2009;

"(ii) restoration of degraded land or forest; or

"(iii) improved forest management.

"(34) INTERNATIONAL OFFSET CREDIT.—The term 'international offset credit' means an offset credit issued by the Administrator under section 743.

"(35) LEAKAGE.—The term 'leakage' means a significant increase in greenhouse gas emissions, or significant decrease in sequestration, which is caused by an offset project and occurs outside the boundaries of the offset project.

"(36) MINERAL SEQUESTRATION.—The term 'mineral sequestration' means sequestration of carbon dioxide from the atmosphere by capturing carbon dioxide into a permanent mineral, such as the aqueous precipitation of carbonate minerals that re-

1 sults in the storage of carbon dioxide in a mineral
2 form.

3 "(37) NATURAL GAS LIQUID.—The term 'nat-
4 ural gas liquid' means ethane, butane, isobutene nat-
5 ural gasoline, and propane which is ready for com-
6 mercial sale or use.

7 "(38) NATURAL GAS LOCAL DISTRIBUTION
8 COMPANY.—The term 'natural gas local distribution
9 company' has the meaning given the term 'local dis-
10 tribution company' in section 2(17) of the Natural
11 Gas Policy Act of 1978 (15 U.S.C. 3301(17)).

12 "(39) OFFSET CREDIT.—The term 'offset cred-
13 it' means a credit issued under part D.

14 "(40) OFFSET PROJECT.—The term 'offset
15 project' means a project or activity that reduces or
16 avoids greenhouse gas emissions, or sequesters
17 greenhouse gases, and for which offset credits are
18 issued under part D.

19 "(41) OFFSET PROJECT DEVELOPER.—The
20 term 'offset project developer' means the individual
21 or entity designated as the offset project developer
22 in an offset project approval petition under section
23 735(c)(1).

24 "(42) PETROLEUM.—The term 'petroleum' in-
25 cludes crude oil, tar sands, oil shale, and heavy oils.

"(43) RENEWABLE BIOMASS.—The term 'renewable biomass' means any of the following:

"(A) Plant material, including waste material, harvested or collected from actively managed agricultural land that was in cultivation, cleared, or fallow and nonforested on the date of enactment;

"(B) Plant material, including waste material, harvested or collected from pastureland that was nonforested on the date of enactment;

"(C) Nonhazardous vegetative matter derived from waste, including separated yard waste, landscape right-of-way trimmings, construction and demolition debris or food waste (but not municipal solid waste, recyclable waste paper, painted, treated or pressurized wood, or wood contaminated with plastic or metals);

"(D) Animal waste or animal byproducts, including products of animal waste digesters;

"(E) Algae;

"(F) Trees, brush, slash, residues, or any other vegetative matter removed from within 600 feet of any building, campground, or route designated for evacuation by a public official with responsibility for emergency preparedness,

or from within 300 feet of a paved road, electric transmission line; utility tower, or water supply line;

"(G) Residues from or byproducts of milled logs;

"(H) Any of the following removed from forested land that is not Federal and is not high conservation priority land:

"(i) Trees, brush, slash, residues, interplanted energy crops, or any other vegetative matter removed from an actively managed tree plantation established—

"(I) prior to the date of enactment of this section; or

"(II) on land that, as of the date of enactment of this section, was cultivated or fallow and non-forested.

"(ii) Trees, logging residue, thinnings, cull trees, pulpwood, and brush removed from naturally regenerated forests or other non-plantation forests, including for the purposes of hazardous fuel reduction or preventative treatment for reducing or containing insect or disease infestation.

"(iii) Logging residue, thinnings, cull trees, pulpwood, brush and species that are non-native and noxious, from stands that were planted and managed after the enactment of this sentence to restore or maintain native forest types.

"(iv) Dead or severely damaged trees removed within 5 years of fire, blowdown, or other natural disaster, and badly infested trees.

"(I) Materials, pre-commercial thinnings, or removed invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)), including those that are byproducts of preventive treatments (such as trees, wood, brush, thinnings, chips, and slash), that are removed as part of a federally recognized timber sale, or that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health, and that are—

"(i) not from are not from components of the National Wilderness Preservation System, Wilderness Study Areas,

Inventoried Roadless Areas, old growth or mature forest stands, components of the National Landscape Conservation System, National Monuments, National Conservation Areas, Designated Primitive Areas; or Wild and Scenic Rivers corridors;

"(ii) harvested in environmentally sustainable quantities, as determined by the appropriate Federal land manager; and

"(iii) are harvested in accordance with Federal and State law, and applicable land management plans.

"(44) RETIRE.—The term 'retire', with respect to an allowance or offset credit established or issued under this title, means to disqualify such allowance or offset credit for any subsequent use under this title, regardless of whether the use is a sale, exchange, or submission of the allowance or offset credit to satisfy a compliance obligation.

"(45) REVERSAL.—The term 'reversal' means an intentional or unintentional loss of sequestered greenhouse gases to the atmosphere.

"(46) SEQUESTERED AND SEQUESTRATION.—The terms 'sequestered' and 'sequestration' mean the separation, isolation, or removal of greenhouse

gases from the atmosphere, as determined by the Administrator. The terms include biological, geologic, and mineral sequestration, but do not include ocean fertilization techniques.

"(47) STATIONARY SOURCE.—The term 'stationary source' means any integrated operation comprising any plant, building, structure, or stationary equipment, including support buildings and equipment, that is located within one or more contiguous or adjacent properties, is under common control of the same person or persons, and emits or may emit a greenhouse gas.

"(48) STRATEGIC RESERVE ALLOWANCE.—The term 'strategic reserve allowance' means an emission allowance reserved for, transferred to, or deposited in the strategic reserve, or established, under section 726.

"(49) TON OF CARBON DIOXIDE EQUIVALENT.—The term 'ton of carbon dioxide equivalent' has the meaning specified in section 712(b) or determined by the Administrator under section 711 or 712.

"(50) UNCAPPED EMISSIONS.—The term 'uncapped emissions' means emissions of greenhouse

gases emitted after December 31, 2011, that are not capped emissions.

"(51) UNITED STATES GREENHOUSE GAS EMISSIONS.—The term 'United States greenhouse gas emissions' means the total quantity of annual greenhouse gas emissions from the United States, as calculated by the Administrator and reported to the United Nations Framework Convention on Climate Change Secretariat.

"(52) UTILITY UNIT.—The term 'utility unit' means a combustion device that, on January 1, 2009, or any date thereafter, is fossil fuel-fired and serves a generator that produces electricity for sale, unless such combustion device, during the 12-month period starting the later of January 1, 2009, or the commencement of commercial operation and each calendar year starting after such later date—

"(A) is part of an integrated cycle system that cogenerates steam and electricity during normal operation and that supplies one-third or less of its potential electric output capacity and 25 MW or less of electrical output for sale; or

"(B) combusts materials of which more than 95 percent is municipal solid waste on a heat input basis.

"(53) VINTAGE YEAR.—The term 'vintage year' means the calendar year for which an emission allowance is established under section 721(a) or which is assigned to an emission allowance under section 726(g)(3)(A), except that the vintage year for a strategic reserve allowance shall be the year in which such allowance is purchased at auction.".

Subtitle B—Disposition of Allowances

SEC. 321. DISPOSITION OF ALLOWANCES FOR GLOBAL WARMING POLLUTION REDUCTION PROGRAM.

Title VII of the Clean Air Act, as added by section 311 of this Act, is amended by adding at the end the following part:

"PART H—DISPOSITION OF ALLOWANCES

"SEC. 781. ALLOCATION OF ALLOWANCES FOR SUPPLEMENTAL REDUCTIONS.

"(a) IN GENERAL.—The Administrator shall allocate for each vintage year the following percentage of the emission allowances established under section 721(a), for distribution in accordance with part E:

"(1) For vintage years 2012 through 2025, 5 percent.

"(2) For vintage years 2026 through 2030, 3 percent.

"(3) For vintage years 2031 through 2050, 2 percent.

"(b) ADJUSTMENT.—The Administrator shall modify the percentages set forth in subsection (a) as necessary to ensure the achievement of the annual supplemental emission reduction objective for 2020, and the cumulative reduction objective through 2025, set forth in section 753(b)(1).

"(c) CARRYOVER.—If the Administrator has not distributed all of the allowances allocated pursuant to this section for a given vintage year by the end of that year, the Administrator shall—

"(1) auction the remaining emission allowances under section 791 not later than March 31 of the year following that vintage year; and

"(2) increase the allocation for the vintage year after the vintage year for which emission allowances were undistributed by the amount of undistributed emission allowances.

"SEC. 782. ALLOCATION OF EMISSION ALLOWANCES.

"(a) ELECTRICITY CONSUMERS.—The Administrator shall allocate emission allowances for the benefit of elec-

tricity consumers, to be distributed in accordance with section 783 in the following amounts:

"(1) For vintage years 2012 and 2013, 43.75 percent of the emission allowances established for each year under section 721(a).

"(2) For vintage years 2014 and 2015, 38.89 percent of the emission allowances established for each year under section 721(a).

"(3) For vintage years 2016 through 2025, 35.00 percent of the emission allowances established for each year under section 721(a).

"(4) For vintage year 2026, 28 percent of the emission allowances established for each year under section 721(a).

"(5) For vintage year 2027, 21 percent of the emission allowances established for each year under section 721(a).

"(6) For vintage year 2028, 14 percent of the emission allowances established for each year under section 721(a).

"(7) For vintage year 2029, 7 percent of the emission allowances established for each year under section 721(a).

"(b) NATURAL GAS CONSUMERS.—The Administrator shall allocate emission allowances for the benefit of

natural gas consumers to be distributed in accordance with section 784 in the following amounts:

"(1) For vintage years 2016 through 2025, 9 percent of the emission allowances established for each year under section 721(a).

"(2) For vintage year 2026, 7.2 percent of the emission allowances established for each year under section 721(a).

"(3) For vintage year 2027, 5.4 percent of the emission allowances established for each year under section 721(a).

"(4) For vintage year 2028, 3.6 percent of the emission allowances established for each year under section 721(a).

"(5) For vintage year 2029, 1.8 percent of the emission allowances established for each year under section 721(a).

"(c) HOME HEATING OIL AND PROPANE CONSUMERS.—The Administrator shall allocate emission allowances for the benefit of home heating oil and propane consumers to be distributed in accordance with section 785 in the following amounts:

"(1) For vintage years 2012 and 2013, 1.875 percent of the emission allowances established for each year under section 721(a).

"(2) For vintage years 2014 and 2015, 1.67 percent of the emission allowances established for each year under section 721(a).

"(3) For vintage years 2016 through 2025, 1.5 percent of the emission allowances established for each year under section 721(a).

"(4) For vintage year 2026, 1.2 percent of the emission allowances established for each year under section 721(a).

"(5) For vintage year 2027, 0.9 percent of the emission allowances established for each year under section 721(a).

"(6) For vintage year 2028, 0.6 percent of the emission allowances established for each year under section 721(a).

"(7) For vintage year 2029, 0.3 percent of the emission allowances established for each year under section 721(a).

"(d) LOW INCOME CONSUMERS.—For each vintage year starting in 2012, the Administrator shall auction 15 percent of the emission allowances established for each year under section 721(a), pursuant to section 791, with the proceeds used for the benefit of low income consumers to fund the program set forth in subtitle C of title IV of American Clean Energy and Security Act of 2009.

"(e) TRADE-VULNERABLE INDUSTRIES.—The Administrator shall allocate emission allowances to energy-intensive, trade-exposed entities, to be distributed in accordance with part F, in the following amounts:

"(1) For vintage years 2012 and 2013, up to 2.0 percent of the emission allowances established for each year under section 721(a).

"(2) For vintage years 2014, up to 15 percent of the emission allowances established for that year under section 721(a).

"(3) For vintage years 2015 through 2025, the maximum number of allowances that shall be distributed shall decline by the same amount that the annual reduction target set forth in section 702 declines (which is 1.75 percentage points annually for 2015 through 2020, and 2.5 percentage points annually from 2021 through 2025).

"(4) For vintage years 2026 through 2050, the maximum number of allowances that shall be distributed shall decline by the same amount that the annual reduction target set forth in section 702 declines (which is 2.5 percentage points annually for 2026 through 2030, and 1.55 percentage points annually from 2031 through 2050) and shall be multiplied by a factor, which shall be 90 percent in 2026

and decline 10 percentage points a year until it reaches zero, unless the President sets a different factor under section 767(c)(3)(A), that shall not exceed 100 percent.

"(f) DEPLOYMENT OF CARBON CAPTURE AND SEQUESTRATION TECHNOLOGY.—

"(1) ANNUAL ALLOCATION.—The Administrator shall allocate emission allowances for the deployment of carbon capture and sequestration technology to be distributed in accordance with section 786 in the following amounts:

"(A) For vintage years 2014 through 2017, 2 percent of the emission allowances established for each year under section 721(a).

"(B) For vintage years 2018 through 2050, 5 percent of the emission allowances established for each year under section 721(a).

"(2) CARRYOVER.—If the Administrator has not distributed all of the allowances allocated pursuant to this section for a given vintage year by the end of that year, the Administrator shall—

"(A) auction those emission allowances under section 791 not later than March 31 of the year following that vintage year; and

"(B) increase the allocation under this subsection for the vintage year after the vintage year for which emission allowances were undisbursed by the amount of undisbursed emission allowances.

"(g) INVESTMENT IN ENERGY EFFICIENCY AND RENEWABLE ENERGY.—The Administrator shall allocate emission allowances to invest in energy efficiency and renewable energy as follows:

"(1) To be distributed in accordance with section 132 of the American Clean Energy and Security Act of 2009 in the following amounts:

"(A) For vintage years 2012 through 2015, 9.5 percent of the emission allowances established for each year under section 721(a).

"(B) For vintage years 2016 through 2017, 7.0 percent of the emission allowances established for each year under section 721(a).

"(C) For vintage years 2018 through 2021, 6.0 percent of the emission allowances established for each year under section 721(a).

"(D) For vintage years 2022 through 2025, 1.5 percent of the emission allowances established for each year under section 721(a).

"(E) For vintage years 2026 through 2050, 4.5 percent of the emission allowances established for each year under section 721(a).

"(F) At the same time the vintage year 2022 through 2025 allowances are distributed, 3.55 percent of emission allowances established under section 721(a) for the vintage year four years greater shall also be distributed (which shall be in addition to the emission allowances in subparagraph (E)).

"(2) To be distributed in accordance with section 201 of the American Clean Energy and Security Act of 2009 in the amount of 0.5 percent of emission allowances established under section 721(a) for each vintage year from 2012 through 2050.

"(h) CLEAN ENERGY INNOVATION CENTERS.—The Administrator shall allocate 1 percent of emission allowances for each vintage year from 2012 through 2050 to be distributed to Clean Energy Innovation Centers in accordance with section 181 of the American Clean Energy and Security Act of 2009.

"(i) INVESTMENT IN CLEAN VEHICLE TECHNOLOGY.—The Administrator shall allocate emission allowances to invest in the development and deployment of clean vehicles, to be distributed in accordance with section

124 of the American Clean Energy and Security Act of 2009 in the following amounts:

"(1) For vintage years 2012 through 2017, 3 percent of the emission allowances established for each year under section 721(a).

"(2) For vintage years 2018 through 2025, 1 percent of the emission allowances established for each year under section 721(a).

"(j) DOMESTIC FUEL PRODUCTION.—For vintage years 2014 through 2026, the Administrator shall allocate 2.0 percent of the emission allowances established under section 721(a) to domestic refiners, to be distributed in accordance with part F.

"(k) INVESTMENT IN WORKERS.—The Administrator shall auction pursuant to section 791 emission allowances for workers in the following amounts and shall report to the Secretary of Labor the amount of proceeds from the sale of these allowances:

"(1) For vintage years 2012 through 2021, 0.5 percent of the emission allowances established for each year under section 721(a).

"(2) For vintage years 2022 through 2050, 1.0 percent of the emission allowances established for each year under section 721(a).

"(l) DOMESTIC ADAPTATION.—The Administrator shall allocate emission allowances for domestic adaptation as follows:

"(1) To be distributed in accordance with section 453 of the American Clean Energy and Security Act in the following amounts:

"(A) For vintage years 2012 through 2021, 0.9 percent of the emission allowances established for each year under section 721(a).

"(B) For vintage years 2022 through 2026, 1.9 percent of the emission allowances established for each year under section 721(a).

"(C) For vintage years 2027 through 2050, 3.9 percent of the emission allowances established for each year under section 721(a).

"(2) For vintage year 2012 and thereafter, the Administrator shall auction 0.1 percent of the emission allowances established for each year under section 721(a), pursuant to section 791, and shall deposit the proceeds in the Climate Change Health Protection and Promotion Fund established by section 467 of the American Clean Energy and Security Act.

"(m) WILDLIFE AND NATURAL RESOURCE ADAPTATION.—The Administrator shall auction pursuant to sec-

1 tion 791 emission allowances for domestic wildlife and nat-
2 ural resource adaptation in the amounts listed in para-
3 graphs (1) through (3) and shall deposit the proceeds from
4 the sale of these allowances in the Natural Resources Cli-
5 mate Change Adaptation Account established pursuant to
6 section 480(a) of the American Clean Energy and Security
7 Act. Funds so deposited shall be available for expenditure,
8 without further appropriation or fiscal year limitation.

9 "(1) For vintage years 2012 through 2021, 1.0
10 percent of the emission allowances established for
11 each year under section 721(a).

12 "(2) For vintage years 2022 through 2026, 2.0
13 percent of the emission allowances established for
14 each year under section 721(a).

15 "(3) For vintage years 2027 through 2050, 4.0
16 percent of the emission allowances established for
17 each year under section 721(a).

18 "(n) INTERNATIONAL ADAPTATION.—The Adminis-
19 trator shall allocate emission allowances for international
20 adaptation to be distributed in accordance with part 2 of
21 subtitle E of title IV of the American Clean Energy and
22 Security Act in the following amounts:

23 "(1) For vintage years 2012 through 2021, 1.0
24 percent of the emission allowances established for
25 each year under section 721(a).

"(2) For vintage years 2022 through 2026, 2.0 percent of the emission allowances established for each year under section 721(a).

"(3) For vintage years 2027 through 2050, 4.0 percent of the emission allowances established for each year under section 721(a).

"(o) INTERNATIONAL CLEAN TECHNOLOGY DEPLOYMENT.—The Administrator shall allocate emission allowances for international clean technology deployment for distribution in accordance with subtitle D of title IV of the American Clean Energy and Security Act in the following amounts:

"(1) For vintage years 2012 through 2021, 1.0 percent of the emission allowances established for each year under section 721(a).

"(2) For vintage years 2022 through 2026, 2.0 percent of the emission allowances established for each year under section 721(a).

"(3) For vintage years 2027 through 2050, 4.0 percent of the emission allowances established for each year under section 721(a).

"(p) RELEASE OF FUTURE ALLOWANCES.—The Administrator shall make future year allowances available by auctioning allowances, pursuant to section 791, in the following amounts:

"(1) In each of calendar years 2015 through 2020, a string of 0.7 billion allowances with vintage years 11 to 16 years after the year of the auction, with an equal number of allowances from each vintage year in the string.

"(2) In each of calendar years 2021 through 2025, a string of 0.5 billion allowances with vintage years 11 to 16 years after the year of the auction, with an equal number of allowances from each vintage year in the string.

"(3) In each of calendar years 2026 through 2030, a string of 0.3 billion allowances with vintage years 11 to 16 years after the year of the auction, with an equal number of allowances from each vintage year in the string.

"(q) DEFICIT REDUCTION.—

"(1) For each of vintage years 2012 through 2025, any allowances not designated for distribution or auction pursuant to section 781, subsections (a) through (o) of this section, or section 790 shall be auctioned by the Administrator pursuant to section 791 and the proceeds shall be deposited into the Treasury.

"(2) Unless otherwise specified, any allowances allocated pursuant to subsections (a) through (o)

and not distributed by March 31 of the calendar year following the allowance's vintage year, shall be auctioned by the Administrator and the proceeds shall be deposited into the Treasury.

"(3) For auctions conducted through vintage year 2025 pursuant to subsection (p), the auction proceeds shall be deposited into the Treasury.

"(r) CLIMATE CHANGE CONSUMER DIVIDEND.—For each of vintage years 2026 through 2050, the Administrator shall auction pursuant to section 791 any allowance established under section 721(a) for that year and not designated for distribution or auction pursuant to subsections (a) through (p), and place the proceeds from the sale of these allowances in the Climate Change Dividend Fund. For auctions conducted in 2026 and thereafter pursuant to subsection (p), the auction proceeds shall be deposited into the Climate Change Dividend Fund. Funds so deposited shall be available for expenditure, without further appropriation or fiscal year limitation.

"SEC. 783. ELECTRICITY CONSUMERS.

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

"(1) ELECTRICITY LOCAL DISTRIBUTION COMPANY.—The term 'electricity local distribution company' means an electric utility—

"(A) that has a legal, regulatory, or contractual obligation to deliver electricity directly to retail consumers in the United States, regardless of whether that entity or another entity sells the electricity as a commodity to those retail consumers; and

"(B) the retail rates of which, except in the case of a registered electric cooperative, are regulated by a State regulatory authority, regulatory commission, municipality, public utility, or by an Indian tribe pursuant to tribal law.

"(2) LONG-TERM CONTRACT GENERATOR.—The term 'long-term contract generator' means a qualifying small power production facility or a qualifying cogeneration facility (within the meaning of section 3(17)(C) or 3(18)(B) of the Federal Power Act), or a new independent power production facility (within the meaning of section 416(a)(2) of this Act, except that subparagraph (C) of such definition shall not apply for purposes of this paragraph), that is—

"(A) a covered entity;

"(B) as of the commencement of operation, a facility consisting of one or more utility units with total installed net output capacity (in MWe) of no more than 130 percent of the fa-

cility's total planned net output capacity (in MWe);

"(C) as of the date of enactment of this title, a facility with a power sales agreement executed before January 1, 2007, that governs the facility's electricity sales and provides for sales at a price (whether a fixed price or a price formula) for electricity that does not allow for recovery of the costs of compliance with the limitation on greenhouse gas emissions under this title; and

"(B) not a merchant coal generator (within the meaning of paragraph (3)).

"(3) MERCHANT COAL GENERATOR.—The term 'merchant coal generator' means an electric generation facility that—

"(A) is a covered entity;

"(B) derives at least 85 percent of its heat input from coal, petroleum coke, or any combination of these 2 fuels;

"(C) is not owned by a Federal, State, or regional agency or power authority; and

"(D) generates electricity for sale to others, provided that such sales are not subject to—

"(i) retail rate regulation by a State public utility commission; or

"(ii) self-regulation of rates by a local government, State agency, or electric cooperative.

"(4) STATE REGULATORY AUTHORITY.—The term 'State regulatory authority' has the meaning given that term in section 3(17) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(17)).

"(b) ELECTRICITY LOCAL DISTRIBUTION COMPANIES.—

"(1) ALLOCATION.—Not later than June 30 of 2011 and each calendar year thereafter through 2028, the Administrator shall distribute to electricity local distribution companies the quantity of emission allowances allocated for the electricity sector for the following vintage year pursuant to section 782(a), provided that the Administrator shall first subtract from such quantity and distribute or reserve for distribution the quantity of emission allowances for the relevant vintage year that are required for distribution under subsections (c) and (d) of this section.

"(2) DISTRIBUTION OF ALLOWANCES.—

"(A) DISTRIBUTION BASED ON EMISSIONS.—

"(i) IN GENERAL.—For each vintage year, 50 percent of the emission allowances available for distribution under paragraph (1) shall be distributed by the Administrator among individual electricity local distribution companies ratably based on the annual average carbon dioxide emissions attributable to generation of electricity sold at retail by each such company during—

"(I) calendar years 2006 through 2008; or

"(II) any 3 consecutive calendar years between 1999 and 2008, inclusive, that such company selects, provided that the company timely informs the Administrator of such selection.

"(ii) DETERMINATION OF EMISSIONS.—As part of the regulations promulgated pursuant to subsection (e), the Administrator, after consultation with the Energy Information Administration, shall determine the average amount of carbon

dioxide emissions attributable to generation of electricity sold at retail by each electricity local distribution company for each of the years 1999 through 2008. Such determinations shall be as precise as practicable, taking into account the nature of data currently available and the nature of markets and regulation in effect in various regions of the country. The following requirements shall apply to such determinations:

"(I) The Administrator shall determine the amount of fossil fuel-based electricity delivered at retail by each electricity local distribution company, and shall use appropriate emission factors to calculate carbon dioxide emissions associated with the generation of such electricity.

"(II) Where it is not practical to determine the precise fuel mix for the electricity delivered at retail by an individual electricity local distribution company, the Administrator may use the best available data, including aver-

1 age data on a regional basis with ref-
2 erence to Regional Transmission Or-
3 ganizations or regional entities (as
4 that term is defined in section
5 215(a)(7) of the Federal Power Act
6 (16 U.S.C. 824o(a)(7)), to estimate
7 fuel mix and emissions. Different
8 methodologies may be applied in dif-
9 ferent regions if appropriate to obtain
10 the most accurate estimate.
11 ''(B) DISTRIBUTION BASED ON DELIV-
12 ERIES.—
13 ''(i) INITIAL ALLOCATION FOR-
14 MULA.—Except as provided in clause (ii),
15 for each vintage year, the Administrator
16 shall distribute 50 percent of the emission
17 allowances allocated under paragraph (1)
18 of this subsection among individual elec-
19 tricity local distribution companies ratably
20 based on each electricity local distribution
21 company's annual average retail electricity
22 deliveries for 2006 through 2008, unless
23 the owner or operator of the company se-
24 lects 3 other consecutive years between

1999 and 2008, inclusive, and timely notifies the Administrator of its selection.

"(ii) UPDATING.—Prior to distributing 2015 vintage emission allowances under this subparagraph and at 3-year intervals thereafter, the Administrator shall update the distribution formula under this subparagraph to reflect changes in each electricity local distribution company's service territory since the most recent formula was established. For each successive 3-year period, the Administrator shall distribute allowances ratably among individual electricity local distribution companies based on the product of—

"(I) each electricity local distribution company's average annual deliveries per customer during calendar years 2006 through 2008, or during the 3 alternative consecutive years selected by such company under clause (i); and

"(II) the number of customers of such electricity local distribution company in the most recent year in which

the formula is updated under this clause.

"(3) USE OF ALLOWANCES.—

"(A) RATEPAYER BENEFIT.—Emission allowances distributed to an electricity local distribution company under this subsection shall be used exclusively for the benefit of retail ratepayers of such electricity local distribution company. Emission allowances received by an electricity local distribution company under this subsection may not be used to support electricity sales to entities or persons other than the retail ratepayers of such electricity local distribution company.

"(B) RATEPAYER CLASSES.—In using emission allowances distributed under this section for the benefit of ratepayers, an electricity local distribution company shall ensure that ratepayer benefits are distributed—

"(i) among ratepayer classes ratably based on electricity deliveries to each class; and

"(ii) equitably among individual ratepayers within each ratepayer class, includ-

ing entities that receive emission allowances pursuant to part F.

"(C) LIMITATION.—No electricity local distribution company may use emission allowances to provide to any ratepayer a rebate that is based solely on the quantity of electricity delivered to such ratepayer. To the extent an electricity local distribution company uses the value of emission allowances distributed under this subsection to provide rebates, it shall, to the maximum extent practicable, provide such rebates with regard to the fixed portion of ratepayers' bills.

"(D) GUIDELINES.—As part of the regulations promulgated under subsection (e), the Administrator shall prescribe specific guidelines for the implementation of the requirements of this paragraph.

"(4) REGULATORY PROCEEDINGS.—

"(A) REQUIREMENT.—No electricity local distribution company shall be eligible to receive emission allowances under this subsection unless the State regulatory authority with authority over such company, or the entity with authority to regulate retail electricity rates of an

electricity local distribution company not regulated by a State regulatory authority, has—

"(i) promulgated a regulation or completed a rate proceeding (or the equivalent, in the case of a ratemaking entity other than a State regulatory authority) that provides for the full implementation of the requirements of paragraph (3) of this subsection; and

"(ii) made available to the Administrator and the public a report describing, in adequate detail, the manner in which the requirements of paragraph (3) will be implemented.

"(B) UPDATING.—The Administrator shall require, as a condition of continued receipt of emission allowances under this subsection by an electricity local distribution company, that a new regulation be promulgated or rate proceeding be completed, and a new report be made available to the Administrator and the public, pursuant to subparagraph (A), not less frequently than every 5 years.

"(5) PLANS AND REPORTING.—

"(A) REGULATIONS.—As part of the regulations promulgated under subsection (e), the Administrator shall prescribe requirements governing plans and reports to be submitted by electricity local distribution companies in accordance with this paragraph.

"(B) PLANS.—Not later than April 30 of 2011 and every 5 years thereafter through 2026, each electricity local distribution company shall submit to the Administrator a plan, approved by the State regulatory authority or other entity charged with regulating the retail rates of such company, describing such company's plans for the disposition of the value of emission allowances to be received pursuant to this subsection, in accord with the requirements of this subsection.

"(C) REPORTS.—Not later than June 30 of 2013 and each calendar year thereafter through 2031, each electricity local distribution company that received emission allowances under this subsection in the preceding calendar year shall submit a report to the Administrator, and to the relevant State regulatory authority or the entity with authority to regulate retail

electricity rates in the case of an electricity local distribution company not regulated by a State regulatory authority, describing the disposition of the value of any emission allowances received by the company in the prior calendar year pursuant to this subsection, including—

"(i) a description of sales, transfer, exchange, or use by the company for compliance with obligations under this title, of any such emission allowances;

"(ii) the monetary value received by the company, whether in money or in some other form, from the sale, transfer, or exchange of emission allowances received by the company under this section;

"(iii) the manner in which the company's disposition of emission allowances received under this subsection complies with the requirements of this subsection, including each of the requirements of paragraph (3); and

"(iv) such other information as the Administrator may require pursuant to subparagraph (A).

"(D) PUBLICATION.—The Administrator shall make available to the public all plans and reports submitted by electricity local distribution companies under this section, including by publishing such plans and reports on the Internet.

"(6) AUDITS.—Each year, the Administrator shall conduct an audit of a representative sample of electricity local distribution companies receiving emission allowances under this subsection to ensure compliance with the requirements of this subsection. In selecting electricity local distribution companies for audit, the Administrator shall take into account any credible evidence of noncompliance with the requirements of this subsection. The Administrator shall make available to the public a report describing the results of each such audit, including by publishing such report on the Internet.

"(7) ENFORCEMENT.—A violation of any requirement of this subsection shall be a violation of this Act. Each emission allowance the value of which is used in violation of the requirements of this subsection shall be a separate violation.

"(c) MERCHANT COAL GENERATORS.—

"(1) QUALIFYING EMISSIONS.—The qualifying emissions for a merchant coal generator for a given calendar year shall be the product of the number of megawatt hours of electricity generated by such generator in such calendar year and the average carbon dioxide emissions per megawatt hour generated by such generator during calendar years 2006 through 2008, provided that the number of megawatt hours in a given calendar year for purposes of such calculation shall be reduced in proportion to the portion of such generator's carbon dioxide emissions that were captured and sequestered in such calendar year and for which such generator received or will receive bonus emission allowances under section 785.

"(2) PHASE-DOWN SCHEDULE.—The Administrator shall identify an annual phase-down factor, applicable to distributions to merchant coal generators for each of calendar years 2012 through 2029, that corresponds to the overall decline in the amount of emission allowances to be allocated to the electricity sector in such years pursuant to section 782(a). Such factor shall—

"(A) for calendar year 2012, be equal to 1.0;

"(B) for each of calendar years 2013 through 2029, correspond to the quotient of—

"(i) the quantity of emission allowances to be allocated to the electricity sector under section 782(a) for such calendar year; divided by

"(ii) the quantity of emission allowances to be allocated to the electricity sector under section 782(a) for calendar year 2012.

"(3) DISTRIBUTION OF EMISSION ALLOWANCES.—Not later than March 1 of 2013 and each calendar year through 2030, the Administrator shall distribute emission allowances of the preceding vintage year to each merchant coal generator equal to the product of—

"(A) 0.5;

"(B) the qualifying emissions for such merchant coal generator for the preceding year, as determined under paragraph (1); and

"(C) the phase-down factor for the preceding calendar year, as identified under paragraph (2).

"(4) ADJUSTMENT.—

"(A) STUDY.—Not later than July 1, 2014, the Administrator, in consultation with the Federal Energy Regulatory Commission, shall complete a study to determine whether the allocation formula under paragraph (3) is resulting in, or is likely to result in, windfall profits to merchant coal generators or substantially disparate treatment of merchant coal generators operating in different markets or regions.

"(B) REGULATION.—If the Administrator, in consultation with the Federal Energy Regulatory Commission, makes an affirmative finding of windfall profits or disparate treatment under subparagraph (A), the Administrator shall, not later than 18 months after the completion of the study described in subparagraph (A), promulgate regulations providing for the adjustment of the allocation formula under paragraph (3) to mitigate, to the extent practicable, such windfall profits, if any, and such disparate treatment, if any.

"(5) LIMITATION ON ALLOWANCES.—Notwithstanding paragraph (3) or (4), for any vintage year the Administrator shall distribute under this subsection no more than 10 percent of the total quan-

tity of emission allowances available for such vintage year for distribution to the electricity sector under section 782(a). If the quantity of emission allowances that would otherwise be distributed pursuant to paragraph (3) or (4) for any vintage year would exceed such limit, the Administrator shall distribute 10 percent of the total emission allowances available for distribution under section 782(a) for such vintage year ratably among merchant coal generators based on the formula in paragraph (3) or (4).

"(d) GENERATORS WITH LONG-TERM POWER PURCHASE AGREEMENTS.—

"(1) RESERVED ALLOWANCES.—Notwithstanding subsections (b) and (c) of this section, the Administrator shall withhold from distribution to electricity local distribution companies a number of emission allowances equal to 105 percent of the emission allowances the Administrator anticipates will be distributed to long-term contract generators under this subsection. If not required to distribute all of these reserved allowances under this subsection, the Administrator shall distribute any remaining emission allowances to the electricity local distribution companies in accordance with subsection (b).

"(2) DISTRIBUTION.—Not later than March 1 of 2013 and each calendar year through 2030, the Administrator shall distribute to the owner or operator of each long-term contract generator the number of emission allowances of the preceding vintage year that are equal to the number of tons of carbon dioxide emitted as a result of a qualifying long-term power purchase agreement referred to in subsection (a)(2)(C).

"(3) DURATION.—A long-term contract generator shall cease to be eligible to receive allocations under this subsection upon the earliest of the following dates:

"(A) The date when the facility no longer qualifies as a qualifying small power production facility or a qualifying cogeneration facility (within the meaning of section 3(17)(C) or 3(18)(B) of the Federal Power Act), or a new independent power production facility (within the meaning of section 416(a)(2) of this Act, except that subparagraph (C) of such definition shall not apply for purposes of this clause).

"(B) The date when the facility no longer meets the total installed net output capacity cri-

terion required to be met as of the commencement of operation in subsection (a)(2)(B).

"(C) The date when the power purchase agreement referred to in subsection (a)(2)(C)—

"(i) expires;

"(ii) is terminated; or

"(iii) is amended in any way that changes the location of the facility, the price (whether a fixed price or price formula) for electricity sold under such agreement, the quantity of electricity sold under the agreement, or the expiration or termination date of the agreement.

"(4) ELIGIBILITY.—To be eligible to receive allowance distributions under this subsection, a long-term contract generator shall submit each of the following in writing to the Administrator within 180 days after the date of enactment of this title, and not later than September 30 of each vintage year for which such generator wishes to receive emission allowances:

"(A) A certificate of representation described in section 700(16).

"(B) An identification of each owner and each operator of the facility.

"(C) An identification of the units at the facility and the location of the facility.

"(D) A written certification by the designated representative that the facility meets all the requirements of the definition of a long-term contract generator.

"(E) The expiration date of the power purchase agreement referred to in subsection (a)(2)(C).

"(F) A copy of the power purchase agreement referred to in subsection (a)(2)(C).

"(5) NOTIFICATION.—Not later than 30 days after a facility loses, in accordance with paragraph (3), its eligibility for emission allowances distributed pursuant to this subsection, the designated representative of such facility shall notify the Administrator in writing when, and on what basis, the facility lost its eligibility to receive emission allowances.

"(e) REGULATIONS.—Not later than 2 years after the date of enactment of this title, the Administrator, in consultation with the Federal Energy Regulatory Commission, shall promulgate regulations to implement the requirements of this section.

"SEC. 784. NATURAL GAS CONSUMERS.

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

"(1) NATURAL GAS LOCAL DISTRIBUTION COMPANY.—The term 'natural gas local distribution company' means a natural gas local distribution company that is a covered entity.

"(2) COST-EFFECTIVE.—The term 'cost-effective', with respect to an energy efficiency program, means that the program meets the Total Resource Cost Test, which requires that the net present value of economic benefits over the life of the program, including avoided supply and delivery costs and deferred or avoided investments, is greater than the net present value of the economic costs over the life of the program, including program costs and incremental costs borne by the energy consumer.

"(b) ALLOCATION.—Not later than June 30 of 2015 and each calendar year thereafter through 2028, the Administrator shall distribute to natural gas local distribution companies the quantity of emission allowances allocated for the following vintage year pursuant to section 782(b). Such allowances shall be distributed among local natural gas distribution companies based on the following formula:

"(1) INITIAL FORMULA.—Except as provided in paragraph (2), for each vintage year, the Administrator shall distribute emission allowances among

natural gas local distribution companies ratably based on each such company's annual average retail natural gas deliveries for 2006 through 2008, unless the owner or operator of the company selects 3 other consecutive years between 1999 and 2008, inclusive, and timely notifies the Administrator of its selection.

"(2) UPDATING.—Prior to distributing 2019 vintage emission allowances and at 3-year intervals thereafter, the Administrator shall update the distribution formula under this subsection to reflect changes in each natural gas local distribution company's service territory since the most recent formula was established. For each successive 3-year period, the Administrator shall distribute allowances ratably among natural gas local distribution companies based on the product of—

"(A) each natural gas local distribution company's average annual natural gas deliveries per customer during calendar years 2006 through 2008, or during the 3 alternative consecutive years selected by such company under paragraph (1); and

"(B) the number of customers of such natural gas local distribution company in the most

1 recent year in which the formula is updated
2 under this paragraph.
3 "(c) USE OF ALLOWANCES.—
4 "(1) RATEPAYER BENEFIT.—Emission allow-
5 ances distributed to a natural gas local distribution
6 company under this section shall be used exclusively
7 for the benefit of retail ratepayers of such natural
8 gas local distribution company. Emission allowances
9 received by a natural gas local distribution company
10 under this section may not be used to support nat-
11 ural gas sales to entities or persons other than the
12 retail ratepayers of such natural gas local distribu-
13 tion company.
14 "(2) RATEPAYER CLASSES.—In using emission
15 allowances distributed under this section for the ben-
16 efit of ratepayers, a natural gas local distribution
17 company shall ensure that ratepayer benefits are
18 distributed—
19 "(A) among ratepayer classes ratably
20 based on natural gas deliveries to each class;
21 and
22 "(B) equitably among individual ratepayers
23 within each ratepayer class.
24 "(3) LIMITATION.—No natural gas local dis-
25 tribution company may use emission allowances to

provide to any ratepayer a rebate that is based solely on the quantity of natural gas delivered to such ratepayer. To the extent a natural gas local distribution company uses the value of emission allowances distributed under this subsection to provide rebates, it shall, to the maximum extent practicable, provide such rebates with regard to the fixed portion of ratepayers' bills.

"(4) ENERGY EFFICIENCY PROGRAMS.—The value of no less than one third of the emission allowances distributed to natural gas local distribution companies pursuant to this section in any calendar year shall be used for cost-effective energy efficiency programs for natural gas consumers. Such programs must be authorized and overseen by the State regulatory authority, or by the entity with regulatory authority over retail natural gas rates in the case of a natural gas local distribution company that is not regulated by a State regulatory authority.

"(5) GUIDELINES.—As part of the regulations promulgated under subsection (h), the Administrator shall prescribe specific guidelines for the implementation of the requirements of this subsection.

"(d) REGULATORY PROCEEDINGS.—

"(1) REQUIREMENT.—No natural gas local distribution company shall be eligible to receive emission allowances under this section unless the State regulatory authority with authority over such company, or the entity with authority to regulate retail rates of a natural gas local distribution company not regulated by a State regulatory authority, has—

"(A) promulgated a regulation or completed a rate proceeding (or the equivalent, in the case of a ratemaking entity other than a State regulatory authority) that provides for the full implementation of the requirements of subsection (c); and

"(B) made available to the Administrator and the public a report describing, in adequate detail, the manner in which the requirements of subsection (c) will be implemented.

"(2) UPDATING.—The Administrator shall require, as a condition of continued receipt of emission allowances under this section by a natural gas local distribution company, that a new regulation be promulgated or rate proceeding be completed, and a new report be made available to the Administrator and the public, pursuant to paragraph (1), not less frequently than every 5 years.

1 "(e) PLANS AND REPORTING.—

2 "(1) REGULATIONS.—As part of the regulations
3 promulgated under subsection (h), the Administrator
4 shall prescribe requirements governing plans and re-
5 ports to be submitted by natural gas local distribu-
6 tion companies in accordance with this subsection.

7 "(2) PLANS.—Not later than April 30 of 2015
8 and every 5 years thereafter through 2025, each
9 natural gas local distribution company shall submit
10 to the Administrator a plan, approved by the State
11 regulatory authority or other entity charged with
12 regulating the retail rates of such company, describ-
13 ing such company's plans for the disposition of the
14 value of emission allowances to be received pursuant
15 to this section, in accord with the requirements of
16 this section.

17 "(3) REPORTS.—Not later than June 30 of
18 2017 and each calendar year thereafter through
19 2031, each natural gas local distribution company
20 that received emission allowances under this section
21 in the preceding calendar year shall submit a report
22 to the Administrator, approved by the relevant State
23 regulatory authority or the entity with authority to
24 regulate retail natural gas rates in the case of a nat-
25 ural gas local distribution company not regulated by

a State regulatory authority, describing the disposition of the value of any emission allowances received by the company in the prior calendar year pursuant to this subsection, including—

"(A) a description of sales, transfer, exchange, or use by the company for compliance with obligations under this title, of any such emission allowances;

"(B) the monetary value received by the company, whether in money or in some other form, from the sale, transfer, or exchange of emission allowances received by the company under this section;

"(C) the manner in which the company's disposition of emission allowances received under this subsection complies with the requirements of this section, including each of the requirements of subsection (c);

"(D) the cost-effectiveness of, and energy savings achieved by, energy efficiency programs supported through such emission allowances; and

"(E) such other information as the Administrator may require pursuant to paragraph (1).

"(4) PUBLICATION.—The Administrator shall make available to the public all plans and reports submitted by natural gas local distribution companies under this subsection, including by publishing such plans and reports on the Internet.

"(f) AUDITS.—Each year, the Administrator shall conduct an audit of a representative sample of natural gas local distribution companies receiving emission allowances under this section to ensure compliance with the requirements of this section. In selecting natural gas local distribution companies for audit, the Administrator shall take into account any credible evidence of noncompliance with the requirements of this section. The Administrator shall make available to the public a report describing the results of each such audit, including by publishing such report on the Internet.

"(g) ENFORCEMENT.—A violation of any requirement of this section shall be a violation of this Act. Each emission allowance the value of which is used in violation of the requirements of this section shall be a separate violation.

"(h) REGULATIONS.—Not later than January 1, 2014, the Administrator, in consultation with the Federal Energy Regulatory Commission, shall promulgate regulations to implement the requirements of this section.

"SEC. 785. HOME HEATING OIL AND PROPANE CONSUMERS.

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

"(1) CARBON CONTENT.—The term 'carbon content' means the amount of carbon dioxide that will be emitted as a result of the combustion of a fuel.

"(2) COST-EFFECTIVE.—The term 'cost-effective', with respect to an energy efficiency program, means that the program meets the Total Resource Cost Test, which requires that the net present value of economic benefits over the life of the program, including avoided supply and delivery costs and deferred or avoided investments, is greater than the net present value of the economic costs over the life of the program, including program costs and incremental costs borne by the energy consumer.

"(b) ALLOCATION.—Not later than September 30 of each of calendar years 2012 through 2030, the Administrator shall distribute among the States, in accordance with this section, the quantity of emission allowances allocated pursuant to section 782(c).

"(c) DISTRIBUTION AMONG STATES.—The Administrator shall distribute allowances among the States under this section each year ratably based on the ratio of—

"(1) the carbon content of home heating oil and propane sold to consumers within each State in the preceding year for residential or commercial uses; to

"(2) the carbon content of home heating oil and propane sold to consumers within the United States in the preceding year for residential or commercial uses.

"(d) USE OF ALLOWANCES.—

"(1) IN GENERAL.—States shall use emission allowances distributed under this section exclusively for the benefit of consumers of home heating oil or propane for residential or commercial purposes. Such proceeds shall be used exclusively for—

"(A) cost-effective energy efficiency programs for consumers that use home heating oil or propane for residential or commercial purposes; or

"(B) rebates or other direct financial assistance programs for consumers of home heating oil or propane used for residential or commercial purposes.

"(2) ADMINISTRATION AND DELIVERY MECHANISMS.—In administering programs supported by this section, States shall—

"(A) use no less than 50 percent of the value of emission allowances received under this section for cost-effective efficiency programs to reduce consumers' overall fuel costs;

"(B) to the extent practicable, deliver consumer support under this section through existing energy efficiency and consumer energy assistance programs or delivery mechanisms, including, where appropriate, programs or mechanisms administered by parties other than the State; and

"(C) seek to coordinate the administration and delivery of energy efficiency and consumer energy assistance programs funded under this section, with one another and with existing programs for various fuel types, so as to deliver comprehensive, fuel-blind, coordinated programs to consumers.

"(e) REPORTING.—Each State receiving emission allowances under this section shall submit to the Administrator, within 12 months of each receipt of such allowances, a report, in accordance with such requirements as the Administrator may prescribe, that—

"(1) describes the State's use of emission allowances distributed under this section, including a de-

1 scription of the energy efficiency and consumer as-
2 sistance programs supported with such allowances;
3 ''(2) demonstrates the cost-effectiveness of, and
4 the energy savings achieved by, energy efficiency
5 programs supported under this section; and
6 ''(3) includes a report prepared by an inde-
7 pendent third party, in accordance with such regula-
8 tions as the Administrator may promulgate, evalu-
9 ating the performance of the energy efficiency and
10 consumer assistance programs supported under this
11 section.
12 ''(f) ENFORCEMENT.—If the Administrator deter-
13 mines that a State is not in compliance with this section,
14 the Administrator may withhold a portion of the allow-
15 ances, the value of which is equal to up to twice the value
16 of the allowances that the State failed to use in accordance
17 with the requirements of this section, that such State
18 would otherwise be eligible to receive under this section
19 in later years. Allowances withheld pursuant to this sub-
20 section shall be distributed among the remaining States
21 ratably in accordance with the formula in subsection (c).
22 **''SEC. 786–788. [SECTIONS RESERVED].**
23 **''SEC. 789. CLIMATE CHANGE REBATES.**
24 ''(a) REBATE.—Not later than October 31 of each
25 calendar year, the President, or such Federal agency or

department as the President may designate, shall distribute the funds in the Consumer Climate Change Rebate Fund on a per capita basis to each household in the United States.

"(b) LIMITATIONS.—The President, or such Federal agency or department as the President may designate, shall establish procedures to ensure that individuals who are not—

"(1) citizens or nationals of the United States; or

"(2) immigrants lawfully residing in the United States,

are excluded for the purpose of calculating and distributing rebates under this section.

"SEC. 790. EXCHANGE FOR STATE-ISSUED ALLOWANCES.

"(a) IN GENERAL.—Not later than one year after the date of enactment of this title, the Administrator shall issue regulations allowing any person in the United States to exchange greenhouse gas emission allowances issued before December 31, 2011, by the State of California or for the Regional Greenhouse Gas Initiative, or the Western Climate Initiative (in this section referred to as 'State allowances') for emission allowances established by the Administrator under section 721(a).

"(b) REGULATIONS.—Regulations issued under subsection (a) shall—

"(1) provide that a person exchanging State allowances under this section receive emission allowances established under section 721(a) in the amount that is sufficient to compensate for the cost of obtaining and holding such State allowances;

"(2) establish a deadline by which persons must exchange the State allowances; and

"(3) provide that the Federal emission allowances disbursed pursuant to this section shall be deducted from the allowances to be auctioned pursuant to section 782(b).

"(c) COST OF OBTAINING STATE ALLOWANCE.—For purposes of this section, the cost of obtaining a State allowance shall be the average auction price, for emission allowances issued in the year in which the State allowance was issued, under the program under which the State allowance was issued.

"SEC. 791. AUCTION PROCEDURES.

"(a) IN GENERAL.—To the extent that auctions of emission allowances by the Administrator are authorized by this part, such auctions shall be carried out pursuant to this section and the regulations established hereunder.

1 "(b) INITIAL REGULATIONS.—Not later than 12
2 months after the date of enactment of this title, the Ad-
3 ministrator, in consultation with other agencies, as appro-
4 priate, shall promulgate regulations governing the auction
5 of allowances under this section. Such regulations shall in-
6 clude the following requirements:

7 "(1) FREQUENCY; FIRST AUCTION.—Auctions
8 shall be held four times per year at regular intervals,
9 with the first auction to be held no later than March
10 31, 2011.

11 "(2) AUCTION SCHEDULE; CURRENT AND FU-
12 TURE VINTAGES.—The Administrator shall, at each
13 quarterly auction under this section, offer for sale
14 both a portion of the allowances with the same vin-
15 tage year as the year in which the auction is being
16 conducted and a portion of the allowances with vin-
17 tage years from future years. The preceding sen-
18 tence shall not apply to auctions held before 2012,
19 during which period, by necessity, the Administrator
20 shall auction only allowances with a vintage year
21 that is later than the year in which the auction is
22 held. Beginning with the first auction and at each
23 quarterly auction held thereafter, the Administrator
24 may offer for sale allowances with vintage years of

1 up to four years after the year in which the auction
2 is being conducted.
3 "(3) AUCTION FORMAT.—Auctions shall follow
4 a single-round, sealed-bid, uniform price format.
5 "(4) PARTICIPATION; FINANCIAL ASSURANCE.—
6 Auctions shall be open to any person, except that
7 the Administrator may establish financial assurance
8 requirements to ensure that auction participants can
9 and will perform on their bids.
10 "(5) DISCLOSURE OF BENEFICIAL OWNER-
11 SHIP.—Each bidder in the auction shall be required
12 to disclose the person or entity sponsoring or bene-
13 fitting from the bidder's participation in the auction
14 if such person or entity is, in whole or in part, other
15 than the bidder.
16 "(6) PURCHASE LIMITS.—No person may, di-
17 rectly or in concert with another participant, pur-
18 chase more than 5 percent of the allowances offered
19 for sale at any quarterly auction.
20 "(7) PUBLICATION OF INFORMATION.—After
21 the auction, the Administrator shall, in a timely
22 fashion, publish the identities of winning bidders,
23 the quantity of allowances obtained by each winning
24 bidder, and the auction clearing price.

"(8) OTHER REQUIREMENTS.—The Administrator may include in the regulations such other requirements or provisions as the Administrator, in consultation with other agencies, as appropriate, considers appropriate to promote effective, efficient, transparent, and fair administration of auctions under this section.

"(c) REVISION OF REGULATIONS.—The Administrator may, in consultation with other agencies, as appropriate, at any time, revise the initial regulations promulgated under subsection (b). Such revised regulations need not meet the requirements identified in subsection (b) if the Administrator determines that an alternative auction design would be more effective, taking into account factors including costs of administration, transparency, fairness, and risks of collusion or manipulation. In determining whether and how to revise the initial regulations under this subsection, the Administrator shall not consider maximization of revenues to the Federal Government.

"(d) RESERVE AUCTION PRICE.—The minimum reserve auction price shall be $10 for auctions occurring in 2012. The minimum reserve price for auctions occurring in years after 2012 shall be the minimum reserve auction price for the previous year increased by 5 percent plus

the rate of inflation (as measured by the Consumer Price Index for all urban consumers).

"(e) DELEGATION OR CONTRACT.—Pursuant to regulations under this section, the Administrator may by delegation or contract provide for the conduct of auctions under the Administrator's supervision by other departments or agencies of the Federal Government or by nongovernmental agencies, groups, or organizations.

"SEC. 792. AUCTIONING ALLOWANCES FOR OTHER ENTITIES.

"(a) CONSIGNMENT.—Any entity holding emission allowances or compensatory allowances may request that the Administrator auction, pursuant to section 791, the allowances on consignment.

"(b) PRICING.—When the Administrator acts under this section as the agent of an entity in possession of emission allowances, the Administrator is not obligated to obtain the highest price possible for the emission allowances, and instead shall auction consignment allowances in the same manner and pursuant to the same rules as auctions of other allowances under section 791. The Administrator may permit emission allowance owners to condition the sale of their allowances pursuant to this section on a minimum reserve price.

"(c) PROCEEDS.—For emission allowances and compensatory allowances auctioned pursuant to this section, notwithstanding section 3302 of title 31, United States Code, or any other provision of law, within 90 days of receipt, the United States shall transfer the proceeds from the auction to the entity which held the allowances auctioned. No funds transferred from a purchaser to a seller of emission allowances or compensatory allowances under this subsection shall be held by any officer or employee of the United States or treated for any purpose as public monies.

"(d) REGULATIONS.—The Administrator shall issue regulations within 24 months after the date of enactment of this title to implement this section.

"SEC. 793. ESTABLISHMENT OF FUNDS.

"There is established in the Treasury of the United States the following funds:

"(1) The Strategic Reserve Fund.

"(2) The Climate Change Rebate Fund.".

Subtitle C—Additional Greenhouse Gas Standards

SEC. 331. GREENHOUSE GAS STANDARDS.

The Clean Air Act (42 U.S.C. 7401 and following), as amended by subtitles A and B of this title, is further amended by adding the following new title after title VII:

"TITLE VIII—ADDITIONAL GREENHOUSE GAS STANDARDS

"SEC. 801. DEFINITIONS.

''For purposes of this title, terms that are defined in title VII, except for the term 'stationary source', shall have the meaning given those terms in title VII.

"PART A—STATIONARY SOURCE STANDARDS

"SEC. 811. STANDARDS OF PERFORMANCE.

''(a) UNCAPPED STATIONARY SOURCES.—

''(1) INVENTORY OF SOURCE CATEGORIES.—(A) Within 12 months after the date of enactment of this title, the Administrator shall publish under section 111(b)(1)(A) an inventory of categories of stationary sources that consist of those categories that contain sources that individually had uncapped greenhouse gas emissions greater than 10,000 tons of carbon dioxide equivalent and that, in the aggregate, were responsible for emitting at least 20 percent annually of the uncapped greenhouse gas emissions.

''(B) The Administrator shall include in the inventory under this paragraph each source category that is responsible for at least 10 percent of the uncapped methane emissions. Notwithstanding any other provision, the inventory required by this sec-

tion shall not include sources of enteric fermentation. The list under this paragraph shall include industrial sources, the emissions from which, when added to the capped emissions from industrial sources, constitute at least 95 percent of the greenhouse gas emissions of the industrial sector.

"(C) For purposes of this subsection, emissions shall be calculated using tons of carbon dioxide equivalents. In promulgating the inventory required by this paragraph and the schedule required under by paragraph (2)(C), the Administrator shall use the most current emissions data available at the time of promulgation.

"(D) Notwithstanding any other provisions, the Administrator may list under 111(b) any source category identified in the inventory required by this subsection without making a finding that the source category causes or contributes significantly to, air pollution with may be reasonably anticipated to endanger public health or welfare.

"(2) STANDARDS AND SCHEDULE.—(A) For each category identified as provided in paragraph (1), the Administrator shall promulgate standards of performance under section 111 for the uncapped emissions of greenhouse gases from stationary

sources in that category and shall promulgate corresponding regulations under section 111(d).

"(B) The Administrator shall promulgate standards as required by this subsection for stationary sources in categories identified as provided in paragraph (1) as expeditiously as practicable, assuring that—

"(i) standards for identified source categories that, combined, emitted 80 percent or more of the greenhouse gas emissions of the identified source categories shall be promulgated not later than 3 years after the date of enactment of this title and shall include standards for natural gas extraction; and

"(ii) for all other identified source categories—

"(I) standards for not less than an additional 25 percent of the identified categories shall be promulgated not later than 5 years after the date of enactment of this title;

"(II) standards for not less than an additional 25 percent of the identified categories shall be promulgated not later than

7 years after the date of enactment of this title; and

"(III) standards for all the identified categories shall be promulgated not later than 10 years after the date of enactment of this title.

"(C) Not later than 24 months after the date of enactment of this title and after notice and opportunity for comment, the Administrator shall publish a schedule establishing a date for the promulgation of standards for each category of sources identified pursuant to paragraph (1). The date for each category shall be consistent with the requirements of subparagraph (B). The determination of priorities for the promulgation of standards pursuant to this paragraph is not a rulemaking and shall not be subject to judicial review, except that failure to promulgate any standard pursuant to the schedule established by this paragraph shall be subject to review under section 304(a)(2).

"(D) Notwithstanding section 307, no action of the Administrator listing a source category under paragraph (1) shall be a final agency action subject to judicial review, except that any such action may be reviewed under section 307 when the Adminis-

1 trator issues performance standards for such cat-
2 egory.
3 "(b) CAPPED SOURCES.—No standard of perform-
4 ance shall be established under section 111 for capped
5 greenhouse gas emissions from a capped source unless the
6 Administrator determines that such standards are appro-
7 priate because of impacts, not including climate change
8 effects. In promulgating a standard of performance under
9 section 111 for the emission from capped sources of any
10 air pollutant that is not a greenhouse gas, the Adminis-
11 trator shall treat the emission of any greenhouse gas by
12 those entities as a nonair quality public health and envi-
13 ronmental impact within the meaning of section
14 111(a)(1).
15 "(c) PERFORMANCE STANDARDS.—For purposes of
16 setting a performance standard for source categories iden-
17 tified pursuant to subsection (a)—
18 "(1) The Administrator shall take into account
19 the goal of reducing total United States greenhouse
20 gas emissions as set forth in section 702.
21 "(2) The Administrator may promulgate a de-
22 sign, equipment, work practice, or operational stand-
23 ard, or any combination thereof, under section 111
24 in lieu of a standard of performance under that sec-
25 tion without regard to any determination of feasi-

bility that would otherwise be required under section 111(h).

"(3) Notwithstanding any other provision, in setting the level of each standard required by this section, the Administrator shall take into account projections of allowance prices, such that the marginal cost of compliance (expressed as dollars per ton of carbon dioxide equivalent reduced) imposed by the standard would not, in the judgement of the Administrator, be expected to exceed the Administrator's projected allowance prices over the time period spanning from the date of initial compliance to the date that the next revisions of the standard would come into effect pursuant to the schedule under section 111(b)(1)(B).

"(d) DEFINITIONS.—In this section, the terms 'uncapped greenhouse gas emissions' and 'uncapped methane emissions' mean those greenhouse gas or methane emissions, respectively, to which section 722 would not have applied if the requirements of this title had been in effect for the same year as the emissions data upon which the list is based.

"(e) STUDY OF THE EFFECTS OF PERFORMANCE STANDARDS.—

"(1) STUDY.—The Administrator shall conduct a study of the impacts of performance standards required under this section, which shall evaluate the effect of such standards on the—

"(A) costs of achieving compliance with the economy-wide reduction goals specified in section 702 and the reduction targets specified in section 703;

"(B) available supply of offset credits; and

"(C) ability to achieve the economy-wide reduction goals specified in section 702 and any other benefits of such standards.

"(2) REPORT.—The Administrator shall submit to the House Energy and Commerce Committee a report that describes the results of the study not later than 18 months after the publication of the standards required under subsection (a)(2)(B)(i).

"PART C—EXEMPTIONS FROM OTHER PROGRAMS

"SEC. 831. CRITERIA POLLUTANTS.

"No greenhouse gas may be listed under section 108(a) on the basis of its effect on climate change.

"SEC. 832. HAZARDOUS AIR POLLUTANTS.

"No greenhouse gas may be added to the list of hazardous air pollutants under section 112 unless such green-

house gas meets the listing criteria of section 112(b) independent of its effects on climate change.

"SEC. 833. NEW SOURCE REVIEW.

''The provisions of part C of title I shall not apply to a greenhouse gas solely on the basis of its effect on climate change or regulation under title VII or this title.

"SEC. 834. TITLE V PERMITS.

''Notwithstanding any provision of title III or V, in determining whether a stationary source is required to apply for, or operate pursuant to, a permit under title V, the Administrator shall not consider the source's greenhouse gas emissions.

"SEC. 835. EXISTING PROCEEDINGS.

''Nothing in the American Clean Energy and Security Act of 2009, or the adoption thereof, shall affect the requirements to be applied in administrative proceedings or litigation initiated under the Clean Air Act prior to the date of enactment of the American Clean Energy and Security Act of 2009. The preceding sentence does not apply to any covered EGU that is subject to the requirements of section 812(b).''.

SEC. 332. HFC REGULATION.

(a) IN GENERAL.—Title VI of the Clean Air Act (42 U.S.C. 7671 et seq.) (relating to stratospheric ozone protection) is amended by adding at the end the following:

"SEC. 619. HYDROFLUOROCARBONS (HFCS).

"(a) TREATMENT AS CLASS II, GROUP II SUBSTANCES.—Except as otherwise provided in this section, hydrofluorocarbons shall be treated as class II substances for purposes of applying the provisions of this title. The Administrator shall establish two groups of class II substances. Class II, group I substances shall include all hydrochlorofluorocarbons (HCFCs) listed pursuant to section 602(b). Class II, group II substances shall include each of the following:

"(1) Hydrofluorocarbon-23 (HFC-23).

"(2) Hydrofluorocarbon-32 (HFC-32).

"(3) Hydrofluorocarbon-41 (HFC-41).

"(4) Hydrofluorocarbon-125 (HFC-125).

"(5) Hydrofluorocarbon-134 (HFC-134).

"(6) Hydrofluorocarbon-134a (HFC-134a).

"(7) Hydrofluorocarbon-143 (HFC-143).

"(8) Hydrofluorocarbon-143a (HFC-143a).

"(9) Hydrofluorocarbon-152 (HFC-152).

"(10) Hydrofluorocarbon-152a (HFC-152a).

"(11) Hydrofluorocarbon-227ea (HFC-227ea).

"(12) Hydrofluorocarbon-236cb (HFC-236cb).

"(13) Hydrofluorocarbon-236ea (HFC-236ea).

"(14) Hydrofluorocarbon-236fa (HFC-236fa).

"(15) Hydrofluorocarbon-245ca (HFC-245ca).

"(16) Hydrofluorocarbon-245fa (HFC-245fa).

"(17) Hydrofluorocarbon-365mfc (HFC-365mfc).

"(18) Hydrofluorocarbon-43-10mee (HFC-43-10mee).

"(19) Hydrofluoroolefin-1234yf (HFO-1234yf).

"(20) Hydrofluoroolefin-1234ze (HFO-1234ze).

Not later than 6 months after the date of enactment of this title, the Administrator shall publish an initial list of class II, group II substances, which shall include the substances listed in this subsection. The Administrator may add to the list of class II, group II substances any other substance used as a substitute for a class I or II substance if the Administrator determines that 1 metric ton of the gas makes the same or greater contribution to global warming over 100 years as 1 metric ton of carbon dioxide. Within 24 months after the date of enactment of this section, the Administrator shall amend the regulations under this title (including the regulations referred to in sections 603, 608, 609, 610, 611, 612, and 613) to apply to class II, group II substances.

"(b) CONSUMPTION AND PRODUCTION OF CLASS II, GROUP II SUBSTANCES.—

"(1) IN GENERAL.—

"(A) CONSUMPTION PHASE DOWN.—In the case of class II, group II substances, in lieu of

applying section 605 and the regulations thereunder, the Administrator shall promulgate regulations phasing down the consumption of class II, group II substances in the United States, and the importation of products containing any class II, group II substance, in accordance with this subsection within 18 months after the date of enactment of this section. Effective January 1, 2012, it shall be unlawful for any person to produce any class II, group II substance, import any class II, group II substance, or import any product containing any class II, group II substance without holding one consumption allowance or one destruction offset credit for each carbon dioxide equivalent ton of the class II, group II substance. Any person who exports a class II, group II substance for which a consumption allowance was retired may receive a refund of that allowance from the Administrator following the export.

"(B) PRODUCTION.—If the United States becomes a party or otherwise adheres to a multilateral agreement, including any amendment to the Montreal Protocol on Substances That Deplete the Ozone Layer, that restricts the pro-

duction of class II, group II substances, the Administrator shall promulgate regulations establishing a baseline for the production of class II, group II substances in the United States and phasing down the production of class II, group II substances in the United States, in accordance with such multilateral agreement and subject to the same exceptions and other provisions as are applicable to the phase down of consumption of class II, group II substances under this section (except that the Administrator shall not require a person who obtains production allowances from the Administrator to make payment for such allowances if the person is making payment for a corresponding quantity of consumption allowances of the same vintage year). Upon the effective date of such regulations, it shall be unlawful for any person to produce any class II, group II substance without holding one consumption allowance and one production allowance, or one destruction offset credit, for each carbon dioxide equivalent ton of the class II, group II substance.

"(C) INTEGRITY OF CAP.—To maintain the integrity of the class II, group II cap, the

Administrator may, through rulemaking, limit the percentage of each person's compliance obligation that may be met through the use of destruction offset credits or banked allowances.

"(D) COUNTING OF VIOLATIONS.—Each emission allowance not held as required by this section shall be a separate violation of this section.

"(2) SCHEDULE.—Pursuant to the regulations promulgated pursuant to paragraph (1), the number of class II, group II consumption allowances established by the Administrator for each calendar year beginning in 2012 shall be the following percentage of the baseline, as established by the Administrator pursuant to paragraph (3):

"Calendar Year	Percent of Baseline
2012	90
2013	87.5
2014	85
2015	82.5
2016	80
2017	77.5
2018	75
2019	71
2020	67
2021	63

"Calendar Year	Percent of Baseline
2022	59
2023	54
2024	50
2025	46
2026	42
2027	38
2028	34
2029	30
2030	25
2031	21
2032	17
after 2032	15

"(3) BASELINE.—(A) Within 12 months after the date of enactment of this section, the Administrator shall promulgate regulations to establish the baseline for purposes of paragraph (2). The baseline shall be the sum, expressed in tons of carbon dioxide equivalents, of—

"(i) the annual average consumption of all class II substances in calendar years 2004, 2005, and 2006; plus

"(ii) the annual average quantity of all class II substances contained in imported products in calendar years 2004, 2005, and 2006.

"(B) Notwithstanding subparagraph (A), if the Administrator determines that the baseline is higher than 370 million metric tons of carbon dioxide equivalents, then the Administrator shall establish the baseline at 370 million metric tons of carbon dioxide equivalents.

"(C) Notwithstanding subparagraph (A), if the Administrator determines that the baseline is lower than 280 million metric tons of carbon dioxide equivalents, then the Administrator shall establish the baseline at 280 million metric tons of carbon dioxide equivalents.

"(4) DISTRIBUTION OF ALLOWANCES.—

"(A) IN GENERAL.—Pursuant to the regulations promulgated under paragraph (1), for each calendar year beginning in 2012, the Administrator shall sell consumption allowances in accordance with this paragraph.

"(B) ESTABLISHMENT OF POOLS.—The Administrator shall establish two allowance pools. Eighty percent of the consumption allowances available for a calendar year shall be placed in the producer-importer pool, and 20 percent of the consumption allowances available

for a calendar year shall be placed in the secondary pool.

"(C) PRODUCER-IMPORTER POOL.—

"(i) AUCTION.—(I) For each calendar year, the Administrator shall offer for sale at auction the following percentage of the consumption allowances in the producer-importer pool:

"Calendar Year	Percent Available for Auction
2012	10
2013	20
2014	30
2015	40
2016	50
2017	60
2018	70
2019	80
2020 and thereafter	90

"(II) Any person who produced or imported any class II substance during calendar year 2004, 2005, or 2006 may participate in the auction. No other persons may participate in the auction unless permitted to do so pursuant to subclause (III).

"(III) Not later than three years after the date of the initial auction and from time to time thereafter, the Administrator shall determine through rulemaking whether any persons who did not produce or import a class II substance during calendar year 2004, 2005, or 2006 will be permitted to participate in future auctions. The Administrator shall base this determination on the duration, consistency, and scale of such person's purchases of consumption allowances in the secondary pool under subparagraph (D), as well as economic or technical hardship and other factors deemed relevant by the Administrator.

"(IV) The Administrator shall set a minimum bid per consumption allowance of the following:

"(aa) For vintage year 2012, $1.00.

"(bb) For vintage year 2013, $1.20.

"(cc) For vintage year 2014, $1.40.

"(dd) For vintage year 2015, $1.60.

"(ee) For vintage year 2016, $1.80.

"(ff) For vintage year 2017, $2.00.

"(gg) For vintage year 2018 and thereafter, $2.00 adjusted for inflation after vintage year 2017 based upon the producer price index as published by the Department of Commerce.

"(ii) NON-AUCTION SALE.—(I) For each calendar year, as soon as practicable after auction, the Administrator shall offer for sale the remaining consumption allowances in the producer-importer pool at the following prices:

"(aa) A fee of $1.00 per vintage year 2012 allowance.

"(bb) A fee of $1.20 per vintage year 2013 allowance.

"(cc) A fee of $1.40 per vintage year 2014 allowance.

"(dd) For each vintage year 2015 allowance, a fee equal to the average of $1.10 and the auction clearing price for vintage year 2014 allowances.

"(ee) For each vintage year 2016 allowance, a fee equal to the average of $1.30 and the auction clearing price for vintage year 2015 allowances.

"(ff) For each vintage year 2017 allowance, a fee equal to the average of $1.40 and the auction clearing price for vintage year 2016 allowances.

"(gg) For each allowance of vintage year 2018 and subsequent vintage years, a fee equal to the auction clearing price for that vintage year.

"(II) The Administrator shall offer to sell the remaining consumption allowances in the producer-importer pool to producers of class II, group II substances and importers of class II, group II substances in

proportion to their relative allocation share.

"(III) Such allocation share for such sale shall be determined by the Administrator using such producer's or importer's annual average data on class II substances from calendar years 2004, 2005, and 2006, on a carbon dioxide equivalent basis, and—

"(aa) shall be based on a producer's production, plus importation, plus acquisitions and purchases from persons who produced class II substances in the United States during calendar years 2004, 2005, or 2006, less exportation, less transfers and sales to persons who produced class II substances in the United States during calendar years 2004, 2005, or 2006; and

"(bb) for an importer of class II substances that did not produce in the United States any class II substance during calendar years 2004, 2005,

and 2006, shall be based on the importer's importation less exportation. For purposes of item (aa), the Administrator shall account for 100 percent of class II, group II substances and 60 percent of class II, group I substances. For purposes of item (bb), the Administrator shall account for 100 percent of class II, group II substances and 100 percent of class II, group I substances.

''(IV) Any consumption allowances made available for nonauction sale to a specific producer or importer of class II, group II substances but not purchased by the specific producer or importer shall be made available for sale to any producer or importer of class II substances during calendar years 2004, 2005, and 2006. If demand for such consumption allowances exceeds supply of such consumption allowances, the Administrator shall develop and utilize criteria for the sale of such consumption allowances that may include pro rata shares, historic production and importation, economic or technical hardship, or

other factors deemed relevant by the Administrator. If the supply of such consumption allowances exceeds demand, the Administrator may offer such consumption allowances for sale in the secondary pool as set forth in subparagraph (D).

''(D) SECONDARY POOL.—(i) For each calendar year, as soon as practicable after the auction required in subparagraph (C), the Administrator shall offer for sale the consumption allowances in the secondary pool at the prices listed in subparagraph (C)(ii).

''(ii) The Administrator shall accept applications for purchase of secondary pool consumption allowances from—

''(I) importers of products containing class II, group II substances;

''(II) persons who purchased any class II, group II substance directly from a producer or importer of class II, group II substances for use in a product containing a class II, group II substance, a manufacturing process, or a reclamation process;

''(III) persons who did not produce or import a class II substance during cal-

endar year 2004, 2005, or 2006, but who the Administrator determines have subsequently taken significant steps to produce or import a substantial quantity of any class II, group II substance; and

"(IV) persons who produced or imported any class II substance during calendar year 2004, 2005, or 2006.

"(iii) If the supply of consumption allowances in the secondary pool equals or exceeds the demand for consumption allowances in the secondary pool as presented in the applications for purchase, the Administrator shall sell the consumption allowances in the secondary pool to the applicants in the amounts requested in the applications for purchase. Any consumption allowances in the secondary pool not purchased in a calendar year may be rolled over and added to the quantity available in the secondary pool in the following year.

"(iv) If the demand for consumption allowances in the secondary pool as presented in the applications for purchase exceeds the supply of consumption allowances in the secondary pool,

the Administrator shall sell the consumption allowances as follows:

"(I) The Administrator shall first sell the consumption allowances in the secondary pool to any importers of products containing class II, group II substances in the amounts requested in their applications for purchase. If the demand for such consumption allowances exceeds supply of such consumption allowances, the Administrator shall develop and utilize criteria for the sale of such consumption allowances among importers of products containing class II, group II substances that may include pro rata shares, historic importation, economic or technical hardship, or other factors deemed relevant by the Administrator.

"(II) The Administrator shall next sell any remaining consumption allowances to persons identified in subclauses (II) and (III) of clause (ii) in the amounts requested in their applications for purchase. If the demand for such consumption allowances exceeds remaining supply of such

consumption allowances, the Administrator shall develop and utilize criteria for the sale of such consumption allowances among subclauses (II) and (III) applicants that may include pro rata shares, historic use, economic or technical hardship, or other factors deemed relevant by the Administrator.

''(III) The Administrator shall then sell any remaining consumption allowances to persons who produced or imported any class II substance during calendar year 2004, 2005, or 2006 in the amounts requested in their applications for purchase. If demand for such consumption allowances exceeds remaining supply of such consumption allowances, the Administrator shall develop and utilize criteria for the sale of such consumption allowances that may include pro rata shares, historic production and importation, economic or technical hardship, or other factors deemed relevant by the Administrator.

''(IV) Each person who purchases consumption allowances in a non-auction

sale under this subparagraph shall be required to disclose the person or entity sponsoring or benefitting from the purchases if such person or entity is, in whole or in part, other than the purchaser or the purchaser's employer.

"(E) DISCRETION TO WITHHOLD ALLOWANCES.—Nothing in this paragraph prevents the Administrator from exercising discretion to withhold and retire consumption allowances that would otherwise be available for auction or nonauction sale. Not later than 18 months after the date of enactment of this section, the Administrator shall promulgate regulations establishing criteria for withholding and retiring consumption allowances.

"(5) BANKING.—A consumption allowance or destruction offset credit may be used to meet the compliance obligation requirements of paragraph (1) in—

"(A) the vintage year for the allowance or destruction offset credit; or

"(B) any calendar year subsequent to the vintage year for the allowance or destruction offset credit.

"(6) AUCTIONS.—

"(A) INITIAL REGULATIONS.—Not later than 18 months after the date of enactment of this section, the Administrator shall promulgate regulations governing the auction of allowances under this section. Such regulations shall include the following requirements:

"(i) FREQUENCY; FIRST AUCTION.—Auctions shall be held one time per year at regular intervals, with the first auction to be held no later than October 31, 2011.

"(ii) AUCTION FORMAT.—Auctions shall follow a single-round, sealed-bid, uniform price format.

"(iii) FINANCIAL ASSURANCE.—The Administrator may establish financial assurance requirements to ensure that auction participants can and will perform on their bids.

"(iv) DISCLOSURE OF BENEFICIAL OWNERSHIP.—Each bidder in the auction shall be required to disclose the person or entity sponsoring or benefitting from the bidder's participation in the auction if such person or entity is, in whole or in part,

other than the bidder or the bidder's employer.

"(v) PUBLICATION OF INFORMATION.—After the auction, the Administrator shall, in a timely fashion, publish the number of bidders, number of winning bidders, the quantity of allowances sold, and the auction clearing price.

"(vi) BIDDING LIMITS IN 2012.—In the vintage year 2012 auction, no auction participant may, directly or in concert with another participant, bid for or purchase more allowances offered for sale at the auction than the greater of—

"(I) the number of allowances which, when added to the number of allowances available for purchase by the participant in the producer-importer pool non-auction sale, would equal the participant's annual average consumption of class II, group II substances in calendar years 2004, 2005, and 2006; or

"(II) the number of allowances equal to the product of—

"(aa) 1.20 multiplied by the participant's allocation share of the producer-importer pool non-auction sale as determined under paragraph (4)(C)(ii); and

"(bb) the number of vintage year 2012 allowances offered at auction.

"(vii) BIDDING LIMITS IN 2013.—In the vintage year 2013 auction, no auction participant may, directly or in concert with another participant, bid for or purchase more allowances offered for sale at the auction than the product of—

"(I) 1.15 multiplied by the ratio of the total number of vintage year 2012 allowances purchased by the participant from the auction and from the producer-importer pool non-auction sale to the total number of vintage year 2012 allowances in the producer-importer pool; and

"(II) the number of vintage year 2013 allowances offered at auction.

"(viii) BIDDING LIMITS IN SUBSEQUENT YEARS.—In the auctions for vintage year 2014 and subsequent vintage years, no auction participant may, directly or in concert with another participant, bid for or purchase more allowances offered for sale at the auction than the product of—

"(I) 1.15 multiplied by the ratio of the highest number of allowances held by the participant in any of the three prior vintage years to meet its compliance obligation under paragraph (1) to the total number of allowances in the producer-importer pool for such vintage year; and

"(II) the number of allowances offered at auction for that vintage year.

"(ix) OTHER REQUIREMENTS.—The Administrator may include in the regulations such other requirements or provisions as the Administrator considers necessary to promote effective, efficient, transparent,

and fair administration of auctions under this section.

"(B) REVISION OF REGULATIONS.—The Administrator may, at any time, revise the initial regulations promulgated under subparagraph (A) based on the Administrator's experience in administering allowance auctions. Such revised regulations need not meet the requirements identified in subparagraph (A) if the Administrator determines that an alternative auction design would be more effective, taking into account factors including costs of administration, transparency, fairness, and risks of collusion or manipulation. In determining whether and how to revise the initial regulations under this paragraph, the Administrator shall not consider maximization of revenues to the Federal Government.

"(C) DELEGATION OR CONTRACT.—Pursuant to regulations under this section, the Administrator may, by delegation or contract, provide for the conduct of auctions under the Administrator's supervision by other departments or agencies of the Federal Government or by

nongovernmental agencies, groups, or organizations.

"(7) PAYMENTS FOR ALLOWANCES.—

"(A) INITIAL REGULATIONS.—Not later than 18 months after the date of enactment of this section, the Administrator shall promulgate regulations governing the payment for allowances purchased in auction and non-auction sales under this section. Such regulations shall include the requirement that, in the event that full payment for purchased allowances is not made on the date of purchase, equal payments shall be made one time per calendar quarter with all payments for allowances of a vintage year made by the end of that vintage year.

"(B) REVISION OF REGULATIONS.—The Administrator may, at any time, revise the initial regulations promulgated under subparagraph (A) based on the Administrator's experience in administering collection of payments. Such revised regulations need not meet the requirements identified in subparagraph (A) if the Administrator determines that an alternative payment structure or frequency would be more effective, taking into account factors in-

cluding cost of administration, transparency, and fairness. In determining whether and how to revise the initial regulations under this paragraph, the Administrator shall not consider maximization of revenues to the Federal Government.

"(C) PENALTIES FOR NON-PAYMENT.—Failure to pay for purchased allowances in accordance with the regulations promulgated pursuant to this paragraph shall be a violation of the requirements of subsection (b). Section 113(c)(3) shall apply in the case of any person who knowingly fails to pay for purchased allowances in accordance with the regulations promulgated pursuant to this paragraph.

"(8) IMPORTED PRODUCTS.—If the United States becomes a party or otherwise adheres to a multilateral agreement, including any amendment to the Montreal Protocol on Substances That Deplete the Ozone Layer, which restricts the production and consumption of class II, group II substances—

"(A) as of the date on which such agreement or amendment enters into force, it shall no longer be unlawful for any person to import from a party to such agreement or amendment

any product containing any class II, group II substance whose production and consumption are regulated by such agreement or amendment without holding one consumption allowance or one destruction offset credit for each carbon dioxide equivalent ton of the class II, group II substance;

"(B) the Administrator shall promulgate regulations within 12 months of the date the United States becomes a party or otherwise adheres to such agreement or amendment, or the date on which such agreement or amendment enters into force, whichever is later, to establish a new baseline for purposes of paragraph (2), which new baseline shall be the original baseline less the carbon dioxide equivalent of the annual average quantity of any class II substances regulated by such agreement or amendment contained in products imported from parties to such agreement or amendment in calendar years 2004, 2005, and 2006;

"(C) as of the date on which such agreement or amendment enters into force, no person importing any product containing any class II, group II substance may, directly or in con-

cert with another person, purchase any consumption allowances for sale by the Administrator for the importation of products from a party to such agreement or amendment that contain any class II, group II substance restricted by such agreement or amendment; and

"(D) the Administrator may adjust the two allowance pools established in paragraph (4) such that up to 90 percent of the consumption allowances available for a calendar year are placed in the producer-importer pool with the remaining consumption allowances placed in the secondary pool.

"(9) OFFSETS.—

"(A) CHLOROFLUOROCARBON DESTRUCTION.—Within 18 months after the date of enactment of this section, the Administrator shall promulgate regulations to provide for the issuance of offset credits for the destruction, in the calendar year 2012 or later, of chlorofluorocarbons in the United States. The Administrator shall establish and distribute to the destroying entity a quantity of destruction offset credits equal to 0.8 times the number of tons of carbon dioxide equivalents of reduction

1 achieved through the destruction. No destruc-
2 tion offset credits shall be established for the
3 destruction of a class II, group II substance.

4 "(B) DEFINITION.—For purposes of this
5 paragraph, the term 'destruction' means the
6 conversion of a substance by thermal, chemical,
7 or other means to another substance with little
8 or no carbon dioxide equivalent value and no
9 ozone depletion potential.

10 "(C) REGULATIONS.—The regulations pro-
11 mulgated under this paragraph shall include
12 standards and protocols for project eligibility,
13 certification of destroyers, monitoring, tracking,
14 destruction efficiency, quantification of project
15 and baseline emissions and carbon dioxide
16 equivalent value, and verification. The Adminis-
17 trator shall ensure that destruction offset cred-
18 its represent real and verifiable destruction of
19 chlorofluorocarbons or other class I or class II,
20 group I, substances authorized under subpara-
21 graph (D).

22 "(D) OTHER SUBSTANCES.—The Adminis-
23 trator may promulgate regulations to add to the
24 list of class I and class II, group I, substances
25 that may be destroyed for destruction offset

1 credits, taking into account a candidate sub-
2 stance's carbon dioxide equivalent value, ozone
3 depletion potential, prevalence in banks in the
4 United States, and emission rates, as well as
5 the need for additional cost containment under
6 the class II, group II cap and the integrity of
7 the class II, group II cap. The Administrator
8 shall not add a class I or class II, group I sub-
9 stance to the list if the consumption of the sub-
10 stance has not been completely phased-out
11 internationally (except for essential use exemp-
12 tions or other similar exemptions) pursuant to
13 the Montreal Protocol.

14 ''(E) EXTENSION OF OFFSETS.—(i) At any
15 time after the Administrator promulgates regu-
16 lations pursuant to subparagraph (A), the Ad-
17 ministrator may add the types of destruction
18 projects authorized to receive destruction offset
19 credits under this paragraph to the list of types
20 of projects eligible for offset credits under sec-
21 tion 733. Nothing in this paragraph shall affect
22 the issuance of offset credits under section 740.

23 ''(ii) The Administrator shall not make the
24 addition under clause (i) unless the Adminis-
25 trator finds that insufficient destruction is oc-

curring or is projected to occur under this paragraph and that the addition would increase destruction.

"(iii) In no event shall more than one destruction offset credit be issued under title VII and this section for the destruction of the same quantity of a substance.

"(10) LEGAL STATUS OF ALLOWANCES AND CREDITS.—None of the following constitutes a property right:

"(A) A production or consumption allowance.

"(B) A destruction offset credit.

"(c) DEADLINES FOR COMPLIANCE.—Notwithstanding the deadlines specified for class II substances in sections 608, 609, 610, 612, and 613 that occur prior to January 1, 2009, the deadline for promulgating regulations under those sections for class II, group II substances shall be January 1, 2012.

"(d) EXCEPTIONS FOR ESSENTIAL USES.—Notwithstanding any phase down of production and consumption required by this section, to the extent consistent with any applicable multilateral agreement to which the United States is a party or otherwise adheres, the Administrator may provide the following exceptions for essential uses:

"(1) MEDICAL DEVICES.—The Administrator, after notice and opportunity for public comment, and in consultation with the Commissioner of the Food and Drug Administration, may provide an exception for the production and consumption of class II, group II substances solely for use in medical devices.

"(2) AVIATION SAFETY.—The Administrator, after notice and opportunity for public comment, may authorize the production and consumption of limited quantities of class II, group II substances solely for the purposes of aviation safety if the Administrator of the Federal Aviation Administration, in consultation with the Administrator, determines that no safe and effective substitute has been developed and that such authorization is necessary for aviation safety purposes.

"(e) DEVELOPING COUNTRIES.—Notwithstanding any phase down of production required by this section, the Administrator, after notice and opportunity for public comment, may authorize the production of limited quantities of class II, group II substances in excess of the amounts otherwise allowable under this section solely for export to, and use in, developing countries. Any production authorized under this subsection shall be solely for

1 purposes of satisfying the basic domestic needs of such
2 countries as provided in applicable international agree-
3 ments, if any, to which the United States is a party or
4 otherwise adheres.

5 "(f) NATIONAL SECURITY; FIRE SUPPRESSION,
6 ETC.—The provisions of subsection (f) and paragraphs (1)
7 and (2) of subsection (g) of section 604 shall apply to any
8 consumption and production phase down of class II, group
9 II substances in the same manner and to the same extent,
10 consistent with any applicable international agreement to
11 which the United States is a party or otherwise adheres,
12 as such provisions apply to the substances specified in
13 such subsection.

14 "(g) ACCELERATED SCHEDULE.—In lieu of section
15 606, the provisions of paragraphs (1), (2), and (3) of this
16 subsection shall apply in the case of class II, group II sub-
17 stances.

18 "(1) IN GENERAL.—The Administrator shall
19 promulgate initial regulations not later than 18
20 months after the date of enactment of this section,
21 and revised regulations any time thereafter, which
22 establish a schedule for phasing down the consump-
23 tion (and, if the condition in subsection (b)(1)(B) is
24 met, the production) of class II, group II substances
25 that is more stringent than the schedule set forth in

this section if, based on the availability of substitutes, the Administrator determines that such more stringent schedule is practicable, taking into account technological achievability, safety, and other factors the Administrator deems relevant, or if the Montreal Protocol, or any applicable international agreement to which the United States is a party or otherwise adheres, is modified or established to include a schedule or other requirements to control or reduce production, consumption, or use of any class II, group II substance more rapidly than the applicable schedule under this section.

"(2) PETITION.—Any person may submit a petition to promulgate regulations under this subsection in the same manner and subject to the same procedures as are provided in section 606(b).

"(3) INCONSISTENCY.—If the Administrator determines that the provisions of this section regarding banking, allowance rollover, or destruction offset credits create a significant potential for inconsistency with the requirements of any applicable international agreement to which the United States is a party or otherwise adheres, the Administrator may promulgate regulations restricting the availability of banking, allowance rollover, or destruction offset

1 credits to the extent necessary to avoid such incon-
2 sistency.

3 ''(h) EXCHANGE.—Section 607 shall not apply in the
4 case of class II, group II substances. Production and con-
5 sumption allowances for class II, group II substances may
6 be freely exchanged or sold but may not be converted into
7 allowances for class II, group I substances.

8 ''(i) LABELING.—(1) In applying section 611 to prod-
9 ucts containing or manufactured with class II, group II
10 substances, in lieu of the words 'destroying ozone in the
11 upper atmosphere' on labels required under section 611
12 there shall be substituted the words 'contributing to global
13 warming'.

14 ''(2) The Administrator may, through rulemaking,
15 exempt from the requirements of section 611 products
16 containing or manufactured with class II, group II sub-
17 stances determined to have little or no carbon dioxide
18 equivalent value compared to other substances used in
19 similar products.

20 ''(j) NONESSENTIAL PRODUCTS.—For the purposes
21 of section 610, class II, group II substances shall be regu-
22 lated under section 610(b), except that in applying section
23 610(b) the word 'hydrofluorocarbon' shall be substituted
24 for the word 'chlorofluorocarbon' and the term 'class II,
25 group II' shall be substituted for the term 'class I'. Class

1 II, group II substances shall not be subject to the provi-
2 sions of section 610(d).

3 "(k) INTERNATIONAL TRANSFERS.—In the case of
4 class II, group II substances, in lieu of sections 616(a)
5 and 616(b), this subsection shall apply. To the extent con-
6 sistent with any applicable international agreement to
7 which the United States is a party or otherwise adheres,
8 including any amendment to the Montreal Protocol, the
9 United States may engage in transfers with other parties
10 to such agreement or amendment under the following con-
11 ditions:

12 "(1) The United States may transfer produc-
13 tion allowances to another party to such agreement
14 or amendment if, at the time of the transfer, the
15 Administrator establishes revised production limits
16 for the United States accounting for the transfer in
17 accordance with regulations promulgated pursuant
18 to this subsection.

19 "(2) The United States may acquire production
20 allowances from another party to such agreement or
21 amendment if, at the time of the transfer, the Ad-
22 ministrator finds that the other party has revised its
23 domestic production limits in the same manner as
24 provided with respect to transfers by the United

1 States in the regulations promulgated pursuant to
2 this subsection.
3 "(l) RELATIONSHIP TO OTHER LAWS.—
4 "(1) STATE LAWS.—For purposes of section
5 116, the requirements of this section for class II,
6 group II substances shall be treated as requirements
7 for the control and abatement of air pollution.
8 "(2) INTERNATIONAL AGREEMENTS.—Section
9 614 shall apply to the provisions of this section con-
10 cerning class II, group II substances, except that for
11 the words 'Montreal Protocol' there shall be sub-
12 stituted the words 'Montreal Protocol, or any appli-
13 cable international agreement to which the United
14 States is a party or otherwise adheres that restricts
15 the production or consumption of class II, group II
16 substances,' and for the words 'Article 4 of the Mon-
17 treal Protocol' there shall be substituted 'any provi-
18 sion of such international agreement regarding trade
19 with non-parties'.
20 "(3) FEDERAL FACILITIES.—For purposes of
21 section 118, the requirements of this section for
22 class II, group II substances and corresponding
23 State, interstate, and local requirements, administra-
24 tive authority, and process and sanctions shall be
25 treated as requirements for the control and abate-

ment of air pollution within the meaning of section 118.

"(m) CARBON DIOXIDE EQUIVALENT VALUE.—(1) In lieu of section 602(e), the provisions of this subsection shall apply in the case of class II, group II substances. Simultaneously with establishing the list of class II, group II substances, and simultaneously with any addition to that list, the Administrator shall publish the carbon dioxide equivalent value of each listed class II, group II substance, based on a determination of the number of metric tons of carbon dioxide that makes the same contribution to global warming over 100 years as 1 metric ton of each class II, group II substance.

"(2) Not later than February 1, 2017, and not less than every 5 years thereafter, the Administrator shall—

"(A) review, and if appropriate, revise the carbon dioxide equivalent values established for class II, group II substances based on a determination of the number of metric tons of carbon dioxide that makes the same contributions to global warming over 100 years as 1 metric ton of each class II, group II substance; and

"(B) publish in the Federal Register the results of that review and any revisions.

"(3) A revised determination published in the Federal Register under paragraph (2)(B) shall take effect for production of class II, group II substances, consumption of class II, group II substances, and importation of products containing class II, group II substances starting on January 1 of the first calendar year starting at least 9 months after the date on which the revised determination was published.

"(4) The Administrator may decrease the frequency of review and revision under paragraph (2) if the Administrator determines that such decrease is appropriate in order to synchronize such review and revisions with any similar review process carried out pursuant to the United Nations Framework Convention on Climate Change, an agreement negotiated under that convention, The Vienna Convention for the Protection of the Ozone Layer, or an agreement negotiated under that convention, except that in no event shall the Administrator carry out such review and revision any less frequently than every 10 years.

"(n) REPORTING REQUIREMENTS.—In lieu of subsections (b) and (c) of section 603, paragraphs (1) and (2) of this subsection shall apply in the case of class II, group II substances:

"(1) IN GENERAL.—On a quarterly basis, or such other basis (not less than annually) as deter-

mined by the Administrator, each person who produced, imported, or exported a class II, group II substance, or who imported a product containing a class II, group II substance, shall file a report with the Administrator setting forth the carbon dioxide equivalent amount of the substance that such person produced, imported, or exported, as well as the amount that was contained in products imported by that person, during the preceding reporting period. Each such report shall be signed and attested by a responsible officer. If all other reporting is complete, no such report shall be required from a person after April 1 of the calendar year after such person permanently ceases production, importation, and exportation of the substance, as well as importation of products containing the substance, and so notifies the Administrator in writing. If the United States becomes a party or otherwise adheres to a multilateral agreement, including any amendment to the Montreal Protocol on Substances That Deplete the Ozone Layer, that restricts the production and consumption of class II, group II substances, then, if all other reporting is complete, no such report shall be required from a person with respect to importation from parties to such agreement or amendment of

1 products containing any class II, group II substance
2 restricted by such agreement or amendment, after
3 April 1 of the calendar year following the year dur-
4 ing which such agreement or amendment enters into
5 force.

6 "(2) BASELINE REPORTS FOR CLASS II, GROUP
7 II SUBSTANCES.—

8 "(A) IN GENERAL.—Unless such informa-
9 tion has been previously reported to the Admin-
10 istrator, on the date on which the first report
11 under paragraph (1) of this subsection is re-
12 quired to be filed, each person who produced,
13 imported, or exported a class II, group II sub-
14 stance, or who imported a product containing a
15 class II substance, (other than a substance
16 added to the list of class II, group II substances
17 after the publication of the initial list of such
18 substances under this section), shall file a re-
19 port with the Administrator setting forth the
20 amount of such substance that such person pro-
21 duced, imported, exported, or that was con-
22 tained in products imported by that person,
23 during each of calendar years 2004, 2005, and
24 2006.

"(B) PRODUCERS.—In reporting under subparagraph (A), each person who produced in the United States a class II substance during calendar years 2004, 2005, or 2006 shall—

"(i) report all acquisitions or purchases of class II substances during each of calendar years 2004, 2005, and 2006 from all other persons who produced in the United States a class II substance during calendar years 2004, 2005, or 2006, and supply evidence of such acquisitions and purchases as deemed necessary by the Administrator; and

"(ii) report all transfers or sales of class II substances during each of calendar years 2004, 2005, and 2006 to all other persons who produced in the United States a class II substance during calendar years 2004, 2005, or 2006, and supply evidence of such transfers and sales as deemed necessary by the Administrator.

"(C) ADDED SUBSTANCES.—In the case of a substance added to the list of class II, group II substances after publication of the initial list of such substances under this section, each per-

son who produced, imported, exported, or imported products containing such substance in calendar year 2004, 2005, or 2006 shall file a report with the Administrator within 180 days after the date on which such substance is added to the list, setting forth the amount of the substance that such person produced, imported, and exported, as well as the amount that was contained in products imported by that person, in calendar years 2004, 2005, and 2006.

"(o) STRATOSPHERIC OZONE AND CLIMATE PROTECTION FUND.—

"(1) IN GENERAL.—There is established in the Treasury of the United States a Stratospheric Ozone and Climate Protection Fund.

"(2) DEPOSITS.—The Administrator shall deposit all proceeds from the auction and non-auction sale of allowances under this section into the Stratospheric Ozone and Climate Protection Fund.

"(3) USE.—Amounts deposited into the Stratospheric Ozone and Climate Protection Fund shall be available, subject to appropriations, exclusively for the following purposes:

"(A) RECOVERY, RECYCLING, AND RECLAMATION.—The Administrator may utilize

1 funds to establish a program to incentivize the
2 recovery, recycling, and reclamation of any
3 Class II substances in order to reduce emissions
4 of such substances.

5 "(B) MULTILATERAL FUND.—If the
6 United States becomes a party or otherwise ad-
7 heres to a multilateral agreement, including any
8 amendment to the Montreal Protocol on Sub-
9 stances That Deplete the Ozone Layer, which
10 restricts the production and consumption of
11 class II, group II substances, the Administrator
12 may utilize funds to meet any related contribu-
13 tion obligation of the United States to the Mul-
14 tilateral Fund for the Implementation of the
15 Montreal Protocol or similar multilateral fund
16 established under such multilateral agreement.

17 "(C) BEST-IN-CLASS APPLIANCES DEPLOY-
18 MENT PROGRAM.—The Secretary of Energy is
19 authorized to utilize funds to carry out the pur-
20 poses of section 214 of the American Clean En-
21 ergy and Security Act of 2009.

22 "(D) LOW GLOBAL WARMING PRODUCT
23 TRANSITION ASSISTANCE PROGRAM.—

24 "(i) IN GENERAL.—The Adminis-
25 trator, in consultation with the Secretary

of Energy, may utilize funds in fiscal years 2012 through 2022 to establish a program to provide financial assistance to manufacturers of products containing class II, group II substances to facilitate the transition to products that contain or utilize alternative substances with no or low carbon dioxide equivalent value and no ozone depletion potential.

"(ii) DEFINITION.—In this subparagraph, the term 'products' means refrigerators, freezers, dehumidifiers, air conditioners, foam insulation, technical aerosols, fire protection systems, and semiconductors.

"(iii) FINANCIAL ASSISTANCE.—The Administrator may provide financial assistance to manufacturers pursuant to clause (i) for—

"(I) the design and configuration of new consumer products that use alternative substances with no or low carbon dioxide equivalent value and no ozone depletion potential; and

"(II) the redesign and retooling of facilities for the manufacture of consumer products in the United States that use alternative substances with no or low carbon dioxide equivalent value and no ozone depletion potential.

"(iv) REPORTS.—For any fiscal year during which the Administrator provides financial assistance pursuant to this subparagraph, the Administrator shall submit a report to the Congress within 3 months of the end of such fiscal year detailing the amounts, recipients, specific purposes, and results of the financial assistance provided."

(b) TABLE OF CONTENTS.—The table of contents of title VI of the Clean Air Act (42 U.S.C. 7671 et seq.) is amended by adding the following new item at the end thereof:

"Sec. 619. Hydrofluorocarbons (HFCs).".

(c) FIRE SUPPRESSION AGENTS.—Section 605(a) of the Clean Air Act (42 U.S.C. 7671(a)) is amended—

(1) by striking "or" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting "; or"; and

(3) by adding the following new paragraph after paragraph (3):

"(4) is listed as acceptable for use as a fire suppression agent for nonresidential applications in accordance with section 612(c).".

(d) MOTOR VEHICLE AIR CONDITIONERS.—

(1) Section 609(e) of the Clean Air Act (42 U.S.C. 7671h(e)) is amended by inserting ", group I" after each reference to "class II".

(2) Section 609 of the Clean Air Act (42 U.S.C. 7671h) is amended by adding the following new subsection after subsection (e):

"(f) CLASS II, GROUP II SUBSTANCES.—

"(1) REPAIR.—The Administrator may promulgate regulations establishing requirements for repair of motor vehicle air conditioners prior to adding a class II, group II substance.

"(2) SMALL CONTAINERS.—(A) The Administrator may promulgate regulations establishing servicing practices and procedures for recovery of class II, group II substances from containers which contain less than 20 pounds of such class II, group II substances.

"(B) Not later than 18 months after enactment of this subsection, the Administrator shall either promulgate regulations requiring that containers which contain less than 20 pounds of a class II, group II substance be equipped with a device or technology that limits refrigerant emissions and leaks from the container and limits refrigerant emissions and leaks during the transfer of refrigerant from the container to the motor vehicle air conditioner or issue a determination that such requirements are not necessary or appropriate.

"(C) Not later than 18 months after enactment of this subsection, the Administrator shall promulgate regulations establishing requirements for consumer education materials on best practices associated with the use of containers which contain less than 20 pounds of a class II, group II substance and prohibiting the sale or distribution, or offer for sale or distribution, of any class II, group II substance in any container which contains less than 20 pounds of such class II, group II substance, unless consumer education materials consistent with such requirements are displayed and available at point-of-sale locations, provided to the consumer, or included in or on the packaging of the container which con-

tain less than 20 pounds of a class II, group II substance.

"(D) The Administrator may, through rulemaking, extend the requirements established under this paragraph to containers which contain 30 pounds or less of a class II, group II substance if the Administrator determines that such action would produce significant environmental benefits.

"(3) RESTRICTION OF SALES.—Effective January 1, 2014, no person may sell or distribute or offer to sell or distribute or otherwise introduce into interstate commerce any motor vehicle air conditioner refrigerant in any size container unless the substance has been found acceptable for use in a motor vehicle air conditioner under section 612.".

(e) SAFE ALTERNATIVES POLICY.—Section 612(e) of the Clean Air Act (42 U.S.C. 7671k(e)) is amended by inserting "or class II" after each reference to "class I".

SEC. 333. BLACK CARBON.

(a) DEFINITION.—As used in this section, the term "black carbon" means the light absorbing component of carbonaceous aerosols.

(b) BLACK CARBON ABATEMENT REPORT.—Not later than one year after the date of enactment of this section, the Administrator shall, in consultation with other

appropriate Federal agencies, submit to Congress a report regarding black carbon emissions. The report shall include the following:

(1) A summary of the current research that identifies—

(A) an inventory of the major sources of black carbon emissions in the United States and throughout the world, including—

(i) an estimate of the quantity of current and projected future emissions; and

(ii) the net climate forcing of the emissions from such sources, including consideration of co-emissions of other pollutants;

(B) effective and cost-effective control technologies, operations, and strategies for additional domestic and international black carbon emissions reductions, such as diesel retrofit technologies on existing on-road and off-road engines and programs to address residential cookstoves, forest burning, and other agriculture-based burning;

(C) potential metrics quantifying the climatic effects of black carbon emissions, including its radiative forcing and warming effects,

that may be used to compare the climate benefits of different mitigation strategies, including an assessment of the uncertainty in such metrics; and

(D) the public health and environmental benefits associated with additional controls for black carbon emissions.

(2) Recommendations regarding—

(A) development of additional emissions monitoring techniques and capabilities, modeling, and other black carbon-related areas of study;

(B) areas of focus for additional study of technologies, operations, and strategies with the greatest potential to reduce emissions of black carbon; and

(C) actions, in addition to those identified by the Administrator under section 851 of the Clean Air Act (as amended by subsection (c)), the Federal Government may take to encourage or require reductions in black carbon emissions.

(c) BLACK CARBON MITIGATION.—Title VIII of the Clean Air Act, as added by section 331 of this Act, and amended by section 222 of this Act, is further amended by adding after part D the following new part:

"PART E—BLACK CARBON

"SEC. 851. BLACK CARBON.

"(a) DOMESTIC BLACK CARBON MITIGATION.—Not later than one year after the date of enactment of this section, the Administrator, taking into consideration the public health and environmental impacts of black carbon emissions, including the effects on global warming, the Arctic, and other snow and ice-covered surfaces, shall propose regulations under the existing authorities of this Act to reduce emissions of black carbon or propose a finding that existing regulations promulgated pursuant to this Act adequately regulate black carbon emissions. Not later than two years after the date of enactment of this section, the Administrator shall promulgate final regulations under the existing authorities of this Act or finalize the proposed finding.

"(b) INTERNATIONAL BLACK CARBON MITIGATION.—

"(1) REPORT.—Not later than one year after the date of enactment of this section, the Administrator, in coordination with the Secretary of State and other appropriate Federal agencies, shall transmit a report to Congress on the amount, type, and direction of all present United States financial, technical, and related assistance to foreign countries to

reduce, mitigate, and otherwise abate black carbon emissions.

"(2) OTHER OPPORTUNITIES.—The report required under paragraph (1) shall also identify opportunities and recommendations, including action under existing authorities, to achieve significant black carbon emission reductions in foreign countries through technical assistance or other approaches to—

"(A) promote sustainable solutions to bring clean, efficient, safe, and affordable stoves, fuels, or both stoves and fuels to residents of developing countries that are reliant on solid fuels such as wood, dung, charcoal, coal, or crop residues for home cooking and heating, so as to help reduce the public health, environmental, and economic impacts of black carbon emissions from these sources by—

"(i) identifying key regions for large-scale demonstration efforts, and key partners in each such region; and

"(ii) developing for each such region a large-scale implementation strategy with a goal of collectively reaching 20,000,000

homes over 5 years with interventions that will—

"(I) increase stove efficiency by over 50 percent (or such other goal as determined by the Administrator);

"(II) reduce emissions of black carbon by over 60 percent (or such other goal as determined by the Administrator); and

"(III) reduce the incidence of severe pneumonia in children under 5 years old by over 30 percent (or such other goal as determined by the Administrator);

"(B) make technological improvements to diesel engines and provide greater access to fuels that emit less or no black carbon;

"(C) reduce unnecessary agricultural or other biomass burning where feasible alternatives exist;

"(D) reduce unnecessary fossil fuel burning that produces black carbon where feasible alternatives exist;

"(E) reduce other sources of black carbon emissions; and

"(F) improve capacity to achieve greater compliance with existing laws to address black carbon emissions.".

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

SEC. 334. STATES.

Section 116 of the Clean Air Act (42 U.S.C. 7416) is amended by adding the following at the end thereof: "For the purposes of this section, the phrases 'standard or limitation respecting emissions of air pollutants' and 'requirements respecting control or abatement of air pollution' shall include any provision to: cap greenhouse gas emissions, require surrender to the State or a political subdivision thereof of emission allowances or offset credits established or issued under this Act, and require the use of such allowances or credits as a means of demonstrating compliance with requirements established by a State or political subdivision thereof.".

SEC. 335. STATE PROGRAMS.

Title VIII of the Clean Air Act, as added by section 331 of this Act and amended by several sections of this Act, is further amended by adding after part E (as added by section 333 of this Act) the following new part:

"PART F—MISCELLANEOUS

"SEC. 861. STATE PROGRAMS.

''Notwithstanding section 116, no State or political subdivision thereof shall implement or enforce a cap and trade program that covers any capped emissions emitted during the years 2012 through 2017. For purposes of this section, the term 'cap and trade program' means a system of greenhouse gas regulation under which a State or political subdivision issues a limited number of tradable instruments in the nature of emission allowances and requires that sources within its jurisdiction surrender such tradeable instruments for each unit of greenhouse gases emitted during a compliance period. For purposes of this section, a 'cap-and-trade program' does not include a target or limit on greenhouse gas emissions adopted by a State or political subdivision that is implemented other than through the issuance and surrender of a limited number of tradable instruments in the nature of emission allowances, nor does it include any other standard, limit, regulation, or program to reduce greenhouse gas emissions that is not implemented through the issuance and surrender of a limited number of tradeable instruments in the nature of emission allowances. For purposes of this section, the term 'cap and trade program' does not include, among other things, fleet-wide motor vehicle emission requirements that allow greater emissions with in-

creased vehicle production, or requirements that fuels, or other products, meet an average pollution emission rate or lifecycle greenhouse gas standard.''.

SEC. 336. ENFORCEMENT.

(a) REMAND.—Section 307(b) of the Clean Air Act (42 U.S.C. 7607(b)) is amended by adding the following new paragraph at the end thereof:

''(3) If the court determines that any action of the Administrator is arbitrary, capricious, or otherwise unlawful, the court may remand such action, without vacatur, if vacatur would impair or delay protection of the environment or public health or otherwise undermine the timely achievement of the purposes of this Act.''.

(b) PETITION FOR RECONSIDERATION.—Section 307(d)(7)(B) of the Clean Air Act (42 U.S.C. 7607(d)(7)(B)) is amended as follows:

(1) By inserting after the second sentence ''If a petition for reconsideration is filed, the Administrator shall take final action on such petition, including promulgation of final action either revising or determining not to revise the action for which reconsideration is sought, within 150 days after the petition is received by the Administrator or the peti-

tion shall be deemed denied for the purpose of judicial review.''.

(2) By amending the third sentence to read as follows: ''Such person may seek judicial review of such denial, or of any other final action, by the Administrator, in response to a petition for reconsideration, in the United States court of appeals for the appropriate circuit (as provided in subsection (b)).''.

SEC. 337. CONFORMING AMENDMENTS.

(a) FEDERAL ENFORCEMENT.—Section 113 of the Clean Air Act (42 U.S.C. 7413) is amended as follows:

(1) In subsection (a)(3), by striking ''or title VI,'' and inserting ''title VI, title VII, or title VIII''.

(2) In subsection (b), by striking ''or a major stationary source'' and inserting ''a major stationary source, or a covered EGU under title VIII,'' in the material preceding paragraph (1).

(3) In paragraph (2), by striking ''or title VI'' and inserting ''title VI, title VII, or title VIII''.

(4) In subsection (c)—

(A) in the first sentence of paragraph (1), by striking ''or title VI (relating to stratospheric ozone control),'' and inserting ''title VI (relating to stratospheric ozone control), or title

VII or VIII (relating to reduction of greenhouse gas emissions),''; and

(B) in the first sentence of paragraph (3), by striking ''or VI'' and inserting ''VI, VII, VIII''.

(5) In subsection (d)(1)(B), by striking ''or VI'' and inserting ''VI, VII, or VIII''.

(6) In subsection (f), in the first sentence, by striking ''or VI'' and inserting ''VI, VII, or VIII''.

(b) RETENTION OF STATE AUTHORITY.—Section 116 of the Clean Air Act (42 U.S.C. 7416) is amended as follows:

(1) By striking ''and 233'' and inserting ''233''.

(2) By striking ''of moving sources)'' and inserting ''of moving sources), and 861 (preempting certain State greenhouse gas programs for a limited time)''.

(c) INSPECTIONS, MONITORING, AND ENTRY.—Section 114(a) of the Clean Air Act (42 U.S.C. 7414(a)) is amended by striking ''section 112,'' and all that follows through ''(ii)'' and inserting the following: ''section 112, or any regulation of greenhouse gas emissions under title VII or VIII, (ii)''.

(d) ENFORCEMENT.—Subsection (f) of section 304 of the Clean Air Act (42 U.S.C. 7604(f)) is amended as follows:

(1) By striking ''; or'' at the end of paragraph (3) thereof and inserting a comma.

(2) By striking the period at the end of paragraph (4) thereof and inserting '', or''.

(3) By adding the following after paragraph (4) thereof:

''(5) any requirement of title VII or VIII.''.

(e) ADMINISTRATIVE PROCEEDINGS AND JUDICIAL REVIEW.—Section 307 of the Clean Air Act (42 U.S.C. 7607) is amended as follows:

(1) In subsection (a), by striking '', or section 306'' and inserting ''section 306, or title VII or VIII''.

(2) In subsection (b)(1)—

(A) by striking ''‚,'' and inserting '','' in each place such punctuation appears; and

(B) by striking ''section 120,'' in the first sentence and inserting ''section 120, any final action under title VII or VIII,''.

(3) In subsection (d)(1) by amending subparagraph (S) to read as follows:

"(S) the promulgation or revision of any regulation under title VII or VIII,".

Subtitle D—Carbon Market Assurance

SEC. 341. CARBON MARKET ASSURANCE.

The Federal Power Act (16 U.S.C. 791a and following) is amended by adding at the end the following:

"PART IV—CARBON MARKET ASSURANCE

"SEC. 401. OVERSIGHT AND ASSURANCE OF CARBON MARKETS.

"(a) DEFINITIONS.—In this section:

"(1) CONTRACT OF SALE.—The term 'contract of sale' includes sales, agreements of sale, and agreements to sell.

"(2) COVERED ENTITY.—The term 'covered entity' shall have the meaning given in section 700 of the Clean Air Act.

"(3) FUTURE DELIVERY.—The term 'future delivery' does not include any sale of any cash commodity for deferred shipment or delivery.

"(4) OFFSET CREATION CONTRACT.—The term 'offset creation contract' mean a written agreement for the origination and development of an offset project, and the related issuance of offset credits, pursuant to title VII of the Clean Air Act.

"(5) REGULATED ALLOWANCE.—The term 'regulated allowance' means any emission allowance, compensatory allowance, offset credit, or renewable energy credit established or issued under the American Clean Energy and Security Act of 2009.

"(6) REGULATED ALLOWANCE DERIVATIVE.—The term 'regulated allowance derivative' means an instrument that is, or includes, an instrument—

"(A) which—

"(i) is of the character of, or is commonly known to the trade as, a 'put option', 'call option', 'privilege', 'indemnity', 'advance guaranty', 'decline guaranty', or 'swap agreement'; or

"(ii) is a contract of sale for future delivery other than an offset creation contract; and

"(B) the value of which, in whole or in part, is expressly linked to the price of a regulated allowance or another regulated allowance derivative.

"(7) REGULATED INSTRUMENT.—The term 'regulated instrument' means a regulated allowance or a regulated allowance derivative.

"(b) REGULATED ALLOWANCE MARKET.—

"(1) AUTHORITY.—The Commission shall promulgate regulations for the establishment, operation, and oversight of markets for regulated allowances not later than 18 months after the date of the enactment of this section, and from time to time thereafter as may be appropriate.

"(2) REGULATIONS.—The regulations promulgated pursuant to paragraph (1) shall—

"(A) provide for effective and comprehensive market oversight;

"(B) prohibit fraud, market manipulation (including an entity's fraudulent or manipulative conduct with respect to regulated allowance derivatives that benefits the entity in regulated allowance markets), and excess speculation, and provide measures to limit unreasonable fluctuation in the prices of regulated allowances;

"(C) facilitate compliance with title VII of the Clean Air Act by covered entities;

"(D) ensure market transparency and recordkeeping deemed necessary and appropriate by the Commission to provide for efficient price discovery; prevention of fraud, market manipulation, and excess speculation; and compliance with title VII of the Clean Air Act and section

610 of the Public Utility Regulatory Policies Act;

"(E) as necessary, ensure that position limitations for individual market participants are established with respect to each class of regulated allowances;

"(F) as necessary, ensure that margin requirements are established for each class of regulated allowances;

"(G) provide for the formation and operation of a fair, orderly and liquid national market system that allows for the best execution in the trading of regulated allowances;

"(H) limit or eliminate counterparty risks, market power concentration risks, and other risks associated with over-the-counter trading;

"(I) establish standards for qualification as, and operation of, trading facilities for regulated allowances;

"(J) establish standards for qualification as, and operation of, clearing organizations for trading facilities for regulated allowances; and

"(K) include such other requirements as necessary to preserve market integrity and facilitate compliance with title VII of the Clean

Air Act and section 610 of the Public Utility Regulatory Policies Act and the regulations promulgated under such title and such section.

"(3) ENFORCEMENT.—

"(A) IN GENERAL.—If the Commission determines, after notice and an opportunity for a hearing on the record, that any entity has violated any rule or order issued by the Commission under this subsection, the Commission may issue an order—

"(i) prohibiting the entity from trading on a trading facility for regulated allowances registered with the Commission, and requiring all such facilities to refuse the entity all privileges for such period as may be specified in the order;

"(ii) if the entity is registered with the Commission in any capacity, suspending for a period of not more than 6 months, or revoking, the registration of the entity;

"(iii) assessing the entity a civil penalty of not more than $1,000,000 per day per violation for as long as the violation continues (and in determining the amount

of a civil penalty, the Commission shall take into account the nature and seriousness of the violation and the efforts to remedy the violation); and

"(iv) requiring disgorgement of unjust profits, restitution to entities harmed by the violation as determined by the Commission, or both.

"(B) AUTHORITY TO SUSPEND OR REVOKE REGISTRATION.—The Commission may suspend for a period of not more than 6 months, or revoke, the registration of a trading facility for regulated allowances or of a clearing organization registered by the Commission if, after notice and opportunity for a hearing on the record, the Commission finds that—

"(i) the entity violated any rule or order issued by the Commission under this subsection; or

"(ii) a director, officer, employee, or agent of the entity has violated any rule or order issued by the Commission under this subsection.

"(C) CEASE AND DESIST PROCEEDINGS.—

"(i) IN GENERAL.—If the Commission determines that any entity may be violating, may have violated, or may be about to violate any provision of this part, or any regulation promulgated by, or any restriction, condition, or order made or imposed by, the Commission under this part, and if the Commission finds that the alleged violation or threatened violation, or the continuation of the violation, is likely to result in significant harm to covered entities or market participants, or significant harm to the public interest, the Commission may issue a temporary order requiring the entity—

"(I) to cease and desist from the violation or threatened violation;

"(II) to take such action as is necessary to prevent the violation or threatened violation; and

"(III) to prevent, as the Commission determines to be appropriate—

"(aa) significant harm to covered entities or market participants;

"(bb) significant harm to the public interest; and

"(cc) frustration of the ability of the Commission to conduct the proceedings or to redress the violation at the conclusion of the proceedings.

"(ii) TIMING OF ENTRY.—An order issued under clause (i) shall be entered only after notice and opportunity for a hearing, unless the Commission determines that notice and hearing before entry would be impracticable or contrary to the public interest.

"(iii) EFFECTIVE DATE.—A temporary order issued under clause (i) shall—

"(I) become effective upon service upon the entity; and

"(II) unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, remain effective and enforceable pending the completion of the proceedings.

"(D) PROCEEDINGS REGARDING DISSIPATION OR CONVERSION OF ASSETS.—

"(i) IN GENERAL.—In a proceeding involving an alleged violation of a regulation or order promulgated or issued by the Commission, if the Commission determines that the alleged violation or related circumstances are likely to result in significant dissipation or conversion of assets, the Commission may issue a temporary order requiring the respondent to take such action as is necessary to prevent the dissipation or conversion of assets.

"(ii) TIMING OF ENTRY.—An order issued under clause (i) shall be entered only after notice and opportunity for a hearing, unless the Commission determines that notice and hearing before entry would be impracticable or contrary to the public interest.

"(iii) EFFECTIVE DATE.—A temporary order issued under clause (i) shall—

"(I) become effective upon service upon the respondent; and

"(II) unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, remain effective and enforceable pending the completion of the proceedings.

"(E) REVIEW OF TEMPORARY ORDERS.—

"(i) APPLICATION FOR REVIEW.—At any time after a respondent has been served with a temporary cease-and-desist order pursuant to subparagraph (C) or order regarding the dissipation or conversion of assets pursuant to subparagraph (D), the respondent may apply to the Commission to have the order set aside, limited, or suspended.

"(ii) NO PRIOR HEARING.—If a respondent has been served with a temporary order entered without a prior hearing of the Commission—

"(I) the respondent may, not later than 10 days after the date on which the order was served, request a hearing on the application; and

"(II) the Commission shall hold a hearing and render a decision on the

application at the earliest practicable time.

"(iii) JUDICIAL REVIEW.—

"(I) IN GENERAL.—An entity shall not be required to submit a request for rehearing of a temporary order before seeking judicial review in accordance with this subparagraph.

"(II) TIMING OF REVIEW.—Not later than 10 days after the date on which a respondent is served with a temporary cease-and-desist order entered with a prior hearing of the Commission, or 10 days after the date on which the Commission renders a decision on an application and hearing under clause (i) with respect to any temporary order entered without such a prior hearing—

"(aa) the respondent may obtain a review of the order in a United States circuit court having jurisdiction over the circuit in which the respondent resides or has a principal place of business,

or in the United States Court of Appeals for the District of Columbia Circuit, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order; and

"(bb) the court shall have jurisdiction to enter such an order.

"(III) NO PRIOR HEARING.—A respondent served with a temporary order entered without a prior hearing of the Commission may not apply to the applicable court described in subclause (II) except after a hearing and decision by the Commission on the application of the respondent under clauses (i) and (ii).

"(iv) PROCEDURES.—Section 222 and Part III shall apply to—

"(I) an application for review of an order under clause (i); and

"(II) an order subject to review under clause (iii).

"(v) NO AUTOMATIC STAY OF TEMPORARY ORDER.—The commencement of proceedings under clause (iii) shall not, unless specifically ordered by the court, operate as a stay of the order of the Commission.

"(F) ACTIONS TO COLLECT CIVIL PENALTIES.—If any person fails to pay a civil penalty assessed under this subsection after an order assessing the penalty has become final and unappealable, the Commission shall bring an action to recover the amount of the penalty in any appropriate United States district court. In any such action, the validity or appropriateness of the final assessment order or judgment shall not be subject to review.

"(4) TRANSACTION FEES.—

"(A) IN GENERAL.—The Commission shall, in accordance with this paragraph, establish and collect transaction fees designed to recover the costs to the Federal Government of the supervision and regulation of regulated allowance markets and market participants, including related costs for enforcement activities, policy and rulemaking activities, administration,

legal services, and international regulatory activities.

"(B) INITIAL FEE RATE.—Each trading facility on or through which regulated allowances are transacted shall pay to the Commission a fee at a rate of not more than $15 per $1,000,000 of the aggregate dollar amount of sales of regulated allowances transacted through the facility.

"(C) ANNUAL ADJUSTMENT OF FEE RATE.—The Commission shall, on an annual basis—

"(i) assess the rate at which fees are to be collected as necessary to meet the cost recovery requirement in subparagraph (A); and

"(ii) consistent with subparagraph (B), adjust the rate as necessary in order to meet the requirement.

"(D) REPORT ON ADEQUACY OF FEES IN RECOVERING COSTS.—The Commission, shall, on an annual basis, 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 the ade-

quacy of the transaction fees in providing funding for the Commission to regulate the regulated allowance markets.

''(5) JUDICIAL REVIEW.—Judicial review of actions taken by the Commission under this subsection shall be pursuant to part III.

''(6) INFORMATION-SHARING.—Within 6 months after a Federal agency with jurisdiction over regulated allowance derivatives is delegated authority pursuant to subsection (c)(1), the agency shall enter into a memorandum of understanding with the Commission relating to information sharing, which shall include provisions ensuring that information requests to markets within the respective jurisdiction of the agency are properly coordinated to facilitate, among other things, effective information-sharing while minimizing duplicative information requests, and provisions regarding the treatment of proprietary information.

''(7) ADDITIONAL EMPLOYEES REPORT AND APPOINTMENT.—Within 18 months after the date of the enactment of this section, the Commission shall submit to the President, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Energy and Natural Resources of

the Senate, a report that contains recommendations as to how many additional employees would be necessary to provide robust oversight and enforcement of the regulations promulgated under this subsection. As soon as practicable after the completion of the report, subject to appropriations, the Commission shall appoint the recommended number of additional employees for such purposes.

"(c) DELEGATION OF AUTHORITY BY THE PRESIDENT.—

"(1) DELEGATION.—The President, taking into consideration the recommendations of the interagency working group established in subsection (d), shall delegate to members of the working group and the heads of other appropriate Federal agencies the authority to promulgate regulations for the establishment, operation, and oversight of all markets for regulated allowance derivatives.

"(2) REGULATIONS.—The regulations promulgated pursuant to paragraph (1) shall—

"(A) provide for effective and comprehensive market oversight;

"(B) prohibit fraud, market manipulation, and excess speculation, and provide measures to

limit unreasonable fluctuation in the prices of regulated allowance derivatives;

"(C) facilitate compliance with title VII of the Clean Air Act by covered entities;

"(D) ensure market transparency and recordkeeping necessary to provide for efficient price discovery; prevention of fraud, market manipulation, and excess speculation; and compliance with title VII of the Clean Air Act and section 610 of the Public Utility Regulatory Policies Act;

"(E) ensure that position limitations for individual market participants are established with respect to each regulated allowance derivative and aggregate position limitations for individual market participants are established with respect to all regulated allowance derivative markets;

"(F) ensure that margin requirements are established for each regulated allowance derivative;

"(G) provide for the formation and operation of a market system that allows for best execution in the trading of regulated allowance derivatives;

"(H) to the extent the regulations deviate from the rule set forth in paragraph (4)(B), limit or eliminate counterparty risks, market power concentration risks, and other risks associated with over-the-counter trading, and promulgate reporting and market transparency rules for large traders;

"(I) ensure that market participants do not evade position limits or otherwise undermine the integrity and effectiveness of the regulations promulgated under subparagraph (C) through participation in markets not subject to the position limits and regulations;

"(J) establish standards, as necessary, for qualification as, and operation of, trading facilities for regulated allowance derivatives;

"(K) establish standards, as necessary, for qualification as, and operation of, clearing organizations for trading facilities for regulated allowance derivatives;

"(L) provide boards of trade designated as contract markets under the Commodity Exchange Act, and market participants, with an adequate transition period for compliance with

1 any new regulatory requirements established
2 under this paragraph;
3 "(M) determine whether and to what ex-
4 tent offset creation contracts, to the extent in-
5 corporating regulated allowance derivatives,
6 should be governed by the same regulations
7 that apply to other regulated allowance deriva-
8 tives; and
9 "(N) include such other requirements as
10 necessary to preserve market integrity and fa-
11 cilitate compliance with title VII of the Clean
12 Air Act and section 610 of the Public Utility
13 Regulatory Policies Act and the regulations pro-
14 mulgated under such title and such section.
15 "(3) DEADLINE.—The agencies authorized to
16 promulgate regulations for the establishment, oper-
17 ation, and oversight of markets for regulated allow-
18 ance derivatives pursuant to paragraph (1) shall
19 promulgate such regulations not later than 18
20 months after the date of enactment of this section,
21 and from time to time thereafter as may be appro-
22 priate.
23 "(4) DEFAULT RULES.—
24 "(A) An individual market participant, di-
25 rectly or in concert with another participant,

shall not control more than 10 percent of the open interest in any regulated allowance derivative.

"(B) All contracts for the purchase or sale of any regulated allowance derivative shall be executed on or through a board of trade designated as a contract market under the Commodity Exchange Act.

"(C) To the extent that regulations promulgated under this subsection provide different rules with respect to the matters described in subparagraph (A) or (B), the regulations shall supersede subparagraph (A) or (B), as the case may be.

"(d) WORKING GROUP.—

"(1) ESTABLISHMENT.—Not later than 30 days after the date of the enactment of this section, the President shall establish an interagency working group on carbon market oversight, which shall include the Administrator of the Environmental Protection Agency and representatives of other relevant agencies, to make recommendations to the President regarding proposed regulations for the establishment, operation, and oversight of markets for regulated allowance derivatives.

1 "(2) REPORT.—Not later than 180 days after
2 the date of the enactment of this section, and bienni-
3 ally thereafter, the interagency working group shall
4 submit a written report to the President and Con-
5 gress that includes its recommendations to the
6 President regarding proposed regulations for the es-
7 tablishment, operation, and oversight of markets for
8 regulated allowance derivatives and any rec-
9 ommendations to Congress for statutory changes
10 needed to ensure the establishment, operation, and
11 oversight of transparent, fair, stable, and efficient
12 markets for regulated allowance derivatives.
13 "(e) ENFORCEMENT OF REGULATIONS.—Each Fed-
14 eral agency that promulgates under subsection (c) a regu-
15 lation of conduct with respect to a regulated allowance de-
16 rivative shall have the same authority to enforce compli-
17 ance with the regulation as the Commodity Futures Trad-
18 ing Commission has to enforce compliance with any regu-
19 lation of similar conduct with respect to a contract, agree-
20 ment, or transaction over which the Commodity Futures
21 Trading Commission has jurisdiction, except that any en-
22 forcement by the Federal Energy Regulatory Commission
23 shall be pursuant to section 222 and Part III.
24 "(f) PROHIBITION ON PRICE OR MARKET MANIPULA-
25 TION, FRAUD, AND FALSE OR MISLEADING STATEMENTS

1 OR REPORTS.—(1) It shall be a felony punishable by a
2 fine of not more than $25,000,000 (or $5,000,000 in the
3 case of a person who is an individual) or imprisonment
4 for not more than 20 years, or both, together with the
5 costs of prosecution for any person, directly or indirectly—
6 "(A) in connection with a transaction involving
7 a regulated instrument, to knowingly—
8 "(i) use any manipulative or deceptive de-
9 vice or contrivance in violation of regulations
10 promulgated pursuant to this section;
11 "(ii) corner or attempt to corner the regu-
12 lated instrument; or
13 "(iii) cheat or defraud, or attempt to cheat
14 or defraud, any other person;
15 "(B) to knowingly deliver or cause to be deliv-
16 ered a false, misleading, or inaccurate report con-
17 cerning information or conditions that affect or tend
18 to affect the price of a regulated instrument;
19 "(C) to knowingly make, or cause to be made,
20 in an application, report, or document required to be
21 filed under any regulation promulgated pursuant to
22 this section, a statement which is false or misleading
23 with respect to a material fact, or to omit any mate-
24 rial fact required to be stated therein or necessary
25 to make the statements therein not misleading; or

"(D) to knowingly falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document that contains a false, fictitious, or fraudulent statement or entry, to an entity on or through which transactions in regulated instruments occur, or are settled or cleared, acting in furtherance of its official duties under this section or regulations promulgated under this section.

"(2) If a person is found guilty of a felony established in paragraph (1), the person may be prohibited from holding or trading regulated instruments for a period of not more than 5 years pursuant to the regulations promulgated under this section, except that, if the person is a covered entity, the person shall be allowed to hold sufficient regulated allowances to meet its compliance obligations.

"(g) RELATION TO STATE LAW.—Nothing in this section shall preclude, diminish or qualify any authority of a State or political subdivision thereof to adopt or enforce any unfair competition, antitrust, consumer protection, securities, commodities or any other law or regulation, except that no such State law or regulation may re-

lieve any person of any requirement otherwise applicable under this section.

"(h) MARKET REPORTS.—

"(1) COLLECTION AND ANALYSIS OF INFORMATION.—The Commission, in conjunction with the Federal agency with jurisdiction over regulated allowance derivatives pursuant to subsection (c)(1), shall, on a continuous basis, collect and analyze the following information on the functioning of the markets for regulated instruments established under this part:

"(A) The status of, and trends in, the markets, including prices, trading volumes, transaction types, and trading channels and mechanisms.

"(B) Spikes, collapses, and volatility in prices of regulated instruments, and the causes therefor.

"(C) The relationship between the market for regulated allowances and allowance derivatives, and the spot and futures markets for energy commodities, including electricity.

"(D) Evidence of fraud or manipulation in any such market, the effects on any such market of any such fraud or manipulation (or

threat of fraud or manipulation) that the Commission, in conjunction with the Federal agency, has identified, and the effectiveness of corrective measures undertaken by the Commission, in conjunction with the Federal agency, to address the fraud, manipulation, or threat.

''(E) The economic effects of the markets, including to macro- and micro-economic effects of unexpected significant increases and decreases in the price of regulated instruments.

''(F) Any changes in the roles, activities, or strategies of various market participants.

''(G) Regional, industrial, and consumer responses to the markets, and energy investment responses to the markets.

''(H) Any other issue related to the markets that the Commission, in conjunction with the entities, deems appropriate.

''(2) ANNUAL REPORTS TO THE CONGRESS.—Not later than 1 month after the end of each calendar year, the Commission, in conjunction with the Federal agency, shall submit to the President, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Energy and Natural Resources of the Senate, and make

available to the public, a report on the matters described in paragraph (1) with respect to the year, including recommendations for any administrative or statutory measures the Commission, in conjunction with the Federal agency, considers necessary to address any threats to the transparency, fairness, or integrity of the markets in regulated instruments.''.

Subtitle E—Additional Market Assurance

SEC. 351. REGULATION OF CERTAIN TRANSACTIONS IN DERIVATIVES INVOLVING ENERGY COMMODITIES.

(a) ENERGY COMMODITY DEFINED.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) in paragraph (14), by inserting '', an energy commodity,'' after ''excluded commodity'';

(2) by redesignating paragraphs (13) through (21) and paragraphs (22) through (34) as paragraphs (14) through (22) and paragraphs (24) through (36), respectively;

(3) by inserting after paragraph (12) the following:

''(13) ENERGY COMMODITY.—The term 'energy commodity' means—

''(A) coal;

"(B) crude oil, gasoline, diesel fuel, jet fuel, heating oil, and propane;

"(C) electricity (excluding financial transmission rights which are subject to regulation and oversight by the Federal Energy Regulatory Commission);

"(D) natural gas; and

"(E) any other substance (other than an excluded commodity, a metal, or an agricultural commodity) that is used as a source of energy, as the Commission, in its discretion, deems appropriate."; and

(4) by inserting after paragraph (22) (as so redesignated by paragraph (2) of this subsection) the following:

"(23) INCLUDED ENERGY TRANSACTION.—The term 'included energy transaction' means a contract, agreement, or transaction in an energy commodity for future delivery that provides for a delivery point of the energy commodity in the United States or a territory or possession of the United States, or that is offered or transacted on or through a computer terminal located in the United States.".

(b) EXTENSION OF REGULATORY AUTHORITY TO SWAPS INVOLVING ENERGY TRANSACTIONS.—Section

2(g) of such Act (7 U.S.C. 2(g)) is amended by inserting ''or an energy commodity'' after ''agricultural commodity''.

(c) ELIMINATION OF EXEMPTION FOR OVER-THE-COUNTER SWAPS INVOLVING ENERGY COMMODITIES.—Section 2(h)(1) of such Act (7 U.S.C. 2(h)(1)) is amended by inserting ''(other than an energy commodity)'' after ''exempt commodity''.

(d) EXTENSION OF REGULATORY AUTHORITY TO INCLUDED ENERGY TRANSACTIONS ON FOREIGN BOARDS OF TRADE.—Section 4 of such Act (7 U.S.C. 6) is amended—

(1) in subsection (a), by inserting '', and which is not an included energy transaction'' after ''territories or possessions'' the 2nd place it appears; and

(2) in subsection (b), by adding at the end the following: ''The preceding sentence shall not apply with respect to included energy transactions.''.

(e) LIMITATION OF GENERAL EXEMPTIVE AUTHORITY OF THE CFTC WITH RESPECT TO INCLUDED ENERGY TRANSACTIONS.—

(1) IN GENERAL.—Section 4(c) of such Act (7 U.S.C. 6(c)) is amended by adding at the end the following:

"(6) The Commission may not exempt any included energy transaction from the requirements of subsection (a), unless the Commission provides 60 days advance notice to the Congress and the Position Limit Energy Advisory Group and solicits public comment about the exemption request and any proposed Commission action.".

(2) NULLIFICATION OF NO-ACTION LETTER EXEMPTIONS TO CERTAIN REQUIREMENTS APPLICABLE TO INCLUDED ENERGY TRANSACTIONS.—Beginning 180 days after the date of the enactment of this Act, any exemption provided by the Commodity Futures Trading Commission that has allowed included energy transactions (as defined in section 1a(13) of the Commodity Exchange Act) to be conducted without regard to the requirements of section 4(a) of such Act shall be null and void.

(f) REQUIREMENT TO ESTABLISH UNIFORM SPECULATIVE POSITION LIMITS FOR ENERGY TRANSACTIONS.—

(1) IN GENERAL.—Section 4a(a) of such Act (7 U.S.C. 6a(a)) is amended—

(A) by inserting "(1)" after "(a)";

(B) by inserting after the 2nd sentence the following: "With respect to energy transactions, the Commission shall fix limits on the aggre-

gate number of positions which may be held by any person for each month across all markets subject to the jurisdiction of the Commission.";

(C) in the 4th sentence by inserting ", consistent with the 3rd sentence," after "Commission"; and

(D) by adding after and below the end the following:

"(2)(A) Not later than 60 days after the date of the enactment of this paragraph, the Commission shall convene a Position Limit Energy Advisory Group consisting of representatives from—

"(i) 7 predominantly commercial short hedgers of the actual energy commodity for future delivery;

"(ii) 7 predominantly commercial long hedgers of the actual energy commodity for future delivery;

"(iii) 4 non-commercial participants in markets for energy commodities for future delivery; and

"(iv) each designated contract market or derivatives transaction execution facility upon which a contract in the energy commodity for future delivery is traded, and each electronic trading facility that has a significant price discovery contract in the energy commodity.

"(B) Not later than 60 days after the date on which the advisory group is convened under subparagraph (A), and annually thereafter, the advisory group shall submit to the Commission advisory recommendations regarding the position limits to be established in paragraph (1).

"(C) The Commission shall have exclusive authority to grant exemptions for bona fide hedging transactions and positions from position limits imposed under this Act on energy transactions.".

(2) CONFORMING AMENDMENTS.—

(A) SIGNIFICANT PRICE DISCOVERY CONTRACTS.—Section 2(h)(7) of such Act (7 U.S.C. 2(h)(7)) is amended—

(i) in subparagraph (A)—

(I) by inserting "of this paragraph and section 4a(a)" after "(B) through (D)"; and

(II) by inserting "of this paragraph" before the period; and

(ii) in subparagraph (C)(ii)(IV)—

(I) in the heading, by striking "LIMITATIONS OR"; and

(II) by striking "position limitations or".

(B) CONTRACTS TRADED ON OR THROUGH DESIGNATED CONTRACT MARKETS.—Section 5(d)(5) of such Act (7 U.S.C. 7(d)(5)) is amended—

(i) in the heading by striking ''LIMITATIONS OR''; and

(ii) by striking ''position limitations or''.

(C) CONTRACTS TRADED ON OR THROUGH DERIVATIVES TRANSACTION EXECUTION FACILITIES.—Section 5a(d)(4) of such Act (7 U.S.C. 7a(d)(4)) is amended—

(i) in the heading by striking ''LIMITATIONS OR''; and

(ii) by striking ''position limits or''.

(g) ELIMINATION OF THE SWAPS LOOPHOLE.—Section 4a(c) of such Act (7 U.S.C. 6a(c)) is amended—

(1) by inserting ''(1)'' after ''(c)''; and

(2) by adding after and below the end the following:

''(2) For the purposes of contracts of sale for future delivery and options on such contracts or commodities, the Commission shall define what constitutes a bona fide hedging transaction or position as a transaction or position that—

1 "(A)(i) represents a substitute for transactions
2 made or to be made or positions taken or to be
3 taken at a later time in a physical marketing chan-
4 nel;
5 "(ii) is economically appropriate to the reduc-
6 tion of risks in the conduct and management of a
7 commercial enterprise; and
8 "(iii) arises from the potential change in the
9 value of—
10 "(I) assets that a person owns, produces,
11 manufactures, processes, or merchandises or
12 anticipates owning, producing, manufacturing,
13 processing, or merchandising;
14 "(II) liabilities that a person owns or an-
15 ticipates incurring; or
16 "(III) services that a person provides, pur-
17 chases, or anticipates providing or purchasing;
18 or
19 "(B) reduces risks attendant to a position re-
20 sulting from a transaction that—
21 "(i) was executed pursuant to subsection
22 (d), (g), (h)(1), or (h)(2) of section 2, or an ex-
23 emption issued by the Commission by rule, reg-
24 ulation or order; and

"(ii) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to paragraph (2)(A) of this subsection.".

(h) DETAILED REPORTING AND DISAGGREGATION OF MARKET DATA.—Section 4 of such Act (7 U.S.C. 6) is amended by adding at the end the following:

"(e) DETAILED REPORTING AND DISAGGREGATION OF MARKET DATA.—

"(1) INDEX TRADERS AND SWAP DEALERS REPORTING.—The Commission shall issue a proposed rule defining and classifying index traders and swap dealers (as those terms are defined by the Commission) for purposes of data reporting requirements and setting routine detailed reporting requirements for any positions of such entities in contracts traded on designated contract markets, over-the-counter markets, derivatives transaction execution facilities, foreign boards of trade subject to section 4(f), and electronic trading facilities with respect to significant price discovery contracts not later than 120 days after the date of the enactment of this subsection, and issue a final rule within 180 days after such date of enactment.

"(2) DISAGGREGATION OF INDEX FUNDS AND OTHER DATA IN MARKETS.—Subject to section 8 and beginning within 60 days of the issuance of the final rule required by paragraph (1), the Commission shall disaggregate and make public weekly—

"(A) the number of positions and total notional value of index funds and other passive, long-only and short-only positions (as defined by the Commission) in all markets to the extent such information is available; and

"(B) data on speculative positions relative to bona fide physical hedgers in those markets to the extent such information is available.

"(3) DISCLOSURE OF IDENTITY OF HOLDERS OF POSITIONS IN INDEXES IN EXCESS OF POSITION LIMITS.—The Commission shall include in its weekly Commitment of Trader reports the identity of each person who holds a position in an index in excess of a limit imposed under section 4i.".

(i) AUTHORITY TO SET LIMITS TO PREVENT EXCESSIVE SPECULATION IN INDEXES.—

(1) IN GENERAL.—Section 4a of such Act (7 U.S.C. 6a) is amended by adding at the end the following:

"(f) The provisions of this section shall apply to the amounts of trading which may be done or positions which may be held by any person under contracts of sale of an index for future delivery on or subject to the rules of any contract market, derivatives transaction execution facility, or over-the-counter market, or on an electronic trading facility with respect to a significant price discovery contract, in the same manner in which this section applies to contracts of sale of a commodity for future delivery.".

(2) REGULATIONS.—The Commodity Futures Trading Commission shall issue regulations under section 4a(f) of the Commodity Exchange Act within 180 days after the date of the enactment of this Act.

SEC. 352. NO EFFECT ON AUTHORITY OF THE FEDERAL ENERGY REGULATORY COMMISSION.

Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by adding at the end the following:.

"(j) NO EFFECT ON FERC AUTHORITY.—This Act shall not be interpreted to affect the jurisdiction of the Federal Energy Regulatory Commission with respect to the authority of the Federal Energy Regulatory Commission under the Federal Power Act (16 U.S.C. 791a et seq.), the Natural Gas Act (15 U.S.C. 717 et seq.), or other law to obtain information, carry out enforcement ac-

tions, or otherwise carry out the responsibilities of the Federal Energy Regulatory Commission.''.

SEC. 353. INSPECTOR GENERAL OF THE COMMODITY FUTURES TRADING COMMISSION.

(a) ELEVATION OF OFFICE.—

(1) INCLUSION OF CFTC IN DEFINITION OF ESTABLISHMENT.—

(A) Section 11(1) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking ''or the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code;'' and inserting ''the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code; or the Chairman of the Commodity Futures Trading Commission;''.

(B) Section 11(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking ''or the Commissions established under section 15301 of title 40, United States Code,'' and inserting ''the Commissions established under section 15301 of title 40, United States Code, or the Commodity Futures Trading Commission,''.

(2) EXCLUSION OF CFTC FROM DEFINITION OF DESIGNATED FEDERAL ENTITY.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking ''the Commodity Futures Trading Commission,''.

(b) EFFECTIVE DATE; TRANSITION RULE.—

(1) EFFECTIVE DATE.—The amendments made by this section shall take effect 30 days after the date of the enactment of this Act.

(2) TRANSITION RULE.—An individual serving as Inspector General of the Commodity Futures Trading Commission on the effective date of this section pursuant to an appointment made under section 8G of the Inspector General Act of 1978 (5 U.S.C. App.)—

(A) may continue so serving until the President makes an appointment under section 3(a) of such Act consistent with the amendments made by this section; and

(B) shall, while serving under subparagraph (A), remain subject to the provisions of section 8G of such Act which apply with respect to the Commodity Futures Trading Commission.

SEC. 354. SETTLEMENT AND CLEARING THROUGH REGISTERED DERIVATIVES CLEARING ORGANIZATIONS.

(a) IN GENERAL.—

(1) APPLICATION TO EXCLUDED DERIVATIVE TRANSACTIONS.—

(A) Section 2(d)(1) of the Commodity Exchange Act (7 U.S.C. 2(d)(1)) is amended—

(i) by striking ''and'' at the end of subparagraph (A);

(ii) by striking the period at the end of subparagraph (B) and inserting ''and''; and

(iii) by adding at the end the following:

''(C) except as provided in section 4(f), the agreement, contract, or transaction is settled and cleared through a derivatives clearing organization registered with the Commission.''.

(B) Section 2(d)(2) of such Act (7 U.S.C. 2(d)(2)) is amended—

(i) by striking ''and'' at the end of subparagraph (B);

(ii) by striking the period at the end of subparagraph (C) and inserting ''; and''; and

(iii) by adding at the end the following:

''(D) except as provided in section 4(f), the agreement, contract, or transaction is settled and cleared through a derivatives clearing organization registered with the Commission.''.

(2) APPLICATION TO CERTAIN SWAP TRANSACTIONS.—Section 2(g) of such Act (7 U.S.C. 2(g)) is amended—

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

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

(C) by adding at the end the following:

''(4) except as provided in section 4(f), settled and cleared through a derivatives clearing organization registered with the Commission.''.

(3) APPLICATION TO CERTAIN TRANSACTIONS IN EXEMPT COMMODITIES.—

(A) Section 2(h)(1) of such Act (7 U.S.C. 2(h)(1)) is amended—

(i) by striking ''and'' at the end of subparagraph (A);

(ii) by striking the period at the end of subparagraph (B) and inserting ''; and''; and

(iii) by adding at the end the following:

''(C) except as provided in section 4(f), is settled and cleared through a derivatives clearing organization registered with the Commission.''.

(B) Section 2(h)(3) of such Act (7 U.S.C. 2(h)(3)) is amended—

(i) by striking ''and'' at the end of subparagraph (A);

(ii) by striking the period at the end of subparagraph (B) and inserting ''; and''; and

(iii) by adding at the end the following:

''(C) except as provided in section 4(f), settled and cleared through a derivatives clearing organization registered with the Commission.''.

(4) GENERAL EXEMPTIVE AUTHORITY.—Section 4(c)(1) of such Act (7 U.S.C. 6(c)(1)) is amended by inserting ''the agreement, contract, or transaction, except as provided in section 4(h), will

be settled and cleared through a derivatives clearing organization registered with the Commission and'' before ''the Commission determines''.

(5) CONFORMING AMENDMENT RELATING TO SIGNIFICANT PRICE DISCOVERY CONTRACTS.—Section 2(h)(7)(D) of such Act (7 U.S.C. 2(h)(7)(D)) is amended by striking the heading for the subparagraph and all that follows through ''As part of'' and inserting the following:

''(D) REVIEW OF IMPLEMENTATION.—As part of''.

(b) ALTERNATIVES TO CLEARING THROUGH DESIGNATED CLEARING ORGANIZATIONS.—Section 4 of such Act (7 U.S.C. 6), as amended by section 351(h) of this Act, is amended by adding at the end the following:

''(f) ALTERNATIVES TO CLEARING THROUGH DESIGNATED CLEARING ORGANIZATIONS.—

''(1) SETTLEMENT AND CLEARING THROUGH CERTAIN OTHER REGULATED ENTITIES.—An agreement, contract, or transaction, or class thereof, relating to an excluded commodity, that would otherwise be required to be settled and cleared by section 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), or 2(h)(3)(C) of this Act, or subsection (c)(1) of this section may be settled and cleared through an entity

listed in subsections (a) or (b) of section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

"(2) WAIVER OF CLEARING REQUIREMENT.—

"(A) The Commission, in its discretion, may exempt an agreement, contract, or transaction, or class thereof, that would otherwise be required by section 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), or 2(h)(3)(C) of this Act, or subsection (c)(1) of this section to be settled and cleared through a derivatives clearing organization registered with the Commission from such requirement.

"(B) In granting exemptions pursuant to subparagraph (A), the Commission shall consult with the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System regarding exemptions that relate to excluded commodities or entities for which the Securities Exchange Commission or the Board of Governors of the Federal Reserve System serve as the primary regulator.

"(C) Before granting an exemption pursuant to subparagraph (A), the Commission shall

find that the agreement, contract, or transaction, or class thereof—

"(i) is highly customized as to its material terms and conditions;

"(ii) is transacted infrequently;

"(iii) does not serve a significant price-discovery function in the marketplace; and

"(iv) is being entered into by parties who can demonstrate the financial integrity of the agreement, contract, or transaction and their own financial integrity, as such terms and standards are determined by the Commission. The standards may include, with respect to any federally regulated financial entity for which net capital requirements are imposed, a net capital requirement associated with any agreement, contract, or transaction subject to an exemption from the clearing requirement that is higher than the net capital requirement that would be associated with such a transaction were it cleared

"(D) Any agreement, contract, or transaction, or class thereof, which is exempted pur-

suant to subparagraph (A) shall be reported to the Commission in a manner designated by the Commission, or to such other entity the Commission deems appropriate.

"(E) The Commission, the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System shall enter into a memorandum of understanding by which the information reported to the Commission pursuant to subparagraph (D) with regard to excluded commodities or entities for which the Securities Exchange Commission or the Board of Governors of the Federal Reserve System serve as the primary regulator may be provided to the other agencies.

"(g) SPOT AND FORWARD EXCLUSION.—The settlement and clearing requirements of section 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), or 4(c)(1) shall not apply to an agreement, contract, or transaction of any cash commodity for immediate or deferred shipment or delivery, as defined by the Commission.".

(c) ADDITIONAL REQUIREMENTS APPLICABLE TO APPLICANTS FOR REGISTRATION AS A DERIVATIVE CLEARING ORGANIZATION.—Section 5b(c)(2) of such Act

(7 U.S.C. 7a-1(c)(2)) is amended by adding at the end the following:

"(O) DISCLOSURE OF GENERAL INFORMATION.—The applicant shall disclose publicly and to the Commission information concerning—

"(i) the terms and conditions of contracts, agreements, and transactions cleared and settled by the applicant;

"(ii) the conventions, mechanisms, and practices applicable to the contracts, agreements, and transactions;

"(iii) the margin-setting methodology and the size and composition of the financial resource package of the applicant; and

"(iv) other information relevant to participation in the settlement and clearing activities of the applicant.

"(P) DAILY PUBLICATION OF TRADING INFORMATION.—The applicant shall make public daily information on settlement prices, volume, and open interest for contracts settled or cleared pursuant to the requirements of 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C) or 4(c)(1) of this Act by the applicant if the Commission determines that the

contracts perform a significant price discovery function for transactions in the cash market for the commodity underlying the contracts.

"(Q) FITNESS STANDARDS.—The applicant shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, and members of the applicant, and any other persons with direct access to the settlement or clearing activities of the applicant, including any parties affiliated with any of the persons described in this subparagraph.".

(d) AMENDMENTS.—

(1) Section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4422) is amended by adding at the end the following:

"(c) CLEARING REQUIREMENT.—A multilateral clearing organization described in subsections (a) or (b) of this section shall comply with requirements similar to the requirements of sections 5b and 5c or the Commodity Exchange Act.".

(2) Section 407 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27e) is amended by inserting "and the settlement and clear-

ing requirements of sections 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), and 4(c)(1) of such Act'' after ''the clearing of covered swap agreements''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect 150 days after the date of the enactment of this Act.

(f) TRANSITION RULE.—Any agreement, contract, or transaction entered into before the date of the enactment of this Act or within 150 days after such date of enactment, in reliance on subsection (d), (g), (h)(1), or (h)(3) of section 2 of the Commodity Exchange Act or any other exemption issued by the Commission Futures Trading Commission by rule, regulation, or order shall, within 90 days after such date of enactment, unless settled and cleared through an entity registered with the Commission as a derivatives clearing organization or another clearing entity pursuant to section 4(f) of such Act, be reported to the Commission in a manner designated by the Commission, or to such other entity as the Commission deems appropriate.

SEC. 355. LIMITATION ON ELIGIBILITY TO PURCHASE A CREDIT DEFAULT SWAP.

(a) IN GENERAL.—Section 4c of the Commodity Exchange Act (7 U.S.C. 6c) is amended by adding at the end the following:

"(h) LIMITATION ON ELIGIBILITY TO PURCHASE A CREDIT DEFAULT SWAP.—It shall be unlawful for any person to enter into a credit default swap unless the person—

"(1) owns a credit instrument which is insured by the credit default swap;

"(2) would experience financial loss if an event that is the subject of the credit default swap occurs with respect to the credit instrument; and

"(3) meets such minimum capital adequacy standards as may be established by the Commission, in consultation with the Board of Governors of the Federal Reserve System, or such more stringent minimum capital adequacy standards as may be established by or under the law of any State in which the swap is originated or entered into, or in which possession of the contract involved takes place.".

(b) ELIMINATION OF PREEMPTION OF STATE BUCKETING LAWS REGARDING NAKED CREDIT DEFAULT SWAPS.—Section 12(e)(2)(B) of such Act (7 U.S.C. 16(e)(2)(B)) is amended by inserting "(other than a credit

default swap in which the purchaser of the swap would not experience financial loss if an event that is the subject of the swap occurred)'' before ''that is excluded''.

(c) DEFINITION OF CREDIT DEFAULT SWAP.—Section 1a of such Act (7 U.S.C. 1a), as amended by section 351(a) of this Act, is amended by adding at the end the following:

''(37) CREDIT DEFAULT SWAP.—the term 'credit default swap' means a contract which insures a party to the contract against the risk that an entity may experience a loss of value as a result of an event specified in the contract, such as a default or credit downgrade. A credit default swap that is traded on or cleared by a registered entity shall be excluded from the definition of a security as defined in this Act and in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934, except it shall be deemed a security solely for purpose of enforcing prohibitions against insider trading in sections 10 and 16 of the Securities Exchange Act of 1934.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective for credit default swaps (as defined in section 1a(37) of the Commodity Exchange Act)

1 entered into after 60 days after the date of the enactment
2 of this section.

3 **SEC. 356. TRANSACTION FEES.**

4 (a) IN GENERAL.—Section 12 of the Commodity Ex-
5 change Act (7 U.S.C. 16) is amended by redesignating
6 subsections (e), (f), and (g) as subsections (f), (g), and
7 (h), respectively, and inserting after subsection (d) the fol-
8 lowing:

9 ''(e) CLEARING FEES.—

10 ''(1) IN GENERAL.—The Commission shall, in
11 accordance with this subsection, charge and collect
12 from each registered clearing organization, and each
13 such organization shall pay to the Commission,
14 transaction fees at a rate calculated to recover the
15 costs to the Federal Government of the supervision
16 and regulation of futures markets, except those di-
17 rectly related to enforcement.

18 ''(2) FEES ASSESSED PER SIDE OF CLEARED
19 CONTRACTS.—

20 ''(A) IN GENERAL.—The Commission shall
21 determine the fee rate referred to in paragraph
22 (1), and shall apply the fee rate per side of any
23 transaction cleared.

24 ''(B) AUTHORITY TO DELEGATE.—The
25 Commission may determine the procedures by

which the fee rate is to be applied on the transactions subject to the fee, or delegate the authority to make the determination to any appropriate derivatives clearing organization.

"(3) EXEMPTIONS.—The Commision may not impose a fee under paragraph (1) on—

"(A) a class of contracts or transactions if the Commission finds that it is in the public interest to exempt the class from the fee; or

"(B) a contract or transaction cleared by a registered derivatives clearing organization that is—

"(i) subject to fees under section 31 of the Securities Exchange Act of 1934; or

"(ii) a security as defined in the Securities Act of 1933 or the Securities Exchange Act of 1934.

"(4) DATES FOR PAYMENT OF FEES.—The fees imposed under paragraph (1) shall be paid on or before—

"(A) March 15 of each year, with respect to transactions occurring on or after the preceding September 1 and on or before the preceding December 31; and

"(B) September 15 of each year, with respect to transactions occurring on or after the preceding January 1 and on or before the preceding August 31.

"(5) ANNUAL ADJUSTMENT OF FEE RATES.—

"(A) IN GENERAL.—Not later than April 30 of each fiscal year, the Commission shall, by order, adjust each fee rate determined under paragraph (2) for the fiscal year to a uniform adjusted rate that, when applied to the estimated aggregate number of cleared sides of transactions for the fiscal year, is reasonably likely to produce aggregate fee receipts under this subsection for the fiscal year equal to the target offsetting receipt amount for the fiscal year.

"(B) DEFINITIONS.—In subparagraph (A):

"(i) ESTIMATED AGGREGATE NUMBER OF CLEARED SIDES OF TRANSACTIONS.—The term 'estimated aggregate number of cleared sides of transactions' means, with respect to a fiscal year, the aggregate number of cleared sides of transactions to be cleared by registered derivatives clearing organizations during the fiscal year, as

estimated by the Commission, after consultation with the Office of Management and Budget, using the methodology required for making projections pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(ii) TARGET OFFSETTING RECEIPT AMOUNT.—The term 'target offsetting receipt amount' means, with respect to a fiscal year, the total level of Commission budget authority for all non-enforcement activities of the Commission, as contained in the regular appropriations Acts for the fiscal year.

"(C) NO JUDICIAL REVIEW.—An adjusted fee rate prescribed under subparagraph (A) shall not be subject to judicial review.

"(6) PUBLICATION.—Not later than April 30 of each fiscal year, the Commission shall cause to be published in the Federal Register notices of the fee rates applicable under this subsection for the succeeding fiscal year, and any estimate or projection on which the fee rates are based.

"(7) INAPPLICABILITY OF CERTAIN PROCEDURAL RULES.—Section 553 of title 5, United

States Code, shall not apply with respect to any exercise of authority under this subsection.

"(8) ESTABLISHMENT OF FUTURES AND OPTIONS TRANSACTION FEE ACCOUNT; DEPOSIT OF FEES.—There is established in the Treasury of the United States an account which shall be known as the 'Futures and Options Transaction Fee Account'. All fees collected under this subsection for a fiscal year shall be deposited in the account. Amounts in the account are authorized to be appropriated to fund the expenditures of the Commission.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to fiscal years beginning 30 or more days after the date of the enactment of this Act.

(c) TRANSITION RULE.—If this section becomes law after March 31 and before September 1 of a fiscal year, then paragraphs (5)(A) and (6) of section 12(e) of the Commodity Exchange Act shall be applied, in the case of the 1st fiscal year beginning after the date of the enactment of this Act, by substituting "August 31" for "April 30".

SEC. 357. NO EFFECT ON AUTHORITY OF THE FEDERAL TRADE COMMISSION.

Nothing in this subtitle shall be interpreted to affect or diminish the jurisdiction or authority of the Federal

Trade Commission with respect to its authorities under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or the Energy Independence and Security Act of 2007 (Public Law 110–140) to obtain information, to carry out enforcement activities or otherwise carry out the responsibilities of the Federal Trade Commission.

SEC. 358. REGULATION OF CARBON DERIVATIVES MARKETS.

(a) DEFAULT RULE.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2), as amended by section 352 of this Act, is amended by adding at the end the following:

''(k) The Commission shall have jurisdiction over the establishment, operations, and oversight of markets for regulated allowance derivatives (as defined in section 401 of the Federal Power Act (16 U.S.C. 791a and following), and shall provide for the establishment, operation, and oversight of the markets in accordance with the same regulations that apply under this Act to included energy transactions.''.

(b) PRESIDENTIAL DETERMINATIONS.—To the extent that the President delegates the authority to promulgate regulations for the establishment, operation, and oversight of all markets for regulated allowance derivatives to a Federal agency other than the Commodity Futures Trading Commission pursuant to section 401 of the Fed-

eral Power Act, such determination shall supersede subsection (a). To the extent that the President determines that regulations promulgated pursuant to section 401(c)(2) of the Federal Power Act would provide for more stringent and effective market oversight, such regulations shall supersede subsection (a). Nothing in this section shall be construed to affect the operation of the default rules established in section 401(c)(4) of the Federal Power Act.

TITLE IV—TRANSITIONING TO A CLEAN ENERGY ECONOMY

Subtitle A—Industrial Sector

SEC. 401. ENSURING REAL REDUCTIONS IN INDUSTRIAL EMISSIONS.

Title VII of the Clean Air Act is amended by inserting after part E the following new part:

"PART F—ENSURING REAL REDUCTIONS IN INDUSTRIAL EMISSIONS

"SEC. 761. PURPOSES.

"(a) PURPOSE OF PART.—The purposes of this part are—

"(1) to promote a strong global effort to significantly reduce greenhouse gas emissions, and, through this global effort, stabilize greenhouse gas concentrations in the atmosphere at a level that will

prevent dangerous anthropogenic interference with the climate system; and

"(2) to prevent an increase in greenhouse gas emissions in countries other than the United States as a result of direct and indirect compliance costs incurred under this title.

"(b) PURPOSES OF SUBPART 1.—The purposes of subpart 1 are additionally—

"(1) to rebate the owners and operators of entities in eligible domestic industrial sectors for their greenhouse gas emission costs incurred under this title, but not for costs associated with other related or unrelated market dynamics;

"(2) to design such rebates in a way that will prevent carbon leakage while also rewarding innovation and facility-level investments in energy efficiency performance improvements; and

"(3) to eliminate or reduce distribution of emission allowances under this part when such distribution is no longer necessary to prevent carbon leakage from eligible industrial sectors.

"SEC. 762. INTERNATIONAL NEGOTIATIONS.

"(a) FINDING.—Congress finds that the purposes of this part, as set forth in section 761, can be most effec-

tively addressed and achieved through agreements negotiated between the United States and foreign countries.

"(b) STATEMENT OF POLICY.—It is the policy of the United States to work proactively under the United Nations Framework Convention on Climate Change, and in other appropriate forums, to establish binding agreements, including sectoral agreements, committing all major greenhouse gas-emitting nations to contribute equitably to the reduction of global greenhouse gas emissions.

"(c) NOTIFICATION OF FOREIGN COUNTRIES.—Not later than January 1, 2020, the President shall notify foreign countries that an International Reserve Allowance Program, as described in subpart 2, may apply to primary products produced in a foreign country by a sector for which the President has made a determination described in section 767(c).

"SEC. 763. DEFINITIONS.

"In this part:

"(1) CARBON LEAKAGE.—The term 'carbon leakage' means any substantial increase (as determined by the Administrator) in greenhouse gas emissions by industrial entities located in other countries if such increase is caused by an incremental cost of production increase in the United

1 States resulting from the implementation of this
2 title.

3 "(2) ELIGIBLE INDUSTRIAL SECTOR.—The
4 term 'eligible industrial sector' means an industrial
5 sector determined by the Administrator under sec-
6 tion 764(b) to be eligible to receive emission allow-
7 ance rebates under subpart 1.

8 "(3) INDUSTRIAL SECTOR.—The term 'indus-
9 trial sector' means any sector that is in the manu-
10 facturing sector (as defined in NAICS codes 31, 32,
11 and 33).

12 "(4) NAICS.—The term 'NAICS' means the
13 North American Industrial Classification System of
14 2002.

15 "(5) OUTPUT.—The term 'output' means the
16 total tonnage or other standard unit of production
17 (as determined by the Administrator) produced by
18 an entity in an industrial sector. The output of the
19 cement sector is hydraulic cement, and not clinker.

20 "(6) PRIMARY PRODUCT.—The term 'primary
21 product' means a product manufactured by an eligi-
22 ble industrial sector that is—

23 "(A) iron, steel, steel mill products (includ-
24 ing pipe and tube), aluminum, cement, glass
25 (including flat, container, and specialty glass

and fiberglass), pulp, paper, chemicals, or industrial ceramics; or

"(B) any other manufactured product that is sold in bulk for purposes of further manufacture or inclusion in a finished product.

"Subpart 1—Emission Allowance Rebate Program

"SEC. 764. ELIGIBLE INDUSTRIAL SECTORS.

"(a) LIST.—

"(1) INITIAL LIST.—Not later than June 30, 2011, the Administrator shall publish in the Federal Register a list of eligible industrial sectors pursuant to subsection (b). Such list shall include the amount of the emission allowance rebate per unit of production that shall be provided to entities in each eligible industrial sector in the following two calendar years pursuant to section 765.

"(2) SUBSEQUENT LISTS.—Not later than February 1, 2013, and every four years thereafter, the Administrator shall publish in the Federal Register an updated version of the list published under paragraph (1).

"(b) ELIGIBLE INDUSTRIAL SECTORS.—

"(1) IN GENERAL.—Not later than June 30, 2011, the Administrator shall promulgate a rule designating, based on the criteria under paragraph (2),

the industrial sectors eligible for emission allowance rebates under this subpart.

"(2) PRESUMPTIVELY ELIGIBLE INDUSTRIAL SECTORS.—

"(A) ELIGIBILITY CRITERIA.—An owner or operator of an entity shall be eligible to receive emission allowance rebates under this subpart if such entity is in an industrial sector that is included in a six-digit classification of the NAICS that meets the criteria in both clauses (i) and (ii), or the criteria in clause (iii).

"(i) ENERGY OR GREENHOUSE GAS INTENSITY.—As determined by the Administrator, the industrial sector had—

"(I) an energy intensity of at least 5 percent, calculated by dividing the cost of purchased electricity and fuel costs of the sector by the value of the shipments of the sector, based on data described in subparagraph (E); or

"(II) a greenhouse gas intensity of at least 5 percent, calculated by dividing—

"(aa) the number 20 multiplied by the number of tons of carbon dioxide equivalent greenhouse gas emissions (including direct emissions from fuel combustion, process emissions, and indirect emissions from the generation of electricity used to produce the output of the sector) of the sector; by

"(bb) the value of the shipments of the sector, based on data described in subparagraph (E).

"(ii) TRADE INTENSITY.—As determined by the Administrator, the industrial sector had a trade intensity of at least 15 percent, calculated by dividing the value of the total imports and exports of such sector by the value of the shipments plus the value of imports of such sector, based on data described in subparagraph (E).

"(iii) VERY HIGH ENERGY OR GREENHOUSE GAS INTENSITY.—As determined by the Administrator, the industrial sector

had an energy or greenhouse gas intensity, as calculated under clause (i)(I) or (II), of at least 20 percent.

"(B) IRON AND STEEL SECTOR.—The Administrator shall consider as in different industrial sectors—

"(i) entities using integrated iron and steelmaking technologies (including coke ovens, blast furnaces, and other iron-making technologies); and

"(ii) entities using electric arc furnace technologies.

"(C) METAL PRODUCTION CLASSIFIED UNDER MORE THAN ONE NAICS CODE.—In determining eligibility under this subsection, the Administrator shall—

"(i) aggregate data for the beneficiation or other processing of iron and copper ores with subsequent steps in the process of metal manufacturing regardless of the NAICS code under which such activity is classified; and

"(ii) aggregate data for the manufacturing of steel with the manufacturing of

1 steel pipe and tube made from purchased
2 steel in a nonintegrated process.
3 "(D) EXCLUSION.—The petroleum refining
4 sector shall not be an eligible industrial sector.
5 "(E) DATA SOURCES.—
6 "(i) ELECTRICITY AND FUEL COSTS,
7 VALUE OF SHIPMENTS.—The Adminis-
8 trator shall determine electricity and fuel
9 costs and the value of shipments under
10 this subsection from data from the United
11 States Census of Mineral Industries and
12 the United States Census Annual Survey
13 of Manufacturers. The Administrator shall
14 take the average of data from as many of
15 the years of 2004, 2005, and 2006 for
16 which such data are available. If such data
17 are unavailable, the Administrator shall
18 make a determination based upon 2002 or
19 2006 data from the most detailed indus-
20 trial classification level of Energy Informa-
21 tion Agency's Manufacturing Energy Con-
22 sumption Survey (using 2006 data if it is
23 available) and the 2002 or 2007 Economic
24 Census of the United States (using 2007
25 data if it is available). If data from the

Manufacturing Energy Consumption Survey are unavailable for any sector at the six-digit classification level in the NAICS, then the Administrator may extrapolate the information necessary to determine the eligibility of a sector under this paragraph from available Manufacturing Energy Consumption Survey data pertaining to a broader industrial category classified in the NAICS. Fuel cost data shall not include the cost of fuel used as feedstock by an industrial sector.

"(ii) IMPORTS AND EXPORTS.—The Administrator shall base the value of imports and exports under this subsection on United States International Trade Commission data. The Administrator shall take the average of data from as many of the years of 2004, 2005, and 2006 for which such data are available.

"(iii) PERCENTAGES.—The Administrator shall round the energy intensity, greenhouse gas intensity, and trade intensity percentages under subparagraph (A) to the nearest whole number.

"(iv) GREENHOUSE GAS EMISSION CALCULATIONS.—When calculating the tons of carbon dioxide equivalent greenhouse gas emissions for each sector under subparagraph (A)(i)(II)(aa), the Administrator may, to the extent necessary with respect to a sector, use economic and engineering models and the best available information on technology performance levels for such sector.

"(3) ADMINISTRATIVE DETERMINATION OF ADDITIONAL ELIGIBLE INDUSTRIAL SECTORS.—

"(A) INDIVIDUAL SHOWING PETITION.—

"(i) PETITION.—The owner or operator of an entity in an industrial sector may petition the Administrator to designate as eligible industrial sectors under this subpart an entity or a group of entities that—

"(I) represent a subsector of a six-digit section of the NAICS code; and

"(II) meet the eligibility criteria in both clauses (i) and (ii) of para-

graph (2)(A), or the eligibility criteria in clause (iii) of paragraph (2)(A).

"(ii) DATA.—In making a determination under this subparagraph, the Administrator shall consider data submitted by the petitioner that is specific to the entity, data solicited by the Administrator from other entities in the subsector, if such other entities exist, and data specified in paragraph (2)(E).

"(iii) BASIS OF SUBSECTOR DETERMINATION.—The Administrator shall determine an entity or group of entities to be a subsector of a six-digit section of the NAICS code based only upon the products manufactured and not the industrial process by which the products are manufactured, except that the Administrator may determine an entity or group of entities that manufacture a product from a virgin material to be a separate subsector from another entity or group of entities that manufacture the same product from recycled material.

"(iv) FINAL ACTION.—The Administrator shall take final action on such petition no later than 6 months after the petition is received by the Administrator.

"(B) UPDATED TRADE INTENSITY DATA.—The Administrator shall designate as eligible to receive emission allowance rebates under this subpart an industrial sector that—

"(i) met the energy or greenhouse gas intensity criteria in paragraph (2)(A)(i) as of the date of promulgation of the rule under paragraph (1); and

"(ii) meets the trade intensity criteria in paragraph (2)(A)(ii), using data from any year after 2006.

"(C) USE OF MOST RECENT DATA.—In determining whether to designate a sector or subsector as an eligible industrial sector under this paragraph, the Administrator shall use the most recent data available from the sources described in paragraph (2)(E), rather than the data from the years specified in paragraph (2)(E), to determine the trade intensity of such sector or subsector, but only for determining such trade intensity.

"SEC. 765. DISTRIBUTION OF EMISSION ALLOWANCE REBATES.

"(a) DISTRIBUTION SCHEDULE.—

"(1) IN GENERAL.—For each vintage year, the Administrator shall distribute allowances pursuant to this section no later than October 31 of the preceding calendar year. The Administrator shall make such annual distributions to the owners and operators of each entity in an eligible industrial sector in the amount of emission allowances calculated under subsection (b), except that—

"(A) for vintage years 2012 and 2013, the distribution for a covered entity shall be the entity's indirect carbon factor as calculated under subsection (b)(3); and

"(B) for vintage year 2026 and thereafter, the distribution shall be the amount calculated under subsection (b) multiplied by, except as modified by the President pursuant to section 767(c)(3)(A) for a sector—

"(i) 90 percent for vintage year 2026;

"(ii) 80 percent for vintage year 2027;

"(iii) 70 percent for vintage year 2028;

"(iv) 60 percent for vintage year 2029;

"(v) 50 percent for vintage year 2030;

"(vi) 40 percent for vintage year 2031;

"(vii) 30 percent for vintage year 2032;

"(viii) 20 percent for vintage year 2033;

"(ix) 10 percent for vintage year 2034; and

"(x) 0 percent for vintage year 2035 and thereafter.

"(2) RESUMPTION OF REDUCTION.—If the President has modified the percentage stated in paragraph (1)(B) under section 767(c)(3)(A), and the President subsequently makes a determination under section 767(b) for an eligible industrial sector that more than 70 percent of global output for that sector is produced or manufactured in countries that have met at least one of the criteria in that subsection, then the reduction schedule set forth in paragraph (1)(B) of this subsection shall begin in the next vintage year, with the percentage reduction

1 based on the amount of the distribution of emission
2 allowances under this section in the previous year.
3 "(3) NEWLY ELIGIBLE SECTORS.—In addition
4 to receiving a distribution of emission allowances
5 under this section in the first distribution occurring
6 after an industrial sector is designated as eligible
7 under section 764(b)(3), the owner or operator of an
8 entity in that eligible industrial sector may receive a
9 prorated share of any emission allowances made
10 available for distribution under this section that
11 were not distributed for the year in which the peti-
12 tion for eligibility was granted under section
13 764(b)(3).
14 "(b) CALCULATION OF DIRECT AND INDIRECT CAR-
15 BON FACTORS.—
16 "(1) IN GENERAL.—
17 "(A) COVERED ENTITIES.—Except as pro-
18 vided in subsection (a), for covered entities, the
19 amount of emission allowance rebates shall be
20 based on the sum of the covered entity's direct
21 and indirect carbon factors.
22 "(B) OTHER ELIGIBLE ENTITIES.—For
23 entities that are in eligible industrial sectors
24 but are not covered entities, the amount of

emission allowance rebates shall be based on the entity's indirect carbon factor.

"(C) NEW ENTITIES.—Not later than 2 years after the date of enactment of this title, the Administrator shall issue regulations governing the distribution of emission allowance rebates for the first and second years of operation of a new entity in an eligible industrial sector. These regulations shall provide for—

"(i) the distribution of emission allowance rebates to such entities based on comparable entities in the same sector; and

"(ii) an adjustment in the third and fourth years of operation to reconcile the total amount of emission allowance rebates received during the first and second years of operation to the amount the entity would have received during the first and second years of operation had the appropriate data been available.

"(2) DIRECT CARBON FACTOR.—The direct carbon factor for a covered entity for a vintage year is the product of—

"(A) the average output of the covered entity for the two years preceding the year of the distribution; and

"(B) the most recent calculation of the average direct greenhouse gas emissions (expressed in tons of carbon dioxide equivalent) per unit of output for all covered entities in the sector, as determined by the Administrator under paragraph (4).

"(3) INDIRECT CARBON FACTOR.—

"(A) IN GENERAL.—The indirect carbon factor for an entity for a calendar year is the product obtained by multiplying the average output of the entity for the two years preceding the years of the distribution by both the electricity emissions intensity factor determined pursuant to subparagraph (B) and the electricity efficiency factor determined pursuant to subparagraph (C) for the year concerned.

"(B) ELECTRICITY EMISSIONS INTENSITY FACTOR.—Each person selling electricity to the owner or operator of an entity in any sector designated as an eligible industrial sector under section 764(b) shall provide the owner or operator of the entity and the Administrator, on an

annual basis, the electricity emissions intensity factor for the entity. The electricity emissions intensity factor for the entity, expressed in tons of carbon dioxide equivalents per kilowatt hour, is determined by dividing—

"(i) the annual sum of the hourly product of—

"(I) the electricity purchased by the entity from that person in each hour (expressed in kilowatt hours), multiplied by

"(II) the cost the person selling the electricity passes to the entity per ton of carbon dioxide equivalent emitted by the electricity provider per kilowatt hour, taking into account the entity's retail rate arrangements, by

"(ii) the total kilowatt hours of electricity purchased by the entity from that person during that year.

"(C) ELECTRICITY EFFICIENCY FACTOR.—The electricity efficiency factor is the average amount of electricity (in kilowatt hours) used per unit of output for all entities in the relevant sector, as determined by the Administrator

based on the best available data, including data provided under paragraph (6).

"(D) INDIRECT CARBON FACTOR REDUCTION.—If an electricity provider received a free allocation of emission allowances pursuant to section [782], the Administrator shall adjust the indirect carbon factor to avoid rebates to the eligible entity for costs that the Administrator determines were not incurred by the industrial entity because the allowances were freely allocated to the eligible entity's electricity provider and used for the benefit of industrial consumers.

"(4) GREENHOUSE GAS INTENSITY CALCULATIONS.—The Administrator shall calculate the average direct greenhouse gas emissions (expressed in tons of carbon dioxide equivalent) per unit of output for all covered entities in each eligible industrial sector every four years using an average of the two most recent years of the best available data.

"(5) ENSURING EFFICIENCY IMPROVEMENTS.—When making greenhouse gas calculations, the Administrator shall—

"(A) limit the average direct greenhouse gas emissions per unit of output, calculated

under paragraph (4), for any eligible industrial sector to an amount that is not greater than it was in any previous calculation under this subsection; and

"(B) limit the electric emissions intensity factor, calculated under paragraph (3)(B) and resulting from a change in electricity supply, for any entity to an amount that is not greater than it was during any previous year.

"(6) DATA SOURCES.—For the purposes of this subsection—

"(A) the Administrator shall use data from the greenhouse gas registry, established under section 713, where it is available; and

"(B) each owner or operator of an entity in an eligible industrial sector and each department, agency, and instrumentality of the United States shall provide the Administrator with such information as the Administrator finds necessary to determine the direct carbon factor and the indirect carbon factor for each entity subject to this section.

"(c) TOTAL MAXIMUM DISTRIBUTION.—Notwithstanding subsections (a) and (b), the Administrator shall not distribute more allowances for any vintage year pursu-

ant to this section than are allocated for use under this part pursuant to section 【782】 for that vintage year. For any vintage year for which the total emission allowance rebates calculated pursuant to this section exceed the number of allowances allocated pursuant to section 【782】, the Administrator shall reduce each entity's distribution on a pro rata basis so that the total distribution under this section equals the number of allowances allocated under section 【782】.

"Subpart 2—International Reserve Allowance Program

"SEC. 766. INTERNATIONAL RESERVE ALLOWANCE PROGRAM.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—If the President takes an action described in section 767(c)(3)(B) with respect to a sector then, not later than 24 months after that determination, the Administrator shall issue regulations—

''(A) determining an appropriate price for and offering for sale to United States importers international reserve allowances;

''(B) requiring the submission of appropriate amounts of such allowances in conjunction with the importation into the United States

of a primary product produced or manufactured by that sector;

"(C) exempting from the requirements of subparagraph (B) primary products produced in—

"(i) foreign countries that the United Nations has identified as among the least developed of developing countries; or

"(ii) foreign countries that the President has determined to be responsible for less than 0.5 percent of total global greenhouse gas emissions; and

"(D) prohibiting the introduction into interstate commerce of a primary product without submitting the required number of international reserve allowances in accordance with such regulations, unless the product was produced by a covered entity under this title, or by an entity that is or could be regulated under this title.

"(2) PURPOSE OF PROGRAM.—The Administrator shall establish the program under paragraph (1) in a manner that addresses, consistent with international agreements to which the United States is a party, the competitive imbalance in the costs of

producing or manufacturing primary products in industrial sectors resulting from the difference between—

"(A) the direct and indirect costs of complying with this title; and

"(B) the direct and indirect costs, if any, of complying in other countries with greenhouse gas regulatory programs, requirements, export tariffs, or other measures adopted or imposed to reduce greenhouse gas emissions.

"(3) EMISSION ALLOWANCE REBATES.—The Administrator shall take into account the value of emission allowance rebates distributed under subpart 1 when making calculations under paragraph (2).

"(4) LIMITATION.—The International Reserve Allowance Program may not begin before January 1, 2025.

"(b) COVERED ENTITIES.—International reserve allowances may not be held by covered entities to comply with section 722.

"Subpart 3—Presidential Determination

"SEC. 767. PRESIDENTIAL REPORTS AND DETERMINATIONS.

"(a) REPORT.—Not later than January 1, 2018, the President shall submit a report to Congress on the effec-

1 tiveness of the distribution of emission allowance rebates
2 under subpart 1 in mitigating carbon leakage in industrial
3 sectors. Such report shall also include—

4 "(1) recommendations on how to better achieve
5 the purposes of this part, including an assessment of
6 the feasibility and usefulness of an International Re-
7 serve Allowance Program; and

8 "(2) an assessment of the amount and duration
9 of assistance, including distribution of free allow-
10 ances, being provided to eligible industrial sectors in
11 other developed countries to mitigate costs of com-
12 pliance with domestic greenhouse gas reduction pro-
13 grams in such countries.

14 "(b) PRESIDENTIAL DETERMINATION.—Not later
15 than June 30, 2022, and every four years thereafter, the
16 President, in consultation with the Administrator and
17 other appropriate agencies, shall determine, for each eligi-
18 ble industrial sector, whether more than 70 percent of
19 global output for that sector is produced or manufactured
20 in countries that have met at least one of the following
21 criteria:

22 "(1) The country is a party to an international
23 agreement to which the United States is a party
24 that includes a nationally enforceable greenhouse gas
25 emissions reduction commitment for that country

that is at least as stringent as that of the United States.

"(2) The country is a party to a multilateral or bilateral emission reduction agreement for that sector to which the United States is a party.

"(3) The country has an annual energy or greenhouse gas intensity, as described in section 764(b)(2)(A)(i), for the sector that is equal to or less than the energy or greenhouse gas intensity for such sector in the United States in the most recent calendar year for which data are available.

"(4) The country has implemented policies, including sectoral caps, export tariffs, production fees, electricity generation regulations, or greenhouse gas emissions fees, that individually or collectively impose an incremental increase on the cost of production associated with greenhouse gas emissions from the sector that is at least 60 percent of the cost of complying with this title in the United States for such sector, averaged over a two-year period.

"(c) EFFECT OF PRESIDENTIAL DETERMINATION.—If the President makes a determination under subsection (b) with respect to an eligible industrial sector that 70 percent or less of the global output for the sector is produced or manufactured in countries that have met one or

more of the criteria in subsection (b), then the President shall, not later than June 30, 2022, and every four years thereafter—

"(1) assess the extent to which the emission allowance rebates provided pursuant to subpart 1 have mitigated or addressed, or could mitigate or address, carbon leakage in that sector;

"(2) assess the extent to which an International Reserve Allowance Program has mitigated or addressed, or could mitigate or address, carbon leakage in that sector and the feasibility of establishing such a program; and

"(3) with respect to that sector—

"(A) modify the percentage by which direct and indirect carbon factors will be multiplied under section 765(a)(1)(B);

"(B) implement an International Reserve Allowance Program under section 766 for the products of the sector; or

"(C) take the actions in both subparagraph (A) and (B).

"(d) REPORT TO CONGRESS.—Not later than June 30, 2022, and every four years thereafter, the President shall transmit to the Congress a report providing notice of any determination made under subsection (b), explain-

ing the reasons for such determination, and identifying the actions taken by the President under subsection (c).

"(e) LIMITATION.—The President may only implement an International Reserve Allowance Program for sectors producing primary products.".

SEC. 402. ALLOCATIONS TO PETROLEUM REFINERIES.

Title VII of the Clean Air Act is amended by inserting after part F the following new part:

"PART G—PETROLEUM REFINERIES

"SEC. 771. ALLOCATIONS TO PETROLEUM REFINERIES.

"(a) OUTPUT.—In this section, the term 'output' means the total tonnage or other standard unit of production (as determined by the Administrator) produced by a petroleum refinery.

"(b) IN GENERAL.—For each vintage year between 2014 and 2026, the Administrator shall distribute allowances pursuant to this section to owners and operators of petroleum refineries in the United States.

"(c) DISTRIBUTION SCHEDULE.—The Administrator shall distribute emission allowances of each vintage year no later than October 31 of the preceding calendar year.

"(d) CALCULATION OF EMISSION ALLOWANCE REBATES.—

"(1) IN GENERAL.—The amount of emission allowance rebates distributed to each refinery shall be

1 based on the sum of the refinery's direct and indi-
2 rect carbon factors.
3 "(2) NEW REFINERIES.—Not later than 2 years
4 after the date of enactment of this section, the Ad-
5 ministrator shall issue regulations governing the dis-
6 tribution of emission allowance rebates for the first
7 and second years of operation of a new petroleum
8 refinery. These regulations shall provide for—
9 "(A) the distribution of emission allowance
10 rebates to such petroleum refineries based on
11 comparable petroleum refineries; and
12 "(B) an adjustment in the third and
13 fourth years of operation to reconcile the total
14 amount of emission allowance rebates received
15 during the first and second years of operation
16 to the amount the petroleum refinery would
17 have received during the first and second years
18 of operation had the appropriate data been
19 available.
20 "(3) DIRECT CARBON FACTOR.—The direct car-
21 bon factor for a petroleum refinery for a vintage
22 year is the product of—
23 "(A) the average output of the petroleum
24 refinery for the two years preceding the year of
25 the distribution; and

"(B) the most recent calculation of the average direct greenhouse gas emissions (expressed in tons of carbon dioxide equivalent) per unit of output for all petroleum refineries, as determined by the Administrator under paragraph (5).

"(4) INDIRECT CARBON FACTOR.—

"(A) IN GENERAL.—The indirect carbon factor for a petroleum refinery for a vintage year is the product obtained by multiplying the average output of the petroleum refinery for the two years preceding the years of the distribution by both the electricity emissions intensity factor determined pursuant to subparagraph (B) and the electricity efficiency factor determined pursuant to subparagraph (C) for the year concerned.

"(B) ELECTRICITY EMISSIONS INTENSITY FACTOR.—Each person selling electricity to the owner or operator of a petroleum refinery shall provide the owner or operator of the petroleum refinery and the Administrator, on an annual basis, the electricity emissions intensity factor for the petroleum refinery. The electricity emissions intensity factor for the petroleum refinery,

expressed in tons of carbon dioxide equivalents per kilowatt hour, is determined by dividing—

"(i) the annual sum of the hourly product of—

"(I) the electricity purchased by the petroleum refinery from that person in each hour (expressed in kilowatt hours), multiplied by

"(II) the cost the person selling the electricity passes to the petroleum refinery per ton of carbon dioxide equivalent emitted by the electricity provider per kilowatt hour, taking into account the petroleum refinery's retail rate arrangements, by

"(ii) the total kilowatt hours of electricity purchased by the petroleum refinery from that person during that year.

"(C) ELECTRICITY EFFICIENCY FACTOR.—The electricity efficiency factor is the average amount of electricity (in kilowatt hours) used per unit of output for all petroleum refineries, as determined by the Administrator based on the best available data, including data provided under paragraph (7).

"(D) INDIRECT CARBON FACTOR REDUCTION.—If an electricity provider received a free allocation of emission allowances pursuant to section 782, the Administrator shall adjust the indirect carbon factor to avoid rebates to the petroleum refinery for costs that the Administrator determines were not incurred by the petroleum refinery because the allowances were freely allocated to the petroleum refinery's electricity provider and used for the benefit of petroleum refineries.

"(5) GREENHOUSE GAS INTENSITY CALCULATIONS.—The Administrator shall calculate the average direct greenhouse gas emissions (expressed in tons of carbon dioxide equivalent) per unit of output for all petroleum refineries not less than once every five years using an average of the two most recent years of the best available data.

"(6) ENSURING EFFICIENCY IMPROVEMENTS.—When making greenhouse gas calculations, the Administrator shall—

"(A) limit the average direct greenhouse gas emissions per unit of output, calculated under paragraph (5), to an amount that is not

greater than it was in any previous calculation under this subsection; and

"(B) limit the electricity emissions intensity factor, calculated under paragraph (4)(B) and resulting from a change in electricity supply, for any petroleum refinery to an amount that is not greater than it was during any previous year.

"(7) DATA SOURCES.—For the purposes of this subsection—

"(A) the Administrator shall use data from the greenhouse gas registry, established under section 713, where it is available; and

"(B) each owner or operator of a petroleum refinery and each department, agency, and instrumentality of the United States shall provide the Administrator with such information as the Administrator finds necessary to determine the direct carbon factor and the indirect carbon factor for each petroleum refinery subject to this section.

"(e) TOTAL MAXIMUM DISTRIBUTION.—The Administrator shall not distribute more allowances for any vintage year pursuant to this section than are allocated for use under this part pursuant to section 782 for that vin-

tage year. For any vintage year for which the total emission allowance rebates calculated pursuant to this section exceed the number of allowances allocated pursuant to section 782, the Administrator shall reduce each petroleum refinery's distribution on a pro rata basis so that the total distribution under this section equals the number of allowances allocated under section 782.''.

Subtitle B—Green Jobs and Worker Transition

PART 1—GREEN JOBS

SEC. 421. CLEAN ENERGY CURRICULUM DEVELOPMENT GRANTS.

(a) AUTHORIZATION.—The Secretary of Education is authorized to award grants, on a competitive basis, to eligible partnerships to develop programs of study (containing the information described in section 122(c)(1)(A) of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2342), that are focused on emerging careers and jobs in renewable energy, energy efficiency, and climate change mitigation. The Secretary of Education shall consult with the Secretary of Labor and the Secretary of Energy prior to the issuance of a solicitation for grant applications.

(b) ELIGIBLE PARTNERSHIPS.—For purposes of this section, an eligible partnership shall include—

(1) at least 1 local educational agency eligible for funding under section 131 of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2351) or an area career and technical education school or education service agency described in such section;

(2) at least 1 postsecondary institution eligible for funding under section 132 of such Act (20 U.S.C. 2352); and

(3) representatives of the community including business, labor organizations, and industry that have experience in clean energy.

(c) APPLICATION.—An eligible partnership seeking a grant under this section shall submit an application to the Secretary at such time and in such manner as the Secretary may require. Applications shall include—

(1) a description of the eligible partners and partnership, the roles and responsibilities of each partner, and a demonstration of each partner's capacity to support the program;

(2) a description of the career area or areas within the field of clean energy to be developed, the reason for the choice, and evidence of the labor market need to prepare students in that area;

(3) a description of the new or existing program of study and both secondary and postsecondary components;

(4) a description of the students to be served by the new program of study;

(5) a description of how the program of study funded by the grant will be replicable and disseminated to schools outside of the partnership, including urban and rural areas;

(6) a description of applied learning that will be incorporated into the program of study and how it will incorporate or reinforce academic learning;

(7) a description of how the program of study will be delivered;

(8) a description of how the program will provide accessibility to students, especially economically disadvantaged, low performing, and urban and rural students;

(9) a description of how the program will address placement of students in nontraditional fields as described in section 3(20) of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302(20)); and

(10) a description of how the applicant proposes to consult or has consulted with a labor organiza-

tion, labor management partnership, apprenticeship program, or joint apprenticeship and training program that provides education and training in the field of study for which the applicant proposes to develop a curriculum.

(d) PRIORITY.—The Secretary shall give priority to applications that—

(1) use online learning or other innovative means to deliver the program of study to students, educators, and instructors outside of the partnership; and

(2) focus on low performing students and special populations as defined in section 3(29) of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302(29)).

(e) PEER REVIEW.—The Secretary shall convene a peer review process to review applications for grants under this section and to make recommendations regarding the selection of grantees. Members of the peer review committee shall include—

(1) educators who have experience implementing curricula with comparable purposes; and

(2) business and industry experts in clean energy-related fields.

(f) USES OF FUNDS.—Grants awarded under this section shall be used for the development, implementation, and dissemination of programs of study (as described in section 122(c)(1)(A) of the Carl D. Perkins Career and Technical Education Act (20 U.S.C. 342(c)(1)(A))) in career areas related to clean energy, renewable energy, energy efficiency, and climate change mitigation.

SEC. 422. INCREASED FUNDING FOR ENERGY WORKER TRAINING PROGRAM.

Section 171(e)(8) of the Workforce Investment Act of 1998 (29 U.S.C. 2916(e)(8)) is amended by striking "$125,000,000" and inserting "$150,000,000".

PART 2—CLIMATE CHANGE WORKER ADJUSTMENT ASSISTANCE

SEC. 425. PETITIONS, ELIGIBILITY REQUIREMENTS, AND DETERMINATIONS.

(a) PETITIONS.—

(1) FILING.—A petition for certification of eligibility to apply for adjustment assistance for a group of workers under this part may be filed by any of the following:

(A) The group of workers.

(B) The certified or recognized union or other duly authorized representative of such workers.

(C) Employers of such workers, one-stop operators or one-stop partners (as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801)), including State employment security agencies, or the State dislocated worker unit established under title I of such Act, on behalf of such workers.

The petition shall be filed simultaneously with the Secretary of Labor and with the Governor of the State in which such workers' employment site is located.

(2) ACTION BY GOVERNORS.—Upon receipt of a petition filed under paragraph (1), the Governor shall—

(A) ensure that rapid response activities and appropriate core and intensive services (as described in section 134 of the Workforce Investment Act of 1998 (29 U.S.C. 2864)) authorized under other Federal laws are made available to the workers covered by the petition to the extent authorized under such laws; and

(B) assist the Secretary in the review of the petition by verifying such information and providing such other assistance as the Secretary may request.

(3) ACTION BY THE SECRETARY.—Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register and on the website of the Department of Labor that the Secretary has received the petition and initiated an investigation.

(4) HEARINGS.—If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under paragraph (3) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

(b) ELIGIBILITY.—

(1) IN GENERAL.—A group of workers shall be certified by the Secretary as eligible to apply for adjustment assistance under this part pursuant to a petition filed under subsection (a) if—

(A) the group of workers is employed in—

(i) energy producing and transforming industries;

(ii) industries dependent upon energy industries;

(iii) energy-intensive manufacturing industries;

(iv) consumer goods manufacturing; or

(v) other industries whose employment the Secretary determines has been adversely affected by any requirement of title VII of the Clean Air Act;

(B) the Secretary determines that a significant number or proportion of the workers in such workers' employment site have become totally or partially separated, or are threatened to become totally or partially separated from employment; and

(C) the sales, production, or delivery of goods or services have decreased as a result of any requirement of title VII of the Clean Air Act, including—

(i) the shift from reliance upon fossil fuels to other sources of energy, including renewable energy, that results in the closing of a facility or layoff of employees at a facility that mines, produces, processes, or utilizes fossil fuels to generate electricity;

(ii) a substantial increase in the cost of energy required for a manufacturing fa-

cility to produce items whose prices are competitive in the marketplace, to the extent the cost is not offset by allowance allocation to the facility pursuant to title VII of the Clean Air Act; or

(iii) other documented occurrences that the Secretary determines are indicators of an adverse impact on an industry described in subparagraph (A) as a result of any requirement of title VII of the Clean Air Act.

(2) WORKERS IN PUBLIC AGENCIES.—A group of workers in a public agency shall be certified by the Secretary as eligible to apply for climate change adjustment assistance pursuant to a petition filed if the Secretary determines that a significant number or proportion of the workers in the public agency have become totally or partially separated from employment, or are threatened to become totally or partially separated as a result of any requirement of title VII of the Clean Air Act.

(3) ADVERSELY AFFECTED SERVICE WORKERS.—A group of workers shall be certified as eligible to apply for climate change adjustment assist-

ance pursuant to a petition filed if the Secretary determines that—

(A) a significant number or proportion of the service workers at an employment site where a group of workers has been certified by the Secretary as eligible to apply for adjustment assistance under this part pursuant to paragraph (1) have become totally or partially separated from employment, or are threatened to become totally or partially separated; and

(B) a loss of business in the firm providing service workers to an employment site is directly attributable to one or more of the documented occurrences listed in paragraph (1)(C).

(c) AUTHORITY TO INVESTIGATE AND COLLECT INFORMATION.—

(1) IN GENERAL.—The Secretary shall, in determining whether to certify a group of workers under subsection (d), obtain information the Secretary determines to be necessary to make the certification, through questionnaires and in such other manner as the Secretary determines appropriate from—

(A) the workers' employer;

(B) officials of certified or recognized unions or other duly authorized representatives of the group of workers; or

(C) one-stop operators or one-stop partners (as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801)); or

(2) VERIFICATION OF INFORMATION.—The Secretary shall require an employer, union, or one-stop operator or partner to certify all information obtained under paragraph (1) from the employer, union, or one-stop operator or partner (as the case may be) on which the Secretary relies in making a determination under subsection (d), unless the Secretary has a reasonable basis for determining that such information is accurate and complete without being certified.

(3) PROTECTION OF CONFIDENTIAL INFORMATION.—The Secretary may not release information obtained under paragraph (1) that the Secretary considers to be confidential business information unless the employer submitting the confidential business information had notice, at the time of submission, that the information would be released by the Secretary, or the employer subsequently consents to the release of the information. Nothing in this para-

graph shall be construed to prohibit the Secretary from providing such confidential business information to a court in camera or to another party under a protective order issued by a court.

(d) DETERMINATION BY THE SECRETARY OF LABOR.—

(1) IN GENERAL.—As soon as possible after the date on which a petition is filed under subsection (a), but in any event not later than 40 days after that date, the Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, as necessary, shall determine whether the petitioning group meets the requirements of subsection (b) and shall issue a certification of eligibility to apply for assistance under this part covering workers in any group which meets such requirements. Each certification shall specify the date on which the total or partial separation began or threatened to begin. Upon reaching a determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register and on the website of the Department of Labor, together with the Secretary's reasons for making such determination.

(2) ONE YEAR LIMITATION.—A certification under this section shall not apply to any worker whose last total or partial separation from the employment site before the worker's application under section 426(a) occurred more than 1 year before the date of the petition on which such certification was granted.

(3) REVOCATION OF CERTIFICATION.—Whenever the Secretary determines, with respect to any certification of eligibility of the workers of an employment site, that total or partial separations from such site are no longer a result of the factors specified in subsection (b)(1), the Secretary shall terminate such certification and promptly have notice of such termination published in the Federal Register and on the website of the Department of Labor, together with the Secretary's reasons for making such determination. Such termination shall apply only with respect to total or partial separations occurring after the termination date specified by the Secretary.

(e) INDUSTRY NOTIFICATION OF ASSISTANCE.—Upon receiving a notification of a determination under subsection (d) with respect to a domestic industry the Secretary of Labor shall notify the representatives of the domestic industry affected by the determination, employers

publicly identified by name during the course of the proceeding relating to the determination, and any certified or recognized union or, to the extent practicable, other duly authorized representative of workers employed by such representatives of the domestic industry, of—

(1) the adjustment allowances, training, and other benefits available under this part;

(2) the manner in which to file a petition and apply for such benefits; and

(3) the availability of assistance in filing such petitions;

(4) notify the Governor of each State in which one or more employers in such industry are located of the Secretary's determination and the identity of the employers; and

(5) upon request, provide any assistance that is necessary to file a petition under subsection (a).

(f) BENEFIT INFORMATION TO WORKERS, PROVIDERS OF TRAINING.—

(1) IN GENERAL.—The Secretary shall provide full information to workers about the adjustment allowances, training, and other benefits available under this part and about the petition and application procedures, and the appropriate filing dates, for such allowances, training and services. The Sec-

retary shall provide whatever assistance is necessary to enable groups of workers to prepare petitions or applications for program benefits. The Secretary shall make every effort to insure that cooperating State agencies fully comply with the agreements entered into under section 426(a) and shall periodically review such compliance. The Secretary shall inform the State Board for Vocational Education or equivalent agency, the one-stop operators or one-stop partners (as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801), and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under subsection (d) and of projections, if available, of the needs for training under as a result of such certification.

(2) NOTICE BY MAIL.—The Secretary shall provide written notice through the mail of the benefits available under this part to each worker whom the Secretary has reason to believe is covered by a certification made under subsection (d)—

(A) at the time such certification is made, if the worker was partially or totally separated from the adversely affected employment before such certification, or—

(B) at the time of the total or partial separation of the worker from the adversely affected employment, if subparagraph (A) does not apply.

(3) NEWSPAPERS; WEBSITE.—The Secretary shall publish notice of the benefits available under this part to workers covered by each certification made under subsection (d) in newspapers of general circulation in the areas in which such workers reside and shall make such information available on the website of the Department of Labor.

SEC. 426. PROGRAM BENEFITS.

(a) CLIMATE CHANGE ADJUSTMENT ALLOWANCE.—

(1) ELIGIBILITY.—Payment of a climate change adjustment allowance shall be made to an adversely affected worker covered by a certification under section 425(b) who files an application for such allowance for any week of unemployment which begins on or after the date of such certification, if the following conditions are met:

(A) Such worker's total or partial separation before the worker's application under this part occurred—

(i) on or after the date, as specified in the certification under which the worker is

covered, on which total or partial separation began or threatened to begin in the adversely affected employment;

(ii) before the expiration of the 2-year period beginning on the date on which the determination under section 425(d) was made; and

(iii) before the termination date, if any, determined pursuant to section 425(d)(3).

(B) Such worker had, in the 52-week period ending with the week in which such total or partial separation occurred, at least 26 weeks of full-time employment or 1,040 hours of part time employment in adversely affected employment, or, if data with respect to weeks of employment are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary. For the purposes of this paragraph, any week in which such worker—

(i) is on employer-authorized leave for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training;

(ii) does not work because of a disability that is compensable under a workmen's compensation law or plan of a State or the United States;

(iii) had his employment interrupted in order to serve as a full-time representative of a labor organization in such firm; or

(iv) is on call-up for purposes of active duty in a reserve status in the Armed Forces of the United States, provided such active duty is ''Federal service'' as defined in section 8521(a)(1) of title 5, United States Code,

shall be treated as a week of employment.

(C) Such worker is enrolled in a training program approved by the Secretary under subsection (b)(2).

(2) INELIGIBILITY FOR CERTAIN OTHER BENEFITS.—An adversely affected worker receiving a payment under this section shall be ineligible to receive any other form of unemployment insurance for the period in which such worker is receiving a climate change adjustment allowance under this section.

(3) REVOCATION.—If—

(A) the Secretary determines that—

(i) the adversely affected worker—

(I) has failed to begin participation in the training program the enrollment in which meets the requirement of paragraph (1)(C); or

(II) has ceased to participate in such training program before completing such training program; and

(ii) there is no justifiable cause for such failure or cessation; or

(B) the certification made with respect to such worker under section 425(d) is revoked under paragraph (3) of such section,

no adjustment allowance may be paid to the adversely affected worker under this part for the week in which such failure, cessation, or revocation occurred, or any succeeding week, until the adversely affected worker begins or resumes participation in a training program approved by the Secretary under section (b)(2).

(4) WAIVERS OF TRAINING REQUIREMENTS.—The Secretary may issue a written statement to an adversely affected worker waiving the requirement to be enrolled in training described in subsection (b)(2) if the Secretary determines that it is not feasible or

appropriate for the worker, because of 1 or more of the following reasons:

(A) RECALL.—The worker has been notified that the worker will be recalled by the employer from which the separation occurred.

(B) MARKETABLE SKILLS.—

(i) IN GENERAL.—The worker possesses marketable skills for suitable employment (as determined pursuant to an assessment of the worker, which may include the profiling system under section 303(j) of the Social Security Act (42 U.S.C. 503(j)), carried out in accordance with guidelines issued by the Secretary) and there is a reasonable expectation of employment at equivalent wages in the foreseeable future.

(ii) MARKETABLE SKILLS DEFINED.—For purposes of clause (i), the term ''marketable skills'' may include the possession of a postgraduate degree from an institution of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) or an equivalent institution, or the possession of an equiva-

lent postgraduate certification in a specialized field.

(C) RETIREMENT.—The worker is within 2 years of meeting all requirements for entitlement to either—

(i) old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.) (except for application therefor); or

(ii) a private pension sponsored by an employer or labor organization.

(D) HEALTH.—The worker is unable to participate in training due to the health of the worker, except that a waiver under this subparagraph shall not be construed to exempt a worker from requirements relating to the availability for work, active search for work, or refusal to accept work under Federal or State unemployment compensation laws.

(E) ENROLLMENT UNAVAILABLE.—The first available enrollment date for the training of the worker is within 60 days after the date of the determination made under this paragraph, or, if later, there are extenuating circumstances for the delay in enrollment, as de-

termined pursuant to guidelines issued by the Secretary.

(F) TRAINING NOT AVAILABLE.—Training described in subsection (b)(2) is not reasonably available to the worker from either governmental agencies or private sources (which may include area career and technical education schools, as defined in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302), and employers), no training that is suitable for the worker is available at a reasonable cost, or no training funds are available.

(5) WEEKLY AMOUNTS.—The climate change adjustment allowance payable to an adversely affected worker for a week of unemployment shall be an amount equal to 70 percent of the average weekly wage of such worker, but in no case shall such amount exceed the average weekly wage for all workers in the State where the adversely affected worker resides.

(6) MAXIMUM DURATION OF BENEFITS.—An eligible worker may receive a climate change adjustment allowance under this subsection for a period of not longer than 156 weeks.

(b) EMPLOYMENT SERVICES AND TRAINING.—

(1) INFORMATION AND EMPLOYMENT SERVICES.—The Secretary shall make available, directly or through agreements with the States under section 427(a) to adversely affected workers covered by a certification under section 425(a) the following information and employment services:

(A) Comprehensive and specialized assessment of skill levels and service needs, including through—

(i) diagnostic testing and use of other assessment tools; and

(ii) in-depth interviewing and evaluation to identify employment barriers and appropriate employment goals.

(B) Development of an individual employment plan to identify employment goals and objectives, and appropriate training to achieve those goals and objectives.

(C) Information on training available in local and regional areas, information on individual counseling to determine which training is suitable training, and information on how to apply for such training.

(D) Information on training programs and other services provided by a State pursuant to title I of the Workforce Investment Act of 1998 and available in local and regional areas, information on individual counseling to determine which training is suitable training, and information on how to apply for such training.

(E) Information on how to apply for financial aid, including referring workers to educational opportunity centers described in section 402F of the Higher Education Act of 1965 (20 U.S.C. 1070a–16), where applicable, and notifying workers that the workers may request financial aid administrators at institutions of higher education (as defined in section 102 of such Act (20 U.S.C. 1002)) to use the administrators' discretion under section 479A of such Act (20 U.S.C. 1087tt) to use current year income data, rather than preceding year income data, for determining the amount of need of the workers for Federal financial assistance under title IV of such Act (20 U.S.C. 1070 et seq.).

(F) Short-term prevocational services, including development of learning skills, communications skills, interviewing skills, punctuality,

personal maintenance skills, and professional conduct to prepare individuals for employment or training.

(G) Individual career counseling, including job search and placement counseling, during the period in which the individual is receiving a climate change adjustment allowance or training under this part, and after receiving such training for purposes of job placement.

(H) Provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including—

(i) job vacancy listings in such labor market areas;

(ii) information on jobs skills necessary to obtain jobs identified in job vacancy listings described in subparagraph (A);

(iii) information relating to local occupations that are in demand and earnings potential of such occupations; and

(iv) skills requirements for local occupations described in subparagraph (C).

(I) Information relating to the availability of supportive services, including services relating to child care, transportation, dependent care, housing assistance, and need-related payments that are necessary to enable an individual to participate in training.

(2) TRAINING.—

(A) APPROVAL OF AND PAYMENT FOR TRAINING.—If the Secretary determines, with respect to an adversely affected worker that—

(i) there is no suitable employment (which may include technical and professional employment) available for an adversely affected worker;

(ii) the worker would benefit from appropriate training;

(iii) there is a reasonable expectation of employment following completion of such training;

(iv) training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources (including area career and technical education schools, as defined in section 3 of the Carl D. Perkins Career

and Technical Education Act of 2006, and employers);

(v) the worker is qualified to undertake and complete such training; and

(vi) such training is suitable for the worker and available at a reasonable cost,

the Secretary shall approve such training for the worker. Upon such approval, the worker shall be entitled to have payment of the costs of such training (subject to the limitations imposed by this section) paid on the worker's behalf by the Secretary directly or through a voucher system.

(B) DISTRIBUTION.—The Secretary shall establish procedures for the distribution of the funds to States to carry out the training programs approved under this paragraph, and shall make an initial distribution of the funds made available as soon as practicable after the beginning of each fiscal year.

(C) ADDITIONAL RULES REGARDING APPROVAL OF AND PAYMENT FOR TRAINING.—

(i) For purposes of applying subparagraph (A)(iii), a reasonable expectation of employment does not require that employ-

ment opportunities for a worker be available, or offered, immediately upon the completion of training approved under such subparagraph.

(ii) If the costs of training an adversely affected worker are paid by the Secretary under subparagraph (A), no other payment for such costs may be made under any other provision of Federal law. No payment may be made under subparagraph (A) of the costs of training an adversely affected worker or an adversely affected incumbent worker if such costs—

(I) have already been paid under any other provision of Federal law; or

(II) are reimbursable under any other provision of Federal law and a portion of such costs have already been paid under such other provision of Federal law.

The provisions of this clause shall not apply to, or take into account, any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of the costs

incurred in training a particular adversely affected worker, even if such use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker.

(D) TRAINING PROGRAMS.—The training programs that may be approved under subparagraph (A) include—

(i) employer-based training, including—

(I) on-the-job training if approved by the Secretary under subsection (c); and

(II) joint labor-management apprenticeship programs;

(ii) any training program provided by a State pursuant to title I of the Workforce Investment Act of 1998;

(iii) any training program approved by a private industry council established under section 102 of such Act;

(iv) any programs in career and technical education described in section 3(5) of the Carl D. Perkins Career and Technical Education Act of 2006;

(v) any program of remedial education;

(vi) any program of prerequisite education or coursework required to enroll in training that may be approved under this paragraph;

(vii) any training program for which all, or any portion, of the costs of training the worker are paid—

(I) under any Federal or State program other than this part; or

(II) from any source other than this part;

(ix) any training program or coursework at an accredited institution of higher education (described in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)), including a training program or coursework for the purpose of—

(I) obtaining a degree or certification; or

(II) completing a degree or certification that the worker had previously begun at an accredited institution of higher education; and

(viii) any other training program approved by the Secretary.

(3) SUPPLEMENTAL ASSISTANCE.—The Secretary may, as appropriate, authorize supplemental assistance that is necessary to defray reasonable transportation and subsistence expenses for separate maintenance in a case in which training for a worker is provided in a facility that is not within commuting distance of the regular place of residence of the worker.

(c) ON-THE-JOB TRAINING REQUIREMENTS.—

(1) IN GENERAL.—The Secretary may approve on-the-job training for any adversely affected worker if—

(A) the Secretary determines that on-the-job training—

(i) can reasonably be expected to lead to suitable employment with the employer offering the on-the-job training;

(ii) is compatible with the skills of the worker;

(iii) includes a curriculum through which the worker will gain the knowledge or skills to become proficient in the job for which the worker is being trained; and

(iv) can be measured by benchmarks that indicate that the worker is gaining such knowledge or skills; and

(B) the State determines that the on-the-job training program meets the requirements of clauses (iii) and (iv) of subparagraph (A).

(2) MONTHLY PAYMENTS.—The Secretary shall pay the costs of on-the-job training approved under paragraph (1) in monthly installments.

(3) CONTRACTS FOR ON-THE-JOB TRAINING.—

(A) IN GENERAL.—The Secretary shall ensure, in entering into a contract with an employer to provide on-the-job training to a worker under this subsection, that the skill requirements of the job for which the worker is being trained, the academic and occupational skill level of the worker, and the work experience of the worker are taken into consideration.

(B) TERM OF CONTRACT.—Training under any such contract shall be limited to the period of time required for the worker receiving on-the-job training to become proficient in the job for which the worker is being trained, but may not exceed 156 weeks in any case.

(4) EXCLUSION OF CERTAIN EMPLOYERS.—The Secretary shall not enter into a contract for on-the-job training with an employer that exhibits a pattern of failing to provide workers receiving on-the-job training from the employer with—

(A) continued, long-term employment as regular employees; and

(B) wages, benefits, and working conditions that are equivalent to the wages, benefits, and working conditions provided to regular employees who have worked a similar period of time and are doing the same type of work as workers receiving on-the-job training from the employer.

(d) ADMINISTRATIVE AND EMPLOYMENT SERVICES FUNDING.—

(1) ADMINISTRATIVE FUNDING.—In addition to any funds made available to a State to carry out this section ____ for a fiscal year, the State shall receive for the fiscal year a payment in an amount that is equal to 15 percent of the amount of such funds and shall—

(A) use not more than ⅔ of such payment for the administration of the climate change ad-

justment assistance for workers program under this part, including for—

(i) processing waivers of training requirements under subsection (a)(4); and

(ii) collecting, validating, and reporting data required under this part; and

(B) use not less than ⅓ of such payment for information and employment services under subsection (b)(1).

(2) EMPLOYMENT SERVICES FUNDING.—

(A) IN GENERAL.—In addition to any funds made available to a State to carry out subsection (b)(2) and the payment under paragraph (1) for a fiscal year, the Secretary shall provide to the State for the fiscal year a reasonable payment for the purpose of providing employment and services under subsection (b)(1).

(B) VOLUNTARY RETURN OF FUNDS.—A State that receives a payment under subparagraph (A) may decline or otherwise return such payment to the Secretary.

(e) JOB SEARCH ALLOWANCES.—The Secretary of Labor may provide adversely affected workers a one-time job search allowance in accordance with regulations prescribed by the Secretary. Any job search allowance pro-

vided shall be available only under the following circumstances and conditions:

(1) The worker is no longer eligible for the climate change adjustment allowance under subsection (a) and has completed the training program required by subsection (a)(1)(E).

(2) The Secretary determines that the worker cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.

(3) An allowance granted shall provide reimbursement to the worker of all necessary job search expenses as prescribed by the Secretary in regulations. Such reimbursement under this subsection may not exceed $1,500 for any worker.

(f) RELOCATION ALLOWANCE AUTHORIZED.—

(1) IN GENERAL.—Any adversely affected worker covered by a certification issued under section 425 may file an application for a relocation allowance with the Secretary, and the Secretary may grant the relocation allowance, subject to the terms and conditions of this subsection.

(2) CONDITIONS FOR GRANTING ALLOWANCE.—A relocation allowance may be granted if all of the following terms and conditions are met:

(A) ASSIST AN ADVERSELY AFFECTED WORKER.—The relocation allowance will assist an adversely affected worker in relocating within the United States.

(B) LOCAL EMPLOYMENT NOT AVAILABLE.—The Secretary determines that the worker cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.

(C) TOTAL SEPARATION.—The worker is totally separated from employment at the time relocation commences.

(D) SUITABLE EMPLOYMENT OBTAINED.—The worker—

(i) has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which the worker wishes to relocate; or

(ii) has obtained a bona fide offer of such employment.

(E) APPLICATION.—The worker filed an application with the Secretary at such time and in such manner as the Secretary shall specify by regulation.

(3) AMOUNT OF ALLOWANCE.—The relocation allowance granted to a worker under paragraph (1) includes—

(A) all reasonable and necessary expenses (including, subsistence and transportation expenses at levels not exceeding amounts prescribed by the Secretary in regulations) incurred in transporting the worker, the worker's family, and household effects; and

(B) a lump sum equivalent to 3 times the worker's average weekly wage, up to a maximum payment of $1,500.

(4) LIMITATIONS.—A relocation allowance may not be granted to a worker unless—

(A) the relocation occurs within 182 days after the filing of the application for relocation assistance; or

(B) the relocation occurs within 182 days after the conclusion of training, if the worker entered a training program approved by the Secretary under subsection (b)(2).

(g) HEALTH INSURANCE CONTINUATION.—Not later than 1 year after the date of enactment of this part, the Secretary of Labor shall prescribe regulations to provide, for the period in which an adversely affected worker is

1 participating in a training program described in sub-
2 section (b)(2), 80 percent of the monthly premium of any
3 health insurance coverage that an adversely affected work-
4 er was receiving from such worker's employer prior to the
5 separation from employment described in section 425(b),
6 to be paid to any health care insurance plan designated
7 by the adversely affected worker receiving an allowance
8 under this section.

9 **SEC. 427. GENERAL PROVISIONS.**

10 (a) AGREEMENTS WITH STATES.—

11 (1) IN GENERAL.—The Secretary is authorized
12 on behalf of the United States to enter into an
13 agreement with any State, or with any State agency
14 (referred to in this section as ''cooperating States''
15 and ''cooperating States agencies'' respectively).
16 Under such an agreement, the cooperating State
17 agency—

18 (A) as agent of the United States, shall re-
19 ceive applications for, and shall provide, pay-
20 ments on the basis provided in this part;

21 (B) in accordance with paragraph (6),
22 shall make available to adversely affected work-
23 ers covered by a certification under section
24 425(d) the employment services described in
25 section 426(b)(1);

(C) shall make any certifications required under section 425(d); and

(D) shall otherwise cooperate with the Secretary and with other State and Federal agencies in providing payments and services under this part.

Each agreement under this section shall provide the terms and conditions upon which the agreement may be amended, suspended, or terminated.

(2) FORM AND MANNER OF DATA.—Each agreement under this section shall—

(A) provide the Secretary with the authority to collect any data the Secretary determines necessary to meet the requirements of this part; and

(B) specify the form and manner in which any such data requested by the Secretary shall be reported.

(3) RELATIONSHIP TO UNEMPLOYMENT INSURANCE.—Each agreement under this section shall provide that an adversely affected worker receiving a climate change adjustment allowance under this part shall not be eligible for unemployment insurance otherwise payable to such worker under the laws of the State.

(4) REVIEW.—A determination by a cooperating State agency with respect to entitlement to program benefits under an agreement is subject to review in the same manner and to the same extent as determinations under the applicable State law and only in that manner and to that extent.

(5) COORDINATION.—Any agreement entered into under this section shall provide for the coordination of the administration of the provisions for employment services, training, and supplemental assistance under section 426 and under title I of the Workforce Investment Act of 1998 upon such terms and conditions as are established by the Secretary in consultation with the States and set forth in such agreement. Any agency of the State jointly administering such provisions under such agreement shall be considered to be a cooperating State agency for purposes of this part.

(6) RESPONSIBILITIES OF COOPERATING AGENCIES.—Each cooperating State agency shall, in carrying out paragraph (1)(B)—

(A) advise each worker who applies for unemployment insurance of the benefits under this part and the procedures and deadlines for applying for such benefits;

(B) facilitate the early filing of petitions under section 425(a) for any workers that the agency considers are likely to be eligible for benefits under this part;

(C) advise each adversely affected worker to apply for training under section 426(b) before, or at the same time, the worker applies for climate change adjustment allowances under section 426(a);

(D) perform outreach to, intake of, and orientation for adversely affected workers and adversely affected incumbent workers covered by a certification under section 426(a) with respect to assistance and benefits available under this part;

(E) make employment services described in section 426(b)(1) available to adversely affected workers and adversely affected incumbent workers covered by a certification under section 425(d) and, if funds provided to carry out this part are insufficient to make such services available, make arrangements to make such services available through other Federal programs; and

(F) provide the benefits and reemployment services under this part in a manner that is necessary for the proper and efficient administration of this part, including the use of state agency personnel employed in accordance with a merit system of personnel administration standards, including—

(i) making determinations of eligibility for, and payment of, climate change readjustment allowances and health care benefit replacement amounts;

(ii) developing recommendations regarding payments as a bridge to retirement and lump sum payments to pension plans in accordance with this subsection; and

(iii) the provision of reemployment services to eligible workers, including referral to training services.

(7) In order to promote the coordination of workforce investment activities in each State with activities carried out under this part, any agreement entered into under this section shall provide that the State shall submit to the Secretary, in such form as the Secretary may require, the description and infor-

mation described in paragraphs (8) and (14) of section 112(b) of the Workforce Investment Act of 1998 (29 U.S.C. 2822(b)) and a description of the State's rapid response activities under section 221(a)(2)(A).

(8) CONTROL MEASURES.—

(A) IN GENERAL.—The Secretary shall require each cooperating State and cooperating State agency to implement effective control measures and to effectively oversee the operation and administration of the climate change adjustment assistance program under this part, including by means of monitoring the operation of control measures to improve the accuracy and timeliness of the data being collected and reported.

(B) DEFINITION.—For purposes of subparagraph (A), the term ''control measures'' means measures that—

(i) are internal to a system used by a State to collect data; and

(ii) are designed to ensure the accuracy and verifiability of such data.

(9) DATA REPORTING.—

(A) IN GENERAL.—Any agreement entered into under this section shall require the cooperating State or cooperating State agency to report to the Secretary on a quarterly basis comprehensive performance accountability data, to consist of—

(i) the core indicators of performance described in subparagraph (B)(i);

(ii) the additional indicators of performance described in subparagraph (B)(ii), if any; and

(iii) a description of efforts made to improve outcomes for workers under the climate change adjustment assistance program.

(B) CORE INDICATORS DESCRIBED.—

(i) IN GENERAL.—The core indicators of performance described in this subparagraph are—

(I) the percentage of workers receiving benefits under this part who are employed during the second calendar quarter following the calendar quarter in which the workers cease receiving such benefits;

(II) the percentage of such workers who are employed in each of the third and fourth calendar quarters following the calendar quarter in which the workers cease receiving such benefits; and

(III) the earnings of such workers in each of the third and fourth calendar quarters following the calendar quarter in which the workers cease receiving such benefits.

(ii) ADDITIONAL INDICATORS.—The Secretary and a cooperating State or cooperating State agency may agree upon additional indicators of performance for the climate change adjustment assistance program under this part, as appropriate.

(C) STANDARDS WITH RESPECT TO RELIABILITY OF DATA.—In preparing the quarterly report required by subparagraph (A), each cooperating State or cooperating State agency shall establish procedures that are consistent with guidelines to be issued by the Secretary to ensure that the data reported are valid and reliable.

(10) VERIFICATION OF ELIGIBILITY FOR PROGRAM BENEFITS.—

(A) IN GENERAL.—An agreement under this section shall provide that the State shall periodically redetermine that a worker receiving benefits under this part who is not a citizen or national of the United States remains in a satisfactory immigration status. Once satisfactory immigration status has been initially verified through the immigration status verification system described in section 1137(d) of the Social Security Act (42 U.S.C. 1320b–7(d)) for purposes of establishing a worker's eligibility for unemployment compensation, the State shall reverify the worker's immigration status if the documentation provided during initial verification will expire during the period in which that worker is potentially eligible to receive benefits under this part. The State shall conduct such redetermination in a timely manner, utilizing the immigration status verification system described in section 1137(d) of the Social Security Act (42 U.S.C. 1320b–7(d)).

(B) PROCEDURES.—The Secretary shall establish procedures to ensure the uniform ap-

plication by the States of the requirements of this paragraph.

(b) ADMINISTRATION ABSENT STATE AGREEMENT.—

(1) In any State where there is no agreement in force between a State or its agency under subsection (a), the Secretary shall promulgate regulations for the performance of all necessary functions under section 426, including provision for a fair hearing for any worker whose application for payments is denied.

(2) A final determination under paragraph (1) with respect to entitlement to program benefits under section 426 is subject to review by the courts in the same manner and to the same extent as is provided by section 205(g) of the Social Security Act (42 U.S.C. 405(g)).

(c) PROHIBITION ON CONTRACTING WITH PRIVATE ENTITIES.—Neither the Secretary nor a State may contract with any private for-profit or nonprofit entity for the administration of the climate change adjustment assistance program under this part.

(d) PAYMENT TO THE STATES.—

(1) IN GENERAL.—The Secretary shall from time to time certify to the Secretary of the Treasury

for payment to each cooperating State the sums necessary to enable such State as agent of the United States to make payments provided for by this part.

(2) RESTRICTION.—All money paid a State under this subsection shall be used solely for the purposes for which it is paid; and money so paid which is not used for such purposes shall be returned, at the time specified in the agreement under this section, to the Secretary of the Treasury.

(3) BONDS.—Any agreement under this section may require any officer or employee of the State certifying payments or disbursing funds under the agreement or otherwise participating in the performance of the agreement, to give a surety bond to the United States in such amount as the Secretary may deem necessary, and may provide for the payment of the cost of such bond from funds for carrying out the purposes of this part.

(e) LABOR STANDARDS.—

(1) PROHIBITION ON DISPLACEMENT.—An individual in an apprenticeship program or on-the-job training program under this part shall not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any employed employee.

(2) PROHIBITION ON IMPAIRMENT OF CONTRACTS.—An apprenticeship program or on-the-job raining program under this Act shall not impair an existing contract for services or collective bargaining agreement, and no such activity that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned.

(3) ADDITIONAL STANDARDS.—The Secretary, or a State acting under an agreement described in subsection (a) may pay the costs of on-the-job training, notwithstanding any other provision of this section, only if—

(A) in the case of training which would be inconsistent with the terms of a collective bargaining agreement, the written concurrence of the labor organization concerned has been obtained;

(B) the job for which such adversely affected worker is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals;

(C) such training is not for the same occupation from which the worker was separated and with respect to which such worker's group was certified pursuant to section 425(d);

(D) the employer is provided reimbursement of not more than 50 percent of the wage rate of the participant, for the cost of providing the training and additional supervision related to the training; and

(E) the employer has not received payment under with respect to any other on-the-job training provided by such employer which failed to meet the requirements of subparagraphs (A) through (D).

(f) DEFINITIONS.—As used in this part the following definitions apply:

(1) The term ''adversely affected employment'' means employment at an employment site, if workers at such site are eligible to apply for adjustment assistance under this part.

(2) The term ''adversely affected worker'' means an individual who has been totally or partially separated from employment and is eligible to apply for adjustment assistance under this part.

(3) The term ''average weekly wage'' means 1/13 of the total wages paid to an individual in the quarter in which the individual's total wages were highest among the first 4 of the last 5 completed calendar quarters immediately before the quarter in which occurs the week with respect to which the computation is made. Such week shall be the week in which total separation occurred, or, in cases where partial separation is claimed, an appropriate week, as defined in regulations prescribed by the Secretary.

(4) The term ''average weekly hours'' means the average hours worked by the individual (excluding overtime) in the employment from which he has been or claims to have been separated in the 52 weeks (excluding weeks during which the individual was sick or on vacation) preceding the week specified in the last sentence of paragraph (4).

(5) The term ''benefit period'' means, with respect to an individual—

(A) the benefit year and any ensuing period, as determined under applicable State law, during which the individual is eligible for regular compensation, additional compensation, or extended compensation; or

(B) the equivalent to such a benefit year or ensuing period provided for under the applicable Federal unemployment insurance law.

(6) The term ''consumer goods manufacturing'' means the electrical equipment, appliance, and component manufacturing industry and transportation equipment manufacturing.

(7) The term ''employment site'' means a single facility or site of employment.

(8) The term ''energy-intensive manufacturing industries'' means all industrial sectors, entities, or groups of entities that meet the energy or greenhouse gas intensity criteria in section 765(b)(2)(A)(i) of the Clean Air Act based on the most recent data available.

(9) The term ''energy producing and transforming industries'' means the coal mining industry, oil and gas extraction, electricity power generation, transmission and distribution, and natural gas distribution.

(10) The term ''industries dependent on energy industries'' means rail transportation and pipeline transportation.

(11) The term ''on-the-job training'' means training provided by an employer to an individual who is employed by the employer.

(12) The terms ''partial separation'' and ''partially separated'' refer, with respect to an individual who has not been totally separated, that such individual has had—

(A) his or her hours of work reduced to 80 percent or less of his average weekly hours in adversely affected employment; and

(B) his or her wages reduced to 80 percent or less of his average weekly wage in such adversely affected employment.

(13) The term ''public agency'' means a department or agency of a State or political subdivision of a State or of the Federal government.

(14) The term ''Secretary'' means the Secretary of Labor.

(15) The term ''service workers'' means workers supplying support or auxiliary services to an employment site.

(16) The term ''State'' includes the District of Columbia and the Commonwealth of Puerto Rico: and the term ''United States'' when used in the geographical sense includes such Commonwealth.

(17) The term ''State agency'' means the agency of the State which administers the State law.

(18) The term ''State law'' means the unemployment insurance law of the State approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

(19) The terms ''total separation'' and ''totally separated'' refer to the layoff or severance of an individual from employment with an employer in which adversely affected employment exists.

(20) The term ''unemployment insurance'' means the unemployment compensation payable to an individual under any State law or Federal unemployment compensation law, including chapter 85 of title 5, United States Code, and the Railroad Unemployment Insurance Act. The terms ''regular compensation'', ''additional compensation'', and ''extended compensation'' have the same respective meanings that are given them in section 205(2), (3), and (4) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

(21) The term ''week'' means a week as defined in the applicable State law.

(22) The term ''week of unemployment'' means a week of total, part-total, or partial unemployment as determined under the applicable State law or Federal unemployment insurance law.

(g) SPECIAL RULE WITH RESPECT TO MILITARY SERVICE.—

(1) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary may waive any requirement of this part that the Secretary determines is necessary to ensure that an adversely affected worker who is a member of a reserve component of the Armed Forces and serves a period of duty described in paragraph (2) is eligible to receive a climate change adjustment allowance, training, and other benefits under this part in the same manner and to the same extent as if the worker had not served the period of duty.

(2) PERIOD OF DUTY DESCRIBED.—An adversely affected worker serves a period of duty described in this paragraph if, before completing training under this part, the worker—

(A) serves on active duty for a period of more than 30 days under a call or order to active duty of more than 30 days; or

(B) in the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performs full-time National Guard duty under section 502(f) of title 32, United States Code, for 30 consecutive days or more when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

(h) FRAUD AND RECOVERY OF OVERPAYMENTS.—

(1) RECOVERY OF PAYMENTS TO WHICH AN INDIVIDUAL WAS NOT ENTITLED.—If the Secretary or a court of competent jurisdiction determines that any person has received any payment under this part to which the individual was not entitled, such individual shall be liable to repay such amount to the Secretary, as the case may be, except that the Secretary shall waive such repayment if such agency or the Secretary determines that—

(A) the payment was made without fault on the part of such individual; and

(B) requiring such repayment would cause a financial hardship for the individual (or the individual's household, if applicable) when tak-

ing into consideration the income and resources reasonably available to the individual (or household) and other ordinary living expenses of the individual (or household).

(2) MEANS OF RECOVERY.—Unless an overpayment is otherwise recovered, or waived under paragraph (1), the Secretary shall recover the overpayment by deductions from any sums payable to such person under this part, under any Federal unemployment compensation law or other Federal law administered by the Secretary which provides for the payment of assistance or an allowance with respect to unemployment. Any amount recovered under this section shall be returned to the Treasury of the United States.

(3) PENALTIES FOR FRAUD.—Any person who—

(A) makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for that person or for any other person any payment authorized to be furnished under this part, or

(B) makes a false statement of a material fact knowing it to be false, or knowingly fails

to disclose a material fact, when providing information to the Secretary during an investigation of a petition under section 425(c),

shall be imprisoned for not more than one year, or fined under title 18, United States Code, or both, and be ineligible for any further payments under this part.

(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this part.

(j) STUDY ON OLDER WORKERS.—The Secretary shall conduct a study examine the circumstances of older adversely affected workers and the ability of such workers to access their retirement benefits. The Secretary shall transmit a report to Congress not later than 2 years after the date of enactment of this part on the findings of the study and the Secretary's recommendations on how to ensure that adversely affected workers within 2 years of retirement are able to access their retirement benefits.

[(k) SPENDING LIMIT.—For each fiscal year, the total amount of funds disbursed for the purposes described in section 426 shall not exceed the amount deposited in that fiscal year into the Climate Change Worker Assistance Fund established under section [782(j)] of the Clean Air Act. The annual spending limit for any succeeding year shall be increased by the difference, if any, between

the amount of the prior year's disbursements and the spending limitation for that year. The Secretary shall promulgate rules to ensure that this spending limit is not exceeded. Such rules shall provide that workers who receive any of the benefits described in section 426 receive full benefits, and shall include the establishment of a waiting list for workers in the event that the requests for assistance exceed the spending limit.]

Subtitle C—Consumer Assistance

SEC. 431. ENERGY TAX CREDIT.

Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 36A the following new section:

"SEC. 36B. ENERGY TAX CREDIT.

"(a) ALLOWANCE OF CREDIT.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to—

"(1) for an eligible individual with applicable income of less than $6,000, the phase in rate times the applicable income;

"(2) for an eligible individual with applicable income that is greater than or equal to $6,000 and is less than or equal to the phase down amount, the maximum energy tax credit;

"(3) for an individual with applicable income that exceeds the phase down amount, an amount equal to—

"(A) the maximum energy tax credit minus; or

"(B) the difference between the individual's applicable income and the phase down amount multiplied by .2.

"(b) COORDINATION WITH ENERGY REFUND RECEIVED THROUGH STATE HUMAN SERVICE AGENCIES.—The amount described in subsection (a) shall be reduced by 1/12 for each month in which the individual or his or her spouse received a refund under section 432 of the Safe Climate Act.

"(1) The Secretary of the Treasury shall promulgate regulations that instruct States on how to inform adult individuals who receive a refund under section 432 of the Safe Climate Act of the number of months he or she received a refund and how such information shall be provided to the Internal Revenue Service.

"(2) The Secretary of the Treasury shall establish a telephone and online system that allows an individual to inquire about the number of months she or he received such a refund.

"(3) In the case of an individual that does not report the number of months a refund was provided under section 432 of the Safe Climate Act or recorded an incorrect number of months, the Secretary of the Treasury shall adjust the energy tax credit based on the information received from States, provided that the Secretary of the Treasury has made a determination that the information meets a sufficient standard for accuracy.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) ELIGIBLE INDIVIDUAL.—

"(A) IN GENERAL.—The term 'eligible individual' means any individual other than—

"(i) any nonresident alien individual;

"(ii) any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins; and

"(iii) an estate or trust.

"(B) IDENTIFICATION NUMBER REQUIREMENT.—Such term shall not include any individual who—

"(i) in the case of a return that is not a joint return, does not include the social security number of the individual; and

"(ii) in the case of joint return, does not include the social security number of at least one of the taxpayers on such return.

For purposes of the preceding sentence, the social security number shall not include a TIN issued by the Internal Revenue Service.

"(2) APPLICABLE INCOME.—Applicable income means the larger of—

"(A) earned income as defined in section 32(c)(2), except that such term shall not include net earnings from self-employment which are not taken into account in computing taxable income; and

"(B) adjusted gross income.

"(3) PHASE IN RATE.—The Secretary of the Treasury shall compute the phase in rates each year for the energy credit for joint returns and for returns that are not filed jointly with respect to each relevant number of qualifying individuals such that the phase in rate equals the maximum energy tax credit divided by $6,000.

1 "(4) MAXIMUM ENERGY TAX CREDIT.—
2 "(A) IN GENERAL.—
3 "(i) The maximum energy tax credit
4 shall vary based on the number of individ-
5 uals in the tax filing unit.
6 "(ii) The maximum energy tax credit
7 for a filing unit of a particular size shall
8 be equal to the average annual reduction in
9 purchasing power for low-income house-
10 holds of that household size, as calculated
11 by the Environmental Protection Agency,
12 that results from the regulation of green-
13 house gas emissions under title VII of the
14 Clean Air Act.
15 "(iii) The Environmental Protection
16 Agency, in consultation with other appro-
17 priate federal agencies, shall calculate the
18 maximum energy tax credit by August 31
19 of each year for the following calendar year
20 using the most recent, reliable data avail-
21 able.
22 "(B) ENERGY TAX CREDIT CALCULA-
23 TION.—
24 "(i) DISTRIBUTION.—For each cal-
25 endar year, the Environmental Protection

1 Agency shall determine pursuant to sub-
2 paragraph (B)(iii) the aggregate reduction
3 in purchasing power among all United
4 States households that results from the
5 regulation of greenhouse gas emissions
6 under title VII of the Clean Air Act and
7 distribute that aggregate reduction in pur-
8 chasing power among all United States
9 households based on—
10 "(I) households' share of total
11 consumption by all households;
12 "(II) the carbon intensity and
13 covered-emissions intensity of house-
14 holds' consumption; and
15 "(III) the share of households'
16 carbon and covered-emissions con-
17 sumption that is not financed by Fed-
18 eral benefits subject to a cost of living
19 adjustment that offsets increased car-
20 bon costs.
21 "(ii) MAXIMUM ENERGY TAX CRED-
22 IT.—The maximum energy tax credit shall
23 be equal to the arithmetic mean value of
24 the amount allocated under clause (i) to
25 households of a specified household size in

the lowest income quintile. Tax filing units that include 5 or more individuals shall be eligible for the arithmetic mean value of the amount allocated under clause (i) to households that includes 5 or more individuals.

"(iii) AGGREGATE REDUCTION IN PURCHASING POWER.—For purposes of this section, the aggregate reduction in purchasing power shall be based on the projected total market value of the emissions allowances used to demonstrate compliance with title VII of the Clean Air Act in that year, adjusted to reflect costs that were not incurred by households as a result of allowances freely allocated pursuant to section 【782】 of the Clean Air Act, as estimated by the Environmental Protection Agency, and calculated in a way generally recognized as suitable by experts in evaluating such purchasing power impacts.

"(iv) INCOME QUINTILES.—Income quintiles shall be determined by ranking households according to income adjusted for household size, and shall be constructed

so that each quintile contains an equal number of people.

"(5) PHASE DOWN AMOUNT.—

"(A) In the case of an eligible individual who has no qualifying individuals, the phase down amount shall be—

"(i) $20,000 in the case of an individual who does not file a joint return; and

"(ii) $25,000 in the case of a joint return.

"(B) In the case of an eligible individual who files a joint return and has at least one qualifying individual—

"(i) If the eligible individual has one qualifying individual, the lowest income level that exceeds the phaseout amount as defined in section 32(b)(2) at which a married couple with one qualifying child is ineligible for the earned income credit for the taxable year.

"(ii) If the eligible individual has two qualifying individuals, the lowest income level that exceeds the phaseout amount as defined in section 32(b)(2) at which a married couple with two qualifying children is

ineligible for the earned income credit for the taxable year.

"(iii) If the eligible individual claims three or more qualifying individuals, the lowest income level that exceeds the phase-out amount as defined in section 32(b)(2) at which a married couple with three or more qualifying children is ineligible for the earned income credit for the taxable year.

"(C) In the case of an eligible individual who does not file a joint return and has at least one individual qualifying individual—

"(i) If the eligible individual has one qualifying individual, the lowest income level that exceeds the phaseout amount as defined in section 32(b)(2) at which a single individual with one qualifying child is ineligible for the earned income credit for the taxable year.

"(ii) If the eligible individual has two qualifying individuals, the lowest income level that exceeds the phaseout amount as defined in section 32(b)(2) at which a single individual with two qualifying children

is ineligible for the earned income credit for the taxable year.

"(iii) If the eligible individual has three or more qualifying individuals, the lowest income level that exceeds the phase-out amount as defined in section 32(b)(2) at which a single individual with three or more qualifying children is ineligible for the earned income credit for the taxable year.

"(6) QUALIFYING INDIVIDUAL.—A qualifying individual is an individual whom the eligible individual claims as a dependent under section 151, or as a qualifying child for the earned income credit under section 32(c)(3) or the child tax credit under section 24, or both. The term qualifying individual does not include—

"(A) someone claimed as a dependent under section 151 if that dependent is claimed as a qualifying child for the earned income tax credit or the child tax credit on a tax form by someone other than the eligible individual; and

"(B) the eligible individual and, if a joint return, his or her spouse.

"(7) NUMBER OF PEOPLE IN THE TAX FILING UNIT.—The number of people in the tax filing unit shall equal the sum of the number of qualifying individuals plus—

"(A) in the case of a joint return, 2; and

"(B) in the case of a return that is not filed jointly, 1.

"(d) TREATMENT OF POSSESSIONS.—

"(1) PAYMENTS TO POSSESSIONS.—

"(A) MIRROR CODE POSSESSION.—The Secretary of the Treasury shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the amendments made by this section. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the Government of the respective possession.

"(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to residents of such possession by rea-

son of the amendments made by this section if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply for a given taxable year with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to residents of such possession.

"(2) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—No credit shall be allowed against United States income taxes for any taxable year under this section to any person—

"(A) to whom a credit is allowed against taxes imposed by the possession by reason of the amendments made by this section for such taxable year; or

"(B) who is eligible for a payment under a plan described in paragraph (1)(B) with respect to such taxable year.

"(e) AMOUNT OF CREDIT TO BE DETERMINED UNDER TABLES.—The amount of the credit allowed by this section shall be determined under tables prescribed by the Secretary.

"(f) INFLATION ADJUSTMENTS.—In the case of any taxable year beginning after 2009, dollar amounts in subsection (c)(4)(A) shall be increased by an amount equal to such dollar amount, multiplied by the cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code of 1986.

"(g) TREATMENT IN OTHER PROGRAMS.—The energy tax credit provided under this section shall not be considered income or resources for any purpose under any Federal, State, or local laws, including, but not limited to, laws relating to an income tax or public assistance program (including, but not limited to, health care, cash aid, child care, nutrition programs, and housing assistance), and no participating State or political subdivision thereof shall decrease any assistance otherwise provided an individual or individuals because of the receipt of an energy tax credit under this Act.".

SEC. 432. ENERGY REFUND PROGRAM FOR LOW-INCOME CONSUMERS.

(a) ENERGY REFUND PROGRAM.—

(1) The Administrator of the Environmental Protection Agency, or the agency designated by the Administrator shall formulate and administer the "Energy Refund Program".

(2) At the request of the State agency, eligible low-income households within the State shall receive a monthly cash energy refund equal to the estimated loss in purchasing power resulting from this Act.

(b) ELIGIBILITY.—

(1) ELIGIBLE HOUSEHOLDS.—Participation in the Energy Refund Program shall be limited to a household that—

(A) the State agency determines to be participating in (i) the Supplemental Nutrition Assistance Program authorized by the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.); (ii) the Food Distribution Program on Indian Reservations authorized by section 4(b) of such Act (7 U.S.C. 2013(b)); or (iii) the program for nutrition assistance in Puerto Rico or American Samoa under section 19 of the such Act (7 U.S.C. 2028);

(B) has gross income that does not exceed 150 percent of the poverty line; or

(C) consists of a single individual or a married couple and (i) receives the subsidy described in section 1860D–14 of the Social Security Act (42 U.S.C. 1395w–114); or (ii)(I) participates in the program under section XVIII of

the Social Security Act; and (II) meets the income requirements described in section 1860D–14(a)(1) or (a)(2) of such Act (42 U.S.C. 1395w–114(a)(1) or (a)(2)).

(2) STREAMLINED ELIGIBILITY FOR CERTAIN BENEFICIARIES.—The Administrator, in consultation with the Secretary of Health and Human Services, the Commissioner of Social Security, the Railroad Retirement Board, the Secretary of Veterans Affairs, and the State agencies shall develop procedures to ensure that low-income beneficiaries of the benefit programs they administer receive the energy refund for which they are eligible.

(3) LIMITATION.—Notwithstanding any provision of law, the Administrator shall establish procedures to ensure that individuals that qualify for the refund under paragraph (1)(B) and that do not participate in the Supplemental Nutrition Assistance Program are United States citizens, United States nationals, or individuals lawfully residing in the United States.

(4) NATIONAL STANDARDS.—The Administrator shall establish uniform national standards of eligibility in accordance with the provisions of this section. No State agency shall impose any other

standard or requirement as a condition of eligibility or refund receipt under the program. Assistance in the Energy Refund Program shall be furnished promptly to all eligible households who make application for such participation.

(c) MONTHLY ENERGY REFUND AMOUNT.—

(1) MONTHLY ENERGY REFUND.—The monthly refund under this subsection for households of 1, 2, 3, 4, and 5 or more members shall be equal to the maximum energy tax credit amount calculated under section 36B(c)(4) of the Internal Revenue Code of 1986 for each household size, divided by 12 and rounded to the nearest whole dollar amount.

(2) MONTHLY ELIGIBILITY.—A household shall not be eligible for the refund under this section for months that the household has not established eligibility under subsection (b).

(d) DELIVERY MECHANISM.—

(1) Subject to standards and an implementation schedule set by the Administrator, the energy refund shall be provided in monthly installments via—

(A) direct deposit into the eligible household's designated bank account;

(B) the State's electronic benefit transfer system; or

(C) another Federal or State mechanism, if such a mechanism is approved by the Administrator.

(2) Such standards shall include—

(A)(i) defining the required level of recipient protection regarding privacy;

(ii) guidance on how recipients are offered choices, when relevant, about the delivery mechanism;

(iii) guidance on ease of use and access to the refund, including the prohibition of fees charged to recipients for withdrawals or other services; and

(iv) cost-effective protections against improper accessing of the energy refund;

(B) operating standards that provide for interoperability between States and law enforcement monitoring; and

(C) other standards, as determined by the Administrator or the Administrator's designee.

(e) INFORMATION ABOUT REFUND PROVIDED TO HOUSEHOLDS AND INTERNAL REVENUE SERVICE.—

(1) By January 31 of each year, for each adult that was a member of a household that received an energy refund under this section in the State during

the prior calendar year, each State shall issue a form that conforms to standards established by the Secretary of the Treasury under section 36B(b) of the Internal Revenue Code of 1986, containing—

(A) the name, address, and social security number of the adult household member; and

(B) the number of months the individual was a member of a household that received an energy refund under this section.

(2) States shall provide this information to the Internal Revenue Service in accordance to standards and regulations set forth by the Secretary of the Treasury.

(f) ADMINISTRATION.—

(1) IN GENERAL.—The State agency of each participating State shall assume responsibility for the certification of applicant households and for the issuance of refunds and the control and accountability thereof.

(2) PROCEDURES.—Under standards established by the Administrator, the State agency shall establish procedures governing the administration of the Energy Refund Program that the State agency determines best serve households in the State, including households with special needs, such as

households with elderly or disabled members, households in rural areas, homeless individuals, and households residing on reservations as defined in the Indian Child Welfare Act of 1978 and the Indian Financing Act of 1974. In carrying out this paragraph, a State agency—

(A) shall provide timely, accurate, and fair service to applicants for, and participants in, the Energy Refund Program;

(B) shall permit an applicant household to apply to participate in the program at the time that the household first contacts the State agency, and shall consider an application that contains the name, address, and signature of the applicant to be sufficient to constitute an application for participation;

(C) shall screen any applicant household for the Supplemental Nutrition Assistance Program, the State's medical assistance program under section XIX of the Social Security Act, State Childrens Health Insurance Program under section XXI of the Social Security Act, and a State program that provides basic assistance under a State program funded under title IV of the Social Security Act or with qualified

State expenditures as defined in section 409(a)(7) of the Social Security Act for eligibility for the Energy Refund Program and, if eligible, shall enroll such applicant household in the Energy Refund Program;

(D) shall complete certification of and provide a refund to any eligible household not later than thirty days following its filing of an application;

(E) shall use appropriate bilingual personnel and materials in the administration of the program in those portions of the State in which a substantial number of members of low-income households speak a language other than English; and

(F) shall utilize State agency personnel who are employed in accordance with the current standards for a Merit System of Personnel Administration or any standards later prescribed by the Office of Personnel Management pursuant to section 208 of the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728) modifying or superseding such standards relating to the establishment and maintenance of personnel standards on a merit basis to make

all tentative and final determinations of eligibility and ineligibility.

(3) REGULATIONS.—

(A) Except as provided in subparagraph (B) the Administrator shall issue such regulations consistent with this section as the Administrator deems necessary or appropriate for the effective and efficient administration of the Energy Refund Program and shall promulgate all such regulations in accordance with the procedures set forth in section 553 of title 5, United States Code.

(B) Without regard to section 553 of title 5 of such Code, the Administrator may, during the period beginning with the effective date of this section and ending two years after such date, by rule promulgate as final any procedures that are substantially the same as the procedures governing the Supplemental Nutrition Assistance Program at 7 CFR 273.2, 273.12.273.15.

(g) TREATMENT.—The value of the refund provided under this Act shall not be considered income or resources for any purpose under any Federal, State, or local laws, including, but not limited to, laws relating to an income

tax, or public assistance programs (including, but not limited to, health care, cash aid, child care, nutrition programs, and housing assistance) and no participating State or political subdivision thereof shall decrease any assistance otherwise provided an individual or individuals because of the receipt of a refund under this Act.

(h) PROGRAM INTEGRITY.—For purposes of ensuring program integrity and complying with the requirements of the Improper Payment Information Act of 2002, the Administrator shall—

(1) to the maximum extent possible rely on and coordinate with the quality control sample and review procedures of section 16(c)(2), (3), (4), and (5) of the Supplemental Nutrition Assistance Program; and

(2) develop procedures to monitor the compliance with and accuracy of State agencies in providing forms to household members and the Internal Revenue Service under subsection (f).

(i) DEFINITIONS.—

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency or the head of another agency designated by the Administrator.

(2) ELECTRONIC BENEFIT TRANSFER SYSTEM.—The term ''electronic benefit transfer system'' means a system by which household benefits or refunds defined under subsection (d) are issued from and stored in a central databank via electronic benefit transfer cards.

(3) GROSS INCOME.—The term ''gross income'' means the gross income of a household that is determined in accordance with standards and procedures established under section 5 of the Food and Nutrition Act of 2008 (7 U.S.C. 2014) and its implementing regulations.

(4) HOUSEHOLD.—The term ''household'' means—

(A)(i) except as provided in subparagraph (C), an individual or a group of individuals who are a household under section 3(n) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(n)); and

(ii) a single individual or married couple that receive benefits under section 1860D–14 of the Social Security Act (42 U.S.C. 1395w–114).

(B) The Administrator shall establish rules for providing the energy refund in an equitable

and administratively simple manner to households where the group of individuals who live together includes a combination of members described in clauses (i) and (ii) of subparagraph (A), or includes additional members not described in clause (i) or clause (ii) of subparagraph (A).

(C) The Administrator shall establish rules regarding the eligibility and delivery of the energy refund to groups of individuals described in section 3(n)(4) or (5) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(n)).

(5) POVERTY LINE.—The term ''poverty line'' has the meaning given the term in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that section.

(6) STATE.—The term ''State'' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands.

(7) STATE AGENCY.—The term ''State agency'' means an agency of State government, including the local offices thereof, that has responsibility for ad-

ministration of the 1 or more federally aided public assistance programs within the State, and in those States where such assistance programs are operated on a decentralized basis, the term shall include the counterpart local agencies administering such programs.

(8) OTHER TERMS.—Other terms not defined in this Act shall have the same meaning applied in the Supplemental Nutrition Assistance Program unless the Administrator finds for good cause that application of a particular definition would be detrimental to the purposes of the Energy Refund Program.

(j) AUTHORIZATION OF APPROPRIATIONS.—Such sums as are necessary are hereby appropriated for the Energy Refund Program under this section.

Subtitle D—Exporting Clean Technology

SEC. 441. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Protecting Americans from the impacts of climate change requires global reductions in greenhouse gas emissions.

(2) Although developing countries are historically least responsible for the cumulative greenhouse gas emissions that are causing climate change and

continue to have very low per capita greenhouse gas emissions, their overall greenhouse gas emissions are increasing as they seek to grow their economies and reduce energy poverty for their populations.

(3) Many developing countries lack the financial and technical resources to adopt clean energy technologies and absent assistance their greenhouse gas emissions will continue to increase.

(4) Investments in clean energy technology cooperation can substantially reduce global greenhouse gas emissions while providing developing countries with incentives to adopt policies that will address competitiveness concerns related to regulation of United States greenhouse gas emissions.

(5) Investments in clean technology in developing countries will increase demand for clean energy products, open up new markets for United States companies, spur innovation, and lower costs.

(6) Under Article 4 of the United Nations Framework Convention on Climate Change, developed country parties, including the United States, committed to ''take all practicable steps to promote, facilitate, and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other parties, particularly devel-

oping country parties, to enable them to implement the provisions of the Convention''.

(7) Under the Bali Action Plan, developed country parties to the United Nations Framework Convention on Climate Change, including the United States, committed to ''enhanced action on the provision of financial resources and investment to support action on mitigation and adaptation and technology cooperation,'' including, inter alia, consideration of ''improved access to adequate, predictable, and sustainable financial resources and financial and technical support, and the provision of new and additional resources, including official and concessional funding for developing country parties''.

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

(1) to provide United States assistance and leverage private resources to encourage widespread implementation, in developing countries, of activities that reduce, sequester, or avoid greenhouse gas emissions; and

(2) to provide such assistance in a manner that—

(A) encourages such countries to adopt policies and measures, including sector-based and cross-sector policies and measures, that

substantially reduce, sequester, or avoid greenhouse gas emissions; and

(B) promotes the successful negotiation of a global agreement to reduce greenhouse gas emissions under the United Nations Framework Convention on Climate Change.

SEC. 442. DEFINITIONS.

In this subtitle:

(1) ALLOWANCE.—The term ''allowance'' means an emission allowance established under section 721 of the Clean Air Act.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means—

(A) the Committees on Energy and Commerce, Foreign Affairs, and Financial Services of the House of Representatives; and

(B) the Committees on Environment and Public Works, Energy and Natural Resources, and Foreign Relations of the Senate.

(3) CONVENTION.—The term ''Convention'' means the United Nations Framework Convention on Climate Change, done at New York on May 9, 1992, and entered into force on March 21, 1994.

(4) DEVELOPING COUNTRY.—The term ''developing country'' means a country eligible to receive official development assistance according to the income guidelines of the Development Assistance Committee of the Organization for Economic Cooperation and Development.

(5) ELIGIBLE COUNTRY.—The term ''eligible country'' means a developing country that is determined by the interagency group under section 444 to be eligible to receive assistance from the International Clean Technology Account.

(6) INTERAGENCY GROUP.—The term ''interagency group'' means the group established by the President under section 443 to administer distributions from the International Clean Technology Account.

(7) INTERNATIONAL CLEAN TECHNOLOGY ACCOUNT.—The term ''International Clean Technology Account'' means the account to which the Administrator allocates allowances under section 782(o) of the Clean Air Act.

(8) LEAST DEVELOPED COUNTRY.—The term ''least developed country'' means a foreign country the United Nations has identified as among the least developed of developing countries.

(9) QUALIFYING ACTIVITY.—The term ''qualifying activity'' means an activity that meets the criteria in section 445.

(10) QUALIFYING ENTITY.—The term ''qualifying entity'' means a national, regional, or local government in, or a nongovernmental organization or private entity located or operating in, an eligible country.

SEC. 443. GOVERNANCE.

(a) OVERSIGHT.—The Secretary of State, or such other Federal agency head as the President may designate, in consultation with the interagency group established under subsection (b), shall oversee distributions of allowances from the International Clean Technology Account.

(b) INTERAGENCY GROUP.—The President shall establish an interagency group to administer the International Clean Technology Account. The Members of the interagency group shall include—

(1) the Secretary of State;

(2) the Administrator of the Environmental Protection Agency;

(3) the Secretary of Energy;

(4) the Secretary of the Treasury;

(5) the Administrator of the United States Agency for International Development; and

(6) any other head of a Federal agency or executive branch appointee that the President may designate.

(c) CHAIRPERSON.—The Secretary of State shall serve as the chairperson of the interagency group.

(d) SUPPLEMENT NOT SUPPLANT.—Allowances distributed from the International Clean Technology Account shall be used to supplement, and not to supplant, any other Federal, State, or local resources available to carry out activities that are qualifying activities under this subtitle.

SEC. 444. DETERMINATION OF ELIGIBLE COUNTRIES.

(a) IN GENERAL.—The interagency group shall determine a country to be an eligible country for the purposes of this subtitle if a country meets the following criteria:

(1) The country is a developing country that—

(A) has entered into an international agreement to which the United States is a party, under which such country agrees to take actions to produce measurable, reportable, and verifiable greenhouse gas emissions mitigation; or

(B) is determined by the interagency group to have in force national policies and measures that are capable of producing measurable, reportable, and verifiable greenhouse gas emissions mitigation.

(2) The country has developed a nationally appropriate mitigation strategy that seeks to achieve substantial reductions, sequestration, or avoidance of greenhouse gas emissions, relative to business-as-usual levels.

(3) Subject to subsection (b)(1), such other criteria as the President determines will serve the purposes of this subtitle or other United States national security, foreign policy, environmental, or economic objectives.

(b) EXCEPTIONS.—

(1) Subsection (a)(3) applies only to bilateral assistance under section 446(c).

(2) The eligibility criteria in this section do not apply in the case of least developed countries receiving assistance under section 445(7) for the purpose of building capacity to meet such eligibility criteria.

SEC. 445. QUALIFYING ACTIVITIES.

Assistance under this subtitle may be provided only to qualifying entities for clean technology activities (in-

cluding building relevant technical and institutional capacity) that contribute to substantial, measurable, reportable, and verifiable reductions, sequestration, or avoidance of greenhouse gas emissions including—

(1) deployment of technologies to capture and sequester carbon dioxide emissions from electric generating units or large industrial sources (except that assistance under this subtitle for such deployment shall be limited to the cost of retrofitting existing facilities with such technologies or the incremental cost of purchasing and installing such technologies at new facilities);

(2) deployment of renewable electricity generation from wind, solar, sustainably produced biomass, geothermal, marine, or hydrokinetic sources;

(3) substantial increases in the efficiency of electricity transmission, distribution, and consumption;

(4) deployment of low- or zero emissions technologies that are facing financial or other barriers to their widespread deployment which could be addressed through support under this subtitle in order to reduce, sequester, or avoid emission;

(5) reduction in transportation sector emissions through increased transportation system and vehicle

efficiency or use of transportation fuels that have lifecycle greenhouse gas emissions that are substantially lower than those attributable to fossil fuel-based alternatives;

(6) reduction in black carbon emissions; or

(7) capacity building activities, including—

(A) developing and implementing methodologies and programs for measuring and quantifying greenhouse gas emissions and verifying emissions mitigation;

(B) assessing, developing, and implementing technology and policy options for greenhouse gas emissions mitigation and avoidance of future emissions, including sector and cross-sector mitigation strategies; and

(C) providing other forms of technical assistance to facilitate the qualification for, and receipt of, assistance under this Act.

SEC. 446. ASSISTANCE.

(a) IN GENERAL.—The Secretary of State, or such other Federal agency head as the President may designate, is authorized to provide assistance, through the distribution of allowances, from the International Clean Technology Account for qualifying activities that take place in eligible countries.

(b) DISTRIBUTION OF ALLOWANCES.—

(1) IN GENERAL.—The Secretary of State, or such other Federal agency head as the President may designate, after consultation with the interagency group, shall distribute allowances from the International Clean Technology Account—

(A) in the form of bilateral assistance in accordance with paragraph (4);

(B) to multilateral funds or institutions pursuant to the Convention or an agreement negotiated under the Convention; or

(C) through some combination of the mechanisms identified in subparagraphs (A) and (B).

(2) GLOBAL ENVIRONMENT FACILITY.—For any allowances provided to the Global Environment Facility pursuant to paragraph (1)(B), the President shall designate the Secretary of the Treasury to distribute those allowances to the Global Environment Facility.

(3) DISTRIBUTION THROUGH INTERNATIONAL FUND OR INSTITUTION.—If allowances are distributed to a multilateral fund or institution, as authorized in paragraph (1), the Secretary of State, or such other Federal agency head as the President

may designate, shall seek to ensure the establishment and implementation of adequate mechanisms to—

(A) apply and enforce the criteria for determination of eligible countries and qualifying activities under sections 444 and 445, respectively; and

(B) require public reporting describing the process and methodology for selecting the ultimate recipients of assistance and a description of each activity that received assistance, including the amount of obligations and expenditures for assistance.

(4) BILATERAL ASSISTANCE.—

(A) IN GENERAL.—Bilateral assistance under paragraph (1) shall be carried out by the Administrator of the United States Agency for International Development, in consultation with the interagency group.

(B) LIMITATIONS.—Not more than 15 percent of allowances made available to carry out bilateral assistance under this subtitle in any year shall be distributed to support activities in any single country.

(C) SELECTION CRITERIA.—Not later than 2 years after the date of enactment of this subtitle, the Administrator of the United States Agency for International Development, after consultation with the interagency group, shall develop and publish a set of criteria to be used in evaluating activities within eligible countries for bilateral assistance under this subtitle.

(D) CRITERIA REQUIREMENTS.—The criteria under subparagraph (C) shall require that—

(i) the activity is a qualifying activity;

(ii) the activity will be conducted as part of an eligible country's nationally appropriate mitigation strategy or as part of an eligible country's actions towards providing a nationally appropriate mitigation strategy to reduce, sequester, or avoid emissions being implemented by the eligible country;

(iii) the activity will not have adverse effects on human health, safety, or welfare, the environment, or natural resources;

(iv) any technologies deployed through bilateral assistance under this subtitle will be properly implemented and maintained;

(v) the activity will not cause any net loss of United States jobs or displacement of United States production;

(vi) costs of the activity will be shared by the host country government, private sector parties, or a multinational development bank, except that this clause does not apply to least developed countries; and

(vii) the activity meets such other requirements as the interagency group determines appropriate to further the purposes of this subtitle.

(E) CRITERIA PREFERENCES.—The criteria under subparagraph (C) shall give preference to activities that—

(i) promise to achieve large-scale greenhouse gas reductions, sequestration, or avoidance at a national, sectoral or cross-sectoral level;

(ii) have the potential to catalyze a shift within the host country towards wide-

spread deployment of low- or zero-carbon energy technologies;

(iii) build technical and institutional capacity and other activities that are unlikely to be attractive to private sector funding; or

(iv) maximize opportunities to leverage other sources of assistance and catalyze private-sector investment.

(c) MONITORING, EVALUATION, AND ENFORCEMENT.—The Secretary of State, or such other Federal agency head as the President may designate, in consultation with the interagency group, shall establish and implement a system to monitor and evaluate the performance of activities receiving assistance under this subtitle. The Secretary of State, or such other Federal agency head as the President may designate, shall have the authority to suspend or terminate assistance in whole or in part for an activity if it is determined that the activity is not operating in compliance with the approved proposal.

(d) COORDINATION WITH U.S. FOREIGN ASSISTANCE.—Subject to the direction of the President, the Secretary of State shall, to the extent practicable, seek to align activities under this section with broader develop-

ment, poverty alleviation, or natural resource management objectives and initiatives in the recipient country.

(e) ANNUAL REPORTS.—Not later than March 1, 2012, and annually thereafter, the President shall submit to the appropriate congressional committees a report on the assistance provided under this subtitle during the prior fiscal year. Such report shall include—

(1) a description of the amount and value of allowances distributed during the prior fiscal year;

(2) a description of each activity that received assistance during the prior fiscal year, and a description of the anticipated and actual outcomes;

(3) an assessment of any adverse effects to human health, safety, or welfare, the environment, or natural resources as a result of activities supported under this subtitle;

(4) an assessment of the success of the assistance provided under this subtitle to improving the technical and institutional capacity to implement substantial emissions reductions; and

(5) an estimate of the greenhouse gas emissions reductions, sequestration, or avoidance achieved by assistance provided under this subtitle during the prior fiscal year.

Subtitle E—Adapting to Climate Change

PART 1—DOMESTIC ADAPTATION

Subpart A—National Climate Change Adaptation Program

SEC. 451. NATIONAL CLIMATE CHANGE ADAPTATION PROGRAM.

The President shall establish within the United States Global Change Research Program a National Climate Change Adaptation Program for the purpose of increasing the overall effectiveness of Federal climate change adaptation efforts.

SEC. 452. CLIMATE SERVICES.

The Secretary of Commerce, acting through the Administrator of the National Oceanic and Atmospheric Administration (NOAA), shall establish within NOAA a National Climate Service to develop climate information, data, forecasts, and warnings at national and regional scales, and to distribute information related to climate impacts to State, local, and tribal governments and the public to facilitate the development and implementation of strategies to reduce society's vulnerability to climate variability and change.

SEC. 453. STATE PROGRAMS TO BUILD RESILIENCE TO CLIMATE CHANGE IMPACTS.

(a) DISTRIBUTION OF ALLOWANCES.—

(1) IN GENERAL.—Not later than September 30, 2012, and annually thereafter through 2050, the Administrator shall distribute allowances allocated for purposes of this subpart pursuant to section 【782】 of the Clean Air Act ratably among the State governments based on the product of—

(A) each State's population; and

(B) each State's allocation factor as determined under paragraph (2).

(2) STATE ALLOCATION FACTORS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the allocation factor for a State shall be the quotient of—

(i) the per capita income of all individuals in the United States, divided by

(ii) the per capita income of all individuals in such State.

(B) LIMITATION.—If the allocation factor for a State as calculated under subparagraph (A) would exceed 1.2, then the allocation factor for such State shall be 1.2. If the allocation factor for a State as calculated under subpara-

graph (A) would be less than 0.8, then the allocation factor for such State shall be 0.8.

(C) PER CAPITA INCOME.—For purposes of this paragraph, per capita income shall be—

(i) determined at 2-year intervals; and

(ii) equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce at the time such determination is made.

(b) SALE OF ALLOWANCES.—Each State receiving emission allowances under this section shall sell such allowances within 1 year of receipt, either directly or through consignment to the Administrator for auction. States shall deposit the proceeds of such sales within the State Energy and Environment Development (SEED) Fund established pursuant to section 131 of the American Clean Energy and Security Act of 2009. Emission allowances distributed under this section that are not sold within 1 year of receipt by a State shall be returned to the Administrator, who shall distribute such allowances to the remaining States ratably in accordance with the formula in subsection (a).

(c) USE OF PROCEEDS.—States shall, in accordance with a State climate adaptation plan approved pursuant to subsection (d), use the proceeds of sales of emission allowances distributed under this section exclusively for the implementation of projects, programs, or measures to build resilience to the impacts of climate change, including—

(1) extreme weather events such as flooding and tropical cyclones;

(2) more frequent heavy precipitation events;

(3) water scarcity and adverse impacts on water quality;

(4) stronger and longer heat waves;

(5) more frequent and severe droughts;

(6) rises in sea level;

(7) ecosystem disruption;

(8) increased air pollution; and

(9) effects on public health.

(d) STATE CLIMATE ADAPTATION PLANS.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Administrator, or such other Federal agency head or heads as the President may designate, shall promulgate regulations establishing requirements for submission and approval of State climate adaptation plans under

this section. Receipt of emission allowances pursuant to this section shall be contingent on approval of a State climate adaptation plan meeting the requirements of such guidelines.

(2) REQUIREMENTS.—Regulations promulgated under this subsection shall require, at minimum, that—

(A) State climate adaptation plans assess and prioritize the State's vulnerability to a broad range of impacts of climate change, based on the best available science;

(B) State climate adaptation plans identify and prioritize specific cost-effective projects, programs, and measures to build resilience to predicted impacts of climate change; and

(C) in order to be eligible to receive emission allowances under this section, a State shall submit a revised State climate adaptation plan for approval not less frequently than every 5 years.

(3) COORDINATION WITH PRIOR PLANNING EFFORTS.—In promulgating regulations under this subsection, the Administrator, or such other Federal agency head or heads as the President may designate, shall draw upon lessons learned and best

practices from preexisting State climate adaptation planning efforts and shall seek to avoid duplication of such efforts.

(e) REPORTING.—Each State receiving emission allowances under this section shall submit to the Administrator, or such other Federal agency head or heads as the President may designate, within 12 months after each receipt of such allowances and once every 2 years thereafter until the proceeds from the sale of emission allowances received under this section are fully expended, a report that—

(1) provides a full accounting for the State's use of proceeds of sales of emission allowances distributed under this section, including a description of the projects, programs, or measures funded through such proceeds; and

(2) includes a report prepared by an independent third party, in accordance with such regulations as are promulgated by the Administrator or such other Federal agency head or heads as the President may designate, evaluating the performance of the projects, programs, or measures funded under this section.

(f) ENFORCEMENT.—If the Administrator, or such other Federal agency head or heads as the President may

1 designate, determines that a State is not in compliance
2 with this section, the Administrator may withhold a por-
3 tion of the allowances, the value of which is equal to up
4 to twice the value of the allowances that the State failed
5 to use in accordance with the requirements of this section,
6 that such State would otherwise be eligible to receive
7 under this section in 1 or more later years. Allowances
8 withheld pursuant to this subsection shall be distributed
9 among the remaining States ratably in accordance with
10 the formula in subsection (a).

11 **Subpart B—Public Health and Climate Change**

12 **SEC. 461. SENSE OF CONGRESS ON PUBLIC HEALTH AND**
13 **CLIMATE CHANGE.**

14 It is the sense of the Congress that the Federal Gov-
15 ernment, in cooperation with international, State, tribal,
16 and local governments, concerned public and private orga-
17 nizations, and citizens, should use all practicable means
18 and measures—

19 (1) to assist the efforts of public health and
20 health care professionals, first responders, States,
21 tribes, municipalities, and local communities to in-
22 corporate measures to prepare health systems to re-
23 spond to the impacts of climate change;

24 (2) to ensure—

(A) that the Nation's health professionals have sufficient information to prepare for and respond to the adverse health impacts of climate change;

(B) the utility and value of scientific research in advancing understanding of—

(i) the health impacts of climate change; and

(ii) strategies to prepare for and respond to the health impacts of climate change;

(C) the identification of communities vulnerable to the health effects of climate change and the development of strategic response plans to be carried out by health professionals for those communities;

(D) the improvement of health status and health equity through efforts to prepare for and respond to climate change; and

(E) the inclusion of health policy in the development of climate change responses;

(3) to encourage further research, interdisciplinary partnership, and collaboration among stakeholders in order to—

(A) understand and monitor the health impacts of climate change; and

(B) improve public health knowledge and response strategies to climate change;

(4) to enhance preparedness activities, and public health infrastructure, relating to climate change and health;

(5) to encourage each and every American to learn about the impacts of climate change on health; and

(6) to assist the efforts of developing nations to incorporate measures to prepare health systems to respond to the impacts of climate change.

SEC. 462. RELATIONSHIP TO OTHER LAWS.

Nothing in this subpart in any manner limits the authority provided to or responsibility conferred on any Federal department or agency by any provision of any law (including regulations) or authorizes any violation of any provision of any law (including regulations), including any health, energy, environmental, transportation, or any other law or regulation.

SEC. 463. NATIONAL STRATEGIC ACTION PLAN.

(a) REQUIREMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services, within 2 years after the date of the

enactment of this Act, on the basis of the best available science, and in consultation pursuant to paragraph (2), shall publish a strategic action plan to assist health professionals in preparing for and responding to the impacts of climate change on public health in the United States and other nations, particularly developing nations.

(2) CONSULTATION.—In developing or making any revision to the national strategic action plan, the Secretary shall—

(A) consult with the Director of the Centers for Disease Control and Prevention, the Administrator of the Environmental Protection Agency, the Director of the National Institutes of Health, the Secretary of Energy, other appropriate Federal agencies, Indian tribes, State and local governments, public health organizations, scientists, and other interested stakeholders; and

(B) provide opportunity for public input.

(b) CONTENTS.—

(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention and other appropriate Federal agencies, shall assist health professionals in pre-

paring for and responding effectively and efficiently to the health effects of climate change through measures including—

(A) developing, improving, integrating, and maintaining domestic and international disease surveillance systems and monitoring capacity to respond to health-related effects of climate change, including on topics addressing—

(i) water, food, and vector borne infectious diseases and climate change;

(ii) pulmonary effects, including responses to aeroallergens;

(iii) cardiovascular effects, including impacts of temperature extremes;

(iv) air pollution health effects, including heightened sensitivity to air pollution;

(v) hazardous algal blooms;

(vi) mental and behavioral health impacts of climate change;

(vii) the health of refugees, displaced persons, and vulnerable communities;

(viii) the implications for communities vulnerable to health effects of climate change, as well as strategies for responding

to climate change within these communities; and

(ix) local and community-based health interventions for climate-related health impacts;

(B) creating tools for predicting and monitoring the public health effects of climate change on the international, national, regional, State, and local levels, and providing technical support to assist in their implementation;

(C) developing public health communications strategies and interventions for extreme weather events and disaster response situations;

(D) identifying and prioritizing communities and populations vulnerable to the health effects of climate change, and determining actions and communication strategies that should be taken to inform and protect these communities and populations from the health effects of climate change;

(E) developing health communication, public education, and outreach programs aimed at public health and health care professionals, as well as the general public, to promote preparedness and response strategies relating to climate

change and public health, including the identification of greenhouse gas reduction behaviors that are health-promoting;

(F) developing academic and regional centers of excellence devoted to—

(i) researching relationships between climate change and health;

(ii) expanding and training the public health workforce to strengthen the capacity of such workforce to respond to and prepare for the health effects of climate change;

(iii) creating and supporting academic fellowships focusing on the health effects of climate change; and

(iv) training senior health ministry officials from developing nations to strengthen the capacity of such nations to—

(I) prepare for and respond to the health effects of climate change; and

(II) build an international network of public health professionals with the necessary climate change knowledge base;

(G) using techniques, including health impact assessments, to assess various climate change public health preparedness and response strategies on international, national, State, regional, tribal, and local levels, and make recommendations as to those strategies that best protect the public health;

(H)(i) assisting in the development, implementation, and support of State, regional, tribal, and local preparedness, communication, and response plans (including with respect to the health departments of such entities) to anticipate and reduce the health threats of climate change; and

(ii) pursuing collaborative efforts to develop, integrate, and implement such plans;

(I) creating a program to advance research as it relates to the effects of climate change on public health across Federal agencies, including research to—

(i) identify and assess climate change health effects preparedness and response strategies;

(ii) prioritize critical public health infrastructure projects related to potential

climate change impacts that affect public health; and

(iii) coordinate preparedness for climate change health impacts, including the development of modeling and forecasting tools;

(J) providing technical assistance for the development, implementation, and support of preparedness and response plans to anticipate and reduce the health threats of climate change in developing nations; and

(K) carrying out other activities determined appropriate by the Secretary to plan for and respond to the impacts of climate change on public health.

(c) REVISION.—The Secretary shall revise the national strategic action plan not later than July 1, 2014, and every 4 years thereafter, to reflect new information collected pursuant to implementation of the national strategic action plan and otherwise, including information on—

(1) the status of critical environmental health parameters and related human health impacts;

(2) the impacts of climate change on public health; and

(3) advances in the development of strategies for preparing for and responding to the impacts of climate change on public health.

(d) IMPLEMENTATION.—

(1) IMPLEMENTATION THROUGH HHS.—The Secretary shall exercise the Secretary's authority under this subpart and other provisions of Federal law to achieve the goals and measures of the national strategic action plan.

(2) OTHER PUBLIC HEALTH PROGRAMS AND INITIATIVES.—The Secretary and Federal officials of other relevant Federal agencies shall administer public health programs and initiatives authorized by provisions of law other than this subpart, subject to the requirements of such statutes, in a manner designed to achieve the goals of the national strategic action plan.

(3) CDC.—In furtherance of the national strategic action plan, the Secretary, acting through the Director of the Centers for Disease Control and Prevention and the head of any other appropriate Federal agency, shall—

(A) conduct scientific research to assist health professionals in preparing for and re-

sponding to the impacts of climate change on public health;

(B) provide funding for—

(i) research on the health effects of climate change; and

(ii) preparedness planning on the international, national, State, regional, and local levels to respond to or reduce the burden of health effects of climate change; and

(C) carry out other activities determined appropriate by the Director or the head of such agency to prepare for and respond to the impacts of climate change on public health.

SEC. 464. ADVISORY BOARD.

(a) ESTABLISHMENT.—The Secretary shall establish a permanent science advisory board comprised of not less than 10 and not more than 20 members.

(b) APPOINTMENT OF MEMBERS.—The Secretary shall appoint the members of the science advisory board from among individuals—

(1) who have expertise in public health and human services, climate change, and other relevant disciplines; and

(2) at least ½ of whom are recommended by the President of the National Academy of Sciences.

(c) FUNCTIONS.—The science advisory board shall—

(1) provide scientific and technical advice and recommendations to the Secretary on the domestic and international impacts of climate change on public health, populations and regions particularly vulnerable to the effects of climate change, and strategies and mechanisms to prepare for and respond to the impacts of climate change on public health; and

(2) advise the Secretary regarding the best science available for purposes of issuing the national strategic action plan.

SEC. 465. REPORTS.

(a) NEEDS ASSESSMENT.—

(1) IN GENERAL.—The Secretary shall seek to enter into, by not later than 6 months after the date of the enactment of this Act, an agreement with the National Research Council and the Institute of Medicine to complete a report that—

(A) assesses the needs for health professionals to prepare for and respond to climate change impacts on public health; and

(B) recommends programs to meet those needs.

(2) SUBMISSION.—The agreement under paragraph (1) shall require the completed report to be submitted to the Congress and the Secretary and made publicly available not later than 1 year after the date of the agreement.

(b) CLIMATE CHANGE HEALTH PROTECTION AND PROMOTION REPORTS.—

(1) IN GENERAL.—The Secretary, in consultation with the advisory board established under section 464, shall ensure the issuance of reports to aid health professionals in preparing for and responding to the adverse health effects of climate change that—

(A) review scientific developments on health impacts of climate change; and

(B) recommend changes to the national strategic action plan.

(2) SUBMISSION.—The Secretary shall submit the reports required by paragraph (1) to the Congress and make such reports publicly available not later than July 1, 2013, and every 4 years thereafter.

SEC. 466. DEFINITIONS.

In this subpart:

(1) HEALTH IMPACT ASSESSMENT.—The term ''health impact assessment'' means a combination of procedures, methods, and tools by which a policy, program, or project may be judged as to its potential effects on the health of a population, and the distribution of those effects within the population.

(2) NATIONAL STRATEGIC ACTION PLAN.—The term ''national strategic action plan'' means the plan issued and revised under section 463.

(3) SECRETARY.—Unless otherwise specified, the term ''Secretary'' means the Secretary of Health and Human Services.

SEC. 467. CLIMATE CHANGE HEALTH PROTECTION AND PROMOTION FUND.

(a) ESTABLISHMENT OF FUND.—There is hereby established in the Treasury a separate account that shall be known as the Climate Change Health Protection and Promotion Fund.

(b) AVAILABILITY OF AMOUNTS.—All amounts deposited into the Climate Change Health Protection and Promotion Fund shall be available to the Secretary to carry out this subpart subject to further appropriation.

(c) DISTRIBUTION OF FUNDS BY HHS.—In carrying out this subpart, the Secretary may make funds deposited

in the Climate Change Health Protection and Promotion Fund available to—

(1) other departments, agencies, and offices of the Federal Government;

(2) foreign, State, tribal, and local governments; and

(3) such other entities as the Secretary determines appropriate.

(d) SUPPLEMENT, NOT REPLACE.—It is the intent of Congress that funds made available to carry out this subpart should be used to supplement, and not replace, existing sources of funding for public health.

Subpart C—Natural Resource Adaptation

SEC. 471. PURPOSES.

The purposes of this subpart are to—

(1) establish an integrated Federal program to protect, restore, and conserve the Nation's natural resources in response to the threats of climate change and ocean acidification; and

(2) provide financial support and incentives for programs, strategies, and activities that protect, restore, and conserve the Nation's natural resources in response to the threats of climate change and ocean acidification.

SEC. 472. NATURAL RESOURCES CLIMATE CHANGE ADAPTATION POLICY.

It is the policy of the Federal Government, in cooperation with State and local governments, Indian tribes, and other interested stakeholders to use all practicable means and measures to protect, restore, and conserve natural resources to enable them to become more resilient, adapt to, and withstand the impacts of climate change and ocean acidification.

SEC. 473. DEFINITIONS.

In this subpart:

(1) COASTAL STATE.—The term ''coastal State'' has the meaning given the term in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453).

(2) CORRIDORS.—The term ''corridors'' means areas that provide connectivity, over different time scales (including seasonal or longer), of habitat or potential habitat and that facilitate the ability of terrestrial, marine, estuarine, and freshwater fish, wildlife, or plants to move within a landscape as needed for migration, gene flow, or dispersal, or in response to the impacts of climate change and ocean acidification or other impacts.

(3) ECOLOGICAL PROCESSES.—The term ''ecological processes'' means biological, chemical, or

physical interaction between the biotic and abiotic components of an ecosystem and includes—

(A) nutrient cycling;

(B) pollination;

(C) predator-prey relationships;

(D) soil formation;

(E) gene flow;

(F) disease epizootiology;

(G) larval dispersal and settlement;

(H) hydrological cycling;

(I) decomposition; and

(J) disturbance regimes such as fire and flooding.

(4) HABITAT.—The term ''habitat'' means the physical, chemical, and biological properties that are used by fish, wildlife, or plants for growth, reproduction, survival, food, water, and cover, on a tract of land, in a body of water, or in an area or region.

(5) INDIAN TRIBE.—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).

(6) NATURAL RESOURCES.—The term ''natural resources'' means the terrestrial, freshwater, estua-

rine, and marine fish, wildlife, plants, land, water, habitats, and ecosystems of the United States.

(7) NATURAL RESOURCES ADAPTATION.—The term ''natural resources adaptation'' means the protection, restoration, and conservation of natural resources to enable them to become more resilient, adapt to, and withstand the impacts of climate change and ocean acidification.

(8) RESILIENCE.—Each of the terms ''resilience'' and ''resilient'' means the ability to resist or recover from disturbance and preserve diversity, productivity, and sustainability.

(9) STATE.—The term ''State'' means—

(A) a State of the United States;

(B) the District of Columbia; and

(C) the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, the Northern Mariana Islands, and American Samoa.

SEC. 474. COUNCIL ON ENVIRONMENTAL QUALITY.

The Chair of the Council on Environmental Quality shall—

(1) advise the President on implementation and development of—

(A) a Natural Resources Climate Change Adaptation Strategy required under section 476; and

(B) Federal natural resource agency adaptation plans required under section 478;

(2) serve as the Chair of the Natural Resources Climate Change Adaptation Panel established under section 475; and

(3) coordinate Federal agency strategies, plans, programs, and activities related to protecting, restoring, and maintaining natural resources to become more resilient, adapt to, and withstand the impacts of climate change and ocean acidification.

SEC. 475. NATURAL RESOURCES CLIMATE CHANGE ADAPTATION PANEL.

(a) ESTABLISHMENT.—Not later than 90 days after the date of the enactment of this subpart, the President shall establish a Natural Resources Climate Change Adaptation Panel, consisting of—

(1) the head, or their designee, of each of—

(A) the National Oceanic and Atmospheric Administration;

(B) the Forest Service;

(C) the National Park Service;

(D) the United States Fish and Wildlife Service;

(E) the Bureau of Land Management;

(F) the United States Geological Survey;

(G) the Bureau of Reclamation;

(H) the Bureau of Indian Affairs;

(I) the Environmental Protection Agency; and

(J) the Army Corps of Engineers;

(2) the Chair of the Council on Environmental Quality; and

(3) the heads of such other Federal agencies or departments with jurisdiction over natural resources of the United States, as determined by the President.

(b) FUNCTIONS.—The Panel shall serve as a forum for interagency consultation on and the coordination of the development and implementation of a national Natural Resources Climate Change Adaptation Strategy required under section 476.

(c) CHAIR.—The Chair of the Council on Environmental Quality shall serve as the Chair of the Panel.

SEC. 476. NATURAL RESOURCES CLIMATE CHANGE ADAPTATION STRATEGY.

(a) IN GENERAL.—Not later than one year after the date of the enactment of this subpart, the President, through the Natural Resources Climate Change Adaptation Panel established under section 475, shall develop a Natural Resources Climate Change Adaptation Strategy to protect, restore, and conserve natural resources to enable them to become more resilient, adapt to, and withstand the impacts of climate change and ocean acidification and to identify opportunities to mitigate those impacts.

(b) DEVELOPMENT AND REVISION.—In developing and revising the Strategy, the Panel shall—

(1) base the strategy on the best available science;

(2) develop the strategy in close cooperation with States and Indian tribes;

(3) coordinate with other Federal agencies as appropriate;

(4) consult with local governments, conservation organizations, scientists, and other interested stakeholders;

(5) provide public notice and opportunity for comment; and

(6) review and revise the Strategy every 5 years to incorporate new information regarding the impacts of climate change and ocean acidification on natural resources and advances in the development of strategies for becoming more resilient and adapting to those impacts.

(c) CONTENTS.—The National Resources Adaptation Strategy shall include—

(1) an assessment of the vulnerability of natural resources to climate change and ocean acidification, including the short-term, medium-term, long-term, cumulative, and synergistic impacts;

(2) a description of current research, observation, and monitoring activities at the Federal, State, tribal, and local level related to the impacts of climate change and ocean acidification on natural resources, as well as identification of research and data needs and priorities;

(3) identification of natural resources that are likely to have the greatest need for protection, restoration, and conservation because of the adverse effects of climate change and ocean acidification;

(4) specific protocols for integrating climate change and ocean acidification adaptation strategies and activities into the conservation and management

of natural resources by Federal departments and agencies to ensure consistency across agency jurisdictions and resources;

(5) specific actions that Federal departments and agencies shall take to protect, conserve, and restore natural resources to become more resilient, adapt to, and withstand the impacts of climate change and ocean acidification, including a timeline to implement those actions;

(6) specific mechanisms for ensuring communication and coordination among Federal departments and agencies, and between Federal departments and agencies and State natural resource agencies, United States territories, Indian tribes, private landowners, conservation organizations, and other nations that share jurisdiction over natural resources with the United States;

(7) specific actions to develop and implement consistent natural resources inventory and monitoring protocols through interagency coordination and collaboration; and

(8) a process for guiding the development of detailed agency- and department-specific adaptation plans required under section 478 to address the impacts of climate change and ocean acidification on

the natural resources in the jurisdiction of each agency.

(d) IMPLEMENTATION.—Consistent with its authorities under other laws and with Federal trust responsibilities with respect to Indian lands, each Federal department or agency with representation on the National Resources Climate Change Adaptation Panel shall consider the impacts of climate change and ocean acidification and integrate the elements of the strategy into agency plans, environmental reviews, programs, and activities related to the conservation, restoration, and management of natural resources.

SEC. 477. NATURAL RESOURCES ADAPTATION SCIENCE AND INFORMATION.

(a) COORDINATION.—Not later than 90 days after the date of the enactment of this subpart, the Secretary of Commerce, acting through the Administrator of the National Oceanic and Atmospheric Administration, and the Secretary of the Interior, acting through the Director of the United States Geological Survey, shall establish a coordinated process for developing and providing science and information needed to assess and address the impacts of climate change and ocean acidification on natural resources. The process shall be led by the National Climate Change and Wildlife Science Center established within the

United States Geological Survey under subsection (d) and the National Climate Service of the National Oceanic and Atmospheric Administration.

(b) FUNCTIONS.—The Secretaries shall ensure that such process avoids duplication and that the National Oceanic and Atmospheric Administration and the United States Geological Survey shall—

(1) provide technical assistance to Federal departments and agencies, State and local governments, Indian tribes, and interested private landowners in their efforts to assess and address the impacts of climate change and ocean acidification on natural resources;

(2) conduct and sponsor research and provide Federal departments and agencies, State and local governments, Indian tribes, and interested private landowners with research products, decision and monitoring tools and information, to develop strategies for assisting natural resources to become more resilient, adapt to, and withstand the impacts of climate change and ocean acidification; and

(3) assist Federal departments and agencies in the development of the adaptation plans required under section 478.

(c) SURVEY.—Not later than one year after the date of enactment of this subpart and every 5 years thereafter, the Secretary of Commerce and the Secretary of the Interior shall undertake a climate change and ocean acidification impact survey that—

(1) identifies natural resources considered likely to be adversely affected by climate change and ocean acidification;

(2) includes baseline monitoring and ongoing trend analysis;

(3) uses a stakeholder process to identify and prioritize needed monitoring and research that is of greatest relevance to the ongoing needs of natural resource managers to address the impacts of climate change and ocean acidification; and

(4) identifies decision tools necessary to develop strategies for assisting natural resources to become more resilient and adapt to and withstand the impacts of climate change and ocean acidification.

(d) NATIONAL CLIMATE CHANGE AND WILDLIFE SCIENCE CENTER.—

(1) ESTABLISHMENT.—The Secretary of the Interior shall establish the National Climate Change and Wildlife Science Center within the United States Geological Survey.

(2) FUNCTIONS.—The Center shall, in collaboration with Federal and State natural resources agencies and departments, Indian tribes, universities, and other partner organizations—

(A) assess and synthesize current physical and biological knowledge and prioritize scientific gaps in such knowledge in order to forecast the ecological impacts of climate change on fish and wildlife at the ecosystem, habitat, community, population, and species levels;

(B) develop and improve tools to identify, evaluate, and, where appropriate, link scientific approaches and models for forecasting the impacts of climate change and adaptation on fish, wildlife, plants, and their habitats, including monitoring, predictive models, vulnerability analyses, risk assessments, and decision support systems to help managers make informed decisions;

(C) develop and evaluate tools to adaptively manage and monitor the effects of climate change on fish and wildlife at national, regional, and local scales; and

(D) develop capacities for sharing standardized data and the synthesis of such data.

(e) SCIENCE ADVISORY BOARD.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this subpart, the Secretary of Commerce and the Secretary of the Interior shall establish and appoint the members of a Science Advisory Board, to be comprised of not fewer than 10 and not more than 20 members—

(A) who have expertise in fish, wildlife, plant, aquatic, and coastal and marine biology, ecology, climate change, ocean acidification, and other relevant scientific disciplines;

(B) who represent a balanced membership among Federal, State, Indian tribes, and local representatives, universities, and conservation organizations; and

(C) at least ½ of whom are recommended by the President of the National Academy of Sciences.

(2) DUTIES.—The Science Advisory Board shall—

(A) advise the Secretaries on the state-of-the-science regarding the impacts of climate change and ocean acidification on natural resources and scientific strategies and mechanisms for protecting, restoring, and conserving

natural resources to enable them to become more resilient, adapt to, and withstand the impacts of climate change and ocean acidification; and

(B) identify and recommend priorities for ongoing research needs on such issues.

(3) COLLABORATION.—The Science Advisory Board shall collaborate with other climate change and ecosystem research entities in other Federal agencies and departments.

(4) AVAILABILITY TO THE PUBLIC.—The advice and recommendations of the Science Advisory Board shall be made available to the public.

SEC. 478. FEDERAL NATURAL RESOURCE AGENCY ADAPTATION PLANS.

(a) DEVELOPMENT.—Not later than 1 year after the date of the development of a Natural Resources Climate Change Adaptation Strategy under section 476, each department or agency that has a representative on the Natural Resources Climate Change Adaptation Panel established under section 475 shall—

(1) complete an adaptation plan for that department or agency, respectively, implementing the Natural Resources Climate Change Adaptation Strategy under section 476 and consistent with the

Natural Resources Climate Change Adaptation Policy under section 472, detailing the department's or agency's current and projected efforts to address the potential impacts of climate change and ocean acidification on natural resources within the department's or agency's jurisdiction and necessary additional actions, including a timeline for implementation of those actions;

(2) provide opportunities for review and comment on that adaptation plan by the public, including in the case of a plan by the Bureau of Indian Affairs, review by Indian tribes; and

(3) submit such plan to the President for approval.

(b) REVIEW BY PRESIDENT AND SUBMISSION TO CONGRESS.—

(1) REVIEW BY PRESIDENT.—The President shall—

(A) approve an adaptation plan submitted under subsection (a)(3) if the plan meets the requirements of subsection (c) and is consistent with the strategy developed under section 476;

(B) decide whether to approve the plan within 60 days after submission; and

(C) if the President disapproves a plan, direct the department or agency to submit a revised plan to the President under subsection (a)(3) within 60 days after such disapproval.

(2) SUBMISSION TO CONGRESS.—Not later than 30 days after the date of approval of such adaptation plan by the President, the department or agency shall submit the approved plan to the Committee on Natural Resources of the House of Representatives, the Committee on Energy and Natural Resources of the Senate, and the committees of the House of Representatives and the Senate with principal jurisdiction over the department or agency.

(c) REQUIREMENTS.—Each adaptation plan shall—

(1) establish programs for assessing the current and future impacts of climate change and ocean acidification on natural resources within the department's or agency's, respectively, jurisdiction, including cumulative and synergistic effects, and for identifying and monitoring those natural resources that are likely to be adversely affected and that have need for conservation;

(2) identify and prioritize the department's or agency's strategies and specific conservation actions to address the current and future impacts of climate

change and ocean acidification on natural resources within the scope of the department's or agency's jurisdiction and to develop and implement strategies to protect, restore, and conserve such resources to become more resilient, adapt to, and better withstand those impacts, including—

(A) the protection, restoration, and conservation of terrestrial, marine, estuarine, and freshwater habitats and ecosystems;

(B) the establishment of terrestrial, marine, estuarine, and freshwater habitat linkages and corridors;

(C) the restoration and conservation of ecological processes;

(D) the protection of a broad diversity of native species of fish, wildlife, and plant populations across their range; and

(E) the protection of fish, wildlife, and plant health, recognizing that climate can alter the distribution and ecology of parasites, pathogens, and vectors;

(3) describe how the department or agency will integrate such strategies and conservation activities into plans, programs, activities, and actions of the department or agency, related to the conservation

and management of natural resources and establish new plans, programs, activities, and actions as necessary;

(4) establish methods for assessing the effectiveness of strategies and conservation actions taken to protect, restore, and conserve natural resources to enable them to become more resilient, adapt to, and withstand the impacts of climate change and ocean acidification, and for updating those strategies and actions to respond to new information and changing conditions;

(5) include a description of current and proposed mechanisms to enhance cooperation and coordination of natural resources adaptation efforts with other Federal agencies, State and local governments, Indian tribes, and nongovernmental stakeholders;

(6) include specific written guidance to resource managers to—

(A) explain how managers are expected to address the effects of climate change and ocean acidification;

(B) identify how managers are to obtain any site-specific information that may be necessary; and

(C) reflect best practices shared among relevant agencies, while also recognizing the unique missions, objectives, and responsibilities of each agency; and

(7) identify and assess data and information gaps necessary to develop natural resources adaptation plans and strategies.

(d) IMPLEMENTATION.—

(1) IN GENERAL.—Upon approval by the President, each department or agency that serves on the Natural Resources Climate Change Adaptation Panel shall implement its adaptation plan through existing and new plans, policies, programs, activities, and actions to the extent not inconsistent with existing authority.

(2) CONSIDERATION OF IMPACTS.—

(A) IN GENERAL.—To the maximum extent practicable and consistent with applicable law, every natural resource management decision made by the department or agency shall consider the impacts of climate change and ocean acidification on those natural resources.

(B) GUIDANCE.—The Council on Environmental Quality shall issue guidance for Federal

departments and agencies for considering those impacts.

(e) REVISION AND REVIEW.—Not less than every 5 years, each adaptation plan under this section shall be reviewed and revised to incorporate the best available science and other information regarding the impacts of climate change and ocean acidification on natural resources.

SEC. 479. STATE NATURAL RESOURCES ADAPTATION PLANS.

(a) REQUIREMENT.—In order to be eligible for funds under section 480, not later than 1 year after the development of a Natural Resources Climate Change Adaptation Strategy required under section 476 each State shall prepare a State natural resources adaptation plan detailing the State's current and projected efforts to address the potential impacts of climate change and ocean acidification on natural resources and coastal areas within the State's jurisdiction.

(b) REVIEW OR APPROVAL.—

(1) IN GENERAL.—Each State adaptation plan shall be reviewed and approved or disapproved by the Secretary of the Interior and, as applicable, the Secretary of Commerce. Such approval shall be granted if the plan meets the requirements of subsection (c) and is consistent with the Natural Re-

sources Climate Change Adaptation Strategy required under section 476.

(2) APPROVAL OR DISAPPROVAL.—Within 180 days after transmittal of such a plan, or a revision to such a plan, the Secretary of the Interior and, as applicable, the Secretary of Commerce shall approve or disapprove the plan by written notice.

(3) RESUBMITTAL.—Within 90 days after transmittal of a resubmitted adaptation plan as a result of disapproval under paragraph (3), the Secretary of the Interior and, as applicable, the Secretary of Commerce, shall approve or disapprove the plan by written notice.

(c) CONTENTS.—A State natural resources adaptation plan shall—

(1) include a strategy for addressing the impacts of climate change and ocean acidification on terrestrial, marine, estuarine, and freshwater fish, wildlife, plants, habitats, ecosystems, wildlife health, and ecological processes, that—

(A) describes the impacts of climate change and ocean acidification on the diversity and health of the fish, wildlife and plant populations, habitats, ecosystems, and associated ecological processes;

(B) establishes programs for monitoring the impacts of climate change and ocean acidification on fish, wildlife, and plant populations, habitats, ecosystems, and associated ecological processes;

(C) describes and prioritizes proposed conservation actions to assist fish, wildlife, plant populations, habitats, ecosystems, and associated ecological processes in becoming more resilient, adapting to, and better withstanding those impacts;

(D) includes strategies, specific conservation actions, and a time frame for implementing conservation actions for fish, wildlife, and plant populations, habitats, ecosystems, and associated ecological processes;

(E) establishes methods for assessing the effectiveness of strategies and conservation actions taken to assist fish, wildlife, and plant populations, habitats, ecosystems, and associated ecological processes in becoming more resilient, adapt to, and better withstand the impacts of climate changes and ocean acidification and for updating those strategies and actions to

respond appropriately to new information or changing conditions;

(F) is incorporated into a revision of the State wildlife action plan (also known as the State comprehensive wildlife strategy)—

(i) that has been submitted to the United States Fish and Wildlife Service; and

(ii) that has been approved by the Service or on which a decision on approval is pending; and

(G) is developed—

(i) with the participation of the State fish and wildlife agency, the State coastal agency, the State agency responsible for administration of Land and Water Conservation Fund grants, the State Forest Legacy program coordinator, and other State agencies considered appropriate by the Governor of such State; and

(ii) in coordination with the Secretary of the Interior, and where applicable, the Secretary of Commerce and other States that share jurisdiction over natural resources with the State; and

(2) include, in the case of a coastal State, a strategy for addressing the impacts of climate change and ocean acidification on the coastal zone that—

(A) identifies natural resources that are likely to be impacted by climate change and ocean acidification and describes those impacts;

(B) identifies and prioritizes continuing research and data collection needed to address those impacts including—

(i) acquisition of high resolution coastal elevation and nearshore bathymetry data;

(ii) historic shoreline position maps, erosion rates, and inventories of shoreline features and structures;

(iii) measures and models of relative rates of sea level rise or lake level changes, including effects on flooding, storm surge, inundation, and coastal geological processes;

(iv) habitat loss, including projected losses of coastal wetlands and potentials for inland migration of natural shoreline habitats;

(v) ocean and coastal species and ecosystem migrations, and changes in species population dynamics;

(vi) changes in storm frequency, intensity, or rainfall patterns;

(vii) saltwater intrusion into coastal rivers and aquifers;

(viii) changes in chemical or physical characteristics of marine and estuarine systems;

(ix) increased harmful algal blooms; and

(x) spread of invasive species;

(C) identifies and prioritizes adaptation strategies to protect, restore, and conserve natural resources to enable them to become more resilient, adapt to, and withstand the impacts of climate change and ocean acidification, including—

(i) protection, maintenance, and restoration of ecologically important coastal lands, coastal and ocean ecosystems, and species biodiversity and the establishment of habitat buffer zones, migration corridors, and climate refugia; and

(ii) improved planning, siting policies, and hazard mitigation strategies;

(D) establishes programs for the long-term monitoring of the impacts of climate change and ocean acidification on the ocean and coastal zone and to assess and adjust, when necessary, such adaptive management strategies;

(E) establishes performance measures for assessing the effectiveness of adaptation strategies intended to improve resilience and the ability of natural resources in the coastal zone to adapt to and withstand the impacts of climate change and ocean acidification and of adaptation strategies intended to minimize those impacts on the coastal zone and to update those strategies to respond to new information or changing conditions; and

(F) is developed with the participation of the State coastal agency and other appropriate State agencies and in coordination with the Secretary of Commerce and other appropriate Federal agencies.

(d) PUBLIC INPUT.—States shall provide for solicitation and consideration of public and independent scientific input in the development of their plans.

(e) COORDINATION WITH OTHER PLANS.—The State plan shall take into consideration research and information contained in, and coordinate with and integrate the goals and measures identified in, as appropriate, other natural resources conservation strategies, including—

(1) the national fish habitat action plan;

(2) plans under the North American Wetlands Conservation Act (16 U.S.C. 4401 et seq.);

(3) the Federal, State, and local partnership known as ''Partners in Flight'';

(4) federally approved coastal zone management plans under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);

(5) federally approved regional fishery management plants and habitat conservation activities under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(6) the national coral reef action plan;

(7) recovery plans for threatened species and endangered species under section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f));

(8) habitat conservation plans under section 10 of that Act (16 U.S.C. 1539);

(9) other Federal, State, and tribal plans for imperiled species;

(10) State or tribal hazard mitigation plans;

(11) State or tribal water management plans; and

(12) other State-based strategies that comprehensively implement adaptation activities to remediate the effects of climate change and ocean acidification on terrestrial, marine, and freshwater fish, wildlife, plants, and other natural resources.

(f) UPDATING.—Each State plan shall be updated not less than every 5 years.

(g) FUNDING.—

(1) IN GENERAL.—Funds allocated to States under section 480 shall be used only for activities that are consistent with a State natural resources adaptation plan that has been approved by the Secretaries of Interior and Commerce.

(2) FUNDING PRIOR TO THE APPROVAL OF A STATE PLAN.—Until the earlier of the date that is 3 years after the date of the enactment of this subpart or the date on which a State receives approval for the State strategy, a State shall be eligible to receive funding under section 480 for adaptation activities that are—

(A) consistent with the comprehensive wildlife strategy of the State and, where appro-

priate, other natural resources conservation strategies; and

(B) in accordance with a workplan developed in coordination with—

(i) the Secretary of the Interior; and

(ii) the Secretary of Commerce, for any coastal State subject to the condition that coordination with the Secretary of Commerce shall be required only for those portions of the strategy relating to activities affecting the coastal zone.

(3) PENDING APPROVAL.—During the period for which approval by the applicable Secretary of a State plan is pending, the State may continue receiving funds under section 480 pursuant to the workplan described in paragraph (2)(B).

SEC. 480. NATURAL RESOURCES CLIMATE CHANGE ADAPTATION FUND.

(a) ESTABLISHMENT OF FUND.—There is hereby established in the Treasury a separate account that shall be known as the Natural Resources Climate Change Adaptation Account.

(b) AVAILABILITY OF AMOUNTS.—All amounts deposited into the Natural Resources Climate Change Adap-

tation Fund shall be available without further appropriation or fiscal year limitation.

(c) ALLOCATIONS.—

(1) STATES.—38.5 percent of the amounts made available for each fiscal year to carry out this subpart shall be provided to States to carry out natural resources adaptation activities in accordance with State natural resources adaptation plans approved under section 479. Specifically—

(A) 32.5 percent shall be available to State wildlife agencies in accordance with the apportionment formula established under the second subsection (c) of section 4 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669c), as added by section 902(e) of H.R. 5548 as introduced in the 106th Congress and enacted into law by section 1(a)(2) of Public Law 106–553 (114 Stat. 2762A–119); and

(B) 6 percent shall be available to State coastal agencies pursuant to the formula established by the Secretary of Commerce under section 306(c) of the Coastal Management Act of 1972 (16 U.S.C. 1455(c)).

(2) DEPARTMENT OF THE INTERIOR.—Of the amounts made available for each fiscal year to carry out this subpart—

(A) 17 percent shall be allocated to the Secretary of the Interior for use in funding—

(i) natural resources adaptation activities carried out—

(I) under endangered species, migratory species, and other fish and wildlife programs administered by the National Park Service, the United States Fish and Wildlife Service, the Bureau of Indian Affairs, and the Bureau of Land Management;

(II) on wildlife refuges, National Park Service land, and other public land under the jurisdiction of the United States Fish and Wildlife Service, the Bureau of Land Management, the Bureau of Indian Affairs, or the National Park Service; or

(III) within Federal water managed by the Bureau of Reclamation and the National Park Service; and

(ii) for the implementation of the National Fish and Wildlife Habitat and Corridors Identification Program pursuant to section 481;

(B) 5 percent shall be allocated to the Secretary of the Interior for natural resources adaptation activities carried out under cooperative grant programs, including—

(i) the cooperative endangered species conservation fund authorized under section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1535);

(ii) programs under the North American Wetlands Conservation Act (16 U.S.C. 4401 et seq.);

(iii) the Neotropical Migratory Bird Conservation Fund established by section 478(a) of the Neotropical Migratory Bird Conservation Act (16 U.S.C. 6108(a));

(iv) the Coastal Program of the United States Fish and Wildlife Service;

(v) the National Fish Habitat Action Plan;

(vi) the Partners for Fish and Wildlife Program;

(vii) the Landowner Incentive Program;

(viii) the Wildlife Without Borders Program of the United States Fish and Wildlife Service; and

(ix) the Migratory Species Program and Park Flight Migratory Bird Program of the National Park Service; and

(C) 3 percent shall be allocated to the Secretary of the Interior to provide financial assistance to Indian tribes to carry out natural resources adaptation activities through the Tribal Wildlife Grants Program of the United States Fish and Wildlife Service.

(3) LAND AND WATER CONSERVATION FUND.—

(A) DEPOSITS.—

(i) IN GENERAL.—Of the amounts made available for each fiscal year to carry out this subpart, 12 percent shall be deposited into the Land and Water Conservation Fund established under section 2 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–5).

(ii) USE OF DEPOSITS.—Deposits into the Land and Water Conservation Fund under this paragraph shall—

(I) be supplemental to authorizations provided under section 3 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6), which shall remain available for non-adaptation needs; and

(II) be available for expenditure to carry out this subpart without further appropriation or fiscal year limitation.

(B) ALLOCATIONS.—Of the amounts deposited under this paragraph into the Land and Water Conservation Fund—

(i) ⅙ shall be allocated to the Secretary of the Interior and made available on a competitive basis to carry out natural resources adaptation activities through the acquisition of land and interests in land under section 6 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–8)—

(I) to States in accordance with their natural resources adaptation plans, and to Indian tribes;

(II) notwithstanding section 5 of that Act (16 U.S.C. 460l–7); and

(III) in addition to any funds provided pursuant to annual appropriations Acts, the Energy Policy Act of 2005 (42 U.S.C. 15801 et seq.), or any other authorization for non-adaptation needs;

(ii) ⅓ shall be allocated to the Secretary of the Interior to carry out natural resources adaptation activities through the acquisition of lands and interests in land under section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–9);

(iii) ⅙ shall be allocated to the Secretary of Agriculture and made available to the States and Indian tribes to carry out natural resources adaptation activities through the acquisition of land and interests in land under section 7 of the Forest Legacy Program under the Cooperative

Forestry Assistance Act of 1978 (16 U.S.C. 2103c); and

(iv) ⅓ shall be allocated to the Secretary of Agriculture to carry out natural resources adaptation activities through the acquisition of land and interests in land under section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–9).

(C) EXPENDITURE OF FUNDS.—In allocating funds under subparagraph (B), the Secretary of the Interior and the Secretary of Agriculture shall take into consideration factors including—

(i) the availability of non-Federal contributions from State, local, or private sources;

(ii) opportunities to protect fish and wildlife corridors or otherwise to link or consolidate fragmented habitats;

(iii) opportunities to reduce the risk of catastrophic wildfires, drought, extreme flooding, or other climate-related events that are harmful to fish and wildlife and people; and

(iv) the potential for conservation of species or habitat types at serious risk due to climate change, ocean acidification, and other stressors.

(4) FOREST SERVICE.—Of the amounts made available for each fiscal year to carry out this subpart, 5 percent shall be allocated to the Secretary of Agriculture for use in funding natural resources adaptation activities carried out on national forests and national grasslands under the jurisdiction of the Forest Service.

(5) DEPARTMENT OF COMMERCE.—Of the amounts made available for each fiscal year to carry out this subpart, 7 percent shall be allocated to the Secretary of Commerce for use in funding natural resources adaptation activities to protect, maintain, and restore coastal, estuarine, and marine resources, habitats, and ecosystems, including such activities carried out under—

(A) the coastal and estuarine land conservation program;

(B) the community-based restoration program;

(C) the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), that are specifi-

cally designed to strengthen the ability of coastal, estuarine, and marine resources, habitats, and ecosystems to adapt to and withstand the impacts of climate change and ocean acidification;

(D) the Open Rivers Initiative;

(E) the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(F) the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.);

(G) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(H) the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.);

(I) the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 et seq.); and

(J) the Estuary Restoration Act of 2000 (33 U.S.C. 2901 et seq.).

(6) ENVIRONMENTAL PROTECTION AGENCY.—Of the amounts made available each fiscal year to carry out this section, 7.5 percent shall be allocated to the Administrator for use in natural resources adaptation activities restoring and protecting—

(A) large-scale freshwater aquatic ecosystems, such as the Everglades, the Great Lakes, Flathead Lake, the Missouri River, the Mississippi River, the Colorado River, the Sacramento-San Joaquin Rivers, the Ohio River, the Columbia-Snake River System, the Apalachicola, Chattahoochee, and Flint River System, the Connecticut River, and the Yellowstone River;

(B) large-scale estuarine ecosystems, such as Chesapeake Bay, Long Island Sound, Puget Sound, the Mississippi River Delta, the San Francisco Bay Delta, Narragansett Bay, and Albemarle-Pamlico Sound; and

(C) freshwater and estuarine ecosystems, watersheds, and basins identified as priorities by the Administrator, working in cooperation with other Federal agencies, States, Indian tribes, local governments, scientists, and other conservation partners.

(7) CORPS OF ENGINEERS.—Of the amounts made available each fiscal year to carry out this section, 5 percent shall be available to the Secretary of the Army for use by the Corps of Engineers to carry

out natural resources adaptation activities restoring—

(A) large-scale freshwater aquatic ecosystems, such as the ecosystems described in paragraph (6)(A);

(B) large-scale estuarine ecosystems, such as the ecosystems described in paragraph (6)(B);

(C) freshwater and estuarine ecosystems, watersheds, and basins identified as priorities by the Corps of Engineers, working in cooperation with other Federal agencies, States, Indian tribes, local governments, scientists, and other conservation partners; and

(D) habitats and ecosystems through the implementation of estuary habitat restoration projects authorized by the Estuary Restoration Act of 2000 (33 U.S.C. 2901 et seq.), project modifications for improvement of the environment, aquatic restoration and protection projects authorized by section 206 of the Water Resources Development Act of 1996 (33 U.S.C. 2330), and other appropriate programs and activities.

(d) USE OF FUNDS BY FEDERAL DEPARTMENTS AND AGENCIES.—Funds allocated to Federal departments and agencies under this section shall only be used for natural resources adaptation activities that are consistent with an adaptation plan developed and approved by the President under section 478.

(e) STATE COST SHARING.—Notwithstanding any other provision of law, a State that receives a grant with amounts allocated under this section shall use funds from non-Federal sources to pay 10 percent of the costs of each activity carried out using amounts provided under the grant.

SEC. 481. NATIONAL WILDLIFE HABITAT AND CORRIDORS INFORMATION PROGRAM.

(a) ESTABLISHMENT.—Within 6 months of the date of enactment of this subpart, the Secretary of the Interior, in cooperation with the States and Indian tribes, shall establish a National Fish and Wildlife Habitat and Corridors Information Program in accordance with the requirements of this section.

(b) PURPOSE.—The purpose of this program is to—

(1) support States and Indian tribes in the development of a geographic information system database of fish and wildlife habitat and corridors that would inform planning and development decisions

within each State, enable each State to model climate impacts and adaptation, and provide geographically specific enhancements of State wildlife action plans;

(2) ensure the collaborative development, with the States and Indian tribes, of a comprehensive, national geographic information system database of maps, models, data, surveys, informational products, and other geospatial information regarding fish and wildlife habitat and corridors, that—

(A) is based on consistent protocols for sampling and mapping across landscapes that take into account regional differences; and

(B) that utilizes—

(i) existing and planned State- and tribal-based geographic information system databases; and

(ii) existing databases, analytical tools, metadata activities, and other information products available through the National Biological Information Infrastructure maintained by the Secretary and nongovernmental organizations; and

(3) facilitate the use of such databases by Federal, State, local, and tribal decisionmakers to incor-

porate qualitative information on fish and wildlife habitat and corridors at the earliest possible stage to—

(A) prioritize and target natural resources adaptation strategies and activities;

(B) avoid, minimize, and mitigate the impacts on fish and wildlife habitat and corridors in siting energy development, water, transmission, transportation, and other land use projects;

(C) assess the impacts of existing development on habitats and corridors; and

(D) develop management strategies to enhance the ability of fish, wildlife, and plant species to migrate or respond to shifting habitats within existing habitats and corridors.

(c) HABITAT AND CORRIDORS INFORMATION SYSTEM.—

(1) IN GENERAL.—The Secretary, in cooperation with the States and Indian tribes, shall develop a Habitat and Corridors Information System.

(2) CONTENTS.—The System shall—

(A) include maps, data, and descriptions of fish and wildlife habitat and corridors, that—

(i) have been developed by Federal agencies, State wildlife agencies and natural heritage programs, Indian tribes, local governments, nongovernmental organizations, and industry; and

(ii) meet accepted Geospatial Interoperability Framework data and metadata protocols and standards;

(B) include maps and descriptions of projected shifts in habitats and corridors of fish and wildlife species in response to climate change;

(C) assure data quality and make the data, models, and analyses included in the System available at scales useful to decisionmakers—

(i) to prioritize and target natural resources adaptation strategies and activities;

(ii) to assess the impacts of proposed energy development, water, transmission, transportation, and other land use projects and avoid, minimize, and mitigate those impacts on habitats and corridors;

(iii) to assess the impacts of existing development on habitats and corridors; and

(iv) to develop management strategies to enhance the ability of fish, wildlife, and plant species to migrate or respond to shifting habitats within existing habitats and corridors;

(D) establish a process for updating maps and other information as landscapes, habitats, corridors, and wildlife populations change or as other information becomes available;

(E) encourage the development of collaborative plans by Federal and State agencies and Indian tribes to monitor and evaluate the efficacy of the System to meet the needs of decisionmakers;

(F) identify gaps in habitat and corridor information, mapping, and research that should be addressed to fully understand and assess current data and metadata, and to prioritize research and future data collection activities for use in updating the System and provide support for those activities;

(G) include mechanisms to support collaborative research, mapping, and planning of habitats and corridors by Federal and State agen-

cies, Indian tribes, and other interested stakeholders;

(H) incorporate biological and geospatial data on species and corridors found in energy development and transmission plans, including renewable energy initiatives, transportation, and other land use plans;

(I) be based on the best scientific information available; and

(J) identify, prioritize, and describe key parcels of non-Federal land located within the boundaries of units of the National Park System, National Wildlife Refuge System, National Forest System, or National Grassland System that are critical to maintenance of wildlife habitat and migration corridors.

(d) FINANCIAL AND OTHER SUPPORT.—The Secretary may provide support to the States and Indian tribes, including financial and technical assistance, for activities that support the development and implementation of the System.

(e) COORDINATION.—The Secretary, in cooperation with the States and Indian tribes, shall make recommendations on how the information developed in the System may be incorporated into existing relevant State

and Federal plans affecting fish and wildlife, including land management plans, the State Comprehensive Wildlife Conservation Strategies, and appropriate tribal conservation plans, to ensure that they—

(1) prevent unnecessary habitat fragmentation and disruption of corridors;

(2) promote the landscape connectivity necessary to allow wildlife to move as necessary to meet biological needs, adjust to shifts in habitat, and adapt to climate change; and

(3) minimize the impacts of energy, development, water, transportation, and transmission projects and other activities expected to impact habitat and corridors.

(f) DEFINITIONS.—In this section:

(1) GEOSPATIAL INTEROPERABILITY FRAMEWORK.—The term ''Geospatial Interoperability Framework'' means the strategy utilized by the National Biological Information Infrastructure that is based upon accepted standards, specifications, and protocols adopted through the International Standards Organization, the Open Geospatial Consortium, and the Federal Geographic Data Committee, to manage, archive, integrate, analyze, and make accessible geospatial and biological data and metadata.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 482. ADDITIONAL PROVISIONS REGARDING INDIAN TRIBES.

(a) FEDERAL TRUST RESPONSIBILITY.—Nothing in this subpart is intended to amend, alter, or give priority over the Federal trust responsibility to Indian tribes.

(b) EXEMPTION FROM FOIA.—If a Federal department or agency receives any information related to sacred sites or cultural activities identified by an Indian tribe as confidential, such information shall be exempt from disclosure under section 552 of title 5, United States Code, popularly known as the Freedom of Information Act (5 U.S.C. 552).

(c) APPLICATION OF OTHER LAW.—The Secretary of the Interior may apply the provisions of Public Law 93–638 where appropriate in the implementation of this subpart.

PART 2—INTERNATIONAL CLIMATE CHANGE ADAPTATION PROGRAM

SEC. 491. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Global climate change is a potentially significant national and global security threat multiplier and is likely to exacerbate competition and con-

flict over agricultural, vegetative, marine, and water resources and to result in increased displacement of people, poverty, and hunger within developing countries.

(2) The strategic, social, political, economic, cultural, and environmental consequences of global climate change are likely to have disproportionate adverse impacts on developing countries, which have less economic capacity to respond to such impacts.

(3) The countries most vulnerable to climate change, due both to greater exposure to harmful impacts and to lower capacity to adapt, are developing countries with very low industrial greenhouse gas emissions that have contributed less to climate change than more affluent countries.

(4) To a much greater degree than developed countries, developing countries rely on the natural and environmental systems likely to be affected by climate change for sustenance, livelihoods, and economic growth and stability.

(5) Within developing countries there may be varying climate change adaptation and resilience needs among different communities and populations, including impoverished communities, children, women, and indigenous peoples.

(6) The consequences of global climate change, including increases in poverty and destabilization of economies and societies, are likely to pose long-term challenges to the national security, foreign policy, and economic interests of the United States.

(7) It is in the national security, foreign policy, and economic interests of the United States to recognize, plan for, and mitigate the international strategic, social, political, cultural, environmental, health, and economic effects of climate change and to assist developing countries to increase their resilience to those effects.

(8) Under Article 4 of the United Nations Framework Convention on Climate Change, developed country parties, including the United States, committed to ''assist the developing country parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects''.

(9) Under the Bali Action Plan, developed country parties to the United Nations Framework Convention on Climate Change, including the United States, committed to ''enhanced action on the provision of financial resources and investment to support action on mitigation and adaptation and technology

cooperation,'' including, inter alia, consideration of ''improved access to adequate, predictable, and sustainable financial resources and financial and technical support, and the provision of new and additional resources, including official and concessional funding for developing country parties''.

(b) PURPOSES.—The purposes of this part are—

(1) to provide new and additional assistance from the United States to the most vulnerable developing countries, including the most vulnerable communities and populations therein, in order to support the development and implementation of climate change adaptation programs and activities that reduce the vulnerability and increase the resilience of communities to climate change impacts, including impacts on water availability, agricultural productivity, flood risk, coastal resources, timing of seasons, biodiversity, economic livelihoods, health and diseases, and human migration; and

(2) to provide such assistance in a manner that protects and promotes the national security, foreign policy, environmental, and economic interests of the United States to the extent such interests may be advanced by minimizing, averting, or increasing resilience to climate change impacts.

SEC. 492. DEFINITIONS.

In this part:

(1) ALLOWANCE.—The term ''allowance'' means an emission allowance established under section 721 of the Clean Air Act.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means—

(A) the Committees on Energy and Commerce, Financial Services, and Foreign Affairs of the House of Representatives; and

(B) the Committees on Environment and Public Works and Foreign Relations of the Senate.

(3) DEVELOPING COUNTRY.—The term ''developing country'' means a country eligible to receive official development assistance according to the income guidelines of the Development Assistance Committee of the Organization for Economic Cooperation and Development.

(4) MOST VULNERABLE DEVELOPING COUNTRIES.—The term ''most vulnerable developing countries'' means, as determined by the Administrator of USAID, developing countries that are at risk of substantial adverse impacts of climate change and have limited capacity to respond to such im-

pacts, considering the approaches included in any international treaties and agreements.

(5) MOST VULNERABLE COMMUNITIES AND POPULATIONS.—The term ''most vulnerable communities and populations'' means communities and populations that are at risk of substantial adverse impacts of climate change and have limited capacity to respond to such impacts, including impoverished communities, children, women, and indigenous peoples.

(6) PROGRAM.—The term ''Program'' means the International Climate Change Adaptation Program established under section 493.

(7) USAID.—The term ''USAID'' means the United States Agency for International Development.

(8) UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE.—The term ''United Nations Framework Convention on Climate Change'' or ''Convention'' means the United Nations Framework Convention on Climate Change done at New York on May 9, 1992, and entered into force on March 21, 1994.

SEC. 493. INTERNATIONAL CLIMATE CHANGE ADAPTATION PROGRAM.

(a) ESTABLISHMENT.—The Secretary of State, in consultation with the Administrator of USAID, the Secretary of the Treasury, and the Administrator of the Environmental Protection Agency, shall establish an International Climate Change Adaptation Program in accordance with the requirements of this part.

(b) ALLOWANCE ACCOUNT.—Allowances allocated pursuant to section 782(n) of the Clean Air Act shall be available for distribution to carry out the Program established under subsection (a).

(c) SUPPLEMENT NOT SUPPLANT.—Assistance provided under this part shall be used to supplement, and not to supplant, any other Federal, State, or local resources available to carry out activities of the type carried out under the Program.

SEC. 494. DISTRIBUTION OF ALLOWANCES.

(a) IN GENERAL.—The Secretary of State, or such other Federal agency head as the President may designate, after consultation with the Secretary of the Treasury, the Administrator of USAID, and the Administrator of the Environmental Protection Agency, shall direct the distribution of allowances to carry out the Program—

(1) in the form of bilateral assistance pursuant to the requirements under section 495;

(2) to multilateral funds or international institutions pursuant to the Convention or an agreement negotiated under the Convention; or

(3) through a combination of the mechanisms identified under paragraphs (1) and (2).

(b) LIMITATION.—

(1) CONDITIONAL DISTRIBUTION TO MULTILATERAL FUNDS OR INTERNATIONAL INSTITUTIONS.—In any fiscal year, the Secretary of State, or such other Federal agency head as the President may designate, in consultation with the Administrator of USAID, the Secretary of the Treasury, and the Administrator of the Environmental Protection Agency, shall distribute at least 40 percent and up to 60 percent of the allowances available to carry out the Program to one or more multilateral funds or international institutions that meet the requirements of paragraph (2), if any such fund or institution exists, and shall annually certify in a report to the appropriate congressional committees that any multilateral fund or international institution receiving allowances under this section meets the requirements of paragraph (2) or that no multilateral fund or international institution that meets the requirements of paragraph (2) exists, as the case may be. The Sec-

retary of State shall notify the appropriate congressional committees not less than 15 days prior to any transfer of allowances to a multilateral fund or international institution pursuant to this section.

(2) MULTILATERAL FUND OR INTERNATIONAL INSTITUTION ELIGIBILITY.—A multilateral fund or international institution is eligible to receive allowances available to carry out the Program—

(A) if—

(i) such fund or institution is established pursuant to—

(I) the Convention; or

(II) an agreement negotiated under the Convention; or

(ii) the allowances are directed to one or more multilateral development banks or international development institutions, pursuant to an agreement negotiated under such Convention; and

(B) if such fund or institution—

(i) specifies the terms and conditions under which the United States is to provide allowances to the fund or institution, and under which the fund or institution is to provide assistance to recipient countries;

(ii) ensures that assistance from the United States to the fund or institution and the principal and income of the fund or institution are disbursed only for purposes that are consistent with those described in section 491(b)(1);

(iii) requires a regular meeting of a governing body of the fund or institution that includes representation from countries among the most vulnerable developing countries and provides public access;

(iv) requires that local communities and indigenous peoples in areas where any activities or programs are planned are engaged through adequate disclosure of information, public participation, and consultation; and

(v) prepares and makes public an annual report that—

(I) describes the process and methodology for selecting the recipients of assistance from the fund or institution, including assessments of vulnerability;

(II) describes specific programs and activities supported by the fund or institution and the extent to which the assistance is addressing the adaptation needs of the most vulnerable developing countries, and the most vulnerable communities and populations therein;

(III) describes the performance goals for assistance authorized under the fund or institution and expresses such goals in an objective and quantifiable form, to the extent practicable;

(IV) describes the performance indicators to be used in measuring or assessing the achievement of the performance goals described in subclause (III);

(V) provides a basis for recommendations for adjustments to assistance authorized under this part to enhance the impact of such assistance; and

(VI) describes the participation of other nations and international or-

ganizations in supporting and governing the fund or institution.

(c) OVERSIGHT.—

(1) DISTRIBUTION TO MULTILATERAL FUNDS OR INTERNATIONAL INSTITUTIONS.—The Secretary of State, or such other Federal agency head as the President may designate, in consultation with the Administrator of USAID, shall oversee the distribution of allowances available to carry out the Program to a multilateral fund or international institution under subsection (b).

(2) BILATERAL ASSISTANCE.—The Administrator of USAID, in consultation with the Secretary of State, shall oversee the distribution of allowances available to carry out the Program for bilateral assistance under section 495.

SEC. 495. BILATERAL ASSISTANCE.

(a) ACTIVITIES AND FOREIGN AID.—

(1) IN GENERAL.—In order to achieve the purposes of this part, the Administrator of USAID may carry out programs and activities and distribute allowances to any private or public group (including international organizations and faith-based organizations), association, or other entity engaged in peaceful activities to—

(A) provide assistance to the most vulnerable developing countries for—

(i) the development of national or regional climate change adaptation plans, including a systematic assessment of socio-economic vulnerabilities in order to identify the most vulnerable communities and populations;

(ii) associated national policies; and

(iii) planning, financing, and execution of adaptation programs and activities;

(B) support investments, capacity-building activities, and other assistance, to reduce vulnerability and promote community-level resilience related to climate change and its impacts in the most vulnerable developing countries, including impacts on water availability, agricultural productivity, flood risk, coastal resources, timing of seasons, biodiversity, economic livelihoods, health, human migration, or other social, economic, political, cultural, or environmental matters;

(C) support climate change adaptation research in or for the most vulnerable developing countries;

(D) reduce vulnerability and provide increased resilience to climate change for local communities and livelihoods in the most vulnerable developing countries by encouraging—

(i) the protection and rehabilitation of natural systems;

(ii) the enhancement and diversification of agricultural, fishery, and other livelihoods; and

(iii) the reduction of disaster risks;

(E) support the deployment of technologies to help the most vulnerable developing countries respond to the destabilizing impacts of climate change and encourage the identification and adoption of appropriate renewable and efficient energy technologies that are beneficial in increasing community-level resilience to the impacts of global climate change in those countries; and

(F) encourage the engagement of local communities through disclosure of information, consultation, and the communities' informed participation relating to the development of plans, programs, and activities to increase com-

1 munity-level resilience to climate change im-
2 pacts.
3 (2) LIMITATIONS.—Not more than 10 percent
4 of the allowances made available to carry out bilat-
5 eral assistance under this part in any year shall be
6 distributed to support activities in any single coun-
7 try.
8 (3) PRIORITIZING ASSISTANCE.—In providing
9 assistance under this section, the Administrator of
10 USAID shall give priority to countries, including the
11 most vulnerable communities and populations there-
12 in, that are most vulnerable to the adverse impacts
13 of climate change, determined by the likelihood and
14 severity of such impacts and the country's capacity
15 to adapt to such impacts.
16 (b) COMMUNITY ENGAGEMENT.—
17 (1) IN GENERAL.—The Administrator of
18 USAID shall ensure that local communities, includ-
19 ing the most vulnerable communities and popu-
20 lations therein, in areas where any programs or ac-
21 tivities are carried out pursuant to this section are
22 engaged in, through disclosure of information, public
23 participation, and consultation, the design, imple-
24 mentation, monitoring, and evaluation of such pro-
25 grams and activities.

(2) CONSULTATION AND DISCLOSURE.—For each country receiving assistance under this section, the Administrator of USAID shall establish a process for consultation with, and disclosure of information to, local, national, and international stakeholders regarding any programs and activities carried out pursuant to this section.

(c) COORDINATION.—

(1) ALIGNMENT OF ACTIVITIES.—Subject to the direction of the President and the Secretary of State, the Administrator of USAID shall, to the extent practicable, seek to align activities under this section with broader development, poverty alleviation, or natural resource management objectives and initiatives in the recipient country.

(2) COORDINATION OF ACTIVITIES.—The Administrator of USAID shall ensure that there is coordination among the activities under this section, subtitle D of this title, and part E of title VII of the Clean Air Act, in order to maximize the effectiveness of United States assistance to developing countries.

(d) REPORTING.—

(1) INITIAL REPORT.—Not later than 180 days after the date of enactment of this part, the Administrator of USAID, in consultation with the Sec-

retary of State, shall submit to the President and the appropriate congressional committees an initial report that—

(A) based on the most recent information available from reliable public sources or knowledge obtained by USAID on a reliable basis, as determined by the Administrator of USAID, identifies the developing countries, including the most vulnerable communities and populations therein, that are most vulnerable to climate change impacts and in which assistance may have the greatest and most sustainable benefit in reducing vulnerability to climate change; and

(B) describes the process and methodology for selecting the recipients of assistance under subsection (a)(1).

(2) ANNUAL REPORTS.—Not later than 18 months after the date on which the initial report is submitted pursuant to paragraph (1), and annually thereafter, the Administrator of USAID, in consultation with the Secretary of State, shall submit to the President and the appropriate congressional committees a report that—

(A) describes the extent to which global climate change, through its potential negative im-

pacts on sensitive populations and natural resources in the most vulnerable developing countries, may threaten, cause, or exacerbate political, economic, environmental, cultural, or social instability or international conflict in those regions;

(B) describes the ramifications of any potentially destabilizing impacts climate change may have on the national security, foreign policy, and economic interests of the United States, including—

(i) the creation of environmental migrants and internally displaced peoples;

(ii) international or internal armed conflicts over water, food, land, or other resources;

(iii) loss of agricultural and other livelihoods, cultural stability, and other causes of increased poverty and economic destabilization;

(iv) decline in availability of resources needed for survival, including water;

(v) increased impact of natural disasters (including droughts, flooding, and other severe weather events);

(vi) increased prevalence or virulence of climate-related diseases; and

(vii) intensified urban migration;

(C) describes how allowances available under this section were distributed during the previous fiscal year to enhance the national security, foreign policy, and economic interests of the United States and assist in avoiding the economically, politically, environmentally, culturally, and socially destabilizing impacts of climate change in most vulnerable developing countries;

(D) identifies and recommends the developing countries, including the most vulnerable communities and populations therein, that are most vulnerable to climate change impacts and in which assistance may have the greatest and most sustainable benefit in reducing vulnerability to climate change, including in the form of deploying technologies, investments, capacity-building activities, and other types of assistance for adaptation to climate change impacts and approaches to reduce greenhouse gases in ways that may also provide community-level resilience to climate change impacts; and

(E) describes cooperation undertaken with other nations and international organizations to carry out this part.

(e) MONITORING AND EVALUATION.—

(1) IN GENERAL.—The Administrator of USAID shall establish and implement a system to monitor and evaluate the effectiveness and efficiency of assistance provided under this section in order to maximize the long-term sustainable development impact of such assistance, including the extent to which such assistance is meeting the purposes of this part and addressing the adaptation needs of developing countries.

(2) REQUIREMENTS.—In carrying out paragraph (1), the Administrator of USAID shall—

(A) in consultation with national governments in recipient countries, establish performance goals for assistance authorized under this section and express such goals in an objective and quantifiable form, to the extent practicable;

(B) establish performance indicators to be used in measuring or assessing the achievement of the performance goals described in subparagraph (A), including an evaluation of—

(i) the extent to which assistance under this section provided for disclosure of information to, consultation with, and informed participation by local communities;

(ii) the extent to which local communities participated in the design, implementation, and evaluation of programs and activities implemented pursuant to this section; and

(iii) the impacts of such participation on the goals and objectives of the programs and activities implemented under this section;

(C) provide a basis for recommendations for adjustments to assistance authorized under this section to enhance the impact of such assistance; and

(D) include, in the annual report to the appropriate congressional committees and other relevant agencies required under subsection (d)(2), findings resulting from the monitoring and evaluation of programs and activities under this section.

○