

108TH CONGRESS  
1ST SESSION

# H. R. 1644

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

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 7, 2003

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

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## A BILL

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

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

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

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Energy Policy Act of 2003”.

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

Sec. 1. Short title; table of contents.

## TITLE I—ENERGY CONSERVATION

### Subtitle A—Federal Leadership in Energy Conservation

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

### Subtitle B—Energy Assistance and State Programs

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

### Subtitle C—Energy Efficient Products

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

## TITLE II—OIL AND GAS

### Subtitle A—Alaska Natural Gas Pipeline

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

Subtitle B—Strategic Petroleum Reserve

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

Subtitle C—Hydraulic Fracturing

- Sec. 2201. Hydraulic fracturing.

Subtitle D—Unproven Oil and Natural Gas Reserves Recovery Program

- Sec. 2301. Program.
- Sec. 2302. Eligible reservoirs.
- Sec. 2303. Focus areas.
- Sec. 2304. Limitation on location of activities.
- Sec. 2305. Program administration.
- Sec. 2306. Advisory Committee.
- Sec. 2307. Limits on participation.
- Sec. 2308. Payments to Federal Government.
- Sec. 2309. Authorization of appropriations.
- Sec. 2310. Public availability of project results and methodologies.
- Sec. 2311. Sunset.
- Sec. 2312. Definitions.

Subtitle E—Miscellaneous

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

TITLE III—HYDROELECTRIC RELICENSING

Subtitle A—Alternative Conditions

- Sec. 3001. Alternative conditions and fishways.

Subtitle B—Additional Hydropower

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

TITLE IV—NUCLEAR MATTERS

Subtitle A—Price-Anderson Act Amendments

- Sec. 4001. Short title.
- Sec. 4002. Extension of indemnification authority.
- Sec. 4003. Maximum assessment.
- Sec. 4004. Department of Energy liability limit.
- Sec. 4005. Incidents outside the United States.
- Sec. 4006. Reports.
- Sec. 4007. Inflation adjustment.
- Sec. 4008. Price-Anderson treatment of modular reactors.
- Sec. 4009. Applicability.

- Sec. 4010. Prohibition on assumption by United States Government of liability for certain foreign accidents.
- Sec. 4011. Secure transfer of nuclear materials.
- Sec. 4012. Nuclear facility threats.
- Sec. 4013. Unreasonable risk consultation.
- Sec. 4014. Financial accountability.
- Sec. 4015. Civil penalties.

#### Subtitle B—Miscellaneous Matters

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

### TITLE V—VEHICLES AND FUELS

#### Subtitle A—Energy Policy Act Amendments

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

#### Subtitle B—FreedomCAR and Hydrogen Fuel Program

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

#### Subtitle C—Clean School Buses

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

#### Subtitle D—Advanced Vehicles

- Sec. 5041. Definitions.
- Sec. 5042. Pilot program.

- Sec. 5043. Reports to Congress.
- Sec. 5044. Authorization of appropriations.

Subtitle E—Hydrogen Fuel Cell Heavy-Duty Vehicles

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

Subtitle F—Miscellaneous

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

TITLE VI—DOE PROGRAMS

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

Subtitle A—Energy Efficiency

PART 1—AUTHORIZATION OF APPROPRIATIONS

- Sec. 6011. Energy efficiency.

PART 2—LIGHTING SYSTEMS

- Sec. 6021. Next Generation Lighting Initiative.

PART 3—VEHICLES

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

Subtitle B—Distributed Energy and Electric Energy Systems

PART 1—AUTHORIZATION OF APPROPRIATIONS

- Sec. 6201. Distributed energy and electric energy systems.

PART 2—DISTRIBUTED POWER

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

PART 3—TRANSMISSION SYSTEMS

- Sec. 6231. Transmission infrastructure systems.

Subtitle C—Renewable Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

Sec. 6301. Renewable energy.

PART 2—BIOENERGY

Sec. 6321. Bioenergy programs.

Subtitle D—Nuclear Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

Sec. 6411. Nuclear energy.

PART 2—NUCLEAR ENERGY RESEARCH PROGRAMS

Sec. 6421. Nuclear energy research programs.

PART 3—ADVANCED FUEL RECYCLING

Sec. 6431. Advanced fuel recycling program.

PART 4—UNIVERSITY PROGRAMS

Sec. 6441. University nuclear science and engineering support.

Subtitle E—Fossil Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

Sec. 6501. Fossil energy.

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

Sec. 6521. Program authority.

Sec. 6522. Ultra-deepwater program.

Sec. 6523. Unconventional natural gas and other petroleum resources program.

Sec. 6524. Additional requirements for awards.

Sec. 6525. Advisory committees.

Sec. 6526. Limits on participation.

Sec. 6527. Fund.

Sec. 6528. Sunset.

Sec. 6529. Definitions.

Subtitle F—Miscellaneous

Sec. 6601. Waste reduction and use of alternatives.

Sec. 6602. Coal gasification.

Sec. 6603. Petroleum coke gasification.

Sec. 6604. Other biopower and bioenergy.

Sec. 6605. Technology transfer.

Sec. 6606. Limitation on legal fee reimbursement.

Sec. 6607. Complex well technology testing facility.

Sec. 6608. Total integrated thermal systems.

Sec. 6609. Oil bypass filtration technology.

TITLE VII—ELECTRICITY

Subtitle A—Transmission Capacity

Sec. 7011. Transmission infrastructure improvement rulemaking.

Sec. 7012. Siting of interstate electrical transmission facilities.

Subtitle B—Transmission Operation

Sec. 7021. Open access transmission by certain utilities.

Sec. 7022. Regional transmission organizations.

Sec. 7023. Native load.

Subtitle C—Reliability

Sec. 7031. Electric reliability standards.

Subtitle D—PUHCA Amendments

Sec. 7041. Short title.

Sec. 7042. Definitions.

Sec. 7043. Repeal of the Public Utility Holding Company Act of 1935.

Sec. 7044. Federal access to books and records.

Sec. 7045. State access to books and records.

Sec. 7046. Exemption authority.

Sec. 7047. Affiliate transactions.

Sec. 7048. Applicability.

Sec. 7049. Effect on other regulations.

Sec. 7050. Enforcement.

Sec. 7051. Savings provisions.

Sec. 7052. Implementation.

Sec. 7053. Transfer of resources.

Sec. 7054. Effective date.

Sec. 7055. Authorization of appropriations.

Sec. 7056. Conforming amendments to the Federal Power Act.

Subtitle E—PURPA Amendments

Sec. 7061. Real-time pricing and time-of-use metering standards.

Sec. 7062. Cogeneration and small power production purchase and sale requirements.

Sec. 7063. Smart metering.

Subtitle F—Renewable Energy

Sec. 7071. Net metering.

Sec. 7072. Renewable energy production incentive.

Sec. 7073. Renewable energy on Federal lands.

Sec. 7074. Assessment of renewable energy resources.

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

Sec. 7081. Market transparency rules.

Sec. 7082. Prohibition on round trip trading.

Sec. 7083. Conforming changes.

Sec. 7084. Enforcement.

Subtitle H—Consumer Protections

Sec. 7091. Refund effective date.

Sec. 7092. Jurisdiction over interstate sales.

Sec. 7093. Consumer privacy.

Sec. 7094. Unfair trade practices.

Subtitle I—Merger Review Reform and Accountability

Sec. 7101. Merger review reform and accountability.

Subtitle J—Study of Economic Dispatch

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

TITLE VIII—COAL

Sec. 8001. Authorization of appropriations.

Sec. 8002. Project criteria.

Sec. 8003. Report.

Sec. 8004. Clean coal centers of excellence.

TITLE IX—MOTOR FUELS

Subtitle A—General Provisions

Sec. 9101. Renewable content of motor vehicle fuel.

Sec. 9102. Fuels safe harbor.

Sec. 9103. Findings and MTBE transition assistance.

Sec. 9104. Elimination of oxygen content requirement for reformulated gasoline.

Sec. 9105. Analyses of motor vehicle fuel changes.

Sec. 9106. Data collection.

Sec. 9107. Fuel system requirements harmonization study.

Subtitle B—MTBE Cleanup

Sec. 9201. Funding for MTBE contamination.

TITLE X—AUTOMOBILE EFFICIENCY

Sec. 10001. Authorization of appropriations for implementation and enforcement of fuel economy standards.

Sec. 10002. Study of feasibility and effects of reducing use of fuel for automobiles.

TITLE XI—PREVENTING THE MISUSE OF NUCLEAR MATERIALS  
AND TECHNOLOGY

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

TITLE XII—ADDITIONAL PROVISIONS

Sec. 12001. Transmission technologies.



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

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

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

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

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

13                   “(1) shall develop, update, and implement a  
14 cost-effective energy conservation and management  
15 plan (referred to in this section as the ‘plan’) for all  
16 facilities administered by the Congress (referred to  
17 in this section as ‘congressional buildings’) to meet  
18 the energy performance requirements for Federal  
19 buildings established under section 543(a)(1); and

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

23           “(b) PLAN REQUIREMENTS.—The plan shall in-  
24 clude—

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

4           “(2) a schedule of energy surveys to ensure  
5 complete surveys of all congressional buildings every  
6 5 years to determine the cost and payback period of  
7 energy and water conservation measures;

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

10           “(4) the results of a study of the costs and ben-  
11 efits of installation of submetering in congressional  
12 buildings; and

13           “(5) information packages and ‘how-to’ guides  
14 for each Member and employing authority of Con-  
15 gress that detail simple, cost-effective methods to  
16 save energy and taxpayer dollars in the workplace.

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

21           “(1) energy expenditures and savings estimates  
22 for each facility;

23           “(2) energy management and conservation  
24 projects; and

1           “(3) future priorities to ensure compliance with  
2           this section.”.

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

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

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

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

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

22 **SEC. 1002. ENERGY MANAGEMENT REQUIREMENTS.**

23           (a) ENERGY REDUCTION GOALS.—

24               (1) AMENDMENT.—Section 543(a)(1) of the  
25           National Energy Conservation Policy Act (42 U.S.C.

1 8253(a)(1)) is amended by striking “its Federal  
 2 buildings so that” and all that follows through the  
 3 end and inserting “the Federal buildings of the  
 4 agency (including each industrial or laboratory facil-  
 5 ity) so that the energy consumption per gross square  
 6 foot of the Federal buildings of the agency in fiscal  
 7 years 2004 through 2013 is reduced, as compared  
 8 with the energy consumption per gross square foot  
 9 of the Federal buildings of the agency in fiscal year  
 10 2001, by the percentage specified in the following  
 11 table:

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

12 (2) REPORTING BASELINE.—The energy reduc-  
 13 tion goals and baseline established in paragraph (1)  
 14 of section 543(a) of the National Energy Conserva-  
 15 tion Policy Act, as amended by paragraph (1) of this  
 16 subsection, supersede all previous goals and base-  
 17 lines under such paragraph, and related reporting  
 18 requirements.

19 (b) REVIEW AND REVISION OF ENERGY PERFORM-  
 20 ANCE REQUIREMENT.—Section 543(a) of the National

1 Energy Conservation Policy Act (42 U.S.C. 8253(a)) is  
2 further amended by adding at the end the following:

3 “(3) Not later than December 31, 2012, the Sec-  
4 retary shall review the results of the implementation of  
5 the energy performance requirement established under  
6 paragraph (1) and submit to Congress recommendations  
7 concerning energy performance requirements for fiscal  
8 years 2014 through 2023.”.

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

18 “(i) compliance with those requirements would  
19 be impracticable;

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

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

1           “(iv) the agency has implemented all prac-  
2           ticable, life cycle cost-effective projects with respect  
3           to the Federal building or collection of Federal  
4           buildings to be excluded.

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

7           “(i) the energy intensiveness of activities car-  
8           ried out in the Federal building or collection of Fed-  
9           eral buildings; or

10           “(ii) the fact that the Federal building or col-  
11           lection of Federal buildings is used in the perform-  
12           ance of a national security function.”.

13           (d) REVIEW BY SECRETARY.—Section 543(e)(2) of  
14 the National Energy Conservation Policy Act (42 U.S.C.  
15 8253(e)(2)) is amended—

16           (1) by striking “impracticability standards” and  
17           inserting “standards for exclusion”; and

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

20           (e) CRITERIA.—Section 543(e) of the National En-  
21 ergy Conservation Policy Act (42 U.S.C. 8253(e)) is fur-  
22 ther amended by adding at the end the following:

23           “(3) Not later than 180 days after the date of enact-  
24 ment of this paragraph, the Secretary shall issue guide-

1 lines that establish criteria for exclusions under paragraph  
2 (1).”.

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

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

14 (g) REPORTS.—Section 548(b) of the National En-  
15 ergy Conservation Policy Act (42 U.S.C. 8258(b)) is  
16 amended—

17 (1) in the subsection heading, by inserting

18 “THE PRESIDENT AND” before “CONGRESS”; and

19 (2) by inserting “President and” before “Con-  
20 gress”.

21 (h) CONFORMING AMENDMENT.—Section 550(d) of  
22 the National Energy Conservation Policy Act (42 U.S.C.  
23 8258b(d)) is amended in the second sentence by striking  
24 “the 20 percent reduction goal established under section  
25 543(a) of the National Energy Conservation Policy Act

1 (42 U.S.C. 8253(a)).” and inserting “each of the energy  
2 reduction goals established under section 543(a).”.

3 **SEC. 1003. ENERGY USE MEASUREMENT AND ACCOUNT-**  
4 **ABILITY.**

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

8 “(e) METERING OF ENERGY USE.—

9 “(1) DEADLINE.—By October 1, 2010, in ac-  
10 cordance with guidelines established by the Sec-  
11 retary under paragraph (2), all Federal buildings  
12 shall, for the purposes of efficient use of energy and  
13 reduction in the cost of electricity used in such  
14 buildings, be metered or submetered. Each agency  
15 shall use, to the maximum extent practicable, ad-  
16 vanced meters or advanced metering devices that  
17 provide data at least daily and that measure at least  
18 hourly consumption of electricity in the Federal  
19 buildings of the agency. Such data shall be incor-  
20 porated into existing Federal energy tracking sys-  
21 tems and made available to Federal facility energy  
22 managers.

23 “(2) GUIDELINES.—

24 “(A) IN GENERAL.—Not later than 180  
25 days after the date of enactment of this sub-



1 section, the Secretary, in consultation with the  
2 Department of Defense, the General Services  
3 Administration, representatives from the meter-  
4 ing industry, utility industry, energy services in-  
5 dustry, energy efficiency industry, national lab-  
6 oratories, universities, and Federal facility en-  
7 ergy managers, shall establish guidelines for  
8 agencies to carry out paragraph (1).

9 “(B) REQUIREMENTS FOR GUIDELINES.—

10 The guidelines shall—

11 “(i) take into consideration—

12 “(I) the cost of metering and  
13 submetering and the reduced cost of  
14 operation and maintenance expected  
15 to result from metering and sub-  
16 metering;

17 “(II) the extent to which meter-  
18 ing and submetering are expected to  
19 result in increased potential for en-  
20 ergy management, increased potential  
21 for energy savings and energy effi-  
22 ciency improvement, and cost and en-  
23 ergy savings due to utility contract  
24 aggregation; and

1                   “(III) the measurement and  
2                   verification protocols of the Depart-  
3                   ment of Energy;

4                   “(ii) include recommendations con-  
5                   cerning the amount of funds and the num-  
6                   ber of trained personnel necessary to gath-  
7                   er and use the metering information to  
8                   track and reduce energy use;

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

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

22                  “(3) PLAN.—No later than 6 months after the  
23                  date guidelines are established under paragraph (2),  
24                  in a report submitted by the agency under section  
25                  548(a), each agency shall submit to the Secretary a

1 plan describing how the agency will implement the  
2 requirements of paragraph (1), including (A) how  
3 the agency will designate personnel primarily respon-  
4 sible for achieving the requirements and (B) dem-  
5 onstration by the agency, complete with documenta-  
6 tion, of any finding that advanced meters or ad-  
7 vanced metering devices, as defined in paragraph  
8 (1), are not practicable.”.

9 **SEC. 1004. FEDERAL BUILDING PERFORMANCE STAND-**  
10 **ARDS.**

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

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

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

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

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

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

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

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

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

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

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

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

9           (a) REQUIREMENTS.—Part 3 of title V of the Na-  
10 tional Energy Conservation Policy Act is amended by add-  
11 ing at the end the following:

12 **“SEC. 553. FEDERAL PROCUREMENT OF ENERGY EFFI-**  
13 **CIENT PRODUCTS.**

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

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

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

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

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

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

9           “(1) REQUIREMENT.—To meet the require-  
10          ments of an executive agency for an energy con-  
11          suming product, the head of the executive agency  
12          shall, except as provided in paragraph (2), procure—

13                   “(A) an Energy Star product; or

14                   “(B) a FEMP designated product.

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

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

24                   “(B) no Energy Star product or FEMP  
25                   designated product is reasonably available that

1           meets the functional requirements of the execu-  
2           tive agency.

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

15          “(c) LISTING OF ENERGY EFFICIENT PRODUCTS IN  
16          FEDERAL CATALOGS.—Energy Star products and FEMP  
17          designated products shall be clearly identified and promi-  
18          nently displayed in any inventory or listing of products  
19          by the General Services Administration or the Defense Lo-  
20          gistics Agency. The General Services Administration or  
21          the Defense Logistics Agency shall supply only Energy  
22          Star products or FEMP designated products for all prod-  
23          uct categories covered by the Energy Star program or the  
24          Federal Energy Management Program, except in cases  
25          where the agency ordering a product specifies in writing

1 that no Energy Star product or FEMP designated product  
2 is available to meet the buyer’s functional requirements,  
3 or that no Energy Star product or FEMP designated  
4 product is cost-effective for the intended application over  
5 the life of the product, taking energy cost savings into ac-  
6 count.

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

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

18 (b) CONFORMING AMENDMENT.—The table of con-  
19 tents in section 1(b) of the National Energy Conservation  
20 Policy Act (42 U.S.C. 8201 note), as amended by section  
21 1001(b) of this Act, is further amended by inserting after  
22 the item relating to section 552 the following:

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



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

2 (a) PERMANENT EXTENSION.—Section 801(c) of the  
3 National Energy Conservation Policy Act (42 U.S.C.  
4 8287(c)) is repealed.

5 (b) REPLACEMENT FACILITIES.—Section 801(a) of  
6 the National Energy Conservation Policy Act (42 U.S.C.  
7 8287(a)) is amended by adding at the end the following  
8 new paragraph:

9 “(3)(A) In the case of an energy savings con-  
10 tract or energy savings performance contract pro-  
11 viding for energy savings through the construction  
12 and operation of one or more buildings or facilities  
13 to replace one or more existing buildings or facilities,  
14 benefits ancillary to the purpose of such contract  
15 under paragraph (1) may include savings resulting  
16 from reduced costs of operation and maintenance at  
17 such replacement buildings or facilities when com-  
18 pared with costs of operation and maintenance at  
19 the buildings or facilities being replaced, established  
20 through a methodology set forth in the contract.

21 “(B) Notwithstanding paragraph (2)(B), aggre-  
22 gate annual payments by an agency under an energy  
23 savings contract or energy savings performance con-  
24 tract referred to in subparagraph (A) may take into  
25 account (through the procedures developed pursuant  
26 to this section) savings resulting from reduced costs

1 of operation and maintenance as described in that  
2 subparagraph.”.

3 (c) ENERGY SAVINGS.—Section 804(2) of the Na-  
4 tional Energy Conservation Policy Act (42 U.S.C.  
5 8287c(2)) is amended to read as follows:

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

7 “(A) a reduction in the cost of energy or  
8 water, from a base cost established through a  
9 methodology set forth in the contract, used in  
10 an existing federally owned building or build-  
11 ings or other federally owned facilities as a re-  
12 sult of—

13 “(i) the lease or purchase of operating  
14 equipment, improvements, altered oper-  
15 ation and maintenance, or technical serv-  
16 ices;

17 “(ii) the increased efficient use of ex-  
18 isting energy sources by cogeneration or  
19 heat recovery, excluding any cogeneration  
20 process for other than a federally owned  
21 building or buildings or other federally  
22 owned facilities; or

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

1           “(B) in the case of a replacement building  
2 or facility described in section 801(a)(3), a re-  
3 duction in the cost of energy, from a base cost  
4 established through a methodology set forth in  
5 the contract, that would otherwise be utilized in  
6 one or more existing federally owned buildings  
7 or other federally owned facilities by reason of  
8 the construction and operation of the replace-  
9 ment building or facility.”.

10           (d) ENERGY SAVINGS CONTRACT.—Section 804(3) of  
11 the National Energy Conservation Policy Act (42 U.S.C.  
12 8287c(3)) is amended to read as follows:

13           “(3) The terms ‘energy savings contract’ and  
14 ‘energy savings performance contract’ mean a con-  
15 tract which provides for—

16           “(A) the performance of services for the  
17 design, acquisition, installation, testing, oper-  
18 ation, and, where appropriate, maintenance and  
19 repair, of an identified energy or water con-  
20 servation measure or series of measures at one  
21 or more locations; or

22           “(B) energy savings through the construc-  
23 tion and operation of one or more buildings or  
24 facilities to replace one or more existing build-  
25 ings or facilities.

1 Such contracts shall, with respect to an agency facil-  
2 ity that is a public building as such term is defined  
3 in section 13(1) of the Public Buildings Act of 1959  
4 (40 U.S.C. 612(1)), be in compliance with the pro-  
5 spectus requirements and procedures of section 7 of  
6 the Public Buildings Act of 1959 (40 U.S.C. 606).”.

7 (e) ENERGY OR WATER CONSERVATION MEASURE.—  
8 Section 804(4) of the National Energy Conservation Pol-  
9 icy Act (42 U.S.C. 8287c(4)) is amended to read as fol-  
10 lows:

11 “(4) The term ‘energy or water conservation  
12 measure’ means—

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

15 or

16 “(B) a water conservation measure that  
17 improves water efficiency, is life cycle cost-effec-  
18 tive, and involves water conservation, water re-  
19 cycling or reuse, more efficient treatment of  
20 wastewater or stormwater, improvements in op-  
21 eration or maintenance efficiencies, retrofit ac-  
22 tivities, or other related activities, not at a Fed-  
23 eral hydroelectric facility.”.

24 (f) REVIEW.—Within 180 days after the date of the  
25 enactment of this section, the Secretary of Energy shall

1 complete a review of the Energy Savings Performance  
2 Contract program to identify statutory, regulatory, and  
3 administrative obstacles that prevent Federal agencies  
4 from fully utilizing the program. In addition, this review  
5 shall identify all areas for increasing program flexibility  
6 and effectiveness, including audit and measurement  
7 verification requirements, accounting for energy use in de-  
8 termining savings, contracting requirements, and energy  
9 efficiency services covered. The Secretary shall report  
10 these findings to the Committee on Energy and Commerce  
11 of the House of Representatives and the Committee on  
12 Energy and Natural Resources of the Senate, and shall  
13 implement identified administrative and regulatory  
14 changes to increase program flexibility and effectiveness  
15 to the extent that such changes are consistent with statu-  
16 tory authority.

17 **SEC. 1007. VOLUNTARY COMMITMENTS TO REDUCE INDUS-**  
18 **TRIAL ENERGY INTENSITY.**

19 (a) VOLUNTARY AGREEMENTS.—The Secretary of  
20 Energy shall enter into voluntary agreements with one or  
21 more persons in industrial sectors that consume signifi-  
22 cant amounts of primary energy per unit of physical out-  
23 put to reduce the energy intensity of their production ac-  
24 tivities.

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

4 (c) RECOGNITION.—The Secretary of Energy, in co-  
5 operation with the Administrator of the Environmental  
6 Protection Agency and other appropriate Federal agen-  
7 cies, shall develop mechanisms to recognize and publicize  
8 the achievements of participants in voluntary agreements  
9 under this section.

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

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

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

1 **SEC. 1008. FEDERAL AGENCY PARTICIPATION IN DEMAND**  
2 **REDUCTION PROGRAMS.**

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

6 “(6) Federal agencies are encouraged to participate  
7 in State or regional demand side reduction programs. The  
8 availability of such programs, including measures employ-  
9 ing onsite generation, and the savings resulting from such  
10 participation, should be included in the evaluation of en-  
11 ergy options for Federal facilities.”.

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

13 (a) ESTABLISHMENT.—The Secretary of Energy, in  
14 consultation with the Administrator of the General Serv-  
15 ices Administration, shall establish an Advanced Building  
16 Efficiency Testbed program for the development, testing,  
17 and demonstration of advanced engineering systems, com-  
18 ponents, and materials to enable innovations in building  
19 technologies. The program shall evaluate efficiency con-  
20 cepts for government and industry buildings, and dem-  
21 onstrate the ability of next generation buildings to support  
22 individual and organizational productivity and health as  
23 well as flexibility and technological change to improve en-  
24 vironmental sustainability. Such program shall com-  
25 plement and not duplicate existing national programs.

1           (b) PARTICIPANTS.—The program established under  
2 subsection (a) shall be led by a university with the ability  
3 to combine the expertise from numerous academic fields  
4 including, at a minimum, intelligent workplaces and ad-  
5 vanced building systems and engineering, electrical and  
6 computer engineering, computer science, architecture,  
7 urban design, and environmental and mechanical engi-  
8 neering. Such university shall partner with other univer-  
9 sities and entities who have established programs and the  
10 capability of advancing innovative building efficiency tech-  
11 nologies.

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



1 **SEC. 1010. INCREASED USE OF RECOVERED MINERAL COM-**  
2 **PONENT IN FEDERALLY FUNDED PROJECTS**  
3 **INVOLVING PROCUREMENT OF CEMENT OR**  
4 **CONCRETE.**

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

8 “INCREASED USE OF RECOVERED MINERAL COMPONENT  
9 IN FEDERALLY FUNDED PROJECTS INVOLVING PRO-  
10 CUREMENT OF CEMENT OR CONCRETE

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

12 “(1) AGENCY HEAD.—The term ‘agency head’  
13 means—

14 “(A) the Secretary of Transportation; and

15 “(B) the head of each other Federal agen-  
16 cy that on a regular basis procures, or provides  
17 Federal funds to pay or assist in paying the  
18 cost of procuring, material for cement or con-  
19 crete projects.

20 “(2) CEMENT OR CONCRETE PROJECT.—The  
21 term ‘cement or concrete project’ means a project  
22 for the construction or maintenance of a highway or  
23 other transportation facility or a Federal, State, or  
24 local government building or other public facility  
25 that—

1           “(A) involves the procurement of cement  
2           or concrete; and

3           “(B) is carried out in whole or in part  
4           using Federal funds.

5           “(3) RECOVERED MINERAL COMPONENT.—The  
6           term ‘recovered mineral component’ means—

7           “(A) ground granulated blast furnace slag;

8           “(B) coal combustion fly ash; and

9           “(C) any other waste material or byprod-  
10          uct recovered or diverted from solid waste that  
11          the Administrator, in consultation with an  
12          agency head, determines should be treated as  
13          recovered mineral component under this section  
14          for use in cement or concrete projects paid for,  
15          in whole or in part, by the agency head.

16          “(b) IMPLEMENTATION OF REQUIREMENTS.—

17          “(1) IN GENERAL.—Not later than 1 year after  
18          the date of enactment of this section, the Adminis-  
19          trator and each agency head shall take such actions  
20          as are necessary to implement fully all procurement  
21          requirements and incentives in effect as of the date  
22          of enactment of this section (including guidelines  
23          under section 6002) that provide for the use of ce-  
24          ment and concrete incorporating recovered mineral  
25          component in cement or concrete projects.

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

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

10          “(c) FULL IMPLEMENTATION STUDY.—

11                 “(1) IN GENERAL.—The Administrator, in co-  
12                 operation with the Secretary of Transportation and  
13                 the Secretary of Energy, shall conduct a study to de-  
14                 termine the extent to which current procurement re-  
15                 quirements, when fully implemented in accordance  
16                 with subsection (b), may realize energy savings and  
17                 environmental benefits attainable with substitution  
18                 of recovered mineral component in cement used in  
19                 cement or concrete projects.

20                 “(2) MATTERS TO BE ADDRESSED.—The study  
21                 shall—

22                         “(A) quantify the extent to which recov-  
23                         ered mineral components are being substituted  
24                         for Portland cement, particularly as a result of  
25                         current procurement requirements, and the en-

1           energy savings and environmental benefits associ-  
2           ated with that substitution;

3           “(B) identify all barriers in procurement  
4           requirements to fuller realization of energy sav-  
5           ings and environmental benefits, including bar-  
6           riers resulting from exceptions from current  
7           law; and

8           “(C)(i) identify potential mechanisms to  
9           achieve greater substitution of recovered min-  
10          eral component in types of cement or concrete  
11          projects for which recovered mineral compo-  
12          nents historically have not been used or have  
13          been used only minimally;

14          “(ii) evaluate the feasibility of establishing  
15          guidelines or standards for optimized substi-  
16          tution rates of recovered mineral component in  
17          those cement or concrete projects; and

18          “(iii) identify any potential environmental  
19          or economic effects that may result from great-  
20          er substitution of recovered mineral component  
21          in those cement or concrete projects.

22          “(3) REPORT.—Not later than 30 months after  
23          the date of enactment of this section, the Adminis-  
24          trator shall submit to the Committee on Appropria-  
25          tions and Committee on Environment and Public

1 Works of the Senate and the Committee on Appro-  
2 priations, Committee on Energy and Commerce, and  
3 Committee on Transportation and Infrastructure of  
4 the House of Representatives a report on the study.

5 “(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—  
6 Unless the study conducted under subsection (c) identifies  
7 any effects or other problems described in subsection  
8 (c)(2)(C)(iii) that warrant further review or delay, the Ad-  
9 ministrator and each agency head shall, within 1 year of  
10 the release of the report in accordance with subsection  
11 (c)(3), take additional actions authorized under this Act  
12 to establish procurement requirements and incentives that  
13 provide for the use of cement and concrete with increased  
14 substitution of recovered mineral component in the con-  
15 struction and maintenance of cement or concrete projects,  
16 so as to—

17 “(1) realize more fully the energy savings and  
18 environmental benefits associated with increased  
19 substitution; and

20 “(2) eliminate barriers identified under sub-  
21 section (c).

22 “(e) EFFECT OF SECTION.—Nothing in this section  
23 affects the requirements of section 6002 (including the  
24 guidelines and specifications for implementing those re-  
25 quirements).”.

1 (b) TABLE OF CONTENTS AMENDMENT.—The table  
 2 of contents of the Solid Waste Disposal Act is amended  
 3 by adding after the item relating to section 6004 the fol-  
 4 lowing new item:

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

## 5 **Subtitle B—Energy Assistance and** 6 **State Programs**

### 7 **SEC. 1021. LIHEAP AND WEATHERIZATION ASSISTANCE.**

8 (a) LOW-INCOME HOME ENERGY ASSISTANCE PRO-  
 9 GRAM.—Section 2602(b) of the Low-Income Home Energy  
 10 Assistance Act of 1981 (42 U.S.C. 8621(b)) is amended  
 11 by striking “each of fiscal years 2002 through 2004” and  
 12 inserting “each of fiscal years 2002 and 2003, and  
 13 \$3,400,000,000 for each of fiscal years 2004 through  
 14 2006”.

15 (b) WEATHERIZATION.—Section 422 of the Energy  
 16 Conservation and Production Act (42 U.S.C. 6872) is  
 17 amended by striking “for fiscal years 1999 through 2003  
 18 such sums as may be necessary” and inserting  
 19 “\$325,000,000 for fiscal year 2004, \$400,000,000 for fis-  
 20 cal year 2005, and \$500,000,000 for fiscal year 2006”.

21 (c) REPORT TO CONGRESS.—Not later than 1 year  
 22 after the date of enactment of this Act, the Secretary of  
 23 Health and Human Services shall transmit to the Con-  
 24 gress a report on how the Low-Income Home Energy As-

1   sistance Program could be used more effectively to prevent  
2   loss of life from extreme temperatures. In preparing such  
3   report, the Secretary shall consult with appropriate offi-  
4   cials in all 50 States and the District of Columbia.

5   **SEC. 1022. STATE ENERGY PROGRAMS.**

6       (a) STATE ENERGY CONSERVATION PLANS.—Section  
7   362 of the Energy Policy and Conservation Act (42 U.S.C.  
8   6322) is amended by inserting at the end the following  
9   new subsection:

10       “(g) The Secretary shall, at least once every 3 years,  
11   invite the Governor of each State to review and, if nec-  
12   essary, revise the energy conservation plan of such State  
13   submitted under subsection (b) or (e). Such reviews should  
14   consider the energy conservation plans of other States  
15   within the region, and identify opportunities and actions  
16   carried out in pursuit of common energy conservation  
17   goals.”.

18       (b) STATE ENERGY EFFICIENCY GOALS.—Section  
19   364 of the Energy Policy and Conservation Act (42 U.S.C.  
20   6324) is amended to read as follows:

21               “STATE ENERGY EFFICIENCY GOALS

22       “SEC. 364. Each State energy conservation plan with  
23   respect to which assistance is made available under this  
24   part on or after the date of enactment of the Energy Pol-  
25   icy Act of 2003 shall contain a goal, consisting of an im-  
26   provement of 25 percent or more in the efficiency of use

1 of energy in the State concerned in calendar year 2010  
2 as compared to calendar year 1990, and may contain in-  
3 terim goals.”.

4 (c) AUTHORIZATION OF APPROPRIATIONS.—Section  
5 365(f) of the Energy Policy and Conservation Act (42  
6 U.S.C. 6325(f)) is amended by striking “for fiscal years  
7 1999 through 2003 such sums as may be necessary” and  
8 inserting “\$100,000,000 for each of the fiscal years 2004  
9 and 2005 and \$125,000,000 for fiscal year 2006”.

10 **SEC. 1023. ENERGY EFFICIENT APPLIANCE REBATE PRO-**  
11 **GRAMS.**

12 (a) DEFINITIONS.—In this section:

13 (1) ELIGIBLE STATE.—The term “eligible  
14 State” means a State that meets the requirements  
15 of subsection (b).

16 (2) ENERGY STAR PROGRAM.—The term “En-  
17 ergy Star program” means the program established  
18 by section 324A of the Energy Policy and Conserva-  
19 tion Act.

20 (3) RESIDENTIAL ENERGY STAR PRODUCT.—  
21 The term “residential Energy Star product” means  
22 a product for a residence that is rated for energy ef-  
23 ficiency under the Energy Star program.

24 (4) STATE ENERGY OFFICE.—The term “State  
25 energy office” means the State agency responsible



1 for developing State energy conservation plans under  
2 section 362 of the Energy Policy and Conservation  
3 Act (42 U.S.C. 6322).

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

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

9 (1) establishes (or has established) a State en-  
10 ergy efficient appliance rebate program to provide  
11 rebates to residential consumers for the purchase of  
12 residential Energy Star products to replace used ap-  
13 pliances of the same type;

14 (2) submits an application for the allocation at  
15 such time, in such form, and containing such infor-  
16 mation as the Secretary may require; and

17 (3) provides assurances satisfactory to the Sec-  
18 retary that the State will use the allocation to sup-  
19 plement, but not supplant, funds made available to  
20 carry out the State program.

21 (c) AMOUNT OF ALLOCATIONS.—

22 (1) IN GENERAL.—Subject to paragraph (2),  
23 for each fiscal year, the Secretary shall allocate to  
24 the State energy office of each eligible State to carry  
25 out subsection (d) an amount equal to the product

1       obtained by multiplying the amount made available  
2       under subsection (f) for the fiscal year by the ratio  
3       that the population of the State in the most recent  
4       calendar year for which data are available bears to  
5       the total population of all eligible States in that cal-  
6       endar year.

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

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

16      (e) ISSUANCE OF REBATES.—Rebates may be pro-  
17      vided to residential consumers that meet the requirements  
18      of the State program. The amount of a rebate shall be  
19      determined by the State energy office, taking into consid-  
20      eration—

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

23               (2) the amount of any Federal or State tax in-  
24      centive available for the purchase of the residential  
25      Energy Star product; and

1           (3) the difference between the cost of the resi-  
2           dential Energy Star product and the cost of an ap-  
3           pliance that is not a residential Energy Star prod-  
4           uct, but is of the same type as, and is the nearest  
5           capacity, performance, and other relevant character-  
6           istics (as determined by the State energy office) to  
7           the residential Energy Star product.

8           (f) AUTHORIZATION OF APPROPRIATIONS.—There  
9           are authorized to be appropriated to carry out this section  
10          \$50,000,000 for each of the fiscal years 2004 through  
11          2008.

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

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

21                 (1) through construction of new energy efficient  
22                 public buildings that use at least 30 percent less en-  
23                 ergy than a comparable public building constructed  
24                 in compliance with standards prescribed in chapter  
25                 8 of the 2000 International Energy Conservation

1 Code, or a similar State code intended to achieve  
2 substantially equivalent efficiency levels; or

3 (2) through renovation of existing public build-  
4 ings to achieve reductions in energy use of at least  
5 30 percent as compared to the baseline energy use  
6 in such buildings prior to renovation, assuming a 3-  
7 year, weather-normalized average for calculating  
8 such baseline.

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

11 (1) maintain such records and evidence of com-  
12 pliance as the Secretary may require; and

13 (2) develop and distribute information and ma-  
14 terials and conduct programs to provide technical  
15 services and assistance to encourage planning, fi-  
16 nancing, and design of energy efficient public build-  
17 ings by units of local government.

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

1 **SEC. 1025. LOW INCOME COMMUNITY ENERGY EFFICIENCY**  
2 **PILOT PROGRAM.**

3 (a) GRANTS.—The Secretary of Energy is authorized  
4 to make grants to units of local government, private, non-  
5 profit community development organizations, and Indian  
6 tribe economic development entities to improve energy effi-  
7 ciency, identify and develop alternative renewable and dis-  
8 tributed energy supplies, and increase energy conservation  
9 in low income rural and urban communities.

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

12 (1) investments that develop alternative renew-  
13 able and distributed energy supplies;

14 (2) energy efficiency projects and energy con-  
15 servation programs;

16 (3) studies and other activities that improve en-  
17 ergy efficiency in low income rural and urban com-  
18 munities;

19 (4) planning and development assistance for in-  
20 creasing the energy efficiency of buildings and facili-  
21 ties; and

22 (5) technical and financial assistance to local  
23 government and private entities on developing new  
24 renewable and distributed sources of power or com-  
25 bined heat and power generation.

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

10 (d) AUTHORIZATION OF APPROPRIATIONS.—For the  
11 purposes of this section there are authorized to be appro-  
12 priated to the Secretary of Energy \$20,000,000 for fiscal  
13 year 2004 and each fiscal year thereafter through fiscal  
14 year 2006.

## 15 **Subtitle C—Energy Efficient** 16 **Products**

### 17 **SEC. 1041. ENERGY STAR PROGRAM.**

18 (a) AMENDMENT.—The Energy Policy and Conserva-  
19 tion Act (42 U.S.C. 6201 and following) is amended by  
20 inserting the following after section 324:

#### 21 **“SEC. 324A. ENERGY STAR PROGRAM.**

22 “There is established at the Department of Energy  
23 and the Environmental Protection Agency a program to  
24 identify and promote energy-efficient products and build-  
25 ings in order to reduce energy consumption, improve en-

1 energy security, and reduce pollution through labeling of and  
2 other forms of communication about products and build-  
3 ings that meet the highest energy efficiency standards. Re-  
4 sponsibilities under the program shall be divided between  
5 the Department of Energy and the Environmental Protec-  
6 tion Agency consistent with the terms of agreements be-  
7 tween the two agencies. The Administrator and the Sec-  
8 retary shall—

9           “(1) promote Energy Star compliant tech-  
10 nologies as the preferred technologies in the market-  
11 place for achieving energy efficiency and to reduce  
12 pollution;

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

16           “(3) preserve the integrity of the Energy Star  
17 label; and

18           “(4) solicit the comments of interested parties  
19 in establishing a new Energy Star product category  
20 or in revising a product category, and upon adoption  
21 of a new or revised product category provide an ex-  
22 planation of the decision that responds to significant  
23 public comments.”.

24           (b) TABLE OF CONTENTS AMENDMENT.—The table  
25 of contents of the Energy Policy and Conservation Act is

1 amended by inserting after the item relating to section  
2 324 the following new item:

“Sec. 324A. Energy Star program.”.

3 **SEC. 1042. CONSUMER EDUCATION ON ENERGY EFFI-**  
4 **CIENCY BENEFITS OF AIR CONDITIONING,**  
5 **HEATING, AND VENTILATION MAINTENANCE.**

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

9 “(c) HVAC MAINTENANCE.—(1) For the purpose of  
10 ensuring that installed air conditioning and heating sys-  
11 tems operate at their maximum rated efficiency levels, the  
12 Secretary shall, within 180 days of the date of enactment  
13 of this subsection, carry out a program to educate home-  
14 owners and small business owners concerning the energy  
15 savings resulting from properly conducted maintenance of  
16 air conditioning, heating, and ventilating systems.

17 “(2) The Secretary shall carry out the program in  
18 cooperation with the Administrator of the Environmental  
19 Protection Agency and such other entities as the Secretary  
20 considers appropriate, including industry trade associa-  
21 tions, industry members, and energy efficiency organiza-  
22 tions.

23 “(d) SMALL BUSINESS EDUCATION AND ASSIST-  
24 ANCE.—The Administrator of the Small Business Admin-  
25 istration, in consultation with the Secretary of Energy and



1 the Administrator of the Environmental Protection Agen-  
2 cy, shall develop and coordinate a Government-wide pro-  
3 gram, building on the existing Energy Star for Small  
4 Business Program, to assist small business to become  
5 more energy efficient, understand the cost savings obtain-  
6 able through efficiencies, and identify financing options  
7 for energy efficiency upgrades. The Secretary and the Ad-  
8 ministrator shall make the program information available  
9 directly to small businesses and through other Federal  
10 agencies, including the Federal Emergency Management  
11 Agency, and the Department of Agriculture.”.

12 **SEC. 1043. ADDITIONAL DEFINITIONS.**

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

16 “(32) The term ‘battery charger’ means a de-  
17 vice that charges batteries for consumer products.

18 “(33) The term ‘commercial refrigerator, freez-  
19 er and refrigerator-freezer’ means a refrigerator,  
20 freezer or refrigerator-freezer that—

21 “(A) is not a consumer product regulated  
22 under this Act; and

23 “(B) incorporates most components in-  
24 volved in the vapor-compression cycle and the  
25 refrigerated compartment in a single package.

1           “(34) The term ‘external power supply’ means  
2           an external power supply circuit that is used to con-  
3           vert household electric current into either DC cur-  
4           rent or lower-voltage AC current to operate a con-  
5           sumer product.

6           “(35) The term ‘illuminated exit sign’ means a  
7           sign that—

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

10                   “(B) consists of—

11                           “(i) an electrically powered integral  
12                           light source that illuminates the legend  
13                           ‘EXIT’ and any directional indicators; and

14                           “(ii) provides contrast between the  
15                           legend, any directional indicators, and the  
16                           background.

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

20                   “(i) has an input voltage of 600 volts or  
21                   less;

22                   “(ii) is air-cooled;

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

24                   “(iv) is rated for operation at a frequency  
25                   of 60 Hertz.

1           “(B) The term ‘low-voltage dry-type trans-  
2 former’ does not include—

3           “(i) transformers with multiple voltage  
4 taps, with the highest voltage tap equaling at  
5 least 20 percent more than the lowest voltage  
6 tap;

7           “(ii) transformers that are designed to be  
8 used in a special purpose application, such as  
9 transformers commonly known as drive trans-  
10 formers, rectifier transformers,  
11 autotransformers, Uninterruptible Power Sys-  
12 tem transformers, impedance transformers, har-  
13 monic transformers, regulating transformers,  
14 sealed and nonventilating transformers, ma-  
15 chine tool transformers, welding transformers,  
16 grounding transformers, or testing trans-  
17 formers; or

18           “(iii) any transformer not listed in clause  
19 (ii) that is excluded by the Secretary by rule be-  
20 cause the transformer is designed for a special  
21 application and the application of standards to  
22 the transformer would not result in significant  
23 energy savings.

24           “(37) The term ‘standby mode’ means the low-  
25 est amount of electric power used by a household ap-

1 pliance when not performing its active functions, as  
2 defined on an individual product basis by the Sec-  
3 retary.

4 “(38) The term ‘torchiere’ means a portable  
5 electric lamp with a reflector bowl that directs light  
6 upward so as to give indirect illumination.

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

12 “(40) The term ‘unit heater’ means a self-con-  
13 tained fan-type heater designed to be installed with-  
14 in the heated space, except that such term does not  
15 include a warm air furnace.

16 “(41) The term ‘traffic signal module’ means a  
17 standard 8-inch (200mm) or 12-inch (300mm) traf-  
18 fic signal indication, consisting of a light source, a  
19 lens, and all other parts necessary for operation,  
20 that communicates movement messages to drivers  
21 through red, amber, and green colors.”.

22 **SEC. 1044. ADDITIONAL TEST PROCEDURES.**

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

1           “(9) Test procedures for illuminated exit signs  
2 shall be based on the test method used under  
3 Version 2.0 of the Energy Star program of the Envi-  
4 ronmental Protection Agency for illuminated exit  
5 signs.

6           “(10) Test procedures for low voltage dry-type  
7 distribution transformers shall be based on the  
8 ‘Standard Test Method for Measuring the Energy  
9 Consumption of Distribution Transformers’ pre-  
10 scribed by the National Electrical Manufacturers As-  
11 sociation (NEMA TP 2–1998). The Secretary may  
12 review and revise this test procedure based on future  
13 revisions to such standard test method.

14           “(11) Test procedures for traffic signal modules  
15 shall be based on the test method used under the  
16 Energy Star program of the Environmental Protec-  
17 tion Agency for traffic signal modules, as in effect  
18 on the date of enactment of this paragraph.”.

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

23           “(f) ADDITIONAL CONSUMER AND COMMERCIAL  
24 PRODUCTS.—The Secretary shall within 24 months after  
25 the date of enactment of this subsection prescribe testing

1 requirements for suspended ceiling fans, refrigerated bot-  
2 tled or canned beverage vending machines, commercial  
3 unit heaters, and commercial refrigerators, freezers and  
4 refrigerator-freezers. Such testing requirements shall be  
5 based on existing test procedures used in industry to the  
6 extent practical and reasonable. In the case of suspended  
7 ceiling fans, such test procedures shall include efficiency  
8 at both maximum output and at an output no more than  
9 50 percent of the maximum output.”.

10 **SEC. 1045. ENERGY CONSERVATION STANDARDS FOR ADDI-**  
11 **TIONAL CONSUMER AND COMMERCIAL PROD-**  
12 **UCTS.**

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

16 “(u) **STANDBY MODE ELECTRIC ENERGY CONSUMP-**  
17 **TION.**—

18 “(1) **INITIAL RULEMAKING.**—(A) The Secretary  
19 shall, within 18 months after the date of enactment  
20 of this subsection, prescribe by notice and comment,  
21 definitions of standby mode and test procedures for  
22 the standby mode power use of battery chargers and  
23 external power supplies. In establishing these test  
24 procedures, the Secretary shall consider, among  
25 other factors, existing test procedures used for meas-

1       uring energy consumption in standby mode and as-  
2       sess the current and projected future market for  
3       battery chargers and external power supplies. This  
4       assessment shall include estimates of the significance  
5       of potential energy savings from technical improve-  
6       ments to these products and suggested product  
7       classes for standards. Prior to the end of this time  
8       period, the Secretary shall hold a scoping workshop  
9       to discuss and receive comments on plans for devel-  
10      oping energy conservation standards for standby  
11      mode energy use for these products.

12           “(B) The Secretary shall, within 3 years after  
13      the date of enactment of this subsection, issue a  
14      final rule that determines whether energy conserva-  
15      tion standards shall be promulgated for battery  
16      chargers and external power supplies or classes  
17      thereof. For each product class, any such standards  
18      shall be set at the lowest level of standby energy use  
19      that—

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

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

1           “(2) DESIGNATION OF ADDITIONAL COVERED  
2 PRODUCTS.—(A) Not later than 180 days after the  
3 date of enactment of this subsection, the Secretary  
4 shall publish for public comment and public hearing  
5 a notice to determine whether any noncovered prod-  
6 ucts should be designated as covered products for  
7 the purpose of instituting a rulemaking under this  
8 section to determine whether an energy conservation  
9 standard restricting standby mode energy consump-  
10 tion, should be promulgated; except that any restric-  
11 tion on standby mode energy consumption shall be  
12 limited to major sources of such consumption.

13           “(B) In making the determinations pursuant to  
14 subparagraph (A) of whether to designate new cov-  
15 ered products and institute rulemakings, the Sec-  
16 retary shall, among other relevant factors and in ad-  
17 dition to the criteria in section 322(b), consider—

18                   “(i) standby mode power consumption  
19 compared to overall product energy consump-  
20 tion; and

21                   “(ii) the priority and energy savings poten-  
22 tial of standards which may be promulgated  
23 under this subsection compared to other re-  
24 quired rulemakings under this section and the



1           available resources of the Department to con-  
2           duct such rulemakings.

3           “(C) Not later than 1 year after the date of en-  
4           actment of this subsection, the Secretary shall issue  
5           a determination of any new covered products for  
6           which he intends to institute rulemakings on standby  
7           mode pursuant to this section and he shall state the  
8           dates by which he intends to initiate those  
9           rulemakings.

10           “(3) REVIEW OF STANDBY ENERGY USE IN  
11           COVERED PRODUCTS.—In determining pursuant to  
12           section 323 whether test procedures and energy con-  
13           servation standards pursuant to this section should  
14           be revised, the Secretary shall consider for covered  
15           products which are major sources of standby mode  
16           energy consumption whether to incorporate standby  
17           mode into such test procedures and energy conserva-  
18           tion standards, taking into account, among other  
19           relevant factors, the criteria for non-covered prod-  
20           ucts in subparagraph (B) of paragraph (2) of this  
21           subsection.

22           “(4) RULEMAKING FOR STANDBY MODE.—(A)  
23           Any rulemaking instituted under this subsection or  
24           for covered products under this section which re-  
25           stricts standby mode power consumption shall be

1 subject to the criteria and procedures for issuing en-  
2 ergy conservation standards set forth in this section  
3 and the criteria set forth in subparagraph (B) of  
4 paragraph (2) of this subsection.

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

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

13 “(5) EFFECTIVE DATE.—Any standard promul-  
14 gated under this subsection shall be applicable to  
15 products manufactured or imported 3 years after the  
16 date of promulgation.

17 “(6) VOLUNTARY PROGRAMS TO REDUCE  
18 STANDBY MODE ENERGY USE.—The Secretary and  
19 the Administrator shall collaborate and develop pro-  
20 grams, including programs pursuant to section 324A  
21 (relating to Energy Star Programs) and other vol-  
22 untary industry agreements or codes of conduct,  
23 which are designed to reduce standby mode energy  
24 use.

1           “(v) SUSPENDED CEILING FANS, VENDING MA-  
2 CHINES, UNIT HEATERS, AND COMMERCIAL REFRIG-  
3 ERATORS, FREEZERS AND REFRIGERATOR-FREEZERS.—  
4 The Secretary shall within 24 months after the date on  
5 which testing requirements are prescribed by the Sec-  
6 retary pursuant to section 323(f), prescribe, by rule, en-  
7 ergy conservation standards for suspended ceiling fans, re-  
8 frigerated bottled or canned beverage vending machines,  
9 unit heaters, and commercial refrigerators, freezers and  
10 refrigerator-freezers. In establishing standards under this  
11 subsection, the Secretary shall use the criteria and proce-  
12 dures contained in subsections (l) and (m). Any standard  
13 prescribed under this subsection shall apply to products  
14 manufactured 3 years after the date of publication of a  
15 final rule establishing such standard.

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

21           “(x) TORCHIERES.—Torchieres manufactured on or  
22 after January 1, 2005—

23                   “(1) shall consume not more than 190 watts of  
24           power; and

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

3           “(y) LOW VOLTAGE DRY-TYPE TRANSFORMERS.—  
4           The efficiency of low voltage dry-type transformers manu-  
5           factured on or after January 1, 2005 shall be the Class  
6           I Efficiency Levels for low voltage dry-type transformers  
7           specified in Table 4–2 of the ‘Guide for Determining En-  
8           ergy Efficiency for Distribution Transformers’ published  
9           by the National Electrical Manufacturers Association  
10          (NEMA TP–1–1996).

11          “(z) TRAFFIC SIGNAL MODULES.—Traffic signal  
12          modules manufactured on or after January 1, 2006 shall  
13          meet the performance requirements used under the En-  
14          ergy Star program of the Environmental Protection Agen-  
15          cy for traffic signals, as in effect on the date of enactment  
16          of this paragraph, and shall be installed with compatible,  
17          electrically-connected signal control interface devices and  
18          conflict monitoring systems.

19          “(aa) EFFECTIVE DATE OF SECTION 327.—The pro-  
20          visions of section 327 shall apply to products for which  
21          standards are set in subsections (v) through (z) of this  
22          section after the effective date for such standards.”.

23          **SEC. 1046. ENERGY LABELING.**

24          (a) RULEMAKING ON EFFECTIVENESS OF CONSUMER  
25          PRODUCT LABELING.—Paragraph (2) of section 324(a) of

1 the Energy Policy and Conservation Act (42 U.S.C.  
2 6294(a)(2)) is amended by adding at the end the fol-  
3 lowing:

4       “(F) Not later than 3 months after the date of enact-  
5 ment of this subparagraph, the Commission shall initiate  
6 a rulemaking to consider the effectiveness of the current  
7 consumer products labeling program in assisting con-  
8 sumers in making purchasing decisions and improving en-  
9 ergy efficiency and to consider changes to the labeling  
10 rules that would improve the effectiveness of consumer  
11 product labels. Such rulemaking shall be completed within  
12 2 years after the date of enactment of this subpara-  
13 graph.”.

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

18       “(5) The Secretary or the Commission, as appro-  
19 priate, may for covered products referred to in subsections  
20 (u) through (z) of section 325, prescribe, by rule, pursuant  
21 to this section, labeling requirements for such products  
22 after a test procedure has been set pursuant to section  
23 323.”.

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

2       The Secretary of Energy shall contract with the Na-  
3 tional Academy of Sciences for a study, to be completed  
4 within 1 year of enactment of this Act, to examine whether  
5 the goals of energy efficiency standards are best served  
6 by measurement of energy consumed, and efficiency im-  
7 provements, at the actual site of energy consumption, or  
8 through the full fuel cycle, beginning at the source of en-  
9 ergy production. The Secretary shall submit the report to  
10 the Congress.

11                   **TITLE II—OIL AND GAS**  
12           **Subtitle A—Alaska Natural Gas**  
13                   **Pipeline**

14 **SEC. 2001. SHORT TITLE.**

15       This subtitle may be cited as the “Alaska Natural  
16 Gas Pipeline Act of 2003”.

17 **SEC. 2002. FINDINGS AND PURPOSES.**

18       (a) FINDINGS.—Congress finds the following:

19           (1) Construction of a natural gas pipeline sys-  
20 tem from the Alaskan North Slope to United States  
21 markets is in the national interest and will enhance  
22 national energy security by providing access to the  
23 significant gas reserves in Alaska needed to meet the  
24 anticipated demand for natural gas.

25           (2) The Commission issued a conditional certifi-  
26 cate of public convenience and necessity for the

1 Alaska natural gas transportation system, which re-  
2 mains in effect.

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

5 (1) To provide a statutory framework for the  
6 expedited approval, construction, and initial oper-  
7 ation of an Alaska natural gas transportation  
8 project, as an alternative to the framework provided  
9 in the Alaska Natural Gas Transportation Act of  
10 1976 (15 U.S.C. 719 et seq.), which remains in ef-  
11 fect.

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

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

18 **SEC. 2003. DEFINITIONS.**

19 In this subtitle, the following definitions apply:

20 (1) ALASKA NATURAL GAS.—The term “Alaska  
21 natural gas” means natural gas derived from the  
22 area of the State of Alaska lying north of 64 degrees  
23 North latitude.

24 (2) ALASKA NATURAL GAS TRANSPORTATION  
25 PROJECT.—The term “Alaska natural gas transpor-

1 tation project” means any natural gas pipeline sys-  
2 tem that carries Alaska natural gas to the border  
3 between Alaska and Canada (including related facili-  
4 ties subject to the jurisdiction of the Commission)  
5 that is authorized under either—

6 (A) the Alaska Natural Gas Transpor-  
7 tation Act of 1976 (15 U.S.C. 719 et seq.); or

8 (B) section 2004.

9 (3) ALASKA NATURAL GAS TRANSPORTATION  
10 SYSTEM.—The term “Alaska natural gas transpor-  
11 tation system” means the Alaska natural gas trans-  
12 portation project authorized under the Alaska Nat-  
13 ural Gas Transportation Act of 1976 and designated  
14 and described in section 2 of the President’s deci-  
15 sion.

16 (4) COMMISSION.—The term “Commission”  
17 means the Federal Energy Regulatory Commission.

18 (5) PRESIDENT’S DECISION.—The term “Presi-  
19 dent’s decision” means the decision and report to  
20 Congress on the Alaska natural gas transportation  
21 system issued by the President on September 22,  
22 1977, pursuant to section 7 of the Alaska Natural  
23 Gas Transportation Act of 1976 (15 U.S.C. 719e)  
24 and approved by Public Law 95–158 (91 Stat.  
25 1268).



1 **SEC. 2004. ISSUANCE OF CERTIFICATE OF PUBLIC CONVEN-**  
2 **IENCE AND NECESSITY.**

3 (a) AUTHORITY OF THE COMMISSION.—Notwith-  
4 standing the provisions of the Alaska Natural Gas Trans-  
5 portation Act of 1976 (15 U.S.C. 719 et seq.), the Com-  
6 mission may, pursuant to section 7(c) of the Natural Gas  
7 Act (15 U.S.C. 717f(c)), consider and act on an applica-  
8 tion for the issuance of a certificate of public convenience  
9 and necessity authorizing the construction and operation  
10 of an Alaska natural gas transportation project other than  
11 the Alaska natural gas transportation system.

12 (b) ISSUANCE OF CERTIFICATE.—

13 (1) IN GENERAL.—The Commission shall issue  
14 a certificate of public convenience and necessity au-  
15 thORIZING the construction and operation of an Alas-  
16 ka natural gas transportation project under this sec-  
17 tion if the applicant has satisfied the requirements  
18 of section 7(e) of the Natural Gas Act (15 U.S.C.  
19 717f(e)).

20 (2) CONSIDERATIONS.—In considering an appli-  
21 cation under this section, the Commission shall pre-  
22 sume that—

23 (A) a public need exists to construct and  
24 operate the proposed Alaska natural gas trans-  
25 portation project; and

1           (B) sufficient downstream capacity will  
2           exist to transport the Alaska natural gas mov-  
3           ing through such project to markets in the con-  
4           tiguous United States.

5           (c) EXPEDITED APPROVAL PROCESS.—The Commis-  
6           sion shall issue a final order granting or denying any ap-  
7           plication for a certificate of public convenience and neces-  
8           sity under section 7(c) of the Natural Gas Act (15 U.S.C.  
9           717f(c)) and this section not more than 60 days after the  
10          issuance of the final environmental impact statement for  
11          that project pursuant to section 2005.

12          (d) PROHIBITION ON CERTAIN PIPELINE ROUTE.—  
13          No license, permit, lease, right-of-way, authorization, or  
14          other approval required under Federal law for the con-  
15          struction of any pipeline to transport natural gas from  
16          lands within the Prudhoe Bay oil and gas lease area may  
17          be granted for any pipeline that follows a route that tra-  
18          verses—

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

22                (2) enters Canada at any point north of 68 de-  
23                grees North latitude.

24          (e) OPEN SEASON.—Except where an expansion is  
25          ordered pursuant to section 2006, initial or expansion ca-

1 capacity on any Alaska natural gas transportation project  
2 shall be allocated in accordance with procedures to be es-  
3 tablished by the Commission in regulations governing the  
4 conduct of open seasons for such project. Such procedures  
5 shall include the criteria for and timing of any open sea-  
6 sons, be consistent with the purposes set forth in section  
7 2002(b)(2), and, for any open season for capacity beyond  
8 the initial capacity, provide the opportunity for the trans-  
9 portation of natural gas other than from the Prudhoe Bay  
10 and Point Thompson units. The Commission shall issue  
11 such regulations not later than 120 days after the date  
12 of enactment of this Act.

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

22 (g) STUDY OF IN-STATE NEEDS.—The holder of the  
23 certificate of public convenience and necessity issued,  
24 modified, or amended by the Commission for an Alaska  
25 natural gas transportation project shall demonstrate that

1 it has conducted a study of Alaska in-State needs, includ-  
2 ing tie-in points along the Alaska natural gas transpor-  
3 tation project for in-State access.

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

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

15 **SEC. 2005. ENVIRONMENTAL REVIEWS.**

16 (a) COMPLIANCE WITH NEPA.—The issuance of a  
17 certificate of public convenience and necessity authorizing  
18 the construction and operation of any Alaska natural gas  
19 transportation project under section 2004 shall be treated  
20 as a major Federal action significantly affecting the qual-  
21 ity of the human environment within the meaning of sec-  
22 tion 102(2)(C) of the National Environmental Policy Act  
23 of 1969 (42 U.S.C. 4332(2)(C)).

24 (b) DESIGNATION OF LEAD AGENCY.—The Commis-  
25 sion shall be the lead agency for purposes of complying

1 with the National Environmental Policy Act of 1969, and  
2 shall be responsible for preparing the statement required  
3 by section 102(2)(c) of that Act (42 U.S.C. 4332(2)(c))  
4 with respect to an Alaska natural gas transportation  
5 project under section 2004. The Commission shall prepare  
6 a single environmental statement under this section, which  
7 shall consolidate the environmental reviews of all Federal  
8 agencies considering any aspect of the project.

9 (c) OTHER AGENCIES.—All Federal agencies consid-  
10 ering aspects of the construction and operation of an Alas-  
11 ka natural gas transportation project under section 2004  
12 shall cooperate with the Commission, and shall comply  
13 with deadlines established by the Commission in the prep-  
14 aration of the statement under this section. The statement  
15 prepared under this section shall be used by all such agen-  
16 cies to satisfy their responsibilities under section  
17 102(2)(C) of the National Environmental Policy Act of  
18 1969 (42 U.S.C. 4332(2)(C)) with respect to such project.

19 (d) EXPEDITED PROCESS.—The Commission shall  
20 issue a draft statement under this section not later than  
21 12 months after the Commission determines the applica-  
22 tion to be complete and shall issue the final statement not  
23 later than 6 months after the Commission issues the draft  
24 statement, unless the Commission for good cause finds  
25 that additional time is needed.

1 **SEC. 2006. PIPELINE EXPANSION.**

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

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

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

16 (2) ensure that the rates as established do not  
17 require existing shippers on the Alaska natural gas  
18 transportation project to subsidize expansion ship-  
19 pers;

20 (3) find that the proposed shipper will comply  
21 with, and the proposed expansion and the expansion  
22 of service will be undertaken and implemented based  
23 on, terms and conditions consistent with the then-ef-  
24 fective tariff of the Alaska natural gas transpor-  
25 tation project;

1           (4) find that the proposed facilities will not ad-  
2           versely affect the financial or economic viability of  
3           the Alaska natural gas transportation project;

4           (5) find that the proposed facilities will not ad-  
5           versely affect the overall operations of the Alaska  
6           natural gas transportation project;

7           (6) find that the proposed facilities will not di-  
8           minish the contract rights of existing shippers to  
9           previously subscribed certificated capacity;

10          (7) ensure that all necessary environmental re-  
11          views have been completed; and

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

15          (c) REQUIREMENT FOR A FIRM TRANSPORTATION  
16          AGREEMENT.—Any order of the Commission issued pur-  
17          suant to this section shall be null and void unless the per-  
18          son or persons requesting the order executes a firm trans-  
19          portation agreement with the Alaska natural gas transpor-  
20          tation project within a reasonable period of time as speci-  
21          fied in such order.

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

1 (e) REGULATIONS.—The Commission may issue reg-  
2 ulations to carry out the provisions of this section.

3 **SEC. 2007. FEDERAL COORDINATOR.**

4 (a) ESTABLISHMENT.—There is established, as an  
5 independent office in the executive branch, the Office of  
6 the Federal Coordinator for Alaska Natural Gas Trans-  
7 portation Projects.

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

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

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

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

17 (c) DUTIES.—The Federal Coordinator shall be re-  
18 sponsible for—

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

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

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



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

8           (2) PROHIBITION ON CERTAIN TERMS AND CON-  
9 DITIONS.—Except with respect to Commission ac-  
10 tions under sections 2004, 2005, and 2006, no Fed-  
11 eral officer or agency shall have the authority to in-  
12 clude terms and conditions that are permitted, but  
13 not required, by law on any certificate, right-of-way,  
14 permit, lease, or other authorization issued to an  
15 Alaska natural gas transportation project if the Fed-  
16 eral Coordinator determines that the terms and con-  
17 ditions would prevent or impair in any significant re-  
18 spect the expeditious construction and operation of  
19 the project.

20           (3) PROHIBITION ON CERTAIN ACTIONS.—Ex-  
21 cept with respect to Commission actions under sec-  
22 tions 2004, 2005, and 2006, unless required by law,  
23 no Federal officer or agency shall add to, amend, or  
24 abrogate any certificate, right-of-way, permit, lease,  
25 or other authorization issued to an Alaska natural

1 gas transportation project if the Federal Coordinator  
2 determines that such action would prevent or impair  
3 in any significant respect the expeditious construc-  
4 tion and operation of the project.

5 (e) STATE COORDINATION.—The Federal Coordi-  
6 nator shall enter into a Joint Surveillance and Monitoring  
7 Agreement, approved by the President and the Governor  
8 of Alaska, with the State of Alaska similar to that in effect  
9 during construction of the Trans-Alaska Oil Pipeline to  
10 monitor the construction of the Alaska natural gas trans-  
11 portation project. The Federal Government shall have pri-  
12 mary surveillance and monitoring responsibility where the  
13 Alaska natural gas transportation project crosses Federal  
14 lands and private lands, and the State government shall  
15 have primary surveillance and monitoring responsibility  
16 where the Alaska natural gas transportation project  
17 crosses State lands.

18 (f) TRANSFER OF FEDERAL INSPECTOR FUNCTIONS  
19 AND AUTHORITY.—Upon appointment of the Federal Co-  
20 ordinator by the President, all of the functions and au-  
21 thority of the Office of Federal Inspector of Construction  
22 for the Alaska Natural Gas Transportation System vested  
23 in the Secretary of Energy pursuant to section 3012(b)  
24 of Public Law 102–486 (15 U.S.C. 719e(b)), including all  
25 functions and authority described and enumerated in the

1 Reorganization Plan No. 1 of 1979 (44 Fed. Reg. 33,663),  
2 Executive Order No. 12142 of June 21, 1979 (44 Fed.  
3 Reg. 36,927), and section 5 of the President's decision,  
4 shall be transferred to the Federal Coordinator.

5 **SEC. 2008. JUDICIAL REVIEW.**

6 (a) **EXCLUSIVE JURISDICTION.**—Except for review by  
7 the Supreme Court of the United States on writ of certio-  
8 rari, the United States Court of Appeals for the District  
9 of Columbia Circuit shall have original and exclusive juris-  
10 diction to determine—

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

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

17 (3) the adequacy of any environmental impact  
18 statement prepared under the National Environ-  
19 mental Policy Act of 1969 with respect to any action  
20 under this subtitle.

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

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

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

10           “(2) The United States Court of Appeals for the Dis-  
11 trict of Columbia Circuit shall set any action brought  
12 under this section for expedited consideration, taking into  
13 account the national interest described in section 2.”.

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

16           (a) LOCAL DISTRIBUTION.—Any facility receiving  
17 natural gas from the Alaska natural gas transportation  
18 project for delivery to consumers within the State of Alas-  
19 ka shall be deemed to be a local distribution facility within  
20 the meaning of section 1(b) of the Natural Gas Act (15  
21 U.S.C. 717(b)), and therefore not subject to the jurisdic-  
22 tion of the Commission.

23           (b) ADDITIONAL PIPELINES.—Nothing in this sub-  
24 title, except as provided in section 2004(d), shall preclude  
25 or affect a future gas pipeline that may be constructed

1 to deliver natural gas to Fairbanks, Anchorage,  
2 Matanuska-Susitna Valley, or the Kenai peninsula or  
3 Valdez or any other site in the State of Alaska for con-  
4 sumption within or distribution outside the State of Alas-  
5 ka.

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

16 **SEC. 2010. STUDY OF ALTERNATIVE MEANS OF CONSTRUC-**  
17 **TION.**

18 (a) REQUIREMENT OF STUDY.—If no application for  
19 the issuance of a certificate or amended certificate of pub-  
20 lic convenience and necessity authorizing the construction  
21 and operation of an Alaska natural gas transportation  
22 project has been filed with the Commission not later than  
23 18 months after the date of enactment of this Act, the  
24 Secretary of Energy shall conduct a study of alternative

1 approaches to the construction and operation of the  
2 project.

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

9 (c) CONSULTATION.—In conducting the study, the  
10 Secretary of Energy shall consult with the Secretary of  
11 the Treasury and the Secretary of the Army (acting  
12 through the Commanding General of the Corps of Engi-  
13 neers).

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

20 **SEC. 2011. CLARIFICATION OF ANGTA STATUS AND AU-**  
21 **THORITIES.**

22 (a) SAVINGS CLAUSE.—Nothing in this subtitle af-  
23 fects any decision, certificate, permit, right-of-way, lease,  
24 or other authorization issued under section 9 of the Alaska  
25 Natural Gas Transportation Act of 1976 (15 U.S.C.

1 719g) or any Presidential findings or waivers issued in  
2 accordance with that Act.

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

20 (c) UPDATED ENVIRONMENTAL REVIEWS.—The Sec-  
21 retary of Energy shall require the sponsor of the Alaska  
22 natural gas transportation system to submit such updated  
23 environmental data, reports, permits, and impact analyses  
24 as the Secretary determines are necessary to develop de-

1 tailed terms, conditions, and compliance plans required by  
2 section 5 of the President’s decision.

3 **SEC. 2012. SENSE OF CONGRESS.**

4 It is the sense of Congress that an Alaska natural  
5 gas transportation project will provide significant eco-  
6 nomic benefits to the United States and Canada. In order  
7 to maximize those benefits, Congress urges the sponsors  
8 of the pipeline project to make every effort to use steel  
9 that is manufactured or produced in North America and  
10 to negotiate a project labor agreement to expedite con-  
11 struction of the pipeline.

12 **SEC. 2013. PARTICIPATION OF SMALL BUSINESS CON-**  
13 **CERNS.**

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

22 (b) STUDY.—

23 (1) IN GENERAL.—The Comptroller General  
24 shall conduct a study on the extent to which small



1 business concerns participate in the construction of  
2 oil and gas pipelines in the United States.

3 (2) REPORT.—Not later than 1 year after the  
4 date of enactment of this Act, the Comptroller Gen-  
5 eral shall transmit to Congress a report containing  
6 the results of the study.

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

11 (4) APPLICABILITY.—After the date of comple-  
12 tion of the construction of an Alaska natural gas  
13 transportation project, this subsection shall no  
14 longer apply.

15 (c) SMALL BUSINESS CONCERN DEFINED.—In this  
16 section, the term “small business concern” has the mean-  
17 ing given such term in section 3(a) of the Small Business  
18 Act (15 U.S.C. 632(a)).

19 **SEC. 2014. ALASKA PIPELINE CONSTRUCTION TRAINING**  
20 **PROGRAM.**

21 (a) ESTABLISHMENT OF PROGRAM.—The Secretary  
22 of Labor (in this section referred to as the “Secretary”)  
23 may make grants to the Alaska Department of Labor and  
24 Workforce Development to—

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

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

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

13           (1) the Governor of Alaska certifies in writing  
14           to the Secretary that there is a reasonable expecta-  
15           tion that construction of an Alaska gas pipeline will  
16           commence within 3 years after the date of such cer-  
17           tification; and

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

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

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



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

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

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

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

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

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

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

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

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

1 (5) anticipated annual budget requests.

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

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

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

14 (a) AMENDMENT TO TITLE I OF THE ENERGY POL-  
15 ICY AND CONSERVATION ACT.—Title I of the Energy Pol-  
16 icy and Conservation Act (42 U.S.C. 6211 et seq.) is  
17 amended—

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

20 “AUTHORIZATION OF APPROPRIATIONS

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

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



## “PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS

“Sec. 273. Summer fill and fuel budgeting programs.”; and

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

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

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

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

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

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

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

16                           “(B) excludes—

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

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

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

4 **SEC. 2301. PROGRAM.**

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

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

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

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

15 (2) Low reservoir pressure.

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

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

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



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

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

4 (1) in—

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

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

13 (2) with the approval of the appropriate Fed-  
14 eral or State land management agency or private  
15 land owner.

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

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

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

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

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

25 (B) make recommendations to the Sec-  
26 retary for project solicitations;

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

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

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

10 (3) CONFLICT OF INTEREST.—(A) The Sec-  
11 retary shall establish procedures—

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

22 (ii) to require any board member, officer,  
23 or employee with a financial relationship or in-  
24 terest disclosed under clause (i) to recuse him-  
25 self or herself from any review under subsection

1 (e)(3) or oversight under subsection (e)(4) with  
2 respect to such applicant or recipient.

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

8 (c) SELECTION OF THE PROGRAM CONSORTIUM.—

9 (1) IN GENERAL.—The Secretary shall select  
10 the program consortium through an open, competi-  
11 tive process.

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

21 (3) TAX STATUS.—The program consortium  
22 shall be an entity that is exempt from tax under sec-  
23 tion 501(c)(3) of the Internal Revenue Code of  
24 1986.

1           (4) SCHEDULE.—Not later than 90 days after  
2 the date of enactment of this Act, the Secretary  
3 shall solicit proposals for the creation of the pro-  
4 gram consortium, which must be submitted not less  
5 than 180 days after the date of enactment of this  
6 Act. The Secretary shall select the program consor-  
7 tium not later than 240 days after such date of en-  
8 actment.

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

12                   (A) list all members of the consortium;

13                   (B) fully describe the structure of the con-  
14 sortium, including any provisions relating to in-  
15 tellectual property; and

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

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

24           (7) CRITERION.—The Secretary may consider  
25 the amount of the fee an applicant proposes to re-

1 ceive under subsection (f) in selecting a consortium  
2 under this section.

3 (d) ANNUAL PLAN.—

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

8 (2) DEVELOPMENT.—(A) Before drafting an  
9 annual plan under this subsection, the Secretary  
10 shall solicit specific written recommendations from  
11 the program consortium for each element to be ad-  
12 dressed in the plan, including those described in  
13 paragraph (4). The Secretary may request that the  
14 program consortium submit its recommendations in  
15 the form of a draft annual plan.

16 (B) The Secretary shall submit the rec-  
17 ommendations of the program consortium under  
18 subparagraph (A) to the Advisory Committee for re-  
19 view, and the Advisory Committee shall provide to  
20 the Secretary written comments by a date deter-  
21 mined by the Secretary. The Secretary may also so-  
22 licit comments from any other experts.

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

1           (3) PUBLICATION.—The Secretary shall trans-  
2           mit to the Congress and publish in the Federal Reg-  
3           ister the annual plan, along with any written com-  
4           ments received under paragraph (2)(A) and (B).  
5           The annual plan shall be transmitted and published  
6           not later than 60 days after the date of enactment  
7           of an Act making appropriations for a fiscal year for  
8           the program under this subtitle.

9           (4) CONTENTS.—The annual plan shall describe  
10          the ongoing and prospective activities of the pro-  
11          gram under this subtitle and shall include—

12                 (A) a list of any solicitations for awards  
13                 that the Secretary plans to issue to carry out  
14                 activities, including the topics for such work,  
15                 who would be eligible to apply, selection cri-  
16                 teria, and the duration of awards; and

17                 (B) a description of the activities expected  
18                 of the program consortium to carry out sub-  
19                 section (e)(4).

20          (e) AWARDS.—

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

## 1 (2) PROPOSALS.—

2 (A) SOLICITATION.—The Secretary shall  
3 solicit proposals for awards under this sub-  
4 section in such manner and at such time as the  
5 Secretary may prescribe, in consultation with  
6 the program consortium.

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

9 (i) An estimate of the potential  
10 unproven reserves in the reservoir, estab-  
11 lished by a registered petroleum engineer.

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

14 (iii) A detailed project plan.

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

17 (v) A time frame for project comple-  
18 tion.

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

24 (vii) Such other matters as the Sec-  
25 retary considers appropriate.

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

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

16          (B) Nothing in subparagraph (A) shall limit the  
17          authority or responsibility of the Secretary to over-  
18          see awards, or limit the authority of the Secretary  
19          to review or revoke awards.

20          (C) The Secretary shall provide to the program  
21          consortium the information necessary for the pro-  
22          gram consortium to carry out its responsibilities  
23          under this paragraph.

24          (f) FEE.—To compensate the program consortium  
25          for carrying out its activities under this section, the Sec-



1 retary shall provide to the program consortium a fee in  
2 an amount not to exceed 7.5 percent of the amounts  
3 awarded under subsection (e) for each fiscal year.

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

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

16 **SEC. 2306. ADVISORY COMMITTEE.**

17 (a) **ESTABLISHMENT.**—Not later than 270 days after  
18 the date of enactment of this Act, the Secretary shall es-  
19 tablish an Advisory Committee.

20 (b) **MEMBERSHIP.**—The Advisory Committee shall be  
21 composed of members appointed by the Secretary and in-  
22 cluding—

23 (1) individuals with extensive experience or  
24 operational knowledge of oil and natural gas produc-  
25 tion, including independent oil and gas producers;

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

3           (3) no individuals who are Federal employees.

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

7           (d) COMPENSATION.—A member of the Advisory  
8           Committee shall serve without compensation but shall re-  
9           ceive travel expenses, including per diem in lieu of subsist-  
10          ence, in accordance with applicable provisions under sub-  
11          chapter I of chapter 57 of title 5, United States Code.

12          (e) PROHIBITION.—The Advisory Committee shall  
13          not make recommendations on funding awards to con-  
14          sortia or for specific projects.

15          **SEC. 2307. LIMITS ON PARTICIPATION.**

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

18                 (1) that the entity's participation in the pro-  
19                 gram under this subtitle would be in the economic  
20                 interest of the United States;

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

1           (3) that the entity has demonstrated that non-  
2           governmental third party sources of financing are  
3           not available for the proposal project.

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

5           (a) INITIAL RATE.—Until the amount of a grant  
6           under this subtitle has been fully repaid to the Federal  
7           Government under this subsection, 95 percent of all reve-  
8           nues derived from increased incremental production at-  
9           tributable to participation in the program under this sub-  
10          title shall be paid to the Secretary by the purchaser of  
11          such increased production.

12          (b) RATE AFTER REPAYMENT.—After the Federal  
13          Government has been fully repaid under subsection (a),  
14          5 percent of all revenues derived from increased incre-  
15          mental production attributable to participation in the pro-  
16          gram under this subtitle shall be paid to the Secretary  
17          by the purchaser of such increased production.

18 **SEC. 2309. AUTHORIZATION OF APPROPRIATIONS.**

19          There are authorized to be appropriated to the Sec-  
20          retary for carrying out this subtitle \$100,000,000, to re-  
21          main available until expended.

22 **SEC. 2310. PUBLIC AVAILABILITY OF PROJECT RESULTS**  
23 **AND METHODOLOGIES.**

24          The results of any project undertaken pursuant to  
25          this subtitle and the methodologies used to achieve those

1 results shall be made public by the Secretary. The meth-  
2 odologies used shall not be proprietary so that such meth-  
3 odologies may be used for other projects by persons not  
4 seeking awards pursuant to this subtitle.

5 **SEC. 2311. SUNSET.**

6 The authority provided by this subtitle shall termi-  
7 nate on September 30, 2010.

8 **SEC. 2312. DEFINITIONS.**

9 In this subtitle:

10 (1) PROGRAM CONSORTIUM.—The term “pro-  
11 gram consortium” means the consortium selected  
12 under section 2305(c).

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

18 (3) SECRETARY.—The term “Secretary” means  
19 the Secretary of Energy.

20 **Subtitle E—Miscellaneous**

21 **SEC. 2401. APPEALS RELATING TO PIPELINE CONSTRUC-**  
22 **TION PROJECTS.**

23 (a) AGENCY OF RECORD.—Any Federal administra-  
24 tive agency proceeding that is an appeal or review of Fed-  
25 eral authority for an interstate natural gas pipeline con-

1 construction project, including construction of natural gas  
2 storage and liquefied natural gas facilities, shall use as  
3 its exclusive record for all purposes the record compiled  
4 by the Federal Energy Regulatory Commission pursuant  
5 to such Commission's proceeding under section 7 of the  
6 Natural Gas Act.

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

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

17 (a) ESTABLISHMENT OF SYSTEM.—Not later than  
18 180 days after the date of enactment of this Act, the Fed-  
19 eral Energy Regulatory Commission shall issue rules au-  
20 thorizing or establishing an electronic information system  
21 to provide the Commission and the public with timely ac-  
22 cess to such information as is necessary or appropriate  
23 to facilitate price transparency and participation in nat-  
24 ural gas markets. Such system shall provide information

1 about the market price of natural gas sold in interstate  
2 commerce.

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

6 (1) aggregate data; and

7 (2) transaction-specific data that is otherwise  
8 required by the Federal Energy Regulatory Commis-  
9 sion to be made public.

10 (c) CIVIL PENALTY.—Any person who violates any  
11 provision of a rule issued under subsection (a) shall be  
12 subject to a civil penalty of not more than \$1,000,000 for  
13 each day that such violation continues. Such penalty shall  
14 be assessed by the Federal Energy Regulatory Commis-  
15 sion, after notice and opportunity for public hearing. In  
16 determining the amount of a proposed penalty, the Com-  
17 mission shall take into consideration the seriousness of the  
18 violation and the efforts of such person to remedy the vio-  
19 lation in a timely manner.

20 **SEC. 2403. OIL AND GAS EXPLORATION AND PRODUCTION**  
21 **DEFINED.**

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

1       “(21) The term ‘oil and gas exploration and produc-  
2 tion’ means all field operations necessary for both explo-  
3 ration and production of oil and gas, including activities  
4 necessary to prepare a site for drilling and for the move-  
5 ment and placement of drilling equipment, whether or not  
6 such activities may be considered construction activities.”.

## 7       **TITLE III—HYDROELECTRIC** 8                   **RELICENSING**

### 9       **Subtitle A—Alternative Conditions**

#### 10   **SEC. 3001. ALTERNATIVE CONDITIONS AND FISHWAYS.**

11       (a) FEDERAL RESERVATIONS.—Section 4(e) of the  
12 Federal Power Act (16 U.S.C. 797(e)) is amended by in-  
13 serting after “adequate protection and utilization of such  
14 reservation.” at the end of the first proviso the following:  
15 “The license applicant shall be entitled to a determination  
16 on the record, after opportunity for an agency trial-type  
17 hearing of any disputed issues of material fact, with re-  
18 spect to such conditions.”.

19       (b) FISHWAYS.—Section 18 of the Federal Power Act  
20 (16 U.S.C. 811) is amended by inserting after “and such  
21 fishways as may be prescribed by the Secretary of Com-  
22 merce.” the following: “The license applicant shall be enti-  
23 tled to a determination on the record, after opportunity  
24 for an agency trial-type hearing of any disputed issues of  
25 material fact, with respect to such fishways.”.

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

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

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

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

21                   “(A) provides for the adequate protection and  
22 utilization of the reservation; and

23                   “(B) will either—

24                           “(i) cost less to implement; or



1                   “(ii) result in improved operation of the  
2                   project works for electricity production,  
3                   as compared to the condition initially deemed nec-  
4                   essary by the Secretary.

5                   “(3) The Secretary shall submit into the public  
6 record of the Commission proceeding with any condition  
7 under section 4(e) or alternative condition it accepts under  
8 this section, a written statement explaining the basis for  
9 such condition, and reason for not accepting any alter-  
10 native condition under this section. The written statement  
11 must demonstrate that the Secretary gave equal consider-  
12 ation to the effects of the condition adopted and alter-  
13 natives not accepted on energy supply, distribution, cost,  
14 and use; flood control; navigation; water supply; and air  
15 quality (in addition to the preservation of other aspects  
16 of environmental quality); based on such information as  
17 may be available to the Secretary, including information  
18 voluntarily provided in a timely manner by the applicant  
19 and others. The Secretary shall also submit, together with  
20 the aforementioned written statement, all studies, data,  
21 and other factual information available to the Secretary  
22 and relevant to the Secretary’s decision.

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

1       “(5) If the Secretary does not accept an applicant’s  
2 alternative condition under this section, and the Commis-  
3 sion finds that the Secretary’s condition would be incon-  
4 sistent with the purposes of this part, or other applicable  
5 law, the Commission may refer the dispute to the Commis-  
6 sion’s Dispute Resolution Service. The Dispute Resolution  
7 Service shall consult with the Secretary and the Commis-  
8 sion and issue a non-binding advisory within 90 days. The  
9 Secretary may accept the Dispute Resolution Service advi-  
10 sory unless the Secretary finds that the recommendation  
11 will not adequately protect the reservation. The Secretary  
12 shall submit the advisory and the Secretary’s final written  
13 determination into the record of the Commission’s pro-  
14 ceeding.

15       “(b) ALTERNATIVE PRESCRIPTIONS.—(1) Whenever  
16 the Secretary of the Interior or the Secretary of Commerce  
17 prescribes a fishway under section 18, the license appli-  
18 cant or licensee may propose an alternative to such pre-  
19 scription to construct, maintain, or operate a fishway. The  
20 alternative may include a fishway or an alternative to a  
21 fishway.

22       “(2) Notwithstanding section 18, the Secretary of the  
23 Interior or the Secretary of Commerce, as appropriate,  
24 shall accept and prescribe, and the Commission shall re-  
25 quire, the proposed alternative referred to in paragraph

1 (1), if the Secretary of the appropriate department deter-  
2 mines, based on substantial evidence provided by the li-  
3 censee or otherwise available to the Secretary, that such  
4 alternative—

5           “(A) will be no less protective of the fish re-  
6 sources than the fishway initially prescribed by the  
7 Secretary; and

8           “(B) will either—

9                 “(i) cost less to implement; or

10                “(ii) result in improved operation of the  
11 project works for electricity production,

12 as compared to the fishway initially deemed nec-  
13 essary by the Secretary.

14           “(3) The Secretary concerned shall submit into the  
15 public record of the Commission proceeding with any pre-  
16 scription under section 18 or alternative prescription it ac-  
17 cepts under this section, a written statement explaining  
18 the basis for such prescription, and reason for not accept-  
19 ing any alternative prescription under this section. The  
20 written statement must demonstrate that the Secretary  
21 gave equal consideration to the effects of the condition  
22 adopted and alternatives not accepted on energy supply,  
23 distribution, cost, and use; flood control; navigation; water  
24 supply; and air quality (in addition to the preservation of  
25 other aspects of environmental quality); based on such in-

1 formation as may be available to the Secretary, including  
2 information voluntarily provided in a timely manner by the  
3 applicant and others. The Secretary shall also submit, to-  
4 gether with the aforementioned written statement, all  
5 studies, data, and other factual information available to  
6 the Secretary and relevant to the Secretary's decision.

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

9       “(5) If the Secretary concerned does not accept an  
10 applicant's alternative prescription under this section, and  
11 the Commission finds that the Secretary's prescription  
12 would be inconsistent with the purposes of this part, or  
13 other applicable law, the Commission may refer the dis-  
14 pute to the Commission's Dispute Resolution Service. The  
15 Dispute Resolution Service shall consult with the Sec-  
16 retary and the Commission and issue a non-binding advi-  
17 sory within 90 days. The Secretary may accept the Dis-  
18 pute Resolution Service advisory unless the Secretary  
19 finds that the recommendation will not adequately protect  
20 the fish resources. The Secretary shall submit the advisory  
21 and the Secretary's final written determination into the  
22 record of the Commission's proceeding.”.

## 1 **Subtitle B—Additional Hydropower**

### 2 **SEC. 3201. HYDROELECTRIC PRODUCTION INCENTIVES.**

3 (a) INCENTIVE PAYMENTS.—For electric energy gen-  
4 erated and sold by a qualified hydroelectric facility during  
5 the incentive period, the Secretary of Energy (referred to  
6 in this section as the “Secretary”) shall make, subject to  
7 the availability of appropriations, incentive payments to  
8 the owner or operator of such facility. The amount of such  
9 payment made to any such owner or operator shall be as  
10 determined under subsection (e) of this section. Payments  
11 under this section may only be made upon receipt by the  
12 Secretary of an incentive payment application which estab-  
13 lishes that the applicant is eligible to receive such payment  
14 and which satisfies such other requirements as the Sec-  
15 retary deems necessary. Such application shall be in such  
16 form, and shall be submitted at such time, as the Sec-  
17 retary shall establish.

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

19 (1) QUALIFIED HYDROELECTRIC FACILITY.—

20 The term “qualified hydroelectric facility” means a  
21 turbine or other generating device owned or solely  
22 operated by a non-Federal entity which generates  
23 hydroelectric energy for sale and which is added to  
24 an existing dam or conduit.

1           (2) EXISTING DAM OR CONDUIT.—The term  
2           “existing dam or conduit” means any dam or con-  
3           duit the construction of which was completed before  
4           the date of the enactment of this section and which  
5           does not require any construction or enlargement of  
6           impoundment or diversion structures (other than re-  
7           pair or reconstruction) in connection with the instal-  
8           lation of a turbine or other generating device.

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

12         The terms defined in this subsection shall apply without  
13         regard to the hydroelectric kilowatt capacity of the facility  
14         concerned, without regard to whether the facility uses a  
15         dam owned by a governmental or nongovernmental entity,  
16         and without regard to whether the facility begins oper-  
17         ation on or after the date of the enactment of this section.

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

24          (d) INCENTIVE PERIOD.—A qualified hydroelectric  
25         facility may receive payments under this section for a pe-

1 riod of 10 fiscal years (referred to in this section as the  
2 “incentive period”). Such period shall begin with the fiscal  
3 year in which electric energy generated from the facility  
4 is first eligible for such payments.

5 (e) AMOUNT OF PAYMENT.—

6 (1) IN GENERAL.—Payments made by the Sec-  
7 retary under this section to the owner or operator of  
8 a qualified hydroelectric facility shall be based on  
9 the number of kilowatt hours of hydroelectric energy  
10 generated by the facility during the incentive period.  
11 For any such facility, the amount of such payment  
12 shall be 1.8 cents per kilowatt hour (adjusted as  
13 provided in paragraph (2)), subject to the avail-  
14 ability of appropriations under subsection (g), except  
15 that no facility may receive more than \$750,000 in  
16 one calendar year.

17 (2) ADJUSTMENTS.—The amount of the pay-  
18 ment made to any person under this section as pro-  
19 vided in paragraph (1) shall be adjusted for inflation  
20 for each fiscal year beginning after calendar year  
21 2003 in the same manner as provided in the provi-  
22 sions of section 29(d)(2)(B) of the Internal Revenue  
23 Code of 1986, except that in applying such provi-  
24 sions the calendar year 2003 shall be substituted for  
25 calendar year 1979.

1 (f) SUNSET.—No payment may be made under this  
2 section to any qualified hydroelectric facility after the ex-  
3 piration of the period of 20 fiscal years beginning with  
4 the first full fiscal year occurring after the date of enact-  
5 ment of this subtitle, and no payment may be made under  
6 this section to any such facility after a payment has been  
7 made with respect to such facility for a period of 10 fiscal  
8 years.

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

13 **SEC. 3202. HYDROELECTRIC EFFICIENCY IMPROVEMENT.**

14 (a) INCENTIVE PAYMENTS.—The Secretary of En-  
15 ergy shall make incentive payments to the owners or oper-  
16 ators of hydroelectric facilities at existing dams to be used  
17 to make capital improvements in the facilities that are di-  
18 rectly related to improving the efficiency of such facilities  
19 by at least 3 percent.

20 (b) LIMITATIONS.—Incentive payments under this  
21 section shall not exceed 10 percent of the costs of the cap-  
22 ital improvement concerned and not more than one pay-  
23 ment may be made with respect to improvements at a sin-  
24 gle facility. No payment in excess of \$750,000 may be  
25 made with respect to improvements at a single facility.



1 (c) AUTHORIZATION.—There is authorized to be ap-  
2 propriated to carry out this section not more than  
3 \$10,000,000 for each of the fiscal years 2004 through  
4 2013.

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

6 Section 408(a)(6) of the Public Utility Regulatory  
7 Policies Act of 1978 is amended by striking “April 20,  
8 1977” and inserting “March 4, 2003”.

9 **SEC. 3204. INCREASED HYDROELECTRIC GENERATION AT**  
10 **EXISTING FEDERAL FACILITIES.**

11 (a) IN GENERAL.—The Secretary of Energy, in con-  
12 sultation with the Secretary of the Interior and Secretary  
13 of the Army, shall conduct studies of the cost-effective op-  
14 portunities to increase hydropower generation at existing  
15 federally-owned or operated water regulation, storage, and  
16 conveyance facilities. Such studies shall be completed with-  
17 in two years after the date of enactment of this subtitle  
18 and transmitted to the Committee on Commerce of the  
19 House of Representatives and the Committee on Energy  
20 and Natural Resources of the Senate. An individual study  
21 shall be prepared for each of the Nation’s principal river  
22 basins. Each such study shall identify and describe with  
23 specificity the following matters:

24 (1) Opportunities to improve the efficiency of  
25 hydropower generation at such facilities through, but

1 not limited to, mechanical, structural, or operational  
2 changes.

3 (2) Opportunities to improve the efficiency of  
4 the use of water supplied or regulated by Federal  
5 projects where such improvement could, in the ab-  
6 sence of legal or administrative constraints, make  
7 additional water supplies available for hydropower  
8 generation or reduce project energy use.

9 (3) Opportunities to create additional hydro-  
10 power generating capacity at existing facilities  
11 through, but not limited to, the construction of addi-  
12 tional generating facilities, the uprating of genera-  
13 tors and turbines, and the construction of pumped  
14 storage facilities.

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

18 (b) PREVIOUS STUDIES.—If studies of the type re-  
19 quired by subsection (a) have been prepared by any agency  
20 of the United States and published within the five years  
21 prior to the date of enactment of this subtitle, the Sec-  
22 retary of Energy may choose not to perform new studies  
23 and incorporate the information in such studies into the  
24 studies required by subsection (a).

1 (c) AUTHORIZATION.—There is authorized to be ap-  
2 propriated such sums as may be necessary to carry out  
3 the purposes of this section.

4 **TITLE IV—NUCLEAR MATTERS**  
5 **Subtitle A—Price-Anderson Act**  
6 **Amendments**

7 **SEC. 4001. SHORT TITLE.**

8 This subtitle may be cited as the “Price-Anderson  
9 Amendments Act of 2003”.

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

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

14 (1) in the subsection heading, by striking “LI-  
15 CENSES” and inserting “LICENSEES”; and

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

18 (b) INDEMNIFICATION OF DEPARTMENT OF ENERGY  
19 CONTRACTORS.—Section 170 d.(1)(A) of the Atomic En-  
20 ergy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended

21 by striking “December 31, 2004” and inserting “August  
22 1, 2017”.

23 (c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL  
24 INSTITUTIONS.—Section 170 k. of the Atomic Energy Act  
25 of 1954 (42 U.S.C. 2210(k)) is amended by striking “Au-

1 gust 1, 2002” each place it appears and inserting “August  
2 1, 2017”.

3 **SEC. 4003. MAXIMUM ASSESSMENT.**

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

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

8 (A) by striking “\$63,000,000” and insert-  
9 ing “\$94,000,000”; and

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

14 (2) in subsection t.—

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

17 (B) by striking “the date of the enactment  
18 of the Price-Anderson Amendments Act of  
19 1988” and inserting “July 1, 2002”; and

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

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

23 (a) INDEMNIFICATION OF DEPARTMENT OF ENERGY  
24 CONTRACTORS.—Section 170 d. of the Atomic Energy Act

1 of 1954 (42 U.S.C. 2210(d)) is amended by striking para-  
2 graph (2) and inserting the following:

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

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

10 “(B) shall indemnify the persons indemnified  
11 against such liability above the amount of the finan-  
12 cial protection required, in the amount of  
13 \$10,000,000,000 (subject to adjustment for inflation  
14 under subsection t.), in the aggregate, for all per-  
15 sons indemnified in connection with the contract and  
16 for each nuclear incident, including such legal costs  
17 of the contractor as are approved by the Secretary.”.

18 (b) CONTRACT AMENDMENTS.—Section 170 d. of the  
19 Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is  
20 amended by striking paragraph (3) and inserting the fol-  
21 lowing:

22 “(3) All agreements of indemnification under which  
23 the Department of Energy (or its predecessor agencies)  
24 may be required to indemnify any person under this sec-  
25 tion shall be deemed to be amended, on the date of enact-

1 ment of the Price-Anderson Amendments Act of 2003, to  
2 reflect the amount of indemnity for public liability and any  
3 applicable financial protection required of the contractor  
4 under this subsection.”.

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

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

10 (2) by striking “paragraph (3) of subsection d.,  
11 whichever amount is more” and inserting “para-  
12 graph (2) of subsection d.”.

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

14 (a) AMOUNT OF INDEMNIFICATION.—Section 170  
15 d.(5) of the Atomic Energy Act of 1954 (42 U.S.C.  
16 2210(d)(5)) is amended by striking “\$100,000,000” and  
17 inserting “\$500,000,000”.

18 (b) LIABILITY LIMIT.—Section 170 e.(4) of the  
19 Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is  
20 amended by striking “\$100,000,000” and inserting  
21 “\$500,000,000”.

22 **SEC. 4006. REPORTS.**

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

1 **SEC. 4007. INFLATION ADJUSTMENT.**

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

4 (1) by redesignating paragraph (2) as para-  
5 graph (3); and

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

7 “(2) The Secretary shall adjust the amount of indem-  
8 nification provided under an agreement of indemnification  
9 under subsection d. not less than once during each 5-year  
10 period following July 1, 2002, in accordance with the ag-  
11 gregate percentage change in the Consumer Price Index  
12 since—

13 “(A) that date, in the case of the first adjust-  
14 ment under this paragraph; or

15 “(B) the previous adjustment under this para-  
16 graph.”.

17 **SEC. 4008. PRICE-ANDERSON TREATMENT OF MODULAR RE-**  
18 **ACTORS.**

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

22 “(5)(A) For purposes of this section only, the Com-  
23 mission shall consider a combination of facilities described  
24 in subparagraph (B) to be a single facility having a rated  
25 capacity of 100,000 electrical kilowatts or more.

1       “(B) A combination of facilities referred to in sub-  
2 paragraph (A) is 2 or more facilities located at a single  
3 site, each of which has a rated capacity of 100,000 elec-  
4 trical kilowatts or more but not more than 300,000 elec-  
5 trical kilowatts, with a combined rated capacity of not  
6 more than 1,300,000 electrical kilowatts.”.

7 **SEC. 4009. APPLICABILITY.**

8       The amendments made by sections 4003, 4004, and  
9 4005 do not apply to a nuclear incident that occurs before  
10 the date of enactment of this Act.

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

14       Section 170 of the Atomic Energy Act of 1954 (42  
15 U.S.C. 2210) is amended by adding at the end the fol-  
16 lowing new subsection:

17       “u. PROHIBITION ON ASSUMPTION OF LIABILITY FOR  
18 CERTAIN FOREIGN ACCIDENTS.—Notwithstanding this  
19 section or any other provision of law, no officer of the  
20 United States or of any department, agency, or instrumen-  
21 tality of the United States Government may enter into any  
22 contract or other arrangement, or into any amendment or  
23 modification of a contract or other arrangement, the pur-  
24 pose or effect of which would be to directly or indirectly  
25 impose liability on the United States Government, or any



1 department, agency, or instrumentality of the United  
2 States Government, or to otherwise directly or indirectly  
3 require an indemnity by the United States Government,  
4 for nuclear accidents occurring in connection with the de-  
5 sign, construction, or operation of a production facility or  
6 utilization facility in any country whose government has  
7 been identified by the Secretary of State as engaged in  
8 state sponsorship of terrorist activities (specifically includ-  
9 ing any country the government of which, as of September  
10 11, 2001, had been determined by the Secretary of State  
11 under section 620A(a) of the Foreign Assistance Act of  
12 1961, section 6(j)(1) of the Export Administration Act of  
13 1979, or section 40(d) of the Arms Export Control Act  
14 to have repeatedly provided support for acts of inter-  
15 national terrorism).”.

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

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

20 “SEC. 170C. SECURE TRANSFER OF NUCLEAR MA-  
21 TERIALS.—

22 “a. The Nuclear Regulatory Commission shall estab-  
23 lish a system to ensure that, with respect to activities by  
24 any party pursuant to a license issued under this Act—

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

3                   “(A) from a facility licensed by the Nu-  
4 clear Regulatory Commission;

5                   “(B) from a facility licensed by an agree-  
6 ment State; or

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

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

12                   “(2) each individual transferring or accom-  
13 panying the transfer of such materials has been sub-  
14 ject to a security background check by appropriate  
15 Federal entities; and

16                   “(3) such materials are not transferred to or  
17 received at a destination other than a facility li-  
18 censed by the Nuclear Regulatory Commission or an  
19 agreement State under this Act or other appropriate  
20 Federal facility, or a destination outside the United  
21 States in a country with whom the United States  
22 has an agreement for cooperation under section 123.

23           “b. Except as otherwise provided by the Commission  
24 by regulation, the materials referred to in subsection a.  
25 are byproduct materials, source materials, special nuclear

1 materials, high-level radioactive waste, spent nuclear fuel,  
2 transuranic waste, and low-level radioactive waste (as de-  
3 fined in section 2(16) of the Nuclear Waste Policy Act  
4 of 1982 (42 U.S.C. 10101(16))).”.

5 (b) REGULATIONS.—Not later than 1 year after the  
6 date of the enactment of this Act, and from time to time  
7 thereafter as it considers necessary, the Nuclear Regu-  
8 latory Commission shall issue regulations identifying ra-  
9 dioactive materials that, consistent with the protection of  
10 public health and safety and the common defense and se-  
11 curity, are appropriate exceptions to the requirements of  
12 section 170C of the Atomic Energy Act of 1954, as added  
13 by subsection (a) of this section.

14 (c) EFFECTIVE DATE.—The amendment made by  
15 subsection (a) shall take effect upon the issuance of regu-  
16 lations under subsection (b).

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

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

“Sec. 170C. Secure transfer of nuclear materials.”.

1 **SEC. 4012. NUCLEAR FACILITY THREATS.**

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

- 10 (1) the events of September 11, 2001;
- 11 (2) an assessment of physical, cyber, bio-  
12 chemical, and other terrorist threats;
- 13 (3) the potential for attack on facilities by mul-  
14 tiple coordinated teams of a large number of individ-  
15 uals;
- 16 (4) the potential for assistance in an attack  
17 from several persons employed at the facility;
- 18 (5) the potential for suicide attacks;
- 19 (6) the potential for water-based and air-based  
20 threats;
- 21 (7) the potential use of explosive devices of con-  
22 siderable size and other modern weaponry;
- 23 (8) the potential for attacks by persons with a  
24 sophisticated knowledge of facility operations;
- 25 (9) the potential for fires, especially fires of  
26 long duration; and

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

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

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

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

13                 (A) involving attacks and destructive acts,  
14                 including sabotage, directed against the facility  
15                 by an enemy of the United States, whether a  
16                 foreign government or other person, or other-  
17                 wise falling under the responsibilities of the  
18                 Federal Government; or

19                 (B) involving the type of risks that Nu-  
20                 clear Regulatory Commission licensees should  
21                 be responsible for guarding against.

22          (c) FEDERAL ACTION REPORT.—Not later than 90  
23          days after the date on which a report is transmitted under  
24          subsection (b), the President shall transmit to the Con-  
25          gress a report on actions taken, or to be taken, to address

1 the types of threats identified under subsection (b)(2)(A).  
2 Such report may include a classified annex as appropriate.

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

9 (e) PHYSICAL SECURITY PROGRAM.—The Nuclear  
10 Regulatory Commission shall establish an operational  
11 safeguards response evaluation program that ensures that  
12 the physical protection capability and operational safe-  
13 guards response for sensitive nuclear facilities, as deter-  
14 mined by the Commission consistent with the protection  
15 of public health and the common defense and security,  
16 shall be tested periodically through Commission approved  
17 or designed, observed, and evaluated force-on-force exer-  
18 cises to determine whether the ability to defeat the design  
19 basis threat is being maintained. For purposes of this sub-  
20 section, the term “sensitive nuclear facilities” includes at  
21 a minimum commercial nuclear power plants, including  
22 associated spent fuel storage facilities, spent fuel storage  
23 pools and dry cask storage at closed reactors, independent  
24 spent fuel storage facilities and geologic repository oper-

1 ations areas, category I fuel cycle facilities, and gaseous  
2 diffusion plants.

3 (f) CONTROL OF INFORMATION.—In carrying out this  
4 section, the President and the Nuclear Regulatory Com-  
5 mission shall control the dissemination of restricted data,  
6 safeguards information, and other classified national secu-  
7 rity information in a manner so as to ensure the common  
8 defense and security, consistent with chapter 12 of the  
9 Atomic Energy Act of 1954.

10 **SEC. 4013. UNREASONABLE RISK CONSULTATION.**

11 Section 170 of the Atomic Energy Act of 1954 (42  
12 U.S.C. 2210) is amended by adding at the end the fol-  
13 lowing new subsection:

14 “v. UNREASONABLE RISK CONSULTATION.—(1) Be-  
15 fore entering into an agreement of indemnification under  
16 this section with respect to a utilization facility, the Nu-  
17 clear Regulatory Commission shall consult with the Assist-  
18 ant to the President for Homeland Security (or any suc-  
19 cessor official) concerning whether the location of the pro-  
20 posed facility and the design of that type of facility ensure  
21 that the facility provides for adequate protection of public  
22 health and safety if subject to a terrorist attack.

23 “(2) Before issuing a license or a license renewal for  
24 a sensitive nuclear facility, the Nuclear Regulatory Com-  
25 mission shall consult with the Secretary of Homeland Se-

1 curity or his designee concerning the emergency evacu-  
2 ation plan for the communities living near the sensitive  
3 nuclear facility. For purposes of this paragraph, the term  
4 ‘sensitive nuclear facility’ has the meaning given that term  
5 in section 4012 of the Energy Policy Act of 2003.”.

6 **SEC. 4014. FINANCIAL ACCOUNTABILITY.**

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

10 “w. FINANCIAL ACCOUNTABILITY.—(1) Notwith-  
11 standing subsection d., the Attorney General may bring  
12 an action in the appropriate United States district court  
13 to recover from a contractor of the Secretary (or subcon-  
14 tractor or supplier of such contractor) amounts paid by  
15 the Federal Government under an agreement of indem-  
16 nification under subsection d. for public liability resulting  
17 from conduct which constitutes intentional misconduct of  
18 any corporate officer, manager, or superintendent of such  
19 contractor (or subcontractor or supplier of such con-  
20 tractor).

21 “(2) The Attorney General may recover under para-  
22 graph (1) an amount not to exceed the amount of the prof-  
23 it derived by the defendant from the contract.

24 “(3) No amount recovered from any contractor (or  
25 subcontractor or supplier of such contractor) under para-



1 graph (1) may be reimbursed directly or indirectly by the  
2 Department of Energy.

3 “(4) Paragraph (1) shall not apply to any nonprofit  
4 entity conducting activities under contract for the Sec-  
5 retary.

6 “(5) No waiver of a defense required under this sec-  
7 tion shall prevent a defendant from asserting such defense  
8 in an action brought under this subsection.

9 “(6) The Secretary shall, by rule, define the terms  
10 ‘profit’ and ‘nonprofit entity’ for purposes of this sub-  
11 section. Such rulemaking shall be completed not later than  
12 180 days after the date of the enactment of this sub-  
13 section.”.

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

19 **SEC. 4015. CIVIL PENALTIES.**

20 (a) REPEAL OF AUTOMATIC REMISSION.—Section  
21 234A b. (2) of the Atomic Energy Act of 1954 (42 U.S.C.  
22 2282a(b)(2)) is amended by striking the last sentence.

23 (b) LIMITATION FOR NONPROFIT INSTITUTIONS.—  
24 Subsection d. of section 234A of the Atomic Energy Act

1 of 1954 (42 U.S.C. 2282a(d)) is amended to read as fol-  
2 lows:

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

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

11 “(2) identified by the Secretary by rule as ap-  
12 propriate to be treated the same under this sub-  
13 section as an entity described in paragraph (1), con-  
14 sistent with the purposes of this section.”.

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

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

## 1 **Subtitle B—Miscellaneous Matters**

### 2 **SEC. 4021. LICENSES.**

3 Section 103 c. of the Atomic Energy Act of 1954 (42  
4 U.S.C. 2133(c)) is amended by inserting “from the au-  
5 thorization to commence operations” after “forty years”.

### 6 **SEC. 4022. NUCLEAR REGULATORY COMMISSION MEET-** 7 **INGS.**

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

### 18 **SEC. 4023. NRC TRAINING PROGRAM.**

19 (a) IN GENERAL.—In order to maintain the human  
20 resource investment and infrastructure of the United  
21 States in the nuclear sciences, health physics, and engi-  
22 neering fields, in accordance with the statutory authorities  
23 of the Commission relating to the civilian nuclear energy  
24 program, the Nuclear Regulatory Commission shall carry  
25 out a training and fellowship program to address short-

1 ages of individuals with critical nuclear safety regulatory  
2 skills.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—

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

7 (2) AVAILABILITY.—Funds made available  
8 under paragraph (1) shall remain available until ex-  
9 pended.

10 **SEC. 4024. COST RECOVERY FROM GOVERNMENT AGEN-**  
11 **CIES.**

12 Section 161 w. of the Atomic Energy Act of 1954  
13 (42 U.S.C. 2201(w)) is amended—

14 (1) by striking “for or is issued” and all that  
15 follows through “1702” and inserting “to the Com-  
16 mission for, or is issued by the Commission, a li-  
17 cense or certificate”;

18 (2) by striking “483a” and inserting “9701”;  
19 and

20 (3) by striking “, of applicants for, or holders  
21 of, such licenses or certificates”.

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

23 Section 161 of the Atomic Energy Act of 1954 (42  
24 U.S.C. 2201) is amended by adding at the end the fol-  
25 lowing:

1           “y. exempt from the application of sections  
2           8344 and 8468 of title 5, United States Code, an  
3           annuitant who was formerly an employee of the  
4           Commission who is hired by the Commission as a  
5           consultant, if the Commission finds that the annu-  
6           itant has a skill that is critical to the performance  
7           of the duties of the Commission.”.

8   **SEC. 4026. CARRYING OF FIREARMS BY LICENSEE EMPLOY-**  
9                           **EES.**

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

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

17                   “(1) such of those employees of its con-  
18                   tractors and subcontractors (at any tier) en-  
19                   gaged in the protection of property under the  
20                   jurisdiction of the United States located at fa-  
21                   cilities owned by or contracted to the United  
22                   States or being transported to or from such fa-  
23                   cilities as it deems necessary in the interests of  
24                   the common defense and security; and

1           “(2) such of those employees of persons li-  
2           censed or certified by the Commission (includ-  
3           ing employees of contractors of licensees or cer-  
4           tificate holders) engaged in the protection of  
5           property of (A) facilities owned or operated by  
6           a Commission licensee or certificate holder that  
7           are designated by the Commission, or (B) prop-  
8           erty of significance to the common defense and  
9           security located at facilities owned or operated  
10          by a Commission licensee or certificate holder  
11          or being transported to or from such facilities;  
12          to carry firearms while in the discharge of their offi-  
13          cial duties. A person authorized to carry firearms  
14          under this subsection may, while in the performance  
15          of, and in connection with, official duties, make ar-  
16          rests without warrant for any offense against the  
17          United States committed in that person’s presence  
18          or for any felony cognizable under the laws of the  
19          United States if that person has reasonable grounds  
20          to believe that the individual to be arrested has com-  
21          mitted or is committing such felony. An employee of  
22          a contractor or subcontractor or of a Commission li-  
23          censee or certificate holder (or a contractor of a li-  
24          censee or certificate holder) authorized to carry fire-  
25          arms under this subsection may make such arrests

1       only when the individual to be arrested is within,  
2       or in direct flight from, the area of such offense.  
3       A person granted authority to make arrests by this  
4       subsection may exercise that authority only in the  
5       enforcement of laws regarding the property of the  
6       United States in the custody of the Department of  
7       Energy, the Nuclear Regulatory Commission, or a  
8       contractor of the Department of Energy or Nuclear  
9       Regulatory Commission or of a licensee or certificate  
10      holder of the Commission, laws applicable to facili-  
11      ties owned or operated by a Commission licensee or  
12      certificate holder that are designated by the Com-  
13      mission pursuant to this subsection and property of  
14      significance to the common defense and security that  
15      is in the custody of a licensee or certificate holder  
16      or a contractor of a licensee or certificate holder of  
17      the Commission, or any provision of this Act that  
18      may subject an offender to a fine, imprisonment, or  
19      both. The arrest authority conferred by this sub-  
20      section is in addition to any arrest authority under  
21      other laws. The Secretary and the Commission, with  
22      the approval of the Attorney General, shall issue  
23      guidelines to implement this subsection;”.

1 **SEC. 4027. UNAUTHORIZED INTRODUCTION OF DANGEROUS**  
2 **WEAPONS.**

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

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

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

11 “a. Any person who intentionally and willfully de-  
12 stroys or causes physical damage to, or who intentionally  
13 and willfully attempts to destroy or cause physical damage  
14 to—

15 “(1) any production facility or utilization facil-  
16 ity licensed under this Act;

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

19 “(3) any nuclear fuel for a utilization facility li-  
20 censed under this Act or any spent nuclear fuel from  
21 such a facility;

22 “(4) any uranium enrichment or nuclear fuel  
23 fabrication facility licensed or certified by the Nu-  
24 clear Regulatory Commission; or

25 “(5) any production, utilization, waste storage,  
26 waste treatment, waste disposal, uranium enrich-



1       ment, or nuclear fuel fabrication facility subject to  
2       licensing or certification under this Act during its  
3       construction where the destruction or damage  
4       caused or attempted to be caused could affect public  
5       health and safety during the operation of the facil-  
6       ity,

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

9       **SEC. 4029. COOPERATIVE RESEARCH AND DEVELOPMENT**  
10                               **AND SPECIAL DEMONSTRATION PROJECTS**  
11                               **FOR THE URANIUM MINING INDUSTRY.**

12       (a) AUTHORIZATION OF APPROPRIATIONS.—There  
13       are authorized to be appropriated to the Secretary of En-  
14       ergy \$10,000,000 for each of fiscal years 2004, 2005, and  
15       2006 for—

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

23               (2) funding for competitively selected dem-  
24       onstration projects with domestic uranium producers  
25       relating to—

- 1           (A) enhanced production with minimal en-  
2           vironmental impacts;  
3           (B) restoration of well fields; and  
4           (C) decommissioning and decontamination  
5           activities.

6           (b) DOMESTIC URANIUM PRODUCER.—For purposes  
7 of this section, the term “domestic uranium producer” has  
8 the meaning given that term in section 1018(4) of the En-  
9 ergy Policy Act of 1992 (42 U.S.C. 2296b–7(4)), except  
10 that the term shall not include any producer that has not  
11 produced uranium from domestic reserves on or after July  
12 30, 1998, in Colorado, Nebraska, Texas, Utah, or Wyo-  
13 ming.

14 **SEC. 4030. URANIUM SALES.**

15           (a) RESTRICTIONS ON INVENTORY SALES.—Section  
16 3112(d) of the USEC Privatization Act (42 U.S.C.  
17 2297h–10(d)) is amended to read as follows:

18           “(d) INVENTORY SALES.—(1) In addition to the  
19 transfers and sales authorized under subsections (b), (c),  
20 and (e), the Secretary of Energy or the Secretary of the  
21 Army may transfer or sell uranium subject to paragraph  
22 (2).

23           “(2) Except as provided in subsections (b), (c), and  
24 (e), no sale or transfer of uranium shall be made under

1 this subsection by the Secretary of Energy or the Sec-  
2 retary of the Army unless—

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

5           “(B) the price paid to the appropriate Sec-  
6 retary, if the transaction is a sale, will not be less  
7 than the fair market value of the material; and

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

10          “(3) The Secretary of Energy shall not make any  
11 transfer or sale of uranium under this subsection that  
12 would cause the total amount of uranium transferred or  
13 sold pursuant to this subsection that is delivered for con-  
14 sumption by end users to exceed—

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

17           “(B) 5 million pounds of  $U_3O_8$  equivalent in  
18 fiscal year 2010 or 2011;

19           “(C) 7 million pounds of  $U_3O_8$  equivalent in fis-  
20 cal year 2012; and

21           “(D) 10 million pounds of  $U_3O_8$  equivalent in  
22 fiscal year 2013 or any fiscal year thereafter.

23          “(4) For the purposes of this subsection, the recovery  
24 of uranium from uranium bearing materials transferred  
25 or sold by the Secretary of Energy or the Secretary of

1 the Army to the domestic uranium industry shall be the  
2 preferred method of making uranium available. The recov-  
3 ered uranium shall be counted against the annual max-  
4 imum deliveries set for in this section, when such uranium  
5 is sold to end users.”.

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

10 “(g) TRANSFERS TO CORPORATION.—Notwith-  
11 standing subsection (b)(2) and subsection (d)(2), the Sec-  
12 retary may transfer up to 9,550 metric tons of uranium  
13 to the Corporation to replace uranium that the Secretary  
14 transferred to the Corporation on or about June 30, 1993,  
15 April 20, 1998, and May 18, 1998, and that does not meet  
16 commercial specifications.”.

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

20 “(h) SERVICES.—(1) Notwithstanding any other pro-  
21 vision of this section, if the Secretary determines that if  
22 the Corporation has failed, or may fail, to perform any  
23 obligation under the Agreement between the Department  
24 of Energy and the Corporation dated June 17, 2002, and  
25 as amended thereafter, which failure could result in termi-

1 nation of the Agreement, the Secretary shall notify the  
2 Committee on Energy and Commerce of the House of  
3 Representatives and the Committee on Energy and Nat-  
4 ural Resources of the Senate, in such a manner that af-  
5 fords the Committees an opportunity to comment, prior  
6 to a determination by the Secretary whether termination,  
7 waiver, or modification of the Agreement is required. The  
8 Secretary is authorized to take such action as he deter-  
9 mines necessary under the Agreement to terminate, waive,  
10 or modify provisions of the Agreement to achieve its pur-  
11 poses.

12       “(2) Notwithstanding any other provision of this sec-  
13 tion, if the Secretary determines in accordance with Arti-  
14 cle 2D of the Agreement between the Department of En-  
15 ergy and the Corporation dated June 17, 2002, and as  
16 amended thereafter, to transition operation of the Padu-  
17 cah gaseous diffusion plant, the Secretary may provide  
18 uranium enrichment services in a manner consistent with  
19 Article 2D of such Agreement.”.

20       (d) REPORT.—Within 3 years after the date of enact-  
21 ment of this Act, the Secretary shall report to the Con-  
22 gress on the implementation of this section. The report  
23 shall include a discussion of available excess uranium in-  
24 ventories, all sales or transfers made by the Secretary of  
25 Energy or the Secretary of the Army, the impact of such

1 sales or transfers on the domestic uranium industry, the  
2 spot market uranium price, and the national security in-  
3 terests of the United States, and any steps taken to reme-  
4 diate any adverse impacts of such sales or transfers.

5 **SEC. 4031. MEDICAL ISOTOPE PRODUCTION.**

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

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

10 (2) by inserting after subsection a. the fol-  
11 lowing:

12 “b. The Commission may issue a license authorizing  
13 the export (including shipment to and use at intermediate  
14 and ultimate consignees specified in the license) to a Re-  
15 cipient Country of highly enriched uranium for medical  
16 isotope production if, in addition to any other require-  
17 ments of this Act, the Commission determines that—

18 “(1) a Recipient Country that supplies an as-  
19 surance letter to the United States Government in  
20 connection with the Commission’s consideration of  
21 the export license application has informed the  
22 United States Government that any intermediate  
23 consignees and the ultimate consignee specified in  
24 the application are required to use such highly en-

1 enriched uranium solely to produce medical isotopes;  
2 and

3 “(2) the highly enriched uranium for medical  
4 isotope production will be irradiated only in a reac-  
5 tor in a Recipient Country that—

6 “(A) uses an alternative nuclear reactor  
7 fuel; or

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

12 “c. Applications to the Commission for licenses au-  
13 thorizing the export to a Recipient Country of highly en-  
14 riched uranium for medical isotope production shall be  
15 subject to subsection b., and subsection a. shall not be ap-  
16 plicable to such exports.

17 “d. The Commission is authorized to specify, by rule-  
18 making or decision in connection with an export license  
19 application, that a country other than a Recipient Country  
20 may receive exports of highly enriched uranium for med-  
21 ical isotope production in accordance with the same cri-  
22 teria established by subsection b. for exports to a Reci-  
23 ent Country, upon the Commission’s finding that such ad-  
24 ditional country is a party to the Treaty on the Non-  
25 proliferation of Nuclear Weapons and the Convention on

1 the Physical Protection of Nuclear Material and will re-  
2 ceive such highly enriched uranium pursuant to an agree-  
3 ment with the United States concerning peaceful uses of  
4 nuclear energy.

5 “e. The Commission shall review the adequacy of  
6 physical protection requirements that are currently appli-  
7 cable to the transportation of highly enriched uranium for  
8 medical isotope production. If it determines that addi-  
9 tional physical protection measures are necessary, includ-  
10 ing any limits that the Commission finds are necessary  
11 on the quantity of highly enriched uranium contained in  
12 a single shipment for medical isotope production, the Com-  
13 mission shall impose such requirements, as license condi-  
14 tions or through other appropriate means.”; and

15 (3) in subsection f., as so redesignated by para-  
16 graph (1) of this section—

17 (A) by striking “and” at the end of para-  
18 graph (2);

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

22 (C) by adding at the end the following:

23 “(4) the term ‘medical isotopes’ means radio-  
24 active isotopes, including Molybdenum 99, Iodine  
25 131, and Xenon 133, that are used to produce radio-



1 pharmaceuticals for diagnostic or therapeutic proce-  
2 dures on patients, or in connection with research  
3 and development of radiopharmaceuticals;

4 “(5) the term ‘highly enriched uranium for  
5 medical isotope production’ means highly enriched  
6 uranium contained in, or for use in, targets to be ir-  
7 radiated for the sole purpose of producing medical  
8 isotopes;

9 “(6) the term ‘radiopharmaceuticals’ means ra-  
10 dioactive isotopes containing byproduct material  
11 combined with chemical or biological material that  
12 are designed to accumulate temporarily in a part of  
13 the body, for therapeutic purposes or for enabling  
14 the production of a useful image of the appropriate  
15 body organ or function for use in diagnosis of med-  
16 ical conditions; and

17 “(7) the term ‘Recipient Country’ means Can-  
18 ada, Belgium, France, Germany, and the Nether-  
19 lands.”.

20 **SEC. 4032. HIGHLY ENRICHED URANIUM DIVERSION**  
21 **THREAT REPORT.**

22 Section 307 of the Energy Reorganization Act of  
23 1974 (42 U.S.C. 5877) is amended by adding at the end  
24 the following new subsection:

1       “(d) Not later than 6 months after the date of the  
2 enactment of this Act, the Secretary of Energy shall trans-  
3 mit to the Congress a report with recommendations on re-  
4 ducing the threat resulting from the theft or diversion of  
5 highly enriched uranium. Such report shall address—

6           “(1) monitoring of highly enriched uranium  
7 supplies at any commercial companies who have ac-  
8 cess to substantial amounts of highly enriched ura-  
9 nium;

10          “(2) assistance to companies described in para-  
11 graph (1) with security and personnel checks;

12          “(3) acceleration of the process of blending  
13 down excess highly enriched uranium into low-en-  
14 riched uranium;

15          “(4) purchasing highly enriched uranium (ex-  
16 cept for production of medical isotopes);

17          “(5) paying the cost of shipping highly enriched  
18 uranium;

19          “(6) accelerating the conversion of commercial  
20 research reactors and energy reactors to the use of  
21 low-enriched uranium fuel where they now use high-  
22 ly enriched uranium fuel; and

23          “(7) minimizing, and encouraging transparency  
24 in, the further enrichment of low-enriched uranium  
25 to highly enriched uranium.”.

1 **SEC. 4033. WHISTLEBLOWER PROTECTION.**

2 (a) DEFINITION OF EMPLOYER.—Section 211(a)(2)  
3 of the Energy Reorganization Act of 1974 (42 U.S.C.  
4 5851(a)(2)) is amended—

5 (1) by striking “and” at the end of subpara-  
6 graph (C);

7 (2) in subparagraph (D), by striking “that is  
8 indemnified” and all that follows through “12344.”  
9 and inserting “or the Commission; and”; and

10 (3) by adding at the end the following new sub-  
11 paragraph:

12 “(E) the Department of Energy and the Com-  
13 mission.”.

14 (b) DE NOVO REVIEW.—Subsection (b) of such sec-  
15 tion 211 is amended by adding at the end the following  
16 new paragraph:

17 “(4) If the Secretary has not issued a final decision  
18 within 180 days after the filing of a complaint under para-  
19 graph (1), and there is no showing that such delay is due  
20 to the bad faith of the claimant, the claimant may bring  
21 an action at law or equity for de novo review in the appro-  
22 priate district court of the United States, which shall have  
23 jurisdiction over such an action without regard to the  
24 amount in controversy.”.

1 **TITLE V—VEHICLES AND FUELS**  
2 **Subtitle A—Energy Policy Act**  
3 **Amendments**

4 **SEC. 5011. CREDIT FOR SUBSTANTIAL CONTRIBUTION TO-**  
5 **WARD NONCOVERED FLEETS.**

6 Section 508 of the Energy Policy Act of 1992 (42  
7 U.S.C. 13258) is amended by adding at the end the fol-  
8 lowing new subsection:

9 “(e) CREDIT FOR SUBSTANTIAL CONTRIBUTION TO-  
10 WARD USE OF DEDICATED VEHICLES IN NONCOVERED  
11 FLEETS.—

12 “(1) DEFINITIONS.—In this subsection:

13 “(A) MEDIUM OR HEAVY DUTY VEHI-  
14 CLE.—The term ‘medium or heavy duty vehicle’  
15 means a dedicated vehicle that—

16 “(i) in the case of a medium duty ve-  
17 hicle, has a gross vehicle weight rating of  
18 more than 8,500 pounds but not more  
19 than 14,000 pounds; or

20 “(ii) in the case of a heavy duty vehi-  
21 cle, has a gross vehicle weight rating of  
22 more than 14,000 pounds.

23 “(B) SUBSTANTIAL CONTRIBUTION.—The  
24 term ‘substantial contribution’ means not less

1           than \$15,000 in cash or in kind services, as de-  
2           termined by the Secretary.

3           “(2) ALLOCATION OF CREDITS.—The Secretary  
4           shall allocate a credit to a fleet or covered person  
5           under this section if the fleet or person makes a sub-  
6           stantial contribution toward the acquisition and use  
7           of dedicated vehicles or neighborhood electric vehi-  
8           cles by a person that owns, operates, leases, or oth-  
9           erwise controls a fleet that is not covered by this  
10          title.

11          “(3) MULTIPLE CREDITS FOR MEDIUM AND  
12          HEAVY DUTY VEHICLES.—The Secretary shall issue  
13          2 full credits to a fleet or covered person under this  
14          section if the fleet or person makes a substantial  
15          contribution toward the acquisition and use of a me-  
16          dium or heavy duty vehicle.

17          “(4) USE OF CREDITS.—At the request of a  
18          fleet or covered person allocated a credit under this  
19          subsection, the Secretary shall, for the year in which  
20          the acquisition of the dedicated vehicle or neighbor-  
21          hood electric vehicle is made, treat that credit as the  
22          acquisition of 1 alternative fueled vehicle that the  
23          fleet or covered person is required to acquire under  
24          this title.

1           “(5) LIMITATION.—Except as provided in para-  
2           graph (3), no more than 1 credit shall be allocated  
3           under this subsection for each vehicle.”.

4 **SEC. 5012. CREDIT FOR ALTERNATIVE FUEL INFRASTRUC-**  
5 **TURE.**

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

9           “(f) CREDIT FOR INVESTMENT IN ALTERNATIVE  
10 FUEL INFRASTRUCTURE.—

11           “(1) DEFINITION.—In this subsection, the term  
12 ‘qualifying infrastructure’ means—

13           “(A) equipment required to refuel or re-  
14 charge alternative fueled vehicles;

15           “(B) facilities or equipment required to  
16 maintain, repair, or operate alternative fueled  
17 vehicles;

18           “(C) training programs, educational mate-  
19 rials, or other activities necessary to provide in-  
20 formation regarding the operation, mainte-  
21 nance, or benefits associated with alternative  
22 fueled vehicles; and

23           “(D) such other activities the Secretary  
24 considers to constitute an appropriate expendi-  
25 ture in support of the operation, maintenance,

1           or further widespread adoption of or utilization  
2           of alternative fueled vehicles.

3           “(2) ALLOCATION OF CREDITS.—The Secretary  
4           shall allocate a credit to a fleet or covered person  
5           under this section for investment in qualifying infra-  
6           structure if the qualifying infrastructure is open to  
7           the general public during regular business hours.

8           “(3) AMOUNT.—For the purposes of credits  
9           under this subsection—

10           “(A) 1 credit shall be equal to a minimum  
11           investment of \$25,000 in cash or in kind serv-  
12           ices, as determined by the Secretary; and

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

16           “(4) USE OF CREDITS.—At the request of a  
17           fleet or covered person allocated a credit under this  
18           subsection, the Secretary shall, for the year in which  
19           the investment is made, treat that credit as the ac-  
20           quisition of 1 alternative fueled vehicle that the fleet  
21           or covered person is required to acquire under this  
22           title.”.

23 **SEC. 5013. ALTERNATIVE FUELED VEHICLE REPORT.**

24           (a) DEFINITIONS.—In this section:

1           (1) ALTERNATIVE FUEL.—The term “alter-  
2           native fuel” has the meaning given the term in sec-  
3           tion 301 of the Energy Policy Act of 1992 (42  
4           U.S.C. 13211).

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

9           (3) LIGHT DUTY MOTOR VEHICLE.—The term  
10          “light duty motor vehicle” has the meaning given  
11          the term in section 301 of the Energy Policy Act of  
12          1992 (42 U.S.C. 13211).

13          (4) SECRETARY.—The term “Secretary” means  
14          the Secretary of Energy.

15          (b) REPORT.—Not later than 1 year after the date  
16          of enactment of this Act, the Secretary shall submit to  
17          Congress a report on the effect that titles III, IV, and  
18          V of the Energy Policy Act of 1992 have had on the devel-  
19          opment of alternative fueled vehicle technology, the avail-  
20          ability of alternative fueled vehicles in the market, the cost  
21          of light duty motor vehicles that are alternative fueled ve-  
22          hicles, and the availability, cost, and use of alternative  
23          fuels and biodiesel. Such report shall include any rec-  
24          ommendations of the Secretary for legislation concerning  
25          the alternative fueled vehicle requirements under the En-



1 ergy Policy Act of 1992, and shall examine, discuss, and  
2 determine the following:

3           (1) The number of alternative fueled vehicles  
4           acquired by fleets or covered persons required to ac-  
5           quire alternative fueled vehicles.

6           (2) The extent to which fleets subject to alter-  
7           native fueled vehicle acquisition requirements have  
8           met those requirements through the use of fuel mix-  
9           tures that contain at least 20 percent biodiesel pur-  
10          suant to section 312 of the Energy Policy Act of  
11          1992 (42 U.S.C. 13220).

12          (3) The amount of alternative fuel used in al-  
13          ternative fueled vehicles acquired by fleets required  
14          to acquire alternative fueled vehicles under the En-  
15          ergy Policy Act of 1992.

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

19          (5) The cost of compliance with vehicle acquisi-  
20          tion requirements under the Energy Policy Act of  
21          1992, and the benefits of using such fuel and vehi-  
22          cles.

23          (6) Projections of the amount of biodiesel, the  
24          number of alternative fueled vehicles, and the  
25          amount of alternative fuel that will be used over the

1 next decade by fleets required to acquire alternative  
2 fueled vehicles under the Energy Policy Act of 1992.

3 (7) The existence of any obstacles to increased  
4 use of alternative fuel and biodiesel in vehicles ac-  
5 quired or maintained by fleets required to acquire al-  
6 ternative fueled vehicles under the Energy Policy  
7 Act of 1992, and the benefits of using such fuel and  
8 vehicles.

9 **SEC. 5014. ALLOCATION OF INCREMENTAL COSTS.**

10 Section 303(c) of the Energy Policy Act of 1992 (42  
11 U.S.C. 13212(c)) is amended by striking “may” and in-  
12 serting “shall”.

13 **Subtitle B—FreedomCAR and**  
14 **Hydrogen Fuel Program**

15 **SEC. 5021. SHORT TITLE.**

16 This subtitle may be cited as the “FreedomCAR and  
17 Hydrogen Fuel Act of 2003” or “Freedom Act”.

18 **SEC. 5022. FINDINGS, PURPOSE, AND DEFINITIONS.**

19 (a) FINDINGS.—Congress finds that—

20 (1) the United States is currently dependent on  
21 foreign sources for a majority of its petroleum sup-  
22 ply;

23 (2) the Nation’s dependence on foreign petro-  
24 leum is expected to increase in the decades ahead;

1           (3) it is in the national interest to reduce de-  
2           pendence on imported petroleum by accelerating  
3           Federal efforts to partner with the private sector by  
4           deploying hydrogen fuel cell vehicles and the refuel-  
5           ing infrastructure to support those vehicles;

6           (4) it is in the national interest to develop a  
7           light duty vehicle fleet that substantially reduces de-  
8           pendence on foreign petroleum, assists the Nation in  
9           meeting its requirements under the Clean Air Act  
10          and reduces greenhouse gas emissions in a manner  
11          that maintains the freedom of consumers to pur-  
12          chase the kinds of vehicles they wish to drive and  
13          the freedom to refuel those vehicles safely,  
14          affordably, and conveniently;

15          (5) hydrogen fuel cell vehicles and supporting  
16          infrastructure have the potential to accelerate the  
17          parallel advancement of fuel cells for stationary  
18          power that will enhance the resiliency, reliability,  
19          and environmental performance of the Nation's elec-  
20          tricity infrastructure;

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

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

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

11           (9) work should be performed in a manner that  
12 is cognizant of consumer acceptance, passenger safe-  
13 ty, and marketplace success.

14           (b) PURPOSE.—The purpose of this subtitle is to re-  
15 duce significantly the Nation’s dependence on imported  
16 petroleum, enhance the production and conservation of en-  
17 ergy, and reduce air emissions through support of the fol-  
18 lowing Department of Energy actions:

19           (1) Programs and activities leading to—

20                   (A) a commitment by automakers and hy-  
21 drogen energy and energy infrastructure pro-  
22 viders no later than year 2015 to offer safe, af-  
23 fordable, and technically viable hydrogen fuel  
24 cell vehicles and refueling infrastructure in the  
25 mass consumer market; and

1 (B) a commitment by the automakers and  
2 hydrogen energy and energy infrastructure pro-  
3 viders to the deployment of hydrogen fuel cell  
4 vehicles and affordable and convenient refueling  
5 infrastructure no later than year 2020.

6 (2) A program to establish international codes,  
7 standards, and safety protocols for the use and man-  
8 ufacture of domestic and foreign products.

9 (3) Interagency, intergovernmental, and inter-  
10 national programs and activities for education, infor-  
11 mation exchange, and cooperation.

12 (c) DEFINITIONS.—In this subtitle:

13 (1) The term “Advisory Committee” means the  
14 Hydrogen Technical and Fuel Cell Advisory Com-  
15 mittee established under section 5028 of this Act.

16 (2) The term “Department” means the Depart-  
17 ment of Energy.

18 (3) The term “FreedomCAR” is the acronym  
19 for a Department initiative in automotive research  
20 and development entitled “Freedom Cooperative  
21 Automotive Research”.

22 (4) The term “fuel cell” means a device that di-  
23 rectly converts the chemical energy of a fuel and an  
24 oxidant into electricity by an electrochemical process  
25 taking place at separate electrodes in the device.

1           (5) The term “infrastructure” means the equip-  
2           ment, systems, or facilities used to produce, dis-  
3           tribute, deliver, or store hydrogen and other ad-  
4           vanced clean fuels.

5           (6) The term “light duty vehicle” means a car  
6           or truck, classified by the Department of Transpor-  
7           tation as a Class I or IIA vehicle.

8           (7) The term “Secretary” means the Secretary  
9           of Energy.

10 **SEC. 5023. PLAN; REPORT.**

11           (a) PLAN.—The Secretary, in consultation with other  
12           appropriate Federal agencies, shall prepare a comprehen-  
13           sive interagency coordination plan for activities under this  
14           subtitle. This plan may be provided as part of the Presi-  
15           dent’s annual budget submission to Congress.

16           (b) REPORT.—Not later than one year after the date  
17           of enactment of this subtitle, and biennially thereafter, the  
18           Secretary shall transmit to the Congress a report on the  
19           status of programs and activities under this subtitle. This  
20           report may be provided as part of the President’s annual  
21           budget submission to Congress. This report may include,  
22           in addition to any views and recommendations of the Sec-  
23           retary—

24                   (1) an assessment of the effectiveness of the  
25           programs and activities under this subtitle and the

1 extent to which the purposes in section 5022(b) have  
2 been met; and

3 (2) the potential for interagency, intergovern-  
4 mental, international, or private sector collaboration  
5 opportunities and activities under this subtitle.

6 **SEC. 5024. PUBLIC-PRIVATE PARTNERSHIP.**

7 (a) PROGRAM.—In partnership with the private sec-  
8 tor, the Secretary shall conduct a program designed to fa-  
9 cilitate the production and conservation of energy and the  
10 deployment of energy infrastructure, including all of the  
11 following:

- 12 (1) Hydrogen energy.
- 13 (2) Fuel cells.
- 14 (3) Advanced vehicle technologies.
- 15 (4) Clean fuels in addition to hydrogen.
- 16 (5) Codes, standards, and safety protocols.

17 (b) PROGRAM GOALS.—

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

20 (A) to enable a commitment by auto-  
21 makers no later than year 2015 to offer safe,  
22 affordable, and technically viable hydrogen fuel  
23 cell vehicles into commerce; and

24 (B) to enable production, delivery, and ac-  
25 ceptance by consumers of model year 2020 hy-

1 hydrogen fuel cell and other vehicles that will  
2 have—

3 (i) a range of at least three hundred  
4 miles;

5 (ii) improved performance and ease of  
6 driving;

7 (iii) met all light duty safety regula-  
8 tions created under section 30111 of title  
9 49, United States Code; and

10 (iv) when compared to light duty vehi-  
11 cles in model year 2003—

12 (I) a fuel economy that is two  
13 and one half times the equivalent fuel  
14 economy of these vehicles as regulated  
15 under the Motor Vehicle Information  
16 and Cost Savings Act, or about 70  
17 miles per gallon, and

18 (II) near zero emissions of air  
19 pollutants regulated under the Clean  
20 Air Act.

21 (2) HYDROGEN ENERGY AND ENERGY INFRA-  
22 STRUCTURE.—For hydrogen energy and energy in-  
23 frastructure the goals of the program include, but  
24 are not limited to, a commitment not later than



1 2015 that will enable the deployment by 2020 of in-  
2 frastructure to provide—

3 (A) safe and convenient refueling;

4 (B) activities leading to widespread avail-  
5 ability of hydrogen from domestic energy  
6 sources through—

7 (i) production, including consideration  
8 of cost-effective production from domestic  
9 energy sources;

10 (ii) delivery, including transmission by  
11 pipeline and other distribution methods for  
12 hydrogen; and

13 (iii) storage, including storage in sur-  
14 face transportation vehicles;

15 (C) hydrogen for fuel cells, internal com-  
16 bustion engines, and other energy conversion  
17 devices for portable, stationary, and transpor-  
18 tation applications; and

19 (D) other technologies consistent with the  
20 Department's plan.

21 (3) FUEL CELLS.—The program for fuel cells  
22 and their portable, stationary, and transportation  
23 applications may include, but is not limited to—

24 (A) a safe, economical, and environ-  
25 mentally sound hydrogen fuel cell;

1 (B) a fuel cell for light duty and other ve-  
2 hicles; and

3 (C) other technologies consistent with the  
4 Department's plan.

5 (4) ADVANCED VEHICLE TECHNOLOGIES.—The  
6 program for advanced vehicle technologies may in-  
7 clude, but is not limited to—

8 (A) advanced combustion;

9 (B) materials;

10 (C) energy storage;

11 (D) control systems; and

12 (E) other technologies consistent with the  
13 Department's plan.

14 (5) CODES, STANDARDS, AND SAFETY PROTO-  
15 COLS.—(A) The Department's program for codes,  
16 standards, and safety protocols shall strive towards  
17 establishment of international codes, standards, and  
18 safety protocols for the use and manufacture of do-  
19 mestic and foreign products.

20 (B) The Secretary may represent the United  
21 States interests with respect to activities and pro-  
22 grams under this subsection, collaborating with the  
23 Secretary of Transportation, and in consultation  
24 with other appropriate governments and nongovern-  
25 mental organizations including the following:

1 (i) Other Federal, State, regional, and  
2 local governments and their representatives.

3 (ii) Industry and its representatives, in-  
4 cluding members of the energy and transpor-  
5 tation industries.

6 (iii) Foreign governments and their rep-  
7 resentatives including international organiza-  
8 tions.

9 (c) FEDERAL FUNDING.—(1) The Secretary shall  
10 carry out the programs and activities under this section  
11 consistent with the generally applicable Federal laws and  
12 regulations governing awards of financial assistance, con-  
13 tracts, or other agreements, and may include funding to  
14 nationally recognized university-based research centers.

15 (2) The Secretary shall endeavor to avoid duplication  
16 or displacement of other research and development pro-  
17 grams and activities.

18 (d) COST SHARING.—(1) The Secretary shall require  
19 a commitment from non-Federal sources of at least 20  
20 percent of the cost of proposed programs under this sec-  
21 tion.

22 (2) The Secretary may reduce or eliminate the cost  
23 sharing requirement under paragraph (1)—

24 (A) if the Secretary determines that the activity  
25 is of a basic or fundamental nature which is vital to

1 the success of the program and unlikely to occur in  
2 a timely manner without reduction or elimination of  
3 the cost-sharing requirement; or

4 (B) for technical analyses, outreach programs,  
5 and other activities including educational programs  
6 under section 5027 of this subtitle that the Sec-  
7 retary does not expect to result in a marketable  
8 product.

9 **SEC. 5025. DEPLOYMENT.**

10 (a) DEPLOYMENT PROGRAM.—In partnership with  
11 the private sector, the Secretary shall conduct a program  
12 to facilitate the deployment of—

13 (1) hydrogen energy and energy infrastructure;

14 (2) fuel cells;

15 (3) advanced vehicle technologies;

16 (4) clean fuels in addition to hydrogen; and

17 (5) codes, standards, and safety protocols.

18 (b) PROGRAM GOALS.—(1) For automakers, the  
19 goals of the program are—

20 (A) to enable a decision by automakers no later  
21 than year 2015 to offer safe, affordable, and tech-  
22 nically viable hydrogen fuel cell vehicles into com-  
23 merce; and

1 (B) to enable production and delivery to, and  
2 acceptance by, consumers of model year 2020 hydro-  
3 gen fuel cell and other vehicles that will have—

4 (i) a range of at least 300 miles;

5 (ii) improved performance and ease of driv-  
6 ing;

7 (iii) met all light duty safety regulations  
8 created under section 30111 of title 49, United  
9 States Code; and

10 (iv) when compared to light duty vehicles  
11 in model year 2003—

12 (I) a fuel economy that is two and one  
13 half times the equivalent fuel economy of  
14 these vehicles under the Motor Vehicle In-  
15 formation and Cost Savings Act, or about  
16 70 miles per gallon; and

17 (II) near zero emissions of air pollut-  
18 ants regulated under the Clean Air Act.

19 (2) For hydrogen energy and energy infrastructure  
20 the goals of the program include, but are not limited to,  
21 a commitment not later than 2015 that will enable the  
22 deployment by 2020 of infrastructure to provide—

23 (A) safe, convenient, and affordable refueling;

24 (B) widespread availability of hydrogen from  
25 domestic energy sources through—

1 (i) production, including consideration of  
2 cost-effective production from domestic energy  
3 sources;

4 (ii) delivery, including transmission by  
5 pipeline and other distribution methods, for hy-  
6 drogen in its gaseous, liquid, and solid states;  
7 and

8 (iii) storage, including storage in surface  
9 transportation vehicles;

10 (C) hydrogen for fuel cells, internal combustion  
11 engines, and other energy conversion devices for  
12 portable, stationary, and transportation applications;  
13 and

14 (D) other technologies consistent with the De-  
15 partment's plan.

16 (c) FUEL CELLS.—The program for fuel cells and  
17 their portable, stationary, and transportation applications  
18 may include but is not limited to—

19 (1) a safe, economical, and environmentally  
20 sound hydrogen fuel cell;

21 (2) a fuel cell for light duty and other vehicles;  
22 and

23 (3) other technologies consistent with the De-  
24 partment's plan.

1 (d) **ADVANCED VEHICLE TECHNOLOGIES.**—The pro-  
2 gram for advanced vehicle technologies may include, but  
3 is not limited to—

4 (1) advanced combustion;

5 (2) materials;

6 (3) energy storage;

7 (4) control systems; and

8 (5) other technologies consistent with the De-  
9 partment's plan.

10 (e) **FEDERAL FUNDING.**—The Secretary shall carry  
11 out the program and activities under this section con-  
12 sistent with laws and regulations governing awards of fi-  
13 nancial assistance, contracts or other agreements, and  
14 may include funding to nationally recognized university-  
15 based research centers. The Secretary shall endeavor to  
16 avoid duplication or displacement of other programs.

17 (f) **COST SHARING.**—

18 (1) **IN GENERAL.**—The Secretary shall require  
19 a commitment from non-Federal sources of at least  
20 50 percent of the costs directly relating to a dem-  
21 onstration under this section.

22 (2) **REDUCTION.**—The Secretary may reduce  
23 the non-Federal requirement under paragraph (1) if  
24 the Secretary determines that—

1 (A) the reduction is appropriate consid-  
2 ering the technological risks involved; and

3 (B) the terms and conditions are con-  
4 sistent with the Agreement on Subsidies and  
5 Countervailing Measures.

6 (3) COOPERATIVE AGREEMENTS WITH GOV-  
7 ERNMENTS.—The Secretary may enter into coopera-  
8 tive and cost sharing agreements with Federal,  
9 State, or local governments to deploy vehicles, vehi-  
10 cle systems, and refueling infrastructure using hy-  
11 drogen, fuel cells, or other advanced technologies in  
12 government facilities or fleet transportation systems.

13 **SEC. 5026. ASSESSMENT AND TRANSFER.**

14 (a) PROGRAM.—The Secretary may conduct a pro-  
15 gram to transfer technology to the private sector under  
16 this subtitle.

17 (b) DISCLOSURE.—The Secretary may protect from  
18 disclosure, for up to 5 years after the information was de-  
19 veloped, any information developed pursuant to a cost  
20 shared transaction, or subagreement thereunder, entered  
21 into under this subtitle to advance the goals of the pro-  
22 grams, which developed information is of a character that  
23 it would be protected from disclosure under section  
24 552(b)(4) of title 5, United States Code, if this developed



1 information had been obtained from a person other than  
2 a Federal agency.

3 **SEC. 5027. INTERAGENCY TASK FORCE.**

4 (a) ESTABLISHMENT.—Not later than 120 days after  
5 the date of enactment of this Act, the President shall es-  
6 tablish an interagency task force chaired by the Secretary  
7 or his designee with representatives from each of the fol-  
8 lowing:

9 (1) The Office of Science and Technology Pol-  
10 icy within the Executive Office of the President.

11 (2) The Department of Transportation.

12 (3) The Department of Defense.

13 (4) The Department of Commerce (including  
14 the National Institute of Standards and Tech-  
15 nology).

16 (5) The Environmental Protection Agency.

17 (6) The National Aeronautics and Space Ad-  
18 ministration.

19 (7) Other Federal agencies as the Secretary de-  
20 termines appropriate.

21 (b) DUTIES OF THE INTERAGENCY TASK FORCE.—

22 (1) PLANNING.—The task force shall coordinate  
23 the implementation of the interagency plan in sec-  
24 tion 5023(a), and work towards deployment of—

1           (A) a safe, economical, and environ-  
2           mentally sound fuel infrastructure, including an  
3           infrastructure that supports buses and other  
4           fleet transportation;

5           (B) fuel cells in government and other ap-  
6           plications, including portable, stationary, and  
7           transportation applications; and

8           (C) distributed power generation, including  
9           the generation of combined heat, power, and  
10          clean fuels including hydrogen.

11          (2) INFORMATION EXCHANGE.—(A) The inter-  
12          agency task force shall coordinate interagency pro-  
13          grams and activities including the exchange of infor-  
14          mation.

15          (B) The heads of all agencies, including those  
16          whose agencies are not represented on the inter-  
17          agency task force, shall cooperate with and furnish  
18          information to the interagency task force, the Advi-  
19          sory Committee, and the Department.

20          (C) The information exchange may consist of  
21          workshops, publications, conferences, and a database  
22          for use by the public and private sectors. The inter-  
23          agency task force is expected to—

1 (i) foster the exchange of generic, non-  
2 proprietary information and technology among  
3 industry, academia, and government;

4 (ii) update the inventory and assessment of  
5 hydrogen, fuel cells, and other advanced tech-  
6 nologies, including their commercial capability  
7 for the economic and environmentally safe pro-  
8 duction, distribution, delivery, storage, and use  
9 of clean fuels including hydrogen;

10 (iii) integrate technical and other informa-  
11 tion made available as a result of the programs  
12 and activities under this subtitle;

13 (iv) promote the marketplace introduction  
14 of infrastructure for hydrogen and other clean  
15 fuel vehicles; and

16 (v) conduct an education program to pro-  
17 vide FreedomCAR and hydrogen fuel informa-  
18 tion to potential end-users.

19 **SEC. 5028. ADVISORY COMMITTEE.**

20 (a) ESTABLISHMENT.—The Hydrogen Technical and  
21 Fuel Cell Advisory Committee is established to advise the  
22 Secretary on the programs and activities under this sub-  
23 title.

24 (b) MEMBERSHIP.—

1           (1) MEMBERS.—The Advisory Committee is  
2           comprised of not fewer than 12 nor more than 25  
3           members. These members shall be appointed by the  
4           Secretary to represent domestic industry, academia,  
5           professional societies, government agencies, and fi-  
6           nancial, environmental, and other appropriate orga-  
7           nizations based on the Department’s assessment of  
8           the technical and other qualifications of committee  
9           members and the needs of the Advisory Committee.

10          (2) TERMS.—The term of a member of the Ad-  
11          visory Committee shall not be more than 3 years.  
12          The Secretary may appoint members of the Advisory  
13          Committee in a manner that allows the terms of the  
14          members serving at any time to expire at spaced in-  
15          tervals so as to ensure continuity in the functioning  
16          of the Advisory Committee. A member of the Advi-  
17          sory Committee whose term is expiring may be re-  
18          appointed.

19          (3) CHAIRPERSON.—The Advisory Committee  
20          shall have a chairperson, who is elected by the mem-  
21          bers from among their number.

22          (c) REVIEW.—The Advisory Committee shall review  
23          and make recommendations to the Secretary on—

24                 (1) the implementation of programs and activi-  
25                 ties under this subtitle;

1           (2) the safety, economical, and environmental  
2           consequences of technologies for the production, dis-  
3           tribution, delivery, storage, or use of hydrogen en-  
4           ergy and fuel cells; and

5           (3) the interagency coordination plan under sec-  
6           tion 5023(a) of this Act.

7           (d) RESPONSE TO RECOMMENDATIONS.—The Sec-  
8           retary shall consider, but need not adopt, any rec-  
9           ommendations of the Advisory Committee under sub-  
10          section (c).

11          (e) ADVISORY COMMITTEE SUPPORT.—The Sec-  
12          retary shall provide resources necessary in the judgment  
13          of the Secretary for the Advisory Committee to carry out  
14          its responsibilities under this subtitle.

15          **SEC. 5029. AUTHORIZATION OF APPROPRIATIONS.**

16          There are authorized to be appropriated to carry out  
17          the purposes of this subtitle including programs for light  
18          duty vehicles, in addition to any amounts made available  
19          for these purposes under other Acts—

20                 (1) \$273,500,000 for fiscal year 2004;

21                 (2) \$325,000,000 for fiscal year 2005;

22                 (3) \$375,000,000 for fiscal year 2006;

23                 (4) \$400,000,000 for fiscal year 2007; and

24                 (5) \$425,000,000 for fiscal year 2008.

1 **SEC. 5030. FUEL CELL PROGRAM AT NATIONAL PARKS.**

2       The Secretary of Energy, in cooperation with the Sec-  
3 retary of Interior and the National Park Service, is au-  
4 thorized to establish a program to provide matching funds  
5 to assist in the deployment of fuel cells at one or more  
6 prominent National Parks. The Secretary of Energy shall  
7 transmit to Congress within 1 year, and annually there-  
8 after, a report describing any activities taken pursuant to  
9 such program. The report shall address whether activities  
10 taken pursuant to such program reduce the environmental  
11 impacts of energy use at National Parks. There are au-  
12 thorized to be appropriated \$2,000,000 for each of fiscal  
13 years 2004 through 2010 to carry out the purposes of this  
14 section.

15 **SEC. 5030A. ADVANCED POWER SYSTEM TECHNOLOGY IN-**  
16 **CENTIVE PROGRAM.**

17       (a) PROGRAM.—The Secretary of Energy is author-  
18 ized to establish an Advanced Power System Technology  
19 Incentive Program to support the deployment of certain  
20 advanced power system technologies and to improve and  
21 protect certain critical governmental, industrial, and com-  
22 mercial processes. Funds provided under this section shall  
23 be used by the Secretary to make incentive payments to  
24 eligible owners or operators of advanced power system  
25 technologies to increase power generation through en-  
26 hanced operational, economic, and environmental perform-

1 ance. Payments under this section may only be made upon  
2 receipt by the Secretary of an incentive payment applica-  
3 tion establishing an applicant as either—

4 (1) a qualifying advanced power system tech-  
5 nology facility; or

6 (2) a qualifying security and assured power fa-  
7 cility.

8 (b) INCENTIVES.—Subject to availability of funds, a  
9 payment of 1.8 cents per kilowatt-hour shall be paid to  
10 the owner or operator of a qualifying advanced power sys-  
11 tem technology facility under this section for electricity  
12 generated at such facility. An additional 0.7 cents per kilo-  
13 watt-hour shall be paid to the owner or operator of a quali-  
14 fying security and assured power facility for electricity  
15 generated at such facility. Any facility qualifying under  
16 this section shall be eligible for an incentive payment for  
17 up to, but not more than, the first 10,000,000 kilowatt-  
18 hours produced in any fiscal year.

19 (c) ELIGIBILITY.—For purposes of this section—

20 (1) the term “qualifying advanced power system  
21 technology facility” means a facility using an ad-  
22 vanced fuel cell, turbine, or hybrid power system or  
23 power storage system to generate or store electric  
24 energy; and

1           (2) the term “qualifying security and assured  
2           power facility” means a qualifying advanced power  
3           system technology facility determined by the Sec-  
4           retary of Energy, in consultation with the Secretary  
5           of Homeland Security, to be in critical need of se-  
6           cure, reliable, rapidly available, high-quality power  
7           for critical governmental, industrial, or commercial  
8           applications.

9           (d) AUTHORIZATION.—There are authorized to be ap-  
10          propriated to the Secretary of Energy for the purposes  
11          of this section, \$10,000,000 for each of the fiscal years  
12          2004 through 2010.

## 13           **Subtitle C—Clean School Buses**

### 14          **SEC. 5031. ESTABLISHMENT OF PILOT PROGRAM.**

15          (a) ESTABLISHMENT.—The Secretary of Energy, in  
16          consultation with the Secretary of Transportation and the  
17          Administrator of the Environmental Protection Agency,  
18          shall establish a pilot program for awarding grants on a  
19          competitive basis to eligible entities for the acquisition of  
20          alternative fuel school buses and ultra-low sulfur diesel  
21          school buses.

22          (b) REQUIREMENTS.—Not later than 3 months after  
23          the date of the enactment of this Act, the Secretary shall  
24          establish and publish in the Federal register grant require-  
25          ments on eligibility for assistance, and on implementation



1 of the program established under subsection (a), including  
2 certification requirements to ensure compliance with this  
3 subtitle.

4 (c) SOLICITATION.—Not later than 6 months after  
5 the date of the enactment of this Act, the Secretary shall  
6 solicit proposals for grants under this section.

7 (d) ELIGIBLE RECIPIENTS.—A grant shall be award-  
8 ed under this section only—

9 (1) to a local or State governmental entity re-  
10 sponsible for providing school bus service to one or  
11 more public school systems or responsible for the  
12 purchase of school buses; or

13 (2) to a contracting entity that provides school  
14 bus service to one or more public school systems, if  
15 the grant application is submitted jointly with the  
16 school system or systems which the buses will serve.

17 (e) TYPES OF GRANTS.—

18 (1) IN GENERAL.—Grants under this section  
19 shall promote the conservation of energy and im-  
20 provement of public health and the environment by  
21 facilitating the acquisition of alternative fuel school  
22 buses and ultra-low sulfur diesel school buses in lieu  
23 of buses manufactured before model year 1977 and  
24 diesel-powered buses manufactured before model  
25 year 1991.

1           (2) NO ECONOMIC BENEFIT.—Other than the  
2 receipt of the grant, a recipient of a grant under this  
3 section may not receive any economic benefit in con-  
4 nection with the receipt of the grant.

5           (3) PRIORITY OF GRANT APPLICATIONS.—The  
6 Secretary shall give priority to awarding grants to  
7 applicants who will utilize grants to replace buses  
8 manufactured before model year 1977.

9           (f) CONDITIONS OF GRANT.—A grant provided under  
10 this section shall include the following conditions:

11           (1) All buses acquired with funds provided  
12 under the grant shall be operated as part of the  
13 school bus fleet for which the grant was made for a  
14 minimum of 5 years.

15           (2) Funds provided under the grant may only  
16 be used—

17           (A) to pay the cost, except as provided in  
18 paragraph (3), of new alternative fuel school  
19 buses or ultra-low sulfur diesel school buses, in-  
20 cluding State taxes and contract fees; and

21           (B) to provide—

22           (i) up to 10 percent of the price of the  
23 alternative fuel buses acquired, for nec-  
24 essary alternative fuel infrastructure if the

1 infrastructure will only be available to the  
2 grant recipient; and

3 (ii) up to 15 percent of the price of  
4 the alternative fuel buses acquired, for nec-  
5 essary alternative fuel infrastructure if the  
6 infrastructure will be available to the grant  
7 recipient and to other bus fleets.

8 (3) The grant recipient shall be required to pro-  
9 vide at least the lesser of 15 percent of the total cost  
10 of each bus received or \$15,000 per bus.

11 (4) In the case of a grant recipient receiving a  
12 grant to demonstrate ultra-low sulfur diesel school  
13 buses, the grant recipient shall be required to pro-  
14 vide documentation to the satisfaction of the Sec-  
15 retary that diesel fuel containing sulfur at not more  
16 than 15 parts per million is available for carrying  
17 out the purposes of the grant, and a commitment by  
18 the applicant to use such fuel in carrying out the  
19 purposes of the grant.

20 (g) BUSES.—Funding under a grant made under this  
21 section may be used to facilitate the use only of new alter-  
22 native fuel school buses or ultra-low sulfur diesel school  
23 buses—

24 (1) with a gross vehicle weight of greater than  
25 14,000 pounds;

1 (2) that are powered by a heavy duty engine;

2 (3) that, in the case of alternative fuel school  
3 buses, emit not more than—

4 (A) for buses manufactured in model year  
5 2002, 2.5 grams per brake horsepower-hour of  
6 nonmethane hydrocarbons and oxides of nitro-  
7 gen and .01 grams per brake horsepower-hour  
8 of particulate matter; and

9 (B) for buses manufactured in model years  
10 2003 through 2006, 1.8 grams per brake horse-  
11 power-hour of nonmethane hydrocarbons and  
12 oxides of nitrogen and .01 grams per brake  
13 horsepower-hour of particulate matter; and

14 (4) that, in the case of ultra-low sulfur diesel  
15 school buses, emit not more than—

16 (A) for buses manufactured in model years  
17 2002 through 2003, 3.0 grams per brake horse-  
18 power-hour of oxides of nitrogen and .01 grams  
19 per brake horsepower-hour of particulate mat-  
20 ter; and

21 (B) for buses manufactured in model years  
22 2004 through 2006, 2.5 grams per brake horse-  
23 power-hour of nonmethane hydrocarbons and  
24 oxides of nitrogen and .01 grams per brake  
25 horsepower-hour of particulate matter,

1       except that under no circumstances shall buses be  
2       acquired under this section that emit nonmethane  
3       hydrocarbons, oxides of nitrogen, or particulate mat-  
4       ter at a rate greater than the best performing tech-  
5       nology of the same class of ultra-low sulfur diesel  
6       school buses commercially available at the time the  
7       grant is made.

8       (h) DEPLOYMENT AND DISTRIBUTION.—The Sec-  
9       retary shall seek to the maximum extent practicable to  
10      achieve nationwide deployment of alternative fuel school  
11      buses and ultra-low sulfur diesel school buses through the  
12      program under this section, and shall ensure a broad geo-  
13      graphic distribution of grant awards, with a goal of no  
14      State receiving more than 10 percent of the grant funding  
15      made available under this section for a fiscal year.

16      (i) LIMIT ON FUNDING.—The Secretary shall provide  
17      not less than 20 percent and not more than 25 percent  
18      of the grant funding made available under this section for  
19      any fiscal year for the acquisition of ultra-low sulfur diesel  
20      school buses.

21      (j) REDUCTION OF SCHOOL BUS IDLING.—Each  
22      local educational agency (as defined in section 9101 of the  
23      Elementary and Secondary Education Act of 1965 (20  
24      U.S.C. 7801)) that receives Federal funds under the Ele-  
25      mentary and Secondary Education Act of 1965 (20 U.S.C.

1 6301 et seq.) is encouraged to develop a policy, consistent  
2 with the health, safety, and welfare of students and the  
3 proper operation and maintenance of school buses, to re-  
4 duce the incidence of unnecessary school bus idling at  
5 schools when picking up and unloading students.

6 (k) ANNUAL REPORT.—Not later than January 31  
7 of each year, the Secretary of Energy shall provide a re-  
8 port evaluating implementation of the program under this  
9 section to the Congress. Such report shall include the total  
10 number of grant applications received, the number and  
11 types of alternative fuel school buses and ultra-low sulfur  
12 diesel school buses requested in grant applications, a list  
13 of grants awarded and the criteria used to select the grant  
14 recipients, certified engine emission levels of all buses pur-  
15 chased under the program, and any other information the  
16 Secretary considers appropriate.

17 (l) DEFINITIONS.—For purposes of this section—

18 (1) the term “alternative fuel school bus”  
19 means a school bus powered substantially by elec-  
20 tricity (including electricity supplied by a fuel cell),  
21 or by liquefied natural gas, compressed natural gas,  
22 liquefied petroleum gas, hydrogen, propane, or meth-  
23 anol or ethanol at no less than 85 percent by vol-  
24 ume;

1           (2) the term “idling” means operating an en-  
2           engine while remaining stationary for more than ap-  
3           proximately 3 minutes, except that such term does  
4           not apply to routine stoppages associated with traf-  
5           fic movement or congestion; and

6           (3) the term “ultra-low sulfur diesel school  
7           bus” means a school bus powered by diesel fuel  
8           which contains sulfur at not more than 15 parts per  
9           million.

10 **SEC. 5032. FUEL CELL BUS DEVELOPMENT AND DEM-**  
11 **ONSTRATION PROGRAM.**

12           (a) ESTABLISHMENT OF PROGRAM.—The Secretary  
13 shall establish a program for entering into cooperative  
14 agreements with private sector fuel cell bus developers for  
15 the acquisition of fuel cell-powered school buses, and sub-  
16 sequently with not less than 2 units of local government  
17 using natural gas-powered school buses and such private  
18 sector fuel cell bus developers to facilitate the use of fuel  
19 cell-powered school buses.

20           (b) COST SHARING.—The non-Federal contribution  
21 for activities funded under this section shall be not less  
22 than 20 percent for fuel infrastructure development activi-  
23 ties.

24           (c) FUNDING.—No more than \$25,000,000 of the  
25 amounts authorized under section 5033 may be used for

1 carrying out this section for the period encompassing fis-  
2 cal years 2003 through 2006.

3 (d) REPORTS TO CONGRESS.—Not later than 3 years  
4 after the date of the enactment of this Act, and not later  
5 than October 1, 2006, the Secretary shall transmit to the  
6 Congress a report that—

7 (1) evaluates the process of converting natural  
8 gas infrastructure to accommodate fuel cell-powered  
9 school buses; and

10 (2) assesses the overall impact on energy con-  
11 servation, public health, and the environment as a  
12 result of this program under this section.

13 **SEC. 5033. AUTHORIZATION OF APPROPRIATIONS.**

14 There are authorized to be appropriated to the Sec-  
15 retary for carrying out this subtitle, to remain available  
16 until expended—

17 (1) \$60,000,000 for fiscal year 2004;

18 (2) \$70,000,000 for fiscal year 2005; and

19 (3) \$80,000,000 for fiscal year 2006.

20 **Subtitle D—Advanced Vehicles**

21 **SEC. 5041. DEFINITIONS.**

22 For the purposes of this subtitle, the following defini-  
23 tions apply:

24 (1) ALTERNATIVE FUELED VEHICLE.—The  
25 term “alternative fueled vehicle” means a vehicle



1 propelled solely on an alternative fuel as defined in  
2 section 301 of the Energy Policy Act (42 U.S.C.  
3 13211), except the term does not include any vehicle  
4 that the Secretary determines, by rule, does not  
5 yield substantial environmental benefits over a vehi-  
6 cle operating solely on gasoline or diesel derived  
7 from fossil fuels.

8 (2) FUEL CELL VEHICLE.—The term “fuel cell  
9 vehicle” means a vehicle propelled by one or more  
10 cells that convert chemical energy directly into elec-  
11 tricity by combining oxygen with hydrogen fuel  
12 which is stored on board the vehicle in any form and  
13 may or may not require reformation prior to use.

14 (3) HYBRID VEHICLE.—The term “hybrid vehi-  
15 cle” means a medium or heavy duty vehicle propelled  
16 by an internal combustion engine using any combus-  
17 tible fuel and an onboard rechargeable battery stor-  
18 age system.

19 (4) NEIGHBORHOOD ELECTRIC VEHICLE.—The  
20 term “neighborhood electric vehicle” means a motor  
21 vehicle that qualifies as both—

22 (A) a low-speed vehicle, as such term is de-  
23 fined in section 571.3(b) of title 49, Code of  
24 Federal Regulations; and

1 (B) a zero-emission vehicle, as such term is  
2 defined in section 86.1702–99 of title 40, Code  
3 of Federal Regulations.

4 (5) PILOT PROGRAM.—The term “pilot pro-  
5 gram” means the competitive grant program estab-  
6 lished under section 5042.

7 (6) ULTRA-LOW SULFUR DIESEL VEHICLE.—  
8 The term “ultra-low sulfur diesel vehicle” means a  
9 vehicle manufactured in model years 2002 through  
10 2006 powered by a heavy-duty diesel engine that—

11 (A) is fueled by diesel fuel which contains  
12 sulfur at not more than 15 parts per million;  
13 and

14 (B) emits not more than the lesser of—

15 (i) for vehicles manufactured in—

16 (I) model years 2002 and 2003,  
17 3.0 grams per brake horsepower-hour  
18 of oxides of nitrogen and .01 grams  
19 per brake horsepower-hour of particu-  
20 late matter; and

21 (II) model years 2004 through  
22 2006, 2.5 grams per brake horse-  
23 power-hour of nonmethane hydro-  
24 carbons and oxides of nitrogen and

1 .01 grams per brake horsepower-hour  
2 of particulate matter; or

3 (ii) the emissions of nonmethane hy-  
4 drocarbons, oxides of nitrogen, and partic-  
5 ulate matter of the best performing tech-  
6 nology of ultra-low sulfur diesel vehicles of  
7 the same class and application that are  
8 commercially available.

9 **SEC. 5042. PILOT PROGRAM.**

10 (a) ESTABLISHMENT.—The Secretary shall establish  
11 a competitive grant pilot program, to be administered  
12 through the Clean Cities Program of the Department of  
13 Energy, to provide not more than 10 geographically dis-  
14 persed project grants to State governments, local govern-  
15 ments, or metropolitan transportation authorities to carry  
16 out a project or projects for the purposes described in sub-  
17 section (b).

18 (b) GRANT PURPOSES.—Grants under this section  
19 may be used for the following purposes:

20 (1) The acquisition of alternative fueled vehicles  
21 or fuel cell vehicles, including—

22 (A) passenger vehicles including neighbor-  
23 hood electric vehicles; and

24 (B) motorized two-wheel bicycles, scooters,  
25 or other vehicles for use by law enforcement

1 personnel or other State or local government or  
2 metropolitan transportation authority employ-  
3 ees.

4 (2) The acquisition of alternative fueled vehi-  
5 cles, hybrid vehicles, or fuel cell vehicles, including—

6 (A) buses used for public transportation or  
7 transportation to and from schools;

8 (B) delivery vehicles for goods or services;  
9 and

10 (C) ground support vehicles at public air-  
11 ports, including vehicles to carry baggage or  
12 push airplanes away from terminal gates.

13 (3) The acquisition of ultra-low sulfur diesel ve-  
14 hicles.

15 (4) Infrastructure necessary to directly support  
16 an alternative fueled vehicle, fuel cell vehicle, or hy-  
17 brid vehicle project funded by the grant, including  
18 fueling and other support equipment.

19 (5) Operation and maintenance of vehicles, in-  
20 frastructure, and equipment acquired as part of a  
21 project funded by the grant.

22 (c) APPLICATIONS.—

23 (1) REQUIREMENTS.—The Secretary shall issue  
24 requirements for applying for grants under the pilot  
25 program. At a minimum, the Secretary shall require

1 that applications be submitted by the head of a  
2 State or local government or a metropolitan trans-  
3 portation authority, or any combination thereof, and  
4 a registered participant in the Clean Cities Program  
5 of the Department of Energy, and shall include—

6 (A) a description of the projects proposed  
7 in the application, including how they meet the  
8 requirements of this subtitle;

9 (B) an estimate of the ridership or degree  
10 of use of the projects proposed in the applica-  
11 tion;

12 (C) an estimate of the air pollution emis-  
13 sions reduced and fossil fuel displaced as a re-  
14 sult of the projects proposed in the application,  
15 and a plan to collect and disseminate environ-  
16 mental data, related to the projects to be fund-  
17 ed under the grant, over the life of the projects;

18 (D) a description of how the projects pro-  
19 posed in the application will be sustainable  
20 without Federal assistance after the completion  
21 of the term of the grant;

22 (E) a complete description of the costs of  
23 each project proposed in the application, includ-  
24 ing acquisition, construction, operation, and

1 maintenance costs over the expected life of the  
2 project;

3 (F) a description of which costs of the  
4 projects proposed in the application will be sup-  
5 ported by Federal assistance under this subtitle;  
6 and

7 (G) documentation to the satisfaction of  
8 the Secretary that diesel fuel containing sulfur  
9 at not more than 15 parts per million is avail-  
10 able for carrying out the projects, and a com-  
11 mitment by the applicant to use such fuel in  
12 carrying out the projects.

13 (2) PARTNERS.—An applicant under paragraph  
14 (1) may carry out projects under the pilot program  
15 in partnership with public and private entities.

16 (d) SELECTION CRITERIA.—In evaluating applica-  
17 tions under the pilot program, the Secretary shall consider  
18 each applicant's previous experience with similar projects  
19 and shall give priority consideration to applications that—

20 (1) are most likely to maximize protection of  
21 the environment;

22 (2) demonstrate the greatest commitment on  
23 the part of the applicant to ensure funding for the  
24 proposed projects and the greatest likelihood that  
25 each project proposed in the application will be

1 maintained or expanded after Federal assistance  
2 under this subtitle is completed; and

3 (3) exceed the minimum requirements of sub-  
4 section (c)(1)(A).

5 (e) PILOT PROJECT REQUIREMENTS.—

6 (1) MAXIMUM AMOUNT.—The Secretary shall  
7 not provide more than \$20,000,000 in Federal as-  
8 sistance under the pilot program to any applicant.

9 (2) COST SHARING.—The Secretary shall not  
10 provide more than 50 percent of the cost, incurred  
11 during the period of the grant, of any project under  
12 the pilot program.

13 (3) MAXIMUM PERIOD OF GRANTS.—The Sec-  
14 retary shall not fund any applicant under the pilot  
15 program for more than 5 years.

16 (4) DEPLOYMENT AND DISTRIBUTION.—The  
17 Secretary shall seek to the maximum extent prac-  
18 ticable to ensure a broad geographic distribution of  
19 project sites.

20 (5) TRANSFER OF INFORMATION AND KNOWL-  
21 EDGE.—The Secretary shall establish mechanisms to  
22 ensure that the information and knowledge gained  
23 by participants in the pilot program are transferred  
24 among the pilot program participants and to other

1 interested parties, including other applicants that  
2 submitted applications.

3 (f) SCHEDULE.—

4 (1) PUBLICATION.—Not later than 3 months  
5 after the date of the enactment of this Act, the Sec-  
6 retary shall publish in the Federal Register, Com-  
7 merce Business Daily, and elsewhere as appropriate,  
8 a request for applications to undertake projects  
9 under the pilot program. Applications shall be due  
10 within 6 months of the publication of the notice.

11 (2) SELECTION.—Not later than 6 months after  
12 the date by which applications for grants are due,  
13 the Secretary shall select by competitive, peer review  
14 all applications for projects to be awarded a grant  
15 under the pilot program.

16 (g) LIMIT ON FUNDING.—The Secretary shall pro-  
17 vide not less than 20 percent and not more than 25 per-  
18 cent of the grant funding made available under this sec-  
19 tion for the acquisition of ultra-low sulfur diesel vehicles.

20 **SEC. 5043. REPORTS TO CONGRESS.**

21 (a) INITIAL REPORT.—Not later than 2 months after  
22 the date grants are awarded under this subtitle, the Sec-  
23 retary shall transmit to the Congress a report con-  
24 taining—



1           (1) an identification of the grant recipients and  
2           a description of the projects to be funded;

3           (2) an identification of other applicants that  
4           submitted applications for the pilot program; and

5           (3) a description of the mechanisms used by the  
6           Secretary to ensure that the information and knowl-  
7           edge gained by participants in the pilot program are  
8           transferred among the pilot program participants  
9           and to other interested parties, including other ap-  
10          plicants that submitted applications.

11          (b) EVALUATION.—Not later than 3 years after the  
12          date of the enactment of this Act, and annually thereafter  
13          until the pilot program ends, the Secretary shall transmit  
14          to the Congress a report containing an evaluation of the  
15          effectiveness of the pilot program, including an assessment  
16          of the benefits to the environment derived from the  
17          projects included in the pilot program as well as an esti-  
18          mate of the potential benefits to the environment to be  
19          derived from widespread application of alternative fueled  
20          vehicles and ultra-low sulfur diesel vehicles.

21          **SEC. 5044. AUTHORIZATION OF APPROPRIATIONS.**

22          There are authorized to be appropriated to the Sec-  
23          retary \$200,000,000 to carry out this subtitle, to remain  
24          available until expended.

1       **Subtitle E—Hydrogen Fuel Cell**  
2                   **Heavy-Duty Vehicles**

3       **SEC. 5051. DEFINITION.**

4           For the purposes of this subtitle, the term “advanced  
5 vehicle technologies program” means the program created  
6 pursuant to section 5506 of title 49, United States Code.

7       **SEC. 5052. FINDINGS.**

8           The Congress makes the following findings:

9                   (1) The Department of Energy and the Depart-  
10                   ment of Transportation jointly developed the consor-  
11                   tium-based advanced vehicle technologies program to  
12                   develop energy efficient and clean heavy-duty vehi-  
13                   cles in 1998.

14                   (2) The majority of clean fuel vehicles in oper-  
15                   ation today are transit buses.

16                   (3) Hydrogen fuel cell heavy-duty vehicle bus  
17                   deployments can most appropriately advance hydro-  
18                   gen fuel cell technology development due to central-  
19                   ized refueling, stable duty cycles, and fixed routes.

20                   (4) Hydrogen fuel cell heavy-duty vehicle bus  
21                   deployments are the most effective manner in which  
22                   to advance technology developments for public  
23                   awareness, consumption, and acceptance.

1 **SEC. 5053. HYDROGEN FUEL CELL BUSES.**

2 The Secretary of Energy, through the advanced vehi-  
3 cle technologies program, in coordination with the Sec-  
4 retary of Transportation, shall advance the development  
5 of fuel cell bus technologies by providing funding for 4  
6 demonstration sites that—

7 (1) have or will soon have hydrogen infrastruc-  
8 ture for fuel cell bus operation; and

9 (2) are operated by entities with experience in  
10 the development of fuel cell bus technologies,

11 to enable the widespread utilization of fuel cell buses. Such  
12 demonstrations shall address the reliability of fuel cell  
13 heavy-duty vehicles, expense, infrastructure, containment,  
14 storage, safety, training, and other issues.

15 **SEC. 5054. AUTHORIZATION OF APPROPRIATIONS.**

16 There are authorized to be appropriated to the Sec-  
17 retary of Energy \$10,000,000 for each of the fiscal years  
18 2004 through 2008 for carrying out this subtitle.

19 **Subtitle F—Miscellaneous**

20 **SEC. 5061. RAILROAD EFFICIENCY.**

21 (a) ESTABLISHMENT.—The Secretary shall, in con-  
22 junction with the Secretary of Transportation and the Ad-  
23 ministrator of the Environmental Protection Agency, es-  
24 tablish a public-private research partnership involving the  
25 Federal Government, the railroad industry, locomotive  
26 manufacturers and equipment suppliers, and the research

1 facility owned by the Federal Railroad Administration and  
2 operated by contract. The goal of the research partnership  
3 shall include developing and demonstrating locomotive  
4 technologies that increase fuel economy, reduce emissions,  
5 and lower costs.

6 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
7 are authorized to be appropriated to carry out the require-  
8 ments of this section \$25,000,000 for fiscal year 2004,  
9 \$30,000,000 for fiscal year 2005, and \$35,000,000 for fis-  
10 cal year 2006.

11 **SEC. 5062. MOBILE EMISSION REDUCTIONS TRADING AND**  
12 **CREDITING.**

13 Within 180 days after the date of enactment of this  
14 Act, the Administrator of the Environmental Protection  
15 Agency shall provide a report to the Congress on the Envi-  
16 ronmental Protection Agency's experience with the trading  
17 of mobile source emission reduction credits for use by own-  
18 ers and operators of stationary source emission sources  
19 to meet emission offset requirements within a nonattain-  
20 ment area. The report shall describe—

21 (1) projects approved by the Environmental  
22 Protection Agency that include the trading of mobile  
23 source emission reduction credits for use by sta-  
24 tionary sources in complying with offset require-  
25 ments, including project and stationary sources loca-

1 tion, volumes of emissions offset and traded, a de-  
2 scription of the sources of mobile emission reduction  
3 credits, and, if available, the cost of the credits;

4 (2) the significant issues identified by the Envi-  
5 ronmental Protection Agency in its consideration  
6 and approval of trading in such projects;

7 (3) the requirements for monitoring and assess-  
8 ing the air quality benefits of any approved project;

9 (4) the statutory authority upon which the En-  
10 vironmental Protection Agency has based approval  
11 of such projects;

12 (5) an evaluation of how the resolution of issues  
13 in approved projects could be utilized in other  
14 projects; and

15 (6) any other issues the Environmental Protec-  
16 tion Agency considers relevant to the trading and  
17 generation of mobile source emission reduction cred-  
18 its for use by stationary sources or for other pur-  
19 poses.

20 **SEC. 5063. IDLE REDUCTION TECHNOLOGIES.**

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

22 (1) IDLE REDUCTION TECHNOLOGY.—The term  
23 “idle reduction technology” means a device or sys-  
24 tem of devices utilized to reduce long-duration idling  
25 of a heavy-duty vehicle.

1           (2) HEAVY-DUTY VEHICLE.—The term “heavy-  
2           duty vehicle” means a vehicle that has a gross vehi-  
3           cle weight rating greater than 26,000 pounds and is  
4           powered by a diesel engine.

5           (3) LONG-DURATION IDLING.—The term “long-  
6           duration idling” means the operation of a main drive  
7           engine, for a period greater than 15 consecutive  
8           minutes, where the main drive engine is not engaged  
9           in gear. Such term does not apply to routine stop-  
10          pages associated with traffic movement or conges-  
11          tion.

12          (b) STUDIES OF THE BENEFITS OF IDLE REDUCTION  
13          TECHNOLOGIES.—

14               (1) POTENTIAL FUEL SAVINGS.—Not later than  
15               90 days after the date of enactment of this section,  
16               the Secretary of Energy shall, in consultation with  
17               the Secretary of Transportation, commence a study  
18               to analyze the potential fuel savings resulting from  
19               use of idle reduction technologies.

20               (2) RECOGNITION OF BENEFITS OF ADVANCED  
21               IDLE REDUCTION TECHNOLOGIES.—Within 90 days  
22               after the date of enactment of this section, the Ad-  
23               ministrators of the Environmental Protection Agency  
24               is directed to commence a review of the Agency’s  
25               mobile source air emissions models used under the

1 Clean Air Act to determine whether such models ac-  
2 curately reflect the emissions resulting from long-du-  
3 ration idling of heavy-duty trucks and other vehicles  
4 and engines, and shall update those models as the  
5 Administrator deems appropriate. Additionally, with-  
6 in 90 days after the date of enactment of this sec-  
7 tion, the Administrator shall commence a review as  
8 to the appropriate emissions reductions credit that  
9 should be allotted under the Clean Air Act for the  
10 use of advanced idle reduction technologies, and  
11 whether such credits should be subject to an emis-  
12 sions trading system, and shall revise Agency regula-  
13 tions and guidance as the Administrator deems ap-  
14 propriate.

15 (3) IDLING TECHNOLOGIES.—Not later than  
16 180 days after the date of the enactment of this sec-  
17 tion, the Secretary of Energy, in consultation with  
18 the Secretary of Transportation and the Adminis-  
19 trator of the Environmental Protection Agency, shall  
20 commence a study to analyze where heavy duty and  
21 other vehicles stop for long duration idling.

22 (c) VEHICLE WEIGHT EXEMPTION.—Section 127(a)  
23 of title 23, United States Code, is amended by adding at  
24 the end the following: “In instances where an idle reduc-  
25 tion technology is installed onboard a motor vehicle, the

1 maximum gross vehicle weight limit and the axle weight  
2 limit for any motor vehicle equipped with an idling reduc-  
3 tion system may be increased by an amount necessary to  
4 compensate for the additional weight of the idling reduc-  
5 tion system, except that the weight limit increase shall be  
6 no greater than 400 pounds.”.

7 **SEC. 5064. STUDY OF AVIATION FUEL CONSERVATION AND**  
8 **EMISSIONS.**

9 The Administrator of the Federal Aviation Adminis-  
10 tration and the Administrator of the Environmental Pro-  
11 tection Agency shall jointly commence a study within 60  
12 days after the date of enactment of this Act to identify  
13 the impact of aircraft emissions on air quality in non-  
14 attainment areas and to identify ways to promote fuel con-  
15 servation measures for aviation, enhance fuel efficiency,  
16 and reduce emissions. As part of this study, the Adminis-  
17 trator of the Federal Aviation Administration and the Ad-  
18 ministrator of the Environmental Protection Agency shall  
19 focus on how air traffic management inefficiencies, such  
20 as aircraft idling at airports, result in unnecessary fuel  
21 burn and air emissions. Within 180 days after the com-  
22 mencement of the study, the Administrator of the Federal  
23 Aviation Administration and the Administrator of the En-  
24 vironmental Protection Agency shall submit a report to  
25 the Committees on Energy and Commerce and Transpor-



1 tation and Infrastructure of the House of Representatives  
2 and the Committees on Environment and Public Works  
3 and Commerce, Science, and Transportation of the Senate  
4 containing the results of the study and recommendations  
5 as to how unnecessary fuel use and emissions affecting  
6 air quality may be reduced, without impacting safety and  
7 security, increasing individual aircraft noise, and taking  
8 into account all aircraft emissions and their relative im-  
9 pact on human health.

10 **SEC. 5065. DIESEL FUELED VEHICLES.**

11 (a) DIESEL COMBUSTION AND AFTER TREATMENT  
12 TECHNOLOGIES.—The Secretary of Energy shall accel-  
13 erate efforts to improve diesel combustion and after-treat-  
14 ment technologies for use in diesel fueled motor vehicles.

15 (b) GOAL.—

16 (1) COMPLIANCE WITH TIER 2 EMISSION  
17 STANDARDS BY 2010.—The Secretary shall carry out  
18 subsection (a) with a view to developing and dem-  
19 onstrating diesel technology meeting tier 2 emission  
20 standards not later than 2010.

21 (2) TIER 2 EMISSION STANDARDS DEFINED.—

22 In this subsection, the term “tier 2 emission stand-  
23 ards” means the motor vehicle emission standards  
24 promulgated by the Administrator of the Environ-  
25 mental Protection Agency on February 10, 2000,

1 under sections 202 and 211 of the Clean Air Act to  
2 apply to passenger cars, light trucks, and larger pas-  
3 senger vehicles of model years after the 2003 vehicle  
4 model year.

5 **SEC. 5066. HYBRID VEHICLES.**

6 (a) IN GENERAL.—Notwithstanding section  
7 102(a)(1) of title 23, United States Code, a State may,  
8 for the purpose of promoting energy conservation, permit  
9 a hybrid vehicle which is either a passenger automobile  
10 or light duty truck with fewer than 2 occupants to operate  
11 in high occupancy vehicle lanes.

12 (b) DEFINITION.—In this section, the term “hybrid  
13 vehicle” means a motor vehicle which draws propulsion en-  
14 ergy from both—

15 (1) an internal combustion or heat engine using  
16 combustible fuel; and

17 (2) an onboard rechargeable energy storage sys-  
18 tem.

19 **SEC. 5067. WAIVERS OF ALTERNATIVE FUELED VEHICLE**  
20 **FUELING REQUIREMENT.**

21 Section 400AA(a)(3)(E) of the Energy Policy and  
22 Conservation Act (42 U.S.C. 6374(a)(3)(E)) is amended  
23 to read as follows:

24 “(E)(i) Dual fueled vehicles acquired pursuant to this  
25 section shall be operated on alternative fuels unless the

1 Secretary determines that an agency needs a waiver of  
2 such requirement for vehicles in the fleet of the agency  
3 in a particular geographic area where—

4           “(I) the alternative fuel otherwise required to  
5           be used in the vehicle is not reasonably available to  
6           retail purchasers of the fuel, as certified to the Sec-  
7           retary by the head of the agency; or

8           “(II) the cost of the alternative fuel otherwise  
9           required to be used in the vehicle is unreasonably  
10          more expensive compared to gasoline, as certified by  
11          the head of the agency.

12          “(ii) The Secretary shall monitor compliance with  
13 this subparagraph by all such fleets and shall report annu-  
14 ally to the Congress on the extent to which the require-  
15 ments of this subparagraph are being achieved. The report  
16 shall include information on annual reductions achieved  
17 of petroleum-based fuels and the problems, if any, encoun-  
18 tered in acquiring alternative fuels.”.

## 19           **TITLE VI—DOE PROGRAMS**

### 20   **SEC. 6001. PURPOSES.**

21          The purposes of this title are to—

22               (1) contribute to a national energy strategy  
23               through Department of Energy programs that pro-  
24               mote the production and conservation of energy in  
25               partnership with industry;

1           (2) protect and strengthen the Nation’s econ-  
2           omy, standard of living, and national security by re-  
3           ducing dependence on imported energy;

4           (3) meet future needs for energy services at the  
5           lowest total cost to the Nation, giving balanced and  
6           comprehensive consideration to technologies that im-  
7           prove the efficiency of energy end uses and that en-  
8           hance energy supply;

9           (4) reduce the environmental impacts of energy  
10          production, distribution, transportation, and use;

11          (5) help increase domestic production of energy,  
12          increase the availability of hydrocarbon reserves, and  
13          lower energy prices; and

14          (6) stimulate economic growth and enhance the  
15          ability of United States companies to compete in fu-  
16          ture markets for advanced energy technologies.

17 **SEC. 6002. DEFINITIONS.**

18          For purposes of this title:

19           (1) DEPARTMENT.—The term “Department”  
20           means the Department of Energy.

21           (2) DEPARTMENTAL MISSION.—The term “de-  
22           partmental mission” means any of the functions  
23           vested in the Secretary of Energy by the Depart-  
24           ment of Energy Organization Act (42 U.S.C. 7101  
25           et seq.) or other law.

1           (3) INSTITUTION OF HIGHER EDUCATION.—The  
2 term “institution of higher education” has the  
3 meaning given that term in section 101(a) of the  
4 Higher Education Act of 1965 (20 U.S.C. 1001(a)).

5           (4) JOINT VENTURE.—The term “joint ven-  
6 ture” has the meaning given that term under section  
7 2 of the National Cooperative Research and Produc-  
8 tion Act of 1993 (15 U.S.C. 4301).

9           (5) NATIONAL LABORATORY.—The term “Na-  
10 tional Laboratory” means any of the following lab-  
11 oratories owned by the Department:

12                   (A) Ames National Laboratory.

13                   (B) Argonne National Laboratory.

14                   (C) Brookhaven National Laboratory.

15                   (D) Fermi National Laboratory.

16                   (E) Idaho National Engineering and Envi-  
17 ronmental Laboratory.

18                   (F) Lawrence Berkeley National Labora-  
19 tory.

20                   (G) Lawrence Livermore National Labora-  
21 tory.

22                   (H) Los Alamos National Laboratory.

23                   (I) National Energy Technology Labora-  
24 tory.

1           (J) National Renewable Energy Labora-  
2           tory.

3           (K) Oak Ridge National Laboratory.

4           (L) Pacific Northwest National Labora-  
5           tory.

6           (M) Princeton Plasma Physics Laboratory.

7           (N) Sandia National Laboratories.

8           (O) Thomas Jefferson National Accel-  
9           erator Facility.

10          (6) NONMILITARY ENERGY LABORATORY.—The  
11          term “nonmilitary energy laboratory” means any of  
12          the following laboratories of the Department:

13               (A) Ames National Laboratory.

14               (B) Argonne National Laboratory.

15               (C) Brookhaven National Laboratory.

16               (D) Fermi National Laboratory.

17               (E) Lawrence Berkeley National Labora-  
18               tory.

19               (F) Oak Ridge National Laboratory.

20               (G) Pacific Northwest National Labora-  
21               tory.

22               (H) Princeton Plasma Physics Laboratory.

23               (I) Stanford Linear Accelerator Center.

24               (J) Thomas Jefferson National Accelerator  
25               Facility.

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

### 3           **Subtitle A—Energy Efficiency**

#### 4           **PART 1—AUTHORIZATION OF APPROPRIATIONS**

##### 5           **SEC. 6011. ENERGY EFFICIENCY.**

6           (a) IN GENERAL.—The following sums are author-  
7           ized to be appropriated to the Secretary for energy effi-  
8           ciency and conservation activities, including activities au-  
9           thorized under this subtitle:

10           (1) For fiscal year 2003, \$560,000,000.

11           (2) For fiscal year 2004, \$616,000,000.

12           (3) For fiscal year 2005, \$695,000,000.

13           (4) For fiscal year 2006, \$772,000,000.

14           (5) For fiscal year 2007, \$865,000,000.

15           (b) ALLOCATIONS.—From amounts authorized under  
16           subsection (a), the following sums are authorized:

17           (1) LIGHTING SYSTEMS.—For activities under  
18           section 6021, \$10,000,000 for fiscal year 2003 and  
19           \$50,000,000 for each of fiscal years 2004 through  
20           2007.

21           (2) SECONDARY ELECTRIC VEHICLE BATTERY  
22           USE PROGRAM.—For activities under section 6032—

23                   (A) for fiscal year 2003, \$1,000,000;

24                   (B) for fiscal year 2004, \$4,000,000;

25                   (C) for fiscal year 2005, \$7,000,000;

1 (D) for fiscal year 2006, \$7,000,000; and

2 (E) for fiscal year 2007, \$7,000,000.

3 (c) EXTENDED AUTHORIZATION.—There are author-  
4 ized to be appropriated to the Secretary for activities  
5 under section 6021, \$50,000,000 for each of fiscal years  
6 2008 through 2012.

7 (d) LIMITS ON USE OF FUNDS.—None of the funds  
8 authorized to be appropriated under this section may be  
9 used for—

10 (1) the promulgation and implementation of en-  
11 ergy efficiency regulations;

12 (2) the Weatherization Assistance Program  
13 under part A of title IV of the Energy Conservation  
14 and Production Act;

15 (3) the State Energy Program under part D of  
16 title III of the Energy Policy and Conservation Act;  
17 or

18 (4) the Federal Energy Management Program  
19 under part 3 of title V of the National Energy Con-  
20 servation Policy Act.

## 21 **PART 2—LIGHTING SYSTEMS**

### 22 **SEC. 6021. NEXT GENERATION LIGHTING INITIATIVE.**

23 (a) IN GENERAL.—The Secretary shall carry out a  
24 Next Generation Lighting Initiative in accordance with  
25 this section to support activities related to advanced solid-



1 state lighting technologies based on white light emitting  
2 diodes.

3 (b) OBJECTIVES.—The objectives of the initiative  
4 shall be—

5 (1) to develop, by 2012, advanced solid-state  
6 lighting technologies based on white light emitting  
7 diodes that, compared to incandescent and fluores-  
8 cent lighting technologies, are—

9 (A) longer lasting;

10 (B) more energy-efficient; and

11 (C) cost-competitive;

12 (2) to develop an inorganic white light emitting  
13 diode that has an efficiency of 160 lumens per watt  
14 and a 10-year lifetime; and

15 (3) to develop an organic white light emitting  
16 diode with an efficiency of 100 lumens per watt with  
17 a 5-year lifetime that—

18 (A) illuminates over a full color spectrum;

19 (B) covers large areas over flexible sur-  
20 faces; and

21 (C) does not contain harmful pollutants,  
22 such as mercury, typical of fluorescent lamps.

23 (c) CONSORTIUM.—

24 (1) IN GENERAL.—The Secretary shall establish  
25 the Next Generation Lighting Initiative through a

1 private consortium (which may include private firms,  
2 trade associations and institutions of higher edu-  
3 cation), which the Secretary shall select through a  
4 competitive process. Each proposed consortium shall  
5 submit to the Secretary such information as the Sec-  
6 retary may require, including a program plan agreed  
7 to by all participants of the consortium.

8 (2) JOINT VENTURE.—The consortium shall be  
9 structured as a joint venture among the participants  
10 of the consortium. The Secretary shall serve on the  
11 governing council of the consortium.

12 (3) ELIGIBILITY.—To be eligible to be selected  
13 as the consortium under paragraph (1), an applicant  
14 must be broadly representative of United States  
15 solid-state lighting research, development, and man-  
16 ufacturing expertise as a whole.

17 (4) GRANTS.—(A) The Secretary shall award  
18 grants to the consortium, which the consortium may  
19 disburse to researchers, including those who are not  
20 participants of the consortium.

21 (B) To receive a grant, the consortium must  
22 provide a description to the Secretary of the pro-  
23 posed activities and list the parties that will receive  
24 funding.

1           (5) NATIONAL LABORATORIES.—National Lab-  
2           oratories may participate in the activities described  
3           in this section, and may receive funds from the con-  
4           sortium.

5           (6) INTELLECTUAL PROPERTY.—Participants in  
6           the consortium and the Federal Government shall  
7           have royalty-free nonexclusive rights to use intellec-  
8           tual property derived from activities funded pursu-  
9           ant to this subsection.

10          (d) DEVELOPMENT, DEMONSTRATION, AND COM-  
11          MERCIAL APPLICATION.—The Secretary shall carry out  
12          the development, demonstration, and commercial applica-  
13          tion activities of the Next Generation Lighting Initiative  
14          through awards to private firms, trade associations, and  
15          institutions of higher education. In selecting awardees, the  
16          Secretary may give preference to members of the consor-  
17          tium selected pursuant to subsection (c).

18          (e) PLANS AND ASSESSMENTS.—(1) The consortium  
19          shall formulate an annual operating plan which shall in-  
20          clude priorities, technical milestones, and plans for tech-  
21          nology transfer, and which shall be subject to approval by  
22          the Secretary.

23          (2) The Secretary shall enter into an arrangement  
24          with the National Academy of Sciences to conduct periodic  
25          reviews of the Next Generation Lighting Initiative. The

1 Academy shall review the priorities, technical milestones,  
2 and plans for technology transfer established under para-  
3 graph (1) and evaluate the progress toward achieving  
4 them. The Secretary shall consider the results of such re-  
5 views in evaluating the plans submitted under paragraph  
6 (1).

7 (f) AUDIT.—The Secretary shall retain an inde-  
8 pendent, commercial auditor to perform an audit of the  
9 consortium to determine the extent to which the funds au-  
10 thorized by this section have been expended in a manner  
11 consistent with the purposes of this section. The auditor  
12 shall transmit a report annually to the Secretary, who  
13 shall transmit the report to the Congress, along with a  
14 plan to remedy any deficiencies cited in the report.

15 (g) SUNSET.—The Next Generation Lighting Initia-  
16 tive shall terminate no later than September 30, 2013.

17 (h) DEFINITIONS.—As used in this section:

18 (1) ADVANCED SOLID-STATE LIGHTING.—The  
19 term “advanced solid-state lighting” means a  
20 semiconducting device package and delivery system  
21 that produces white light using externally applied  
22 voltage.

23 (2) INORGANIC WHITE LIGHT EMITTING  
24 DIODE.—The term “inorganic white light emitting  
25 diode” means an inorganic semiconducting package

1 that produces white light using externally applied  
2 voltage.

3 (3) ORGANIC WHITE LIGHT EMITTING DIODE.—

4 The term “organic white light emitting diode”  
5 means an organic semiconducting compound that  
6 produces white light using externally applied voltage.

7 **PART 3—VEHICLES**

8 **SEC. 6031. DEFINITIONS.**

9 For purposes of this part, the term—

10 (1) “battery” means an energy storage device  
11 that previously has been used to provide motive  
12 power in a vehicle powered in whole or in part by  
13 electricity; and

14 (2) “associated equipment” means equipment  
15 located where the batteries will be used that is nec-  
16 essary to enable the use of the energy stored in the  
17 batteries.

18 **SEC. 6032. ESTABLISHMENT OF SECONDARY ELECTRIC VE-**

19 **HICLE BATTERY USE PROGRAM.**

20 (a) PROGRAM.—The Secretary shall establish and  
21 conduct a program for the secondary use of batteries.

22 Such program shall be—

23 (1) designed to demonstrate the use of batteries  
24 in secondary application, including utility and com-  
25 mercial power storage and power quality;

1           (2) structured to evaluate the performance, in-  
2           cluding useful service life and costs, of such bat-  
3           teries in field operations, and evaluate the necessary  
4           supporting infrastructure, including reuse and dis-  
5           posal of batteries; and

6           (3) coordinated with ongoing secondary battery  
7           use programs at the National Laboratories and in  
8           industry.

9           (b) SOLICITATION.—(1) Not later than 6 months  
10          after the date of the enactment of this Act, the Secretary  
11          shall solicit proposals to demonstrate the secondary use  
12          of batteries and associated equipment and supporting in-  
13          frastructure in geographic locations throughout the  
14          United States. The Secretary may make additional solici-  
15          tations for proposals if the Secretary determines that such  
16          solicitations are necessary to carry out this section.

17          (2)(A) Proposals submitted in response to a solici-  
18          tation under this section shall include—

19                 (i) a description of the project, including the  
20                 batteries to be used in the project, the proposed lo-  
21                 cations and applications for the batteries, the num-  
22                 ber of batteries to be demonstrated, and the type,  
23                 characteristics, and estimated life-cycle costs of the  
24                 batteries compared to other energy storage devices  
25                 currently used;

1           (ii) the contribution, if any, of State or local  
2           governments and other persons to the demonstration  
3           project;

4           (iii) the type of associated equipment and sup-  
5           porting infrastructure to be demonstrated; and

6           (iv) any other information the Secretary con-  
7           siders appropriate.

8           (B) If the proposal includes a lease arrangement, the  
9           proposal shall indicate the terms of such lease arrange-  
10          ment for the batteries and associated equipment.

11          (c) SELECTION OF PROPOSALS.—(1)(A) The Sec-  
12          retary, in cooperation with affected Federal Regulatory  
13          agencies, shall, not later than 3 months after the closing  
14          date established by the Secretary for receipt of proposals  
15          under subsection (b), select at least 5 proposals to receive  
16          financial assistance under this section.

17          (B) No one project selected under this section shall  
18          receive more than 25 percent of the funds authorized  
19          under this section. No more than 3 projects selected under  
20          this section shall demonstrate the same battery type.

21          (2) In selecting a proposal under this section, the  
22          Secretary shall consider—

23                  (A) the ability of the proposer to acquire the  
24                  batteries and associated equipment and to success-  
25                  fully manage and conduct the demonstration project,

1 including satisfying the reporting requirements set  
2 forth in paragraph (3)(B);

3 (B) the geographic and climatic diversity of the  
4 projects selected;

5 (C) the long-term technical and competitive via-  
6 bility of the batteries to be used in the project and  
7 of the original manufacturer of such batteries;

8 (D) the suitability of the batteries for their in-  
9 tended uses;

10 (E) the technical performance of the batteries,  
11 including the expected additional useful life and the  
12 batteries' ability to retain energy;

13 (F) the environmental effects of the use of and  
14 disposal of the batteries proposed to be used in the  
15 project selected;

16 (G) the extent of involvement of State or local  
17 government and other persons in the demonstration  
18 project and whether such involvement will—

19 (i) permit a reduction of the Federal cost  
20 share per project; or

21 (ii) otherwise be used to allow the Federal  
22 contribution to be provided to demonstrate a  
23 greater number of batteries; and

24 (H) such other criteria as the Secretary con-  
25 siders appropriate.



1 (3) CONDITIONS.—The Secretary shall require that—

2 (A) as a part of a demonstration project, the  
3 users of the batteries provide to the proposer infor-  
4 mation regarding the operation, maintenance, per-  
5 formance, and use of the batteries, and the proposer  
6 provide such information to the battery manufac-  
7 turer, for 3 years after the beginning of the dem-  
8 onstration project;

9 (B) the proposer provide to the Secretary and  
10 the Administrator of the United States Environ-  
11 mental Protection Agency such information regard-  
12 ing the operation, maintenance, performance, and  
13 use of the batteries as the Secretary or the Adminis-  
14 trator may request;

15 (C) the proposer provide to the Secretary such  
16 information regarding the disposal of the batteries  
17 as the Secretary may require to ensure that the pro-  
18 poser disposes of the batteries in accordance with  
19 applicable law; and

20 (D) the proposer provide at least 50 percent of  
21 the costs associated with the proposal.

1 **Subtitle B—Distributed Energy and**  
2 **Electric Energy Systems**

3 **PART 1—AUTHORIZATION OF APPROPRIATIONS**

4 **SEC. 6201. DISTRIBUTED ENERGY AND ELECTRIC ENERGY**  
5 **SYSTEMS.**

6 The following sums are authorized to be appropriated  
7 to the Secretary for distributed energy and electric energy  
8 systems activities, including activities authorized under  
9 this subtitle:

10 (1) For fiscal year 2004, \$190,000,000.

11 (2) For fiscal year 2005, \$200,000,000.

12 (3) For fiscal year 2006, \$220,000,000.

13 (4) For fiscal year 2007, \$240,000,000.

14 **PART 2—DISTRIBUTED POWER**

15 **SEC. 6221. STRATEGY.**

16 (a) REQUIREMENT.—Not later than 1 year after the  
17 date of enactment of this Act, the Secretary shall develop  
18 and transmit to the Congress a strategy for a comprehen-  
19 sive program to develop hybrid distributed power systems  
20 that combine—

21 (1) one or more renewable electric power gen-  
22 eration technologies of 10 megawatts or less located  
23 near the site of electric energy use; and

1           (2) nonintermittent electric power generation  
2           technologies suitable for use in a distributed power  
3           system.

4           (b) CONTENTS.—The strategy shall—

5           (1) identify the needs best met with such hybrid  
6           distributed power systems and the technological bar-  
7           riers to the use of such systems;

8           (2) provide for the development of methods to  
9           design, test, integrate into systems, and operate  
10          such hybrid distributed power systems;

11          (3) include, as appropriate, activities needed for  
12          the adoption of such hybrid distributed power sys-  
13          tems, including energy storage devices and environ-  
14          mental control technologies; and

15          (4) describe how activities under the strategy  
16          will be integrated with other activities supported by  
17          the Department of Energy related to electric power  
18          technologies.

19 **SEC. 6222. HIGH POWER DENSITY INDUSTRY PROGRAM.**

20          The Secretary shall establish a comprehensive pro-  
21          gram to improve energy efficiency of high power density  
22          facilities, including data centers, server farms, and tele-  
23          communications facilities. Such program shall consider  
24          technologies that provide significant improvement in ther-

1 mal controls, metering, load management, peak load re-  
2 duction, or the efficient cooling of electronics.

3 **SEC. 6223. MICRO-COGENERATION ENERGY TECHNOLOGY.**

4 The Secretary shall make competitive, merit-based  
5 grants to consortia for the development of micro-cogenera-  
6 tion energy technology. The consortia shall explore the use  
7 of small-scale combined heat and power in residential  
8 heating appliances.

9 **PART 3—TRANSMISSION SYSTEMS**

10 **SEC. 6231. TRANSMISSION INFRASTRUCTURE SYSTEMS.**

11 (a) PROGRAM AUTHORIZED.—The Secretary shall de-  
12 velop a program to promote improved reliability and effi-  
13 ciency of electrical transmission systems. Such program  
14 may include—

15 (1) advanced energy technologies, materials,  
16 and systems;

17 (2) advanced grid reliability and efficiency tech-  
18 nology development;

19 (3) technologies contributing to significant load  
20 reductions;

21 (4) advanced metering, load management, and  
22 control technologies;

23 (5) technologies to enhance existing grid compo-  
24 nents;

1           (6) the development and use of high-tempera-  
2           ture superconductors to—

3                   (A) enhance the reliability, operational  
4                   flexibility, or power-carrying capability of elec-  
5                   tric transmission or distribution systems; or

6                   (B) increase the efficiency of electric en-  
7                   ergy generation, transmission, distribution, or  
8                   storage systems;

9           (7) integration of power systems, including sys-  
10           tems to deliver high-quality electric power, electric  
11           power reliability, and combined heat and power;

12           (8) any other infrastructure technologies, as ap-  
13           propriate; and

14           (9) technology transfer and education.

15           (b) PROGRAM PLAN.—Not later than 1 year after the  
16           date of the enactment of this Act, the Secretary, in con-  
17           sultation with other appropriate Federal agencies, shall  
18           prepare and transmit to Congress a 5-year program plan  
19           to guide activities under this section. In preparing the pro-  
20           gram plan, the Secretary shall consult with utilities, en-  
21           ergy services providers, manufacturers, institutions of  
22           higher education, other appropriate State and local agen-  
23           cies, environmental organizations, professional and tech-  
24           nical societies, and any other persons the Secretary con-  
25           siders appropriate.

1 (c) REPORT.—Not later than 2 years after the trans-  
2 mittal of the plan under subsection (b), the Secretary shall  
3 transmit a report to Congress describing the progress  
4 made under this section and identifying any additional re-  
5 sources needed to continue the development and commer-  
6 cial application of transmission infrastructure tech-  
7 nologies.

## 8 **Subtitle C—Renewable Energy**

### 9 **PART 1—AUTHORIZATION OF APPROPRIATIONS**

#### 10 **SEC. 6301. RENEWABLE ENERGY.**

11 (a) IN GENERAL.—The following sums are author-  
12 ized to be appropriated to the Secretary for renewable en-  
13 ergy activities, including activities authorized under this  
14 subtitle:

15 (1) For fiscal year 2004, \$460,000,000.

16 (2) For fiscal year 2005, \$510,000,000.

17 (3) For fiscal year 2006, \$560,000,000.

18 (4) For fiscal year 2007, \$609,000,000.

19 (b) BIOENERGY.—From the amounts authorized  
20 under subsection (a), the following sums are authorized  
21 to be appropriated to carry out section 6321 and other  
22 bioenergy activities:

23 (1) For fiscal year 2004, \$135,425,000.

24 (2) For fiscal year 2005, \$155,600,000.

25 (3) For fiscal year 2006, \$167,650,000.

1 (4) For fiscal year 2007, \$180,000,000.

2 (c) USE OF FUNDS.—

3 (1) BIOENERGY.—Of the funds authorized  
4 under subsection (b), not less than \$5,000,000 for  
5 each fiscal year shall be made available for grants to  
6 Historically Black Colleges and Universities, Tribal  
7 Colleges, and Hispanic-Serving Institutions.

8 (2) RURAL AND REMOTE LOCATIONS.—In car-  
9 rying out this section, the Secretary, in consultation  
10 with the Secretary of Agriculture, shall demonstrate  
11 the production and use of energy from advanced  
12 wind power technology, biomass, geothermal energy  
13 systems, and other renewable energy technologies in  
14 order to assist in delivering electricity to rural and  
15 remote locations.

16 (3) HYDROPOWER.—Of the funds authorized  
17 under subsection (a), not less than \$5,000,000 for  
18 each fiscal year shall be made available for dem-  
19 onstration projects of off-stream pumped storage hy-  
20 dropower.

21 **PART 2—BIOENERGY**

22 **SEC. 6321. BIOENERGY PROGRAMS.**

23 (a) PROGRAM.—The Secretary shall conduct a pro-  
24 gram to facilitate the production of bioenergy, including—

25 (1) biopower energy systems;

- 1 (2) biofuels;
- 2 (3) integrated applications of both biopower and
- 3 biofuels;
- 4 (4) feedstocks; and
- 5 (5) economic analysis.

6 (b) DEFINITION.—For purposes of this section, the  
7 term “bioenergy” includes energy produced from animal  
8 waste and agricultural crops.

## 9 **Subtitle D—Nuclear Energy**

### 10 **PART 1—AUTHORIZATION OF APPROPRIATIONS**

#### 11 **SEC. 6411. NUCLEAR ENERGY.**

12 (a) CORE PROGRAMS.—The following sums are au-  
13 thorized to be appropriated to the Secretary for nuclear  
14 energy activities, regulation of research and development  
15 activities and nuclear regulatory research, including activi-  
16 ties authorized under this subtitle, other than those de-  
17 scribed in subsection (b):

- 18 (1) For fiscal year 2004, \$200,000,000.
- 19 (2) For fiscal year 2005, \$233,000,000.
- 20 (3) For fiscal year 2006, \$266,000,000.
- 21 (4) For fiscal year 2007, \$300,000,000.

22 (b) NUCLEAR INFRASTRUCTURE SUPPORT.—The fol-  
23 lowing sums are authorized to be appropriated to the Sec-  
24 retary for activities under section 6421(f):

- 25 (1) For fiscal year 2004, \$120,000,000.



1           (2) For fiscal year 2005, \$125,000,000.

2           (3) For fiscal year 2006, \$130,000,000.

3           (4) For fiscal year 2007, \$135,000,000.

4           (c) ALLOCATIONS.—From amounts authorized under  
5 subsection (a), the following sums are authorized:

6           (1) ADVANCED FUEL RECYCLING PROGRAM.—

7           For activities under section 6431—

8                   (A) for fiscal year 2004, \$80,000,000;

9                   (B) for fiscal year 2005, \$93,000,000;

10                  (C) for fiscal year 2006, \$106,000,000;

11                  and

12                  (D) for fiscal year 2007, \$120,000,000.

13           (2) UNIVERSITY PROGRAMS.—For activities  
14 under section 6441—

15                   (A) for fiscal year 2004, \$25,000,000;

16                   (B) for fiscal year 2005, \$33,900,000;

17                   (C) for fiscal year 2006, \$37,900,000; and

18                   (D) for fiscal year 2007, \$43,600,000.

19           (d) LIMIT ON USE OF FUNDS.—None of the funds  
20 authorized under this section may be used for decommis-  
21 sioning the Fast Flux Test Facility.

1           **PART 2—NUCLEAR ENERGY RESEARCH**

2                           **PROGRAMS**

3   **SEC. 6421. NUCLEAR ENERGY RESEARCH PROGRAMS.**

4           (a) NUCLEAR ENERGY RESEARCH INITIATIVE.—The  
5 Secretary shall carry out a Nuclear Energy Research Ini-  
6 tiative for research and development related to nuclear en-  
7 ergy.

8           (b) NUCLEAR ENERGY PLANT OPTIMIZATION PRO-  
9 GRAM.—The Secretary shall carry out a Nuclear Energy  
10 Plant Optimization Program to support research and de-  
11 velopment activities addressing reliability, availability, pro-  
12 ductivity, and component aging in existing nuclear power  
13 plants.

14           (c) NUCLEAR POWER 2010 PROGRAM.—The Sec-  
15 retary shall carry out a Nuclear Power 2010 Program,  
16 consistent with recommendations in the October 2001 re-  
17 port entitled “A Roadmap to Deploy New Nuclear Power  
18 Plants in the United States by 2010” issued by the Nu-  
19 clear Energy Research Advisory Committee of the Depart-  
20 ment. The Program shall—

21                   (1) rely on the expertise and capabilities of the  
22 National Laboratories in the areas of advanced nu-  
23 clear fuels cycles and fuels testing;

24                   (2) pursue an approach that considers a variety  
25 of reactor designs;

1           (3) include participation of international col-  
2           laborators in research, development, and design ef-  
3           forts as appropriate; and

4           (4) encourage industry participation.

5           (d) GENERATION IV NUCLEAR ENERGY SYSTEMS  
6 INITIATIVE.—The Secretary shall carry out a Generation  
7 IV Nuclear Energy Systems Initiative to develop an over-  
8 all technology plan and to support research and develop-  
9 ment necessary to make an informed technical decision  
10 about the most promising candidates for eventual commer-  
11 cial application. The Initiative shall examine advanced  
12 proliferation-resistant and passively safe reactor designs,  
13 including designs that—

14           (1) are economically competitive with other elec-  
15           tric power generation plants;

16           (2) have higher efficiency, lower cost, and im-  
17           proved safety compared to reactors in operation on  
18           the date of enactment of this Act;

19           (3) use fuels that are proliferation resistant and  
20           have substantially reduced production of high-level  
21           waste per unit of output; and

22           (4) utilize improved instrumentation.

23           (e) REACTOR PRODUCTION OF HYDROGEN.—The  
24 Secretary shall carry out research to examine designs for

1 high-temperature reactors capable of producing large-scale  
2 quantities of hydrogen using thermochemical processes.

3 (f) NUCLEAR INFRASTRUCTURE SUPPORT.—The  
4 Secretary shall develop and implement a strategy for the  
5 facilities of the Office of Nuclear Energy, Science, and  
6 Technology and shall transmit a report containing the  
7 strategy along with the President’s budget request to the  
8 Congress for fiscal year 2005. Such strategy shall provide  
9 a cost-effective means for—

10 (1) maintaining existing facilities and infra-  
11 structure, as needed;

12 (2) closing unneeded facilities;

13 (3) making facility upgrades and modifications;

14 and

15 (4) building new facilities.

16 **PART 3—ADVANCED FUEL RECYCLING**

17 **SEC. 6431. ADVANCED FUEL RECYCLING PROGRAM.**

18 (a) IN GENERAL.—The Secretary, through the Direc-  
19 tor of the Office of Nuclear Energy, Science and Tech-  
20 nology, shall conduct an advanced fuel recycling tech-  
21 nology research and development program to evaluate pro-  
22 liferation-resistant fuel recycling and transmutation tech-  
23 nologies which minimize environmental or public health  
24 and safety impacts as an alternative to aqueous reprocess-  
25 ing technologies deployed as of the date of enactment of

1 this Act in support of evaluation of alternative national  
2 strategies for spent nuclear fuel and the Generation IV  
3 advanced reactor concepts, subject to annual review by the  
4 Secretary's Nuclear Energy Research Advisory Committee  
5 or other independent entity, as appropriate. Opportunities  
6 to enhance progress of this program through international  
7 cooperation should be sought.

8 (b) REPORTS.—The Secretary shall report on the ac-  
9 tivities of the advanced fuel recycling technology research  
10 and development program, as part of the Department's  
11 annual budget submission.

#### 12 **PART 4—UNIVERSITY PROGRAMS**

##### 13 **SEC. 6441. UNIVERSITY NUCLEAR SCIENCE AND ENGINEER-** 14 **ING SUPPORT.**

15 (a) ESTABLISHMENT.—The Secretary shall support  
16 a program to invest in human resources and infrastructure  
17 in the nuclear sciences and engineering and related fields  
18 (including health physics and nuclear and radiochemistry),  
19 consistent with departmental missions related to civilian  
20 nuclear research and development.

21 (b) DUTIES.—In carrying out the program under this  
22 section, the Secretary shall—

23 (1) establish a graduate and undergraduate fel-  
24 lowship program to attract new and talented stu-  
25 dents;

1           (2) establish a Junior Faculty Research Initi-  
2           ation Grant Program to assist institutions of higher  
3           education in recruiting and retaining new faculty in  
4           the nuclear sciences and engineering;

5           (3) support fundamental nuclear sciences and  
6           engineering research through the Nuclear Engineer-  
7           ing Education Research Program;

8           (4) encourage collaborative nuclear research  
9           among industry, National Laboratories, and institu-  
10          tions of higher education through the Nuclear En-  
11          ergy Research Initiative; and

12          (5) support communication and outreach re-  
13          lated to nuclear science and engineering.

14          (c) MAINTAINING UNIVERSITY RESEARCH AND  
15          TRAINING REACTORS AND ASSOCIATED INFRASTRUC-  
16          TURE.—Activities under this section may include—

17               (1) converting research reactors currently using  
18               high-enrichment fuels to low-enrichment fuels, up-  
19               grading operational instrumentation, and sharing of  
20               reactors among institutions of higher education;

21               (2) providing technical assistance, in collabora-  
22               tion with the United States nuclear industry, in reli-  
23               censing and upgrading training reactors as part of  
24               a student training program; and

1           (3) providing funding for reactor improvements  
2           as part of a focused effort that emphasizes research,  
3           training, and education.

4           (d) UNIVERSITY-NATIONAL LABORATORY INTER-  
5 ACTIONS.—The Secretary shall develop—

6           (1) a sabbatical fellowship program for profes-  
7           sors at institutions of higher education to spend ex-  
8           tended periods of time at National Laboratories in  
9           the areas of nuclear science and technology; and

10          (2) a visiting scientist program in which Na-  
11          tional Laboratory staff can spend time in academic  
12          nuclear science and engineering departments.

13 The Secretary may provide fellowships for students to  
14 spend time at National Laboratories in the area of nuclear  
15 science with a member of the Laboratory staff acting as  
16 a mentor.

17          (e) OPERATING AND MAINTENANCE COSTS.—Fund-  
18          ing for a research project provided under this section may  
19          be used to offset a portion of the operating and mainte-  
20          nance costs of a research reactor at an institution of high-  
21          er education used in the research project.

1           **Subtitle E—Fossil Energy**

2       **PART 1—AUTHORIZATION OF APPROPRIATIONS**

3       **SEC. 6501. FOSSIL ENERGY.**

4           There are authorized to be appropriated to the Sec-  
5       retary for fossil energy activities, including activities au-  
6       thorized under this subtitle—

7           (1) \$523,000,000 for fiscal year 2004;

8           (2) \$542,000,000 for fiscal year 2005;

9           (3) \$558,000,000 for fiscal year 2006; and

10          (4) \$585,000,000 for fiscal year 2007.

11       **PART 2—ULTRA-DEEPWATER AND UNCONVEN-**  
12       **TIONAL NATURAL GAS AND OTHER PETRO-**  
13       **LEUM RESOURCES**

14       **SEC. 6521. PROGRAM AUTHORITY.**

15          (a) IN GENERAL.—The Secretary shall carry out a  
16       program under this part for ultra-deepwater and uncon-  
17       ventional natural gas and other petroleum resource explo-  
18       ration and production, including safe operations and envi-  
19       ronmental mitigation.

20          (b) PROGRAM ELEMENTS.—The program under this  
21       part shall address the following areas, including improving  
22       safety and minimizing environmental impacts of activities  
23       within each area:

24           (1) Ultra-deepwater technology.

25           (2) Ultra-deepwater architecture.



1           (3) Unconventional natural gas and other petro-  
2       leum resource exploration and production tech-  
3       nology.

4       (c) LIMITATION ON LOCATION OF FIELD ACTIVI-  
5 TIES.—Field activities under the program under this part  
6 shall be carried out only—

7           (1) in—

8           (A) areas in the territorial waters of the  
9       United States not under any Outer Continental  
10      Shelf moratorium as of September 30, 2002;

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

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

19          (2) with the approval of the appropriate Fed-  
20      eral or State land management agency or private  
21      land owner.

22       (d) NATIONAL ENERGY TECHNOLOGY LABORA-  
23 TORY.—The Secretary, through the National Energy  
24 Technology Laboratory, shall carry out activities com-  
25 plementary to activities under subsection (b)(1).

1 (e) CONSULTATION WITH SECRETARY OF THE INTE-  
2 RIOR.—In carrying out this part, the Secretary shall con-  
3 sult regularly with the Secretary of the Interior.

4 **SEC. 6522. ULTRA-DEEPWATER PROGRAM.**

5 (a) IN GENERAL.—The Secretary shall carry out the  
6 activities under paragraphs (1) and (2) of section 6521(b),  
7 to maximize the value of the ultra-deepwater natural gas  
8 and other petroleum resources of the United States by in-  
9 creasing the supply of such resources and by reducing the  
10 cost and increasing the efficiency of exploration for and  
11 production of such resources, while improving safety and  
12 minimizing environmental impacts.

13 (b) ROLE OF THE SECRETARY.—The Secretary shall  
14 have ultimate responsibility for, and oversight of, all as-  
15 pects of the program under this section.

16 (c) ROLE OF THE PROGRAM CONSORTIUM.—

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

19 (A) manage awards pursuant to subsection  
20 (f)(4);

21 (B) make recommendations to the Sec-  
22 retary for project solicitations;

23 (C) disburse funds awarded under sub-  
24 section (f) as directed by the Secretary in ac-

1 cordance with the annual plan under subsection  
2 (e); and

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

5 (2) LIMITATION.—The Secretary may not as-  
6 sign any activities to the program consortium except  
7 as specifically authorized under this section.

8 (3) CONFLICT OF INTEREST.—(A) The Sec-  
9 retary shall establish procedures—

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

20 (ii) to require any board member, officer,  
21 or employee with a financial relationship or in-  
22 terest disclosed under clause (i) to recuse him-  
23 self or herself from any review under subsection  
24 (f)(3) or oversight under subsection (f)(4) with  
25 respect to such applicant or recipient.

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

6           (d) SELECTION OF THE PROGRAM CONSORTIUM.—

7           (1) IN GENERAL.—The Secretary shall select  
8           the program consortium through an open, competi-  
9           tive process.

10          (2) MEMBERS.—The program consortium may  
11          include corporations, institutions of higher edu-  
12          cation, National Laboratories, or other research in-  
13          stitutions. After submitting a proposal under para-  
14          graph (4), the program consortium may not add  
15          members without the consent of the Secretary.

16          (3) TAX STATUS.—The program consortium  
17          shall be an entity that is exempt from tax under sec-  
18          tion 501(c)(3) of the Internal Revenue Code of  
19          1986.

20          (4) SCHEDULE.—Not later than 90 days after  
21          the date of enactment of this Act, the Secretary  
22          shall solicit proposals for the creation of the pro-  
23          gram consortium, which must be submitted not less  
24          than 180 days after the date of enactment of this  
25          Act. The Secretary shall select the program consor-

1       tium not later than 240 days after such date of en-  
2       actment.

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

6           (A) list all members of the consortium;

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

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

13          (6) ELIGIBILITY.—To be eligible to be selected  
14       as the program consortium, an applicant must be an  
15       entity whose members collectively have demonstrated  
16       capabilities in planning and managing programs in  
17       natural gas or other petroleum exploration or pro-  
18       duction.

19          (7) CRITERION.—The Secretary may consider  
20       the amount of the fee an applicant proposes to re-  
21       ceive under subsection (g) in selecting a consortium  
22       under this section.

23       (e) ANNUAL PLAN.—

24           (1) IN GENERAL.—The program under this sec-  
25       tion shall be carried out pursuant to an annual plan

1 prepared by the Secretary in accordance with para-  
2 graph (2).

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

11 (B) The Secretary shall submit the rec-  
12 ommendations of the program consortium under  
13 subparagraph (A) to the Ultra-Deepwater Advisory  
14 Committee established under section 6525(a) for re-  
15 view, and such Advisory Committee shall provide to  
16 the Secretary written comments by a date deter-  
17 mined by the Secretary. The Secretary may also so-  
18 licit comments from any other experts.

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

22 (3) PUBLICATION.—The Secretary shall trans-  
23 mit to the Congress and publish in the Federal Reg-  
24 ister the annual plan, along with any written com-  
25 ments received under paragraph (2)(A) and (B).

1 The annual plan shall be transmitted and published  
2 not later than 60 days after the date of enactment  
3 of an Act making appropriations for a fiscal year for  
4 the program under this section.

5 (4) CONTENTS.—The annual plan shall describe  
6 the ongoing and prospective activities of the pro-  
7 gram under this section and shall include—

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

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

16 (f) AWARDS.—

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

22 (2) PROPOSALS.—The Secretary shall solicit  
23 proposals for awards under this subsection in such  
24 manner and at such time as the Secretary may pre-  
25 scribe, in consultation with the program consortium.

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

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

16          (B) Nothing in subparagraph (A) shall limit the  
17          authority or responsibility of the Secretary to over-  
18          see awards, or limit the authority of the Secretary  
19          to review or revoke awards.

20          (C) The Secretary shall provide to the program  
21          consortium the information necessary for the pro-  
22          gram consortium to carry out its responsibilities  
23          under this paragraph.

24          (g) FEE.—



1           (1) IN GENERAL.—To compensate the program  
2 consortium for carrying out its activities under this  
3 section, the Secretary shall provide to the program  
4 consortium a fee in an amount not to exceed 7.5  
5 percent of the amounts awarded under subsection (f)  
6 for each fiscal year.

7           (2) ADVANCE.—The Secretary shall advance  
8 funds to the program consortium upon selection of  
9 the consortium, which shall be deducted from  
10 amounts to be provided under paragraph (1).

11          (h) AUDIT.—The Secretary shall retain an inde-  
12 pendent, commercial auditor to determine the extent to  
13 which funds provided to the program consortium, and  
14 funds provided under awards made under subsection (f),  
15 have been expended in a manner consistent with the pur-  
16 poses and requirements of this part. The auditor shall  
17 transmit a report annually to the Secretary, who shall  
18 transmit the report to Congress, along with a plan to rem-  
19 edy any deficiencies cited in the report.

20 **SEC. 6523. UNCONVENTIONAL NATURAL GAS AND OTHER**  
21 **PETROLEUM RESOURCES PROGRAM.**

22          (a) IN GENERAL.—The Secretary, after consulting  
23 with appropriate Federal regulatory agencies, shall carry  
24 out activities under section 6521(b)(3), to maximize the  
25 value of the onshore unconventional natural gas and other

1 petroleum resources of the United States by increasing the  
2 supply of such resources and by reducing the cost and in-  
3 creasing the efficiency of exploration for and production  
4 of such resources, while improving safety and minimizing  
5 environmental impacts.

6 (b) AWARDS.—

7 (1) IN GENERAL.—The Secretary shall carry  
8 out this section through awards made through an  
9 open, competitive process.

10 (2) CONSORTIA.—In carrying out paragraph  
11 (1), the Secretary shall give preference to making  
12 awards to consortia.

13 (c) AUDIT.—The Secretary shall retain an inde-  
14 pendent, commercial auditor to determine the extent to  
15 which funds provided under awards made under this sec-  
16 tion have been expended in a manner consistent with the  
17 purposes and requirements of this part. The auditor shall  
18 transmit a report annually to the Secretary, who shall  
19 transmit the report to Congress, along with a plan to rem-  
20 edy any deficiencies cited in the report.

21 (d) FOCUS AREAS.—Awards under this section may  
22 focus on areas including advanced coal-bed methane, deep  
23 drilling, natural gas production from tight sands, natural  
24 gas production from gas shales, innovative exploration and  
25 production techniques, enhanced recovery techniques, and

1 environmental mitigation of unconventional natural gas  
2 and other petroleum resources exploration and production.

3 (e) ACTIVITIES BY THE UNITED STATES GEOLOGI-  
4 CAL SURVEY.—The Secretary of the Interior, through the  
5 United States Geological Survey, shall, where appropriate,  
6 carry out programs to complement the programs under  
7 this section.

8 **SEC. 6524. ADDITIONAL REQUIREMENTS FOR AWARDS.**

9 (a) DEMONSTRATION PROJECTS.—An application for  
10 an award under this part for a demonstration project shall  
11 describe with specificity the intended commercial use of  
12 the technology to be demonstrated.

13 (b) FLEXIBILITY IN LOCATING DEMONSTRATION  
14 PROJECTS.—Subject to the limitation in section 6521(c),  
15 a demonstration project under this part relating to an  
16 ultra-deepwater technology or an ultra-deepwater architec-  
17 ture may be conducted in deepwater depths.

18 (c) INTELLECTUAL PROPERTY AGREEMENTS.—If an  
19 award under this part is made to a consortium (other than  
20 the program consortium), the consortium shall provide to  
21 the Secretary a signed contract agreed to by all members  
22 of the consortium describing the rights of each member  
23 to intellectual property used or developed under the award.

1 (d) TECHNOLOGY TRANSFER.—Each recipient of an  
2 award under this part shall conduct technology transfer  
3 activities, as appropriate.

4 **SEC. 6525. ADVISORY COMMITTEES.**

5 (a) ULTRA-DEEPWATER ADVISORY COMMITTEE.—

6 (1) ESTABLISHMENT.—Not later than 270 days  
7 after the date of enactment of this section, the Sec-  
8 retary shall establish an advisory committee to be  
9 known as the Ultra-Deepwater Advisory Committee.

10 (2) MEMBERSHIP.—The advisory committee  
11 under this subsection shall be composed of members  
12 appointed by the Secretary and including—

13 (A) individuals with extensive experience or  
14 operational knowledge of offshore natural gas  
15 and other petroleum exploration and produc-  
16 tion;

17 (B) individuals broadly representative of  
18 the affected interests in ultra-deepwater natural  
19 gas and other petroleum production, including  
20 interests in environmental protection and safe  
21 operations;

22 (C) no individuals who are Federal employ-  
23 ees; and

1           (D) no individuals who are board members,  
2           officers, or employees of the program consor-  
3           tium.

4           (3) DUTIES.—The advisory committee under  
5           this subsection shall—

6           (A) advise the Secretary on the develop-  
7           ment and implementation of programs under  
8           this part related to ultra-deepwater natural gas  
9           and other petroleum resources; and

10          (B) carry out section 6522(e)(2)(B).

11          (4) COMPENSATION.—A member of the advi-  
12          sory committee under this subsection shall serve  
13          without compensation but shall receive travel ex-  
14          penses, including per diem in lieu of subsistence, in  
15          accordance with applicable provisions under sub-  
16          chapter I of chapter 57 of title 5, United States  
17          Code.

18          (b) UNCONVENTIONAL RESOURCES TECHNOLOGY  
19          ADVISORY COMMITTEE.—

20               (1) ESTABLISHMENT.—Not later than 270 days  
21               after the date of enactment of this section, the Sec-  
22               retary shall establish an advisory committee to be  
23               known as the Unconventional Resources Technology  
24               Advisory Committee.

1           (2) MEMBERSHIP.—The advisory committee  
2 under this subsection shall be composed of members  
3 appointed by the Secretary and including—

4           (A) individuals with extensive experience or  
5 operational knowledge of unconventional nat-  
6 ural gas and other petroleum resource explo-  
7 ration and production, including independent oil  
8 and gas producers;

9           (B) individuals broadly representative of  
10 the affected interests in unconventional natural  
11 gas and other petroleum resource exploration  
12 and production, including interests in environ-  
13 mental protection and safe operations; and

14           (C) no individuals who are Federal employ-  
15 ees.

16           (3) DUTIES.—The advisory committee under  
17 this subsection shall advise the Secretary on the de-  
18 velopment and implementation of activities under  
19 this part related to unconventional natural gas and  
20 other petroleum resources.

21           (4) COMPENSATION.—A member of the advi-  
22 sory committee under this subsection shall serve  
23 without compensation but shall receive travel ex-  
24 penses, including per diem in lieu of subsistence, in  
25 accordance with applicable provisions under sub-

1 chapter I of chapter 57 of title 5, United States  
2 Code.

3 (c) PROHIBITION.—No advisory committee estab-  
4 lished under this section shall make recommendations on  
5 funding awards to consortia or for specific projects.

6 **SEC. 6526. LIMITS ON PARTICIPATION.**

7 (a) IN GENERAL.—An entity shall be eligible to re-  
8 ceive an award under this part only if the Secretary  
9 finds—

10 (1) that the entity's participation in the pro-  
11 gram under this part would be in the economic in-  
12 terest of the United States; and

13 (2) that either—

14 (A) the entity is a United States-owned en-  
15 tity organized under the laws of the United  
16 States; or

17 (B) the entity is organized under the laws  
18 of the United States and has a parent entity or-  
19 ganized under the laws of a country which af-  
20 fords—

21 (i) to United States-owned entities op-  
22 portunities, comparable to those afforded  
23 to any other entity, to participate in any  
24 cooperative venture similar to those au-  
25 thorized under this part;

1                   (ii) to United States-owned entities  
2                   local investment opportunities comparable  
3                   to those afforded to any other entity; and  
4                   (iii) adequate and effective protection  
5                   for the intellectual property rights of  
6                   United States-owned entities.

7           (b) SENSE OF CONGRESS AND REPORT.—It is the  
8   Sense of the Congress that ultra-deepwater technology de-  
9   veloped under this part is to be developed primarily for  
10   production of ultra-deepwater natural gas and other petro-  
11   leum resources of the United States, and that this priority  
12   is to be reflected in the terms of grants, contracts, and  
13   cooperative agreements entered under this part. As part  
14   of the annual Departmental budget submission, the Sec-  
15   retary shall report on all steps taken to implement the pol-  
16   icy described in this subsection.

17   **SEC. 6527. FUND.**

18           There is hereby established in the Treasury of the  
19   United States a separate fund to be known as the “Ultra-  
20   Deepwater and Unconventional Natural Gas and Other  
21   Petroleum Products Fund”.

22   **SEC. 6528. SUNSET.**

23           The authority provided by this part shall terminate  
24   on September 30, 2010.



1 **SEC. 6529. DEFINITIONS.**

2 In this part:

3 (1) DEEPWATER.—The term “deepwater”  
4 means a water depth that is greater than 200 but  
5 less than 1,500 meters.

6 (2) PROGRAM CONSORTIUM.—The term “pro-  
7 gram consortium” means the consortium selected  
8 under section 6522(d).

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

14 (4) ULTRA-DEEPWATER.—The term “ultra-  
15 deepwater” means a water depth that is equal to or  
16 greater than 1,500 meters.

17 (5) ULTRA-DEEPWATER ARCHITECTURE.—The  
18 term “ultra-deepwater architecture” means the inte-  
19 gration of technologies for the exploration for, or  
20 production of, natural gas or other petroleum re-  
21 sources located at ultra-deepwater depths.

22 (6) ULTRA-DEEPWATER TECHNOLOGY.—The  
23 term “ultra-deepwater technology” means a discrete  
24 technology that is specially suited to address one or  
25 more challenges associated with the exploration for,

1 or production of, natural gas or other petroleum re-  
2 sources located at ultra-deepwater depths.

3 (7) UNCONVENTIONAL NATURAL GAS AND  
4 OTHER PETROLEUM RESOURCE.—The term “uncon-  
5 ventional natural gas and other petroleum resource”  
6 means natural gas and other petroleum resource lo-  
7 cated onshore in an economically inaccessible geo-  
8 logical formation.

## 9 **Subtitle F—Miscellaneous**

### 10 **SEC. 6601. WASTE REDUCTION AND USE OF ALTERNATIVES.**

11 (a) GRANT AUTHORITY.—The Secretary is author-  
12 ized to make a single grant to a qualified institution to  
13 examine and develop the feasibility of burning post-con-  
14 sumer carpet in cement kilns as an alternative energy  
15 source. The purposes of the grant shall include deter-  
16 mining—

17 (1) how post-consumer carpet can be burned  
18 without disrupting kiln operations;

19 (2) the extent to which overall kiln emissions  
20 may be reduced;

21 (3) the emissions of air pollutants and other  
22 relevant environmental impacts; and

23 (4) how this process provides benefits to both  
24 cement kiln operations and carpet suppliers.

1 (b) QUALIFIED INSTITUTION.—For the purposes of  
2 subsection (a), a qualified institution is a research-inten-  
3 sive institution of higher education with demonstrated ex-  
4 pertise in the fields of fiber recycling and logistical mod-  
5 eling of carpet waste collection and preparation.

6 (c) WASTE REDUCTION AND USE OF ALTER-  
7 NATIVES.—There are authorized to be appropriated to the  
8 Secretary to carry out activities under this section  
9 \$500,000 for fiscal year 2004.

10 **SEC. 6602. COAL GASIFICATION.**

11 The Secretary is authorized to provide loan guaran-  
12 tees for a project to produce energy from a plant using  
13 integrated gasification combined cycle technology of at  
14 least 400 megawatts in capacity that produces power at  
15 competitive rates in deregulated energy generation mar-  
16 kets and that does not receive any subsidy (direct or indi-  
17 rect) from ratepayers.

18 **SEC. 6603. PETROLEUM COKE GASIFICATION.**

19 The Secretary is authorized to provide loan guaran-  
20 tees for at least one petroleum coke gasification  
21 polygeneration project.

22 **SEC. 6604. OTHER BIOPOWER AND BIOENERGY.**

23 The Secretary shall conduct a program to assist in  
24 the planning, design, and implementation of projects to

1 convert rice straw, rice hulls, sugarcane bagasse, forest  
2 thinnings, and barley grain into biopower and biofuels.

3 **SEC. 6605. TECHNOLOGY TRANSFER.**

4 There are authorized to be appropriated to the Sec-  
5 retary \$1,000,000 for a competitively awarded contract,  
6 to an entity with offshore oil and gas management experi-  
7 ence, for the transfer of technologies relating to ultra-  
8 deepwater research and development developed at the  
9 Naval Surface Warfare Center, Carderock Division.

10 **SEC. 6606. LIMITATION ON LEGAL FEE REIMBURSEMENT.**

11 The Department of Energy shall not, except as re-  
12 quired under a contract entered into before the date of  
13 enactment of this Act, reimburse any contractor or sub-  
14 contractor of the Department for any legal fees or ex-  
15 penses incurred with respect to a complaint subsequent  
16 to—

17 (1) an adverse determination on the merits with  
18 respect to such complaint against the contractor or  
19 subcontractor by the Director of the Department of  
20 Energy's Office of Hearings and Appeals pursuant  
21 to section 708 of title 10, Code of Federal Regula-  
22 tions, or by a Department of Labor Administrative  
23 Law Judge pursuant to section 211 of the Energy  
24 Reorganization Act of 1974 (42 U.S.C. 5851); or

1           (2) an adverse final judgment by any State or  
2           Federal court with respect to such complaint against  
3           the contractor or subcontractor for wrongful termi-  
4           nation or retaliation due to the making of disclo-  
5           sures protected under chapter 12 of title 5, United  
6           States Code, section 211 of the Energy Reorganiza-  
7           tion Act of 1974 (42 U.S.C. 5851), or any com-  
8           parable State law,  
9           unless the adverse determination or final judgment is re-  
10          versed upon further administrative or judicial review.

11 **SEC. 6607. COMPLEX WELL TECHNOLOGY TESTING FACIL-**  
12 **ITY.**

13          The Secretary, in coordination with industry leaders  
14          in extended reach drilling technology, shall establish a  
15          Complex Well Technology Testing Facility at the Rocky  
16          Mountain Oilfield Testing Center to increase the range of  
17          extended drilling technology to 50,000 feet, so that more  
18          energy resources can be realized with fewer drilling facili-  
19          ties.

20 **SEC. 6608. TOTAL INTEGRATED THERMAL SYSTEMS.**

21          The Secretary shall—

22                (1) conduct a study of the benefits of total inte-  
23                grated thermal systems in reducing demand for oil  
24                and protecting the environment; and

1           (2) examine the feasibility of using total inte-  
 2           grated thermal systems in Department of Defense  
 3           and other Federal motor vehicle fleets.

4 **SEC. 6609. OIL BYPASS FILTRATION TECHNOLOGY.**

5           The Secretary of Energy and the Administrator of  
 6 the Environmental Protection Agency shall—

7           (1) conduct a joint study of the benefits of oil  
 8           bypass filtration technology in reducing demand for  
 9           oil and protecting the environment; and

10           (2) examine the feasibility of using oil bypass  
 11           filtration technology in Federal motor vehicle fleets.

12           **TITLE VII—ELECTRICITY**

13           **Subtitle A—Transmission Capacity**

14 **SEC. 7011. TRANSMISSION INFRASTRUCTURE IMPROVE-**  
 15           **MENT RULEMAKING.**

16           Part II of the Federal Power Act (16 U.S.C. 824 et  
 17 seq.) is amended by adding the following new section at  
 18 the end thereof:

19 **“SEC. 215. TRANSMISSION INFRASTRUCTURE IMPROVE-**  
 20           **MENT RULEMAKING.**

21           “(a) **RULEMAKING REQUIREMENT.**—Within 1 year  
 22 after the enactment of this section, the Commission shall  
 23 establish, by rule, incentive-based (including but not lim-  
 24 ited to performance-based) transmission rate treatments  
 25 to promote capital investment in the enlargement and im-

1 improvement of facilities for the transmission of electric en-  
2 ergy in interstate commerce as appropriate to—

3 “(1) promote economically efficient trans-  
4 mission and generation of electricity;

5 “(2) provide a return on equity that attracts  
6 new investment in transmission facilities and reason-  
7 ably reflects the risks taken by public utilities in re-  
8 structuring control of transmission assets; and

9 “(3) encourage deployment of transmission  
10 technologies and other measures to increase the ca-  
11 pacity and efficiency of existing transmission facili-  
12 ties and improve the operation of such facilities.

13 The Commission may, from time to time, revise such rule.

14 “(b) FUNDING OF CERTAIN FACILITIES.—The rule  
15 promulgated pursuant to this section shall provide that,  
16 upon the request of a regional transmission organization  
17 or other Commission-approved transmission organization,  
18 new transmission facilities that increase the transfer capa-  
19 bility of the transmission system shall be participant fund-  
20 ed. In such rules, the Commission shall also provide guid-  
21 ance as to what types of facilities may be participant fund-  
22 ed.

23 “(c) JUST AND REASONABLE RATES.—With respect  
24 to any transmission rate filed with the Commission on or  
25 after the effective date of the rule promulgated under this

1 section, the Commission shall, in its review of such rate  
2 under sections 205 and 206, apply the rules adopted pur-  
3 suant to this section, including any revisions thereto.  
4 Nothing in this section shall be construed to override,  
5 weaken, or conflict with the procedural and other require-  
6 ments of this part, including the requirement of sections  
7 205 and 206 that all rates, charges, terms, and conditions  
8 be just and reasonable and not unduly discriminatory or  
9 preferential.”.

10 **SEC. 7012. SITING OF INTERSTATE ELECTRICAL TRANS-**  
11 **MISSION FACILITIES.**

12 (a) AMENDMENT OF FEDERAL POWER ACT.—Part  
13 II of the Federal Power Act is amended by adding at the  
14 end the following:

15 **“SEC. 216. SITING OF INTERSTATE ELECTRICAL TRANS-**  
16 **MISSION FACILITIES**

17 “(a) TRANSMISSION STUDIES.—Within one year  
18 after the enactment of this section, and every 3 years  
19 thereafter, the Secretary of Energy shall conduct a study  
20 of electric transmission congestion. After considering al-  
21 ternatives and recommendations from interested parties  
22 the Secretary shall issue a report, based on such study,  
23 which may designate one or more geographic areas experi-  
24 encing electric energy transmission congestion as ‘inter-  
25 state congestion areas’.



1       “(b) CONSTRUCTION PERMIT.—The Commission is  
2 authorized, after notice and an opportunity for hearing,  
3 to issue permits for the construction or modification of  
4 electric transmission facilities in interstate congestion  
5 areas designated by the Secretary under subsection (a) if  
6 the Commission makes each of the following findings:

7               “(1) A finding that—

8                       “(A) the State in which the transmission  
9 facilities are to be constructed or modified is  
10 without authority to approve the siting of the  
11 facilities, or

12                       “(B) a State commission or body in the  
13 State in which the transmission facilities are to  
14 be constructed or modified that has authority to  
15 approve the siting of the facilities has withheld  
16 approval, conditioned its approval in such a  
17 manner that the proposed construction or modi-  
18 fication will not significantly reduce trans-  
19 mission congestion in interstate commerce and  
20 is otherwise not economically feasible, or de-  
21 layed final approval for more than one year  
22 after the filing of an application seeking ap-  
23 proval or one year after the designation of the  
24 relevant interstate congestion area, whichever is  
25 later.

1           “(2) A finding that the facilities to be author-  
2           ized by the permit will be used for the transmission  
3           of electric energy in interstate commerce.

4           “(3) A finding that the proposed construction  
5           or modification is consistent with the public interest.

6           “(4) A finding that the proposed construction  
7           or modification will significantly reduce transmission  
8           congestion in interstate commerce.

9           The Commission may include in a permit issued under this  
10          section conditions consistent with the public interest.

11          “(c) PERMIT APPLICATIONS.—Permit applications  
12          under subsection (b) shall be made in writing to the Com-  
13          mission and verified under oath. The Commission shall  
14          issue rules setting forth the form of the application, the  
15          information it is to contain, and the manner of service of  
16          notice of the permit application upon interested persons.

17          “(d) COMMENTS.—In any proceeding before the  
18          Commission under subsection (b), the Commission shall  
19          afford each State in which a transmission facility covered  
20          by the permit is or will be located, each affected Federal  
21          agency and Indian tribe, private property owners, and  
22          other interested persons, a reasonable opportunity to  
23          present their views and recommendations with respect to  
24          the need for and impact of a facility covered by the permit.

1           “(e) RIGHTS-OF-WAY.—In the case of a permit under  
2 subsection (b) for electric transmission facilities to be lo-  
3 cated on property other than property owned by the  
4 United States or a State, if the permit holder cannot ac-  
5 quire by contract, or is unable to agree with the owner  
6 of the property to the compensation to be paid for, the  
7 necessary right-of-way to construct or modify such trans-  
8 mission facilities, the permit holder may acquire the right-  
9 of-way by the exercise of the right of eminent domain in  
10 the district court of the United States for the district in  
11 which the property concerned is located, or in the appro-  
12 priate court of the State in which the property is located.  
13 The practice and procedure in any action or proceeding  
14 for that purpose in the district court of the United States  
15 shall conform as nearly as may be with the practice and  
16 procedure in similar action or proceeding in the courts of  
17 the State where the property is situated.

18           “(f) STATE LAW.—Nothing in this section shall pre-  
19 clude any person from constructing any transmission fa-  
20 cilities pursuant to State law.

21           “(g) COMPLIANCE WITH OTHER LAWS.—Commis-  
22 sion action under this section shall be subject to the Na-  
23 tional Environmental Policy Act of 1969 (42 U.S.C. 4321  
24 et seq.) and all other applicable Federal laws.

1       “(h) COMPENSATION.—Any exercise of eminent do-  
2 main authority pursuant to this section shall be considered  
3 a taking of private property for which just compensation  
4 is due. Just compensation shall be an amount equal to  
5 the full fair market value of the property taken on the  
6 date of the exercise of eminent domain authority, except  
7 that the compensation shall exceed fair market value if  
8 necessary to make the landowner whole for decreases in  
9 the value of any portion of the land not subject to eminent  
10 domain. Any parcel of land acquired by eminent domain  
11 under this subsection shall be transferred back to the  
12 owner from whom it was acquired (or his heirs or assigns)  
13 if the land is not used for power line construction or modi-  
14 fication within a reasonable period of time after the acqui-  
15 sition. Property acquired under this subsection may not  
16 be used for any heritage area, recreational trail, or park,  
17 or for any other purpose (other than power line construc-  
18 tion or modification, and for power line operation and  
19 maintenance) without the consent of the owner of the par-  
20 cel from whom the property was acquired (or his heirs or  
21 assigns).

22       “(i) ERCOT.—Nothing in this section shall be con-  
23 strued to authorize any interconnection with any facility  
24 owned or operated by an entity referred to in section  
25 212(k)(2)(B).

1 “(j) RIGHTS OF WAY ON FEDERAL LANDS.—

2 “(1) LEAD AGENCY.—If an applicant, or pro-  
3 spective applicant, for Federal authorization related  
4 to an electricity transmission or distribution facility  
5 so requests, the Department of Energy (DOE) shall  
6 act as the lead agency for purposes of coordinating  
7 all applicable Federal authorization and related envi-  
8 ronmental review of the facility. The term ‘Federal  
9 authorization’ shall mean any authorization required  
10 under Federal law in order to site a transmission or  
11 distribution facility, including but not limited to  
12 such permits, special use authorizations, certifi-  
13 cations, opinions, or other approvals as may be re-  
14 quired, whether issued by a Federal or a State agen-  
15 cy. To the maximum extent practicable under appli-  
16 cable Federal law, the Secretary of Energy shall co-  
17 ordinate this Federal authorization and review proc-  
18 ess with any Indian tribes, multi-State entities, and  
19 State agencies that are responsible for conducting  
20 any separate permitting and environmental reviews  
21 of the facility, to ensure timely and efficient review  
22 and permit decisions.

23 “(2) AUTHORITY TO SET DEADLINES.—As lead  
24 agency, the Department of Energy, in consultation  
25 with other Federal and, as appropriate, with Indian

1 tribes, multi-State entities, and State agencies that  
2 are willing to coordinate their own separate permit-  
3 ting and environmental reviews with the Federal au-  
4 thorization and environmental reviews, shall estab-  
5 lish prompt and binding intermediate milestones and  
6 ultimate deadlines for the review of and Federal au-  
7 thorization decisions relating to the proposed facil-  
8 ity. The Secretary of Energy shall ensure that once  
9 an application has been submitted with such data as  
10 the Secretary deems necessary, all permit decisions  
11 and related environmental reviews under all applica-  
12 ble Federal laws shall be completed within 1 year or,  
13 if a requirement of another provision of Federal law  
14 makes this impossible, as soon thereafter as is prac-  
15 ticable. The Secretary of Energy also shall provide  
16 an expeditious pre-application mechanism for pro-  
17 spective applicants to confer with the agencies in-  
18 volved to have each such agency determine and com-  
19 municate to the prospective applicant within 60 days  
20 of when the prospective applicant submits a request  
21 for such information concerning—

22 “(A) the likelihood of approval for a poten-  
23 tial facility; and

24 “(B) key issues of concern to the agencies  
25 and public.

1           “(3) CONSOLIDATED ENVIRONMENTAL REVIEW  
2           AND RECORD OF DECISION.—The Secretary of En-  
3           ergy, in consultation with the affected agencies, shall  
4           prepare a single environmental review document,  
5           which shall be used as the basis for all decisions on  
6           the proposed project under Federal law. The docu-  
7           ment may be an environmental assessment or envi-  
8           ronmental impact statement under the National En-  
9           vironmental Policy Act of 1969 if warranted, or such  
10          other form of analysis as may be warranted. DOE  
11          and other agencies shall streamline the review and  
12          permitting of transmission and distribution facilities  
13          within corridors designated under Section 503 of the  
14          Federal Land Policy and Management Act (43  
15          U.S.C. Section 1763) by fully taking into account  
16          prior analyses and decisions as to the corridors. The  
17          document under this section may consist of or in-  
18          clude an environmental assessment, if allowed by  
19          law, or an environmental impact statement, if war-  
20          ranted or required by law, or such other form of  
21          analysis as warranted, consistent with any require-  
22          ment of the National Environmental Policy Act, the  
23          Federal Land Policy and Management Act, or any  
24          other applicable law. Such document shall include  
25          consideration by the relevant agencies of any appli-

1 cable criteria or other matters as required under ap-  
2 plicable laws.

3 “(4) APPEALS.—In the event that any agency  
4 has denied a Federal authorization required for a  
5 transmission or distribution facility, or has failed to  
6 act by the deadline established by the Secretary pur-  
7 suant to this section for deciding whether to issue  
8 the authorization, the applicant or any State in  
9 which the facility would be located may file an ap-  
10 peal with the Secretary of Energy, who shall, in con-  
11 sultation with the affected agency, review the denial  
12 or take action on the pending application. Based on  
13 the overall record and in consultation with the af-  
14 fected agency, the Secretary may then either issue  
15 the necessary authorization with any appropriate  
16 conditions, or deny the application. The Secretary  
17 shall issue a decision within 90 days of the filing of  
18 the appeal. In making a decision under this para-  
19 graph, the Secretary shall comply with all applicable  
20 requirements of Federal law, including any require-  
21 ments of the Endangered Species Act, the Clean  
22 Water Act, the National Forest Management Act,  
23 the National Environmental Policy Act, and the  
24 Federal Land Management and Policy Act.



1           “(5) CONFORMING REGULATIONS AND MEMO-  
2           RANDA OF AGREEMENT.—Not later than 18 months  
3           after the date of enactment of this section, the Sec-  
4           retary of Energy shall issue any regulations nec-  
5           essary to implement the foregoing provisions. Not  
6           later than 1 year after the date of enactment of this  
7           section, the Secretary and the heads of all relevant  
8           Federal departments and non-departmental agencies  
9           shall, and interested Indian tribes, multi-State enti-  
10          ties, and State agencies may, enter into Memoranda  
11          of Agreement to ensure the timely and coordinated  
12          review and permitting of electricity transmission and  
13          distribution facilities. The head of each Federal de-  
14          partment or non-departmental agency with approval  
15          authority shall designate a senior responsible official  
16          and dedicate sufficient other staff and resources to  
17          ensure that the DOE regulations and any Memo-  
18          randa are fully implemented.

19          “(6) MISCELLANEOUS.—Each Federal author-  
20          ization for an electricity transmission or distribution  
21          facility shall be issued for a duration, as determined  
22          by the Secretary of Energy, commensurate with the  
23          anticipated use of the facility and with appropriate  
24          authority to manage the right-of-way for reliability  
25          and environmental protection. Further, when such

1 authorizations expire, they shall be reviewed for re-  
2 newal taking fully into account reliance on such elec-  
3 tricity infrastructure, recognizing its importance for  
4 public health, safety and economic welfare and as  
5 a legitimate use of Federal lands.

6 “(7) MAINTAINING AND ENHANCING THE  
7 TRANSMISSION INFRASTRUCTURE.—In exercising the  
8 responsibilities under this Section, the Secretary of  
9 Energy shall consult regularly with the Federal En-  
10 ergy Regulatory Commission (FERC) and FERC-  
11 approved Regional Transmission Organizations and  
12 Independent System Operators.

13 “(k) INTERSTATE COMPACTS.—The consent of Con-  
14 gress is hereby given for States to enter into interstate  
15 compacts establishing regional transmission siting agen-  
16 cies to facilitate coordination among the States within  
17 such areas for purposes of siting future electric energy  
18 transmission facilities and to carry out State electric en-  
19 ergy transmission siting responsibilities. The Secretary of  
20 Energy may provide technical assistance to regional trans-  
21 mission siting agencies established under this subsection.

22 “(l) SAVINGS CLAUSE.—Nothing in this section shall  
23 be construed to affect any requirement of the environ-  
24 mental laws of the United States, including, but not lim-  
25 ited to, the National Environmental Policy Act of 1969.

1 This section shall not apply to any component of the Na-  
2 tional Wilderness Preservation System, the National Wild  
3 and Scenic Rivers System, or the National Park system  
4 (including National Monuments therein).”.

5 (b) FEDERAL CORRIDORS.—The Secretary of the In-  
6 terior, the Secretary of Energy, the Secretary of Agri-  
7 culture, and the Chairman of the Council on Environ-  
8 mental Quality shall, within 90 days of the date of enact-  
9 ment of this subsection, submit a joint report to Congress  
10 identifying the following:

11 (1) all existing designated transmission and dis-  
12 tribution corridors on Federal land and the status of  
13 work related to proposed transmission and distribu-  
14 tion corridor designations, the schedule for com-  
15 pleting such work, any impediments to completing  
16 the work, and steps that Congress could take to ex-  
17 pedite the process;

18 (2) the number of pending applications to lo-  
19 cate transmission and distribution facilities on Fed-  
20 eral lands, key information relating to each such fa-  
21 cility, how long each application has been pending,  
22 the schedule for issuing a timely decision as to each  
23 facility, and progress in incorporating existing and  
24 new such rights-of-way into relevant land use and  
25 resource management plans or their equivalent; and

1           (3) the number of existing transmission and  
2           distribution rights-of-way on Federal lands that will  
3           come up for renewal within the following 5, 10, and  
4           15 year periods, and a description of how the Secre-  
5           taries plan to manage such renewals.

## 6                   **Subtitle B—Transmission** 7                   **Operation**

### 8   **SEC. 7021. OPEN ACCESS TRANSMISSION BY CERTAIN UTIL-** 9                   **ITIES.**

10           Part II of the Federal Power Act (16 U.S.C. 824 et  
11           seq.) is amended by inserting after section 211 the fol-  
12           lowing:

### 13   **“SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMIT-** 14                   **TING UTILITIES.**

15           “(a) IN GENERAL.—Subject to section 212(h), the  
16           Commission may, by rule or order, require an unregulated  
17           transmitting utility to provide transmission services—

18                   “(1) at rates that are comparable to those that  
19                   the unregulated transmitting utility charges itself,  
20                   and

21                   “(2) on terms and conditions (not relating to  
22                   rates) that are comparable to those under which  
23                   such unregulated transmitting utility provides trans-  
24                   mission services to itself and that are not unduly  
25                   discriminatory or preferential.

1 “(b) EXEMPTIONS.—

2 “(1) IN GENERAL.—The Commission shall ex-  
3 empt from any rule or order under this subsection  
4 any unregulated transmitting utility that—

5 “(A)(i) sells no more than 4,000,000  
6 megawatt hours of electricity per year; and

7 “(ii) is a distribution utility; or

8 “(B) does not own or operate any trans-  
9 mission facilities that are necessary for oper-  
10 ating an interconnected transmission system (or  
11 any portion thereof); or

12 “(C) meets other criteria the Commission  
13 determines to be in the public interest.

14 “(2) LOCAL DISTRIBUTION.— The requirements  
15 of subsection (a) shall not apply to facilities used in  
16 local distribution.

17 “(c) RATE CHANGING PROCEDURES.—The rate  
18 changing procedures applicable to public utilities under  
19 subsections (c) and (d) of section 205 are applicable to  
20 unregulated transmitting utilities for purposes of this sec-  
21 tion.

22 “(d) REMAND.—In exercising its authority under  
23 paragraph (1), the Commission may remand transmission  
24 rates to an unregulated transmitting utility for review and

1 revision where necessary to meet the requirements of sub-  
2 section (a).

3 “(e) SECTION 211 REQUESTS.—The provision of  
4 transmission services under subsection (a) does not pre-  
5 clude a request for transmission services under section  
6 211.

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

8 “(1) The term ‘unregulated transmitting utility’  
9 means an entity that—

10 “(A) owns or operates facilities used for  
11 the transmission of electric energy in interstate  
12 commerce, and

13 “(B) is either an entity described in sec-  
14 tion 201(f) or a rural electric cooperative.

15 “(2) The term ‘distribution utility’ means an  
16 unregulated transmitting utility that serves at least  
17 ninety percent of its electric customers at retail.”.

18 **SEC. 7022. REGIONAL TRANSMISSION ORGANIZATIONS.**

19 (a) SENSE OF THE CONGRESS ON RTOs.—It is the  
20 sense of Congress that, in order to promote fair, open ac-  
21 cess to electric transmission service, benefit retail con-  
22 sumers, facilitate wholesale competition, improve effi-  
23 ciencies in transmission grid management, promote grid  
24 reliability, remove opportunities for unduly discriminatory  
25 or preferential transmission practices, and provide for the

1 efficient development of transmission infrastructure need-  
2 ed to meet the growing demands of competitive wholesale  
3 power markets, all transmitting utilities in interstate com-  
4 merce should voluntarily become members of independ-  
5 ently administered regional transmission organizations  
6 that have operational control of interstate transmission fa-  
7 cilities and do not own or control generation facilities used  
8 to supply electric energy for sale at wholesale.

9 (b) SENSE OF THE CONGRESS ON CAPITAL INVEST-  
10 MENT.—It is the sense of the Congress that the Federal  
11 Energy Regulatory Commission should provide to any  
12 transmitting utility that becomes a member of an oper-  
13 ational regional transmitting organization approved by the  
14 Commission a return on equity sufficient to attract new  
15 investment capital for expansion of transmission capacity,  
16 in accordance with sections 205 and 206 of the Federal  
17 Power Act (16 U.S.C. 824d and 824e), including the re-  
18 quirement that rates be just and reasonable.

19 (c) REPORT ON PENDING APPLICATIONS.—Not later  
20 than 120 days after the date of enactment of this section,  
21 the Federal Energy Regulatory Commission shall submit  
22 to the Committee on Energy and Commerce of the United  
23 States House of Representatives and the Committee on  
24 Energy and Natural Resources of the United States Sen-  
25 ate a report containing the following:

1           (1) A list of all regional transmission organiza-  
2           tion applications filed at the Commission pursuant  
3           to the Commission's Order No. 2000, including an  
4           identification of each public utility and other entity  
5           included within the proposed membership of the re-  
6           gional transmission organization.

7           (2) A table showing the date each such applica-  
8           tion was filed, the date of any revised filings of such  
9           application, the date of each preliminary or final  
10          Commission order regarding such application, and a  
11          statement of whether the application has been re-  
12          jected, preliminarily approved, finally approved, or  
13          has some other status (including a description of  
14          that status).

15          (3) For any application that has not been fi-  
16          nally approved by the Commission, a detailed de-  
17          scription of every aspect of the application that the  
18          Commission has determined does not conform to the  
19          requirements of Order No. 2000.

20          (4) For any application that has not been fi-  
21          nally approved by the Commission, an explanation  
22          by the Commission of why the items described pur-  
23          suant to paragraph (3) constitute material non-  
24          compliance with the requirements of the Commis-



1        sion’s Order No. 2000 sufficient to justify denial of  
2        approval by the Commission.

3            (5) For all regional transmission organization  
4        applications filed pursuant to the Commission’s  
5        Order No. 2000, whether finally approved or not—

6            (A) a discussion of that regional trans-  
7        mission organization’s efforts to minimize rate  
8        seams between itself and—

9            (i) other regional transmission organi-  
10        zations; and

11          (ii) entities not participating in a re-  
12        gional transmission organization; and

13          (B) a discussion of the impact of such  
14        seams on consumers and wholesale competition;  
15        and

16          (C) a discussion of minimizing cost-shifting  
17        on consumers.

18        (d) FEDERAL UTILITY PARTICIPATION IN RTOS.—

19            (1) DEFINITIONS.—For purposes of this sec-  
20        tion—

21            (A) The term “appropriate Federal regu-  
22        latory authority” means—

23            (i) with respect to a Federal power  
24        marketing agency, the Secretary of En-  
25        ergy, except that the Secretary may des-

1            designate the Administrator of a Federal  
2            power marketing agency to act as the ap-  
3            propriate Federal regulatory authority with  
4            respect to the transmission system of that  
5            Federal power marketing agency; and

6            (ii) with respect to the Tennessee Val-  
7            ley Authority, the Board of Directors of  
8            the Tennessee Valley Authority.

9            (B) The term “Federal utility” means a  
10          Federal power marketing agency or the Ten-  
11          nessee Valley Authority.

12          (C) The term “transmission system”  
13          means electric transmission facilities owned,  
14          leased, or contracted for by the United States  
15          and operated by a Federal utility.

16          (2) TRANSFER.—The appropriate Federal regu-  
17          latory authority is authorized to enter into a con-  
18          tract, agreement or other arrangement transferring  
19          control and use of all or part of the Federal utility’s  
20          transmission system to a regional transmission orga-  
21          nization approved by the Federal Energy Regulatory  
22          Commission. Such contract, agreement or arrange-  
23          ment shall include—

24                  (A) performance standards for operation  
25                  and use of the transmission system that the

1 head of the Federal utility determines necessary  
2 or appropriate, including standards that assure  
3 recovery of all the Federal utility's costs and  
4 expenses related to the transmission facilities  
5 that are the subject of the contract, agreement  
6 or other arrangement, consistency with existing  
7 contracts and third-party financing arrange-  
8 ments, and consistency with said Federal util-  
9 ity's statutory authorities, obligations, and limi-  
10 tations;

11 (B) provisions for monitoring and over-  
12 sight by the Federal utility of the regional  
13 transmission organization's fulfillment of the  
14 terms and conditions of the contract, agreement  
15 or other arrangement, including a provision  
16 that may provide for the resolution of disputes  
17 through arbitration or other means with the re-  
18 gional transmission organization or with other  
19 participants, notwithstanding the obligations  
20 and limitations of any other law regarding arbi-  
21 tration; and

22 (C) a provision that allows the Federal  
23 utility to withdraw from the regional trans-  
24 mission organization and terminate the con-

1           tract, agreement or other arrangement in ac-  
2           cordance with its terms.

3           Neither this section, actions taken pursuant to it,  
4           nor any other transaction of a Federal utility using  
5           a regional transmission organization shall serve to  
6           confer upon the Federal Energy Regulatory Com-  
7           mission jurisdiction or authority over the Federal  
8           utility's electric generation assets, electric capacity  
9           or energy that the Federal utility is authorized by  
10          law to market, or the Federal utility's power sales  
11          activities.

12           (3) EXISTING STATUTORY AND OTHER OBLIGA-  
13          TIONS.—

14           (A) SYSTEM OPERATION REQUIRE-  
15          MENTS.—Any statutory provision requiring or  
16          authorizing a Federal utility to transmit electric  
17          power or to construct, operate or maintain its  
18          transmission system shall not be construed to  
19          prohibit a transfer of control and use of its  
20          transmission system pursuant to, and subject to  
21          all requirements of paragraph (2).

22           (B) OTHER OBLIGATIONS.—This sub-  
23          section shall not be construed to—

24           (i) suspend, or exempt any Federal  
25          utility from, any provision of existing Fed-

1 eral law, including but not limited to any  
2 requirement or direction relating to the use  
3 of the Federal utility's transmission sys-  
4 tem, environmental protection, fish and  
5 wildlife protection, flood control, naviga-  
6 tion, water delivery, or recreation; or

7 (ii) authorize abrogation of any con-  
8 tract or treaty obligation.

9 **SEC. 7023. NATIVE LOAD.**

10 Part II of the Federal Power Act (16 U.S.C. 824 et  
11 seq.) is amended by adding the following new section at  
12 the end thereof:

13 **“SEC. 217. SERVICE OBLIGATIONS OF LOAD-SERVING ENTI-**  
14 **TIES.**

15 “(a) IN GENERAL.—In exercising authority under  
16 this Act, the Commission shall ensure that any load-serv-  
17 ing entity that either—

18 “(1) owns transmission facilities for the trans-  
19 mission of electric energy in interstate commerce  
20 used to purchase or deliver electric energy to meet—

21 “(A) a service obligation to customers; or

22 “(B) an existing wholesale contractual obli-  
23 gation; or

1           “(2) holds a contract or service agreement for  
2           firm transmission service used to purchase or deliver  
3           electric energy to meet—

4                   “(A) a service obligation to customers; or

5                   “(B) an existing wholesale contractual obli-  
6           gation

7 shall be entitled to use such transmission facilities or  
8 equivalent transmission rights to meet such obligations be-  
9 fore transmission capacity is made available for other  
10 uses.

11           “(b) USE BY SUCCESSOR IN INTEREST.—To the ex-  
12 tent that all or a portion of the service obligation or con-  
13 tractual obligation covered by subsection (a) is transferred  
14 to another load serving entity, the successor shall be enti-  
15 tled to use such transmission facilities or firm trans-  
16 mission rights associated with the transferred service obli-  
17 gation consistent with subsection (a). Subsequent trans-  
18 fers to another load serving entity, or back to the original  
19 load-serving entity, shall be entitled to the same rights.

20           “(c) OTHER ENTITIES.—The Commission may exer-  
21 cise authority under this Act to make transmission rights  
22 not used to meet an obligation covered by subsection (a)  
23 available to other entities in a manner determined by the  
24 Commission to be not unduly discriminatory or pref-  
25 erential.

1 “(d) DEFINITIONS.—For the purposes of this section:

2 “(1) The term ‘load-serving entity’ means an  
3 electric utility, transmitting utility or Federal power  
4 marketing agency that has an obligation under Fed-  
5 eral, State, or local law, or under long-term con-  
6 tracts, to provide electric service to either—

7 “(A) electric consumers (as defined in sec-  
8 tion 3(5) of the Public Utility Regulatory Poli-  
9 cies Act of 1978 (16 U.S.C. 2602(5)); or

10 “(B) an electric utility as defined in sec-  
11 tion 3(4) of the Public Utility Regulatory Poli-  
12 cies Act of 1978 (16 U.S.C. 2602(5)) that has  
13 an obligation to provide electric service to elec-  
14 tric consumers.

15 Such obligations shall be deemed ‘service obliga-  
16 tions’.

17 “(2) The term ‘existing wholesale contractual  
18 obligation’ means an obligation under a firm long-  
19 term wholesale contract that was in effect on March  
20 28, 2003. A contract modification after March 28,  
21 2003 (other than one that increases the quantity of  
22 electric energy sold under the contract) shall not af-  
23 fect the status of such contract as an existing whole-  
24 sale contractual obligation.

1       “(e) RELATIONSHIP TO OTHER PROVISIONS.—To the  
2 extent that a transmitting utility reserves transmission ca-  
3 pacity (or reserves the equivalent amount of tradable  
4 transmission rights) to provide firm transmission service  
5 to meet service obligations or firm long-term wholesale  
6 contractual obligations pursuant to subsection (a), that  
7 transmitting utility shall not be considered as engaging  
8 in undue discrimination or preference under this Act.

9       “(f) JURISDICTION.—This section shall not apply to  
10 an entity located in an area referred to in section  
11 212(k)(2)(A).

12       “(g) SAVINGS CLAUSE.—Nothing in this section shall  
13 affect any allocation of transmission rights by the PJM  
14 Interconnection, the New York Independent System Oper-  
15 ator, the New England Independent System Operator, the  
16 Midwest Independent System Operator, or the California  
17 Independent System Operator. Nothing in this section  
18 shall provide a basis for abrogating any contract for firm  
19 transmission service or rights in effect as of the date of  
20 enactment of this section.”.

## 21                   **Subtitle C—Reliability**

### 22       **SEC. 7031. ELECTRIC RELIABILITY STANDARDS.**

23       Part II of the Federal Power Act (16 U.S.C 824 et  
24 seq.) is amended by inserting the following new section  
25 at the end thereof:



1 **“SEC. 217. ELECTRIC RELIABILITY.**

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

3 “(1) The term ‘bulk-power system’ means—

4 “(A) facilities and control systems nec-  
5 essary for operating an interconnected electric  
6 energy transmission network (or any portion  
7 thereof); and

8 “(B) electric energy from generation facili-  
9 ties needed to maintain transmission system re-  
10 liability.

11 The term does not include facilities used in the local  
12 distribution of electric energy.

13 “(2) The terms ‘Electric Reliability Organiza-  
14 tion’ and ‘ERO’ mean the organization certified by  
15 the Commission under subsection (c) the purpose of  
16 which is to establish and enforce reliability stand-  
17 ards for the bulk-power system, subject to Commis-  
18 sion review.

19 “(3) The term ‘reliability standard’ means a re-  
20 quirement, approved by the Commission under this  
21 section, to provide for reliable operation of the bulk-  
22 power system. The term includes requirements for  
23 the operation of existing bulk-power system facilities  
24 and the design of planned additions or modifications  
25 to such facilities to the extent necessary to provide  
26 for reliable operation of the bulk-power system, but

1 the term does not include any requirement to en-  
2 large such facilities or to construct new transmission  
3 capacity or generation capacity.

4 “(4) The term ‘reliable operation’ means oper-  
5 ating the elements of the bulk-power system within  
6 equipment and electric system thermal, voltage, and  
7 stability limits so that instability, uncontrolled sepa-  
8 ration, or cascading failures of such system will not  
9 occur as a result of a sudden disturbance or unan-  
10 ticipated failure of system elements.

11 “(5) The term ‘Interconnection’ means a geo-  
12 graphic area in which the operation of bulk-power  
13 system components is synchronized such that the  
14 failure of one or more of such components may ad-  
15 versely affect the ability of the operators of other  
16 components within the system to maintain reliable  
17 operation of the facilities within their control.

18 “(6) The term ‘transmission organization’  
19 means a regional transmission organization, inde-  
20 pendent system operator, independent transmission  
21 provider, or other transmission organization finally  
22 approved by the Commission for the operation of  
23 transmission facilities.

1           “(7) The term ‘regional entity’ means an entity  
2           having enforcement authority pursuant to subsection  
3           (e)(4).

4           “(b) JURISDICTION AND APPLICABILITY.—(1) The  
5           Commission shall have jurisdiction, within the United  
6           States, over the ERO certified by the Commission under  
7           subsection (c), any regional entities, and all users, owners  
8           and operators of the bulk-power system, including but not  
9           limited to the entities described in section 201(f), for pur-  
10          poses of approving reliability standards established under  
11          this section and enforcing compliance with this section. All  
12          users, owners and operators of the bulk-power system  
13          shall comply with reliability standards that take effect  
14          under this section.

15          “(2) The Commission shall issue a final rule to imple-  
16          ment the requirements of this section not later than 180  
17          days after the date of enactment of this section.

18          “(c) CERTIFICATION.—Following the issuance of a  
19          Commission rule under subsection (b)(2), any person may  
20          submit an application to the Commission for certification  
21          as the Electric Reliability Organization (ERO). The Com-  
22          mission may certify one such ERO if the Commission de-  
23          termines that such ERO—

24                  “(1) has the ability to develop and enforce, sub-  
25          ject to subsection (e)(2), reliability standards that

1 provide for an adequate level of reliability of the  
2 bulk-power system;

3 “(2) has established rules that—

4 “(A) assure its independence of the users  
5 and owners and operators of the bulk-power  
6 system, while assuring fair stakeholder rep-  
7 resentation in the selection of its directors and  
8 balanced decisionmaking in any ERO com-  
9 mittee or subordinate organizational structure;

10 “(B) allocate equitably reasonable dues,  
11 fees, and other charges among end users for all  
12 activities under this section;

13 “(C) provide fair and impartial procedures  
14 for enforcement of reliability standards through  
15 the imposition of penalties in accordance with  
16 subsection (e) (including limitations on activi-  
17 ties, functions, or operations, or other appro-  
18 priate sanctions);

19 “(D) provide for reasonable notice and op-  
20 portunity for public comment, due process,  
21 openness, and balance of interests in developing  
22 reliability standards and otherwise exercising its  
23 duties; and

1                   “(E) provide for taking, after certification,  
2                   appropriate steps to gain recognition in Canada  
3                   and Mexico.

4           “(d) RELIABILITY STANDARDS.—(1) The Electric  
5 Reliability Organization shall file each reliability standard  
6 or modification to a reliability standard that it proposes  
7 to be made effective under this section with the Commis-  
8 sion.

9           “(2) The Commission may approve, by rule or order,  
10 a proposed reliability standard or modification to a reli-  
11 ability standard if it determines that the standard is just,  
12 reasonable, not unduly discriminatory or preferential, and  
13 in the public interest. The Commission shall give due  
14 weight to the technical expertise of the Electric Reliability  
15 Organization with respect to the content of a proposed  
16 standard or modification to a reliability standard and to  
17 the technical expertise of a regional entity organized on  
18 an Interconnection-wide basis with respect to a reliability  
19 standard to be applicable within that Interconnection, but  
20 shall not defer with respect to the effect of a standard  
21 on competition. A proposed standard or modification shall  
22 take effect upon approval by the Commission.

23           “(3) The Electric Reliability Organization shall  
24 rebuttably presume that a proposal from a regional entity  
25 organized on an Interconnection-wide basis for a reliability

1 standard or modification to a reliability standard to be ap-  
2 plicable on an Interconnection-wide basis is just, reason-  
3 able, and not unduly discriminatory or preferential, and  
4 in the public interest.

5       “(4) The Commission shall remand to the Electric  
6 Reliability Organization for further consideration a pro-  
7 posed reliability standard or a modification to a reliability  
8 standard that the Commission disapproves in whole or in  
9 part.

10       “(5) The Commission, upon its own motion or upon  
11 complaint, may order the Electric Reliability Organization  
12 to submit to the Commission a proposed reliability stand-  
13 ard or a modification to a reliability standard that ad-  
14 dresses a specific matter if the Commission considers such  
15 a new or modified reliability standard appropriate to carry  
16 out this section.

17       “(6) The final rule adopted under subsection (b)(2)  
18 shall include fair processes for the identification and time-  
19 ly resolution of any conflict between a reliability standard  
20 and any function, rule, order, tariff, rate schedule, or  
21 agreement accepted, approved, or ordered by the Commis-  
22 sion applicable to a transmission organization. Such trans-  
23 mission organization shall continue to comply with such  
24 function, rule, order, tariff, rate schedule or agreement ac-  
25 cepted approved, or ordered by the Commission until—

1           “(A) the Commission finds a conflict exists be-  
2           tween a reliability standard and any such provision;

3           “(B) the Commission orders a change to such  
4           provision pursuant to section 206 of this part; and

5           “(C) the ordered change becomes effective  
6           under this part.

7 If the Commission determines that a reliability standard  
8 needs to be changed as a result of such a conflict, it shall  
9 order the ERO to develop and file with the Commission  
10 a modified reliability standard under paragraph (4) or (5)  
11 of this subsection.

12         “(e) ENFORCEMENT.—(1) The ERO may impose,  
13 subject to paragraph (2), a penalty on a user or owner  
14 or operator of the bulk-power system for a violation of a  
15 reliability standard approved by the Commission under  
16 subsection (d) if the ERO, after notice and an opportunity  
17 for a hearing—

18           “(A) finds that the user or owner or operator  
19           has violated a reliability standard approved by the  
20           Commission under subsection (d); and

21           “(B) files notice and the record of the pro-  
22           ceeding with the Commission.

23         “(2) A penalty imposed under paragraph (1) may  
24 take effect not earlier than the 31st day after the electric  
25 reliability organization files with the Commission notice of

1 the penalty and the record of proceedings. Such penalty  
2 shall be subject to review by the Commission, on its own  
3 motion or upon application by the user, owner or operator  
4 that is the subject of the penalty filed within 30 days after  
5 the date such notice is filed with the Commission. Applica-  
6 tion to the Commission for review, or the initiation of re-  
7 view by the Commission on its own motion, shall not oper-  
8 ate as a stay of such penalty unless the Commission other-  
9 wise orders upon its own motion or upon application by  
10 the user, owner or operator that is the subject of such  
11 penalty. In any proceeding to review a penalty imposed  
12 under paragraph (1), the Commission, after notice and op-  
13 portunity for hearing (which hearing may consist solely  
14 of the record before the electric reliability organization and  
15 opportunity for the presentation of supporting reasons to  
16 affirm, modify, or set aside the penalty), shall by order  
17 affirm, set aside, reinstate, or modify the penalty, and,  
18 if appropriate, remand to the electric reliability organiza-  
19 tion for further proceedings. The Commission shall imple-  
20 ment expedited procedures for such hearings.

21       “(3) On its own motion or upon complaint, the Com-  
22 mission may order compliance with a reliability standard  
23 and may impose a penalty against a user or owner or oper-  
24 ator of the bulk-power system, if the Commission finds,  
25 after notice and opportunity for a hearing, that the user



1 or owner or operator of the bulk-power system has en-  
2 gaged or is about to engage in any acts or practices that  
3 constitute or will constitute a violation of a reliability  
4 standard.

5 “(4) The Commission shall establish regulations au-  
6 thorizing the ERO to enter into an agreement to delegate  
7 authority to a regional entity for the purpose of proposing  
8 reliability standards to the ERO and enforcing reliability  
9 standards under paragraph (1) if—

10 “(A) the regional entity is governed by—

11 “(i) an independent board;

12 “(ii) a balanced stakeholder board; or

13 “(iii) a combination independent and bal-  
14 anced stakeholder board.”

15 “(B) the regional entity otherwise satisfies the  
16 provisions of subsection (c)(1) and (2); and

17 “(C) the agreement promotes effective and effi-  
18 cient administration of bulk-power system reliability.

19 The Commission may modify such delegation. The ERO  
20 and the Commission shall rebuttably presume that a pro-  
21 posal for delegation to a regional entity organized on an  
22 Interconnection-wide basis promotes effective and efficient  
23 administration of bulk-power system reliability and should  
24 be approved. Such regulation may provide that the Com-  
25 mission may assign the ERO’s authority to enforce reli-

1 ability standards under paragraph (1) directly to a re-  
2 gional entity consistent with the requirements of this para-  
3 graph.

4 “(5) The Commission may take such action as is nec-  
5 essary or appropriate against the ERO or a regional entity  
6 to ensure compliance with a reliability standard or any  
7 Commission order affecting the ERO or a regional entity.

8 “(6) Any penalty imposed under this section shall  
9 bear a reasonable relation to the seriousness of the viola-  
10 tion and shall take into consideration the efforts of such  
11 user, owner, or operator to remedy the violation in a time-  
12 ly manner.

13 “(f) CHANGES IN ELECTRICITY RELIABILITY ORGA-  
14 NIZATION RULES.—The Electric Reliability Organization  
15 shall file with the Commission for approval any proposed  
16 rule or proposed rule change, accompanied by an expla-  
17 nation of its basis and purpose. The Commission, upon  
18 its own motion or complaint, may propose a change to the  
19 rules of the Electric Reliability Organization. A proposed  
20 rule or proposed rule change shall take effect upon a find-  
21 ing by the Commission, after notice and opportunity for  
22 comment, that the change is just, reasonable, not unduly  
23 discriminatory or preferential, is in the public interest, and  
24 satisfies the requirements of subsection (c).

1       “(g) RELIABILITY REPORTS.—The Electric Reli-  
2 ability Organization shall conduct periodic assessments of  
3 the reliability and adequacy of the bulk-power system in  
4 North America.

5       “(h) COORDINATION WITH CANADA AND MEXICO.—  
6 The President is urged to negotiate international agree-  
7 ments with the governments of Canada and Mexico to pro-  
8 vide for effective compliance with reliability standards and  
9 the effectiveness of the Electric Reliability Organization  
10 in the United States and Canada or Mexico.

11       “(i) SAVINGS PROVISIONS.—(1) The Electric Reli-  
12 ability Organization shall have authority to develop and  
13 enforce compliance with reliability standards for only the  
14 bulk-power system.

15       “(2) This section does not authorize the Electric Reli-  
16 ability Organization or the Commission to order the con-  
17 struction of additional generation or transmission capacity  
18 or to set and enforce compliance with standards for ade-  
19 quacy or safety of electric facilities or services.

20       “(3) Nothing in this section shall be construed to pre-  
21 empt any authority of any State to take action to ensure  
22 the safety, adequacy, and reliability of electric service  
23 within that State, as long as such action is not incon-  
24 sistent with any reliability standard, except that the State  
25 of New York may establish rules that result in greater

1 reliability within that State, as long as such action does  
2 not result in lesser reliability outside the State than that  
3 provided by the reliability standards.

4       “(4) Within 90 days of the application of the Electric  
5 Reliability Organization or other affected party, and after  
6 notice and opportunity for comment, the Commission shall  
7 issue a final order determining whether a State action is  
8 inconsistent with a reliability standard, taking into consid-  
9 eration any recommendation of the Electric Reliability Or-  
10 ganization.

11       “(5) The Commission, after consultation with the  
12 Electric Reliability Organization and the State taking ac-  
13 tion, may stay the effectiveness of any State action, pend-  
14 ing the Commission’s issuance of a final order.

15       “(j) REGIONAL ADVISORY BODIES.—The Commis-  
16 sion shall establish a regional advisory body on the petition  
17 of at least two-thirds of the States within a region that  
18 have more than one-half of their electric load served within  
19 the region. A regional advisory body shall be composed of  
20 one member from each participating State in the region,  
21 appointed by the Governor of each State, and may include  
22 representatives of agencies, States, and provinces outside  
23 the United States. A regional advisory body may provide  
24 advice to the Electric Reliability Organization, a regional  
25 entity, or the Commission regarding the governance of an

1 existing or proposed regional entity within the same re-  
2 gion, whether a standard proposed to apply within the re-  
3 gion is just, reasonable, not unduly discriminatory or pref-  
4 erential, and in the public interest, whether fees proposed  
5 to be assessed within the region are just, reasonable, not  
6 unduly discriminatory or preferential, and in the public  
7 interest and any other responsibilities requested by the  
8 Commission. The Commission may give deference to the  
9 advice of any such regional advisory body if that body is  
10 organized on an Interconnection-wide basis.

11 “(k) APPLICATION TO ALASKA AND HAWAII.—The  
12 provisions of this section do not apply to Alaska or Ha-  
13 waii.”.

## 14 **Subtitle D—PUHCA Amendments**

### 15 **SEC. 7041. SHORT TITLE.**

16 This subtitle may be cited as the “Public Utility  
17 Holding Company Act of 2003”.

### 18 **SEC. 7042. DEFINITIONS.**

19 For purposes of this subtitle:

20 (1) The term “affiliate” of a company means  
21 any company, 5 percent or more of the outstanding  
22 voting securities of which are owned, controlled, or  
23 held with power to vote, directly or indirectly, by  
24 such company.

1           (2) The term “associate company” of a com-  
2           pany means any company in the same holding com-  
3           pany system with such company.

4           (3) The term “Commission” means the Federal  
5           Energy Regulatory Commission.

6           (4) The term “company” means a corporation,  
7           partnership, association, joint stock company, busi-  
8           ness trust, or any organized group of persons,  
9           whether incorporated or not, or a receiver, trustee,  
10          or other liquidating agent of any of the foregoing.

11          (5) The term “electric utility company” means  
12          any company that owns or operates facilities used  
13          for the generation, transmission, or distribution of  
14          electric energy for sale.

15          (6) The terms “exempt wholesale generator”  
16          and “foreign utility company” have the same mean-  
17          ings as in sections 32 and 33, respectively, of the  
18          Public Utility Holding Company Act of 1935 (15  
19          U.S.C. 79z-5a, 79z-5b), as those sections existed on  
20          the day before the effective date of this subtitle.

21          (7) The term “gas utility company” means any  
22          company that owns or operates facilities used for  
23          distribution at retail (other than the distribution  
24          only in enclosed portable containers or distribution  
25          to tenants or employees of the company operating

1 such facilities for their own use and not for resale)  
2 of natural or manufactured gas for heat, light, or  
3 power.

4 (8) The term “holding company” means—

5 (A) any company that directly or indirectly  
6 owns, controls, or holds, with power to vote, 10  
7 percent or more of the outstanding voting secu-  
8 rities of a public utility company or of a holding  
9 company of any public utility company; and

10 (B) any person, determined by the Com-  
11 mission, after notice and opportunity for hear-  
12 ing, to exercise directly or indirectly (either  
13 alone or pursuant to an arrangement or under-  
14 standing with one or more persons) such a con-  
15 trolling influence over the management or poli-  
16 cies of any public utility company or holding  
17 company as to make it necessary or appropriate  
18 for the rate protection of utility customers with  
19 respect to rates that such person be subject to  
20 the obligations, duties, and liabilities imposed  
21 by this subtitle upon holding companies.

22 (9) The term “holding company system” means  
23 a holding company, together with its subsidiary com-  
24 panies.

1           (10) The term “jurisdictional rates” means  
2 rates established by the Commission for the trans-  
3 mission of electric energy in interstate commerce,  
4 the sale of electric energy at wholesale in interstate  
5 commerce, the transportation of natural gas in inter-  
6 state commerce, and the sale in interstate commerce  
7 of natural gas for resale for ultimate public con-  
8 sumption for domestic, commercial, industrial, or  
9 any other use.

10           (11) The term “natural gas company” means a  
11 person engaged in the transportation of natural gas  
12 in interstate commerce or the sale of such gas in  
13 interstate commerce for resale.

14           (12) The term “person” means an individual or  
15 company.

16           (13) The term “public utility” means any per-  
17 son who owns or operates facilities used for trans-  
18 mission of electric energy in interstate commerce or  
19 sales of electric energy at wholesale in interstate  
20 commerce.

21           (14) The term “public utility company” means  
22 an electric utility company or a gas utility company.

23           (15) The term “State commission” means any  
24 commission, board, agency, or officer, by whatever  
25 name designated, of a State, municipality, or other



1 political subdivision of a State that, under the laws  
2 of such State, has jurisdiction to regulate public util-  
3 ity companies.

4 (16) The term “subsidiary company” of a hold-  
5 ing company means—

6 (A) any company, 10 percent or more of  
7 the outstanding voting securities of which are  
8 directly or indirectly owned, controlled, or held  
9 with power to vote, by such holding company;  
10 and

11 (B) any person, the management or poli-  
12 cies of which the Commission, after notice and  
13 opportunity for hearing, determines to be sub-  
14 ject to a controlling influence, directly or indi-  
15 rectly, by such holding company (either alone or  
16 pursuant to an arrangement or understanding  
17 with one or more other persons) so as to make  
18 it necessary for the rate protection of utility  
19 customers with respect to rates that such per-  
20 son be subject to the obligations, duties, and li-  
21 abilities imposed by this subtitle upon sub-  
22 subsidiary companies of holding companies.

23 (17) The term “voting security” means any se-  
24 curity presently entitling the owner or holder thereof

1 to vote in the direction or management of the affairs  
2 of a company.

3 **SEC. 7043. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**  
4 **PANY ACT OF 1935.**

5 The Public Utility Holding Company Act of 1935 (15  
6 U.S.C. 79 et seq.) is repealed.

7 **SEC. 7044. FEDERAL ACCESS TO BOOKS AND RECORDS.**

8 (a) IN GENERAL.—Each holding company and each  
9 associate company thereof shall maintain, and shall make  
10 available to the Commission, such books, accounts, memo-  
11 randa, and other records as the Commission deems to be  
12 relevant to costs incurred by a public utility or natural  
13 gas company that is an associate company of such holding  
14 company and necessary or appropriate for the protection  
15 of utility customers with respect to jurisdictional rates.

16 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-  
17 ing company or of any subsidiary company of a holding  
18 company shall maintain, and shall make available to the  
19 Commission, such books, accounts, memoranda, and other  
20 records with respect to any transaction with another affil-  
21 iate, as the Commission deems to be relevant to costs in-  
22 curred by a public utility or natural gas company that is  
23 an associate company of such holding company and nec-  
24 essary or appropriate for the protection of utility cus-  
25 tomers with respect to jurisdictional rates.

1           (c) HOLDING COMPANY SYSTEMS.—The Commission  
2 may examine the books, accounts, memoranda, and other  
3 records of any company in a holding company system, or  
4 any affiliate thereof, as the Commission deems to be rel-  
5 evant to costs incurred by a public utility or natural gas  
6 company within such holding company system and nec-  
7 essary or appropriate for the protection of utility cus-  
8 tomers with respect to jurisdictional rates.

9           (d) CONFIDENTIALITY.—No member, officer, or em-  
10 ployee of the Commission shall divulge any fact or infor-  
11 mation that may come to his or her knowledge during the  
12 course of examination of books, accounts, memoranda, or  
13 other records as provided in this section, except as may  
14 be directed by the Commission or by a court of competent  
15 jurisdiction.

16 **SEC. 7045. STATE ACCESS TO BOOKS AND RECORDS.**

17           (a) In GENERAL.—Upon the written request of a  
18 State commission having jurisdiction to regulate a public  
19 utility company in a holding company system, the holding  
20 company or any associate company or affiliate thereof,  
21 other than such public utility company, wherever located,  
22 shall produce for inspection books, accounts, memoranda,  
23 and other records that—

24                   (1) have been identified in reasonable detail by  
25           the State commission;

1           (2) the State commission deems are relevant to  
2           costs incurred by such public utility company; and

3           (3) are necessary for the effective discharge of  
4           the responsibilities of the State commission with re-  
5           spect to such proceeding.

6           (b) LIMITATION.—Subsection (a) does not apply to  
7           any person that is a holding company solely by reason of  
8           ownership of one or more qualifying facilities under the  
9           Public Utility Regulatory Policies Act of 1978 (16 U.S.C.  
10          2601 et seq.).

11          (c) CONFIDENTIALITY OF INFORMATION.—The pro-  
12          duction of books, accounts, memoranda, and other records  
13          under subsection (a) shall be subject to such terms and  
14          conditions as may be necessary and appropriate to safe-  
15          guard against unwarranted disclosure to the public of any  
16          trade secrets or sensitive commercial information.

17          (d) EFFECT ON STATE LAW.—Nothing in this sec-  
18          tion shall preempt applicable State law concerning the pro-  
19          vision of books, accounts, memoranda, and other records,  
20          or in any way limit the rights of any State to obtain books,  
21          accounts, memoranda, and other records under any other  
22          Federal law, contract, or otherwise.

23          (e) COURT JURISDICTION.—Any United States dis-  
24          trict court located in the State in which the State commis-

1 sion referred to in subsection (a) is located shall have ju-  
2 risdiction to enforce compliance with this section.

3 **SEC. 7046. EXEMPTION AUTHORITY.**

4 (a) RULEMAKING.—Not later than 90 days after the  
5 effective date of this subtitle, the Commission shall pro-  
6 mulgate a final rule to exempt from the requirements of  
7 section 7044 (relating to Federal access to books and  
8 records) any person that is a holding company, solely with  
9 respect to one or more—

10 (1) qualifying facilities under the Public Utility  
11 Regulatory Policies Act of 1978 (16 U.S.C. 2601 et  
12 seq.);

13 (2) exempt wholesale generators; or

14 (3) foreign utility companies.

15 (b) OTHER AUTHORITY.—The Commission shall ex-  
16 empt a person or transaction from the requirements of  
17 section 7044 (relating to Federal access to books and  
18 records) if, upon application or upon the motion of the  
19 Commission—

20 (1) the Commission finds that the books, ac-  
21 counts, memoranda, and other records of any person  
22 are not relevant to the jurisdictional rates of a pub-  
23 lic utility or natural gas company; or

1           (2) the Commission finds that any class of  
2           transactions is not relevant to the jurisdictional  
3           rates of a public utility or natural gas company.

4 **SEC. 7047. AFFILIATE TRANSACTIONS.**

5           (a) COMMISSION AUTHORITY UNAFFECTED.—Noth-  
6           ing in this subtitle shall limit the authority of the Commis-  
7           sion under the Federal Power Act (16 U.S.C. 791a et seq.)  
8           to require that jurisdictional rates are just and reasonable,  
9           including the ability to deny or approve the pass through  
10          of costs, the prevention of cross-subsidization, and the pro-  
11          mulgation of such rules and regulations as are necessary  
12          or appropriate for the protection of utility consumers.

13          (b) RECOVERY OF COSTS.—Nothing in this subtitle  
14          shall preclude the Commission or a State commission from  
15          exercising its jurisdiction under otherwise applicable law  
16          to determine whether a public utility company, public util-  
17          ity, or natural gas company may recover in rates any costs  
18          of an activity performed by an associate company, or any  
19          costs of goods or services acquired by such public utility  
20          company from an associate company.

21 **SEC. 7048. APPLICABILITY.**

22          Except as otherwise specifically provided in this sub-  
23          title, no provision of this subtitle shall apply to, or be  
24          deemed to include—

25                 (1) the United States;

1           (2) a State or any political subdivision of a  
2 State;

3           (3) any foreign governmental authority not op-  
4 erating in the United States;

5           (4) any agency, authority, or instrumentality of  
6 any entity referred to in paragraph (1), (2), or (3);  
7 or

8           (5) any officer, agent, or employee of any entity  
9 referred to in paragraph (1), (2), or (3) acting as  
10 such in the course of his or her official duty.

11 **SEC. 7049. EFFECT ON OTHER REGULATIONS.**

12       Nothing in this subtitle precludes the Commission or  
13 a State commission from exercising its jurisdiction under  
14 otherwise applicable law to protect utility customers.

15 **SEC. 7050. ENFORCEMENT.**

16       The Commission shall have the same powers as set  
17 forth in sections 306 through 317 of the Federal Power  
18 Act (16 U.S.C. 825e–825p) to enforce the provisions of  
19 this subtitle.

20 **SEC. 7051. SAVINGS PROVISIONS.**

21       (a) IN GENERAL.—Nothing in this subtitle prohibits  
22 a person from engaging in or continuing to engage in ac-  
23 tivities or transactions in which it is legally engaged or  
24 authorized to engage on the date of enactment of this Act,

1 so long as that person continues to comply with the terms  
2 of any such authorization, whether by rule or by order.

3 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—

4 Nothing in this subtitle limits the authority of the Com-  
5 mission under the Federal Power Act (16 U.S.C. 791a et  
6 seq.) (including section 301 of that Act) or the Natural  
7 Gas Act (15 U.S.C. 717 et seq.) (including section 8 of  
8 that Act).

9 **SEC. 7052. IMPLEMENTATION.**

10 Not later than 12 months after the date of enactment  
11 of this subtitle, the Commission shall—

12 (1) promulgate such regulations as may be nec-  
13 essary or appropriate to implement this subtitle  
14 (other than section 7045, relating to State access to  
15 books and records); and

16 (2) submit to the Congress detailed rec-  
17 ommendations on technical and conforming amend-  
18 ments to Federal law necessary to carry out this  
19 subtitle and the amendments made by this subtitle.

20 **SEC. 7053. TRANSFER OF RESOURCES.**

21 All books and records that relate primarily to the  
22 functions transferred to the Commission under this sub-  
23 title shall be transferred from the Securities and Exchange  
24 Commission to the Commission.



1 **SEC. 7054. EFFECTIVE DATE.**

2 This subtitle shall take effect 12 months after the  
3 date of enactment of this subtitle.

4 **SEC. 7055. AUTHORIZATION OF APPROPRIATIONS.**

5 There are authorized to be appropriated such funds  
6 as may be necessary to carry out this subtitle.

7 **SEC. 7056. CONFORMING AMENDMENTS TO THE FEDERAL**  
8 **POWER ACT.**

9 (a) CONFLICT OF JURISDICTION.—Section 318 of the  
10 Federal Power Act (16 U.S.C. 825q) is repealed.

11 (b) DEFINITIONS.—(1) Section 201(g) of the Federal  
12 Power Act (16 U.S.C. 824(g)) is amended by striking  
13 “1935” and inserting “2003”.

14 (2) Section 214 of the Federal Power Act (16 U.S.C.  
15 824m) is amended by striking “1935” and inserting  
16 “2003”.

17 **Subtitle E—PURPA Amendments**

18 **SEC. 7061. REAL-TIME PRICING AND TIME-OF-USE METER-**  
19 **ING STANDARDS.**

20 (a) ADOPTION OF STANDARDS.—Section 111(d) of  
21 the Public Utility Regulatory Policies Act of 1978 (16  
22 U.S.C. 2621(d)) is amended by adding at the end the fol-  
23 lowing:

24 “(11) REAL-TIME PRICING.—(A) Each electric  
25 utility shall, at the request of an electric consumer,  
26 provide electric service under a real-time rate sched-

1       ule, under which the rate charged by the electric  
2       utility varies by the hour (or smaller time interval)  
3       according to changes in the electric utility’s whole-  
4       sale power cost. The real-time pricing service shall  
5       enable the electric consumer to manage energy use  
6       and cost through real-time metering and commu-  
7       nications technology.

8               “(B) For purposes of implementing this para-  
9       graph, any reference contained in this section to the  
10      date of enactment of the Public Utility Regulatory  
11      Policies Act of 1978 shall be deemed to be a ref-  
12      erence to the date of enactment of this paragraph.

13              “(C) Notwithstanding subsections (b) and (c) of  
14      section 112, each State regulatory authority shall  
15      consider and make a determination concerning  
16      whether it is appropriate to implement the standard  
17      set out in subparagraph (A) not later than 1 year  
18      after the date of enactment of this paragraph.

19              “(12) TIME-OF-USE METERING.—(A) Each elec-  
20      tric utility shall, at the request of an electric con-  
21      sumer, provide electric service under a time-of-use  
22      rate schedule which enables the electric consumer to  
23      manage energy use and cost through time-of-use me-  
24      tering and technology.

1           “(B) For purposes of implementing this para-  
2           graph, any reference contained in this section to the  
3           date of enactment of the Public Utility Regulatory  
4           Policies Act of 1978 shall be deemed to be a ref-  
5           erence to the date of enactment of this paragraph.

6           “(C) Notwithstanding subsections (b) and (c) of  
7           section 112, each State regulatory authority shall  
8           consider and make a determination concerning  
9           whether it is appropriate to implement the standards  
10          set out in subparagraph (A) not later than 1 year  
11          after the date of enactment of this paragraph.”.

12          (b) SPECIAL RULES.—Section 115 of the Public Util-  
13          ity Regulatory Policies Act of 1978 (16 U.S.C. 2625) is  
14          amended by adding at the end the following:

15          “(i) REAL-TIME PRICING.—In a State that permits  
16          third-party marketers to sell electric energy to retail elec-  
17          tric consumers, the electric consumer shall be entitled to  
18          receive the same real-time metering and communication  
19          service as a direct retail electric consumer of the electric  
20          utility.

21          “(j) TIME-OF-USE METERING.—In a State that per-  
22          mits third-party marketers to sell electric energy to retail  
23          electric consumers, the electric consumer shall be entitled  
24          to receive the same time-of-use metering and communica-

1 tion service as a direct retail electric consumer of the elec-  
2 tric utility.”.

3 **SEC. 7062. COGENERATION AND SMALL POWER PRODUC-**  
4 **TION PURCHASE AND SALE REQUIREMENTS.**

5 (a) **TERMINATION OF MANDATORY PURCHASE AND**  
6 **SALE REQUIREMENTS.**—Section 210 of the Public Utility  
7 Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is  
8 amended by adding at the end the following:

9 “(m) **TERMINATION OF MANDATORY PURCHASE AND**  
10 **SALE REQUIREMENTS.**—

11 “(1) **OBLIGATION TO PURCHASE.**—After the  
12 date of enactment of this subsection, no electric util-  
13 ity shall be required to enter into a new contract or  
14 obligation to purchase electric energy from a quali-  
15 fying cogeneration facility or a qualifying small  
16 power production facility under this section if the  
17 Commission finds that—

18 “(A) the qualifying cogeneration facility or  
19 qualifying small power production facility has  
20 access to

21 “(i) independently administered, auc-  
22 tion-based day ahead and real time whole-  
23 sale markets for the sale of electric energy,  
24 and

1                   “(ii) long-term wholesale markets for  
2                   the sale of capacity and electric energy;

3                   “(B) the qualifying cogeneration facility or  
4                   qualifying small power production facility has  
5                   access to a competitive wholesale market for the  
6                   sale of electric energy that provides such quali-  
7                   fying cogeneration facility or qualifying small  
8                   power production facility with opportunities to  
9                   sell electric energy that, at a minimum, are  
10                  comparable to the opportunities provided by the  
11                  markets, or some minimum combination there-  
12                  of, described in subparagraph (A); or

13                  “(C) the qualifying cogeneration facility  
14                  does not meet criteria established by the Com-  
15                  mission pursuant to the rulemaking set forth in  
16                  subparagraph (n) and has not filed with the  
17                  Commission a notice of self-certification or an  
18                  application for Commission certification under  
19                  18 C.F.R. 292.207 prior to the date of enact-  
20                  ment of this subsection.

21                  “(2) COMMISSION REVIEW.—(A) Any electric  
22                  utility may file an application with the Commission  
23                  for relief from the mandatory purchase obligation  
24                  pursuant to this subsection on a utility-wide basis.  
25                  Such application shall set forth the reasons why

1 such relief is appropriate and describe how the con-  
2 ditions set forth in subparagraphs (A) and (B) of  
3 paragraph (1) of this subsection have been met.

4 “(B) After notice, including sufficient notice to  
5 potentially affected qualifying facilities, and an op-  
6 portunity for comment, and within 90 days of the  
7 filing of an application under subparagraph (A), the  
8 Commission shall make a final determination as to  
9 whether the conditions set forth in subparagraphs  
10 (A) and (B) of paragraph (1) have been met. The  
11 Commission shall not be authorized to issue a tolling  
12 order regarding such application or otherwise delay  
13 a final decision regarding such application.

14 “(3) REINSTATEMENT OF OBLIGATION TO PUR-  
15 CHASE.—(A) At any time after the Commission  
16 makes a finding under paragraph (2) relieving an  
17 electric utility of its obligation to purchase electric  
18 energy, a qualifying cogeneration facility or a quali-  
19 fying small power production facility may apply to  
20 the Commission for an order reinstating the electric  
21 utility’s obligation to purchase electric energy under  
22 this section. Such application shall set forth the rea-  
23 sons why such relief is no longer appropriate and de-  
24 scribe how the tests set forth in subparagraphs (A)

1 and (B) of paragraph (1) of this subsection are no  
2 longer met.

3 “(B) After notice, including sufficient notice to  
4 potentially affected utilities, and opportunity for  
5 comment, and within 90 days of the filing of an ap-  
6 plication under subparagraph (A), the Commission  
7 shall issue an order reinstating the electric utility’s  
8 obligation to purchase electric energy under this sec-  
9 tion if the Commission finds that the condition in  
10 paragraph (1), which relieved the obligation to pur-  
11 chase, is no longer met. The Commission shall not  
12 be authorized to issue a tolling order regarding such  
13 application or otherwise delay a final decision re-  
14 garding such application.

15 “(4) OBLIGATION TO SELL.—After the date of  
16 enactment of this subsection, no electric utility shall  
17 be required to enter into a new contract or obliga-  
18 tion to sell electric energy to a qualifying cogenera-  
19 tion facility or a qualifying small power production  
20 facility if—

21 “(A) competing retail electric suppliers are  
22 willing and able to provide electric energy to the  
23 qualifying cogeneration facility or qualifying  
24 small power production facility, and

1           “(B) the electric utility is not required by  
2           State law to sell electric energy in its service  
3           territory.

4           “(5) NO EFFECT ON EXISTING RIGHTS AND  
5           REMEDIES.—Nothing in this subsection affects the  
6           rights or remedies of any party under any contract  
7           or obligation, in effect or pending approval before  
8           the appropriate State regulatory authority or non-  
9           regulated electric utility on the date of enactment of  
10          this subsection, to purchase electric energy or capac-  
11          ity from or to sell electric energy or capacity to a  
12          facility under this Act (including the right to recover  
13          costs of purchasing electric energy or capacity).

14          “(6) RECOVERY OF COSTS.—

15                 “(A) REGULATION.—To ensure recovery  
16                 by an electric utility that purchases electric en-  
17                 ergy or capacity from a qualifying facility pur-  
18                 suant to any legally enforceable obligation en-  
19                 tered into or imposed under this section of all  
20                 prudently incurred costs associated with the  
21                 purchases, the Commission shall issue and en-  
22                 force such regulations as may be required to en-  
23                 sure that the electric utility shall recover the  
24                 prudently incurred costs associated with such  
25                 purchases.



1           “(B) ENFORCEMENT.—A regulation under  
2           subparagraph (A) shall be enforceable in ac-  
3           cordance with the provisions of law applicable  
4           to enforcement of regulations under the Federal  
5           Power Act (16 U.S.C. 791a et seq.).

6           “(n) RULEMAKING FOR NEW FACILITIES.—

7           “(1) IN GENERAL.—Not later than 180 days  
8           after the date of enactment of this subsection, the  
9           Commission shall issue a rule revising the criteria  
10          for qualifying cogeneration facilities in 18 C.F.R.  
11          292.205. In particular, the Commission shall evalu-  
12          ate the rules regarding qualifying facility criteria  
13          and revise such rules, as necessary, to ensure—

14               “(A) that the thermal energy output of a  
15               new qualifying cogeneration facility is used in a  
16               productive and beneficial manner;

17               “(B) the electrical and thermal output of  
18               the cogeneration facility is used predominantly  
19               for commercial or industrial processes and not  
20               intended predominantly for sale to an electric  
21               utility; and

22               “(C) continuing progress in the develop-  
23               ment of efficient electric energy generating  
24               technology.

1           “(2) APPLICABILITY.—Any revisions made to  
2           operating and efficiency standards shall be applica-  
3           ble only to a cogeneration facility that—

4                   “(A) was not a qualifying cogeneration fa-  
5                   cility, or

6                   “(B) had not filed with the Commission a  
7                   notice of self-certification or an application for  
8                   Commission certification under 18 C.F.R.  
9                   292.207—

10          prior to the date of enactment of this subsection.

11           “(3) DEFINITION.—For purposes of this sub-  
12           section, the term ‘commercial processes’ includes  
13           uses of thermal and electric energy for educational  
14           and healthcare facilities.

15           “(o) RULES FOR EXISTING FACILITIES.— Notwith-  
16          standing rule revisions under subsection (n), the Commis-  
17          sion’s rules in effect prior to the effective date of any re-  
18          vised rules prescribed under subsection (n) shall continue  
19          to apply to any cogeneration facility or small power pro-  
20          duction facility that—

21                   “(1) was a qualifying cogeneration facility or a  
22                   qualifying small power production facility, or

23                   “(2) had filed with the Commission a notice of  
24                   self-certification or an application for Commission  
25                   certification under 18 C.F.R. 292.207—

1 prior to the date of enactment of subsections (m) and  
2 (n).”.

3 (b) **ELIMINATION OF OWNERSHIP LIMITATIONS.**—

4 (1) Section 3(17)(C) of the Federal Power Act (16 U.S.C.  
5 796(17)(C)) is amended to read as follows:

6 “(C) ‘qualifying small power production fa-  
7 cility’ means a small power production facility  
8 that the Commission determines, by rule, meets  
9 such requirements (including requirements re-  
10 specting minimum size, fuel use, and fuel effi-  
11 ciency) as the Commission may, by rule, pre-  
12 scribe.”.

13 (2) Section 3(18)(B) of the Federal Power Act (16  
14 U.S.C. 796(18)(B)) is amended to read as follows:

15 “(B) ‘qualifying cogeneration facility’  
16 means a cogeneration facility that the Commis-  
17 sion determines, by rule, meets such require-  
18 ments (including requirements respecting min-  
19 imum size, fuel use, and fuel efficiency) as the  
20 Commission may, by rule, prescribe.”.

21 **SEC. 7063. SMART METERING.**

22 (a) **IN GENERAL.**—Section 111 (d) of the Public Util-  
23 ities Regulatory Policies Act of 1978 (16 U.S.C. 2621(d))  
24 is amended by adding at the end the following:

1           “(11) (A) Not later than eighteen (18) months  
2 after the date of enactment of this paragraph, each  
3 electric utility shall offer each of its customer class-  
4 es, and provide individual customers upon customer  
5 request, a time-based rate schedule under which the  
6 rate charged by the electric utility varies during dif-  
7 ferent time periods and reflects the variance in the  
8 costs of generating and purchasing electricity at the  
9 wholesale level. The time-based rate schedule shall  
10 enable the electric consumer to manage energy use  
11 and cost through advanced metering and commu-  
12 nications technology.

13           “(B) The types of time-based rate schedules  
14 that may be offered under the schedule referred to  
15 in subparagraph (A) include, among others, each the  
16 following:

17           “(i) Time-Of-Use pricing whereby elec-  
18 tricity prices are set for a specific time period  
19 on an advance or forward basis, typically not  
20 changing more often than twice a year. Prices  
21 paid for energy consumed during these periods  
22 shall be pre-established and known to con-  
23 sumers in advance of such consumption, allow-  
24 ing them to vary their demand and usage in re-  
25 sponse to such prices and manage their energy

1 costs by shifting usage to a lower cost period or  
2 reducing their consumption overall.

3 “(ii) Critical Peak Pricing whereby time-  
4 of-use prices are in effect except for certain  
5 peak days, when prices may reflect the costs of  
6 generating and purchasing electricity at the  
7 wholesale level and when consumers may receive  
8 additional discounts for reducing peak period  
9 energy consumption.

10 “(iii) Real-Time pricing whereby electricity  
11 prices are set for a specific time period on an  
12 advanced or forward basis and may change as  
13 often as hourly.

14 “(C) Each electric utility subject to subpara-  
15 graph (A) shall provide each customer requesting a  
16 time-based rate with a time-based meter capable of  
17 enabling the utility and customer to offer and re-  
18 ceive such rate, respectively.

19 “(D) For purposes of implementing this para-  
20 graph, any reference contained in this section to the  
21 date of enactment of the Public Utility Regulatory  
22 Policies Act of 1978 shall be deemed to be a ref-  
23 erence to the date of enactment of this paragraph.

24 “(E) In a State that permits third-party mar-  
25 keters to sell electric energy to retail electric con-

1       sumers, such consumers shall be entitled to receive  
2       that same time-based metering and communications  
3       device and service as a retail electric consumer of  
4       the electric utility.

5               “(F) Notwithstanding subsections (b) and (c) of  
6       section 112, each State regulatory authority shall,  
7       not later than twelve (12) months after enactment  
8       of this paragraph conduct an investigation in accord-  
9       ance with section 115(i) and issue a decision wheth-  
10      er it is appropriate to implement the standards set  
11      out in subparagraphs (A) and (C).”.

12      (b) STATE INVESTIGATION OF DEMAND RESPONSE  
13      AND TIME-BASED METERING.—

14      Section 115 of the Public Utilities Regulatory Poli-  
15      cies Act of 1978 (16 U.S.C. 2625) is amended by adding  
16      the at the end the following:

17               “(i) TIME-BASED METERING AND COMMUNICA-  
18      TIONS.—(1) Each State regulatory authority shall, not  
19      later than twelve (12) months after enactment of this sub-  
20      section, conduct an investigation and issue a decision  
21      whether or not it is appropriate for electric utilities to pro-  
22      vide and install time-based meters and communications  
23      devices for each of their customers which enable such cus-  
24      tomers to participate in time-based pricing rate schedules  
25      and other demand response programs.”.

1 (c) FEDERAL ASSISTANCE ON DEMAND RE-  
2 SPONSE.—Section 132 (a) of the Public Utility Regulatory  
3 Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by  
4 striking “and” at the end of paragraph (3), striking the  
5 period at the end of paragraph (4) and inserting “; and”,  
6 and by adding the following at the end thereof:

7 “(5) technologies, techniques and rate-making  
8 methods related to advanced metering and commu-  
9 nications and the use of these technologies, tech-  
10 niques and methods in demand response programs.”.

11 (d) FEDERAL GUIDANCE.—Section 132 of the Public  
12 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2643)  
13 is amended by adding the following at the end thereof:

14 “(d) DEMAND RESPONSE.—The Secretary shall be  
15 responsible for each of the following:

16 “(1) Educating consumers on the availability,  
17 advantages and benefits of advanced metering and  
18 communications technologies including the funding  
19 of demonstration or pilot projects.

20 “(2) Working with States, utilities, other energy  
21 providers and advanced metering and communica-  
22 tions experts to identify and address barriers to the  
23 adoption of demand response programs, and

24 “(3) Within 6 months of enactment, provide the  
25 Congress with a report that identifies and quantifies

1 the national benefits of demand response and pro-  
2 vides policy recommendations as to how to achieve  
3 specific levels of such benefits by January 1, 2005.”.

4 (e) DEMAND RESPONSE AND REGIONAL COORDINA-  
5 TION.—

6 (1) It is the policy of the United States to en-  
7 courage States to coordinate, on a regional basis,  
8 State energy policies to provide reliable and afford-  
9 able demand response services to the public.

10 (2) TECHNICAL ASSISTANCE.—The Secretary of  
11 Energy shall provide technical assistance to States  
12 and regional organizations formed by two or more  
13 States to assist them in—

14 (A) identifying the areas with the greatest  
15 demand response potential;

16 (B) identifying and resolving problems in  
17 transmission and distribution networks, includ-  
18 ing through the use of demand response; and

19 (C) developing plans and programs to use  
20 demand response to respond to peak demand or  
21 emergency needs.

22 (3) REPORT.—The Federal Energy Regulatory  
23 Commission shall prepare and publish an annual re-  
24 port, by appropriate region, that assesses demand  
25 response resources, including those available from all



1 consumer classes, and which identifies and reviews  
2 each of the following:

3 (A) Saturation and penetration rate of ad-  
4 vanced meters and communications tech-  
5 nologies, devices and systems.

6 (B) Existing demand response programs  
7 and time-based rate programs.

8 (C) The annual resource contribution of  
9 demand resources, including the prior year and  
10 following years.

11 (D) The potential for demand response as  
12 a quantifiable, reliable resource for regional  
13 planning purposes.

14 (E) Steps taken to ensure that, in regional  
15 transmission planning and operations, that de-  
16 mand resources are provided equitable treat-  
17 ment as a quantifiable, reliable resource relative  
18 to the resource obligations of any load-serving  
19 entity, transmission provider or transmitting  
20 party.

21 (f) COST RECOVERY OF DEMAND RESPONSE DE-  
22 VICES.—It is the policy of the United States that time-  
23 based pricing and other forms of demand response, where-  
24 by electricity customers are provided with electricity price  
25 signals and the ability to benefit by responding to them,

1 shall be encouraged and the deployment of such tech-  
2 nology and devices that enable electricity customers to  
3 participate in such pricing and demand response systems  
4 shall be facilitated. It is further the policy of the United  
5 States that the benefits of such demand response that ac-  
6 crue to those not deploying such technology and devices,  
7 but who are part of the same regional electricity entity,  
8 shall be recognized.

## 9 **Subtitle F—Renewable Energy**

### 10 **SEC. 7071. NET METERING.**

11 (a) ADOPTION OF STANDARD.—Section 111(d) of the  
12 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.  
13 2621(d)) is amended by adding at the end the following:

14 “(13) NET METERING.—(A) Each electric util-  
15 ity shall make available upon request net metering  
16 service to any electric consumer that the electric  
17 utility serves.

18 “(B) For purposes of implementing this para-  
19 graph, any reference contained in this section to the  
20 date of enactment of the Public Utility Regulatory  
21 Policies Act of 1978 shall be deemed to be a ref-  
22 erence to the date of enactment of this paragraph.

23 “(C) Notwithstanding subsections (b) and (c) of  
24 section 112, each State regulatory authority shall  
25 consider and make a determination concerning

1       whether it is appropriate to implement the standard  
2       set out in subparagraph (A) not later than 1 year  
3       after the date of enactment of this paragraph.”.

4       (b) SPECIAL RULES FOR NET METERING.—Section  
5       115 of the Public Utility Regulatory Policies Act of 1978  
6       (16 U.S.C. 2625) is amended by adding at the end the  
7       following:

8           “(k) NET METERING.—In undertaking the consider-  
9       ation and making the determination under section 111  
10       with respect to the standard concerning net metering es-  
11       tablished by section 111(d)(13), the term ‘net metering  
12       service’ shall mean a service provided in accordance with  
13       the following standards:

14           “(1) RATES AND CHARGES.—An electric util-  
15       ity—

16           “(A) shall charge the owner or operator of  
17       an on-site generating facility rates and charges  
18       that are identical to those that would be  
19       charged other electric consumers of the electric  
20       utility in the same rate class; and

21           “(B) shall not charge the owner or oper-  
22       ator of an on-site generating facility any addi-  
23       tional standby, capacity, interconnection, or  
24       other rate or charge.

1           “(2) MEASUREMENT.—An electric utility that  
2           sells electric energy to the owner or operator of an  
3           on-site generating facility shall measure the quantity  
4           of electric energy produced by the on-site facility  
5           and the quantity of electric energy consumed by the  
6           owner or operator of an on-site generating facility  
7           during a billing period in accordance with normal  
8           metering practices.

9           “(3) ELECTRIC ENERGY SUPPLIED EXCEEDING  
10          ELECTRIC ENERGY GENERATED.—If the quantity of  
11          electric energy sold by the electric utility to an on-  
12          site generating facility exceeds the quantity of elec-  
13          tric energy supplied by the on-site generating facility  
14          to the electric utility during the billing period, the  
15          electric utility may bill the owner or operator for the  
16          net quantity of electric energy sold, in accordance  
17          with normal metering practices.

18          “(4) ELECTRIC ENERGY GENERATED EXCEED-  
19          ING ELECTRIC ENERGY SUPPLIED.—If the quantity  
20          of electric energy supplied by the on-site generating  
21          facility to the electric utility exceeds the quantity of  
22          electric energy sold by the electric utility to the on-  
23          site generating facility during the billing period—

24                  “(A) the electric utility may bill the owner  
25                  or operator of the on-site generating facility for

1 the appropriate charges for the billing period in  
2 accordance with paragraph (2); and

3 “(B) the owner or operator of the on-site  
4 generating facility shall be credited for the ex-  
5 cess kilowatt-hours generated during the billing  
6 period, with the kilowatt-hour credit appearing  
7 on the bill for the following billing period.

8 “(5) SAFETY AND PERFORMANCE STAND-  
9 ARDS.—An eligible on-site generating facility and  
10 net metering system used by an electric consumer  
11 shall meet all applicable safety, performance, reli-  
12 ability, and interconnection standards established by  
13 the National Electrical Code, the Institute of Elec-  
14 trical and Electronics Engineers, and Underwriters  
15 Laboratories.

16 “(6) ADDITIONAL CONTROL AND TESTING RE-  
17 QUIREMENTS.—The Commission, after consultation  
18 with State regulatory authorities and nonregulated  
19 electric utilities and after notice and opportunity for  
20 comment, may adopt, by rule, additional control and  
21 testing requirements for on-site generating facilities  
22 and net metering systems that the Commission de-  
23 termines are necessary to protect public safety and  
24 system reliability.

1           “(7) DEFINITIONS.—For purposes of this sub-  
2 section:

3           “(A) The term ‘eligible on-site generating  
4 facility’ means—

5           “(i) a facility on the site of a residen-  
6 tial electric consumer with a maximum  
7 generating capacity of 10 kilowatts or less  
8 that is fueled by solar energy, wind energy,  
9 or fuel cells; or

10           “(ii) a facility on the site of a com-  
11 mercial electric consumer with a maximum  
12 generating capacity of 500 kilowatts or  
13 less that is fueled solely by a renewable en-  
14 ergy resource, landfill gas, or a high effi-  
15 ciency system.

16           “(B) The term ‘renewable energy resource’  
17 means solar, wind, biomass, or geothermal en-  
18 ergy.

19           “(C) The term ‘high efficiency system’  
20 means service fuel cells or combined heat and  
21 power.

22           “(D) The term ‘net metering’ means serv-  
23 ice to an electric consumer under which electric  
24 energy generated by that electric consumer  
25 from an eligible on-site generating facility and

1 delivered to the local distribution facilities may  
2 be used to offset electric energy provided by the  
3 electric utility to the electric consumer during  
4 the applicable billing period.”

5 **SEC. 7072. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

6 (a) INCENTIVE PAYMENTS.—Section 1212(a) of the  
7 Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is  
8 amended by striking “and which satisfies” and all that  
9 follows through “Secretary shall establish.” and inserting  
10 “. If there are insufficient appropriations to make full pay-  
11 ments for electric production from all qualified renewable  
12 energy facilities in any given year, the Secretary shall as-  
13 sign 60 percent of appropriated funds for that year to fa-  
14 cilities that use solar, wind, geothermal, or closed-loop  
15 (dedicated energy crops) biomass technologies to generate  
16 electricity, and assign the remaining 40 percent to other  
17 projects. The Secretary may, after transmitting to the  
18 Congress an explanation of the reasons therefor, alter the  
19 percentage requirements of the preceding sentence.”.

20 (b) QUALIFIED RENEWABLE ENERGY FACILITY.—  
21 Section 1212(b) of the Energy Policy Act of 1992 (42  
22 U.S.C. 13317(b)) is amended—

23 (1) by striking “a State or any political” and  
24 all that follows through “nonprofit electrical cooper-  
25 ative” and inserting “a not-for-profit electric cooper-

1       ative, a public utility described in section 115 of the  
2       Internal Revenue Code of 1986, a State, Common-  
3       wealth, territory, or possession of the United States  
4       or the District of Columbia, or a political subdivision  
5       thereof, or an Indian tribal government of subdivi-  
6       sion thereof,”; and

7               (2) by inserting “landfill gas,” after “wind, bio-  
8       mass,”.

9       (c) ELIGIBILITY WINDOW.—Section 1212(c) of the  
10      Energy Policy Act of 1992 (42 U.S.C. 13317(c)) is  
11      amended by striking “during the 10-fiscal year period be-  
12      ginning with the first full fiscal year occurring after the  
13      enactment of this section” and inserting “after October  
14      1, 2003, and before October 1, 2013”.

15      (d) AMOUNT OF PAYMENT.—Section 1212(e)(1) of  
16      the Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1))  
17      is amended by inserting “landfill gas,” after “wind, bio-  
18      mass,”.

19      (e) SUNSET.—Section 1212(f) of the Energy Policy  
20      Act of 1992 (42 U.S.C. 13317(f)) is amended by striking  
21      “the expiration of” and all that follows through “of this  
22      section” and inserting “September 30, 2023”.

23      (f) AUTHORIZATION OF APPROPRIATIONS.—Section  
24      1212(g) of the Energy Policy Act of 1992 (42 U.S.C.  
25      13317(g)) is amended to read as follows:



1 “(g) AUTHORIZATION OF APPROPRIATIONS.—

2 “(1) IN GENERAL.—Subject to paragraph (2),  
3 there are authorized to be appropriated such sums  
4 as may be necessary to carry out this section for fis-  
5 cal years 2003 through 2023.

6 “(2) AVAILABILITY OF FUNDS.—Funds made  
7 available under paragraph (1) shall remain available  
8 until expended.”.

9 **SEC. 7073. RENEWABLE ENERGY ON FEDERAL LANDS.**

10 (a) REPORT TO CONGRESS.—Within 24 months after  
11 the date of enactment of this section, the Secretary of the  
12 Interior, in cooperation with the Secretary of Agriculture,  
13 shall develop and report to the Congress recommendations  
14 on opportunities to develop renewable energy on public  
15 lands under the jurisdiction of the Secretary of the Inte-  
16 rior and National Forest System lands under the jurisdic-  
17 tion of the Secretary of Agriculture. The report shall in-  
18 clude—

19 (1) 5-year plans developed by the Secretary of  
20 the Interior and the Secretary of Agriculture, re-  
21 spectively, for encouraging the development of wind  
22 and solar energy consistent with applicable law and  
23 management plans; and

24 (2) an analysis of—

1           (A) the use of rights-of-ways, leases, or  
2 other methods to develop wind and solar energy  
3 on such lands;

4           (B) the anticipated benefits of grants,  
5 loans, tax credits, or other provisions to pro-  
6 mote wind and solar energy development on  
7 such lands; and

8           (C) any issues that the Secretary of the  
9 Interior or the Secretary of Agriculture have  
10 encountered in managing wind or solar energy  
11 projects on such lands, or believe are likely to  
12 arise in relation to the development of wind or  
13 solar energy on such lands;

14           (3) a list, developed in consultation with the  
15 Secretary of Energy and the Secretary of Defense,  
16 of lands under the jurisdiction of the Department of  
17 Energy or Defense that would be suitable for devel-  
18 opment for wind or solar energy, and any rec-  
19 ommended statutory and regulatory mechanisms for  
20 such development; and

21           (4) any recommendations pertaining to the  
22 issues addressed in the report.

23           (b) NATIONAL ACADEMY OF SCIENCES STUDY.—

24           (1) IN GENERAL.—Within 90 days after the  
25 date of the enactment of this Act, the Secretary of

1 the Interior shall contract with the National Acad-  
2 emy of Sciences to—

3 (A) study the potential for the development  
4 of wind, solar, and ocean energy on the Outer  
5 Continental Shelf;

6 (B) assess existing Federal authorities for  
7 the development of such resources; and

8 (C) recommend statutory and regulatory  
9 mechanisms for such development.

10 (2) TRANSMITTAL OF RESULTS.—The results of  
11 the study shall be transmitted to the Congress with-  
12 in 24 months after the date of the enactment of this  
13 Act.

14 **SEC. 7074. ASSESSMENT OF RENEWABLE ENERGY RE-**  
15 **SOURCES.**

16 (a) RESOURCE ASSESSMENT.—Not later than 3  
17 months after the date of enactment of this Act, and each  
18 year thereafter, the Secretary of Energy shall review the  
19 available assessments of renewable energy resources avail-  
20 able within the United States, including solar, wind, bio-  
21 mass, ocean, geothermal, and hydroelectric energy re-  
22 sources, and undertake new assessments as necessary,  
23 taking into account changes in market conditions, avail-  
24 able technologies, and other relevant factors.

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

6 (1) a detailed inventory describing the available  
7 amount and characteristics of the renewable energy  
8 resources; and

9 (2) such other information as the Secretary be-  
10 lieves would be useful in developing such renewable  
11 energy resources, including descriptions of sur-  
12 rounding terrain, population and load centers, near-  
13 by energy infrastructure, location of energy and  
14 water resources, and available estimates of the costs  
15 needed to develop each resource, together with an  
16 identification of any barriers to providing adequate  
17 transmission for remote sources of renewable energy  
18 resources to current and emerging markets, rec-  
19 ommendations for removing or addressing such bar-  
20 riers, and ways to provide access to the grid that do  
21 not unfairly disadvantage renewable or other energy  
22 producers.

1 **Subtitle G—Market Transparency,**  
2 **Round Trip Trading Prohibi-**  
3 **tion, and Enforcement**

4 **SEC. 7081. MARKET TRANSPARENCY RULES.**

5 Part II of the Federal Power Act is amended by add-  
6 ing the following new section at the end thereof:

7 **“SEC. 218. MARKET TRANSPARENCY RULES.**

8 “(a) COMMISSION RULES.—Not later than 180 days  
9 after the date of enactment of this section, the Commis-  
10 sion shall issue rules establishing an electronic information  
11 system to provide the Commission and the public with ac-  
12 cess to such information as is necessary or appropriate  
13 to facilitate price transparency and participation in mar-  
14 kets subject to the Commission’s jurisdiction. Such sys-  
15 tems shall provide information about the availability and  
16 market price of sales of electric energy at wholesale in  
17 interstate commerce and transmission of electric energy  
18 in interstate commerce to the Commission, State commis-  
19 sions, buyers and sellers of wholesale electric energy, users  
20 of transmission services, and the public on a timely basis.  
21 The Commission shall have authority to obtain such infor-  
22 mation from any person, and any entity described in sec-  
23 tion 201(f), who sells electric energy at wholesale in inter-  
24 state commerce or provides transmission services in inter-  
25 state commerce.

1       “(b) EXEMPTIONS.—The Commission shall exempt  
2 from disclosure information it determines would, if dis-  
3 closed, (1) be detrimental to the operation of an effective  
4 market; or (2) jeopardize system security. This section  
5 shall not apply to an entity described in section  
6 212(k)(2)(B) with respect to transactions for the purchase  
7 or sale of wholesale electric energy and transmission serv-  
8 ices within the area described in section 212(k)(2)(A).

9       **SEC. 7082. PROHIBITION ON ROUND TRIP TRADING.**

10       Part II of the Federal Power Act is amended by add-  
11 ing the following new section at the end thereof:

12       **“SEC. 219. PROHIBITION ON ROUND TRIP TRADING.**

13       “(a) PROHIBITION.—It shall be a violation of this Act  
14 for any person, and any entity described in section 201(f),  
15 willfully and knowingly to enter into any contract or other  
16 arrangement to execute a round-trip trade for the pur-  
17 chase or sale of electric energy at wholesale.

18       “(b) DEFINITION OF ROUND-TRIP TRADE.—For the  
19 purposes of this section, the term “round-trip trade”  
20 means a transaction, or combination of transactions, in  
21 which a person or other entity—

22               “(1) enters into a contract or other arrange-  
23 ment to purchase from, or sell to, any other person  
24 or other entity electric energy at wholesale;

1           “(2) simultaneously with entering into the con-  
2           tract described in paragraph (1), arranges a finan-  
3           cially offsetting trade with such other person or enti-  
4           ty for the same quantity of electric energy so that,  
5           collectively, the purchase and sale transactions in  
6           themselves result in no financial gain or loss; and

7           “(3) has a specific intent to distort reported  
8           revenues, trading volumes, or prices.”.

9   **SEC. 7083. CONFORMING CHANGES.**

10          Sections 201(b)(2) and 201(e) of the Federal Power  
11   Act are each amended by striking “or 212” and inserting  
12   “212, 215, 216, 217, 218, or 219”. Section 201(b)(2) of  
13   such Act is further amended by striking “and 212” and  
14   inserting “, 212, 215, 216, 217, 218, and 219”.

15   **SEC. 7084. ENFORCEMENT.**

16          (a) COMPLAINTS.—Section 306 of the Federal Power  
17   Act (16 U.S.C. 825e) is amended by—

18           (1) inserting “electric utility,” after “Any per-  
19           son,”; and

20           (2) inserting “, transmitting utility,” after “li-  
21           censee” each place it appears.

22          (b) REVIEW OF COMMISSION ORDERS.—Section  
23   313(a) of the Federal Power Act (16 U.S.C. 8251) is  
24   amended by inserting “electric utility,” after “person,” in  
25   the first place it appears and by striking “any person un-

1 less such person” and inserting “any entity unless such  
2 entity”.

3 (c) CRIMINAL PENALTIES.—Section 316 of the Fed-  
4 eral Power Act (16 U.S.C. 825o) is amended—

5 (1) in subsection (a), by striking “\$5,000” and  
6 inserting “\$1,000,000”, and by striking “two years”  
7 and inserting “five years”;

8 (2) in subsection (b), by striking “\$500” and  
9 inserting “\$25,000”; and

10 (3) by striking subsection (c).

11 (d) CIVIL PENALTIES.—Section 316A of the Federal  
12 Power Act (16 U.S.C. 825–1) is amended—

13 (1) in subsections (a) and (b), by striking “sec-  
14 tion 211, 212, 213, or 214” each place it appears  
15 and inserting “Part II”; and

16 (2) in subsection (b), by striking “\$10,000”  
17 and inserting “\$1,000,000”.

## 18 **Subtitle H—Consumer Protections**

### 19 **SEC. 7091. REFUND EFFECTIVE DATE.**

20 Section 206(b) of the Federal Power Act (16 U.S.C.  
21 824e(b)) is amended by—

22 (1) striking “the date 60 days after the filing  
23 of such complaint nor later than 5 months after the  
24 expiration of such 60-day period” in the second sen-  
25 tence and inserting “the date of the filing of such



1 complaint nor later than 5 months after the filing of  
2 such complaint”;

3 (2) striking “60 days after” in the third sen-  
4 tence and inserting “of”;

5 (3) striking “expiration of such 60-day period”  
6 in the third sentence and inserting “publication  
7 date”; and

8 (4) in the fifth sentence after “rendered by the”  
9 insert “date 60 days after the”.

10 **SEC. 7092. JURISDICTION OVER INTERSTATE SALES.**

11 (a) SCOPE OF AUTHORITY.—Section 206 of the Fed-  
12 eral Power Act (16 U.S.C. 824e) is amended by adding  
13 the following new subsection at the end thereof:

14 “(f)(1) If an entity that is not a public utility (includ-  
15 ing an entity referred to in section 201(f)) voluntarily  
16 makes a spot market sale of electric energy and such sale  
17 violates Commission rules in effect at the time of such  
18 sale, such entity shall be subject to the Commission’s re-  
19 fund authority under this section with respect to such vio-  
20 lation.

21 “(2) This section shall not apply to any entity that  
22 is either—

23 “(A) an entity described in section 201(f); or

24 “(B) a rural electric cooperative

1 that does not sell more than 4,000,000 megawatt hours  
2 of electricity per year.

3 “(3) For purposes of this subsection, the term ‘spot  
4 market sale’ means an agreement for the sale of electric  
5 energy at wholesale in interstate commerce that is for 24  
6 hours or less and that is entered into the day of, or the  
7 day prior to, delivery.”.

8 (b) CONFORMING AMENDMENTS.—(1) Section 206 of  
9 the Federal Power Act (16 U.S.C. 824e) is amended as  
10 follows:

11 (A) In subsection (b), in the seventh sentence,  
12 by striking “the public utility to make”.

13 (B) In the first sentence of subsection (a), by  
14 striking “hearing had” and inserting “hearing held”.

15 (2) Section 201(b)(2) of such Act (16 U.S.C.  
16 824(b)(2)) is amended as follows:

17 (A) In the first sentence by striking “section  
18 210” and inserting “section 206(f), 210,”.

19 (B) In the second sentence by striking “section  
20 210” and inserting “206(f), 210,”.

21 (3) Section 201(e) of the Federal Power Act is  
22 amended by striking “section 210” and inserting “section  
23 206(f), 210”.

1 (c) UNIFORM INVESTIGATION AUTHORITY.—Section  
2 307(a) of the Federal Power Act (16 U.S.C. 825f(a)) is  
3 amended as follows:

4 (1) By inserting “, electric utility, transmitting  
5 utility, or other entity” after “person” each time it  
6 appears.

7 (2) By striking the period at the end of the  
8 first sentence and inserting the following: “or in ob-  
9 taining information about the sale of electric energy  
10 at wholesale in interstate commerce and the trans-  
11 mission of electric energy in interstate commerce.”.

12 (d) SANCTITY OF CONTRACT.—(1) The Federal En-  
13 ergy Regulatory Commission shall have no authority to ab-  
14rogate or modify any provision of a contract, except upon  
15 a finding, after notice and opportunity for a hearing, that  
16 such action is necessary to protect the public interest, un-  
17 less such contract expressly provides for a different stand-  
18 ard of review.

19 (2) For purposes of this subsection, a contract is any  
20 agreement, in effect and subject to the jurisdiction of the  
21 Commission—

22 (A) under section 4 of the Natural Gas Act or  
23 section 205 of the Federal Power Act; and

24 (B) that is not for sales in an organized ex-  
25 change or auction spot market.

1           (3) This subsection shall not apply to any contract  
2       executed before the date of enactment of this section un-  
3       less such contract is an interconnection agreement, nor  
4       shall this subsection affect the outcome in any proceeding  
5       regarding any contract for sales of electric power executed  
6       before the date of enactment of this section.

7       **SEC. 7093. CONSUMER PRIVACY.**

8           (a) IN GENERAL.—The Federal Trade Commission  
9       shall issue rules protecting the privacy of electric con-  
10      sumers from the disclosure of consumer information ob-  
11      tained in connection with the sale or delivery of electric  
12      energy to electric consumers. The Federal Trade Commis-  
13      sion shall proceed in accordance with section 553 of title  
14      5, United States Code, when prescribing a rule under this  
15      section.

16          (b) STATE AUTHORITY.—If the Federal Trade Com-  
17      mission determines that a State’s regulations provide  
18      equivalent or greater protection than the provisions of this  
19      section, such State regulations shall apply in that State  
20      in lieu of the regulations issued by the Commission under  
21      this section.

22       **SEC. 7094. UNFAIR TRADE PRACTICES.**

23          (a) SLAMMING.—The Federal Trade Commission  
24      shall issue rules prohibiting the change of selection of an  
25      electric utility except with the informed consent of the

1 electric consumer or if approved by the appropriate State  
2 regulatory authority.

3 (b) CRAMMING.—The Federal Trade Commission  
4 shall issue rules prohibiting the sale of goods and services  
5 to an electric consumer unless expressly authorized by law  
6 or the electric consumer.

7 (c) RULEMAKING.—The Federal Trade Commission  
8 shall proceed in accordance with section 553 of title 5,  
9 United States Code, when prescribing a rule under this  
10 section.

11 (d) STATE AUTHORITY.—If the Federal Trade Com-  
12 mission determines that a State’s regulations provide  
13 equivalent or greater protection than the provisions of this  
14 section, such State regulations shall apply in that State  
15 in lieu of the regulations issued by the Commission under  
16 this section.

## 17 **Subtitle I—Merger Review Reform** 18 **and Accountability**

### 19 **SEC. 7101. MERGER REVIEW REFORM AND ACCOUNT-** 20 **ABILITY.**

21 (a) MERGER REVIEW REFORM.—Within 180 days  
22 after the date of enactment of this act, the Secretary of  
23 Energy, in consultation with the Federal Energy Regu-  
24 latory Commission and the Department of Justice, shall  
25 prepare, and transmit to the Committee on Energy and

1 Commerce of the House of Representatives and the Com-  
2 mittee on Energy and Natural Resources of the Senate  
3 each of the following:

4 (1) A study of the extent to which the authori-  
5 ties vested in the Federal Energy Regulatory Com-  
6 mission under section 203 of the Federal Power Act  
7 are duplicative of authorities vested in—

8 (A) other agencies of Federal and State  
9 government; and

10 (B) the Federal Energy Regulatory Com-  
11 mission, including under sections 205 and 206  
12 of the Federal Power Act.

13 (2) Recommendations on reforms to the Fed-  
14 eral Power Act that would eliminate any unneces-  
15 sary duplication in the exercise of regulatory author-  
16 ity or unnecessary delays in the approval (or dis-  
17 approval) of applications for the sale, lease, or other  
18 disposition of public utility facilities.

19 (b) MERGER REVIEW ACCOUNTABILITY.—Not later  
20 than 1 year after the date of enactment of this Act and  
21 annually thereafter, with respect to all orders issued with-  
22 in the preceding year that impose a condition on a sale,  
23 lease, or other disposition of public utility facilities under  
24 section 203(b) of the Federal Power Act, the Federal En-  
25 ergy Regulatory Commission shall transmit a report to the

1 Committee on Energy and Commerce of the House of  
2 Representatives and the Committee on Energy and Nat-  
3 ural Resources of the Senate explaining each of the fol-  
4 lowing:

5 (1) The condition imposed.

6 (2) Whether the Commission could have im-  
7 posed such condition by exercising its authority  
8 under any provision of the Federal Power Act other  
9 than under section 203(b).

10 (3) If the Commission could not have imposed  
11 such condition other than under section 203(b), why  
12 the Commission determined that such condition was  
13 consistent with the public interest.

14 **Subtitle J—Study of Economic**  
15 **Dispatch**

16 **SEC. 7111. STUDY ON THE BENEFITS OF ECONOMIC DIS-**  
17 **PATCH.**

18 (a) STUDY.—The Secretary of Energy, in coordina-  
19 tion and consultation with the States, shall conduct a  
20 study on—

21 (1) the procedures currently used by electric  
22 utilities to perform economic dispatch,

23 (2) identifying possible revisions to those proce-  
24 dures to improve the ability of nonutility generation

1 resources to offer their output for sale for the pur-  
2 pose of inclusion in economic dispatch; and

3 (3) the potential benefits to residential, com-  
4 mercial, and industrial electricity consumers nation-  
5 ally and in each state if economic dispatch proce-  
6 dures were revised to improve the ability of non-  
7 utility generation resources to offer their output for  
8 inclusion in economic dispatch.

9 (b) DEFINITION.—The term “economic dispatch”  
10 when used in this section means the operation of genera-  
11 tion facilities to produce energy at the lowest cost to reli-  
12 ably serve consumers, recognizing any operational limits  
13 of generation and transmission facilities.

14 (c) REPORT TO CONGRESS AND THE STATES.—Not  
15 later than 90 days after the date of enactment of this Act,  
16 and on a yearly basis following, the Secretary of Energy  
17 shall submit a report to the Congress and the States on  
18 the results of the study conducted under subsection (a),  
19 including recommendations to the Congress and the States  
20 for any suggested legislative or regulatory changes.

## 21 **TITLE VIII—COAL**

### 22 **SEC. 8001. AUTHORIZATION OF APPROPRIATIONS.**

23 (a) CLEAN COAL POWER INITIATIVE.—Except as  
24 provided in subsection (b), there are authorized to be ap-  
25 propriated to the Secretary to carry out the activities au-



1 thorized by this title \$200,000,000 for each of the fiscal  
2 years 2005 through 2013, to remain available until ex-  
3 pended.

4 (b) LIMIT ON USE OF FUNDS.—The Secretary shall  
5 transmit to the Congress the report required by this sub-  
6 section not later than September 30, 2004. Notwith-  
7 standing subsection (a), no funds may be used to carry  
8 out the activities authorized by this title after September  
9 30, 2004, unless the report has been transmitted. The re-  
10 port shall include, with respect to subsection (a), a 10-  
11 year plan containing—

12 (1) a detailed assessment of whether the aggre-  
13 gate funding levels provided under subsection (a) are  
14 the appropriate funding levels for that program;

15 (2) a detailed description of how proposals will  
16 be solicited and evaluated, including a list of all ac-  
17 tivities expected to be undertaken;

18 (3) a detailed list of technical milestones for  
19 each coal and related technology that will be pur-  
20 sued; and

21 (4) a detailed description of how the program  
22 will avoid problems enumerated in General Account-  
23 ing Office reports on the Clean Coal Technology  
24 Program, including problems that have resulted in

1 unspent funds and projects that failed either finan-  
2 cially or scientifically.

3 (c) APPLICABILITY.—Subsection (b) shall not apply  
4 to any project begun before September 30, 2004.

5 **SEC. 8002. PROJECT CRITERIA.**

6 (a) IN GENERAL.—The Secretary shall not provide  
7 funding under this title for any project that does not ad-  
8 vance efficiency, environmental performance, and cost  
9 competitiveness well beyond the level of technologies that  
10 on a full scale are in operation or have been demonstrated  
11 as of the date of the enactment of this Act.

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

14 (1) GASIFICATION.—(A) In allocating the funds  
15 made available under section 8001(a), the Secretary  
16 shall ensure that up to 80 percent of the funds are  
17 used only for coal-based gasification technologies, in-  
18 cluding gasification combined cycle, gasification fuel  
19 cells, gasification coproduction and hybrid gasifi-  
20 cation/combustion.

21 (B) The Secretary shall set technical milestones  
22 specifying emissions levels for projects funded under  
23 this paragraph. The milestones shall be designed to  
24 increasingly restrict emission levels through the life

1 of the program. The milestones shall be designed to  
2 achieve by 2020 coal gasification projects able—

3 (i) to remove 99 percent of sulfur dioxide;

4 (ii) to emit no more than .05 lbs of NOx  
5 per million BTU;

6 (iii) to achieve substantial reductions in  
7 mercury emissions; and

8 (iv) to achieve a thermal efficiency of—

9 (I) 60 percent for coal of more than  
10 9,000 Btu;

11 (II) 59 percent for coal of 7,000 to  
12 9,000 Btu; and

13 (III) 50 percent for coal of less than  
14 7,000 Btu.

15 (2) OTHER PROJECTS.—For projects not de-  
16 scribed in paragraph (1), the Secretary shall set  
17 technical milestones specifying emissions levels. The  
18 milestones shall be designed to increasingly restrict  
19 emission levels through the life of the program. The  
20 milestones shall be designed to achieve by 2010  
21 projects able—

22 (A) to remove 97 percent of sulfur dioxide;

23 (B) to emit no more than .08 lbs of NOx  
24 per million BTU;

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

3 (D) except as provided in paragraph (4),  
4 to achieve a thermal efficiency of—

5 (i) 45 percent for coal of more than  
6 9,000 Btu;

7 (ii) 44 percent for coal of 7,000 to  
8 9,000 Btu; and

9 (iii) 42 percent for coal of less than  
10 7,000 Btu.

11 (3) CONSULTATION.—Before setting the tech-  
12 nical milestones under paragraphs (1)(B) and (2),  
13 the Secretary shall consult with the Administrator of  
14 the Environmental Protection Agency and interested  
15 entities, including coal producers, industries using  
16 coal, organizations to promote coal or advanced coal  
17 technologies, environmental organizations, and orga-  
18 nizations representing workers.

19 (4) EXISTING UNITS.—In the case of projects  
20 at existing units, in lieu of the thermal efficiency re-  
21 quirements set forth in paragraph (1)(B)(iv) and  
22 (2)(D), the projects shall be designed to achieve an  
23 overall thermal design efficiency improvement com-  
24 pared to the efficiency of the unit as operated, of not  
25 less than—

- 1                   (A) 7 percent for coal of more than 9,000  
2                   Btu;  
3                   (B) 6 percent for coal of 7,000 to 9,000  
4                   Btu; or  
5                   (C) 4 percent for coal of less than 7,000  
6                   Btu.

7           (5) PERMITTED USES.—In allocating funds  
8           made available under section 8001, the Secretary  
9           may fund projects that include, as part of the  
10          project, the separation and capture of carbon diox-  
11          ide.

12          (c) FINANCIAL CRITERIA.—The Secretary shall not  
13          provide a funding award under this title unless the recipi-  
14          ent has documented to the satisfaction of the Secretary  
15          that—

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

18               (2) the recipient will provide sufficient informa-  
19               tion to the Secretary for the Secretary to ensure  
20               that the award funds are spent efficiently and effec-  
21               tively; and

22               (3) a market exists for the technology being  
23               demonstrated or applied, as evidenced by statements  
24               of interest in writing from potential purchasers of  
25               the technology.

1 (d) FINANCIAL ASSISTANCE.—The Secretary shall  
2 provide financial assistance to projects that meet the re-  
3 quirements of subsections (a), (b), and (c) and are likely  
4 to—

5 (1) achieve overall cost reductions in the utiliza-  
6 tion of coal to generate useful forms of energy;

7 (2) improve the competitiveness of coal among  
8 various forms of energy in order to maintain a diver-  
9 sity of fuel choices in the United States to meet elec-  
10 tricity generation requirements; and

11 (3) demonstrate methods and equipment that  
12 are applicable to 25 percent of the electricity gener-  
13 ating facilities, utilizing different types of coal, that  
14 use coal as the primary feedstock as of the date of  
15 the enactment of this Act.

16 (e) FEDERAL SHARE.—The Federal share of the cost  
17 of a project funded by the Secretary under this title shall  
18 not exceed 50 percent.

19 (f) APPLICABILITY.—No technology, or level of emis-  
20 sion reduction, shall be treated as adequately dem-  
21 onstrated for purposes of section 111 of the Clean Air Act,  
22 achievable for purposes of section 169 of that Act, or  
23 achievable in practice for purposes of section 171 of that  
24 Act solely by reason of the use of such technology, or the

1 achievement of such emission reduction, by one or more  
2 facilities receiving assistance under this title.

3 **SEC. 8003. REPORT.**

4 Not later than 1 year after the date of the enactment  
5 of this Act, and once every 2 years thereafter for the fol-  
6 lowing 8 years, the Secretary, in consultation with other  
7 appropriate Federal agencies, shall transmit to the Con-  
8 gress a report describing—

9 (1) the technical milestones set forth in section  
10 8002 and how those milestones ensure progress to-  
11 ward meeting the requirements of subsections  
12 (b)(1)(B) and (b)(2) of section 8002; and

13 (2) the status of projects funded under this  
14 title.

15 **SEC. 8004. CLEAN COAL CENTERS OF EXCELLENCE.**

16 As part of the program authorized in section 8001,  
17 the Secretary shall award competitive, merit-based grants  
18 to universities for the establishment of Centers of Excel-  
19 lence for Energy Systems of the Future. The Secretary  
20 shall provide grants to universities that can show the  
21 greatest potential for advancing new clean coal tech-  
22 nologies.

1           **TITLE IX—MOTOR FUELS**  
2           **Subtitle A—General Provisions**

3   **SEC. 9101. RENEWABLE CONTENT OF MOTOR VEHICLE**  
4           **FUEL.**

5           (a) IN GENERAL.—Section 211 of the Clean Air Act  
6 (42 U.S.C. 7545) is amended—

7           (1) by redesignating subsection (o) as sub-  
8           section (q); and

9           (2) by inserting after subsection (n) the fol-  
10          lowing:

11          “(o) RENEWABLE FUEL PROGRAM.—

12           “(1) DEFINITIONS.—In this section:

13           “(A) CELLULOSIC BIOMASS ETHANOL.—

14           The term ‘cellulosic biomass ethanol’ means  
15           ethanol derived from any lignocellulosic or  
16           hemicellulosic matter that is available on a re-  
17           newable or recurring basis, including—

18           “(i) dedicated energy crops and trees;

19           “(ii) wood and wood residues;

20           “(iii) plants;

21           “(iv) grasses;

22           “(v) agricultural residues;

23           “(vi) fibers;

24           “(vii) animal wastes and other waste  
25           materials; and



1 “(viii) municipal solid waste.

2 “(B) RENEWABLE FUEL.—

3 “(i) IN GENERAL.—The term ‘renew-  
4 able fuel’ means motor vehicle fuel that—

5 “(I)(aa) is produced from grain,  
6 starch, oilseeds, or other biomass; or

7 “(bb) is natural gas produced  
8 from a biogas source, including a  
9 landfill, sewage waste treatment plant,  
10 feedlot, or other place where decaying  
11 organic material is found; and

12 “(II) is used to replace or reduce  
13 the quantity of fossil fuel present in a  
14 fuel mixture used to operate a motor  
15 vehicle.

16 “(ii) INCLUSION.—The term ‘renew-  
17 able fuel’ includes cellulosic biomass eth-  
18 anol and biodiesel (as defined in section  
19 312(f) of the Energy Policy Act of 1992  
20 (42 U.S.C. 13220(f)) and any blending  
21 components derived from renewable fuel  
22 (provided that only the renewable fuel por-  
23 tion of any such blending component shall  
24 be considered part of the applicable volume

1           under the renewable fuel program estab-  
2           lished by this subsection).

3           “(C) SMALL REFINERY.—The term ‘small  
4           refinery’ means a refinery for which average ag-  
5           gregate daily crude oil throughput for the cal-  
6           endar year (as determined by dividing the ag-  
7           gregate throughput for the calendar year by the  
8           number of days in the calendar year) does not  
9           exceed 75,000 barrels.

10          “(2) RENEWABLE FUEL PROGRAM.—

11           “(A) IN GENERAL.—Not later than 1 year  
12           from enactment of this provision, the Adminis-  
13           trator shall promulgate regulations ensuring  
14           that gasoline sold or dispensed to consumers in  
15           the contiguous United States, on an annual av-  
16           erage basis, contains the applicable volume of  
17           renewable fuel as specified in subparagraph  
18           (B). Regardless of the date of promulgation,  
19           such regulations shall contain compliance provi-  
20           sions for refiners, blenders, and importers, as  
21           appropriate, to ensure that the requirements of  
22           this section are met, but shall not restrict where  
23           renewables can be used, or impose any per-gal-  
24           lon obligation for the use of renewables. If the  
25           Administrator does not promulgate such regula-

1 tions, the applicable percentage, on a volume  
2 percentage of gasoline basis, shall be 1.62 in  
3 2005.

4 “(B) APPLICABLE VOLUME.—

5 “(i) CALENDAR YEARS 2005 THROUGH  
6 2015.—For the purpose of subparagraph  
7 (A), the applicable volume for any of cal-  
8 endar years 2005 through 2015 shall be  
9 determined in accordance with the fol-  
10 lowing table:

**Applicable volume of renewable fuel**

<b>“Calendar year:</b>	<b>(In billions of gallons)</b>
2005 .....	2.7
2006 .....	2.7
2007 .....	2.9
2008 .....	2.9
2009 .....	3.4
2010 .....	3.4
2011 .....	3.4
2012 .....	4.2
2013 .....	4.2
2014 .....	4.2
2015 .....	5.0.

11 “(ii) CALENDAR YEAR 2016 AND  
12 THEREAFTER.—For the purpose of sub-  
13 paragraph (A), the applicable volume for  
14 calendar year 2016 and each calendar year  
15 thereafter shall be equal to the product ob-  
16 tained by multiplying—

17 “(I) the number of gallons of  
18 gasoline that the Administrator esti-

1                   mates will be sold or introduced into  
2                   commerce in the calendar year; and

3                   “(II) the ratio that—

4                    “(aa) 5.0 billion gallons of  
5                    renewable fuels; bears to

6                    “(bb) the number of gallons  
7                    of gasoline sold or introduced  
8                    into commerce in calendar year  
9                    2015.

10               “(3) APPLICABLE PERCENTAGES.—Not later  
11               than October 31 of each calendar year after 2002,  
12               the Administrator of the Energy Information Ad-  
13               ministration shall provide the Administrator an esti-  
14               mate of the volumes of gasoline sales in the United  
15               States for the coming calendar year. Based on such  
16               estimates, the Administrator shall, by November 30  
17               of each calendar year after 2003, determine and  
18               publish in the Federal Register, the renewable fuel  
19               obligation, on a volume percentage of gasoline basis,  
20               applicable to refiners, blenders, and importers, as  
21               appropriate, for the coming calendar year, to ensure  
22               that the requirements of paragraph (2) are met. For  
23               each calendar year, the Administrator shall establish  
24               a single applicable percentage that applies to all par-  
25               ties, and make provision to avoid redundant obliga-

1 tions. In determining the applicable percentages, the  
2 Administrator shall make adjustments to account for  
3 the use of renewable fuels by exempt small refineries  
4 during the previous year.

5 “(4) CELLULOSIC BIOMASS ETHANOL.—For the  
6 purpose of paragraph (2), 1 gallon of cellulosic bio-  
7 mass ethanol shall be considered to be the equivalent  
8 of 1.5 gallon of renewable fuel.

9 “(5) CREDIT PROGRAM.—

10 “(A) IN GENERAL.—The regulations pro-  
11 mulgated to carry out this subsection shall pro-  
12 vide for the generation of an appropriate  
13 amount of credits by any person that refines,  
14 blends, or imports gasoline that contains a  
15 quantity of renewable fuel that is greater than  
16 the quantity required under paragraph (2).  
17 Such regulations shall provide for the genera-  
18 tion of an appropriate amount of credits for  
19 biodiesel fuel. If a small refinery notifies the  
20 Administrator that it waives the exemption pro-  
21 vided by this Act, the regulations shall provide  
22 for the generation of credits by the small refin-  
23 ery beginning in the year following such notifi-  
24 cation.

1           “(B) USE OF CREDITS.—A person that  
2           generates credits under subparagraph (A) may  
3           use the credits, or transfer all or a portion of  
4           the credits to another person, for the purpose  
5           of complying with paragraph (2).

6           “(C) LIFE OF CREDITS.—A credit gen-  
7           erated under this paragraph shall be valid to  
8           show compliance:

9                   (i) in the calendar year in which the  
10                  credit was generated or the next calendar  
11                  year, or

12                  (ii) in the calendar year in which the  
13                  credit was generated or next two consecu-  
14                  tive calendar years if the Administrator  
15                  promulgates regulations under paragraph  
16                  (6).

17           “(D) INABILITY TO PURCHASE SUFFICIENT  
18           CREDITS.—The regulations promulgated to  
19           carry out this subsection shall include provi-  
20           sions allowing any person that is unable to gen-  
21           erate or purchase sufficient credits to meet the  
22           requirements under paragraph (2) to carry for-  
23           ward a renewables deficit provided that, in the  
24           calendar year following the year in which the  
25           renewables deficit is created, such person shall

1           achieve compliance with the renewables require-  
2           ment under paragraph (2), and shall generate  
3           or purchase additional renewables credits to off-  
4           set the renewables deficit of the previous year.

5           “(6) SEASONAL VARIATIONS IN RENEWABLE  
6           FUEL USE.—

7                   “(A) STUDY.—For each of calendar years  
8                   2005 through 2015, the Administrator of the  
9                   Energy Information Administration, shall con-  
10                  duct a study of renewable fuels blending to de-  
11                  termine whether there are excessive seasonal  
12                  variations in the use of renewable fuels.

13                   “(B) REGULATION OF EXCESSIVE SEA-  
14                   SONAL VARIATIONS.—If, for any calendar year,  
15                   the Administrator of the Energy Information  
16                   Administration, based on the study under sub-  
17                   paragraph (A), makes the determinations speci-  
18                   fied in subparagraph (C), the Administrator  
19                   shall promulgate regulations to ensure that 35  
20                   percent or more of the quantity of renewable  
21                   fuels necessary to meet the requirement of  
22                   paragraph (2) is used during each of the peri-  
23                   ods specified in subparagraph (D) of each sub-  
24                   sequent calendar year.

1           “(C) DETERMINATIONS.—The determina-  
2           tions referred to in subparagraph (B) are  
3           that—

4                   “(i) less than 35 percent of the quan-  
5                   tity of renewable fuels necessary to meet  
6                   the requirement of paragraph (2) has been  
7                   used during one of the periods specified in  
8                   subparagraph (D) of the calendar year;

9                   “(ii) a pattern of excessive seasonal  
10                  variation described in clause (i) will con-  
11                  tinue in subsequent calendar years; and

12                  “(iii) promulgating regulations or  
13                  other requirements to impose a 35% or  
14                  more seasonal use of renewable fuels will  
15                  not prevent or interfere with the attain-  
16                  ment of national ambient air quality stand-  
17                  ards or significantly increase the price of  
18                  motor fuels to the consumer.

19           “(D) PERIODS.—The two periods referred  
20           to in this paragraph are—

21                   “(i) April through September; and

22                   “(ii) January through March and Oc-  
23                  tober through December.

24           “(E) EXCLUSIONS.—Renewable fuels  
25           blended or consumed in 2005 in a State which



1 has received a waiver under section 209(b) shall  
2 not be included in the study in subparagraph  
3 (A).

4 “(7) WAIVERS.—

5 “(A) IN GENERAL.—The Administrator, in  
6 consultation with the Secretary of Agriculture  
7 and the Secretary of Energy, may waive the re-  
8 quirement of paragraph (2) in whole or in part  
9 on petition by one or more States by reducing  
10 the national quantity of renewable fuel required  
11 under this subsection—

12 “(i) based on a determination by the  
13 Administrator, after public notice and op-  
14 portunity for comment, that implementa-  
15 tion of the requirement would have a sig-  
16 nificant and meaningful adverse impact on  
17 the economy or environment of a State, a  
18 region, or the United States, or will pre-  
19 vent or interfere with the attainment of a  
20 national ambient air quality standard in  
21 any area of a State; or

22 “(ii) based on a determination by the  
23 Administrator, after public notice and op-  
24 portunity for comment, that there is an in-

1           adequate domestic supply or distribution  
2           capacity to meet the requirement.

3           “(B) PETITIONS FOR WAIVERS.—The Ad-  
4           ministrators, in consultation with the Secretary  
5           of Agriculture and the Secretary of Energy,  
6           shall approve or disapprove a State petition for  
7           a waiver of the requirement of paragraph (2)  
8           within 90 days after the date on which the peti-  
9           tion is received by the Administrator. If the Ad-  
10          ministrator does not act to approve or dis-  
11          approve a State petition for a waiver within 90  
12          days, the Administrator shall publish a notice  
13          setting forth the reasons for not acting within  
14          the required 90-day period.

15          “(C) TERMINATION OF WAIVERS.—A waiv-  
16          er granted under subparagraph (A) shall termi-  
17          nate after 1 year, but may be renewed by the  
18          Administrator after consultation with the Sec-  
19          retary of Agriculture and the Secretary of En-  
20          ergy.

21          “(8) STUDY AND WAIVER FOR INITIAL YEAR OF  
22          PROGRAM.—Not later than 180 days from enact-  
23          ment, the Secretary of Energy shall complete for the  
24          Administrator a study assessing whether the renew-  
25          able fuels requirement under paragraph (2) will like-

1 ly result in significant adverse consumer impacts in  
2 2005, on a national, regional or State basis. Such  
3 study shall evaluate renewable fuel supplies and  
4 prices, blendstock supplies, and supply and distribu-  
5 tion system capabilities. Based on such study, the  
6 Secretary shall make specific recommendations to  
7 the Administrator regarding waiver of the require-  
8 ments of paragraph (2), in whole or in part, to avoid  
9 any such adverse impacts. Within 270 days from en-  
10 actment, the Administrator shall, consistent with the  
11 recommendations of the Secretary waive, in whole or  
12 in part, the renewable fuels requirement under para-  
13 graph (2) by reducing the national quantity of re-  
14 newable fuel required under this subsection in 2005.  
15 This provision shall not be interpreted as limiting  
16 the Administrator's authority to waive the require-  
17 ments of paragraph (2) in whole, or in part, under  
18 paragraph (7) or paragraph (9), pertaining to waiv-  
19 ers.

20 “(9) ASSESSMENT AND WAIVER.—The Sec-  
21 retary of Energy, in consultation with the Adminis-  
22 trator of the Environmental Protection Agency and  
23 the Secretary of Agriculture on his own motion, or  
24 upon petition of any State shall evaluate the require-  
25 ment of paragraph (2) and determine, prior to Janu-

1       ary 1, 2007, or prior to January 1 of any subse-  
2       quent year in which the applicable volume of renew-  
3       able fuel is increased under paragraph (2)(B),  
4       whether the requirement of paragraph (2), including  
5       the applicable volume of renewable fuel contained in  
6       paragraph (2)(B) should remain in effect, in whole  
7       or in part, during 2007 or any year or years subse-  
8       quent to 2007. In evaluating the requirement of  
9       paragraph (2) and in making any determination  
10      under this section, the Secretary shall consider the  
11      best available information and data collected by ac-  
12      cepted methods or best available means regarding—

13               “(A) the capacity of renewable fuel pro-  
14               ducers to supply an adequate amount of renew-  
15               able fuel at competitive prices to fulfill the re-  
16               quirement in paragraph (2);

17               “(B) the potential of the requirement in  
18               paragraph (2) to significantly raise the price of  
19               gasoline, food or heating oil for consumers in  
20               any significant area or region of the country  
21               above the price that would otherwise apply to  
22               such commodities in the absence of the require-  
23               ment;

24               “(C) the potential of the requirement in  
25               paragraph (2) to interfere with the supply of

1 fuel in any significant gasoline market or region  
2 of the country, including interference with the  
3 efficient operation of refiners, blenders, import-  
4 ers, wholesale suppliers, and retail vendors of  
5 gasoline, and other motor fuels; and

6 “(D) the potential of the requirement to  
7 cause or promote exceedences of Federal, State,  
8 or local air quality standards.

9 If the Secretary determines, after public notice and  
10 the opportunity for comment, that the requirement  
11 of paragraph (2) would have significant and mean-  
12 ingful adverse impact on the supply of fuel and re-  
13 lated infrastructure or on the economy, environment,  
14 public health or environment of any significant area  
15 or region of the country, the Secretary may waive,  
16 in whole or in part, the requirement of paragraph  
17 (2) in any one year or period of years as well as re-  
18 duce the applicable volume of renewable fuel con-  
19 tained in paragraph (2)(B) in any one year or period  
20 of years.

21 “(10) SMALL REFINERIES.—

22 “(A) IN GENERAL.—The requirement of  
23 paragraph (2) shall not apply to small refineries  
24 until the first calendar year beginning more  
25 than 5 years after the first year set forth in the

1 table in paragraph (2)(B)(i). Not later than De-  
2 cember 31, 2006, the Secretary of Energy shall  
3 complete for the Administrator a study to de-  
4 termine whether the requirement of paragraph  
5 (2) would impose a disproportionate economic  
6 hardship on small refineries. For any small re-  
7 finery that the Secretary of Energy determines  
8 would experience a disproportionate economic  
9 hardship, the Administrator shall extend the  
10 small refinery exemption for such small refinery  
11 for no less than two additional years.

12 “(B) ECONOMIC HARDSHIP.—

13 “(i) EXTENSION OF EXEMPTION.—A  
14 small refinery may at any time petition the  
15 Administrator for an extension of the ex-  
16 emption from the requirement of para-  
17 graph (2) for the reason of dispropor-  
18 tionate economic hardship. In evaluating a  
19 hardship petition, the Administrator, in  
20 consultation with the Secretary of Energy,  
21 shall consider the findings of the study in  
22 addition to other economic factors.

23 “(ii) DEADLINE FOR ACTION ON PETI-  
24 TIONS.—The Administrator shall act on  
25 any petition submitted by a small refinery

1           for a hardship exemption not later than 90  
2           days after the receipt of the petition.

3           “(C) CREDIT PROGRAM.—If a small refin-  
4           ery notifies the Administrator that it waives the  
5           exemption provided by this Act, the regulations  
6           shall provide for the generation of credits by  
7           the small refinery beginning in the year fol-  
8           lowing such notification.

9           “(D) OPT-IN FOR SMALL REFINERS.—A  
10          small refinery shall be subject to the require-  
11          ments of this section if it notifies the Adminis-  
12          trator that it waives the exemption under sub-  
13          paragraph (A).”.

14          (b) PENALTIES AND ENFORCEMENT.—Section  
15          211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is  
16          amended—

17                 (1) in paragraph (1)—

18                         (A) in the first sentence, by striking “or  
19                         (n)” each place it appears and inserting “(n) or  
20                         (o)”; and

21                         (B) in the second sentence, by striking “or  
22                         (m)” and inserting “(m), or (o)”; and

23                 (2) in the first sentence of paragraph (2), by  
24                 striking “and (n)” each place it appears and insert-  
25                 ing “(n), and (o)”.

1 (c) SURVEY OF RENEWABLE FUEL MARKET.—

2 (1) SURVEY AND REPORT.—Not later than De-  
3 cember 1, 2006, and annually thereafter, the Admin-  
4 istrator of the Environmental Protection Agency (in  
5 consultation with the Secretary of Energy acting  
6 through the Administrator of the Energy Informa-  
7 tion Administration) shall—

8 (A) conduct, with respect to each conven-  
9 tional gasoline use area and each reformulated  
10 gasoline use area in each State, a survey to de-  
11 termine the market shares of—

12 (i) conventional gasoline containing  
13 ethanol;

14 (ii) reformulated gasoline containing  
15 ethanol;

16 (iii) conventional gasoline containing  
17 renewable fuel; and

18 (iv) reformulated gasoline containing  
19 renewable fuel; and

20 (B) submit to Congress, and make publicly  
21 available, a report on the results of the survey  
22 under subparagraph (A).

23 (2) RECORDKEEPING AND REPORTING RE-  
24 QUIREMENTS.—The Administrator may require any  
25 refiner, blender, or importer to keep such records



1 and make such reports as are necessary to ensure  
2 that the survey conducted under paragraph (1) is  
3 accurate. The Administrator shall rely, to the extent  
4 practicable, on existing reporting and recordkeeping  
5 requirements to avoid duplicative requirements.

6 (3) APPLICABLE LAW.—Activities carried out  
7 under this subsection shall be conducted in a man-  
8 ner designed to protect confidentiality of individual  
9 responses.

10 (4) CALCULATION OF MARKET SHARES.—Mar-  
11 ket shares for conventional gasoline and reformu-  
12 lated gasoline use areas will be calculated on a state-  
13 wide basis using information collected under para-  
14 graph (2) and other information available to the Ad-  
15 ministrator. Market share information may be based  
16 upon gasoline distribution patterns that include  
17 multistate use areas.

18 **SEC. 9102. FUELS SAFE HARBOR.**

19 (a) IN GENERAL.—Notwithstanding any other provi-  
20 sion of Federal or State law, no renewable fuel, as defined  
21 by section 211(o)(1) of the Clean Air Act, or fuel con-  
22 taining MTBE, used or intended to be used as a motor  
23 vehicle fuel, nor any motor vehicle fuel containing such  
24 renewable fuel or MTBE, shall be deemed defective in de-  
25 sign or manufacture by virtue of the fact that it is, or

1 contains, such a renewable fuel or MTBE, if it does not  
2 violate a control or prohibition imposed by the Adminis-  
3 trator under section 211 of such Act, and the manufac-  
4 turer is in compliance with all requests for information  
5 under subsection (b) of such section 211(b) of the Clean  
6 Air Act. If the safe harbor provided by this section does  
7 not apply, the existence of a design defect or manufac-  
8 turing defect shall be determined under otherwise applica-  
9 ble law. Nothing in this paragraph shall be construed to  
10 affect the liability of any person for environmental remedi-  
11 ation costs, drinking water contamination, negligence,  
12 public nuisance or any other liability other than liability  
13 for a defect in design or manufacture of a motor vehicle  
14 fuel.

15 (b) EFFECTIVE DATE.—This section shall be effec-  
16 tive as of the date of enactment and shall apply with re-  
17 spect to all claims filed on or after that date.

18 **SEC. 9103. FINDINGS AND MTBE TRANSITION ASSISTANCE.**

19 (a) FINDINGS.—Congress finds that—

20 (1) since 1979, methyl tertiary butyl ether (re-  
21 ferred to in this section as “MTBE”) has been used  
22 nationwide at low levels in gasoline to replace lead  
23 as an octane booster or anti-knocking agent;

24 (2) Public Law 101–549 (commonly known as  
25 the “Clean Air Act Amendments of 1990”) (42

1 U.S.C. 7401 et seq.) established a fuel oxygenate  
2 standard under which reformulated gasoline must  
3 contain at least 2 percent oxygen by weight;

4 (3) at the time of the adoption of the fuel oxy-  
5 gen standard, Congress was aware that significant  
6 use of MTBE would result from the adoption of that  
7 standard, and that the use of MTBE would likely be  
8 important to the cost-effective implementation of  
9 that program;

10 (4) Congress was aware that gasoline and its  
11 component additives can and do leak from storage  
12 tanks;

13 (5) the fuel industry responded to the fuel oxy-  
14 genate standard established by Public Law 101-549  
15 by making substantial investments in—

16 (A) MTBE production capacity; and

17 (B) systems to deliver MTBE-containing  
18 gasoline to the marketplace;

19 (6) Congress has—

20 (A) reconsidered the relative value of the  
21 oxygenate requirement for reformulated gaso-  
22 line; and

23 (B) decided to provide for the elimination  
24 of the oxygenate requirement for reformulated

1 gasoline and to provide for a renewable content  
2 requirement for motor fuel; and

3 (7) it is appropriate for Congress to provide  
4 some limited transition assistance—

5 (A) to merchant producers of MTBE who  
6 produced MTBE in response to a market cre-  
7 ated by the oxygenate requirement contained in  
8 the Clean Air Act; and

9 (B) for the purpose of mitigating any fuel  
10 supply problems that may result from the elimi-  
11 nation of the oxygenate requirement for refor-  
12 mulated gasoline.

13 (b) PURPOSES.—The purpose of this section is to  
14 provide assistance to merchant producers of MTBE in  
15 making the transition from producing MTBE to producing  
16 other fuel additives.

17 (c) MTBE MERCHANT PRODUCER CONVERSION AS-  
18 SISTANCE.—Section 211(c) of the Clean Air Act (42  
19 U.S.C. 7545(c)) is amended by adding at the end the fol-  
20 lowing:

21 “(5) MTBE MERCHANT PRODUCER CONVER-  
22 SION ASSISTANCE.—

23 “(A) IN GENERAL.—

24 “(i) GRANTS.—The Secretary of En-  
25 ergy, in consultation with the Adminis-

1           trator, may make grants to merchant pro-  
2           ducers of methyl tertiary butyl ether in the  
3           United States to assist the producers in  
4           the conversion of eligible production facili-  
5           ties described in subparagraph (C) to the  
6           production of iso-octane and alkylates.

7           “(ii) DETERMINATION.—The Admin-  
8           istrator, in consultation with the Secretary  
9           of Energy, may determine that transition  
10          assistance for the production of iso-octane  
11          and alkylates is inconsistent with the pro-  
12          visions of subparagraph (B) and, on that  
13          basis, may deny applications for grants au-  
14          thorized by this provision.

15          “(B) FURTHER GRANTS.—The Secretary  
16          of Energy, in consultation with the Adminis-  
17          trator, may also further make grants to mer-  
18          chant producers of MTBE in the United States  
19          to assist the producers in the conversion of eli-  
20          gible production facilities described in subpara-  
21          graph (C) to the production of such other fuel  
22          additives that, consistent with this subsection—

23                  “(i) unless the Administrator deter-  
24                  mines that such fuel additives may reason-

1 ably be anticipated to endanger public  
2 health or the environment;

3 “(ii) have been registered and have  
4 been tested or are being tested in accord-  
5 ance with the requirements of this section;  
6 and

7 “(iii) will contribute to replacing gaso-  
8 line volumes lost as a result of paragraph  
9 (5).

10 “(C) ELIGIBLE PRODUCTION FACILI-  
11 TIES.—A production facility shall be eligible to  
12 receive a grant under this paragraph if the pro-  
13 duction facility—

14 “(i) is located in the United States;  
15 and

16 “(ii) produced methyl tertiary butyl  
17 ether for consumption before April 1, 2003  
18 and ceased production at any time after  
19 the date of enactment.

20 “(D) AUTHORIZATION OF APPROPRIA-  
21 TIONS.—There is authorized to be appropriated  
22 to carry out this paragraph \$250,000,000 for  
23 each of fiscal years 2004 through 2006, to re-  
24 main available until expended.”.

1 (d) EFFECT ON STATE LAW.—The amendments  
2 made to the Clean Air Act by this title have no effect re-  
3 garding any available authority of States to limit the use  
4 of methyl tertiary butyl ether in motor vehicle fuel.

5 **SEC. 9104. ELIMINATION OF OXYGEN CONTENT REQUIRE-**  
6 **MENT FOR REFORMULATED GASOLINE.**

7 (a) ELIMINATION.—

8 (1) IN GENERAL.—Section 211(k) of the Clean  
9 Air Act (42 U.S.C. 7545(k)) is amended—

10 (A) in paragraph (2)—

11 (i) in the second sentence of subpara-  
12 graph (A), by striking “(including the oxy-  
13 gen content requirement contained in sub-  
14 paragraph (B))”;

15 (ii) by striking subparagraph (B); and

16 (iii) by redesignating subparagraphs  
17 (C) and (D) as subparagraphs (B) and  
18 (C), respectively;

19 (B) in paragraph (3)(A), by striking clause  
20 (v);

21 (C) in paragraph (7)—

22 (i) in subparagraph (A)—

23 (I) by striking clause (i); and

1 (II) by redesignating clauses (ii)  
2 and (iii) as clauses (i) and (ii), respec-  
3 tively; and

4 (ii) in subparagraph (C)—

5 (I) by striking clause (ii); and

6 (II) by redesignating clause (iii)  
7 as clause (ii); and

8 (2) EFFECTIVE DATE.—The amendments made  
9 by paragraph (1) take effect 270 days after the date  
10 of enactment of this Act, except that such amend-  
11 ments shall take effect upon enactment in any State  
12 that has received a waiver under section 209(b) of  
13 the Clean Air Act.

14 (b) MAINTENANCE OF TOXIC AIR POLLUTANT EMIS-  
15 SION REDUCTIONS.—Section 211(k)(1) of the Clean Air  
16 Act (42 U.S.C. 7545(k)(1)) is amended—

17 (1) by striking “Within 1 year after the enact-  
18 ment of the Clean Air Act Amendments of 1990,”  
19 and inserting the following:

20 “(A) IN GENERAL.—Not later than No-  
21 vember 15, 1991,”; and

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

23 “(B) MAINTENANCE OF TOXIC AIR POL-  
24 LUTANT EMISSIONS REDUCTIONS FROM REFOR-  
25 MULATED GASOLINE.—



1           “(i) DEFINITIONS.—In this subpara-  
2 graph the term ‘PADD’ means a Petro-  
3 leum Administration for Defense District.

4           “(ii) REGULATIONS REGARDING EMIS-  
5 SIONS OF TOXIC AIR POLLUTANTS.—Not  
6 later than 270 days after the date of en-  
7 actment of this subparagraph the Adminis-  
8 trator shall establish, for each refinery or  
9 importer, standards for toxic air pollutants  
10 from use of the reformulated gasoline pro-  
11 duced or distributed by the refinery or im-  
12 porter that maintain the reduction of the  
13 average annual aggregate emissions of  
14 toxic air pollutants for reformulated gaso-  
15 line produced or distributed by the refinery  
16 or importer during calendar years 1999  
17 and 2000, determined on the basis of data  
18 collected by the Administrator with respect  
19 to the refinery or importer.

20           “(iii) STANDARDS APPLICABLE TO  
21 SPECIFIC REFINERIES OR IMPORTERS.—

22           “(I) APPLICABILITY OF STAND-  
23 ARDS.—For any calendar year, the  
24 standards applicable to a refinery or  
25 importer under clause (ii) shall apply

1 to the quantity of gasoline produced  
2 or distributed by the refinery or im-  
3 porter in the calendar year only to the  
4 extent that the quantity is less than  
5 or equal to the average annual quan-  
6 tity of reformulated gasoline produced  
7 or distributed by the refinery or im-  
8 porter during calendar years 1999  
9 and 2000.

10 “(II) APPLICABILITY OF OTHER  
11 STANDARDS.—For any calendar year,  
12 the quantity of gasoline produced or  
13 distributed by a refinery or importer  
14 that is in excess of the quantity sub-  
15 ject to subclause (I) shall be subject  
16 to standards for toxic air pollutants  
17 promulgated under subparagraph (A)  
18 and paragraph (3)(B).

19 “(iv) CREDIT PROGRAM.—The Admin-  
20 istrator shall provide for the granting and  
21 use of credits for emissions of toxic air pol-  
22 lutants in the same manner as provided in  
23 paragraph (7).

24 “(v) REGIONAL PROTECTION OF  
25 TOXICS REDUCTION BASELINES.—

1           “(I) IN GENERAL.—Not later  
2 than 60 days after the date of enact-  
3 ment of this subparagraph, and not  
4 later than April 1 of each calendar  
5 year that begins after that date of en-  
6 actment, the Administrator shall pub-  
7 lish in the Federal Register a report  
8 that specifies, with respect to the pre-  
9 vious calendar year—

10           “(aa) the quantity of refor-  
11 mulated gasoline produced that is  
12 in excess of the average annual  
13 quantity of reformulated gasoline  
14 produced in 1999 and 2000; and

15           “(bb) the reduction of the  
16 average annual aggregate emis-  
17 sions of toxic air pollutants in  
18 each PADD, based on retail sur-  
19 vey data or data from other ap-  
20 propriate sources.

21           “(II) EFFECT OF FAILURE TO  
22 MAINTAIN AGGREGATE TOXICS RE-  
23 Ductions.—If, in any calendar year,  
24 the reduction of the average annual  
25 aggregate emissions of toxic air pol-

1                   lutants in a PADD fails to meet or  
2                   exceed the reduction of the average  
3                   annual aggregate emissions of toxic  
4                   air pollutants in the PADD in cal-  
5                   endar years 1999 and 2000, the Ad-  
6                   ministrator, not later than 90 days  
7                   after the date of publication of the re-  
8                   port for the calendar year under sub-  
9                   clause (I), shall—

10                               “(aa) identify, to the max-  
11                               imum extent practicable, the rea-  
12                               sons for the failure, including the  
13                               sources, volumes, and character-  
14                               istics of reformulated gasoline  
15                               that contributed to the failure;  
16                               and

17                               “(bb) promulgate revisions  
18                               to the regulations promulgated  
19                               under clause (ii), to take effect  
20                               not earlier than 180 days but not  
21                               later than 270 days after the  
22                               date of promulgation, to provide  
23                               that, notwithstanding clause  
24                               (iii)(II), all reformulated gasoline  
25                               produced or distributed at each

1 refinery or importer shall meet  
2 the standards applicable under  
3 clause (ii) not later than April 1  
4 of the year following the report  
5 in subclause (II) and for subse-  
6 quent years.

7 “(vi) REGULATIONS TO CONTROL  
8 HAZARDOUS AIR POLLUTANTS FROM  
9 MOTOR VEHICLES AND MOTOR VEHICLE  
10 FUELS.—Not later than July 1, 2004, the  
11 Administrator shall promulgate final regu-  
12 lations to control hazardous air pollutants  
13 from motor vehicles and motor vehicle  
14 fuels, as provided for in section 80.1045 of  
15 title 40, Code of Federal Regulations (as  
16 in effect on the date of enactment of this  
17 subparagraph).”.

18 (c) CONSOLIDATION IN REFORMULATED GASOLINE  
19 REGULATIONS.—Not later than 180 days after the date  
20 of enactment of this Act, the Administrator shall revise  
21 the reformulated gasoline regulations under subpart D of  
22 part 80 of title 40, Code of Federal Regulations, to con-  
23 solidate the regulations applicable to VOC-Control Re-  
24 gions 1 and 2 under section 80.41 of that title by elimi-  
25 nating the less stringent requirements applicable to gaso-

1 line designated for VOC-Control Region 2 and instead ap-  
2 plying the more stringent requirements applicable to gaso-  
3 line designated for VOC-Control Region 1.

4 (d) SAVINGS CLAUSE.—Nothing in this section is in-  
5 tended to affect or prejudice either any legal claims or ac-  
6 tions with respect to regulations promulgated by the Ad-  
7 ministrator prior to enactment of this Act regarding emis-  
8 sions of toxic air pollutants from motor vehicles or the  
9 adjustment of standards applicable to a specific refinery  
10 or importer made under such prior regulations and the  
11 Administrator may apply such adjustments to the stand-  
12 ards applicable to such refinery or importer under clause  
13 (iii)(I) of section 211(k)(1)(B) of the Clean Air Act, ex-  
14 cept that—

15 (1) the Administrator shall revise such adjust-  
16 ments to be based only on calendar years 1999–  
17 2000, and

18 (2) for adjustments based on toxic air pollutant  
19 emissions from reformulated gasoline significantly  
20 below the national annual average emissions of toxic  
21 air pollutants from all reformulated gasoline, the  
22 Administrator may revise such adjustments to take  
23 account of the scope of any lawful and enforceable  
24 Federal or State prohibition on methyl tertiary butyl  
25 ether imposed after the effective date of the enact-

1       ment of this paragraph, except that any such adjust-  
2       ment shall require such refiner or importer, to the  
3       greatest extent practicable, to maintain the reduc-  
4       tion achieved during calendar year 1999–2000 in the  
5       average annual aggregate emissions of toxic air pol-  
6       lutants from reformulated gasoline produced or dis-  
7       tributed by the refinery or importer. Any such ad-  
8       justment shall not be made at a level below the aver-  
9       age percentage of reductions of emissions of toxic air  
10      pollutants for reformulated gasoline supplied to  
11      PADD I during calendar years 1999–2000.

12 **SEC. 9105. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.**

13       Section 211 of the Clean Air Act (42 U.S.C. 7545)  
14 is amended by inserting after subsection (o) the following:

15       “(p) ANALYSES OF MOTOR VEHICLE FUEL CHANGES  
16 AND EMISSIONS MODEL.—

17               “(1) ANTI-BACKSLIDING ANALYSIS.—

18                       “(A) DRAFT ANALYSIS.—Not later than 4  
19                       years after the date of enactment of this para-  
20                       graph, the Administrator shall publish for pub-  
21                       lic comment a draft analysis of the changes in  
22                       emissions of air pollutants and air quality due  
23                       to the use of motor vehicle fuel and fuel addi-  
24                       tives resulting from implementation of the

1 amendments made by title IX of the Energy  
2 Policy Act of 2003.

3 “(B) FINAL ANALYSIS.—After providing a  
4 reasonable opportunity for comment but not  
5 later than 5 years after the date of enactment  
6 of this paragraph, the Administrator shall pub-  
7 lish the analysis in final form.

8 “(2) EMISSIONS MODEL.—For the purposes of  
9 this subsection, as soon as the necessary data are  
10 available, the Administrator shall develop and final-  
11 ize an emissions model that reasonably reflects the  
12 effects of gasoline characteristics or components on  
13 emissions from vehicles in the motor vehicle fleet  
14 during calendar year 2005.”.

15 **SEC. 9106. DATA COLLECTION.**

16 Section 205 of the Department of Energy Organiza-  
17 tion Act (42 U.S.C. 7135) is amended by adding at the  
18 end the following:

19 “(m) RENEWABLE FUELS SURVEY.—(1) In order to  
20 improve the ability to evaluate the effectiveness of the Na-  
21 tion’s renewable fuels mandate, the Administrator shall  
22 conduct and publish the results of a survey of renewable  
23 fuels demand in the motor vehicle fuels market in the  
24 United States monthly, and in a manner designed to pro-  
25 tect the confidentiality of individual responses. In con-



1 ducting the survey, the Administrator shall collect infor-  
2 mation both on a national and regional basis, including—

3 “(A) the quantity of renewable fuels produced;

4 “(B) the quantity of renewable fuels blended;

5 “(C) the quantity of renewable fuels imported;

6 “(D) the quantity of renewable fuels demanded;

7 “(E) market price data; and

8 “(F) such other analyses or evaluations as the  
9 Administrator finds is necessary to achieve the pur-  
10 poses of this section.

11 “(2) The Administrator shall also collect or estimate  
12 information both on a national and regional basis, pursu-  
13 ant to subparagraphs (A) through (F) of paragraph (1),  
14 for the five years prior to implementation of this sub-  
15 section.

16 “(3) This subsection does not affect the authority of  
17 the Administrator to collect data under section 52 of the  
18 Federal Energy Administration Act of 1974 (15 U.S.C.  
19 790a).”.

20 **SEC. 9107. FUEL SYSTEM REQUIREMENTS HARMONIZATION**

21 **STUDY.**

22 (a) STUDY.—

23 (1) IN GENERAL.—The Administrator of the  
24 Environmental Protection Agency and the Secretary  
25 of Energy shall jointly conduct a study of Federal,

1 State, and local requirements concerning motor vehi-  
2 cle fuels, including—

3 (A) requirements relating to reformulated  
4 gasoline, volatility (measured in Reid vapor  
5 pressure), oxygenated fuel, and diesel fuel; and

6 (B) other requirements that vary from  
7 State to State, region to region, or locality to  
8 locality.

9 (2) REQUIRED ELEMENTS.—The study shall as-  
10 sess—

11 (A) the effect of the variety of require-  
12 ments described in paragraph (1) on the supply,  
13 quality, and price of motor vehicle fuels avail-  
14 able to consumers in various States and local-  
15 ities;

16 (B) the effect of the requirements de-  
17 scribed in paragraph (1) on achievement of—

18 (i) national, regional, and local air  
19 quality standards and goals; and

20 (ii) related environmental and public  
21 health protection standards and goals;

22 (C) the effect of Federal, State, and local  
23 motor vehicle fuel regulations, including mul-  
24 tiple motor vehicle fuel requirements, on—

25 (i) domestic refineries;

- 1 (ii) the fuel distribution system; and
- 2 (iii) industry investment in new capac-
- 3 ity;
- 4 (D) the effect of the requirements de-
- 5 scribed in paragraph (1) on emissions from ve-
- 6 hicles, refineries, and fuel handling facilities;
- 7 (E) the feasibility of developing national or
- 8 regional motor vehicle fuel slates for the 48
- 9 contiguous States that, while improving air
- 10 quality at the national, regional and local levels
- 11 consistent with the attainment of national am-
- 12 bient air quality standards, could—
- 13 (i) enhance flexibility in the fuel dis-
- 14 tribution infrastructure and improve fuel
- 15 fungibility;
- 16 (ii) reduce price volatility and costs to
- 17 consumers and producers;
- 18 (iii) provide increased liquidity to the
- 19 gasoline market; and
- 20 (iv) enhance fuel quality, consistency,
- 21 and supply;
- 22 (F) the feasibility of providing incentives,
- 23 to promote cleaner burning motor vehicle fuel;
- 24 and

1           (G) the extent to which improvements in  
2           air quality and any increases or decreases in  
3           the price of motor fuel can be projected to re-  
4           sult from the Environmental Protection Agen-  
5           cy's Tier II requirements for conventional gaso-  
6           line and vehicle emission systems, the reformu-  
7           lated gasoline program, the renewable content  
8           requirements established by this subtitle, State  
9           programs regarding gasoline volatility, and any  
10          other requirements imposed by States or local-  
11          ities affecting the composition of motor fuel.

12          (b) REPORT.—

13           (1) IN GENERAL.—Not later than December 31,  
14           2006, the Administrator of the Environmental Pro-  
15           tection Agency and the Secretary of Energy shall  
16           submit to Congress a report on the results of the  
17           study conducted under subsection (a).

18           (2) RECOMMENDATIONS.—

19           (A) IN GENERAL.—The report shall con-  
20           tain recommendations for legislative and admin-  
21           istrative actions that may be taken—

22                   (i) to improve air quality;

23                   (ii) to reduce costs to consumers and  
24                   producers; and

25                   (iii) to increase supply liquidity.

1 (B) REQUIRED CONSIDERATIONS.—The  
2 recommendations under subparagraph (A) shall  
3 take into account the need to provide advance  
4 notice of required modifications to refinery and  
5 fuel distribution systems in order to ensure an  
6 adequate supply of motor vehicle fuel in all  
7 States.

8 (3) CONSULTATION.—In developing the report,  
9 the Administrator of the Environmental Protection  
10 Agency and the Secretary of Energy shall consult  
11 with—

12 (A) the Governors of the States;

13 (B) automobile manufacturers;

14 (C) motor vehicle fuel producers and dis-  
15 tributors; and

16 (D) the public.

## 17 **Subtitle B—MTBE Cleanup**

### 18 **SEC. 9201. FUNDING FOR MTBE CONTAMINATION.**

19 Notwithstanding any other provision of law, there is  
20 authorized to be appropriated to the Administrator of the  
21 United States Environmental Protection Agency from the  
22 Leaking Underground Storage Tank Trust Fund not more  
23 than \$850,000,000 to be used for taking such action lim-  
24 ited to site assessment (including exposure assessment),  
25 corrective action, inspection of underground storage tank

1 systems, and groundwater monitoring as the Adminis-  
2 trator deems necessary to protect human health, welfare,  
3 and the environment from underground storage tank re-  
4 leases of fuel containing fuel oxygenates.

5                   **TITLE X—AUTOMOBILE**  
6                   **EFFICIENCY**

7   **SEC. 10001. AUTHORIZATION OF APPROPRIATIONS FOR IM-**  
8                   **PLEMENTATION AND ENFORCEMENT OF**  
9                   **FUEL ECONOMY STANDARDS.**

10           In addition to any other funds authorized by law,  
11 there are authorized to be appropriated to the National  
12 Highway Traffic Safety Administration to implement and  
13 enforce average fuel economy standards \$5,000,000 for  
14 fiscal years 2004 through 2006.

15   **SEC. 10002. STUDY OF FEASIBILITY AND EFFECTS OF RE-**  
16                   **DUCING USE OF FUEL FOR AUTOMOBILES.**

17           (a) IN GENERAL.—Not later than 30 days after the  
18 date of the enactment of this Act, the Administrator of  
19 the National Highway Traffic Safety Administration shall  
20 study the feasibility and effects of reducing by model year  
21 2012, by a significant percentage, the use of fuel for auto-  
22 mobiles.

23           (b) SUBJECTS OF STUDY.—The study under this sec-  
24 tion shall include—

1           (1) examination of, and recommendation of al-  
2           ternatives to, the policy under current Federal law  
3           of establishing average fuel economy standards for  
4           automobiles and requiring each automobile manufac-  
5           turer to comply with average fuel economy standards  
6           that apply to the automobiles it manufactures;

7           (2) examination of how automobile manufactur-  
8           ers could contribute toward achieving the reduction  
9           referred to in subsection (a);

10          (3) examination of the potential of fuel cell  
11          technology in motor vehicles in order to determine  
12          the extent to which such technology may contribute  
13          to achieving the reduction referred to in subsection  
14          (a); and

15          (4) examination of the effects of the reduction  
16          referred to in subsection (a) on—

17                 (A) gasoline supplies;

18                 (B) the automobile industry, including  
19                 sales of automobiles manufactured in the  
20                 United States;

21                 (C) motor vehicle safety; and

22                 (D) air quality.

23          (c) REPORT.—The Administrator shall submit to the  
24          Congress a report on the findings, conclusion, and rec-

1 ommendations of the study under this section by not later  
2 than 1 year after the date of the enactment of this Act.

3 **TITLE XI—PREVENTING THE**  
4 **MISUSE OF NUCLEAR MATE-**  
5 **RIALS AND TECHNOLOGY**

6 **SEC. 11001. PREVENTING THE MISUSE OF NUCLEAR MATE-**  
7 **RIALS AND TECHNOLOGY.**

8 (a) AMENDMENT.—Chapter 14 of the Atomic Energy  
9 Act of 1954 (42 U.S.C. 2201 et seq.) is amended by add-  
10 ing at the end the following new section:

11 “SEC. 170D. PREVENTING THE MISUSE OF NU-  
12 CLEAR MATERIALS AND TECHNOLOGY.—

13 “a. In order to successfully promote the development  
14 of nuclear energy as a safe and reliable source of electrical  
15 energy, it is the policy of the United States to prevent  
16 any nuclear materials, technology, components, sub-  
17 stances, technical information, or related goods or services  
18 from being misused or diverted from peaceful nuclear en-  
19 ergy purposes.

20 “b. In order to further advance the policy set forth  
21 in subsection a., notwithstanding any other provision of  
22 law, no Federal agency shall issue any license, approval,  
23 or authorization for the export or reexport, or the transfer  
24 or retransfer, either directly or indirectly, to any country  
25 whose government has been identified by the Secretary of



1 State as engaged in state sponsorship of terrorist activities  
2 (specifically including any country the government of  
3 which, as of September 11, 2001, had been determined  
4 by the Secretary of State under section 620A(a) of the  
5 Foreign Assistance Act of 1961, section 6(j)(1) of the Ex-  
6 port Administration Act of 1979, or section 40(d) of the  
7 Arms Export Control Act to have repeatedly provided sup-  
8 port for acts of international terrorism) of—

9           “(1) any special nuclear material or byproduct  
10       material;

11           “(2) any nuclear production or utilization facili-  
12       ties; or

13           “(3) any components, technologies, substances,  
14       technical information, or related goods or services  
15       used (or which could be used) in a nuclear produc-  
16       tion or utilization facility.

17       “c. Any license, approval, or authorization described  
18 in subsection b. made prior to the date of enactment of  
19 this section is hereby revoked.”.

20       (b) TABLE OF CONTENTS AMENDMENT.—The table  
21 of contents of such chapter 14 is amended by adding at  
22 the end the following item:

“Sec. 170D. Preventing the misuse of nuclear materials and technology.”.

1           **TITLE XII—ADDITIONAL**  
2                           **PROVISIONS**

3 **SEC. 12001. TRANSMISSION TECHNOLOGIES.**

4           The Federal Energy Regulatory Commission shall  
5 take affirmative steps in the exercise of its authorities  
6 under the Federal Power Act to encourage the deployment  
7 of transmission technologies that utilize real time moni-  
8 toring and analytical software to increase and maximize  
9 the capacity and efficiency of transmission networks and  
10 to reduce line losses.

○