

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.

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

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

23 “(4) TRANSFERABILITY OF PRIOR REPORTS.—

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

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.”.

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