

109TH CONGRESS  
1ST SESSION

# S. 388

To amend the Energy Policy Act of 1992 to direct the Secretary of Energy to carry out activities that promote the adoption of technologies that reduce greenhouse gas intensity and to provide credit-based financial assistance and investment protection for projects that employ advanced climate technologies or systems, to provide for the establishment of a national greenhouse gas registry, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2005

Mr. HAGEL (for himself, Mr. ALEXANDER, Mr. CRAIG, and Mrs. DOLE) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To amend the Energy Policy Act of 1992 to direct the Secretary of Energy to carry out activities that promote the adoption of technologies that reduce greenhouse gas intensity and to provide credit-based financial assistance and investment protection for projects that employ advanced climate technologies or systems, to provide for the establishment of a national greenhouse gas registry, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Climate Change Tech-  
3 nology Deployment and Infrastructure Credit Act of  
4 2005”.

5 **SEC. 2. GREENHOUSE GAS INTENSITY REDUCING TECH-**  
6 **NOLOGY STRATEGIES.**

7 Title XVI of the Energy Policy Act of 1992 (42  
8 U.S.C. 13381 et seq.) is amended by adding at the end  
9 the following:

10 **“SEC. 1610. GREENHOUSE GAS INTENSITY REDUCING**  
11 **STRATEGIES.**

12 “(a) DEFINITIONS.—In this section:

13 “(1) CARBON SEQUESTRATION.—The term ‘car-  
14 bon sequestration’ means the capture of carbon diox-  
15 ide through terrestrial, geological, biological, or  
16 other means, which prevents the release of carbon  
17 dioxide into the atmosphere.

18 “(2) COMMITTEE.—The term ‘Committee’  
19 means the Interagency Coordinating Committee on  
20 Climate Change Technology established under sub-  
21 section (c)(1).

22 “(3) GREENHOUSE GAS.—The term ‘greenhouse  
23 gas’ means carbon dioxide, methane, nitrous oxide,  
24 hydrofluorocarbons, perfluorocarbons, and sulfur  
25 hexafluoride.

1           “(4) GREENHOUSE GAS INTENSITY.—The term  
2           ‘greenhouse gas intensity’ means the ratio of green-  
3           house gas emissions to economic output.

4           “(5) NATIONAL LABORATORY.—The term ‘Na-  
5           tional Laboratory’ means a laboratory owned by the  
6           Department of Energy, including the following:

7                   “(A) Argonne National Laboratory.

8                   “(B) Idaho National Laboratory.

9                   “(C) Brookhaven National Laboratory.

10                  “(D) Oak Ridge National Laboratory.

11                  “(E) Los Alamos National Laboratory.

12                  “(F) Sandia National Laboratory.

13                  “(G) Lawrence Livermore National Lab-  
14                  oratory.

15                  “(H) National Energy Technology Labora-  
16                  tory.

17                  “(I) National Renewable Energy Labora-  
18                  tory.

19                  “(J) Pacific Northwest National Labora-  
20                  tory.

21           “(6) WORKING GROUP.—The term ‘Working  
22           Group’ means the Climate Change Technology  
23           Working Group established under subsection (g)(1).

24           “(b) OFFICE OF SCIENCE AND TECHNOLOGY POLICY  
25           STRATEGY.—

1           “(1) IN GENERAL.—Based on the recommenda-  
2           tions of the report submitted under subsection  
3           (f)(2), the Director of the Office of Science and  
4           Technology Policy shall develop a national strategy  
5           to promote greenhouse gas intensity reducing tech-  
6           nologies and practices developed through research  
7           and development programs conducted by National  
8           Laboratories, other Federal research facilities, uni-  
9           versities, and the private sector.

10           “(2) REPORT.—The Director of the Office of  
11           Science and Technology Policy shall annually submit  
12           to the President and make available to the public a  
13           report on the activities carried out in furtherance of  
14           the strategy developed under paragraph (1).

15           “(c) INTERAGENCY COORDINATING COMMITTEE ON  
16 CLIMATE CHANGE TECHNOLOGY.—

17           “(1) IN GENERAL.—Not later than 180 days  
18           after the date on which the first report is submitted  
19           under subsection (b)(2), the Secretary shall establish  
20           an Interagency Coordinating Committee on Climate  
21           Change Technology to coordinate Federal climate  
22           change activities and programs carried out in fur-  
23           therance of the strategy developed under subsection  
24           (b)(1).

1           “(2) MEMBERSHIP.—The Committee shall be  
2 composed of at least 6 members, including—

3           “(A) the Secretary;

4           “(B) the Secretary of Commerce;

5           “(C) the Chairman of the Council on Envi-  
6 ronmental Quality;

7           “(D) the Secretary of Agriculture;

8           “(E) the Administrator of the Environ-  
9 mental Protection Agency; and

10           “(F) the Secretary of Transportation.

11           “(d) CLIMATE CHANGE SCIENCE PROGRAM AND CLI-  
12 MATE CHANGE TECHNOLOGY PROGRAM.—

13           “(1) CLIMATE CHANGE SCIENCE PROGRAM.—

14           Not later than 180 days after the date on which the  
15 first report is submitted under subsection (b)(2), the  
16 Secretary of Commerce, in cooperation with the  
17 Committee, shall establish as a permanent program  
18 within the Department of Commerce the Climate  
19 Change Science Program to assist the Committee in  
20 the interagency coordination of climate change  
21 science research and related activities, including—

22           “(A) the assessments of the state of knowl-  
23 edge on climate change; and

1           “(B) carrying out supporting studies, plan-  
2           ning, and analyses of the science of climate  
3           change.

4           “(2) CLIMATE CHANGE TECHNOLOGY PRO-  
5           GRAM.—Not later than 180 days after the date on  
6           which the first report is submitted under subsection  
7           (b)(2), the Secretary, in cooperation with the Com-  
8           mittee, shall establish as a permanent program with-  
9           in the Department of Energy, the Climate Change  
10          Technology Program to assist the Committee in the  
11          interagency coordination of climate change tech-  
12          nology research, development, demonstration, and  
13          deployment to reduce greenhouse gas intensity.

14          “(e) TECHNOLOGY INVENTORY.—

15                 “(1) IN GENERAL.—The Secretary shall con-  
16                 duct an inventory and evaluation of greenhouse gas  
17                 intensity reducing technologies that have been devel-  
18                 oped, or are under development, by the National  
19                 Laboratories to determine which technologies are  
20                 suitable for commercialization and deployment.

21                 “(2) REPORT.—Not later than 180 days after  
22                 the completion of the inventory under paragraph (1),  
23                 the Secretary shall submit to the Secretary of Com-  
24                 merce and Congress a report that includes the re-

1       sults of the completed inventory and any rec-  
2       ommendations of the Secretary.

3           “(3) USE.—The Secretary, in consultation with  
4       the Secretary of Commerce, shall use the results of  
5       the inventory as guidance in the commercialization  
6       of greenhouse gas intensity reducing technologies.

7           “(f) GREENHOUSE GAS INTENSITY REDUCING TECH-  
8       NOLOGY STUDY.—

9           “(1) STUDY.—As soon as practicable after the  
10       date of enactment of this section, the Committee  
11       shall conduct and submit to the Secretary a study  
12       on—

13           “(A) the commercialization and diffusion  
14       of new and existing technologies to reduce  
15       greenhouse gas intensity; and

16           “(B) ways to increase the development and  
17       deployment of cost-effective technologies and  
18       practices.

19           “(2) REPORT.—Not later than 180 days after  
20       the completion of the study under paragraph (1), the  
21       Secretary shall submit to Congress and the Director  
22       of the Office of Science and Technology Policy a re-  
23       port that describes—

24           “(A) the results of the study; and

1           “(B) any recommendations of the Com-  
2           mittee to—

3                   “(i) increase commercialization of the  
4                   technologies and practices described in  
5                   paragraph (1); and

6                   “(ii) promote the long-term commer-  
7                   cialization and deployment of those tech-  
8                   nologies and practices.

9           “(g) CLIMATE CHANGE TECHNOLOGY WORKING  
10          GROUP.—

11                   “(1) IN GENERAL.—The Secretary, in consulta-  
12                   tion with the Committee, shall establish a Climate  
13                   Change Technology Working Group to identify  
14                   major statutory, regulatory, and economic barriers  
15                   to the commercialization of greenhouse gas intensity  
16                   reducing technologies and practices.

17                   “(2) COMPOSITION.—The Working Group shall  
18                   be composed of the following members, to be ap-  
19                   pointed by the Secretary, in consultation with the  
20                   Committee:

21                           “(A) 1 representative from each National  
22                   Laboratory.

23                           “(B) 3 members shall be representatives of  
24                   energy-producing industries.

1           “(C) 3 members shall represent major en-  
2           ergy-consuming industries.

3           “(D) 3 members shall represent groups  
4           that represent end-use energy and other con-  
5           sumers.

6           “(E) 3 members shall be employees of the  
7           Federal Government who are experts in energy  
8           technology, intellectual property, tax, and regu-  
9           lation.

10          “(F) 3 members shall be representatives of  
11          universities with expertise in energy technology  
12          development that are recommended by the Na-  
13          tional Academy of Engineering.

14          “(3) REPORT.—Not later than 1 year after the  
15          date of enactment of this section and annually there-  
16          after, the Working Group shall submit to the Com-  
17          mittee a report that describes—

18                 “(A) the findings of the Working Group;  
19                 and

20                 “(B) any recommendations of the Working  
21                 Group for the removal of barriers to commer-  
22                 cialization and increasing the use of greenhouse  
23                 gas intensity reducing technologies.

24          “(h) GREENHOUSE GAS INTENSITY REDUCING  
25          TECHNOLOGY DEPLOYMENT.—

1           “(1) IN GENERAL.—Based on the strategy de-  
2           veloped under subsection (b)(1), the technology in-  
3           ventory conducted under subsection (e)(1), and the  
4           greenhouse gas intensity reducing technology study  
5           report submitted under subsection (e)(2), the Com-  
6           mittee shall develop a program for implementation  
7           by the Climate Credit Board established under sec-  
8           tion 1611(b)(2)(A) that would provide for the re-  
9           moval of domestic barriers to the deployment of  
10          greenhouse gas intensity reducing technologies.

11          “(2) REQUIREMENTS.—In developing the pro-  
12          gram under paragraph (1), the Committee shall con-  
13          sider—

14                 “(A) the cost-effectiveness of the tech-  
15                 nology;

16                 “(B) fiscal and regulatory barriers;

17                 “(C) statutory barriers; and

18                 “(D) intellectual property issues.

19          “(3) REPORT.—Not later than 1 year after the  
20          date of enactment of this section, the Committee  
21          shall submit to the President and Congress a report  
22          that—

23                 “(A) identifies the barriers to, and the  
24                 commercial risks associated with, the deploy-

1           ment of greenhouse gas intensity reducing tech-  
2           nologies;

3           “(B) includes a comprehensive plan for  
4           carrying out eligible projects with Federal fi-  
5           nancial assistance under section 1611; and

6           “(C) describes the program developed  
7           under paragraph (1).

8           “(i) PROCEDURES FOR CALCULATING, MONITORING,  
9           AND ANALYZING GREENHOUSE GAS INTENSITY.—

10           “(1) IN GENERAL.—Using the guidelines issued  
11           under section 1605(b), the Committee, in collabora-  
12           tion with the Administrator of the Energy Informa-  
13           tion Administration and the National Institute of  
14           Standards and Technology, shall develop and pro-  
15           pose standards and best practices for calculating,  
16           monitoring, and analyzing greenhouse gas intensity.

17           “(2) CONTENT.—The standards and best prac-  
18           tices shall address measurement of greenhouse gas  
19           intensity by industry sector.

20           “(3) APPLICABLE LAW.—To ensure that high  
21           quality information is produced, the standards and  
22           best practices developed under paragraph (1) shall  
23           conform to the guidelines established under section  
24           515 of the Treasury and General Government Ap-  
25           propriations Act, 2001 (commonly known as the

1 ‘Data Quality Act’) (44 U.S.C. 3516 note; 114 Stat.  
2 2763A–1543), as enacted into law by section 1(a)(3)  
3 of Public Law 106–554.

4 “(j) DEMONSTRATION PROJECTS.—

5 “(1) IN GENERAL.—The Secretary shall con-  
6 duct and participate in demonstration projects ap-  
7 proved by the Committee, including demonstration  
8 projects relating to—

9 “(A) coal gasification and coal liquefaction;

10 “(B) carbon sequestration;

11 “(C) cogeneration technology initiatives;

12 “(D) advanced nuclear power projects;

13 “(E) lower emission transportation;

14 “(F) renewable energy; and

15 “(G) transmission upgrades.

16 “(2) CRITERIA.—The Committee shall approve  
17 a demonstration project under paragraph (1) if the  
18 proposed demonstration project would—

19 “(A) increase the reduction of the green-  
20 house gas intensity to levels below that which  
21 would be achieved by technologies being used in  
22 the United States as of the date of enactment  
23 of this section;

24 “(B) maximize the potential return on  
25 Federal investment;

1           “(C) demonstrate distinct roles in public-  
2 private partnerships;

3           “(D) produce a large-scale reduction of  
4 greenhouse gas intensity if commercialization  
5 occurred; and

6           “(E) support a diversified portfolio to miti-  
7 gate the uncertainty associated with a single  
8 technology.

9           “(k) COOPERATIVE RESEARCH AND DEVELOPMENT  
10 AGREEMENTS.—In carrying out greenhouse gas intensity  
11 reduction research and technology deployment, the Sec-  
12 retary may enter into cooperative research and develop-  
13 ment agreements under section 12 of the Stevenson-  
14 Wydler Technology Innovation Act of 1980 (15 U.S.C.  
15 3710a).

16           “(l) AUTHORIZATION OF APPROPRIATIONS.—There  
17 are authorized to be appropriated such sums as are nec-  
18 essary to carry out this section.

19           “(m) TERMINATION OF AUTHORITY.—The authority  
20 provided by this section terminates effective December 31,  
21 2010.”.

22 **SEC. 3. CLIMATE INFRASTRUCTURE CREDIT.**

23           Title XVI of the Energy Policy Act of 1992 (42  
24 U.S.C. 13381 et seq.) (as amended by section 2) is  
25 amended by adding at the end the following:

1 **“SEC. 1611. CLIMATE INFRASTRUCTURE CREDIT.**

2 “(a) DEFINITIONS.—In this section:

3 “(1) ADVANCED CLIMATE TECHNOLOGY OR SYS-  
4 TEM.—The term ‘advanced climate technology or  
5 system’ means a climate technology or system that  
6 is not in general usage as of the date of enactment  
7 of this section.

8 “(2) BOARD.—The term ‘Board’ means the Cli-  
9 mate Credit Board established under subsection  
10 (b)(2)(A).

11 “(3) DIRECT LOAN.—The term ‘direct loan’ has  
12 the meaning given the term in section 502 of the  
13 Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

14 “(4) ELIGIBLE PROJECT.—The term ‘eligible  
15 project’ means a demonstration project that is ap-  
16 proved under section 1610(j)(1).

17 “(5) ELIGIBLE PROJECT COST.—The term ‘eli-  
18 gible project cost’ means any amount incurred for an  
19 eligible project that is paid by, or on behalf of, an  
20 obligor, including the costs of—

21 “(A) pre-construction activities, includ-  
22 ing—

23 “(i) detailed project engineering and  
24 design work;

25 “(ii) environmental reviews and per-  
26 mitting; and

1           “(iii) other pre-construction activities,  
2           as determined by the Secretary;

3           “(B) construction activities, including—

4               “(i) the acquisition of capital equip-  
5               ment;

6               “(ii) construction management; and

7               “(iii) construction contingencies; and

8           “(C) acquiring land (including any im-  
9           provements to the land) relating to the eligible  
10          project; and

11          “(D) financing the eligible project, includ-  
12          ing—

13               “(i) providing capitalized interest nec-  
14               essary to meet market requirements;

15               “(ii) maintaining reasonably required  
16               reserve funds;

17               “(iii) capital issuance expenses; and

18               “(iv) other carrying costs during con-  
19               struction.

20          “(6) FEDERAL FINANCIAL ASSISTANCE.—The  
21          term ‘Federal financial assistance’ means any credit-  
22          based financial assistance, including a direct loan,  
23          loan guarantee, a line of credit (which serves as  
24          standby default coverage or standby interest cov-  
25          erage), production incentive payment under sub-

1 section (g)(1)(B), or other credit-based financial as-  
2 sistance mechanism for an eligible project that is—

3 “(A) authorized to be made available by  
4 the Secretary for an eligible project under this  
5 section; and

6 “(B) provided in accordance with the Fed-  
7 eral Credit Reform Act of 1990 (2 U.S.C. 661  
8 et seq.).

9 “(7) INVESTMENT-GRADE RATING.—The term  
10 ‘investment-grade rating’ means a rating category of  
11 BBB minus, Baa3, or higher assigned by a rating  
12 agency for eligible project obligations offered into  
13 the capital markets.

14 “(8) LENDER.—The term ‘lender’ means any  
15 non-Federal qualified institutional buyer (as defined  
16 in section 230.144A(a) of title 17, Code of Federal  
17 Regulations (or any successor regulation), known as  
18 Rule 144A(a) of the Securities and Exchange Com-  
19 mission and issued under the Securities Act of 1933  
20 (15 U.S.C. 77a et seq.)), including—

21 “(A) a qualified retirement plan (as de-  
22 fined in section 4974(c) of the Internal Revenue  
23 Code of 1986) that is a qualified institutional  
24 buyer; and

1           “(B) a governmental plan (as defined in  
2           section 414(d) of the Internal Revenue Code of  
3           1986) that is a qualified institutional buyer.

4           “(9) LOAN GUARANTEE.—The term ‘loan guar-  
5           antee’ means any guarantee or other pledge by the  
6           Secretary to pay all or part of the principal of and  
7           interest on a loan or other debt obligation that is  
8           issued by an obligor and funded by a lender.

9           “(10) OBLIGOR.—The term ‘obligor’ means a  
10          person or entity (including a corporation, partner-  
11          ship, joint venture, trust, or governmental entity,  
12          agency, or instrumentality) that is primarily liable  
13          for payment of the principal of, or interest on, a  
14          Federal credit instrument.

15          “(11) PROJECT OBLIGATION.—The term  
16          ‘project obligation’ means any note, bond, debenture,  
17          or other debt obligation issued by an obligor in con-  
18          nection with the financing of an eligible project,  
19          other than a Federal credit instrument.

20          “(12) RATING AGENCY.—The term ‘rating  
21          agency’ means a bond rating agency identified by  
22          the Securities and Exchange Commission as a Na-  
23          tionally Recognized Statistical Rating Organization.

24          “(13) REGULATORY FAILURE.—The term ‘regu-  
25          latory failure’ means a situation in which, because of

1 a breakdown in a regulatory process or an indefinite  
2 delay caused by a judicial challenge to the regulatory  
3 consideration of a specific eligible project, the Fed-  
4 eral or State regulatory or licensing process gov-  
5 erning the siting, construction, or commissioning of  
6 an eligible project does not produce a definitive de-  
7 termination that the eligible project may go forward  
8 or stop within a predetermined and prescribed time  
9 period, as determined by the Secretary.

10 “(14) SECURED LOAN.—The term ‘secured  
11 loan’ means a loan or other secured debt obligation  
12 issued by an obligor and funded by the Secretary in  
13 connection with the financing of an eligible project.

14 “(15) STANDBY DEFAULT COVERAGE.—The  
15 term ‘standby default coverage’ means a pledge by  
16 the Secretary to pay all or part of the debt obliga-  
17 tion issued by an obligor and funded by a lender,  
18 plus all or part of obligor equity, if an eligible  
19 project fails to receive an operating license in a pe-  
20 riod of time established by the Secretary because of  
21 a regulatory failure or other specific issue identified  
22 by the Secretary.

23 “(16) STANDBY INTEREST COVERAGE.—The  
24 term ‘standby interest coverage’ means a pledge by  
25 the Secretary to provide to an obligor, at a future

1 date and on the occurrence of 1 or more events, a  
2 direct loan, the proceeds of which shall be used by  
3 the obligor to maintain the current status of the ob-  
4 ligor on interest payments due on 1 or more loans  
5 or other project obligations issued by an obligor and  
6 funded by a lender for an eligible project.

7 “(17) SUBSIDY AMOUNT.—The term ‘subsidy  
8 amount’ means the amount of budget authority suf-  
9 ficient to cover the estimated long-term cost to the  
10 Federal Government of a Federal credit instrument  
11 issued by the Secretary to an eligible project, cal-  
12 culated on a net present value basis, excluding ad-  
13 ministrative costs and any incidental effects on gov-  
14 ernmental receipts or outlays in accordance with the  
15 Federal Credit Reform Act of 1990 (2 U.S.C. 661  
16 et seq.).

17 “(18) SUBSTANTIAL COMPLETION.—The term  
18 ‘substantial completion’ means that an eligible  
19 project has been determined by the Board to be in,  
20 or capable of, commercial operation.

21 “(b) DUTIES OF THE SECRETARY.—

22 “(1) IN GENERAL.—The Secretary shall make  
23 available to eligible project developers and eligible  
24 project owners, in accordance with this section, such

1 financial assistance as is necessary to supplement  
2 private sector financing for eligible projects.

3 “(2) CLIMATE CREDIT BOARD.—

4 “(A) IN GENERAL.—Not later than 120  
5 days after the date of enactment of this section,  
6 the Secretary shall establish within the Depart-  
7 ment of Energy a Climate Credit Board com-  
8 posed of—

9 “(i) the Under Secretary of Energy,  
10 who shall serve as Chairperson;

11 “(ii) the Chief Financial Officer of the  
12 Department of Energy;

13 “(iii) the Assistant Secretary of En-  
14 ergy for Policy and International Affairs;

15 “(iv) the Assistant Secretary of En-  
16 ergy for Energy Efficiency and Renewable  
17 Energy; and

18 “(v) such other individuals as the Sec-  
19 retary determines to have the experience  
20 and expertise (including expertise in cor-  
21 porate and project finance and the energy  
22 sector) necessary to carry out the duties of  
23 the Board.

24 “(B) DUTIES.—The Board shall—

1           “(i) implement the program developed  
2           under section 1610(h)(1) in accordance  
3           with paragraph (3);

4           “(ii) issue regulations and criteria in  
5           accordance with paragraph (4);

6           “(iii) conduct negotiations with indi-  
7           viduals and entities interested in obtaining  
8           assistance under this section;

9           “(iv) recommend to the Secretary po-  
10          tential recipients and amounts of grants of  
11          assistance under this section; and

12          “(v) carry out such other projects and  
13          activities as the Interagency Coordinating  
14          Committee on Climate Change Technology  
15          may recommend.

16          “(3) GREENHOUSE GAS INTENSITY REDUCING  
17          TECHNOLOGY DEPLOYMENT PROGRAM.—Not later  
18          than 1 year after the date of enactment of this sec-  
19          tion, the Board shall implement the greenhouse gas  
20          intensity reducing technology deployment program  
21          developed under section 1610(h)(1).

22          “(4) REGULATIONS AND CRITERIA.—

23                 “(A) IN GENERAL.—Not later than 1 year  
24                 after the date of enactment of this section, the  
25                 Board shall issue and publish in the Federal

1 Register such regulations and criteria as are  
2 necessary to implement this section.

3 “(B) REQUIREMENTS.—The regulations  
4 and criteria shall provide for, at a minimum—

5 “(i) a competitive process and the  
6 general terms and conditions for the provi-  
7 sion of assistance under this section;

8 “(ii) the procedures by which eligible  
9 project owners and eligible project devel-  
10 opers may request financial assistance  
11 under this section; and

12 “(iii) the collection of any other infor-  
13 mation necessary for the Secretary to carry  
14 out this section, including a process for ne-  
15 gotiating the terms and conditions of as-  
16 sistance provided under this section.

17 “(C) ELIGIBILITY AND CRITERIA.—The de-  
18 termination of eligibility of, and criteria for se-  
19 lecting, eligible projects to receive assistance  
20 under this section shall be carried out in ac-  
21 cordance with subsection (c).

22 “(D) CONDITIONS FOR PROVISION OF AS-  
23 SISTANCE.—The Board shall not provide assist-  
24 ance under this section unless the Board deter-  
25 mines that the terms, conditions, maturity, se-

1           curity, schedule, and amounts of repayments of  
2           the assistance are reasonable and meet such  
3           standards as the Board determines are appro-  
4           priate to protect the financial interests of the  
5           United States.

6           “(5) REPORTS TO THE PRESIDENT AND CON-  
7           GRESS.—Not later than 4 years after the date of en-  
8           actment of this section, and every 2 years thereafter,  
9           the Board shall submit to the Secretary, for trans-  
10          mittal to the President and Congress, a report that  
11          describes—

12                   “(A) the progress in carrying out this sec-  
13                   tion;

14                   “(B) the financial performance of the eligi-  
15                   ble projects that are receiving, or have received,  
16                   assistance under this section as of the date of  
17                   the report; and

18                   “(C) the progress and value to the United  
19                   States of the program under this section, in-  
20                   cluding a recommendation as to whether the ob-  
21                   jectives of this section are best served by—

22                           “(i) continuing the program under the  
23                           authority of the Secretary;

24                           “(ii) establishing a Federal Govern-  
25                           ment corporation or Federal Government-

1 sponsored enterprise to administer the pro-  
2 gram; or

3 “(iii) phasing out the program and re-  
4 lying on the capital markets to fund the  
5 kinds of energy infrastructure investments  
6 assisted by this section without Federal  
7 participation.

8 “(6) CONFIDENTIALITY.—The Board shall pro-  
9 tect the confidentiality of any information provided  
10 by an applicant for assistance under this section  
11 that the applicant certifies to be commercially sen-  
12 sitive or that is protected intellectual property.

13 “(c) GENERAL REQUIREMENTS REGARDING ASSIST-  
14 ANCE, DETERMINATION OF ELIGIBILITY, AND PROJECT  
15 SELECTION.—

16 “(1) IN GENERAL.—The Board shall not pro-  
17 vide assistance to an eligible project under this sec-  
18 tion unless the Board first determines that the  
19 amount of assistance to be provided for the eligible  
20 project is not greater than the amount of assistance  
21 required to achieve the purposes of this section with  
22 respect to the eligible project.

23 “(2) ELIGIBILITY.—To be eligible to receive as-  
24 sistance under this section, an eligible project shall,  
25 as determined by the Board—

1           “(A) be supported by an application that  
2 contains all information required to be included  
3 by, and is submitted to and approved by the  
4 Board in accordance with, the regulations and  
5 criteria issued by the Board under subsection  
6 (b)(4);

7           “(B) be nationally or regionally significant  
8 by—

9                   “(i) reducing greenhouse gas inten-  
10 sity;

11                   “(ii) generating economic benefits;

12                   “(iii) contributing to energy security;

13                   “(iv) contributing to energy and tech-  
14 nology diversity in the energy economy of  
15 the United States;

16                   “(v) contributing to energy and elec-  
17 tricity price stability; or

18                   “(vi) otherwise enhancing national or  
19 regional energy efficiency, reliability, and  
20 robustness of performance;

21           “(C) contain an advanced climate tech-  
22 nology or system that could—

23                   “(i) significantly improve the effi-  
24 ciency, security, reliability, and environ-

1           mental performance of the energy economy  
2           of the United States; and

3                   “(ii) reduce greenhouse gas emissions;

4                   “(D) have revenue sources dedicated to re-  
5           payment of credit support-based project financ-  
6           ing, such as revenue—

7                   “(i) from the sale of sequestered car-  
8           bon;

9                   “(ii) from the sale of energy, elec-  
10          tricity, or other products from eligible  
11          projects that employ advanced climate  
12          technologies and systems;

13                  “(iii) from the sale of transportation  
14          of commerce;

15                  “(iv) from the sale of electricity or  
16          generating capacity, in the case of elec-  
17          tricity infrastructure;

18                  “(v) from the sale or transmission of  
19          energy;

20                  “(vi) associated with energy efficiency  
21          gains, in the case of other energy projects;

22          or

23                  “(vii) from other dedicated revenue  
24          sources;

1           “(E) include a project proposal and agree-  
2           ment for project financing repayment that dem-  
3           onstrates to the satisfaction of the Board that  
4           the dedicated revenue sources described in sub-  
5           paragraph (D) will be adequate to repay project  
6           financing provided under this section;

7           “(F) reduce greenhouse gas intensity on a  
8           national or regional basis; and

9           “(G) if the eligible project involves new  
10          transmission capacity, link to low-emission  
11          projects.

12          “(3) LIMITATIONS.—Except as otherwise pro-  
13          vided in this section—

14                 “(A) the total cost of an eligible project  
15                 provided Federal financial assistance under this  
16                 section shall be at least \$40,000,000;

17                 “(B) the Federal share of an eligible  
18                 project provided Federal financial assistance  
19                 under this Act shall be not more than 20 per-  
20                 cent of the total cost of carrying out the eligible  
21                 project; and

22                 “(C) not more than \$200,000,000 in Fed-  
23                 eral financial assistance shall be provided to  
24                 any individual eligible project.

25          “(4) SELECTION AMONG ELIGIBLE PROJECTS.—

1           “(A) ESTABLISHMENT OF SELECTION CRI-  
2           TERIA.—The Board shall establish criteria for  
3           selecting which eligible projects will receive as-  
4           sistance under this section.

5           “(B) REQUIREMENTS.—The selection cri-  
6           teria shall include a determination by the Board  
7           of the extent to which—

8                   “(i) the eligible project reduces green-  
9                   house gas intensity beyond reductions  
10                  achieved by technology available as of Oc-  
11                  tober 15, 1992;

12                  “(ii) financing for the eligible project  
13                  has appropriate security features, such as  
14                  a rate covenant, to ensure repayment;

15                  “(iii) assistance under this section for  
16                  the eligible project would foster innovative  
17                  public-private partnerships and attract pri-  
18                  vate debt or equity investment;

19                  “(iv) assistance under this section for  
20                  an eligible project would enable the eligible  
21                  project to proceed at an earlier date than  
22                  would otherwise be practicable;

23                  “(v) the eligible project uses new tech-  
24                  nologies that enhance the efficiency, reduce  
25                  the environmental impact, improve the reli-

1 ability, or improve the safety, of the eligi-  
2 ble project;

3 “(vi) the eligible project helps to  
4 maintain or protect the environment, espe-  
5 cially with respect to having a low level of  
6 emissions to the atmosphere;

7 “(vii) assistance for the eligible  
8 project provided under this section could  
9 reduce the contribution of other Federal  
10 grant or funding assistance to the eligible  
11 project; and

12 “(viii) the eligible project is nationally  
13 or regionally significant in terms of gener-  
14 ating economic benefits, supporting inter-  
15 national commerce, or otherwise enhancing  
16 national energy efficiency, security, reli-  
17 ability, robustness, and environmental per-  
18 formance.

19 “(C) FINANCIAL INFORMATION.—An appli-  
20 cation for assistance for an eligible project  
21 under this section shall include such informa-  
22 tion as the Secretary determines to be nec-  
23 essary concerning—

1           “(i) the amount of budget authority  
2           required to fund the Federal credit instru-  
3           ment requested for the eligible project;

4           “(ii) the estimated construction costs  
5           of the proposed eligible project;

6           “(iii) estimates of construction and  
7           operating costs of the eligible project;

8           “(iv) projected revenues from the eli-  
9           gible project; and

10           “(v) any other financial aspects of the  
11           eligible project, including assurances, that  
12           the Board determines to be appropriate.

13           “(D) PRELIMINARY RATING OPINION LET-  
14           TER.—The Board shall require each applicant  
15           seeking assistance for an eligible project under  
16           this section to provide a preliminary rating  
17           opinion letter from at least 1 credit rating  
18           agency indicating that the senior obligations of  
19           the eligible project have the potential to achieve  
20           an investment-grade rating.

21           “(E) RISK ASSESSMENT.—Before entering  
22           into any agreement to provide assistance for an  
23           eligible project under this section, the Board, in  
24           consultation with the Secretary, the Director of  
25           the Office of Management and Budget, and

1 each credit rating agency providing a prelimi-  
2 nary rating opinion letter under subparagraph  
3 (D), shall determine and maintain an appro-  
4 priate capital reserve subsidy amount for each  
5 line of credit established for the eligible project,  
6 taking into account the information contained  
7 in the preliminary rating opinion letter.

8 “(F) INVESTMENT-GRADE RATING RE-  
9 QUIREMENT.—

10 “(i) IN GENERAL.—The funding of  
11 any assistance under this section shall be  
12 contingent on the senior obligations of the  
13 eligible project receiving an investment-  
14 grade rating from at least 1 credit rating  
15 agency.

16 “(ii) CONSIDERATIONS.—In deter-  
17 mining whether an investment-grade rating  
18 is appropriate under clause (i), the credit  
19 rating agency shall take into account the  
20 availability of Federal financial assistance  
21 under this section.

22 “(5) MAXIMUM AVAILABLE CLIMATE CREDIT  
23 SUPPORT.—Notwithstanding any assistance limita-  
24 tion under any other provision of this section, the  
25 Secretary shall not provide energy credit support to

1 any eligible project in the form of a secured loan or  
2 loan guarantee under subsection (f), production in-  
3 centive payments under subsection (g), or other  
4 credit-based financial assistance under subsection  
5 (h), the combined total of which exceeds 60 percent  
6 of eligible project costs, excluding the value of stand-  
7 by default coverage under subsection (d) and stand-  
8 by interest coverage under subsection (e), as deter-  
9 mined by the Secretary.

10 “(d) STANDBY DEFAULT COVERAGE.—

11 “(1) AGREEMENTS; USE OF PROCEEDS.—

12 “(A) AGREEMENTS.—

13 “(i) IN GENERAL.—Subject to sub-  
14 paragraph (B), the Board, in consultation  
15 with the Secretary, may enter into agree-  
16 ments to provide standby default coverage  
17 for advanced climate technologies or sys-  
18 tems of an eligible project.

19 “(ii) RECIPIENTS.—Coverage under  
20 clause (i) may be provided to 1 or more ob-  
21 ligors and debt holders to be triggered at  
22 future dates on the occurrence of certain  
23 events for any eligible project selected  
24 under subsection (c).

1           “(B) USE OF PROCEEDS.—The proceeds of  
2           standby default coverage made available under  
3           this subsection shall be available to reimburse  
4           all or part of the debt obligation for an eligible  
5           project issued by an obligor and funded by a  
6           lender, plus all or part of obligor equity, in the  
7           event that, because of a regulatory failure or  
8           other event specified by the Secretary pursuant  
9           to this section, an eligible advanced climate  
10          technology or system for an eligible project fails  
11          to receive an operating license in a period of  
12          time specified by the Board in accordance with  
13          this subsection.

14          “(2) TERMS AND LIMITATIONS.—

15                 “(A) IN GENERAL.—Standby default cov-  
16                 erage under this subsection with respect to an  
17                 eligible project shall be on such terms and con-  
18                 ditions and contain such covenants, representa-  
19                 tions, warranties, and requirements (including  
20                 requirements for audits) as the Board deter-  
21                 mines to be appropriate.

22                 “(B) MAXIMUM AMOUNTS.—The total  
23                 amount of standby default coverage provided  
24                 for an eligible project shall not exceed 100 per-

1 cent of the reasonably anticipated eligible  
2 project costs, including debt and equity.

3 “(C) EXERCISE.—Any exercise on the  
4 standby default coverage shall be made only if  
5 a facility involved with the eligible project fails,  
6 because of regulatory failure or other specific  
7 issues specified by the Secretary, to receive an  
8 operating license by such deadline as the Sec-  
9 retary shall establish.

10 “(D) COST OF COVERAGE.—The cost of  
11 standby default coverage shall be assumed by  
12 the Secretary subject to the risk assessment  
13 calculation required under subsection (c)(4)(E)  
14 and the availability of funds for that purpose.

15 “(E) FEES.—In carrying out this section,  
16 the Secretary may—

17 “(i) establish fees at a level sufficient  
18 to cover all or a portion of the administra-  
19 tive costs incurred by the Federal Govern-  
20 ment in providing standby default coverage  
21 under this subsection; and

22 “(ii) require that the fees be paid  
23 upon application for a standby default cov-  
24 erage agreement under this subsection.

1           “(F) PERIOD OF AVAILABILITY.—In the  
2 event that regulatory approval to operate a fa-  
3 cility is suspended as a result of regulatory fail-  
4 ure or other circumstances specified by the Sec-  
5 retary, standby default coverage shall be avail-  
6 able beginning on the date of substantial com-  
7 pletion and ending not later than 5 years after  
8 the date on which operation of the facility is  
9 scheduled to commence.

10           “(G) RIGHTS OF THIRD-PARTY CREDI-  
11 TORS.—

12           “(i) AGAINST FEDERAL GOVERN-  
13 MENT.—A third-party creditor of an obli-  
14 gor shall not have any right against the  
15 Federal Government with respect to any  
16 amounts other than those specified in sub-  
17 paragraph (B).

18           “(ii) ASSIGNMENT.—An obligor may  
19 assign all or part of the standby default  
20 coverage for an eligible project to 1 or  
21 more lenders or to a trustee on behalf of  
22 the lenders.

23           “(H) RESULT OF EXERCISE OF STANDBY  
24 DEFAULT COVERAGE.—If standby default cov-

1 erage is exercised by the obligor of an eligible  
2 project—

3 “(i) the Federal Government shall be-  
4 come the sole owner of the eligible project,  
5 with all rights and appurtenances to the el-  
6 igible project; and

7 “(ii) the Board shall dispose of the as-  
8 sets of the eligible project on terms that  
9 are most favorable to the Federal Govern-  
10 ment, which may include continuing to li-  
11 censing and commercial operation or resale  
12 of the eligible project, in whole or in part,  
13 if that is the best course of action in the  
14 judgment of the Board.

15 “(I) ESTIMATE OF ASSETS AT TIME OF  
16 TERMINATION.—If standby default coverage is  
17 exercised and an eligible project is terminated,  
18 the Board, in making a determination of wheth-  
19 er to dispose of the assets of the eligible project  
20 or continue the eligible project to licensing and  
21 commercial operation, shall obtain a fair and  
22 impartial estimate of the eligible project assets  
23 at the time of termination.

24 “(J) RELATIONSHIP TO OTHER CREDIT IN-  
25 STRUMENTS.—An eligible project that receives

1 standby default coverage under this subsection  
2 may receive a secured loan or loan guarantee  
3 under subsection (f), production incentive pay-  
4 ments under subsection (g), or assistance  
5 through a credit-based financial assistance  
6 mechanism under subsection (h).

7 “(K) OTHER CONDITIONS AND REQUIRE-  
8 MENTS.—The Secretary may impose such other  
9 conditions and requirements in connection with  
10 any insurance provided under this subsection  
11 (including requirements for audits) as the Sec-  
12 retary determines to be appropriate.

13 “(e) STANDBY INTEREST COVERAGE.—

14 “(1) IN GENERAL.—

15 “(A) AGREEMENTS.—Subject to subpara-  
16 graph (B), the Board may enter into agree-  
17 ments to make standby interest coverage avail-  
18 able to 1 or more obligors in the form of loans  
19 for advanced climate or energy technologies or  
20 systems to be made by the Board at future  
21 dates on the occurrence of certain events for  
22 any eligible project selected under subsection  
23 (c)(4).

24 “(B) USE OF PROCEEDS.—Subject to sub-  
25 section (c)(3), the proceeds of standby interest

1 coverage made available under this subsection  
2 shall be available to pay the debt service on  
3 project obligations issued to finance eligible  
4 project costs of an eligible project if a delay in  
5 commercial operations occurs due to a regu-  
6 latory failure or other condition determined by  
7 the Secretary.

8 “(2) TERMS AND LIMITATIONS.—

9 “(A) IN GENERAL.—Standby interest cov-  
10 erage under this subsection with respect to an  
11 eligible project shall be made on such terms and  
12 conditions (including a requirement for an  
13 audit) as the Secretary determines appropriate.

14 “(B) MAXIMUM AMOUNTS.—

15 “(i) TOTAL AMOUNT.—The total  
16 amount of standby interest coverage for an  
17 eligible project under this subsection shall  
18 not exceed 25 percent of the reasonably  
19 anticipated eligible project costs of the eli-  
20 gible project.

21 “(ii) 1-YEAR DRAWS.—The amount  
22 drawn in any 1 year for an eligible project  
23 under this subsection shall not exceed 20  
24 percent of the total amount of the standby  
25 interest coverage for the eligible project.

1           “(C) PERIOD OF AVAILABILITY.—The  
2 standby interest coverage for an eligible project  
3 shall be available during the period—

4           “(i) beginning on a date following  
5 substantial completion of the eligible  
6 project that regulatory approval to operate  
7 a facility under the eligible project is sus-  
8 pended as a result of regulatory failure or  
9 other condition determined by the Sec-  
10 retary; and

11           “(ii) ending on a date that is not later  
12 than 5 years after the eligible project is  
13 scheduled to commence commercial oper-  
14 ations.

15           “(D) COST OF COVERAGE.—Subject to  
16 subsection (c)(4)(E), the cost of standby inter-  
17 est coverage for an eligible project under this  
18 subsection shall be borne by the Secretary.

19           “(E) DRAWS.—Any draw on the standby  
20 interest coverage for an eligible project shall—

21           “(i) represent a loan;

22           “(ii) be made only if there is a delay  
23 in commercial operations after the sub-  
24 stantial completion of the eligible project;  
25 and

1           “(iii) be subject to the overall credit  
2 support limitations established under sub-  
3 section (c)(5).

4           “(F) INTEREST RATE.—

5           “(i) IN GENERAL.—Subject to clause  
6 (ii), the interest rate on a loan resulting  
7 from a draw on standby interest coverage  
8 under this subsection shall be established  
9 by the Secretary.

10           “(ii) MINIMUM RATE.—The interest  
11 rate on a loan resulting from a draw on  
12 standby interest coverage under this sub-  
13 section shall not be less than the current  
14 average market yield on outstanding mar-  
15 ketable obligations of the United States  
16 with a maturity of 10 years, as of the date  
17 on which the standby interest coverage is  
18 obligated.

19           “(G) SECURITY.—The standby interest  
20 coverage for an eligible project—

21           “(i) shall be payable, in whole or in  
22 part, from dedicated revenue sources gen-  
23 erated by the eligible project;

24           “(ii) shall require security for the  
25 project obligations; and

1           “(iii) may have a lien on revenues de-  
2           scribed in clause (i), subject to any lien se-  
3           curing project obligations.

4           “(H) RIGHTS OF THIRD-PARTY CREDI-  
5           TORS.—

6           “(i) AGAINST FEDERAL GOVERN-  
7           MENT.—A third-party creditor of the obli-  
8           gor shall not have any right against the  
9           Federal Government with respect to any  
10          draw on standby interest coverage under  
11          this subsection.

12          “(ii) ASSIGNMENT.—An obligor may  
13          assign the standby interest coverage to 1  
14          or more lenders or to a trustee on behalf  
15          of the lenders.

16          “(I) SUBORDINATION.—A secured loan for  
17          an eligible project made under this subsection  
18          shall be subordinate to senior private debt  
19          issued by a lender for the eligible project.

20          “(J) NONRECOURSE STATUS.—A secured  
21          loan for an eligible project under this subsection  
22          shall be nonrecourse to the obligor in the event  
23          of bankruptcy, insolvency, or liquidation of the  
24          eligible project.

1           “(K) FEES.—The Board may impose fees  
2 at a level sufficient to cover all or part of the  
3 costs to the Federal Government of providing  
4 standby interest coverage for an eligible project  
5 under this subsection.

6           “(3) REPAYMENT.—

7           “(A) TERMS AND CONDITIONS.—The Sec-  
8 retary shall establish a repayment schedule and  
9 terms and conditions for each loan for an eligi-  
10 ble project under this subsection based on the  
11 projected cash flow from revenues for the eligi-  
12 ble project.

13           “(B) REPAYMENT SCHEDULE.—Scheduled  
14 repayments of principal or interest on a loan  
15 under this subsection shall—

16           “(i) commence not later than 5 years  
17 after the end of the period of availability  
18 specified in paragraph (2)(C); and

19           “(ii) be completed, with interest, not  
20 later than 10 years after the end of the pe-  
21 riod of availability.

22           “(C) SOURCES OF REPAYMENT FUNDS.—  
23 The sources of funds for scheduled loan repay-  
24 ments under this subsection shall include—

1           “(i) the sale of electricity or gener-  
2           ating capacity;

3           “(ii) the sale or transmission of en-  
4           ergy;

5           “(iii) revenues associated with energy  
6           efficiency gains; or

7           “(iv) other dedicated revenue sources,  
8           such as carbon use.

9           “(D) PREPAYMENT.—

10           “(i) USE OF EXCESS REVENUES.—At  
11           the discretion of the obligor, any excess  
12           revenues that remain after satisfying  
13           scheduled debt service requirements on the  
14           project obligations and secured loan, and  
15           all deposit requirements under the terms of  
16           any trust agreement, bond resolution, or  
17           similar agreement securing project obliga-  
18           tions, may be applied annually to prepay  
19           the secured loan without penalty.

20           “(ii) USE OF PROCEEDS OF REFI-  
21           NANCING.—The secured loan may be pre-  
22           paid at any time without penalty from the  
23           proceeds of refinancing from non-Federal  
24           funding sources.

25           “(f) SECURED LOANS AND LOAN GUARANTEES.—

1 “(1) IN GENERAL.—

2 “(A) AGREEMENTS.—Subject to subpara-  
3 graph (B), the Board may enter into agree-  
4 ments with 1 or more obligors to make secured  
5 loans for eligible projects involving advanced cli-  
6 mate technologies or systems.

7 “(B) USE OF PROCEEDS.—Subject to  
8 paragraph (2), the proceeds of a secured loan  
9 for an eligible project made available under this  
10 subsection shall be available, in conjunction  
11 with the equity of the obligor and senior debt  
12 financing for the eligible project, to pay for eli-  
13 gible project costs.

14 “(2) TERMS AND LIMITATIONS.—

15 “(A) IN GENERAL.—A secured loan under  
16 this subsection with respect to an eligible  
17 project shall be made on such terms and condi-  
18 tions (including requirements for an audit) as  
19 the Board, in consultation with the Secretary,  
20 determines appropriate.

21 “(B) MAXIMUM AMOUNT.—Subject to sub-  
22 section (c)(5), the total amount of the secured  
23 loan for an eligible project under this subsection  
24 shall not exceed 50 percent of the reasonably

1           anticipated eligible project costs of the eligible  
2           project.

3           “(C) PERIOD OF AVAILABILITY.—The  
4           Board may enter into a contract with the owner  
5           or operator of an eligible project to provide a  
6           secured loan during the period—

7                     “(i) beginning on the date that the fi-  
8                     nancial structure of the eligible project is  
9                     established; and

10                    “(ii) ending on the date of the start of  
11                    construction of the eligible project.

12           “(D) COST OF COVERAGE.—Subject to  
13           subsection (c)(4)(E), the cost of a secured loan  
14           for an eligible project under this subsection  
15           shall be borne by the Secretary.

16           “(E) INTEREST RATE.—

17                     “(i) IN GENERAL.—Subject to clause  
18                     (ii), the interest rate on a secured loan  
19                     under this subsection shall be established  
20                     by the Secretary.

21                     “(ii) MINIMUM RATE.—The interest  
22                     rate on a loan resulting from a secured  
23                     loan under this subsection shall not be less  
24                     than the current average market yield on  
25                     outstanding marketable obligations of the

1 United States of comparable maturity, as  
2 of the date of the execution of the loan  
3 agreement.

4 “(F) SECURITY.—The secured loan—

5 “(i) shall be payable, in whole or in  
6 part, from dedicated revenue sources gen-  
7 erated by the eligible project;

8 “(ii) shall include a rate covenant,  
9 coverage requirement, or similar security  
10 feature supporting the project obligations;  
11 and

12 “(iii) may have a lien on revenues de-  
13 scribed in clause (i), subject to any lien se-  
14 curing project obligations.

15 “(G) RIGHTS OF THIRD-PARTY CREDI-  
16 TORS.—

17 “(i) AGAINST FEDERAL GOVERN-  
18 MENT.—A third-party creditor of the obli-  
19 gor shall not have any right against the  
20 Federal Government with respect to any  
21 payments due to the Federal Government  
22 under this subsection.

23 “(ii) ASSIGNMENT.—An obligor may  
24 assign the secured loan to 1 or more lend-  
25 ers or to a trustee on behalf of the lenders.

1           “(H) SUBORDINATION.—A secured loan  
2 for an eligible project made under this sub-  
3 section shall be subordinate to senior private  
4 debt issued by a lender for the eligible project.

5           “(I) NONRECOURSE STATUS.—A secured  
6 loan for an eligible project under this subsection  
7 shall be non-recourse to the obligor in the event  
8 of bankruptcy, insolvency, or liquidation of the  
9 eligible project.

10           “(J) FEES.—The Board may establish fees  
11 at a level sufficient to cover all or a portion of  
12 the costs to the Federal Government of making  
13 secured loans for an eligible project under this  
14 subsection.

15           “(3) REPAYMENT.—

16           “(A) SCHEDULE AND TERMS.—The Board  
17 shall establish a repayment schedule and terms  
18 and conditions for each secured loan for an eli-  
19 gible project under this subsection based on the  
20 projected cash flow from revenues for the eligi-  
21 ble project.

22           “(B) REPAYMENT SCHEDULE.—Scheduled  
23 repayments on a secured loan for an eligible  
24 project under this subsection shall—

1 “(i) commence not later than 5 years  
2 after the scheduled start of commercial op-  
3 erations of the eligible project; and

4 “(ii) be completed, with interest, not  
5 later than 35 years after the scheduled  
6 date of the start of commercial operations  
7 of the eligible project.

8 “(C) SOURCES OF REPAYMENT FUNDS.—  
9 The sources of funds for scheduled loan repay-  
10 ments under this subsection shall include—

11 “(i) the sale of carbon or carbon com-  
12 pounds;

13 “(ii) the sale of electricity or gener-  
14 ating capacity;

15 “(iii) the sale of sequestration serv-  
16 ices;

17 “(iv) the sale or transmission of en-  
18 ergy;

19 “(v) revenues associated with energy  
20 efficiency gains; or

21 “(vi) other dedicated revenue sources.

22 “(D) DEFERRED PAYMENTS.—

23 “(i) AUTHORIZATION.—If, at any time  
24 during the 10-year period beginning on the  
25 date of the scheduled start of commercial

1 operation of an eligible project, the eligible  
2 project is unable to generate sufficient rev-  
3 enues to pay the scheduled loan repay-  
4 ments of principal or interest on the se-  
5 cured loan, the Secretary may, subject to  
6 clause (iii), allow the obligor to add unpaid  
7 principal or interest to the outstanding bal-  
8 ance of the secured loan.

9 “(ii) INTEREST.—Any payment de-  
10 ferred under clause (i) shall—

11 “(I) continue to accrue interest  
12 in accordance with paragraph (2)(E)  
13 until fully repaid; and

14 “(II) be scheduled to be amor-  
15 tized over the number of years re-  
16 maining in the term of the loan in ac-  
17 cordance with subparagraph (B).

18 “(iii) CRITERIA.—

19 “(I) IN GENERAL.—Any payment  
20 deferral under clause (i) shall be con-  
21 tingent on the eligible project meeting  
22 criteria established by the Secretary.

23 “(II) REPAYMENT STANDARDS.—  
24 The criteria established under sub-

1 clause (I) shall include standards for  
2 reasonable assurance of repayment.

3 “(E) PREPAYMENT.—

4 “(i) USE OF EXCESS REVENUES.—At  
5 the discretion of the obligor, any excess  
6 revenues that remain after satisfying  
7 scheduled debt service requirements on the  
8 project obligations and secured loan, and  
9 all deposit requirements under the terms of  
10 any trust agreement, bond resolution, or  
11 similar agreement securing project obliga-  
12 tions, may be applied annually to prepay  
13 the secured loan without penalty.

14 “(ii) USE OF PROCEEDS OF REFI-  
15 NANCING.—The secured loan may be pre-  
16 paid at any time without penalty from the  
17 proceeds of refinancing from non-Federal  
18 funding sources.

19 “(4) SALE OF SECURED LOANS.—

20 “(A) IN GENERAL.—Subject to subpara-  
21 graph (B), as soon as practicable after substan-  
22 tial completion of an eligible project and after  
23 notifying the obligor, the Board may sell to an-  
24 other entity or reoffer into the capital markets  
25 a secured loan for the eligible project if the

1 Board determines that the sale or reoffering  
2 can be made on favorable terms.

3 “(B) CONSENT OF OBLIGOR.—In making a  
4 sale or reoffering under subparagraph (A), the  
5 Board may not change the original terms and  
6 conditions of the secured loan without the writ-  
7 ten consent of the obligor.

8 “(5) LOAN GUARANTEES.—

9 “(A) IN GENERAL.—The Board may pro-  
10 vide a loan guarantee to a lender, in lieu of  
11 making a secured loan, under this subsection if  
12 the Board determines that the budgetary cost  
13 of the loan guarantee is substantially the same  
14 as that of a secured loan.

15 “(B) TERMS.—

16 “(i) IN GENERAL.—Except as pro-  
17 vided in clause (ii), the terms of a guaran-  
18 teed loan shall be consistent with the terms  
19 for a secured loan under this subsection.

20 “(ii) INTEREST RATE; PREPAY-  
21 MENT.—The interest rate on the guaran-  
22 teed loan and any prepayment features  
23 shall be established by negotiations be-  
24 tween the obligor and the lender, with the  
25 consent of the Board.

1 “(g) PRODUCTION INCENTIVE PAYMENTS.—

2 “(1) SECURED LOAN.—

3 “(A) IN GENERAL.—The Secretary may  
4 enter into an agreement with 1 or more obligors  
5 to make a secured loan for an eligible project  
6 selected under subsection (c)(4) that employs 1  
7 or more advanced climate technologies or sys-  
8 tems.

9 “(B) PRODUCTION INCENTIVE PAY-  
10 MENTS.—

11 “(i) IN GENERAL.—Amounts loaned  
12 to an obligor under subparagraph (A) shall  
13 be made available in the form of a series  
14 of production incentive payments provided  
15 by the Board to the obligor during a period  
16 of not more than 10 years, as determined  
17 by the Board, beginning after the date on  
18 which commercial project operations start  
19 at the eligible project.

20 “(ii) AMOUNT.—Production incentive  
21 payments under clause (i) shall be for an  
22 amount equal to 50 percent of the value  
23 of—

1                   “(I) the energy produced or  
2                   transmitted by the eligible project  
3                   during the applicable year; or

4                   “(II) any gains in energy effi-  
5                   ciency achieved by the eligible project  
6                   during the applicable year.

7                   “(2) TERMS AND LIMITATIONS.—

8                   “(A) IN GENERAL.—A secured loan under  
9                   this subsection shall be subject to such terms  
10                  and conditions, including any covenant, rep-  
11                  resentation, warranty, and requirement (includ-  
12                  ing a requirement for an audit) that the Sec-  
13                  retary determines to be appropriate.

14                  “(B) AGREEMENT COSTS.—Subject to sub-  
15                  section (c)(4), the cost of carrying out an agree-  
16                  ment entered into under paragraph (1)(A) shall  
17                  be paid by the Secretary.

18                  “(C) INTEREST RATE.—

19                  “(i) IN GENERAL.—Subject to clause  
20                  (ii), the interest rate on a secured loan  
21                  under this subsection shall be established  
22                  by the Secretary.

23                  “(ii) MINIMUM RATE.—The interest  
24                  rate on a secured loan under this sub-  
25                  section shall not be less than the current

1 average market yield on outstanding mar-  
2 ketable obligations of the United States of  
3 comparable maturity, as of the date on  
4 which the agreement under paragraph  
5 (1)(A) is executed.

6 “(D) SECURITY.—The secured loan—

7 “(i) shall be payable, in whole or in  
8 part, from dedicated revenue sources gen-  
9 erated by the eligible project;

10 “(ii) shall include a rate covenant,  
11 coverage requirement, or similar security  
12 feature supporting the eligible project obli-  
13 gations; and

14 “(iii) may have a lien on revenues de-  
15 scribed in clause (i), subject to any lien se-  
16 curing eligible project obligations.

17 “(E) RIGHTS OF THIRD-PARTY CREDI-  
18 TORS.—

19 “(i) AGAINST FEDERAL GOVERN-  
20 MENT.—A third-party creditor of the obli-  
21 gor shall not have any right against the  
22 Federal Government with respect to any  
23 payments due to the Federal Government  
24 under the agreement entered into under  
25 paragraph (1)(A).

1           “(ii) ASSIGNMENT.—An obligor may  
2           assign production incentive payments to 1  
3           or more lenders or to a trustee on behalf  
4           of the lenders.

5           “(F) SUBORDINATION.—A secured loan  
6           under this subsection shall be subordinate to  
7           senior private debt issued by a lender for the el-  
8           igible project.

9           “(G) NONRECOURSE STATUS.—A secured  
10          loan under this subsection shall be nonrecourse  
11          to the obligor in the event of bankruptcy, insol-  
12          veny, or liquidation of the eligible project.

13          “(H) FEES.—The Secretary may impose  
14          fees at a level sufficient to cover all or part of  
15          the costs to the Federal Government of pro-  
16          viding production incentive payments under this  
17          subsection.

18          “(3) REPAYMENT.—

19                 “(A) SCHEDULE, TERMS, AND CONDI-  
20                 TIONS.—The Secretary shall establish a repay-  
21                 ment schedule and terms and conditions for  
22                 each secured loan under this subsection based  
23                 on the projected cash flow from revenues of the  
24                 eligible project.

1           “(B) REPAYMENT SCHEDULE.—Scheduled  
2 repayments of principal or interest on a secured  
3 loan under this subsection shall—

4           “(i) commence not later than 5 years  
5 after the date on which the last production  
6 incentive payment is made by the Board  
7 under paragraph (1)(B); and

8           “(ii) be completed, with interest, not  
9 later than 10 years after the date on which  
10 the last production incentive payment is  
11 made.

12           “(C) SOURCES OF REPAYMENT FUNDS.—  
13 The sources of funds for scheduled loan repay-  
14 ments under this subsection include—

15           “(i) the sale of electricity or gener-  
16 ating capacity;

17           “(ii) the sale or transmission of en-  
18 ergy;

19           “(iii) revenues associated with energy  
20 efficiency gains; or

21           “(iv) other dedicated revenue sources.

22           “(D) DEFERRED PAYMENTS.—

23           “(i) AUTHORIZATION.—If, at any time  
24 during the 10-year period beginning on  
25 the date on which commercial operations of

1 the eligible project start, the eligible  
2 project is unable to generate sufficient rev-  
3 enues to pay the scheduled loan repay-  
4 ments of principal or interest on a secured  
5 loan under this subsection, the Secretary  
6 may, subject to criteria established by the  
7 Secretary (including standards for reason-  
8 able assurances of repayment), allow the  
9 obligor to add unpaid principal and inter-  
10 est to the outstanding balance of the se-  
11 cured loan.

12 “(ii) INTEREST.—Any payment de-  
13 ferred under clause (i) shall—

14 “(I) continue to accrue interest  
15 in accordance with paragraph (2)(C)  
16 until fully repaid; and

17 “(II) be scheduled to be amor-  
18 tized over the number of years re-  
19 maining in the term of the loan in ac-  
20 cordance with subparagraph (B).

21 “(E) PREPAYMENT.—

22 “(i) USE OF EXCESS REVENUES.—At  
23 the discretion of the obligor, any excess  
24 revenues that remain after satisfying  
25 scheduled debt service requirements on the

1 eligible project obligations and the secured  
2 loan, and all deposit requirements under  
3 the terms of any trust agreement, bond  
4 resolution, or similar agreement securing  
5 eligible project obligations, may be applied  
6 annually to prepay loans pursuant to an  
7 agreement entered into under paragraph  
8 (1)(A) without penalty.

9 “(ii) USE OF PROCEEDS OF REFI-  
10 NANCING.—The secured loan may be pre-  
11 paid at any time without penalty from the  
12 proceeds of refinancing from non-Federal  
13 funding sources.

14 “(4) SALE OF SECURED LOANS.—

15 “(A) IN GENERAL.—Subject to subpara-  
16 graph (B), as soon as practicable after the date  
17 on which the last production incentive payment  
18 is made to the obligor under paragraph (1)(B)  
19 and after notifying the obligor, the Secretary  
20 may sell to another entity or reoffer into the  
21 capital markets a secured loan for the eligible  
22 project if the Secretary determines that the sale  
23 or reoffering can be made on favorable terms.

24 “(B) CONSENT REQUIRED.—In making a  
25 sale or reoffering under subparagraph (A), the

1 Board may not change the original terms and  
2 conditions of the secured loan without the writ-  
3 ten consent of the obligor.

4 “(h) OTHER CREDIT-BASED FINANCIAL ASSISTANCE  
5 MECHANISMS FOR ELIGIBLE PROJECTS.—

6 “(1) IN GENERAL.—

7 “(A) AGREEMENTS.—The Board may  
8 enter into an agreement with 1 or more obligors  
9 to make a secured loan to the obligors for eligi-  
10 ble projects selected under subsection (c) that  
11 employ advanced technologies or systems, the  
12 proceeds of which shall be used to—

13 “(i) finance eligible project costs; or

14 “(ii) enhance eligible project revenues.

15 “(B) CREDIT-BASED FINANCIAL ASSIST-  
16 ANCE.—Amounts made available as a secured  
17 loan under subparagraph (A) shall be provided  
18 by the Board to the obligor in the form of cred-  
19 it-based financial assistance mechanisms that  
20 are not otherwise specifically provided for in  
21 subsections (d) through (g), as determined to  
22 be appropriate by the Secretary.

23 “(2) TERMS AND LIMITATIONS.—

24 “(A) IN GENERAL.—A secured loan under  
25 this subsection shall be subject to such terms

1 and conditions (including any covenants, rep-  
2 resentations, warranties, and requirements (in-  
3 cluding a requirement for an audit)) as the Sec-  
4 retary determines to be appropriate.

5 “(B) MAXIMUM AMOUNT.—Subject to sub-  
6 section (c)(5), the total amount of the secured  
7 loan under this subsection shall not exceed 50  
8 percent of the reasonably anticipated eligible  
9 project costs.

10 “(C) PERIOD OF AVAILABILITY.—The  
11 Board may enter into a contract with the obli-  
12 gor to provide credit-based financial assistance  
13 to an eligible project during the period—

14 “(i) beginning on the date that the fi-  
15 nancial structure of the eligible project is  
16 established; and

17 “(ii) ending on the date of the start of  
18 construction of the eligible project.

19 “(D) AGREEMENT COSTS.—Subject to sub-  
20 section (c)(4)(E), the cost of carrying out an  
21 agreement entered into under paragraph (1)(A)  
22 shall be paid by the Board.

23 “(E) INTEREST RATE.—

24 “(i) IN GENERAL.—Subject to clause  
25 (ii), the interest rate on a secured loan

1 under this subsection shall be established  
2 by the Board.

3 “(ii) MINIMUM RATE.—The interest  
4 rate on a secured loan under this sub-  
5 section shall not be less than the current  
6 average market yield on outstanding mar-  
7 ketable obligations of the United States of  
8 comparable maturity, as of the date of the  
9 execution of the secured loan agreement.

10 “(F) SECURITY.—The secured loan—

11 “(i) shall be payable, in whole or in  
12 part, from dedicated revenue sources gen-  
13 erated by the eligible project;

14 “(ii) shall include a rate covenant,  
15 coverage requirement, or similar security  
16 feature supporting the eligible project obli-  
17 gations; and

18 “(iii) may have a lien on revenues de-  
19 scribed in clause (i), subject to any lien se-  
20 curing eligible project obligations.

21 “(G) RIGHTS OF THIRD-PARTY CREDI-  
22 TORS.—

23 “(i) AGAINST FEDERAL GOVERN-  
24 MENT.—A third-party creditor of the obli-  
25 gor shall not have any right against the

1 Federal Government with respect to any  
2 payments due to the Federal Government  
3 under this subsection.

4 “(ii) ASSIGNMENT.—An obligor may  
5 assign payments made pursuant to an  
6 agreement to provide credit-based financial  
7 assistance under this subsection to 1 or  
8 more lenders or to a trustee on behalf of  
9 the lenders.

10 “(H) SUBORDINATION.—A secured loan  
11 under this subsection shall be subordinate to  
12 senior private debt issued by a lender for the el-  
13 igible project.

14 “(I) NONRECOURSE STATUS.—A secured  
15 loan under this subsection shall be nonrecourse  
16 to the obligor in the event of bankruptcy, insol-  
17 vency, or liquidation of the eligible project.

18 “(J) FEES.—The Board may establish fees  
19 at a level sufficient to cover all or part of the  
20 costs to the Federal Government of providing  
21 credit-based financial assistance under this sub-  
22 section.

23 “(3) REPAYMENT.—

24 “(A) SCHEDULE AND TERMS AND CONDI-  
25 TIONS.—The Board shall establish a repayment

1 schedule and terms and conditions for each se-  
2 cured loan under this subsection based on the  
3 projected cash flow from eligible project reve-  
4 nues.

5 “(B) REPAYMENT SCHEDULE.—Scheduled  
6 loan repayments of principal or interest on a se-  
7 cured loan under this subsection shall—

8 “(i) commence not later than 5 years  
9 after the date of substantial completion of  
10 the eligible project; and

11 “(ii) be completed, with interest, not  
12 later than 35 years after the date of sub-  
13 stantial completion of the eligible project.

14 “(C) SOURCES OF REPAYMENT FUNDS.—  
15 The sources of funds for scheduled loan repay-  
16 ments under this subsection shall include—

17 “(i) the sale of electricity or gener-  
18 ating capacity;

19 “(ii) the sale or transmission of en-  
20 ergy;

21 “(iii) revenues associated with energy  
22 efficiency gains; or

23 “(iv) other dedicated revenue sources,  
24 such as carbon sequestration.

25 “(D) DEFERRED PAYMENTS.—

1           “(i) AUTHORIZATION.—If, at any time  
2           during the 10-year period beginning on  
3           the date of the start of commercial oper-  
4           ations of the eligible project, the eligible  
5           project is unable to generate sufficient rev-  
6           enues to pay the scheduled loan repay-  
7           ments of principal or interest on a secured  
8           loan under this subsection, the Secretary  
9           may, subject to criteria established by the  
10          Secretary (including standards for reason-  
11          able assurances of repayment), allow the  
12          obligor to add unpaid principal and inter-  
13          est to the outstanding balance of the se-  
14          cured loan.

15          “(ii) INTEREST.—Any payment de-  
16          ferred under clause (i) shall—

17                  “(I) continue to accrue interest  
18                  in accordance with paragraph (2)(E)  
19                  until fully repaid; and

20                  “(II) be scheduled to be amor-  
21                  tized over the number of years re-  
22                  maining in the term of the loan in ac-  
23                  cordance with subparagraph (B).

24          “(E) PREPAYMENT.—

1           “(i) USE OF EXCESS REVENUES.—At  
2           the discretion of the obligor, any excess  
3           revenues that remain after satisfying  
4           scheduled debt service requirements on the  
5           eligible project obligations and secured  
6           loan, and all deposit requirements under  
7           the terms of any trust agreement, bond  
8           resolution, or similar agreement securing  
9           eligible project obligations, may be applied  
10          annually to prepay a secured loan under  
11          this subsection without penalty.

12          “(ii) USE OF PROCEEDS OF REFI-  
13          NANCING.—A secured loan under this sub-  
14          section may be prepaid at any time without  
15          penalty from the proceeds of refinancing  
16          from non-Federal funding sources.

17          “(4) SALE OF SECURED LOANS.—

18                 “(A) IN GENERAL.—Subject to subpara-  
19                 graph (B), as soon as practicable after the start  
20                 of commercial operations of an eligible project  
21                 and after notifying the obligor, the Board may  
22                 sell to another entity or reoffer into the capital  
23                 markets a secured loan for the eligible project  
24                 under this subsection if the Secretary deter-

1           mines that the sale or reoffering can be made  
2           on favorable terms.

3           “(B) CONSENT OF OBLIGOR.—In making a  
4           sale or reoffering under subparagraph (A), the  
5           Board may not change the original terms and  
6           conditions of the secured loan without the writ-  
7           ten consent of the obligor.

8           “(i) FEDERAL, STATE, AND LOCAL REGULATORY  
9           REQUIREMENTS.—The provision of Federal financial as-  
10          sistance to an eligible project under this section shall  
11          not—

12           “(1) relieve any recipient of the assistance of  
13           any obligation to obtain any required Federal, State,  
14           or local regulatory requirement, permit, or approval  
15           with respect to the eligible project;

16           “(2) limit the right of any unit of Federal,  
17           State, or local government to approve or regulate  
18           any rate of return on private equity invested in the  
19           eligible project; or

20           “(3) otherwise supersede any Federal, State, or  
21           local law (including any regulation) applicable to the  
22           construction or operation of the eligible project.

23           “(j) AUTHORIZATION OF APPROPRIATIONS.—There  
24          is authorized to be appropriated to carry out this section

1 \$400,000,000 for each of fiscal years 2006 through 2010,  
2 to remain available until expended.

3 “(k) TERMINATION OF AUTHORITY.—The authority  
4 provided by this section terminates effective December 31,  
5 2010.”.

6 **SEC. 4. NATIONAL CLIMATE REGISTRY INITIATIVE.**

7 Title XVI of the Energy Policy Act of 1992 (42  
8 U.S.C. 13381 et seq.) (as amended by section 3) is amend-  
9 ed by adding at the end the following:

10 **“SEC. 1612. NATIONAL CLIMATE REGISTRY INITIATIVE.**

11 “(a) PURPOSE.—The purpose of this section is to es-  
12 tablish a new national greenhouse gas registry—

13 “(1) to further encourage voluntary efforts, by  
14 persons and entities conducting business and other  
15 operations in the United States, to implement ac-  
16 tions, projects, and measures that reduce greenhouse  
17 gas emissions;

18 “(2) to encourage those persons and entities to  
19 monitor and voluntarily report direct or indirect  
20 greenhouse gas emissions from—

21 “(A) the facilities of the persons and enti-  
22 ties; and

23 “(B) to the maximum extent practicable,  
24 other types of sources;

1           “(3) to adopt a procedure and uniform format  
2           for use by the persons and entities in establishing  
3           and voluntarily reporting greenhouse gas emission  
4           baselines in connection with, and furtherance of, re-  
5           ductions of greenhouse gas emissions;

6           “(4) to provide verification mechanisms to en-  
7           sure, for participants and the public, a high level of  
8           confidence in accuracy and verifiability of reports  
9           made to a national greenhouse gas registry;

10           “(5) to encourage persons and entities, through  
11           voluntary agreements entered into with the Sec-  
12           retary, to annually report greenhouse gas emissions  
13           from the facilities of the persons and entities;

14           “(6) to provide to persons and entities that  
15           enter into those voluntary agreements and reduce  
16           greenhouse gas emissions transferable credits that  
17           may be used for any incentive, market-based, or reg-  
18           ulatory program determined by Congress to be nec-  
19           essary and feasible to reduce the risk of climate  
20           change and effects of climate change; and

21           “(7) to provide for the registration, transfer,  
22           and tracking of the ownership or holding of those  
23           credits for purposes of facilitating voluntary trading  
24           among persons and entities.

25           “(b) DEFINITIONS.—In this section:

1           “(1) COMMITTEE.—The term ‘Committee’  
2 means the Interagency Coordinating Committee on  
3 Climate Change Technology established under sec-  
4 tion 1610(c)(1).

5           “(2) ENTITY.—The term ‘entity’ means—

6                   “(A) a public person;

7                   “(B) a Federal, State, interstate, or local  
8 governmental agency, department, or corpora-  
9 tion; and

10                   “(C) any other publicly-owned organiza-  
11 tion.

12           “(3) FACILITY.—The term ‘facility’ means 2 or  
13 more buildings, structures, or installations, or 2 or  
14 more units of a building, structure, or installation,  
15 that—

16                   “(A) are located on contiguous or adjacent  
17 parcels of land;

18                   “(B) are under common control of the  
19 same person or entity; and

20                   “(C) are a source of greenhouse gas emis-  
21 sions in excess of a limitation established under  
22 this section.

23           “(4) GREENHOUSE GAS.—The term ‘greenhouse  
24 gas’ means—

1           “(A) an anthropogenic gaseous constituent  
2           of the atmosphere (including carbon dioxide,  
3           methane, nitrous oxide, hydrofluorocarbons,  
4           perfluorocarbons, and sulfur hexafluoride)  
5           that—

6                   “(i) absorbs and reemits infrared ra-  
7                   diation; and

8                   “(ii) influences climate; and

9           “(B) an anthropogenic aerosol (such as  
10          black soot) that—

11                   “(i) absorbs solar radiation; and

12                   “(ii) influences climate.

13          “(5) PERSON.—The term ‘person’ means an in-  
14          dividual, corporation, association, joint venture, co-  
15          operative, or partnership.

16          “(6) REDUCTION.—The term ‘reduction’ means  
17          an action, project, or measure carried out, within or  
18          outside the United States, by a person or entity to  
19          directly or indirectly reduce, avoid, or sequester  
20          emissions of 1 or more greenhouse gases.

21          “(7) REGISTRY.—The term ‘registry’ means the  
22          national greenhouse gas registry established under  
23          subsection (c)(1)(A).

1           “(8) SECRETARY.—The term ‘Secretary’ means  
2 the Secretary of Energy, acting through the Admin-  
3 istrator of the Energy Information Administration.

4           “(c) NATIONAL GREENHOUSE GAS REGISTRY.—

5           “(1) ESTABLISHMENT.—

6           “(A) IN GENERAL.—Not later than 1 year  
7 after the enactment of this section, the Presi-  
8 dent, in consultation with the Committee, shall  
9 establish a national greenhouse gas registry.

10           “(B) ADMINISTRATION.—The registry  
11 shall be administered by the Secretary in ac-  
12 cordance with applicable provisions of—

13           “(i) this section; and

14           “(ii) the Department of Energy Orga-  
15 nization Act (42 U.S.C. 7101 et seq.).

16           “(2) DESIGNATION.—On establishment of the  
17 registry under paragraph (1) and issuance of the  
18 guidelines in accordance with subsection (d)(1), the  
19 registry shall serve as the depository for the United  
20 States for data on greenhouse gas emissions and  
21 emission reductions that are collected from and re-  
22 ported by persons or entities that own, or conduct  
23 business and other operations at, 1 or more facilities  
24 in the United States.

25           “(3) PARTICIPATION.—

1           “(A) IN GENERAL.—Any person or entity  
2           conducting business or other activities in the  
3           United States may, in accordance with the  
4           guidelines issued under subsection (d)(1) and  
5           the conditions described in subparagraph (B),  
6           voluntarily report to the registry—

7                   “(i) total levels of greenhouse gas  
8                   emissions of the person or entity; and

9                   “(ii) certified emission reductions of  
10                  the person or entity.

11           “(B) CONDITIONS.—The conditions de-  
12           scribed in this subparagraph are that—

13                   “(i) with respect to a report described  
14                   in subparagraph (A)(i), the report rep-  
15                   resents a complete and accurate inventory  
16                   of—

17                           “(I) greenhouse gas emissions  
18                           from facilities of, and operations con-  
19                           ducted by, the person or entity within  
20                           the United States; and

21                           “(II) any domestic or inter-  
22                           national greenhouse gas emission re-  
23                           duction activities of the person or en-  
24                           tity; and

1                   “(ii) with respect to a report described  
2                   in subparagraph (A)(ii), the reductions  
3                   have been verified by an independent third-  
4                   party or other process—

5                   “(I) in accordance with the  
6                   guidelines issued under subsection  
7                   (d)(1)(B)(ii); or

8                   “(II) by other means determined  
9                   to be appropriate by the Secretary.

10                   “(4) CONFIDENTIALITY OF INFORMATION.—  
11                   Trade secret information, and commercial and finan-  
12                   cial information that is privileged and confidential,  
13                   that is submitted to the registry under paragraph  
14                   (3) or otherwise made available under any other pro-  
15                   vision of this section may be disclosed by the reg-  
16                   istry only in accordance with section 552(b)(4) of  
17                   title 5, United States Code.

18                   “(d) IMPLEMENTATION.—

19                   “(1) GUIDELINES.—

20                   “(A) IN GENERAL.—Not later than 1 year  
21                   after the date of establishment of the registry  
22                   under subsection (c)(1)(A), the Secretary, in  
23                   consultation with the Committee, shall issue  
24                   guidelines establishing procedures for the ad-  
25                   ministration of the registry.

1           “(B) CONTENTS.—The guidelines issued  
2           under subparagraph (A) shall include—

3                   “(i) means and methods by which a  
4                   person or entity may determine, quantify,  
5                   and report, by appropriate and credible  
6                   means, annual baseline emission levels of  
7                   the person or entity, taking into consider-  
8                   ation any reports made by the person or  
9                   entity under other Federal programs;

10                   “(ii) procedures for the use of an  
11                   independent third-party or other effective  
12                   verification process for emission levels and  
13                   reductions reported under subsection  
14                   (c)(3)(A) that are developed—

15                           “(I) in accordance with authority  
16                           available to the Secretary under this  
17                           section and other applicable provisions  
18                           of law; and

19                           “(II) by taking into consider-  
20                           ation, to the maximum extent prac-  
21                           ticable—

22                                   “(aa) the costs, risks, and  
23                                   voluntary nature of the registry;  
24                                   and

25                                   “(bb) other relevant factors;

1           “(iii)(I) a range of reference cases for  
2 reporting of project-based emission reduc-  
3 tions in various sectors; and

4           “(II) any benchmark and default  
5 methodologies and practices that may be  
6 used as reference cases for eligible  
7 projects;

8           “(iv) safeguards—

9           “(I) to prevent and address du-  
10 plicative reporting (including inad-  
11 vertent reporting) of the same green-  
12 house gas emissions or emission re-  
13 ductions by more than 1 reporting  
14 person or entity; and

15           “(II) to provide for corrections  
16 and adjustments in data, as nec-  
17 essary, in cases of duplicative report-  
18 ing;

19           “(v) procedures and criteria for the  
20 review and registration of ownership or  
21 holding of all or any portion of a reported,  
22 independently-verified emission reduction  
23 project, action, or measure;

24           “(vi) measures, or a process, for pro-  
25 viding to a person or entity participating

1 in the registry such appropriate number of  
2 transferable credits with unique serial  
3 numbers as reflects the verified greenhouse  
4 gas emission reductions accomplished by  
5 the person or entity; and

6 “(vii) such accounting provisions as  
7 are necessary to permit any change in reg-  
8 istration or transfer of ownership of a  
9 credit described in clause (vi) that results  
10 from a voluntary, private transaction be-  
11 tween 1 or more persons or entities, in-  
12 cluding the requirement that the Secretary  
13 shall be notified of any such change or  
14 transfer not later than 30 days after the  
15 date on which the change or transfer is ef-  
16 fectuated.

17 “(2) CONSIDERATION.—In developing the  
18 guidelines under paragraph (1), the Secretary shall  
19 take into consideration—

20 “(A)(i) the guidelines for voluntary emis-  
21 sion reporting issued under section 1605(b), as  
22 in effect as of the date of enactment of this sec-  
23 tion;

24 “(ii) the experience of the Secretary in ap-  
25 plying those guidelines; and

1           “(iii) any revision to those guidelines initi-  
2           ated by the Secretary in response to any direc-  
3           tive of the President issued before the date of  
4           enactment of this section;

5           “(B) protocols and guidelines developed  
6           under any Federal, State, local, or private vol-  
7           untary greenhouse gas emission reporting or re-  
8           duction program;

9           “(C) the differences between, and potential  
10          uniqueness of the facilities, operations, and  
11          business and other relevant practices of, per-  
12          sons and entities in the private and public sec-  
13          tors that the Secretary expects to participate in  
14          the registry;

15          “(D) issues, such as comparability, that  
16          are associated with the reporting of emission  
17          baselines and reductions for various projects  
18          and activities;

19          “(E) the appropriate level or threshold of  
20          emissions applicable to a facility, project, or ac-  
21          tivity of a person or entity that may be reason-  
22          ably and cost-effectively identified, measured,  
23          and voluntarily reported, taking into consider-  
24          ation—

1           “(i) different types of facilities,  
2           projects, and activities; and

3           “(ii) the de minimis nature, and  
4           sources, of certain emissions; and

5           “(F) any other factor that the Secretary  
6           determines to be appropriate.

7           “(3) EXPERTS AND CONSULTANTS.—

8           “(A) IN GENERAL.—In accordance with  
9           section 3109 of title 5, United States Code, the  
10          Secretary and any member of the Committee  
11          may secure the services of 1 or more experts or  
12          consultants in the private and nonprofit sectors  
13          in the areas of greenhouse gas measurement,  
14          certification, and emission trading.

15          “(B) GRANTS, CONTRACTS, AND AGREEMENTS.—In securing a service under subpara-  
16          graph (A), the Secretary or the member of the  
17          Committee securing the service may use any  
18          grant, contract, cooperative agreement, or other  
19          arrangement authorized by applicable law and  
20          available to the Secretary or the member of the  
21          Committee.

22          “(4) TRANSFERABILITY OF PRIOR REPORTS.—

23          An emission report or reduction made by a person  
24          or entity under section 1605(b), or under any other  
25

1 Federal or State voluntary greenhouse gas emission  
2 reduction program, may be independently verified  
3 and reported to the registry in accordance with the  
4 guidelines issued under paragraph (1).

5 “(5) PUBLIC COMMENT.—The Secretary shall—

6 “(A) make the guidelines issued under  
7 paragraph (1) available in draft form for public  
8 notice and opportunity for comment for a pe-  
9 riod of at least 90 days; and

10 “(B) after that 90-day period, adopt the  
11 guidelines for use in implementing this section.

12 “(6) REVIEW AND REVISION.—The Secretary,  
13 through the Committee, shall periodically review  
14 and, as necessary, revise, in accordance with para-  
15 graph (5), the guidelines issued under paragraph  
16 (1).

17 “(e) VOLUNTARY AGREEMENTS.—

18 “(1) IN GENERAL.—Any person or entity may  
19 voluntarily enter into an agreement with the Sec-  
20 retary to provide that—

21 “(A) the person or entity (or any successor  
22 of the person or entity) shall annually report to  
23 the registry the greenhouse gas emissions of the  
24 person or entity (including the sources of those  
25 emissions) that—

1           “(i) are from applicable facilities and  
2           operations of the person or entity; and

3           “(ii) generate net emissions at a level  
4           above any de minimis threshold specified in  
5           the guidelines issued by the Secretary  
6           under subsection (d)(1);

7           “(B) the person or entity (or any successor  
8           of the person or entity)—

9           “(i) commits to report to, and partici-  
10          pate in, the registry for a period of at least  
11          5 calendar years; and

12          “(ii) any agreement for such a com-  
13          mitment may be renewed by consent of the  
14          person or entity and the Secretary;

15          “(C) for purposes of measuring perform-  
16          ance under the agreement, the person or entity  
17          (or any successor of the person or entity) and  
18          the Secretary shall determine—

19          “(i) in accordance with the guidelines  
20          issued under subsection (d)(1), a baseline  
21          emission level of the person or entity for a  
22          representative period preceding the effec-  
23          tive date of the agreement; and

1           “(ii) emission reduction goals of the  
2           person or entity, taking into consider-  
3           ation—

4                   “(I) the baseline emission level  
5                   determined under clause (i); and

6                   “(II) any relevant economic and  
7                   operational factors that may affect  
8                   the baseline emission level throughout  
9                   the term of the agreement; and

10           “(D) for certified emission reductions  
11           made relative to the baseline emission level, the  
12           Secretary shall provide, to the person or entity,  
13           at the request of the person or entity, transfer-  
14           able credits with unique assigned serial num-  
15           bers that—

16                   “(i) may be used by the person or en-  
17                   tity toward meeting emission reduction  
18                   goals established under the agreement;

19                   “(ii) may be transferred, through a  
20                   voluntary, private transaction, to any other  
21                   person or entity; or

22                   “(iii) shall be applicable toward any  
23                   incentive, market-based, or regulatory pro-  
24                   gram determined by Congress to be nec-  
25                   essary and feasible to reduce the risk of

1 climate change and effects of climate  
2 change.

3 “(2) PUBLIC NOTICE AND COMMENT.—

4 “(A) IN GENERAL.—Not later than 30  
5 days before the date on which an agreement de-  
6 scribed in paragraph (1) is finalized, the Sec-  
7 retary shall—

8 “(i) publish in the Federal Register a  
9 notice of finalization for the agreement;  
10 and

11 “(ii) provide an opportunity for writ-  
12 ten public comment.

13 “(B) COMMENTS.—The Secretary—

14 “(i) shall review each comment re-  
15 ceived under subparagraph (A)(ii); and

16 “(ii) after reviewing the comments,  
17 may—

18 “(I) withdraw the agreement de-  
19 scribed in paragraph (1); or

20 “(II) agree with each person or  
21 entity that is a party to the agree-  
22 ment to—

23 “(aa) revise and finalize the  
24 agreement; or

1                                   “(bb) finalize the agreement  
2                                   without substantive change.

3                                   “(C) AVAILABILITY.—An agreement de-  
4                                   scribed in paragraph (1) shall be—

5                                   “(i) maintained in the registry; and

6                                   “(ii) made available to the public.

7                                   “(3) EMISSIONS IN EXCESS.—If a person or en-  
8                                   tity fails to certify that emissions from applicable fa-  
9                                   cilities of the person or entity are less than the emis-  
10                                  sion reduction goals of the person or entity con-  
11                                  tained in an agreement described in paragraph (1),  
12                                  the person or entity shall take such actions as are  
13                                  necessary to reduce the emissions of the person or  
14                                  entity, including—

15                                  “(A) the redemption of any transferable  
16                                  credits of the person or entity that were ac-  
17                                  quired in previous years;

18                                  “(B) the acquisition, through private, vol-  
19                                  untary agreements, of transferable credits from  
20                                  other persons or entities participating in the  
21                                  registry; or

22                                  “(C) the undertaking of additional emis-  
23                                  sion reduction activities in subsequent years, as  
24                                  determined in accordance with an agreement  
25                                  between the person or entity and the Secretary.

1           “(4) NO NEW AUTHORITY.—Nothing in this  
2 subsection provides any regulatory or other authority  
3 regarding the reporting of greenhouse gas emissions  
4 or reductions in those emissions.

5           “(f) MEASUREMENT AND VERIFICATION.—

6           “(1) STANDARDS AND PRACTICES.—

7           “(A) IN GENERAL.—The Secretary of  
8 Commerce, acting through the Director of the  
9 National Institute of Standards and Technology  
10 and in consultation with the Secretary, shall de-  
11 velop standards and best practices for accurate  
12 measurement and verification of greenhouse gas  
13 emissions and emission reductions.

14           “(B) COMPONENTS.—The standards and  
15 best practices developed under subparagraph  
16 (A) shall address the need for—

17           “(i) standardized measurement and  
18 verification practices for reports made by  
19 all persons and entities participating in the  
20 registry, taking into account—

21           “(I) protocols and standards al-  
22 ready in use by persons or entities de-  
23 siring to participate in the registry;

24           “(II) boundary issues, such as  
25 leakage and shifted use;

1                   “(III) avoidance of duplicative  
2                   counting and reporting of greenhouse  
3                   gas emissions and emission reduc-  
4                   tions; and

5                   “(IV) such other factors as the  
6                   Secretary of Commerce and the Sec-  
7                   retary determine to be appropriate;

8                   “(ii) measurement and verification of  
9                   actions taken to reduce, avoid, or sequester  
10                  greenhouse gas emissions;

11                  “(iii) measurement, in coordination  
12                  with the Secretary of Agriculture, of the  
13                  results of the use of carbon sequestration  
14                  and carbon recapture technologies, includ-  
15                  ing—

16                   “(I) organic soil carbon seques-  
17                   tration practices; and

18                   “(II) forest preservation and re-  
19                   forestation activities that adequately  
20                   address the issues of permanence,  
21                   leakage, and verification; and

22                   “(iv) such other measurement and  
23                   verification standards as the Secretary of  
24                   Commerce, the Secretary of Agriculture,

1           and the Secretary determine to be appro-  
2           priate.

3           “(2) PUBLIC COMMENT.—The Secretary of  
4 Commerce shall—

5           “(A) make the standards and best prac-  
6           tices developed under paragraph (1)(A) avail-  
7           able in draft form for public notice and oppor-  
8           tunity for comment for a period of at least 90  
9           days; and

10           “(B) as soon as practicable after the end  
11           of the 90-day period, in coordination with the  
12           Secretary, adopt the standards and best prac-  
13           tices for use in implementing this section.

14           “(g) CERTIFIED INDEPENDENT THIRD PARTIES.—

15           “(1) CERTIFICATION.—The Secretary and the  
16           Secretary of Commerce, acting through the Director  
17           of the National Institute of Standards, shall develop  
18           standards for certification of parties to verify the ac-  
19           curacy and reliability of reports submitted under  
20           this section, including standards that—

21           “(A) prohibit a certified party from par-  
22           ticipating in the registry through the ownership  
23           or transaction of transferable credits recorded  
24           in the registry;

1           “(B) prohibit the receipt by a certified  
2           party of compensation in the form of a commis-  
3           sion received by the certified party based on the  
4           quantity of emission reductions verified by the  
5           certified party; and

6           “(C) authorize certified parties to enter  
7           into agreements with persons engaged in trad-  
8           ing of transferable credits recorded in the reg-  
9           istry.

10          “(2) LIST OF CERTIFIED PARTIES.—The Sec-  
11          retary shall maintain and, on request of the public  
12          or a person or entity making a report under this sec-  
13          tion, make available, a list of certified parties de-  
14          scribed in paragraph (1), and clients of the certified  
15          parties, that submit 1 or more reports under this  
16          section.

17          “(h) REPORT TO CONGRESS.—

18                 “(1) IN GENERAL.—Not later than 1 year after  
19                 the date of issuance of guidelines under subsection  
20                 (d)(1), and biennially thereafter, the President, act-  
21                 ing through the Committee, shall submit to Congress  
22                 a report on the status of the registry.

23                 “(2) CONTENTS.—The report shall contain—

24                         “(A) an assessment, expressed in terms of  
25                         geographic locations and national emissions

1 represented, of the level of participation in the  
2 registry;

3 “(B) an assessment of the effectiveness of  
4 voluntary reporting agreements in enhancing  
5 participation in the registry;

6 “(C) an assessment of the extent of use of  
7 the registry for emission trading and other pur-  
8 poses;

9 “(D) an assessment of progress toward in-  
10 dividual and national emission reduction goals;  
11 and

12 “(E)(i) an inventory of administrative ac-  
13 tions implemented, or planned to be imple-  
14 mented, to improve the registry or the guide-  
15 lines issued under subsection (d)(1); and

16 “(ii) such recommendations for legislation  
17 to modify this section or section 1605 as the  
18 President determines to be necessary to carry  
19 out this section.

20 “(i) REVIEW BY NATIONAL ACADEMY OF  
21 SCIENCES.—The Secretary, in consultation with the Com-  
22 mittee, shall—

23 “(1) not later than 1 year after the date of  
24 issuance of the guidelines under subsection (d)(1),  
25 enter into an agreement with the National Academy

1 of Sciences under which the National Academy of  
2 Sciences shall conduct, not later than 180 days after  
3 the date of execution of the agreement, a review of  
4 the scientific and technological methods, assump-  
5 tions, and standards used by the Secretary and the  
6 Secretary of Commerce in developing the guidelines;  
7 and

8 “(2) on completion of the review under sub-  
9 paragraph (A), submit to the President and Con-  
10 gress a report that describes the results of the re-  
11 view (including any recommendations of the Sec-  
12 retary).

13 “(j) TERMINATION OF AUTHORITY.—The authority  
14 provided by this section terminates effective December 31,  
15 2010.”.

○