

114TH CONGRESS }  
*1st Session*

HOUSE OF REPRESENTATIVES

{ REPT. 114-347  
Part 1

NORTH AMERICAN ENERGY SECURITY AND  
INFRASTRUCTURE ACT OF 2015

---

R E P O R T

OF THE

COMMITTEE ON ENERGY AND COMMERCE

TOGETHER WITH

DISSENTING VIEWS

[TO ACCOMPANY H.R. 8]



NOVEMBER 19, 2015.—Committed to the Committee of the Whole House  
on the State of the Union and ordered to be printed

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U.S. GOVERNMENT PUBLISHING OFFICE

97-649

WASHINGTON : 2015



NORTH AMERICAN ENERGY SECURITY AND  
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Mr. UPTON, from the Committee on Energy and Commerce,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 8]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 8) to modernize energy infrastructure, build a 21st century energy and manufacturing workforce, bolster America's energy security and diplomacy, and promote energy efficiency and government accountability, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

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

(a) **SHORT TITLE.**—This Act may be cited as the “North American Energy Security and Infrastructure Act of 2015”.

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

Sec. 1. Short title; table of contents.

**TITLE I—MODERNIZING AND PROTECTING INFRASTRUCTURE**

**Subtitle A—Energy Delivery, Reliability, and Security**

Sec. 1101. FERC process coordination.  
 Sec. 1102. Resolving environmental and grid reliability conflicts.  
 Sec. 1103. Emergency preparedness for energy supply disruptions.  
 Sec. 1104. Critical electric infrastructure security.  
 Sec. 1105. Strategic Transformer Reserve.  
 Sec. 1106. Cyber Sense.  
 Sec. 1107. State coverage and consideration of PURPA standards for electric utilities.  
 Sec. 1108. Reliability analysis for certain rules that affect electric generating facilities.  
 Sec. 1109. Carbon capture, utilization, and sequestration technologies.  
 Sec. 1110. Reliability and performance assurance in Regional Transmission Organizations.

**Subtitle B—Energy Security and Infrastructure Modernization**

Sec. 1201. Energy Security and Infrastructure Modernization Fund.

**Subtitle C—Hydropower Regulatory Modernization**

Sec. 1301. Hydroelectric production and efficiency incentives.  
 Sec. 1302. Protection of private property rights in hydropower licensing.  
 Sec. 1303. Extension of time for FERC project involving W. Kerr Scott Dam.  
 Sec. 1304. Hydropower licensing and process improvements.  
 Sec. 1305. Judicial review of delayed Federal authorizations.  
 Sec. 1306. Licensing study improvements.  
 Sec. 1307. Closed-loop pumped storage projects.  
 Sec. 1308. License amendment improvements.  
 Sec. 1309. Promoting hydropower development at existing nonpowered dams.

**TITLE II—21ST CENTURY WORKFORCE**

Sec. 2001. Energy and manufacturing workforce development.

**TITLE III—ENERGY SECURITY AND DIPLOMACY**

Sec. 3001. Sense of Congress.  
 Sec. 3002. Energy security valuation.  
 Sec. 3003. North American energy security plan.  
 Sec. 3004. Collective energy security.  
 Sec. 3005. Strategic Petroleum Reserve mission readiness plan.  
 Sec. 3006. Authorization to export natural gas.

**TITLE IV—ENERGY EFFICIENCY AND ACCOUNTABILITY**

**Subtitle A—Energy Efficiency**

**CHAPTER 1—FEDERAL AGENCY ENERGY EFFICIENCY**

Sec. 4111. Energy-efficient and energy-saving information technologies.  
 Sec. 4112. Energy efficient data centers.  
 Sec. 4113. Report on energy and water savings potential from thermal insulation.  
 Sec. 4114. Federal purchase requirement.  
 Sec. 4115. Energy performance requirement for Federal buildings.  
 Sec. 4116. Federal building energy efficiency performance standards; certification system and level for Federal buildings.  
 Sec. 4117. Operation of battery recharging stations in parking areas used by Federal employees.

**CHAPTER 2—ENERGY EFFICIENT TECHNOLOGY AND MANUFACTURING**

Sec. 4121. Inclusion of Smart Grid capability on Energy Guide labels.  
 Sec. 4122. Voluntary verification programs for air conditioning, furnace, boiler, heat pump, and water heater products.  
 Sec. 4123. Facilitating consensus furnace standards.  
 Sec. 4124. Future of Industry program.  
 Sec. 4125. No warranty for certain certified Energy Star products.  
 Sec. 4126. Clarification to effective date for regional standards.  
 Sec. 4127. Internet of Things report.

**CHAPTER 3—ENERGY PERFORMANCE CONTRACTING**

Sec. 4131. Use of energy and water efficiency measures in Federal buildings.

**CHAPTER 4—SCHOOL BUILDINGS**

Sec. 4141. Coordination of energy retrofitting assistance for schools.

## CHAPTER 5—BUILDING ENERGY CODES

- Sec. 4151. Greater energy efficiency in building codes.  
 Sec. 4152. Voluntary nature of building asset rating program.

## CHAPTER 6—EPCA TECHNICAL CORRECTIONS AND CLARIFICATIONS

- Sec. 4161. Modifying product definitions.  
 Sec. 4162. Clarifying rulemaking procedures.

## CHAPTER 7—ENERGY AND WATER EFFICIENCY

- Sec. 4171. Smart energy and water efficiency pilot program.  
 Sec. 4172. WaterSense.

## Subtitle B—Accountability

## CHAPTER 1—MARKET MANIPULATION, ENFORCEMENT, AND COMPLIANCE

- Sec. 4211. FERC Office of Compliance Assistance and Public Participation.

## CHAPTER 2—MARKET REFORMS

- Sec. 4221. GAO study on wholesale electricity markets.  
 Sec. 4222. Clarification of facility merger authorization.

## CHAPTER 3—CODE MAINTENANCE

- Sec. 4231. Repeal of off-highway motor vehicles study.  
 Sec. 4232. Repeal of methanol study.  
 Sec. 4233. Repeal of residential energy efficiency standards study.  
 Sec. 4234. Repeal of weatherization study.  
 Sec. 4235. Repeal of report to Congress.  
 Sec. 4236. Repeal of report by General Services Administration.  
 Sec. 4237. Repeal of intergovernmental energy management planning and coordination workshops.  
 Sec. 4238. Repeal of Inspector General audit survey and President's Council on Integrity and Efficiency report to Congress.  
 Sec. 4239. Repeal of procurement and identification of energy efficient products program.  
 Sec. 4240. Repeal of national action plan for demand response.  
 Sec. 4241. Repeal of national coal policy study.  
 Sec. 4242. Repeal of study on compliance problem of small electric utility systems.  
 Sec. 4243. Repeal of study of socioeconomic impacts of increased coal production and other energy development.  
 Sec. 4244. Repeal of study of the use of petroleum and natural gas in combustors.  
 Sec. 4245. Repeal of submission of reports.  
 Sec. 4246. Repeal of electric utility conservation plan.  
 Sec. 4247. Technical amendment to Powerplant and Industrial Fuel Use Act of 1978.  
 Sec. 4248. Emergency energy conservation repeals.  
 Sec. 4249. Repeal of State utility regulatory assistance.  
 Sec. 4250. Repeal of survey of energy saving potential.  
 Sec. 4251. Repeal of photovoltaic energy program.  
 Sec. 4252. Repeal of energy auditor training and certification.

## CHAPTER 4—USE OF EXISTING FUNDS

- Sec. 4261. Use of existing funds.

## TITLE I—MODERNIZING AND PROTECTING INFRASTRUCTURE

### Subtitle A—Energy Delivery, Reliability, and Security

## SEC. 1101. FERC PROCESS COORDINATION.

Section 15 of the Natural Gas Act (15 U.S.C. 717n) is amended—

(1) by amending subsection (b)(2) to read as follows:

“(2) OTHER AGENCIES.—

“(A) IN GENERAL.—Each Federal and State agency considering an aspect of an application for Federal authorization shall cooperate with the Commission and comply with the deadlines established by the Commission.

“(B) IDENTIFICATION.—The Commission shall identify, as early as practicable after it is notified by a prospective applicant of a potential project requiring Commission authorization, any Federal or State agency, local government, or Indian tribe that may consider an aspect of an application for that Federal authorization.

“(C) NOTIFICATION.—

“(i) IN GENERAL.—The Commission shall notify any agency identified under subparagraph (B) of the opportunity to cooperate or participate in the review process.

“(ii) DEADLINE.—A notification issued under clause (i) shall establish a deadline by which a response to the notification shall be submitted, which may be extended by the Commission for good cause.”;

(2) in subsection (c)—

(A) in paragraph (1)—

- (i) by striking “and” at the end of subparagraph (A);
- (ii) by redesignating subparagraph (B) as subparagraph (C); and
- (iii) by inserting after subparagraph (A) the following new subparagraph:

“(B) set deadlines for all such Federal authorizations; and”;

(B) by striking paragraph (2); and

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

“(2) DEADLINE FOR FEDERAL AUTHORIZATIONS.—A final decision on a Federal authorization is due no later than 90 days after the Commission issues its final environmental document, unless a schedule is otherwise established by Federal law.

“(3) CONCURRENT REVIEWS.—Each Federal and State agency considering an aspect of an application for a Federal authorization shall—

“(A) carry out the obligations of that agency under applicable law concurrently, and in conjunction, with the review required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), unless doing so would impair the ability of the agency to conduct needed analysis or otherwise carry out those obligations;

“(B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of required Federal authorizations no later than 90 days after the Commission issues its final environmental document; and

“(C) transmit to the Commission a statement—

“(i) acknowledging receipt of the schedule established under paragraph (1); and

“(ii) setting forth the plan formulated under subparagraph (B) of this paragraph.

“(4) ISSUE IDENTIFICATION AND RESOLUTION.—

“(A) IDENTIFICATION.—Federal and State agencies that may consider an aspect of an application for Federal authorization shall identify, as early as possible, any issues of concern that may delay or prevent an agency from working with the Commission to resolve such issues and granting such authorization.

“(B) ISSUE RESOLUTION.—The Commission may forward any issue of concern identified under subparagraph (A) to the heads of the relevant agencies (including, in the case of a failure by the State agency, the Federal agency overseeing the delegated authority) for resolution.

“(5) FAILURE TO MEET SCHEDULE.—If a Federal or State agency does not complete a proceeding for an approval that is required for a Federal authorization in accordance with the schedule established by the Commission under paragraph (1)—

“(A) the applicant may pursue remedies under section 19(d); and

“(B) the head of the relevant Federal agency (including, in the case of a failure by a State agency, the Federal agency overseeing the delegated authority) shall notify Congress and the Commission of such failure and set forth a recommended implementation plan to ensure completion of the proceeding for an approval.”;

(3) by redesignating subsections (d) through (f) as subsections (g) through (i), respectively; and

(4) by inserting after subsection (c) the following new subsections:

“(d) REMOTE SURVEYS.—If a Federal or State agency considering an aspect of an application for Federal authorization requires the applicant to submit environmental data, the agency shall consider any such data gathered by aerial or other remote means that the applicant submits. The agency may grant a conditional approval for Federal authorization, conditioned on the verification of such data by subsequent onsite inspection.

“(e) APPLICATION PROCESSING.—The Commission, and Federal and State agencies, may allow an applicant seeking Federal authorization to fund a third-party contractor to assist in reviewing the application.

“(f) ACCOUNTABILITY, TRANSPARENCY, EFFICIENCY.—For applications requiring multiple Federal authorizations, the Commission, with input from any Federal or State agency considering an aspect of an application, shall track and make available to the public on the Commission’s website information related to the actions required to complete permitting, reviews, and other actions required. Such information shall include the following:

“(1) The schedule established by the Commission under subsection (c)(1).

“(2) A list of all the actions required by each applicable agency to complete permitting, reviews, and other actions necessary to obtain a final decision on the Federal authorization.

“(3) The expected completion date for each such action.

“(4) A point of contact at the agency accountable for each such action.

“(5) In the event that an action is still pending as of the expected date of completion, a brief explanation of the reasons for the delay.”.

**SEC. 1102. RESOLVING ENVIRONMENTAL AND GRID RELIABILITY CONFLICTS.**

(a) COMPLIANCE WITH OR VIOLATION OF ENVIRONMENTAL LAWS WHILE UNDER EMERGENCY ORDER.—Section 202(c) of the Federal Power Act (16 U.S.C. 824a(c)) is amended—

(1) by inserting “(1)” after “(c)”; and

(2) by adding at the end the following:

“(2) With respect to an order issued under this subsection that may result in a conflict with a requirement of any Federal, State, or local environmental law or regulation, the Commission shall ensure that such order requires generation, delivery, interchange, or transmission of electric energy only during hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable, is consistent with any applicable Federal, State, or local environmental law or regulation and minimizes any adverse environmental impacts.

“(3) To the extent any omission or action taken by a party, that is necessary to comply with an order issued under this subsection, including any omission or action taken to voluntarily comply with such order, results in noncompliance with, or causes such party to not comply with, any Federal, State, or local environmental law or regulation, such omission or action shall not be considered a violation of such environmental law or regulation, or subject such party to any requirement, civil or criminal liability, or a citizen suit under such environmental law or regulation.

“(4)(A) An order issued under this subsection that may result in a conflict with a requirement of any Federal, State, or local environmental law or regulation shall expire not later than 90 days after it is issued. The Commission may renew or re-issue such order pursuant to paragraphs (1) and (2) for subsequent periods, not to exceed 90 days for each period, as the Commission determines necessary to meet the emergency and serve the public interest.

“(B) In renewing or reissuing an order under subparagraph (A), the Commission shall consult with the primary Federal agency with expertise in the environmental interest protected by such law or regulation, and shall include in any such renewed or reissued order such conditions as such Federal agency determines necessary to minimize any adverse environmental impacts to the extent practicable. The conditions, if any, submitted by such Federal agency shall be made available to the public. The Commission may exclude such a condition from the renewed or reissued order if it determines that such condition would prevent the order from adequately addressing the emergency necessitating such order and provides in the order, or otherwise makes publicly available, an explanation of such determination.

“(5) If an order issued under this subsection is subsequently stayed, modified, or set aside by a court pursuant to section 313 or any other provision of law, any omission or action previously taken by a party that was necessary to comply with the order while the order was in effect, including any omission or action taken to voluntarily comply with the order, shall remain subject to paragraph (3).”.

(b) TEMPORARY CONNECTION OR CONSTRUCTION BY MUNICIPALITIES.—Section 202(d) of the Federal Power Act (16 U.S.C. 824a(d)) is amended by inserting “or municipality” before “engaged in the transmission or sale of electric energy”.

**SEC. 1103. EMERGENCY PREPAREDNESS FOR ENERGY SUPPLY DISRUPTIONS.**

(a) FINDING.—Congress finds that recent natural disasters have underscored the importance of having resilient oil and natural gas infrastructure and effective ways for industry and government to communicate to address energy supply disruptions.

(b) AUTHORIZATION FOR ACTIVITIES TO ENHANCE EMERGENCY PREPAREDNESS FOR NATURAL DISASTERS.—The Secretary of Energy shall develop and adopt procedures to—

(1) improve communication and coordination between the Department of Energy’s energy response team, Federal partners, and industry;

(2) leverage the Energy Information Administration’s subject matter expertise within the Department’s energy response team to improve supply chain situation assessments;

(3) establish company liaisons and direct communication with the Department’s energy response team to improve situation assessments;

(4) streamline and enhance processes for obtaining temporary regulatory relief to speed up emergency response and recovery;

(5) facilitate and increase engagement among States, the oil and natural gas industry, and the Department in developing State and local energy assurance plans;

(6) establish routine education and training programs for key government emergency response positions with the Department and States; and

(7) involve States and the oil and natural gas industry in comprehensive drill and exercise programs.

(c) COOPERATION.—The activities carried out under subsection (b) shall include collaborative efforts with State and local government officials and the private sector.

(d) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary of Energy shall submit to Congress a report describing the effectiveness of the activities authorized under this section.

**SEC. 1104. CRITICAL ELECTRIC INFRASTRUCTURE SECURITY.**

(a) CRITICAL ELECTRIC INFRASTRUCTURE SECURITY.—Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding after section 215 the following new section:

**“SEC. 215A. CRITICAL ELECTRIC INFRASTRUCTURE SECURITY.**

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

“(1) BULK-POWER SYSTEM; ELECTRIC RELIABILITY ORGANIZATION; REGIONAL ENTITY.—The terms ‘bulk-power system’, ‘Electric Reliability Organization’, and ‘regional entity’ have the meanings given such terms in paragraphs (1), (2), and (7) of section 215(a), respectively.

“(2) CRITICAL ELECTRIC INFRASTRUCTURE.—The term ‘critical electric infrastructure’ means a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters.

“(3) CRITICAL ELECTRIC INFRASTRUCTURE INFORMATION.—The term ‘critical electric infrastructure information’ means information related to critical electric infrastructure, or proposed critical electrical infrastructure, generated by or provided to the Commission or other Federal agency, other than classified national security information, that is designated as critical electric infrastructure information by the Commission under subsection (d)(2). Such term includes information that qualifies as critical energy infrastructure information under the Commission’s regulations.

“(4) DEFENSE CRITICAL ELECTRIC INFRASTRUCTURE.—The term ‘defense critical electric infrastructure’ means any electric infrastructure located in the United States (including the territories) that serves a facility designated by the Secretary pursuant to subsection (c), but is not owned or operated by the owner or operator of such facility.

“(5) ELECTROMAGNETIC PULSE.—The term ‘electromagnetic pulse’ means 1 or more pulses of electromagnetic energy emitted by a device capable of disabling or disrupting operation of, or destroying, electronic devices or communications networks, including hardware, software, and data, by means of such a pulse.

“(6) GEOMAGNETIC STORM.—The term ‘geomagnetic storm’ means a temporary disturbance of the Earth’s magnetic field resulting from solar activity.

“(7) GRID SECURITY EMERGENCY.—The term ‘grid security emergency’ means the occurrence or imminent danger of—

“(A)(i) a malicious act using electronic communication or an electromagnetic pulse, or a geomagnetic storm event, that could disrupt the operation of those electronic devices or communications networks, including hardware, software, and data, that are essential to the reliability of critical electric infrastructure or of defense critical electric infrastructure; and

“(ii) disruption of the operation of such devices or networks, with significant adverse effects on the reliability of critical electric infrastructure or of defense critical electric infrastructure, as a result of such act or event; or

“(B)(i) a direct physical attack on critical electric infrastructure or on defense critical electric infrastructure; and

“(ii) significant adverse effects on the reliability of critical electric infrastructure or of defense critical electric infrastructure as a result of such physical attack.

“(8) SECRETARY.—The term ‘Secretary’ means the Secretary of Energy.

“(b) AUTHORITY TO ADDRESS GRID SECURITY EMERGENCY.—

“(1) AUTHORITY.—Whenever the President issues and provides to the Secretary a written directive or determination identifying a grid security emergency, the Secretary may, with or without notice, hearing, or report, issue such orders for emergency measures as are necessary in the judgment of the Secretary to protect or restore the reliability of critical electric infrastructure or of



defense critical electric infrastructure during such emergency. As soon as practicable but not later than 180 days after the date of enactment of this section, the Secretary shall, after notice and opportunity for comment, establish rules of procedure that ensure that such authority can be exercised expeditiously.

“(2) NOTIFICATION OF CONGRESS.—Whenever the President issues and provides to the Secretary a written directive or determination under paragraph (1), the President shall promptly notify congressional committees of relevant jurisdiction, including the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, of the contents of, and justification for, such directive or determination.

“(3) CONSULTATION.—Before issuing an order for emergency measures under paragraph (1), the Secretary shall, to the extent practicable in light of the nature of the grid security emergency and the urgency of the need for action, consult with appropriate governmental authorities in Canada and Mexico, entities described in paragraph (4), the Electricity Sub-sector Coordinating Council, the Commission, and other appropriate Federal agencies regarding implementation of such emergency measures.

“(4) APPLICATION.—An order for emergency measures under this subsection may apply to—

“(A) the Electric Reliability Organization;

“(B) a regional entity; or

“(C) any owner, user, or operator of critical electric infrastructure or of defense critical electric infrastructure within the United States.

“(5) EXPIRATION AND REISSUANCE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), an order for emergency measures issued under paragraph (1) shall expire no later than 15 days after its issuance.

“(B) EXTENSIONS.—The Secretary may reissue an order for emergency measures issued under paragraph (1) for subsequent periods, not to exceed 15 days for each such period, provided that the President, for each such period, issues and provides to the Secretary a written directive or determination that the grid security emergency identified under paragraph (1) continues to exist or that the emergency measure continues to be required.

“(6) COST RECOVERY.—

“(A) CRITICAL ELECTRIC INFRASTRUCTURE.—If the Commission determines that owners, operators, or users of critical electric infrastructure have incurred substantial costs to comply with an order for emergency measures issued under this subsection and that such costs were prudently incurred and cannot reasonably be recovered through regulated rates or market prices for the electric energy or services sold by such owners, operators, or users, the Commission shall, consistent with the requirements of section 205, after notice and an opportunity for comment, establish a mechanism that permits such owners, operators, or users to recover such costs.

“(B) DEFENSE CRITICAL ELECTRIC INFRASTRUCTURE.—To the extent the owner or operator of defense critical electric infrastructure is required to take emergency measures pursuant to an order issued under this subsection, the owners or operators of a critical defense facility or facilities designated by the Secretary pursuant to subsection (c) that rely upon such infrastructure shall bear the full incremental costs of the measures.

“(7) TEMPORARY ACCESS TO CLASSIFIED INFORMATION.—The Secretary, and other appropriate Federal agencies, shall, to the extent practicable and consistent with their obligations to protect classified information, provide temporary access to classified information related to a grid security emergency for which emergency measures are issued under paragraph (1) to key personnel of any entity subject to such emergency measures to enable optimum communication between the entity and the Secretary and other appropriate Federal agencies regarding the grid security emergency.

“(c) DESIGNATION OF CRITICAL DEFENSE FACILITIES.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with other appropriate Federal agencies and appropriate owners, users, or operators of infrastructure that may be defense critical electric infrastructure, shall identify and designate facilities located in the United States (including the territories) that are—

“(1) critical to the defense of the United States; and

“(2) vulnerable to a disruption of the supply of electric energy provided to such facility by an external provider.

The Secretary may, in consultation with appropriate Federal agencies and appropriate owners, users, or operators of defense critical electric infrastructure, periodically revise the list of designated facilities as necessary.

“(d) PROTECTION AND SHARING OF CRITICAL ELECTRIC INFRASTRUCTURE INFORMATION.—

“(1) PROTECTION OF CRITICAL ELECTRIC INFRASTRUCTURE INFORMATION.—Critical electric infrastructure information—

“(A) shall be exempt from disclosure under section 552(b)(3) of title 5, United States Code; and

“(B) shall not be made available by any Federal, State, political subdivision or tribal authority pursuant to any Federal, State, political subdivision or tribal law requiring public disclosure of information or records.

“(2) DESIGNATION AND SHARING OF CRITICAL ELECTRIC INFRASTRUCTURE INFORMATION.—Not later than one year after the date of enactment of this section, the Commission, in consultation with the Secretary of Energy, shall promulgate such regulations and issue such orders as necessary to—

“(A) designate information as critical electric infrastructure information;

“(B) prohibit the unauthorized disclosure of critical electric infrastructure information;

“(C) ensure there are appropriate sanctions in place for Commissioners, officers, employees, or agents of the Commission who knowingly and willfully disclose critical electric infrastructure information in a manner that is not authorized under this section; and

“(D) taking into account standards of the Electric Reliability Organization, facilitate voluntary sharing of critical electric infrastructure information with, between, and by—

“(i) Federal, State, political subdivision, and tribal authorities;

“(ii) the Electric Reliability Organization;

“(iii) regional entities;

“(iv) information sharing and analysis centers established pursuant to Presidential Decision Directive 63;

“(v) owners, operators, and users of critical electric infrastructure in the United States; and

“(vi) other entities determined appropriate by the Commission.

“(3) CONSIDERATIONS.—In promulgating regulations and issuing orders under paragraph (2), the Commission shall take into consideration the role of State commissions in reviewing the prudence and cost of investments, determining the rates and terms of conditions for electric services, and ensuring the safety and reliability of the bulk-power system and distribution facilities within their respective jurisdictions.

“(4) PROTOCOLS.—The Commission shall, in consultation with Canadian and Mexican authorities, develop protocols for the voluntary sharing of critical electric infrastructure information with Canadian and Mexican authorities and owners, operators, and users of the bulk-power system outside the United States.

“(5) NO REQUIRED SHARING OF INFORMATION.—Nothing in this section shall require a person or entity in possession of critical electric infrastructure information to share such information with Federal, State, political subdivision, or tribal authorities, or any other person or entity.

“(6) SUBMISSION OF INFORMATION TO CONGRESS.—Nothing in this section shall permit or authorize the withholding of information from Congress, any committee or subcommittee thereof, or the Comptroller General.

“(7) DISCLOSURE OF NONPROTECTED INFORMATION.—In implementing this section, the Commission shall protect from disclosure only the minimum amount of information necessary to protect the security and reliability of the bulk-power system and distribution facilities. The Commission shall segregate critical electric infrastructure information within documents and electronic communications, wherever feasible, to facilitate disclosure of information that is not designated as critical electric infrastructure information.

“(8) DURATION OF DESIGNATION.—Information may not be designated as critical electric infrastructure information for longer than 5 years, unless specifically re-designated by the Commission.

“(9) REMOVAL OF DESIGNATION.—The Commission shall remove the designation of critical electric infrastructure information, in whole or in part, from a document or electronic communication if the Commission determines that the unauthorized disclosure of such information could no longer be used to impair the security or reliability of the bulk-power system or distribution facilities.

“(10) JUDICIAL REVIEW OF DESIGNATIONS.—Notwithstanding section 313(b), any determination by the Commission concerning the designation of critical electric infrastructure information under this subsection shall be subject to review under chapter 7 of title 5, United States Code, except that such review shall be brought in the district court of the United States in the district in

which the complainant resides, or has his principal place of business, or in the District of Columbia. In such a case the court shall examine in camera the contents of documents or electronic communications that are the subject of the determination under review to determine whether such documents or any part thereof were improperly designated or not designated as critical electric infrastructure information.

“(e) SECURITY CLEARANCES.—The Secretary shall facilitate and, to the extent practicable, expedite the acquisition of adequate security clearances by key personnel of any entity subject to the requirements of this section, to enable optimum communication with Federal agencies regarding threats to the security of the critical electric infrastructure. The Secretary, the Commission, and other appropriate Federal agencies shall, to the extent practicable and consistent with their obligations to protect classified and critical electric infrastructure information, share timely actionable information regarding grid security with appropriate key personnel of owners, operators, and users of the critical electric infrastructure.

“(f) CLARIFICATIONS OF LIABILITY.—

“(1) COMPLIANCE WITH OR VIOLATION OF THIS ACT.—Except as provided in paragraph (4), to the extent any action or omission taken by an entity that is necessary to comply with an order for emergency measures issued under subsection (b)(1), including any action or omission taken to voluntarily comply with such order, results in noncompliance with, or causes such entity not to comply with any rule, order, regulation, or provision of this Act, including any reliability standard approved by the Commission pursuant to section 215, such action or omission shall not be considered a violation of such rule, order, regulation, or provision.

“(2) RELATION TO SECTION 202(c).—Except as provided in paragraph (4), an action or omission taken by an owner, operator, or user of critical electric infrastructure or of defense critical electric infrastructure to comply with an order for emergency measures issued under subsection (b)(1) shall be treated as an action or omission taken to comply with an order issued under section 202(c) for purposes of such section.

“(3) SHARING OR RECEIPT OF INFORMATION.—No cause of action shall lie or be maintained in any Federal or State court for the sharing or receipt of information under, and that is conducted in accordance with, subsection (d).

“(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to require dismissal of a cause of action against an entity that, in the course of complying with an order for emergency measures issued under subsection (b)(1) by taking an action or omission for which they would be liable but for paragraph (1) or (2), takes such action or omission in a grossly negligent manner.”

(b) CONFORMING AMENDMENTS.—

(1) JURISDICTION.—Section 201(b)(2) of the Federal Power Act (16 U.S.C. 824(b)(2)) is amended by inserting “215A,” after “215,” each place it appears.

(2) PUBLIC UTILITY.—Section 201(e) of the Federal Power Act (16 U.S.C. 824(e)) is amended by inserting “215A,” after “215.”

#### SEC. 1105. STRATEGIC TRANSFORMER RESERVE.

(a) FINDING.—Congress finds that the storage of strategically located spare large power transformers and emergency mobile substations will reduce the vulnerability of the United States to multiple risks facing electric grid reliability, including physical attack, cyber attack, electromagnetic pulse, geomagnetic disturbances, severe weather, and seismic events.

(b) DEFINITIONS.—In this section:

(1) BULK-POWER SYSTEM.—The term “bulk-power system” has the meaning given such term in section 215(a) of the Federal Power Act (16 U.S.C. 824o(a)).

(2) CRITICALLY DAMAGED LARGE POWER TRANSFORMER.—The term “critically damaged large power transformer” means a large power transformer that—

(A) has sustained extensive damage such that—

(i) repair or refurbishment is not economically viable; or

(ii) the extensive time to repair or refurbish the large power transformer would create an extended period of instability in the bulk-power system; and

(B) prior to sustaining such damage, was part of the bulk-power system.

(3) CRITICAL ELECTRIC INFRASTRUCTURE.—The term “critical electric infrastructure” has the meaning given that term in section 215A of the Federal Power Act.

(4) ELECTRIC RELIABILITY ORGANIZATION.—The term “Electric Reliability Organization” has the meaning given such term in section 215(a) of the Federal Power Act (16 U.S.C. 824o(a)).

(5) **EMERGENCY MOBILE SUBSTATION.**—The term “emergency mobile substation” means a mobile substation or mobile transformer that is—

(A) assembled and permanently mounted on a trailer that is capable of highway travel and meets relevant Department of Transportation regulations; and

(B) intended for express deployment and capable of being rapidly placed into service.

(6) **LARGE POWER TRANSFORMER.**—The term “large power transformer” means a power transformer with a maximum nameplate rating of 100 megavolt-amperes or higher, including related critical equipment, that is, or is intended to be, a part of the bulk-power system.

(7) **SECRETARY.**—The term “Secretary” means the Secretary of Energy.

(8) **SPARE LARGE POWER TRANSFORMER.**—The term “spare large power transformer” means a large power transformer that is stored within the Strategic Transformer Reserve to be available to temporarily replace a critically damaged large power transformer.

(c) **STRATEGIC TRANSFORMER RESERVE PLAN.**—

(1) **PLAN.**—Not later than one year after the date of enactment of this Act, the Secretary, acting through the Office of Electricity Delivery and Energy Reliability, shall, in consultation with the Federal Energy Regulatory Commission, the Electricity Sub-sector Coordinating Council, the Electric Reliability Organization, and owners and operators of critical electric infrastructure and defense and military installations, prepare and submit to Congress a plan to establish a Strategic Transformer Reserve for the storage, in strategically located facilities, of spare large power transformers and emergency mobile substations in sufficient numbers to temporarily replace critically damaged large power transformers and substations that are critical electric infrastructure or serve defense and military installations.

(2) **INCLUSIONS.**—The Strategic Transformer Reserve plan shall include a description of—

(A) the appropriate number and type of spare large power transformers necessary to provide or restore sufficient resiliency to the bulk-power system, critical electric infrastructure, and defense and military installations to mitigate significant impacts to the electric grid resulting from—

- (i) physical attack;
- (ii) cyber attack;
- (iii) electromagnetic pulse attack;
- (iv) geomagnetic disturbances;
- (v) severe weather; or
- (vi) seismic events;

(B) other critical electric grid equipment for which an inventory of spare equipment, including emergency mobile substations, is necessary to provide or restore sufficient resiliency to the bulk-power system, critical electric infrastructure, and defense and military installations;

(C) the degree to which utility sector actions or initiatives, including individual utility ownership of spare equipment, joint ownership of spare equipment inventory, sharing agreements, or other spare equipment reserves or arrangements, satisfy the needs identified under subparagraphs (A) and (B);

(D) the potential locations for, and feasibility and appropriate number of, strategic storage locations for reserve equipment, including consideration of—

- (i) the physical security of such locations;
- (ii) the protection of the confidentiality of such locations; and
- (iii) the proximity of such locations to sites of potentially critically damaged large power transformers and substations that are critical electric infrastructure or serve defense and military installations, so as to enable efficient delivery of equipment to such sites;

(E) the necessary degree of flexibility of spare large power transformers to be included in the Strategic Transformer Reserve to conform to different substation configurations, including consideration of transformer—

- (i) power and voltage rating for each winding;
- (ii) overload requirements;
- (iii) impedance between windings;
- (iv) configuration of windings; and
- (v) tap requirements;

(F) an estimate of the direct cost of the Strategic Transformer Reserve, as proposed, including—

- (i) the cost of storage facilities;

- (ii) the cost of the equipment; and
- (iii) management, maintenance, and operation costs;
- (G) the funding options available to establish, stock, manage, and maintain the Strategic Transformer Reserve, including consideration of fees on owners and operators of bulk-power system facilities, critical electric infrastructure, and defense and military installations relying on the Strategic Transformer Reserve, use of Federal appropriations, and public-private cost-sharing options;
- (H) the ease and speed of transportation, installation, and energization of spare large power transformers to be included in the Strategic Transformer Reserve, including consideration of factors such as—
  - (i) transformer transportation weight;
  - (ii) transformer size;
  - (iii) topology of critical substations;
  - (iv) availability of appropriate transformer mounting pads;
  - (v) flexibility of the spare large power transformers as described in subparagraph (E); and
  - (vi) ability to rapidly transition a spare large power transformer from storage to energization;
- (I) eligibility criteria for withdrawal of equipment from the Strategic Transformer Reserve;
- (J) the process by which owners or operators of critically damaged large power transformers or substations that are critical electric infrastructure or serve defense and military installations may apply for a withdrawal from the Strategic Transformer Reserve;
- (K) the process by which equipment withdrawn from the Strategic Transformer Reserve is returned to the Strategic Transformer Reserve or is replaced;
- (L) possible fees to be paid by users of equipment withdrawn from the Strategic Transformer Reserve;
- (M) possible fees to be paid by owners and operators of large power transformers and substations that are critical electric infrastructure or serve defense and military installations to cover operating costs of the Strategic Transformer Reserve;
- (N) the domestic and international large power transformer supply chain;
- (O) the potential reliability, cost, and operational benefits of including emergency mobile substations in any Strategic Transformer Reserve established under this section; and
- (P) other considerations for designing, constructing, stocking, funding, and managing the Strategic Transformer Reserve.

(d) **ESTABLISHMENT.**—The Secretary may establish a Strategic Transformer Reserve in accordance with the plan prepared pursuant to subsection (c) after the date that is 6 months after the date on which such plan is submitted to Congress.

(e) **DISCLOSURE OF INFORMATION.**—Any information included in the Strategic Transformer Reserve plan, or shared in the preparation and development of such plan, the disclosure of which could cause harm to critical electric infrastructure, shall be exempt from disclosure under section 552(b)(3) of title 5, United States Code, and any State, tribal, or local law requiring disclosure of information or records.

#### **SEC. 1106. CYBER SENSE.**

(a) **IN GENERAL.**—The Secretary of Energy shall establish a voluntary Cyber Sense program to identify and promote cyber-secure products intended for use in the bulk-power system, as defined in section 215(a) of the Federal Power Act (16 U.S.C. 824o(a)).

(b) **PROGRAM REQUIREMENTS.**—In carrying out subsection (a), the Secretary of Energy shall—

- (1) establish a Cyber Sense testing process to identify products and technologies intended for use in the bulk-power system, including products relating to industrial control systems, such as supervisory control and data acquisition systems;
- (2) for products tested and identified under the Cyber Sense program, establish and maintain cybersecurity vulnerability reporting processes and a related database;
- (3) promulgate regulations regarding vulnerability reporting processes for products tested and identified under the Cyber Sense program;
- (4) provide technical assistance to utilities, product manufacturers, and other electric sector stakeholders to develop solutions to mitigate identified

vulnerabilities in products tested and identified under the Cyber Sense program;

(5) biennially review products tested and identified under the Cyber Sense program for vulnerabilities and provide analysis with respect to how such products respond to and mitigate cyber threats;

(6) develop procurement guidance for utilities for products tested and identified under the Cyber Sense program;

(7) provide reasonable notice to the public, and solicit comments from the public, prior to establishing or revising the Cyber Sense testing process;

(8) oversee Cyber Sense testing carried out by third parties; and

(9) consider incentives to encourage the use in the bulk-power system of products tested and identified under the Cyber Sense program.

(c) **DISCLOSURE OF INFORMATION.**—Any vulnerability reported pursuant to regulations promulgated under subsection (b)(3), the disclosure of which could cause harm to critical electric infrastructure (as defined in section 215A of the Federal Power Act), shall be exempt from disclosure under section 552(b)(3) of title 5, United States Code, and any State, tribal, or local law requiring disclosure of information or records.

(d) **FEDERAL GOVERNMENT LIABILITY.**—Consistent with other voluntary Federal Government certification programs, nothing in this section shall be construed to authorize the commencement of an action against the United States Government with respect to the testing and identification of a product under the Cyber Sense program.

#### **SEC. 1107. STATE COVERAGE AND CONSIDERATION OF PURPA STANDARDS FOR ELECTRIC UTILITIES.**

(a) **STATE CONSIDERATION OF RESILIENCY AND ADVANCED ENERGY ANALYTICS TECHNOLOGIES AND RELIABLE GENERATION.**—

(1) **CONSIDERATION.**—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding the following at the end:

“(20) **IMPROVING THE RESILIENCE OF ELECTRIC INFRASTRUCTURE.**—

“(A) **IN GENERAL.**—Each electric utility shall develop a plan to use resiliency-related technologies, upgrades, measures, and other approaches designed to improve the resilience of electric infrastructure, mitigate power outages, continue delivery of vital services, and maintain the flow of power to facilities critical to public health, safety, and welfare, to the extent practicable using the most current data, metrics, and frameworks related to current and future threats, including physical and cyber attacks, electromagnetic pulse attacks, geomagnetic disturbances, seismic events, and severe weather and other environmental stressors.

“(B) **RESILIENCY-RELATED TECHNOLOGIES.**—For purposes of this paragraph, examples of resiliency-related technologies, upgrades, measures, and other approaches include—

“(i) hardening, or other enhanced protection, of utility poles, wiring, cabling, and other distribution components, facilities, or structures;

“(ii) advanced grid technologies capable of isolating or repairing problems remotely, such as advanced metering infrastructure, high-tech sensors, grid monitoring and control systems, and remote reconfiguration and redundancy systems;

“(iii) cybersecurity products and components;

“(iv) distributed generation, including back-up generation to power critical facilities and essential services, and related integration components, such as advanced inverter technology;

“(v) microgrid systems, including hybrid microgrid systems for isolated communities;

“(vi) combined heat and power;

“(vii) waste heat resources;

“(viii) non-grid-scale energy storage technologies;

“(ix) wiring, cabling, and other distribution components, including submersible distribution components, and enclosures;

“(x) electronically controlled reclosers and similar technologies for power restoration, including emergency mobile substations, as defined in section 1105 of the North American Energy Security and Infrastructure Act of 2015;

“(xi) advanced energy analytics technology, such as Internet-based and cloud-based computing solutions and subscription licensing models;

“(xii) measures that enhance resilience through planning, preparation, response, and recovery activities;

“(xiii) operational capabilities to enhance resilience through rapid response recovery; and

“(xiv) measures to ensure availability of key critical components through contracts, cooperative agreements, stockpiling and prepositioning, or other measures.

“(C) RATE RECOVERY.—Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) shall consider authorizing each such electric utility to recover any capital, operating expenditure, or other costs of the electric utility related to the procurement, deployment, or use of resiliency-related technologies, including a reasonable rate of return on the capital expenditures of the electric utility for the procurement, deployment, or use of resiliency-related technologies.

“(21) PROMOTING INVESTMENTS IN ADVANCED ENERGY ANALYTICS TECHNOLOGY.—

“(A) IN GENERAL.—Each electric utility shall develop and implement a plan for deploying advanced energy analytics technology.

“(B) RATE RECOVERY.—Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) shall consider confirming and clarifying, if necessary, that each such electric utility is authorized to recover the costs of the electric utility relating to the procurement, deployment, or use of advanced energy analytics technology, including a reasonable rate of return on all such costs incurred by the electric utility for the procurement, deployment, or use of advanced energy analytics technology, provided such technology is used by the electric utility for purposes of realizing operational efficiencies, cost savings, enhanced energy management and customer engagement, improvements in system reliability, safety, and cybersecurity, or other benefits to ratepayers.

“(C) ADVANCED ENERGY ANALYTICS TECHNOLOGY.—For purposes of this paragraph, examples of advanced energy analytics technology include Internet-based and cloud-based computing solutions and subscription licensing models, including software as a service that uses cyber-physical systems to allow the correlation of data aggregated from appropriate data sources and smart grid sensor networks, employs analytics and machine learning, or employs other advanced computing solutions and models.

“(22) ASSURING ELECTRIC RELIABILITY WITH RELIABLE GENERATION.—

“(A) ASSURANCE OF ELECTRIC RELIABILITY.—Each electric utility shall adopt or modify policies to ensure that such electric utility incorporates reliable generation into its integrated resource plan to assure the availability of electric energy over a 10-year planning period.

“(B) RELIABLE GENERATION.—For purposes of this paragraph, ‘reliable generation’ means electric generation facilities with reliability attributes that include—

“(i)(I) possession of adequate fuel on-site to enable operation for an extended period of time;

“(II) the operational ability to generate electric energy from more than one source; or

“(III) fuel certainty, through firm contractual obligations, that ensures adequate fuel supply to enable operation, for an extended period of time, for the duration of an emergency or severe weather conditions;

“(ii) operational characteristics that enable the generation of electric energy for the duration of an emergency or severe weather conditions; and

“(iii) unless procured through other procurement mechanisms, essential reliability services, including frequency support and regulation services.

“(23) SUBSIDIZATION OF CUSTOMER-SIDE TECHNOLOGY.—

“(A) CONSIDERATION.—To the extent that a State regulatory authority may require or allow rates charged by any electric utility for which it has ratemaking authority to electric consumers that do not use a customer-side technology to include any cost, fee, or charge that directly or indirectly cross-subsidizes the deployment, construction, maintenance, or operation of that customer-side technology, such authority shall evaluate whether subsidizing the deployment, construction, maintenance, or operation of a customer-side technology would—

“(i) result in benefits predominately enjoyed by only the users of that customer-side technology;

“(ii) shift costs of a customer-side technology to electricity consumers that do not use that customer-side technology, particularly where disparate economic or resource conditions exist among the electricity consumers cross-subsidizing the customer-side technology;

“(iii) negatively affect resource utilization, fuel diversity, or grid security;

“(iv) provide any unfair competitive advantage to market the customer-side technology; and

“(v) be necessary to fulfill an obligation to serve electric consumers.

“(B) PUBLIC NOTICE.—Each State regulatory authority shall make available to the public the evaluation completed under subparagraph (A) at least 90 days prior to any proceedings in which such authority considers the cross-subsidization of a customer-side technology.

“(C) CUSTOMER-SIDE TECHNOLOGY.—For purposes of this paragraph, the term ‘customer-side technology’ means a device connected to the electricity distribution system—

“(i) at, or on the customer side of, the meter; or

“(ii) that, if owned or operated by or on behalf of an electric utility, would otherwise be at, or on the customer side of, the meter.”.

(2) COMPLIANCE.—

(A) TIME LIMITATIONS.—Section 112(b) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(b)) is amended by adding at the end the following:

“(7)(A) Not later than 1 year after the date of enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility, as applicable, shall commence the consideration referred to in section 111, or set a hearing date for consideration, with respect to the standards established by paragraphs (20), (22), and (23) of section 111(d).

“(B) Not later than 2 years after the date of the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility, as applicable, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to each standard established by paragraphs (20), (22), and (23) of section 111(d).

“(8)(A) Not later than 6 months after the date of enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 111, or set a hearing date for consideration, with respect to the standard established by paragraph (21) of section 111(d).

“(B) Not later than 1 year after the date of enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall complete the consideration, and shall make the determination, referred to in section 111 with respect to the standard established by paragraph (21) of section 111(d).”.

(B) FAILURE TO COMPLY.—Section 112(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(c)) is amended by adding the following at the end: “In the case of the standards established by paragraphs (20) through (23) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraphs.”.

(C) PRIOR STATE ACTIONS.—Section 112 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622) is amended by adding at the end the following new subsection:

“(g) PRIOR STATE ACTIONS.—Subsections (b) and (c) of this section shall not apply to a standard established by paragraph (20), (21), (22), or (23) of section 111(d) in the case of any electric utility in a State if—

“(1) before the date of enactment of this subsection, the State has implemented for such utility the standard concerned (or a comparable standard);

“(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility during the 3-year period ending on the date of enactment of this subsection; or

“(3) the State legislature has voted on the implementation of the standard concerned (or a comparable standard) for such utility during the 3-year period ending on the date of enactment of this subsection.”.

(b) COVERAGE FOR COMPETITIVE MARKETS.—Section 102 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2612) is amended by adding at the end the following:

“(d) COVERAGE FOR COMPETITIVE MARKETS.—The requirements of this title do not apply to the operations of an electric utility, or to proceedings respecting such operations, to the extent that such operations or proceedings, or any portion thereof, re-



late to the competitive sale of retail electric energy that is unbundled or separated from the regulated provision or sale of distribution service.”.

**SEC. 1108. RELIABILITY ANALYSIS FOR CERTAIN RULES THAT AFFECT ELECTRIC GENERATING FACILITIES.**

(a) **APPLICABILITY.**—This section shall apply with respect to any proposed or final covered rule issued by a Federal agency for which compliance with the rule may impact an electric utility generating unit or units, including by resulting in closure or interruption to operations of such a unit or units.

(b) **RELIABILITY ANALYSIS.**—

(1) **ANALYSIS OF RULES.**—The Federal Energy Regulatory Commission, in consultation with the Electric Reliability Organization, shall conduct an independent reliability analysis of a proposed or final covered rule under this section to evaluate the anticipated effects of implementation and enforcement of the rule on—

- (A) electric reliability and resource adequacy;
- (B) the electricity generation portfolio of the United States;
- (C) the operation of wholesale electricity markets; and
- (D) energy delivery and infrastructure, including electric transmission facilities and natural gas pipelines.

(2) **RELEVANT INFORMATION.**—

(A) **MATERIALS FROM FEDERAL AGENCIES.**—A Federal agency shall provide to the Commission materials and information relevant to the analysis required under paragraph (1) for a rule, including relevant data, modeling, and resource adequacy and reliability assessments, prepared or relied upon by such agency in developing the rule.

(B) **ANALYSES FROM OTHER ENTITIES.**—The Electric Reliability Organization, regional entities, regional transmission organizations, independent system operators, and other reliability coordinators and planning authorities shall timely conduct analyses and provide such information as may be reasonably requested by the Commission.

(3) **NOTICE.**—A Federal agency shall provide to the Commission notice of the issuance of any proposed or final covered rule not later than 15 days after the date of such issuance.

(c) **PROPOSED RULES.**—Not later than 150 days after the date of publication in the Federal Register of a proposed rule described in subsection (a), the Federal Energy Regulatory Commission shall make available to the public an analysis of the proposed rule conducted in accordance with subsection (b), and any relevant special assessment or seasonal or long-term reliability assessment completed by the Electric Reliability Organization.

(d) **FINAL RULES.**—

(1) **INCLUSION.**—A final rule described in subsection (a) shall include, if available at the time of issuance, a copy of the analysis conducted pursuant to subsection (c) of the rule as proposed.

(2) **ANALYSIS.**—Not later than 120 days after the date of publication in the Federal Register of a final rule described in subsection (a), the Federal Energy Regulatory Commission shall make available to the public an analysis of the final rule conducted in accordance with subsection (b), and any relevant special assessment or seasonal or long-term reliability assessment completed by the Electric Reliability Organization.

(e) **DEFINITIONS.**—In this section:

(1) **ELECTRIC RELIABILITY ORGANIZATION.**—The term “Electric Reliability Organization” has the meaning given to such term in section 215(a) of the Federal Power Act (16 U.S.C. 824o(a)).

(2) **FEDERAL AGENCY.**—The term “Federal agency” means an agency, as that term is defined in section 551 of title 5, United States Code.

(3) **COVERED RULE.**—The term “covered rule” means a proposed or final rule that is estimated by the Federal agency issuing the rule, or the Director of the Office of Management and Budget, to result in an annual effect on the economy of \$1,000,000,000 or more.

**SEC. 1109. CARBON CAPTURE, UTILIZATION, AND SEQUESTRATION TECHNOLOGIES.**

(a) **AMENDMENTS TO THE ENERGY POLICY ACT OF 2005.**—

(1) **FOSSIL ENERGY.**—Section 961(a) of the Energy Policy Act of 2005 (42 U.S.C. 16291(a)) is amended by adding at the end the following:

“(8) Improving the conversion, use, and storage of carbon dioxide produced from fossil fuels.”.

(2) **COAL AND RELATED TECHNOLOGIES PROGRAM.**—Section 962(b)(1) of the Energy Policy Act of 2005 (42 U.S.C. 16292(b)(1)) is amended—

(A) by striking “during each of calendar years 2008, 2010, 2012, and 2016, and during each fiscal year beginning after September 30, 2021,” and inserting “during each fiscal year beginning after September 30, 2016,”;

(B) by inserting “allow for large-scale demonstration and” after “technologies that would”; and

(C) by inserting “commercial use,” after “use of coal for”.

(b) INCREASED ACCOUNTABILITY WITH RESPECT TO CARBON CAPTURE, UTILIZATION, AND SEQUESTRATION PROJECTS.—

(1) DOE EVALUATION.—

(A) IN GENERAL.—The Secretary of Energy (in this subsection referred to as the “Secretary”) shall, in accordance with this subsection, annually conduct an evaluation, and make recommendations, with respect to each project conducted by the Secretary for research, development, demonstration, or deployment of carbon capture, utilization, and sequestration technologies (also known as carbon capture and storage and utilization technologies).

(B) SCOPE.—For purposes of this subsection, a project includes any contract, lease, cooperative agreement, or other similar transaction with a public agency or private organization or person, entered into or performed, or any payment made, by the Secretary for research, development, demonstration, or deployment of carbon capture, utilization, and sequestration technologies.

(2) REQUIREMENTS FOR EVALUATION.—In conducting an evaluation of a project under this subsection, the Secretary shall—

(A) examine if the project has made advancements toward achieving any specific goal of the project with respect to a carbon capture, utilization, and sequestration technology; and

(B) evaluate and determine if the project has made significant progress in advancing a carbon capture, utilization, and sequestration technology.

(3) RECOMMENDATIONS.—For each evaluation of a project conducted under this subsection, if the Secretary determines that—

(A) significant progress in advancing a carbon capture, utilization, and sequestration technology has been made, the Secretary shall assess the funding of the project and make a recommendation as to whether increased funding is necessary to advance the project; or

(B) significant progress in advancing a carbon capture, utilization, and sequestration technology has not been made, the Secretary shall—

(i) assess the funding of the project and make a recommendation as to whether increased funding is necessary to advance the project;

(ii) assess and determine if the project has reached its full potential; and

(iii) make a recommendation as to whether the project should continue.

(4) REPORTS.—

(A) REPORT ON EVALUATIONS AND RECOMMENDATIONS.—Not later than 2 years after the date of enactment of this Act, and every 2 years thereafter, the Secretary shall—

(i) issue a report on the evaluations conducted and recommendations made during the previous year pursuant to this subsection; and

(ii) make each such report available on the Internet website of the Department of Energy.

(B) REPORT.—Not later than 2 years after the date of enactment of this Act, and every 3 years thereafter, the Secretary shall submit to the Subcommittee on Energy and Power of the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on—

(i) the evaluations conducted and recommendations made during the previous 3 years pursuant to this subsection; and

(ii) the progress of the Department of Energy in advancing carbon capture, utilization, and sequestration technologies, including progress in achieving the Department of Energy’s goal of having an array of advanced carbon capture and sequestration technologies ready by 2020 for large-scale demonstration.

**SEC. 1110. RELIABILITY AND PERFORMANCE ASSURANCE IN REGIONAL TRANSMISSION ORGANIZATIONS.**

Part II of the Federal Power Act (16 U.S.C. 824 et seq.), as amended by section 1104, is further amended by adding after section 215A the following new section:

**“SEC. 215B. RELIABILITY AND PERFORMANCE ASSURANCE IN REGIONAL TRANSMISSION ORGANIZATIONS.**

**“(a) EXISTING CAPACITY MARKETS.—**

**“(1) ANALYSIS CONCERNING CAPACITY MARKET DESIGN.—**Not later than 180 days after the date of enactment of this section, each Regional Transmission Organization, and each Independent System Operator, that operates a capacity market, or a comparable market intended to ensure the procurement and availability of sufficient future electric energy resources, that is subject to the jurisdiction of the Commission, shall provide to the Commission an analysis of how the structure of such market meets the following criteria:

**“(A)** The structure of such market utilizes competitive market forces to the extent practicable in procuring capacity resources.

**“(B)** Consistent with subparagraph (A), the structure of such market includes resource-neutral performance criteria that ensure the procurement of sufficient capacity from physical generation facilities that have reliability attributes that include—

**“(i)(I)** possession of adequate fuel on-site to enable operation for an extended period of time;

**“(II)** the operational ability to generate electric energy from more than one fuel source; or

**“(III)** fuel certainty, through firm contractual obligations, that ensures adequate fuel supply to enable operation, for an extended period of time, for the duration of an emergency or severe weather conditions;

**“(ii)** operational characteristics that enable the generation of electric energy for the duration of an emergency or severe weather conditions; and

**“(iii)** unless procured through other markets or procurement mechanisms, essential reliability services, including frequency support and regulation services.

**“(2) COMMISSION EVALUATION AND REPORT.—**Not later than 1 year after the date of enactment of this section, the Commission shall make publicly available, and submit to the Committee on Energy and Commerce in the House of Representatives and the Committee on Energy and Natural Resources in the Senate, a report containing—

**“(A)** evaluation of whether the structure of each market addressed in an analysis submitted pursuant to paragraph (1) meets the criteria under such paragraph, based on the analysis; and

**“(B)** to the extent a market so addressed does not meet such criteria, any recommendations with respect to the procurement of sufficient capacity, as described in paragraph (1)(B).

**“(b) COMMISSION EVALUATION AND REPORT FOR NEW SCHEDULES.—**

**“(1) INCLUSION OF ANALYSIS IN FILING.—**Except as provided in subsection (a)(2), whenever a Regional Transmission Organization or Independent System Operator files a new schedule under section 205 to establish a market described in subsection (a)(1), or that substantially modifies the capacity market design of a market described in subsection (a)(1), the Regional Transmission Organization or Independent System Operator shall include in any such filing the analysis required by subsection (a)(1).

**“(2) EVALUATION AND REPORT.—**Not later than 180 days of receiving an analysis under paragraph (1), the Commission shall make publicly available, and submit to the Committee on Energy and Commerce in the House of Representatives and the Committee on Energy and Natural Resources in the Senate, a report containing—

**“(A)** an evaluation of whether the structure of the market addressed in the analysis meets the criteria under subsection (a)(1), based on the analysis; and

**“(B)** to the extent the market does not meet such criteria, any recommendations with respect to the procurement of sufficient capacity, as described in subsection (a)(1)(B).

**“(c) EFFECT ON EXISTING APPROVALS.—**Nothing in this section shall be considered to—

**“(1)** require a modification of the Commission’s approval of the capacity market design approved pursuant to docket numbers ER15–623–000, EL15–29–000, EL14–52–000, and ER14–2419–000; or

**“(2)** provide grounds for the Commission to grant rehearing or otherwise modify orders issued in those dockets.”.

## Subtitle B—Energy Security and Infrastructure Modernization

### SEC. 1201. ENERGY SECURITY AND INFRASTRUCTURE MODERNIZATION FUND.

(a) **ESTABLISHMENT.**—There is hereby established in the Treasury of the United States a fund to be known as the Energy Security and Infrastructure Modernization Fund (referred to in this section as the “Fund”), consisting of—

- (1) collections deposited in the Fund under subsection (c); and
- (2) amounts otherwise appropriated to the Fund.

(b) **PURPOSE.**—The purpose of the Fund is—

- (1) to provide for the construction, maintenance, repair, and replacement of Strategic Petroleum Reserve facilities; and
- (2) for carrying out non-Strategic Petroleum Reserve projects needed to enhance the energy security of the United States by increasing the resilience, reliability, safety, and security of energy supply, transmission, storage, or distribution infrastructure.

(c) **COLLECTION AND DEPOSIT OF SALE PROCEEDS IN FUND.**—

(1) **DRAWDOWN AND SALE.**—Notwithstanding section 161 of the Energy Policy and Conservation Act (42 U.S.C. 6241), to the extent provided in advance in appropriation Acts, the Secretary of Energy shall draw down and sell crude oil from the Strategic Petroleum Reserve in amounts as authorized under subsection (e), except as provided in paragraphs (2) and (3). Amounts received for a sale under this subsection shall be deposited into the Fund during the fiscal year in which the sale occurs. Such amounts shall remain available in the Fund without fiscal year limitation.

(2) **EMERGENCY PROTECTION.**—The Secretary shall not draw down and sell crude oil under this subsection in amounts that would limit the authority to sell petroleum products under section 161(h) of the Energy Policy and Conservation Act (42 U.S.C. 6241(h)) in the full amount authorized by that subsection.

(3) **INVESTMENT PROTECTION.**—The Secretary shall not draw down and sell crude oil under this subsection at a price lower than the average price paid for oil in the Strategic Petroleum Reserve.

(d) **AUTHORIZED USES OF FUND.**—

(1) **IN GENERAL.**—Amounts in the Fund may be used for, or may be credited as offsetting collections for amounts used for, carrying out the programs described in paragraphs (2), (3), and (4), to the extent provided in advance in appropriation Acts.

(2) **PROGRAM TO MODERNIZE THE STRATEGIC PETROLEUM RESERVE.**—

(A) **FINDINGS.**—Congress finds the following:

- (i) The Strategic Petroleum Reserve is one of the Nation’s most valuable energy security assets.
- (ii) The age and condition of the Strategic Petroleum Reserve have diminished its value as a Federal energy security asset.
- (iii) Global oil markets and the location and amount of United States oil production and refining capacity have dramatically changed in the 40 years since the establishment of the Strategic Petroleum Reserve.
- (iv) Maximizing the energy security value of the Strategic Petroleum Reserve requires a modernized infrastructure that meets the drawdown and distribution needs of changed domestic and international oil and refining market conditions.

(B) **REAFFIRMATION OF POLICY.**—Congress reaffirms the continuing strategic importance and need for the Strategic Petroleum Reserve as found and declared in section 151 of the Energy Policy and Conservation Act (42 U.S.C. 6231).

(C) **PROGRAM.**—The Secretary of Energy shall establish a Strategic Petroleum Reserve modernization program to protect the United States economy from the impacts of emergency petroleum product supply disruptions. The program shall include—

- (i) operational improvements to extend the useful life of surface and subsurface infrastructure;
- (ii) maintenance of cavern storage integrity; and
- (iii) addition of infrastructure and facilities to maximize the drawdown and incremental distribution capacity of the Strategic Petroleum Reserve.

(3) **PROGRAM TO ENHANCE SAFETY, PERFORMANCE, AND RESILIENCE OF NATURAL GAS DISTRIBUTION SYSTEMS.**—

(A) PROGRAM.—The Secretary of Energy shall establish a grant program to provide financial assistance to States to offset the incremental rate increases paid by eligible households resulting from the implementation of State-approved infrastructure replacement, repair, and maintenance programs designed to accelerate the necessary replacement, repair, or maintenance of natural gas distribution systems.

(B) DATE OF ELIGIBILITY.—Awards may be provided under this paragraph to offset rate increases described in subsection (a) occurring on or after July 1, 2015.

(C) PRIORITIZATION.—The Secretary shall collaborate with States to prioritize the distribution of grants made under this paragraph. At a minimum, the Secretary shall consider prioritizing the distribution of grants to States which have—

(i) authorized or adopted enhanced infrastructure replacement programs or innovative rate recovery mechanisms, such as infrastructure cost trackers and riders, infrastructure base rate surcharges, deferred regulatory asset programs, and earnings stability mechanisms; and

(ii) a viable means for delivering financial assistance to eligible households.

(D) DEFINITION.—In this paragraph, the term “eligible household” means a household that is eligible to receive payments under section 8624(b)(2) of title 42, United States Code.

(4) PROGRAM TO ENHANCE ELECTRIC INFRASTRUCTURE RESILIENCE, RELIABILITY, AND ENERGY SECURITY.—

(A) PROGRAM.—The Secretary shall establish a competitive grant program to provide grants to States, units of local government, and Indian tribe economic development entities to enhance energy security through measures for electricity delivery infrastructure hardening and enhanced resilience and reliability.

(B) PURPOSE OF GRANTS.—The Secretary may make grants on a competitive basis to enable broader use of resiliency-related technologies, upgrades, and institutional measures and practices designed to—

(i) improve the resilience, reliability, and security of electricity delivery infrastructure;

(ii) improve preparedness and restoration time to mitigate power disturbances resulting from physical and cyber attacks, electromagnetic pulse attacks, geomagnetic disturbances, seismic events, and severe weather and other environmental stressors;

(iii) continue delivery of power to facilities critical to public health, safety, and welfare, including hospitals, assisted living facilities, and schools;

(iv) continue delivery of power to electricity-dependent essential services, including fueling stations and pumps, wastewater and sewage treatment facilities, gas pipeline infrastructure, communications systems, transportation services and systems, and services provided by emergency first responders; and

(v) enhance regional grid resilience and the resilience of electricity-dependent regional infrastructure.

(C) EXAMPLES.—Resiliency-related technologies, upgrades, and measures with respect to which grants may be made under this paragraph include—

(i) hardening, or other enhanced protection, of utility poles, wiring, cabling, and other distribution components, facilities, or structures;

(ii) advanced grid technologies capable of isolating or repairing problems remotely, such as advanced metering infrastructure, high-tech sensors, grid monitoring and control systems, and remote reconfiguration and redundancy systems;

(iii) cybersecurity products and components;

(iv) distributed generation, including back-up generation to power critical facilities and essential services, and related integration components, such as advanced inverter technology;

(v) microgrid systems, including hybrid microgrid systems for isolated communities;

(vi) combined heat and power;

(vii) waste heat resources;

(viii) non-grid-scale energy storage technologies;

(ix) wiring, cabling, and other distribution components, including submersible distribution components, and enclosures;

(x) electronically controlled reclosers and similar technologies for power restoration, including emergency mobile substations, as defined

in section 1105 of the North American Energy Security and Infrastructure Act of 2015;

- (xi) advanced energy analytics technology, such as Internet-based and cloud-based computing solutions and subscription licensing models;
- (xii) measures that enhance resilience through planning, preparation, response, and recovery activities;
- (xiii) operational capabilities to enhance resilience through rapid response recovery; and
- (xiv) measures to ensure availability of key critical components through contracts, cooperative agreements, stockpiling and prepositioning, or other measures.

(D) IMPLEMENTATION.—Specific projects or programs established, or to be established, pursuant to awards provided under this paragraph shall be implemented through the States by public and publicly regulated entities on a cost-shared basis.

(E) COOPERATION.—In carrying out projects or programs established, or to be established, pursuant to awards provided under this paragraph, award recipients shall cooperate, as applicable, with—

- (i) State public utility commissions;
- (ii) State energy offices;
- (iii) electric infrastructure owners and operators; and
- (iv) other entities responsible for maintaining electric reliability.

(F) DATA AND METRICS.—

(i) IN GENERAL.—To the extent practicable, award recipients shall utilize the most current data, metrics, and frameworks related to—

- (I) electricity delivery infrastructure hardening and enhancing resilience and reliability; and
- (II) current and future threats, including physical and cyber attacks, electromagnetic pulse, geomagnetic disturbances, seismic events, and severe weather and other environmental stressors.

(ii) METRICS.—Award recipients shall demonstrate to the Secretary with measurable and verifiable data how the deployment of resiliency-related technologies, upgrades, and technologies achieve improvements in the resiliency and recovery of electricity delivery infrastructure and related services, including a comparison of data collected before and after deployment. Metrics for demonstrating improvements in resiliency and recovery may include—

- (I) power quality during power disturbances when delivered power does not meet power quality requirements of the customer;
- (II) duration of customer interruptions;
- (III) number of customers impacted;
- (IV) cost impacts, including business and other economic losses;
- (V) impacts on electricity-dependent essential services and critical facilities; and
- (VI) societal impacts.

(iii) FURTHERING ENERGY ASSURANCE PLANS.—Award recipients shall demonstrate to the Secretary how projects or programs established, or to be established, pursuant to awards provided under this paragraph further applicable State and local energy assurance plans.

(G) MATCHING CONTRIBUTIONS.—The Secretary may not make a grant under this paragraph unless the applicant agrees to make available non-Federal contributions (which may include in-kind contributions) in an amount not less than 50 percent of the Federal contribution.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated (and drawdowns and sales under subsection (c) in an equal amount are authorized)—

- (1) for carrying out subsection (d)(2), \$500,000,000 for the period encompassing fiscal years 2017 through 2020;
- (2) for carrying out subsection (d)(3), \$100,000,000 for the period encompassing fiscal years 2017 through 2020, of which not more than 5 percent may be used for administrative expenses; and
- (3) for carrying out subsection (d)(4), \$250,000,000 for the period encompassing fiscal years 2017 through 2020, of which not more than 5 percent may be used for administrative expenses.

(f) TRANSMISSION OF DEPARTMENT BUDGET REQUESTS.—The Secretary of Energy shall prepare and submit in the Department's annual budget request to Congress—

- (1) an itemization of the amounts of funds necessary to carry out subsection (d); and

- (2) a designation of any activities thereunder for which a multiyear budget authority would be appropriate.
- (g) SUNSET.—The authority of the Secretary to drawdown and sell crude oil from the Strategic Petroleum Reserve under this section shall expire at the end of fiscal year 2020.

## Subtitle C—Hydropower Regulatory Modernization

### SEC. 1301. HYDROELECTRIC PRODUCTION AND EFFICIENCY INCENTIVES.

- (a) HYDROELECTRIC PRODUCTION INCENTIVES.—Section 242 of the Energy Policy Act of 2005 (42 U.S.C. 15881) is amended—
  - (1) in subsection (c), by striking “10” and inserting “20”;
  - (2) in subsection (f), by striking “20” and inserting “30”; and
  - (3) in subsection (g), by striking “each of the fiscal years 2006 through 2015” and inserting “each of fiscal years 2016 through 2025”.
- (b) HYDROELECTRIC EFFICIENCY IMPROVEMENT.—Section 243(c) of the Energy Policy Act of 2005 (42 U.S.C. 15882(c)) is amended by striking “each of the fiscal years 2006 through 2015” and inserting “each of fiscal years 2016 through 2025”.

### SEC. 1302. PROTECTION OF PRIVATE PROPERTY RIGHTS IN HYDROPOWER LICENSING.

- (a) LICENCES.—Section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) is amended—
  - (1) by striking “and” after “recreational opportunities,”; and
  - (2) by inserting “, and minimizing infringement on the useful exercise and enjoyment of property rights held by nonlicensees” after “aspects of environmental quality”.
- (b) PRIVATE LANDOWNERSHIP.—Section 10 of the Federal Power Act (16 U.S.C. 803) is amended—
  - (1) in subsection (a)(1), by inserting “, including minimizing infringement on the useful exercise and enjoyment of property rights held by nonlicensees” after “section 4(e)”; and
  - (2) by adding at the end the following:
    - “(k) PRIVATE LANDOWNERSHIP.—In developing any recreational resource within the project boundary, the licensee shall consider private landownership as a means to encourage and facilitate—
      - “(1) private investment; and
      - “(2) increased tourism and recreational use.”.

### SEC. 1303. EXTENSION OF TIME FOR FERC PROJECT INVOLVING W. KERR SCOTT DAM.

- (a) IN GENERAL.—Notwithstanding the time period specified in section 13 of the Federal Power Act (16 U.S.C. 806) that would otherwise apply to the Federal Energy Regulatory Commission project numbered 12642, the Commission may, at the request of the licensee for the project, and after reasonable notice, in accordance with the good faith, due diligence, and public interest requirements of that section and the Commission’s procedures under that section, extend the time period during which the licensee is required to commence the construction of the project for up to 3 consecutive 2-year periods from the date of the expiration of the extension originally issued by the Commission.
- (b) REINSTATEMENT OF EXPIRED LICENSE.—If the period required for commencement of construction of the project described in subsection (a) has expired prior to the date of the enactment of this Act, the Commission may reinstate the license effective as of the date of its expiration and the first extension authorized under subsection (a) shall take effect on the date of such expiration.

### SEC. 1304. HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS.

Part I of the Federal Power Act (16 U.S.C. 792 et seq.) is amended by adding at the end the following:

#### “SEC. 34. HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS.

- “(a) DEFINITION.—In this section, the term ‘Federal authorization’—
  - “(1) means any authorization required under Federal law with respect to an application for a license, license amendment, or exemption under this part; and
  - “(2) includes any permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law to approve or implement the license, license amendment, or exemption under this part.
- “(b) DESIGNATION AS LEAD AGENCY.—
  - “(1) IN GENERAL.—The Commission shall act as the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes

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

“(2) OTHER AGENCIES AND INDIAN TRIBES.—

“(A) IN GENERAL.—Each Federal, State, and local government agency and Indian tribe considering an aspect of an application for Federal authorization shall coordinate with the Commission and comply with the deadline established in the schedule developed for the project in accordance with the rule issued by the Commission under subsection (c).

“(B) IDENTIFICATION.—The Commission shall identify, as early as practicable after it is notified by the applicant of a project or facility requiring Commission action under this part, any Federal or State agency, local government, or Indian tribe that may consider an aspect of an application for a Federal authorization.

“(C) NOTIFICATION.—

“(i) IN GENERAL.—The Commission shall notify any agency and Indian tribe identified under subparagraph (B) of the opportunity to participate in the process of reviewing an aspect of an application for a Federal authorization.

“(ii) DEADLINE.—Each agency and Indian tribe receiving a notice under clause (i) shall submit a response acknowledging receipt of the notice to the Commission within 30 days of receipt of such notice and request.

“(D) ISSUE IDENTIFICATION AND RESOLUTION.—

“(i) IDENTIFICATION OF ISSUES.—Federal, State, and local government agencies and Indian tribes that may consider an aspect of an application for Federal authorization shall identify, as early as possible, and share with the Commission and the applicant, any issues of concern identified during the pendency of the Commission’s action under this part relating to any Federal authorization that may delay or prevent the granting of such authorization, including any issues that may prevent the agency or Indian tribe from meeting the schedule established for the project in accordance with the rule issued by the Commission under subsection (c).

“(ii) ISSUE RESOLUTION.—The Commission may forward any issue of concern identified under clause (i) to the heads of the relevant State and Federal agencies (including, in the case of scheduling concerns identified by a State or local government agency or Indian tribe, the Federal agency overseeing the delegated authority, or the Secretary of the Interior with regard to scheduling concerns identified by an Indian tribe) for resolution. The Commission and any relevant agency shall enter into a memorandum of understanding to facilitate interagency coordination and resolution of such issues of concern, as appropriate.

“(c) SCHEDULE.—

“(1) COMMISSION RULEMAKING TO ESTABLISH PROCESS TO SET SCHEDULE.—Within 180 days of the date of enactment of this section the Commission shall, in consultation with the appropriate Federal agencies, issue a rule, after providing for notice and public comment, establishing a process for setting a schedule following the filing of an application under this part for the review and disposition of each Federal authorization.

“(2) ELEMENTS OF SCHEDULING RULE.—In issuing a rule under this subsection, the Commission shall ensure that the schedule for each Federal authorization—

“(A) includes deadlines for actions by—

“(i) any Federal or State agency, local government, or Indian tribe that may consider an aspect of an application for the Federal authorization;

“(ii) the applicant;

“(iii) the Commission; and

“(iv) other participants in a proceeding;

“(B) is developed in consultation with the applicant and any agency and Indian tribe that submits a response under subsection (b)(2)(C)(ii);

“(C) provides an opportunity for any Federal or State agency, local government, or Indian tribe that may consider an aspect of an application for the applicable Federal authorization to identify and resolve issues of concern, as provided in subsection (b)(2)(D);

“(D) complies with applicable schedules established under Federal and State law;

“(E) ensures expeditious completion of all proceedings required under Federal and State law, to the extent practicable; and



“(F) facilitates completion of Federal and State agency studies, reviews, and any other procedures required prior to, or concurrent with, the preparation of the Commission’s environmental document required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

“(d) TRANSMISSION OF FINAL SCHEDULE.—

“(1) IN GENERAL.—For each application for a license, license amendment, or exemption under this part, the Commission shall establish a schedule in accordance with the rule issued by the Commission under subsection (c). The Commission shall publicly notice and transmit the final schedule to the applicant and each agency and Indian tribe identified under subsection (b)(2)(B).

“(2) RESPONSE.—Each agency and Indian tribe receiving a schedule under this subsection shall acknowledge receipt of such schedule in writing to the Commission within 30 days.

“(e) ADHERENCE TO SCHEDULE.—All applicants, other licensing participants, and agencies and tribes considering an aspect of an application for a Federal authorization shall meet the deadlines set forth in the schedule established pursuant to subsection (d)(1).

“(f) APPLICATION PROCESSING.—The Commission, Federal, State, and local government agencies, and Indian tribes may allow an applicant seeking a Federal authorization to fund a third-party contractor selected by such agency or tribe to assist in reviewing the application. All costs of an agency or tribe incurred pursuant to direct funding by the applicant, including all costs associated with the third party contractor, shall not be considered costs of the United States for the administration of this part under section 10(e).

“(g) COMMISSION RECOMMENDATION ON SCOPE OF ENVIRONMENTAL REVIEW.—For the purposes of coordinating Federal authorizations for each project, the Commission shall consult with and make a recommendation to agencies and Indian tribes receiving a schedule under subsection (d) on the scope of the environmental review for all Federal authorizations for such project. Each Federal and State agency and Indian tribe shall give due consideration and may give deference to the Commission’s recommendations, to the extent appropriate under Federal law.

“(h) FAILURE TO MEET SCHEDULE.—A Federal, State, or local government agency or Indian tribe that anticipates that it will be unable to complete its disposition of a Federal authorization by the deadline set forth in the schedule established under subsection (d)(1) may file for an extension as provided under section 313(b)(2).

“(i) CONSOLIDATED RECORD.—The Commission shall, with the cooperation of Federal, State, and local government agencies and Indian tribes, maintain a complete consolidated record of all decisions made or actions taken by the Commission or by a Federal administrative agency or officer (or State or local government agency or officer or Indian tribe acting under delegated Federal authority) with respect to any Federal authorization. Such record shall constitute the record for judicial review under section 313(b).”.

**SEC. 1305. JUDICIAL REVIEW OF DELAYED FEDERAL AUTHORIZATIONS.**

Section 313(b) of the Federal Power Act (16 U.S.C. 825(b)) is amended—

(1) by striking “(b) Any party” and inserting the following:

“(b) JUDICIAL REVIEW.—

“(1) IN GENERAL.—Any party”; and

(2) by adding at the end the following:

“(2) DELAY OF A FEDERAL AUTHORIZATION.—Any Federal, State, or local government agency or Indian tribe that will not complete its disposition of a Federal authorization by the deadline set forth in the schedule by the Commission under section 34 may file for an extension in the United States court of appeals for any circuit wherein the project or proposed project is located, or in the United States Court of Appeals for the District of Columbia. Such petition shall be filed not later than 30 days prior to such deadline. The court shall only grant an extension if the agency or tribe demonstrates, based on the record maintained under section 34, that it otherwise complied with the requirements of section 34 and that complying with the schedule set by the Commission would have prevented the agency or tribe from complying with applicable Federal or State law. If the court grants the extension, the court shall set a reasonable schedule and deadline, not to exceed 90 days, for the agency to act on remand. If the court denies the extension, or if an agency or tribe does not file for an extension as provided in this subsection and does not complete its disposition of a Federal authorization by the applicable deadline, the Commission and applicant may move forward with the proposed action.”.

**SEC. 1306. LICENSING STUDY IMPROVEMENTS.**

Part I of the Federal Power Act (16 U.S.C. 792 et seq.), as amended by section 1304, is further amended by adding at the end the following:

**“SEC. 35. LICENSING STUDY IMPROVEMENTS.**

“(a) **IN GENERAL.**—To facilitate the timely and efficient completion of the license proceedings under this part, the Commission shall, in consultation with applicable Federal and State agencies and interested members of the public—

“(1) compile current and accepted best practices in performing studies required in such license proceedings, including methodologies and the design of studies to assess the full range of environmental impacts of a project that reflect the most recent peer-reviewed science;

“(2) compile a comprehensive collection of studies and data accessible to the public that could be used to inform license proceedings under this part; and

“(3) encourage license applicants, agencies, and Indian tribes to develop and use, for the purpose of fostering timely and efficient consideration of license applications, a limited number of open-source methodologies and tools applicable across a wide array of projects, including water balance models and streamflow analyses.

“(b) **USE OF STUDIES.**—To the extent practicable, the Commission and other Federal, State, and local government agencies and Indian tribes considering an aspect of an application for Federal authorization shall use current, accepted science toward studies and data in support of their actions. Any participant in a proceeding with respect to a Federal authorization shall demonstrate a study requested by the party is not duplicative of current, existing studies that are applicable to the project.

“(c) **BASIN-WIDE OR REGIONAL REVIEW.**—The Commission shall establish a program to develop comprehensive plans, at the request of project applicants, on a regional or basin-wide scale, in consultation with the applicants, appropriate Federal agencies, and affected States, local governments, and Indian tribes, in basins or regions with respect to which there are more than one project or application for a project. Upon such a request, the Commission, in consultation with the applicants, such Federal agencies, and affected States, local governments, and Indian tribes, may conduct or commission regional or basin-wide environmental studies, with the participation of at least 2 applicants. Any study conducted under this subsection shall apply only to a project with respect to which the applicant participates.”.

**SEC. 1307. CLOSED-LOOP PUMPED STORAGE PROJECTS.**

Part I of the Federal Power Act (16 U.S.C. 792 et seq.), as amended by section 1306, is further amended by adding at the end the following:

**“SEC. 36. CLOSED-LOOP PUMPED STORAGE PROJECTS.**

“(a) **DEFINITION.**—For purposes of this section, a closed-loop pumped storage project is a project—

“(1) in which the upper and lower reservoirs do not impound or directly withdraw water from navigable waters; or

“(2) that is not continuously connected to a naturally flowing water feature.

“(b) **IN GENERAL.**—As provided in this section, the Commission may issue and amend licenses and preliminary permits, as appropriate, for closed-loop pumped storage projects.

“(c) **DAM SAFETY.**—Before issuing any license for a closed-loop pumped storage project, the Commission shall assess the safety of existing dams and other structures related to the project (including possible consequences associated with failure of such structures).

“(d) **LICENSE CONDITIONS.**—With respect to a closed-loop pumped storage project, the authority of the Commission to impose conditions on a license under sections 4(e), 10(a), 10(g), and 10(j) shall not apply, and any condition included in or applicable to a closed-loop pumped storage project licensed under this section, including any condition or other requirement of a Federal authorization, shall be limited to those that are—

“(1) necessary to protect public safety; or

“(2) reasonable, economically feasible, and essential to prevent loss of or damage to, or to mitigate adverse effects on, fish and wildlife resources directly caused by the construction and operation of the project, as compared to the environmental baseline existing at the time the Commission completes its environmental review.

“(e) **TRANSFERS.**—Notwithstanding section 5, and regardless of whether the holder of a preliminary permit for a closed-loop pumped storage project claimed municipal preference under section 7(a) when obtaining the permit, the Commission may, to facilitate development of a closed-loop pumped storage project—

“(1) add entities as joint permittees following issuance of a preliminary permit; and

“(2) transfer a license in part to one or more nonmunicipal entities as co-licensees with a municipality.”.

**SEC. 1308. LICENSE AMENDMENT IMPROVEMENTS.**

Part I of the Federal Power Act (16 U.S.C. 792 et seq.), as amended by section 1307, is further amended by adding at the end the following:

**“SEC. 37. LICENSE AMENDMENT IMPROVEMENTS.****“(a) QUALIFYING PROJECT UPGRADES.—**

“(1) IN GENERAL.—As provided in this section, the Commission may approve an application for an amendment to a license issued under this part for a qualifying project upgrade.

“(2) APPLICATION.—A licensee filing an application for an amendment to a project license under this section shall include in such application information sufficient to demonstrate that the proposed change to the project described in the application is a qualifying project upgrade.

“(3) INITIAL DETERMINATION.—Not later than 15 days after receipt of an application under paragraph (2), the Commission shall make an initial determination as to whether the proposed change to the project described in the application for a license amendment is a qualifying project upgrade. The Commission shall publish its initial determination and issue notice of the application filed under paragraph (2). Such notice shall solicit public comment on the initial determination within 45 days.

“(4) PUBLIC COMMENT ON QUALIFYING CRITERIA.—The Commission shall accept public comment regarding whether a proposed license amendment is for a qualifying project upgrade for a period of 45 days beginning on the date of publication of a public notice described in paragraph (3), and shall—

“(A) if no entity contests whether the proposed license amendment is for a qualifying project upgrade during such comment period, immediately publish a notice stating that the initial determination has not been contested; or

“(B) if an entity contests whether the proposed license amendment is for a qualifying project upgrade during the comment period, issue a written determination in accordance with paragraph (5).

“(5) WRITTEN DETERMINATION.—If an entity contests whether the proposed license amendment is for a qualifying project upgrade during the comment period under paragraph (4), the Commission shall, not later than 30 days after the date of publication of the public notice of the initial determination under paragraph (3), issue a written determination as to whether the proposed license amendment is for a qualifying project upgrade.

“(6) PUBLIC COMMENT ON AMENDMENT APPLICATION.—If no entity contests whether the proposed license amendment is for a qualifying project upgrade during the comment period under paragraph (4) or the Commission issues a written determination under paragraph (5) that a proposed license amendment is a qualifying project upgrade, the Commission shall—

“(A) during the 60-day period beginning on the date of publication of a notice under paragraph (4)(A) or the date on which the Commission issues the written determination under paragraph (5), as applicable, solicit comments from each Federal, State, and local government agency and Indian tribe considering an aspect of an application for Federal authorization (as defined in section 34) with respect to the proposed license amendment, as well as other interested agencies, Indian tribes, and members of the public; and

“(B) during the 90-day period beginning on the date of publication of a notice under paragraph (4)(A) or the date on which the Commission issues the written determination under paragraph (5), as applicable, consult with—

“(i) appropriate Federal agencies and the State agency exercising administrative control over the fish and wildlife resources, and water quality and supply, of the State in which the qualifying project upgrade is located;

“(ii) any Federal department supervising any public lands or reservations occupied by the qualifying project upgrade; and

“(iii) any Indian tribe affected by the qualifying project upgrade.

“(7) FEDERAL AUTHORIZATIONS.—The schedule established by the Commission under section 34 for any project upgrade under this subsection shall require final disposition on all necessary Federal authorizations (as defined in section 34), other than final action by the Commission, by not later than 120 days after the date on which the Commission issues a notice under paragraph (4)(A) or a written determination under paragraph (5), as applicable.

“(8) COMMISSION ACTION.—Not later than 150 days after the date on which the Commission issues a notice under paragraph (4)(A) or a written determina-

tion under paragraph (5), as applicable, the Commission shall take final action on the license amendment application.

“(9) LICENSE AMENDMENT CONDITIONS.—Any condition included in or applicable to a license amendment approved under this subsection, including any condition or other requirement of a Federal authorization, shall be limited to those that are—

“(A) necessary to protect public safety; or

“(B) reasonable, economically feasible, and essential to prevent loss of or damage to, or to mitigate adverse effects on, fish and wildlife resources, water supply, and water quality that are directly caused by the construction and operation of the qualifying project upgrade, as compared to the environmental baseline existing at the time the Commission approves the application for the license amendment.

“(10) PROPOSED LICENSE AMENDMENTS THAT ARE NOT QUALIFYING PROJECT UPGRADES.—If the Commission determines under paragraph (3) or (5) that a proposed license amendment is not for a qualifying project upgrade, the procedures under paragraphs (6) through (9) shall not apply to the application.

“(11) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall, after notice and opportunity for public comment, issue a rule to implement this subsection.

“(12) DEFINITIONS.—For purposes of this subsection:

“(A) QUALIFYING PROJECT UPGRADE.—The term ‘qualifying project upgrade’ means a change to a project licensed under this part that meets the qualifying criteria, as determined by the Commission.

“(B) QUALIFYING CRITERIA.—The term ‘qualifying criteria’ means, with respect to a project license under this part, a change to the project that—

“(i) if carried out, would be unlikely to adversely affect any species listed as threatened or endangered under the Endangered Species Act of 1973 or result in the destruction or adverse modification of critical habitat, as determined in consultation with the Secretary of the Interior or Secretary of Commerce, as appropriate, in accordance with section 7 of the Endangered Species Act of 1973;

“(ii) is consistent with any applicable comprehensive plan under section 10(a)(2);

“(iii) includes only changes to project lands, waters, or operations that, in the judgment of the Commission, would result in only insignificant or minimal cumulative adverse environmental effects;

“(iv) would be unlikely to adversely affect water quality and water supply; and

“(v) proposes to implement—

“(I) capacity increases, efficiency improvements, or other enhancements to hydropower generation at the licensed project;

“(II) environmental protection, mitigation, or enhancement measures to benefit fish and wildlife resources or other natural and cultural resources; or

“(III) improvements to public recreation at the licensed project.

“(b) AMENDMENT APPROVAL PROCESSES.—

“(1) RULE.—Not later than 1 year after the date of enactment of this section, the Commission shall, after notice and opportunity for public comment, issue a rule establishing new standards and procedures for license amendment applications under this part. In issuing such rule, the Commission shall seek to develop the most efficient and expedient process, consultation, and review requirements, commensurate with the scope of different categories of proposed license amendments. Such rule shall account for differences in environmental effects across a wide range of categories of license amendment applications.

“(2) CAPACITY.—In issuing a rule under this subsection, the Commission shall take into consideration that a change in generating or hydraulic capacity may indicate the potential environmental effects of a proposed amendment but is not determinative of such effects.

“(3) PROCESS OPTIONS.—In issuing a rule under this subsection, the Commission shall take into consideration the range of process options available under the Commission’s regulations for new and original license applications and adapt such options to amendment applications, where appropriate.”.

#### SEC. 1309. PROMOTING HYDROPOWER DEVELOPMENT AT EXISTING NONPOWERED DAMS.

Part I of the Federal Power Act (16 U.S.C. 792 et seq.), as amended by section 1308, is further amended by adding at the end the following:

#### “SEC. 38. PROMOTING HYDROPOWER DEVELOPMENT AT EXISTING NONPOWERED DAMS.

“(a) EXEMPTIONS FOR QUALIFYING FACILITIES.—

“(1) EXEMPTION QUALIFICATIONS.—Subject to the requirements of this subsection, the Commission may grant an exemption in whole or in part from the requirements of this part, including any license requirements contained in this part, to any facility the Commission determines is a qualifying facility.

“(2) CONSULTATION WITH FEDERAL AND STATE AGENCIES.—In granting any exemption under this subsection, the Commission shall consult with—

“(A) the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the State agency exercising administrative control over the fish and wildlife resources of the State in which the facility will be located, in the manner provided by the Fish and Wildlife Coordination Act;

“(B) any Federal department supervising any public lands or reservations occupied by the project; and

“(C) any Indian tribe affected by the project.

“(3) EXEMPTION CONDITIONS.—

“(A) IN GENERAL.—The Commission shall include in any exemption granted under this subsection only such terms and conditions that the Commission determines are—

“(i) necessary to protect public safety; or

“(ii) reasonable, economically feasible, and essential to prevent loss of or damage to, or to mitigate adverse effects on, fish and wildlife resources directly caused by the construction and operation of the qualifying facility, as compared to the environmental baseline existing at the time the Commission grants the exemption.

“(B) NO CHANGES TO RELEASE REGIME.—No Federal authorization required with respect to a qualifying facility described in paragraph (1), including an exemption granted by the Commission under this subsection, may include any condition or other requirement that results in any material change to the storage, control, withdrawal, diversion, release, or flow operations of the associated qualifying nonpowered dam.

“(4) ENVIRONMENTAL REVIEW.—The Commission’s environmental review under the National Environmental Policy Act of 1969 of a proposed exemption under this subsection shall consist only of an environmental assessment, unless the Commission determines, by rule or order, that the Commission’s obligations under such Act for granting exemptions under this subsection can be met through a categorical exclusion.

“(5) VIOLATION OF TERMS OF EXEMPTION.—Any violation of a term or condition of any exemption granted under this subsection shall be treated as a violation of a rule or order of the Commission under this Act.

“(6) ANNUAL CHARGES FOR ENHANCEMENT ACTIVITIES.—Exemptees under this subsection for any facility located at a non-Federal dam shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of funding environmental enhancement projects in watersheds in which facilities exempted under this subsection are located. Such annual charges shall be equivalent to the annual charges for use of a Government dam under section 10(e), unless the Commission determines, by rule, that a lower charge is appropriate to protect exemptees’ investment in the project or avoid increasing the price to consumers of power due to such charges. The proceeds of charges made by the Commission under this paragraph shall be paid into the Treasury of the United States and credited to miscellaneous receipts. Subject to annual appropriation Acts, such proceeds shall be available to Federal and State fish and wildlife agencies for purposes of carrying out specific environmental enhancement projects in watersheds in which one or more facilities exempted under this subsection are located. Not later than 180 days after the date of enactment of this section, the Commission shall establish rules, after notice and opportunity for public comment, for the collection and administration of annual charges under this paragraph.

“(7) EFFECT OF JURISDICTION.—The jurisdiction of the Commission over any qualifying facility exempted under this subsection shall extend only to the qualifying facility exempted and any associated primary transmission line, and shall not extend to any conduit, dam, impoundment, shoreline or other land, or any other project work associated with the qualifying facility exempted under this subsection.

“(b) DEFINITIONS.—For purposes of this section—

“(1) FEDERAL AUTHORIZATION.—The term ‘Federal authorization’ has the same meaning as provided in section 34.

“(2) QUALIFYING CRITERIA.—The term ‘qualifying criteria’ means, with respect to a facility—

“(A) as of the date of enactment of this section, the facility is not licensed under, or exempted from the license requirements contained in, this part;

“(B) the facility will be associated with a qualifying nonpowered dam;

“(C) the facility will be constructed, operated, and maintained for the generation of electric power;

“(D) the facility will use for such generation any withdrawals, diversions, releases, or flows from the associated qualifying nonpowered dam, including its associated impoundment or other infrastructure; and

“(E) the operation of the facility will not result in any material change to the storage, control, withdrawal, diversion, release, or flow operations of the associated qualifying nonpowered dam.

“(3) QUALIFYING FACILITY.—The term ‘qualifying facility’ means a facility that is determined under this section to meet the qualifying criteria.

“(4) QUALIFYING NONPOWERED DAM.—The term ‘qualifying nonpowered dam’ means any dam, dike, embankment, or other barrier—

“(A) the construction of which was completed on or before the date of enactment of this section;

“(B) that is operated for the control, release, or distribution of water for agricultural, municipal, navigational, industrial, commercial, environmental, recreational, aesthetic, or flood control purposes;

“(C) that, as of the date of enactment of this section, is not equipped with hydropower generating works that are licensed under, or exempted from the license requirements contained in, this part; and

“(D) that, in the case of a non-Federal dam, has been certified by an independent consultant approved by the Commission as complying with the Commission’s dam safety requirements.”.

## TITLE II—21ST CENTURY WORKFORCE

### SEC. 2001. ENERGY AND MANUFACTURING WORKFORCE DEVELOPMENT.

(a) IN GENERAL.—The Secretary of Energy (in this section referred to as the “Secretary”) shall establish and carry out a comprehensive program to improve education and training for energy and manufacturing-related jobs in order to increase the number of skilled workers trained to work in energy and manufacturing-related fields, including by—

(1) encouraging underrepresented groups, including religious and ethnic minorities, women, veterans, individuals with disabilities, and socioeconomically disadvantaged individuals to enter into the science, technology, engineering, and mathematics (in this section referred to as “STEM”) fields;

(2) encouraging the Nation’s education system to equip students with the skills, mentorships, training, and technical expertise necessary to fill the employment opportunities vital to managing and operating the Nation’s energy and manufacturing industries;

(3) providing students and other candidates for employment with the necessary skills and certifications for skilled, semiskilled, and highly skilled energy and manufacturing-related jobs; and

(4) strengthening and more fully engaging Department of Energy programs and labs in carrying out the Department’s Minorities in Energy Initiative.

(b) PRIORITY.—The Secretary shall make educating and training underrepresented groups for energy and manufacturing-related jobs a national priority under the program established under subsection (a).

(c) DIRECT ASSISTANCE.—In carrying out the program established under subsection (a), the Secretary shall provide direct assistance (including financial assistance awards, technical expertise, wraparound services, career coaching, mentorships, internships, and partnerships) to schools, community colleges, workforce development organizations, nonprofit organizations, labor organizations, apprenticeship programs, and minority serving institutions. The Secretary shall distribute direct assistance in a manner proportional to energy and manufacturing industry needs and demand for jobs, consistent with information obtained under subsections (e)(3) and (i).

(d) CLEARINGHOUSE.—In carrying out the program established under subsection (a), the Secretary shall establish a clearinghouse to—

(1) maintain and update information and resources on training and workforce development programs for energy and manufacturing-related jobs, including job training and workforce development programs available to assist displaced and unemployed energy and manufacturing workers transitioning to new employment; and

(2) act as a resource, and provide guidance, for schools, community colleges, universities (including minority serving institutions), workforce development programs, labor-management organizations, and industry organizations that would like to develop and implement energy and manufacturing-related training programs.

(e) COLLABORATION.—In carrying out the program established under subsection (a), the Secretary—

(1) shall collaborate with schools, community colleges, universities (including minority serving institutions), workforce-training organizations, national laboratories, unions, State energy offices, workforce investment boards, and the energy and manufacturing industries;

(2) shall encourage and foster collaboration, mentorships, and partnerships among organizations (including unions, industry, schools, community colleges, workforce-development organizations, and colleges and universities) that currently provide effective job training programs in the energy and manufacturing fields and institutions (including schools, community colleges, workforce development programs, and colleges and universities) that seek to establish these types of programs in order to share best practices and approaches that best suit local, State, and national needs; and

(3) shall collaborate with the Bureau of Labor Statistics, the Department of Commerce, the Bureau of the Census, and the energy and manufacturing industries to develop a comprehensive and detailed understanding of the energy and manufacturing workforce needs and opportunities by State and by region, and publish an annual report on energy and manufacturing job creation by the sectors enumerated in subsection (i).

(f) GUIDELINES FOR EDUCATIONAL INSTITUTIONS.—

(1) IN GENERAL.—In carrying out the program established under subsection (a), the Secretary, in collaboration with the Secretary of Education, the Secretary of Commerce, the Secretary of Labor, the National Science Foundation, and industry shall develop voluntary guidelines and best practices for educational institutions of all levels, including for elementary and secondary schools and community colleges and for undergraduate, graduate, and postgraduate university programs, to help provide graduates with the skills necessary to work in energy and manufacturing-related jobs.

(2) INPUT.—The Secretary shall solicit input from the oil, gas, coal, renewable, nuclear, utility, energy-intensive and advanced manufacturing, and pipeline industries in developing guidelines under paragraph (1).

(3) ENERGY AND MANUFACTURING EFFICIENCY AND CONSERVATION INITIATIVES.—The guidelines developed under paragraph (1) shall include grade-specific guidelines for teaching energy and manufacturing efficiency and conservation initiatives to educate students and families.

(4) STEM EDUCATION.—The guidelines developed under paragraph (1) shall promote STEM education as it relates to job opportunities in energy and manufacturing-related fields of study in schools, community colleges, and universities nationally.

(g) OUTREACH TO MINORITY SERVING INSTITUTIONS.—In carrying out the program established under subsection (a), the Secretary shall—

(1) give special consideration to increasing outreach to minority serving institutions (including historically black colleges and universities, predominantly black institutions, Hispanic serving institutions, and tribal institutions);

(2) make resources available to minority serving institutions with the objective of increasing the number of skilled minorities and women trained to go into the energy and manufacturing sectors;

(3) encourage industry to improve the opportunities for students of minority serving institutions to participate in industry internships and cooperative work/study programs; and

(4) partner with the Department of Energy laboratories to increase underrepresented groups' participation in internships, fellowships, traineeships, and employment at all Department of Energy laboratories.

(h) OUTREACH TO DISPLACED AND UNEMPLOYED ENERGY AND MANUFACTURING WORKERS.—In carrying out the program established under subsection (a), the Secretary shall—

(1) give special consideration to increasing outreach to employers and job trainers preparing displaced and unemployed energy and manufacturing workers for emerging energy and manufacturing jobs;

(2) make resources available to institutions serving displaced and unemployed energy and manufacturing workers with the objective of training individuals to re-enter the energy and manufacturing workforce;

(3) encourage the energy and manufacturing industries to improve opportunities for displaced and unemployed energy and manufacturing workers to participate in internships and cooperative work/study programs; and

(4) work closely with the energy and manufacturing industries to identify energy and manufacturing operations, such as coal-fired power plants and coal mines, scheduled for closure and to provide early intervention assistance to workers employed at such energy and manufacturing operations by—

(A) giving special consideration to employers and job trainers preparing such workers for emerging energy and manufacturing jobs;

(B) making resources available to institutions serving such workers with the objective of training them to re-enter the energy and manufacturing workforce; and

(C) encouraging the energy and manufacturing industries to improve opportunities for such workers to participate in internships and cooperative work-study programs.

(i) **GUIDELINES TO DEVELOP SKILLS FOR AN ENERGY AND MANUFACTURING INDUSTRY WORKFORCE.**—In carrying out the program established under subsection (a), the Secretary shall collaborate with representatives from the energy and manufacturing industries (including the oil, gas, coal, nuclear, utility, pipeline, renewable, petrochemical, manufacturing, and electrical construction sectors) to identify the areas of highest need in each sector and to develop guidelines for the skills necessary to develop a workforce trained to go into the following sectors of the energy and manufacturing sectors:

(1) Energy efficiency industry, including work in energy efficiency, conservation, weatherization, or retrofitting, or as inspectors or auditors.

(2) Pipeline industry, including work in pipeline construction and maintenance or work as engineers or technical advisors.

(3) Utility industry, including work in the generation, transmission, and distribution of electricity and natural gas, such as utility technicians, operators, lineworkers, engineers, scientists, and information technology specialists.

(4) Alternative fuels, including work in biofuel development and production.

(5) Nuclear industry, including work as scientists, engineers, technicians, mathematicians, or security personnel.

(6) Oil and gas industry, including work as scientists, engineers, technicians, mathematicians, petrochemical engineers, or geologists.

(7) Renewable industry, including work in the development, manufacturing, and production of renewable energy sources (such as solar, hydropower, wind, or geothermal energy).

(8) Coal industry, including work as coal miners, engineers, developers and manufacturers of state-of-the-art coal facilities, technology vendors, coal transportation workers and operators, or mining equipment vendors.

(9) Manufacturing industry, including work as operations technicians, operations and design in additive manufacturing, 3-D printing, advanced composites, and advanced aluminum and other metal alloys, industrial energy efficiency management systems, including power electronics, and other innovative technologies.

(10) Chemical manufacturing industry, including work in construction (such as welders, pipefitters, and tool and die makers) or as instrument and electrical technicians, machinists, chemical process operators, chemical engineers, quality and safety professionals, and reliability engineers.

(j) **ENROLLMENT IN TRAINING AND APPRENTICESHIP PROGRAMS.**—In carrying out the program established under subsection (a), the Secretary shall work with industry, organized labor, and community-based workforce organizations to help identify students and other candidates, including from underrepresented communities such as minorities, women, and veterans, to enroll into training and apprenticeship programs for energy and manufacturing-related jobs.

## **TITLE III—ENERGY SECURITY AND DIPLOMACY**

### **SEC. 3001. SENSE OF CONGRESS.**

Congress finds the following:

(1) North America's energy revolution has significantly enhanced energy security in the United States, and fundamentally changed the Nation's energy future from that of scarcity to abundance.

(2) North America's energy abundance has increased global energy supplies and reduced the price of energy for consumers in the United States and abroad.



(3) Allies and trading partners of the United States, including in Europe and Asia, are seeking stable and affordable energy supplies from North America to enhance their energy security.

(4) The United States has an opportunity to improve its energy security and promote greater stability and affordability of energy supplies for its allies and trading partners through a more integrated, secure, and competitive North American energy system.

(5) The United States also has an opportunity to promote such objectives by supporting the free flow of energy commodities and more open, transparent, and competitive global energy markets, and through greater Federal agency coordination relating to regulations or agency actions that significantly affect the supply, distribution, or use of energy.

**SEC. 3002. ENERGY SECURITY VALUATION.**

(a) **ESTABLISHMENT OF ENERGY SECURITY VALUATION METHODS.**—Not later than one year after the date of enactment of this Act, the Secretary of Energy, in collaboration with the Secretary of State, shall develop and transmit, after public notice and comment, to the Committee on Energy and Commerce and the Committee on Foreign Affairs of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on Foreign Relations of the Senate a report that develops recommended United States energy security valuation methods. In developing the report, the Secretaries may consider the recommendations of the Administration's Quadrennial Energy Review released on April 21, 2015. The report shall—

(1) evaluate and define United States energy security to reflect modern domestic and global energy markets and the collective needs of the United States and its allies and partners;

(2) identify transparent and uniform or coordinated procedures and criteria to ensure that energy-related actions that significantly affect the supply, distribution, or use of energy are evaluated with respect to their potential impact on energy security, including their impact on—

- (A) consumers and the economy;
- (B) energy supply diversity and resiliency;
- (C) well-functioning and competitive energy markets;
- (D) United States trade balance; and
- (E) national security objectives; and

(3) include a recommended implementation strategy that identifies and aims to ensure that the procedures and criteria referred to in paragraph (2) are—

- (A) evaluated consistently across the Federal Government; and
- (B) weighed appropriately and balanced with environmental considerations required by Federal law.

(b) **PARTICIPATION.**—In developing the report referred to in subsection (a), the Secretaries may consult with relevant Federal, State, private sector, and international participants, as appropriate and consistent with applicable law.

**SEC. 3003. NORTH AMERICAN ENERGY SECURITY PLAN.**

(a) **REQUIREMENT.**—Not later than one year after the date of enactment of this Act, the Secretary of Energy, in collaboration with the Secretary of State, shall develop and transmit to the Committee on Energy and Commerce and the Committee on Foreign Affairs of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on Foreign Relations of the Senate the plan described in subsection (b).

(b) **PURPOSE.**—The plan referred to in subsection (a) shall include—

(1) a recommended framework and implementation strategy to—

(A) improve planning and coordination with Canada and Mexico to enhance energy integration, strengthen North American energy security, and promote efficiencies in the exploration, production, storage, supply, distribution, marketing, pricing, and regulation of North American energy resources; and

(B) address—

(i) North American energy public data, statistics, and mapping collaboration;

(ii) responsible and sustainable best practices for the development of unconventional oil and natural gas; and

(iii) modern, resilient energy infrastructure for North America, including physical infrastructure as well as institutional infrastructure such as policies, regulations, and practices relating to energy development; and

(2) a recommended framework and implementation strategy to improve collaboration with Caribbean and Central American partners on energy security, including actions to support—

- (A) more open, transparent, and competitive energy markets;
- (B) regulatory capacity building;
- (C) improvements to energy transmission and storage; and
- (D) improvements to the performance of energy infrastructure and efficiency.

(c) PARTICIPATION.—In developing the plan referred to in subsection (a), the Secretaries may consult with other Federal, State, private sector, and international participants, as appropriate and consistent with applicable law.

**SEC. 3004. COLLECTIVE ENERGY SECURITY.**

(a) IN GENERAL.—The Secretary of Energy and the Secretary of State shall collaborate to strengthen domestic energy security and the energy security of the allies and trading partners of the United States, including through actions that support or facilitate—

- (1) energy diplomacy;
- (2) the delivery of United States assistance, including energy resources and technologies, to prevent or mitigate an energy security crisis;
- (3) the development of environmentally and commercially sustainable energy resources;
- (4) open, transparent, and competitive energy markets; and
- (5) regulatory capacity building.

(b) ENERGY SECURITY FORUMS.—Not later than one year after the date of enactment of this Act, the Secretary of Energy, in collaboration with the Secretary of State, shall convene not less than 2 forums to promote the collective energy security of the United States and its allies and trading partners. The forums shall include participation by the Secretary of Energy and the Secretary of State. In addition, an invitation shall be extended to—

- (1) appropriate representatives of foreign governments that are allies or trading partners of the United States; and
- (2) independent experts and industry representatives.

(c) REQUIREMENTS.—The forums shall—

- (1) consist of at least one Trans-Atlantic and one Trans-Pacific energy security forum;
- (2) be designed to foster dialogue among government officials, independent experts, and industry representatives regarding—
  - (A) the current state of global energy markets;
  - (B) trade and investment issues relevant to energy; and
  - (C) barriers to more open, competitive, and transparent energy markets;
- and
- (3) be recorded and made publicly available on the Department of Energy's website, including, not later than 30 days after each forum, publication on the website any significant outcomes.

(d) NOTIFICATION.—At least 30 days before each of the forums referred to in subsection (b), the Secretary of Energy shall send a notification regarding the forum to—

- (1) the chair and the ranking minority member of the Committee on Energy and Commerce and the Committee on Foreign Affairs of the House of Representatives; and
- (2) the chair and ranking minority member of the Committee on Energy and Natural Resources and the Committee on Foreign Relations of the Senate.

**SEC. 3005. STRATEGIC PETROLEUM RESERVE MISSION READINESS PLAN.**

Not later than 180 days after the date of enactment of this Act, the Secretary of Energy shall conduct a long-range strategic review of the Strategic Petroleum Reserve and develop and transmit to Congress a plan that includes an analysis and implementation schedule that—

- (1) specifies near-term and long-term roles of the Strategic Petroleum Reserve relative to United States energy security and economic goals and objectives;
- (2) describes existing legal authorities governing the policies, configuration, and capabilities of the Strategic Petroleum Reserve;
- (3) identifies Strategic Petroleum Reserve configuration and performance capabilities and recommends an action plan to achieve the optimal—
  - (A) capacity, location, and composition of petroleum products in the Reserve; and
  - (B) storage and distributional capabilities; and
- (4) estimates the resources required to attain and maintain the Strategic Petroleum Reserve's long-term sustainability and operational effectiveness.

**SEC. 3006. AUTHORIZATION TO EXPORT NATURAL GAS.**

(a) **DECISION DEADLINE.**—For proposals that must also obtain authorization from the Federal Energy Regulatory Commission or the United States Maritime Administration to site, construct, expand, or operate LNG export facilities, the Department of Energy shall issue a final decision on any application for the authorization to export natural gas under section 3 of the Natural Gas Act (15 U.S.C. 717b) not later than 30 days after the later of—

(1) the conclusion of the review to site, construct, expand, or operate the LNG facilities required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

(2) the date of enactment of this Act.

(b) **CONCLUSION OF REVIEW.**—For purposes of subsection (a), review required by the National Environmental Policy Act of 1969 shall be considered concluded—

(1) for a project requiring an Environmental Impact Statement, 30 days after publication of a Final Environmental Impact Statement;

(2) for a project for which an Environmental Assessment has been prepared, 30 days after publication by the Department of Energy of a Finding of No Significant Impact; and

(3) upon a determination by the lead agency that an application is eligible for a categorical exclusion pursuant to National Environmental Policy Act of 1969 implementing regulations.

(c) **PUBLIC DISCLOSURE OF EXPORT DESTINATIONS.**—Section 3 of the Natural Gas Act (15 U.S.C. 717b) is amended by adding at the end the following:

“(g) **PUBLIC DISCLOSURE OF LNG EXPORT DESTINATIONS.**—As a condition for approval of any authorization to export LNG, the Secretary of Energy shall require the applicant to publicly disclose the specific destination or destinations of any such authorized LNG exports.”.

## **TITLE IV—ENERGY EFFICIENCY AND ACCOUNTABILITY**

### **Subtitle A—Energy Efficiency**

#### **CHAPTER 1—FEDERAL AGENCY ENERGY EFFICIENCY**

**SEC. 4111. ENERGY-EFFICIENT AND ENERGY-SAVING INFORMATION TECHNOLOGIES.**

(a) **AMENDMENT.**—Subtitle C of title V of the Energy Independence and Security Act of 2007 (Public Law 110–140; 121 Stat. 1661) is amended by adding at the end the following:

**“SEC. 530. ENERGY-EFFICIENT AND ENERGY-SAVING INFORMATION TECHNOLOGIES.**

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

“(1) **DIRECTOR.**—The term ‘Director’ means the Director of the Office of Management and Budget.

“(2) **INFORMATION TECHNOLOGY.**—The term ‘information technology’ has the meaning given that term in section 11101 of title 40, United States Code.

“(b) **DEVELOPMENT OF IMPLEMENTATION STRATEGY.**—Not later than 1 year after the date of enactment of this section, each Federal agency shall coordinate with the Director, the Secretary, and the Administrator of the Environmental Protection Agency to develop an implementation strategy (that includes best practices and measurement and verification techniques) for the maintenance, purchase, and use by the Federal agency of energy-efficient and energy-saving information technologies, taking into consideration the performance goals established under subsection (d).

“(c) **ADMINISTRATION.**—In developing an implementation strategy under subsection (b), each Federal agency shall consider—

“(1) advanced metering infrastructure;

“(2) energy-efficient data center strategies and methods of increasing asset and infrastructure utilization;

“(3) advanced power management tools;

“(4) building information modeling, including building energy management;

“(5) secure telework and travel substitution tools; and

“(6) mechanisms to ensure that the agency realizes the energy cost savings brought about through increased efficiency and utilization.

“(d) **PERFORMANCE GOALS.**—

“(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of this section, the Director, in consultation with the Secretary, shall establish per-

formance goals for evaluating the efforts of Federal agencies in improving the maintenance, purchase, and use of energy-efficient and energy-saving information technology.

“(2) BEST PRACTICES.—The Chief Information Officers Council established under section 3603 of title 44, United States Code, shall recommend best practices for the attainment of the performance goals, which shall include Federal agency consideration of, to the extent applicable by law, the use of—

“(A) energy savings performance contracting; and

“(B) utility energy services contracting.

“(e) REPORTS.—

“(1) AGENCY REPORTS.—Each Federal agency shall include in the report of the agency under section 527 a description of the efforts and results of the agency under this section.

“(2) OMB GOVERNMENT EFFICIENCY REPORTS AND SCORECARDS.—Effective beginning not later than October 1, 2017, the Director shall include in the annual report and scorecard of the Director required under section 528 a description of the efforts and results of Federal agencies under this section.”

(b) CONFORMING AMENDMENT.—The table of contents for the Energy Independence and Security Act of 2007 is amended by adding after the item relating to section 529 the following:

“Sec. 530. Energy-efficient and energy-saving information technologies.”.

#### SEC. 4112. ENERGY EFFICIENT DATA CENTERS.

Section 453 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17112) is amended—

(1) in subsection (b)(2)(D)(iv), by striking “determined by the organization” and inserting “proposed by the stakeholders”;

(2) by striking subsection (b)(3); and

(3) by striking subsections (c) through (g) and inserting the following:

“(c) STAKEHOLDER INVOLVEMENT.—The Secretary and the Administrator shall carry out subsection (b) in collaboration with the information technology industry and other key stakeholders, with the goal of producing results that accurately reflect the most relevant and useful information available. In such collaboration, the Secretary and the Administrator shall pay particular attention to organizations that—

“(1) have members with expertise in energy efficiency and in the development, operation, and functionality of data centers, information technology equipment, and software, such as representatives of hardware manufacturers, data center operators, and facility managers;

“(2) obtain and address input from Department of Energy National Laboratories or any college, university, research institution, industry association, company, or public interest group with applicable expertise;

“(3) follow—

“(A) commonly accepted procedures for the development of specifications; and

“(B) accredited standards development processes; and

“(4) have a mission to promote energy efficiency for data centers and information technology.

“(d) MEASUREMENTS AND SPECIFICATIONS.—The Secretary and the Administrator shall consider and assess the adequacy of the specifications, measurements, best practices, and benchmarks described in subsection (b) for use by the Federal Energy Management Program, the Energy Star Program, and other efficiency programs of the Department of Energy or the Environmental Protection Agency.

“(e) STUDY.—The Secretary, in collaboration with the Administrator, shall, not later than 18 months after the date of enactment of the North American Energy Security and Infrastructure Act of 2015, make available to the public an update to the Report to Congress on Server and Data Center Energy Efficiency published on August 2, 2007, under section 1 of Public Law 109–431 (120 Stat. 2920), that provides—

“(1) a comparison and gap analysis of the estimates and projections contained in the original report with new data regarding the period from 2008 through 2015;

“(2) an analysis considering the impact of information technologies, including virtualization and cloud computing, in the public and private sectors;

“(3) an evaluation of the impact of the combination of cloud platforms, mobile devices, social media, and big data on data center energy usage;

“(4) an evaluation of water usage in data centers and recommendations for reductions in such water usage; and

“(5) updated projections and recommendations for best practices through fiscal year 2020.

“(f) DATA CENTER ENERGY PRACTITIONER PROGRAM.—The Secretary, in collaboration with key stakeholders and the Director of the Office of Management and Budget, shall maintain a data center energy practitioner program that leads to the certification of energy practitioners qualified to evaluate the energy usage and efficiency opportunities in Federal data centers. Each Federal agency shall consider having the data centers of the agency evaluated every 4 years, in accordance with section 543(f) of the National Energy Conservation Policy Act (42 U.S.C. 8253), by energy practitioners certified pursuant to such program.

“(g) OPEN DATA INITIATIVE.—The Secretary, in collaboration with key stakeholders and the Director of the Office of Management and Budget, shall establish an open data initiative for Federal data center energy usage data, with the purpose of making such data available and accessible in a manner that encourages further data center innovation, optimization, and consolidation. In establishing the initiative, the Secretary shall consider the use of the online Data Center Maturity Model.

“(h) INTERNATIONAL SPECIFICATIONS AND METRICS.—The Secretary, in collaboration with key stakeholders, shall actively participate in efforts to harmonize global specifications and metrics for data center energy and water efficiency.

“(i) DATA CENTER UTILIZATION METRIC.—The Secretary, in collaboration with key stakeholders, shall facilitate the development of an efficiency metric that measures the energy efficiency of a data center (including equipment and facilities).

“(j) PROTECTION OF PROPRIETARY INFORMATION.—The Secretary and the Administrator shall not disclose any proprietary information or trade secrets provided by any individual or company for the purposes of carrying out this section or the programs and initiatives established under this section.”

**SEC. 4113. REPORT ON ENERGY AND WATER SAVINGS POTENTIAL FROM THERMAL INSULATION.**

(a) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Energy, in consultation with appropriate Federal agencies and relevant stakeholders, shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the impact of thermal insulation on both energy and water use systems for potable hot and chilled water in Federal buildings, and the return on investment of installing such insulation.

(b) CONTENTS.—The report shall include—

- (1) an analysis based on the cost of municipal or regional water for delivered water and the avoided cost of new water; and
- (2) a summary of energy and water savings, including short-term and long-term (20 years) projections of such savings.

**SEC. 4114. FEDERAL PURCHASE REQUIREMENT.**

(a) DEFINITIONS.—Section 203(b) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b)) is amended by striking paragraph (2) and inserting the following:

“(2) RENEWABLE ENERGY.—The term ‘renewable energy’ means electric energy, or thermal energy if resulting from a thermal energy project placed in service after December 31, 2014, generated from, or avoided by, solar, wind, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), geothermal, municipal solid waste (in accordance with subsection (e)), qualified waste heat resource, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project.

“(3) QUALIFIED WASTE HEAT RESOURCE.—The term ‘qualified waste heat resource’ means—

- “(A) exhaust heat or flared gas from any industrial process;
- “(B) waste gas or industrial tail gas that would otherwise be flared, incinerated, or vented;
- “(C) a pressure drop in any gas for an industrial or commercial process;
- or
- “(D) such other forms of waste heat as the Secretary determines appropriate.”

(b) PAPER RECYCLING.—Section 203 of the Energy Policy Act of 2005 (42 U.S.C. 15852) is amended by adding at the end the following:

“(e) PAPER RECYCLING.—

“(1) SEPARATE COLLECTION.—For purposes of this section, any Federal agency may consider electric energy generation purchased from a facility to be renewable energy if the municipal solid waste used by the facility to generate the electricity is—

- “(A) separately collected (within the meaning of section 246.101(z) of title 40, Code of Federal Regulations, as in effect on the date of enactment of

the North American Energy Security and Infrastructure Act of 2015) from paper that is commonly recycled; and

“(B) processed in a way that keeps paper that is commonly recycled segregated from non-recyclable solid waste.

“(2) INCIDENTAL INCLUSION.—Municipal solid waste used to generate electric energy that meets the conditions described in paragraph (1) shall be considered renewable energy even if the municipal solid waste contains incidental commonly recycled paper.

“(3) NO EFFECT ON EXISTING PROCESSES.—Nothing in paragraph (1) shall be interpreted to require a State or political subdivision of a State, directly or indirectly, to change the systems, processes, or equipment it uses to collect, treat, dispose of, or otherwise use municipal solid waste, within the meaning of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), nor require a change to the regulations that implement subtitle D of such Act (42 U.S.C. 6941 et seq.).”.

**SEC. 4115. ENERGY PERFORMANCE REQUIREMENT FOR FEDERAL BUILDINGS.**

Section 543 of the National Energy Conservation Policy Act (42 U.S.C. 8253) is amended—

(1) by striking subsection (a) and inserting the following:

“(a) ENERGY PERFORMANCE REQUIREMENT FOR FEDERAL BUILDINGS.—

“(1) REQUIREMENT.—Subject to paragraph (2), each agency shall apply energy conservation measures to, and shall improve the design for the construction of, the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in fiscal years 2006 through 2017 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in fiscal year 2003, by the percentage specified in the following table:

<b>“Fiscal Year</b>	<b>Percentage Reduction</b>
2006 .....	2
2007 .....	4
2008 .....	9
2009 .....	12
2010 .....	15
2011 .....	18
2012 .....	21
2013 .....	24
2014 .....	27
2015 .....	30
2016 .....	33
2017 .....	36.

“(2) EXCLUSION FOR BUILDINGS WITH ENERGY INTENSIVE ACTIVITIES.—

“(A) IN GENERAL.—An agency may exclude from the requirements of paragraph (1) any building (including the associated energy consumption and gross square footage) in which energy intensive activities are carried out.

“(B) REPORTS.—Each agency shall identify and list in each report made under section 548(a) the buildings designated by the agency for exclusion under subparagraph (A).

“(3) REVIEW.—Not later than December 31, 2017, the Secretary shall—

“(A) review the results of the implementation of the energy performance requirements established under paragraph (1); and

“(B) based on the review conducted under subparagraph (A), submit to Congress a report that addresses the feasibility of requiring each agency to apply energy conservation measures to, and improve the design for the construction of, the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in each of fiscal years 2018 through 2030 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in the prior fiscal year, by 3 percent.”; and

(2) in subsection (f)—

(A) in paragraph (1)—

(i) by redesignating subparagraphs (E), (F), and (G) as subparagraphs (F), (G), and (H), respectively; and

(ii) by inserting after subparagraph (D) the following:

“(E) ONGOING COMMISSIONING.—The term ‘ongoing commissioning’ means an ongoing process of commissioning using monitored data, the primary goal of which is to ensure continuous optimum performance of a facility, in accordance with design or operating needs, over the useful life of the facility, while meeting facility occupancy requirements.”;

(B) in paragraph (2), by adding at the end the following:

“(C) ENERGY MANAGEMENT SYSTEM.—An energy manager designated under subparagraph (A) shall consider use of a system to manage energy use at the facility and certification of the facility in accordance with the International Organization for Standardization standard numbered 50001 and entitled ‘Energy Management Systems’.”;

(C) by striking paragraphs (3) and (4) and inserting the following:

“(3) ENERGY AND WATER EVALUATIONS AND COMMISSIONING.—

“(A) EVALUATIONS.—Except as provided in subparagraph (B), effective beginning on the date that is 180 days after the date of enactment of the North American Energy Security and Infrastructure Act of 2015, and annually thereafter, each energy manager shall complete, for each calendar year, a comprehensive energy and water evaluation and recommissioning or retrocommissioning for approximately 25 percent of the facilities of that energy manager’s agency that meet the criteria under paragraph (2)(B) in a manner that ensures that an evaluation of each facility is completed at least once every 4 years.

“(B) EXCEPTIONS.—An evaluation and recommissioning or retrocommissioning shall not be required under subparagraph (A) with respect to a facility that—

“(i) has had a comprehensive energy and water evaluation during the 8-year period preceding the date of the evaluation;

“(ii)(I) has been commissioned, recommissioned, or retrocommissioned during the 10-year period preceding the date of the evaluation; or

“(II) is under ongoing commissioning, recommissioning, or retrocommissioning;

“(iii) has not had a major change in function or use since the previous evaluation and commissioning, recommissioning, or retrocommissioning;

“(iv) has been benchmarked with public disclosure under paragraph (8) within the year preceding the evaluation; and

“(v)(I) based on the benchmarking, has achieved at a facility level the most recent cumulative energy savings target under subsection (a) compared to the earlier of—

“(aa) the date of the most recent evaluation; or

“(bb) the date—

“(AA) of the most recent commissioning, recommissioning, or retrocommissioning; or

“(BB) on which ongoing commissioning, recommissioning, or retrocommissioning began; or

“(II) has a long-term contract in place guaranteeing energy savings at least as great as the energy savings target under subclause (I).

“(4) IMPLEMENTATION OF IDENTIFIED ENERGY AND WATER EFFICIENCY MEASURES.—

“(A) IN GENERAL.—Not later than 2 years after the date of completion of each evaluation under paragraph (3), each energy manager may—

“(i) implement any energy- or water-saving measure that the Federal agency identified in the evaluation conducted under paragraph (3) that is life-cycle cost effective; and

“(ii) bundle individual measures of varying paybacks together into combined projects.

“(B) MEASURES NOT IMPLEMENTED.—Each energy manager, as part of the certification system under paragraph (7) and using guidelines developed by the Secretary, shall provide an explanation regarding any life-cycle cost-effective measures described in subparagraph (A)(i) that have not been implemented.”; and

(D) in paragraph (7)(C), by adding at the end the following:

“(iii) SUMMARY REPORT.—The Secretary shall make publicly available a report that summarizes the information tracked under subparagraph (B)(i) by each agency and, as applicable, by each type of measure.”.

**SEC. 4116. FEDERAL BUILDING ENERGY EFFICIENCY PERFORMANCE STANDARDS; CERTIFICATION SYSTEM AND LEVEL FOR FEDERAL BUILDINGS.**

(a) DEFINITIONS.—Section 303 of the Energy Conservation and Production Act (42 U.S.C. 6832) is amended—

(1) in paragraph (6), by striking “to be constructed” and inserting “constructed or altered”; and

(2) by adding at the end the following:

“(17) MAJOR RENOVATION.—The term ‘major renovation’ means a modification of building energy systems sufficiently extensive that the whole building can

meet energy standards for new buildings, based on criteria to be established by the Secretary through notice and comment rulemaking.”

(b) FEDERAL BUILDING EFFICIENCY STANDARDS.—Section 305 of the Energy Conservation and Production Act (42 U.S.C. 6834) is amended—

(1) in subsection (a)(3)—

(A) by striking “(3)(A) Not later than” and all that follows through the end of subparagraph (B) and inserting the following:

“(3) REVISED FEDERAL BUILDING ENERGY EFFICIENCY PERFORMANCE STANDARDS; CERTIFICATION FOR GREEN BUILDINGS.—

“(A) REVISED FEDERAL BUILDING ENERGY EFFICIENCY PERFORMANCE STANDARDS.—

“(i) IN GENERAL.—Not later than 1 year after the date of enactment of the North American Energy Security and Infrastructure Act of 2015, the Secretary shall establish, by rule, revised Federal building energy efficiency performance standards that require that—

“(I) new Federal buildings and alterations and additions to existing Federal buildings—

“(aa) meet or exceed the most recent revision of the IECC (in the case of residential buildings) or ASHRAE Standard 90.1 (in the case of commercial buildings) as of the date of enactment of the North American Energy Security and Infrastructure Act of 2015; and

“(bb) meet or exceed the energy provisions of State and local building codes applicable to the building, if the codes are more stringent than the IECC or ASHRAE Standard 90.1, as applicable;

“(II) unless demonstrated not to be life-cycle cost effective for new Federal buildings and Federal buildings with major renovations—

“(aa) the buildings be designed to achieve energy consumption levels that are at least 30 percent below the levels established in the version of the ASHRAE Standard or the IECC, as appropriate, that is applied under subclause (I)(aa), including updates under subparagraph (B); and

“(bb) sustainable design principles are applied to the location, siting, design, and construction of all new Federal buildings and replacement Federal buildings;

“(III) if water is used to achieve energy efficiency, water conservation technologies shall be applied to the extent that the technologies are life-cycle cost effective; and

“(IV) if life-cycle cost effective, as compared to other reasonably available technologies, not less than 30 percent of the hot water demand for each new Federal building or Federal building undergoing a major renovation be met through the installation and use of solar hot water heaters.

“(ii) LIMITATION.—Clause (i)(I) shall not apply to unaltered portions of existing Federal buildings and systems that have been added to or altered.

“(B) UPDATES.—Not later than 1 year after the date of approval of each subsequent revision of ASHRAE Standard 90.1 or the IECC, as appropriate, the Secretary shall determine whether the revised standards established under subparagraph (A) should be updated to reflect the revisions, based on the energy savings and life-cycle cost effectiveness of the revisions.”;

(B) in subparagraph (C), by striking “(C) In the budget request” and inserting the following:

“(C) BUDGET REQUEST.—In the budget request”; and

(C) in subparagraph (D)—

(i) by striking “(D) Not later than” and all that follows through the end of the first sentence of clause (i)(III) and inserting the following:

“(D) CERTIFICATION FOR GREEN BUILDINGS.—

“(i) IN GENERAL.—”;

(ii) by striking clause (ii);

(iii) in clause (iii), by striking “(iii) In identifying” and inserting the following:

“(ii) CONSIDERATIONS.—In identifying”;

(iv) in clause (iv)—

(I) by striking “(iv) At least once” and inserting the following:

“(iii) STUDY.—At least once”; and

(II) by striking “clause (iii)” and inserting “clause (ii)”;



(v) in clause (v)—

(I) by striking “(v) The Secretary may” and inserting the following:

“(iv) INTERNAL CERTIFICATION PROCESSES.—The Secretary may”; and

(II) by striking “clause (i)(III)” each place it appears and inserting “clause (i)”;

(vi) in clause (vi)—

(I) by striking “(vi) With respect” and inserting the following:

“(v) PRIVATIZED MILITARY HOUSING.—With respect”; and

(II) by striking “develop alternative criteria to those established by subclauses (I) and (III) of clause (i) that achieve an equivalent result in terms of energy savings, sustainable design, and” and inserting “develop alternative certification systems and levels than the systems and levels identified under clause (i) that achieve an equivalent result in terms of”; and

(vii) in clause (vii), by striking “(vii) In addition to” and inserting the following:

“(vi) WATER CONSERVATION TECHNOLOGIES.—In addition to”; and

(2) by striking subsections (c) and (d) and inserting the following:

“(c) PERIODIC REVIEW.—The Secretary shall—

“(1) every 5 years, review the Federal building energy standards established under this section; and

“(2) on completion of a review under paragraph (1), if the Secretary determines that significant energy savings would result, upgrade the standards to include all new energy efficiency and renewable energy measures that are technologically feasible and economically justified.”.

**SEC. 4117. OPERATION OF BATTERY RECHARGING STATIONS IN PARKING AREAS USED BY FEDERAL EMPLOYEES.**

(a) AUTHORIZATION.—

(1) IN GENERAL.—The head of any office of the Federal Government which owns or operates a parking area for the use of its employees (either directly or indirectly through a contractor) may install, construct, operate, and maintain on a reimbursable basis a battery recharging station in such area for the use of privately owned vehicles of employees of the office and others who are authorized to park in such area.

(2) USE OF VENDORS.—The head of an office may carry out paragraph (1) through a contract with a vendor, under such terms and conditions (including terms relating to the allocation between the office and the vendor of the costs of carrying out the contract) as the head of the office and the vendor may agree to.

(b) IMPOSITION OF FEES TO COVER COSTS.—

(1) FEES.—The head of an office of the Federal Government which operates and maintains a battery recharging station under this section shall charge fees to the individuals who use the station in such amount as is necessary to ensure that office recovers all of the costs it incurs in installing, constructing, operating, and maintaining the station.

(2) DEPOSIT AND AVAILABILITY OF FEES.—Any fees collected by the head of an office under this subsection shall be—

(A) deposited monthly in the Treasury to the credit of the appropriations account for salaries and expenses of the office; and

(B) available for obligation without further appropriation during—

(i) the fiscal year collected; and

(ii) the fiscal year following the fiscal year collected.

(c) NO EFFECT ON EXISTING PROGRAMS FOR HOUSE AND SENATE.—Nothing in this section may be construed to affect the installation, construction, operation, or maintenance of battery recharging stations by the Architect of the Capitol—

(1) under Public Law 112–170 (2 U.S.C. 2171), relating to employees of the House of Representatives and individuals authorized to park in any parking area under the jurisdiction of the House of Representatives on the Capitol Grounds; or

(2) under Public Law 112–167 (2 U.S.C. 2170), relating to employees of the Senate and individuals authorized to park in any parking area under the jurisdiction of the Senate on the Capitol Grounds.

(d) EFFECTIVE DATE.—This section shall apply with respect to fiscal year 2016 and each succeeding fiscal year.

## CHAPTER 2—ENERGY EFFICIENT TECHNOLOGY AND MANUFACTURING

### SEC. 4121. INCLUSION OF SMART GRID CAPABILITY ON ENERGY GUIDE LABELS.

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

“(J) SMART GRID CAPABILITY ON ENERGY GUIDE LABELS.—

“(i) RULE.—Not later than 1 year after the date of enactment of this subparagraph, the Commission shall initiate a rulemaking to consider making a special note in a prominent manner on any Energy Guide label for any product that includes Smart Grid capability that—

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

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

“(III) on a utility system with Smart Grid capability, the use of the product’s Smart Grid capability could reduce the customer’s cost of the product’s annual operation as a result of the incremental energy and electricity cost savings that would result from the customer taking full advantage of such Smart Grid capability.

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

### SEC. 4122. VOLUNTARY VERIFICATION PROGRAMS FOR AIR CONDITIONING, FURNACE, BOILER, HEAT PUMP, AND WATER HEATER PRODUCTS.

Section 326(b) of the Energy Policy and Conservation Act (42 U.S.C. 6296(b)) is amended by adding at the end the following:

“(6) VOLUNTARY VERIFICATION PROGRAMS FOR AIR CONDITIONING, FURNACE, BOILER, HEAT PUMP, AND WATER HEATER PRODUCTS.—

“(A) RELIANCE ON VOLUNTARY PROGRAMS.—For the purpose of verifying compliance with energy conservation standards established under sections 325 and 342 for covered products described in paragraphs (3), (4), (5), (9), and (11) of section 322(a) and covered equipment described in subparagraphs (B), (C), (D), (F), (I), (J), and (K) of section 340(1), the Secretary shall rely on testing conducted by recognized voluntary verification programs that are recognized by the Secretary in accordance with subparagraph (B).

“(B) RECOGNITION OF VOLUNTARY VERIFICATION PROGRAMS.—

“(i) IN GENERAL.—Not later than 180 days after the date of enactment of this paragraph, the Secretary shall initiate a negotiated rulemaking in accordance with subchapter III of chapter 5 of title 5, United States Code (commonly known as the ‘Negotiated Rulemaking Act of 1990’) to develop criteria that have consensus support for achieving recognition by the Secretary as an approved voluntary verification program. Any subsequent amendment to such criteria may be made only pursuant to a subsequent negotiated rulemaking in accordance with subchapter III of chapter 5 of title 5, United States Code.

“(ii) MINIMUM REQUIREMENTS.—The criteria developed under clause (i) shall, at a minimum, ensure that a voluntary verification program—

“(I) is nationally recognized;

“(II) is operated by a third party and not directly operated by a program participant;

“(III) satisfies any applicable elements of—

“(aa) International Organization for Standardization standard numbered 17025; and

“(bb) any other relevant International Organization for Standardization standards identified and agreed to through the negotiated rulemaking under clause (i);

“(IV) at least annually tests independently obtained products following the test procedures established under this title to verify the certified rating of a representative sample of products and equipment within the scope of the program;

“(V) maintains a publicly available list of all ratings of products subject to verification;

“(VI) requires the changing of the performance rating or removal of the product or equipment from the program if testing determines that the performance rating does not meet the levels the manufacturer has certified to the Secretary;

“(VII) requires new program participants to substantiate ratings through test data generated in accordance with Department of Energy regulations;

“(VIII) allows for challenge testing of products and equipment within the scope of the program;

“(IX) requires program participants to disclose the performance rating of all covered products and equipment within the scope of the program for the covered product or equipment;

“(X) provides to the Secretary—

“(aa) an annual report of all test results, the contents of which shall be determined through the negotiated rulemaking process under clause (i); and

“(bb) test reports, on the request of the Secretary, that note any instructions specified by the manufacturer or the representative of the manufacturer for the purpose of conducting the verification testing, to be exempted from disclosure under section 552(b)(4) of title 5, United States Code; and

“(XI) satisfies any additional requirements or standards that the Secretary shall establish consistent with this subparagraph.

“(iii) CESSATION OF RECOGNITION.—The Secretary may only cease recognition of a voluntary verification program as an approved program described in subparagraph (A) upon a finding that the program is not meeting its obligations for compliance through program review criteria developed during the negotiated rulemaking conducted under subparagraph (B).

“(C) ADMINISTRATION.—

“(i) IN GENERAL.—The Secretary shall not require—

“(I) manufacturers to participate in a recognized voluntary verification program described in subparagraph (A); or

“(II) participating manufacturers to provide information that has already been provided to the Secretary.

“(ii) LIST OF COVERED PRODUCTS.—The Secretary may maintain a publicly available list of covered products and equipment that distinguishes between products that are and are not covered products and equipment verified through a recognized voluntary verification program described in subparagraph (A).

“(iii) PERIODIC VERIFICATION TESTING.—The Secretary—

“(I) shall not subject products or equipment that have been verification tested under a recognized voluntary verification program described in subparagraph (A) to periodic verification testing to verify the accuracy of the certified performance rating of the products or equipment; but

“(II) may require testing of products or equipment described in subclause (I)—

“(aa) if the testing is necessary—

“(AA) to assess the overall performance of a voluntary verification program;

“(BB) to address specific performance issues;

“(CC) for use in updating test procedures and standards;

or

“(DD) for other purposes consistent with this title; or

“(bb) if such testing is agreed to during the negotiated rulemaking conducted under subparagraph (B).

“(D) EFFECT ON OTHER AUTHORITY.—Nothing in this paragraph limits the authority of the Secretary to enforce compliance with any law.”.

#### **SEC. 4123. FACILITATING CONSENSUS FURNACE STANDARDS.**

(a) CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE.—

(1) FINDINGS.—Congress finds that—

(A) acting pursuant to the requirements of section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295), the Secretary of Energy is considering amending the energy conservation standards applicable to residential nonweatherized gas furnaces and mobile home gas furnaces;

(B) numerous stakeholders, representing manufacturers, distributors, and installers of residential nonweatherized gas furnaces and mobile home furnaces, natural gas utilities, home builders, multifamily property owners, and energy efficiency, environmental, and consumer advocates have begun negotiations in an attempt to agree on a consensus recommendation to the

Secretary on levels for such standards that will meet the statutory criteria; and

(C) the stakeholders believe these negotiations are likely to result in a consensus recommendation, but several of the stakeholders do not support suspending the current rulemaking.

(2) PURPOSE.—It is the purpose of this section to provide the stakeholders described in paragraph (1) with an opportunity to continue negotiations for a limited time period to facilitate the proposal for adoption of standards that enjoy consensus support, while not delaying the current rulemaking except to the extent necessary to provide such opportunity.

(b) OPPORTUNITY FOR A NEGOTIATED FURNACE STANDARD.—Section 325(f)(4) of the Energy Policy and Conservation Act (42 U.S.C. 6295(f)(4)) is amended by adding after subparagraph (D) the following:

“(E)(i) Unless the Secretary has published such a notice prior to the date of enactment of this Act, the Secretary shall publish, not later than October 31, 2015, a supplemental notice of proposed rulemaking or a notice of data availability updating the proposed rule entitled ‘Energy Conservation Program for Consumer Products: Energy Conservation Standards for Residential Furnaces’ and published in the Federal Register on March 12, 2015 (80 Fed. Reg. 13119), to provide notice and an opportunity for comment on—

“(I) dividing nonweatherized gas furnaces into two or more product classes with separate energy conservation standards based on capacity; and

“(II) any other matters the Secretary determines appropriate.

“(ii) On receipt of a statement that is submitted on or before January 1, 2016, jointly by interested persons that are fairly representative of relevant points of view, that contains recommended standards for nonweatherized gas furnaces and mobile home gas furnaces that are consistent with the requirements of this part (except that the date on which such standards will apply may be earlier or later than the date required under this part), the Secretary shall evaluate the standards proposed in the joint statement for consistency with the requirements of subsection (o), and shall publish notice of the potential adoption of the standards proposed in the joint statement, modified as necessary to ensure consistency with subsection (o). The Secretary shall solicit public comment for a period of at least 30 days with respect to such notice.

“(iii) Not later than July 31, 2016, but not before July 1, 2016, the Secretary shall publish a final rule containing a determination of whether the standards for nonweatherized gas furnaces and mobile home gas furnaces should be amended. Such rule shall contain any such amendments to the standards.”.

#### SEC. 4124. FUTURE OF INDUSTRY PROGRAM.

(a) IN GENERAL.—Section 452 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17111) is amended by striking the section heading and inserting the following: “**FUTURE OF INDUSTRY PROGRAM**”.

(b) DEFINITION OF ENERGY SERVICE PROVIDER.—Section 452(a) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17111(a)) is amended—

(1) by redesignating paragraphs (3) through (5) as paragraphs (4) through (6), respectively; and

(2) by inserting after paragraph (2):

“(3) ENERGY SERVICE PROVIDER.—The term ‘energy service provider’ means any business providing technology or services to improve the energy efficiency, water efficiency, power factor, or load management of a manufacturing site or other industrial process in an energy-intensive industry, or any utility operating under a utility energy service project.”.

(c) INDUSTRIAL RESEARCH AND ASSESSMENT CENTERS.—Section 452(e) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17111(e)) is amended—

(1) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively, and indenting appropriately;

(2) by striking “The Secretary” and inserting the following:

“(1) IN GENERAL.—The Secretary”;

(3) in subparagraph (A) (as redesignated by paragraph (1)), by inserting before the semicolon at the end the following: “, including assessments of sustainable manufacturing goals and the implementation of information technology advancements for supply chain analysis, logistics, system monitoring, industrial and manufacturing processes, and other purposes”; and

(4) by adding at the end the following:

“(2) COORDINATION.—To increase the value and capabilities of the industrial research and assessment centers, the centers shall—

“(A) coordinate with Manufacturing Extension Partnership Centers of the National Institute of Standards and Technology;

“(B) coordinate with the Building Technologies Office of the Department of Energy to provide building assessment services to manufacturers;

“(C) increase partnerships with the National Laboratories of the Department of Energy to leverage the expertise and technologies of the National Laboratories for national industrial and manufacturing needs; and

“(D) increase partnerships with energy service providers and technology providers to leverage private sector expertise and accelerate deployment of new and existing technologies and processes for energy efficiency, power factor, and load management.

“(3) OUTREACH.—The Secretary shall provide funding for—

“(A) outreach activities by the industrial research and assessment centers to inform small- and medium-sized manufacturers of the information, technologies, and services available; and

“(B) coordination activities by each industrial research and assessment center to leverage efforts with—

“(i) Federal and State efforts;

“(ii) the efforts of utilities and energy service providers;

“(iii) the efforts of regional energy efficiency organizations; and

“(iv) the efforts of other industrial research and assessment centers.

“(4) SMALL BUSINESS LOANS.—The Administrator of the Small Business Administration shall, to the maximum extent practicable, expedite consideration of applications from eligible small business concerns for loans under the Small Business Act (15 U.S.C. 631 et seq.) to implement recommendations of industrial research and assessment centers established under paragraph (1).”.

(d) CONFORMING AMENDMENT.—The item relating to section 452 in the table of contents for the Energy Independence and Security Act of 2007 is amended to read as follows:

“Sec. 452. Future of Industry program.”.

#### **SEC. 4125. NO WARRANTY FOR CERTAIN CERTIFIED ENERGY STAR PRODUCTS.**

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

“(e) NO WARRANTY.—

“(1) IN GENERAL.—Any disclosure relating to participation of a product in the Energy Star program shall not create an express or implied warranty or give rise to any private claims or rights of action under State or Federal law relating to the disqualification of that product from Energy Star if—

“(A) the product has been certified by a certification body recognized by the Energy Star program;

“(B) the Administrator has approved corrective measures, including a determination of whether or not consumer compensation is appropriate; and

“(C) the responsible party has fully complied with all approved corrective measures.

“(2) CONSTRUCTION.—Nothing in this subsection shall be construed to require the Administrator to modify any procedure or take any other action.”.

#### **SEC. 4126. CLARIFICATION TO EFFECTIVE DATE FOR REGIONAL STANDARDS.**

Section 325(o)(6)(E)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6295(o)(6)(E)(ii)) is amended by striking “installed” and inserting “manufactured or imported into the United States”.

#### **SEC. 4127. INTERNET OF THINGS REPORT.**

The Secretary of Energy shall, not later than 18 months after the date of enactment of this Act, report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on the efforts made to take advantage of, and promote, the utilization of advanced technologies such as Internet of Things end-to-end platform solutions to provide real-time actionable analytics and enable predictive maintenance and asset management to improve energy efficiency wherever feasible. In doing so, the Secretary shall look to encourage and utilize Internet of Things energy management solutions that have security tightly integrated into the hardware and software from the outset. The Secretary shall also encourage the use of Internet of Things solutions that enable seamless connectivity and that are interoperable, open standards-based, and built on a repeatable foundation for ease of scalability.

### **CHAPTER 3—ENERGY PERFORMANCE CONTRACTING**

#### **SEC. 4131. USE OF ENERGY AND WATER EFFICIENCY MEASURES IN FEDERAL BUILDINGS.**

(a) REPORTS.—Section 548(b) of the National Energy Conservation Policy Act (42 U.S.C. 8258(b)) is amended—

- (1) in paragraph (3), by striking “and” at the end;
- (2) in paragraph (4), by striking the period at the end and inserting “; and”; and
- (3) by adding at the end the following new paragraph:
  - “(5) the status of each agency’s energy savings performance contracts and utility energy service contracts, the investment value of such contracts, the guaranteed energy savings for the previous year as compared to the actual energy savings for the previous year, the plan for entering into such contracts in the coming year, and information explaining why any previously submitted plans for such contracts were not implemented.”.
- (b) **FEDERAL ENERGY MANAGEMENT DEFINITIONS.**—Section 551(4) of the National Energy Conservation Policy Act (42 U.S.C. 8259(4)) is amended by striking “or retrofit activities” and inserting “retrofit activities, or energy consuming devices and required support structures”.
- (c) **AUTHORITY TO ENTER INTO CONTRACTS.**—Section 801(a)(2)(F) of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)(2)(F)) is amended—
  - (1) in clause (i), by striking “or” at the end;
  - (2) in clause (ii), by striking the period at the end and inserting “; or”; and
  - (3) by adding at the end the following new clause:
    - “(iii) limit the recognition of operation and maintenance savings associated with systems modernized or replaced with the implementation of energy conservation measures, water conservation measures, or any series of energy conservation measures and water conservation measures.”.
- (d) **MISCELLANEOUS AUTHORITY.**—Section 801(a)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)) is amended by adding at the end the following:
  - “(H) **MISCELLANEOUS AUTHORITY.**—Notwithstanding any other provision of law, a Federal agency may sell or transfer energy savings and apply the proceeds of such sale or transfer to fund a contract under this title.”.
- (e) **PAYMENT OF COSTS.**—Section 802 of the National Energy Conservation Policy Act (42 U.S.C. 8287a) is amended by striking “(and related operation and maintenance expenses)” and inserting “, including related operations and maintenance expenses”.
- (f) **ENERGY SAVINGS PERFORMANCE CONTRACTS DEFINITIONS.**—Section 804(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(2)) is amended—
  - (1) in subparagraph (A), by striking “federally owned building or buildings or other federally owned facilities” and inserting “Federal building (as defined in section 551 (42 U.S.C. 8259))” each place it appears;
  - (2) in subparagraph (C), by striking “; and” and inserting a semicolon;
  - (3) in subparagraph (D), by striking the period at the end and inserting a semicolon; and
  - (4) by adding at the end the following new subparagraphs:
    - “(E) the use, sale, or transfer of energy incentives, rebates, or credits (including renewable energy credits) from Federal, State, or local governments or utilities; and
    - “(F) any revenue generated from a reduction in energy or water use, more efficient waste recycling, or additional energy generated from more efficient equipment.”.

## CHAPTER 4—SCHOOL BUILDINGS

### SEC. 4141. COORDINATION OF ENERGY RETROFITTING ASSISTANCE FOR SCHOOLS.

Section 392 of the Energy Policy and Conservation Act (42 U.S.C. 6371a) is amended by adding at the end the following:

- “(e) **COORDINATION OF ENERGY RETROFITTING ASSISTANCE FOR SCHOOLS.**—
  - “(1) **DEFINITION OF SCHOOL.**—Notwithstanding section 391(6), for the purposes of this subsection, the term ‘school’ means—
    - “(A) an elementary school or secondary school (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801));
    - “(B) an institution of higher education (as defined in section 102(a) of the Higher Education Act of 1965 (20 U.S.C. 1002(a)));
    - “(C) a school of the defense dependents’ education system under the Defense Dependents’ Education Act of 1978 (20 U.S.C. 921 et seq.) or established under section 2164 of title 10, United States Code;
    - “(D) a school operated by the Bureau of Indian Affairs;
    - “(E) a tribally controlled school (as defined in section 5212 of the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2511)); and

“(F) a Tribal College or University (as defined in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b))).

“(2) ESTABLISHMENT OF CLEARINGHOUSE.—The Secretary, acting through the Office of Energy Efficiency and Renewable Energy, shall establish a clearinghouse to disseminate information regarding available Federal programs and financing mechanisms that may be used to help initiate, develop, and finance energy efficiency, distributed generation, and energy retrofitting projects for schools.

“(3) REQUIREMENTS.—In carrying out paragraph (2), the Secretary shall—

“(A) consult with appropriate Federal agencies to develop a list of Federal programs and financing mechanisms that are, or may be, used for the purposes described in paragraph (2); and

“(B) coordinate with appropriate Federal agencies to develop a collaborative education and outreach effort to streamline communications and promote available Federal programs and financing mechanisms described in subparagraph (A), which may include the development and maintenance of a single online resource that includes contact information for relevant technical assistance in the Office of Energy Efficiency and Renewable Energy that States, local education agencies, and schools may use to effectively access and use such Federal programs and financing mechanisms.”.

## CHAPTER 5—BUILDING ENERGY CODES

### SEC. 4151. GREATER ENERGY EFFICIENCY IN BUILDING CODES.

(a) DEFINITIONS.—Section 303 of the Energy Conservation and Production Act (42 U.S.C. 6832), as amended by section 4116, is further amended—

(1) by striking paragraph (14) and inserting the following:

“(14) MODEL BUILDING ENERGY CODE.—The term ‘model building energy code’ means a voluntary building energy code or standard developed and updated through a consensus process among interested persons, such as the IECC or ASHRAE Standard 90.1 or a code used by other appropriate organizations regarding which the Secretary has issued a determination that buildings subject to it would achieve greater energy efficiency than under a previously developed code.”; and

(2) by adding at the end the following:

“(18) ASHRAE STANDARD 90.1.—The term ‘ASHRAE Standard 90.1’ means the American Society of Heating, Refrigerating and Air-Conditioning Engineers ANSI/ASHRAE/IES Standard 90/1 Energy Standard for Buildings Except Low-Rise Residential Buildings.

“(19) COST-EFFECTIVE.—The term ‘cost-effective’ means having a simple payback of 10 years or less.

“(20) IECC.—The term ‘IECC’ means the International Energy Conservation Code as published by the International Code Council.

“(21) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given the term in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103).

“(22) SIMPLE PAYBACK.—The term ‘simple payback’ means the time in years that is required for energy savings to exceed the incremental first cost of a new requirement or code.

“(23) TECHNICALLY FEASIBLE.—The term ‘technically feasible’ means capable of being achieved, based on widely available appliances, equipment, technologies, materials, and construction practices.”.

(b) STATE BUILDING ENERGY EFFICIENCY CODES.—Section 304 of the Energy Conservation and Production Act (42 U.S.C. 6833) is amended to read as follows:

### “SEC. 304. UPDATING STATE BUILDING ENERGY EFFICIENCY CODES.

“(a) IN GENERAL.—The Secretary shall provide technical assistance, as described in subsection (e), for the purposes of—

“(1) implementation of building energy codes by States, Indian tribes, and, as appropriate, by local governments, that are technically feasible and cost-effective; and

“(2) supporting full compliance with the State, tribal, and local codes.

“(b) STATE AND INDIAN TRIBE CERTIFICATION OF BUILDING ENERGY CODE UPDATES.—

“(1) REVIEW AND UPDATING OF CODES BY EACH STATE AND INDIAN TRIBE.—

“(A) IN GENERAL.—Not later than 3 years after the date on which a model building energy code is published, each State or Indian tribe shall certify whether or not the State or Indian tribe, respectively, has reviewed and updated the energy provisions of the building code of the State or Indian tribe, respectively.

“(B) DEMONSTRATION.—The certification shall include a statement of whether or not the energy savings for the code provisions that are in effect throughout the State or Indian tribal territory meet or exceed—

“(i) the energy savings of the most recently published model building energy code; or

“(ii) the targets established under section 307(b)(2).

“(C) NO MODEL BUILDING ENERGY CODE UPDATE.—If a model building energy code is not updated by a target date established under section 307(b)(2)(D), each State or Indian tribe shall, not later than 3 years after the specified date, certify whether or not the State or Indian tribe, respectively, has reviewed and updated the energy provisions of the building code of the State or Indian tribe, respectively, to meet or exceed the target in section 307(b)(2).

“(2) VALIDATION BY SECRETARY.—Not later than 90 days after a State or Indian tribe certification under paragraph (1), the Secretary shall—

“(A) determine whether the code provisions of the State or Indian tribe, respectively, meet the criteria specified in paragraph (1);

“(B) determine whether the certification submitted by the State or Indian tribe, respectively, is complete; and

“(C) if the requirements of subparagraph (B) are satisfied, validate the certification.

“(3) LIMITATION.—Nothing in this section shall be interpreted to require a State or Indian tribe to adopt any building code or provision within a code.

“(c) IMPROVEMENTS IN COMPLIANCE WITH BUILDING ENERGY CODES.—

“(1) REQUIREMENT.—

“(A) IN GENERAL.—Not later than 3 years after the date of a certification under subsection (b), each State and Indian tribe shall certify whether or not the State or Indian tribe, respectively, has—

“(i) achieved full compliance under paragraph (3) with the applicable certified State or Indian tribe building energy code or with the associated model building energy code; or

“(ii) made significant progress under paragraph (4) toward achieving compliance with the applicable certified State or Indian tribe building energy code or with the associated model building energy code.

“(B) REPEAT CERTIFICATIONS.—If the State or Indian tribe certifies progress toward achieving compliance, the State or Indian tribe shall repeat the certification until the State or Indian tribe certifies that the State or Indian tribe has achieved full compliance.

“(2) MEASUREMENT OF COMPLIANCE.—A certification under paragraph (1) shall include documentation of the rate of compliance based on—

“(A) inspections of a random sample of the buildings covered by the code in the preceding year; or

“(B) an alternative method that yields an accurate measure of compliance.

“(3) ACHIEVEMENT OF COMPLIANCE.—A State or Indian tribe shall be considered to achieve full compliance under paragraph (1) if—

“(A) at least 90 percent of building space covered by the code in the preceding year substantially meets all the requirements of the applicable code specified in paragraph (1), or achieves equivalent or greater energy savings level; or

“(B) the estimated excess energy use of buildings that did not meet the applicable code specified in paragraph (1) in the preceding year, compared to a baseline of comparable buildings that meet this code, is not more than 5 percent of the estimated energy use of all buildings covered by this code during the preceding year.

“(4) SIGNIFICANT PROGRESS TOWARD ACHIEVEMENT OF COMPLIANCE.—A State or Indian tribe shall be considered to have made significant progress toward achieving compliance for purposes of paragraph (1) if the State or Indian tribe—

“(A) has developed and is implementing a plan for achieving compliance during the 8-year period beginning on the date of enactment of this paragraph, including annual targets for compliance and active training and enforcement programs; and

“(B) has met the most recent target under subparagraph (A).

“(5) VALIDATION BY SECRETARY.—Not later than 90 days after a State or Indian tribe certification under paragraph (1), the Secretary shall—

“(A) determine whether the State or Indian tribe has demonstrated meeting the criteria of this subsection, including accurate measurement of compliance;



“(B) determine whether the certification submitted by the State or Indian tribe is complete; and

“(C) if the requirements of subparagraph (B) are satisfied, validate the certification.

“(6) LIMITATION.—Nothing in this section shall be interpreted to require a State or Indian tribe to adopt any building code or provision within a code.

“(d) STATES OR INDIAN TRIBES THAT DO NOT ACHIEVE COMPLIANCE.—

“(1) REPORTING.—A State or Indian tribe that has not made a certification required under subsection (b) or (c) by the applicable deadline shall submit to the Secretary a report on the status of the State or Indian tribe with respect to meeting the requirements and submitting the certification.

“(2) STATE SOVEREIGNTY.—Nothing in this section shall be interpreted to require a State or Indian tribe to adopt any building code or provision within a code.

“(3) LOCAL GOVERNMENT.—In any State or Indian tribe for which the Secretary has not validated a certification under subsection (b) or (c), a local government may be eligible for Federal support by meeting the certification requirements of subsections (b) and (c).

“(4) ANNUAL REPORTS BY SECRETARY.—

“(A) IN GENERAL.—The Secretary shall annually submit to Congress, and publish in the Federal Register, a report on—

“(i) the status of model building energy codes;

“(ii) the status of code adoption and compliance in the States and Indian tribes;

“(iii) implementation of this section; and

“(iv) improvements in energy savings over time as a result of the targets established under section 307(b)(2).

“(B) IMPACTS.—The report shall include estimates of impacts of past action under this section, and potential impacts of further action, on—

“(i) upfront financial and construction costs, cost benefits and returns (using a return on investment analysis), and lifetime energy use for buildings;

“(ii) resulting energy costs to individuals and businesses; and

“(iii) resulting overall annual building ownership and operating costs.

“(e) TECHNICAL ASSISTANCE TO STATES AND INDIAN TRIBES.—

“(1) IN GENERAL.—The Secretary shall, upon request, provide technical assistance to States and Indian tribes to implement the goals and requirements of this section—

“(A) to implement State residential and commercial building energy codes; and

“(B) to document the rate of compliance with a building energy code.

“(2) TECHNICAL ASSISTANCE.—The assistance shall include, as requested by the State or Indian tribe, technical assistance in—

“(A) evaluating the energy savings of building energy codes;

“(B) assessing the economic considerations, referenced in section 307(b)(4), of implementing building energy codes;

“(C) building energy analysis and design tools;

“(D) energy simulation models;

“(E) building demonstrations;

“(F) developing the definitions of energy use intensity and building types for use in model building energy codes to evaluate the efficiency impacts of the model building energy codes; and

“(G) complying with a performance-based pathway referenced in the model code.

“(3) EXCLUSION.—For purposes of this section, ‘technical assistance’ shall not include actions that promote or discourage the adoption of a particular building energy code, code provision, or energy savings target to a State or Indian tribe.

“(4) INFORMATION QUALITY AND TRANSPARENCY.—For purposes of this section, information provided by the Secretary, attendant to any technical assistance provided to a State or Indian tribe, is ‘influential information’ and shall satisfy the guidelines established by the Office of Management and Budget and published at 67 Federal Register 8,452 (Feb. 22, 2002).

“(f) FEDERAL SUPPORT.—

“(1) IN GENERAL.—The Secretary shall provide support to States and Indian tribes—

“(A) to implement the reporting requirements of this section; and

“(B) to implement residential and commercial building energy codes, including increasing and verifying compliance with the codes and training of

State, tribal, and local building code officials to implement and enforce the codes.

“(2) EXCLUSION.—Support shall not be given to support adoption and implementation of model building energy codes for which the Secretary has made a determination under section 307(g)(1)(C) that the code is not cost-effective.

“(3) TRAINING.—Support shall be offered to States to train State and local building code officials to implement and enforce codes described in paragraph (1)(B).

“(4) LOCAL GOVERNMENTS.—States may work under this subsection with local governments that implement and enforce codes described in paragraph (1)(B).

“(g) VOLUNTARY PROGRAMS TO EXCEED MODEL BUILDING ENERGY CODE.—

“(1) IN GENERAL.—The Secretary shall provide technical assistance, as described in subsection (e), for the development of voluntary programs that exceed the model building energy codes for residential and commercial buildings for use as—

“(A) voluntary incentive programs adopted by local, tribal, or State governments; and

“(B) nonbinding guidelines for energy-efficient building design.

“(2) TARGETS.—The voluntary programs described in paragraph (1) shall be designed—

“(A) to achieve substantial energy savings compared to the model building energy codes; and

“(B) to meet targets under section 307(b), if available, up to 3 to 6 years in advance of the target years.

“(h) STUDIES.—

“(1) GAO STUDY.—

“(A) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the impacts of updating the national model building energy codes for residential and commercial buildings. In conducting the study, the Comptroller General shall consider and report, at a minimum—

“(i) the actual energy consumption savings stemming from updated energy codes compared to the energy consumption savings predicted during code development;

“(ii) the actual consumer cost savings stemming from updated energy codes compared to predicted consumer cost savings; and

“(iii) an accounting of expenditures of the Federal funds under each program authorized by this title.

“(B) REPORT TO CONGRESS.—Not later than 3 years after the date of enactment of the North American Energy Security and Infrastructure Act of 2015, the Comptroller General of the United States shall submit a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives including the study findings and conclusions.

“(2) FEASIBILITY STUDY.—The Secretary, in consultation with building science experts from the National Laboratories and institutions of higher education, designers and builders of energy-efficient residential and commercial buildings, code officials, and other stakeholders, shall undertake a study of the feasibility, impact, economics, and merit of—

“(A) code improvements that would require that buildings be designed, sited, and constructed in a manner that makes the buildings more adaptable in the future to become zero-net-energy after initial construction, as advances are achieved in energy-saving technologies;

“(B) code procedures to incorporate a ten-year payback, not just first-year energy use, in trade-offs and performance calculations; and

“(C) legislative options for increasing energy savings from building energy codes, including additional incentives for effective State and local verification of compliance with and enforcement of a code.

“(3) ENERGY DATA IN MULTITENANT BUILDINGS.—The Secretary, in consultation with appropriate representatives of the utility, utility regulatory, building ownership, and other stakeholders, shall—

“(A) undertake a study of best practices regarding delivery of aggregated energy consumption information to owners and managers of residential and commercial buildings with multiple tenants and uses; and

“(B) consider the development of a memorandum of understanding between and among affected stakeholders to reduce barriers to the delivery of aggregated energy consumption information to such owners and managers.

“(i) EFFECT ON OTHER LAWS.—Nothing in this section or section 307 supersedes or modifies the application of sections 321 through 346 of the Energy Policy and Conservation Act (42 U.S.C. 6291 et seq.).

“(j) FUNDING LIMITATIONS.—No Federal funds shall be—

“(1) used to support actions by the Secretary, or States, to promote or discourage the adoption of a particular building energy code, code provision, or energy saving target to a State or Indian tribe; or

“(2) provided to private third parties or non-governmental organizations to engage in such activities.”.

(c) FEDERAL BUILDING ENERGY EFFICIENCY STANDARDS.—Section 305 of the Energy Conservation and Production Act (42 U.S.C. 6834) is amended by striking “voluntary building energy code” in subsections (a)(2)(B) and (b) and inserting “model building energy code”.

(d) MODEL BUILDING ENERGY CODES.—

(1) AMENDMENT.—Section 307 of the Energy Conservation and Production Act (42 U.S.C. 6836) is amended to read as follows:

**“SEC. 307. SUPPORT FOR MODEL BUILDING ENERGY CODES.**

“(a) IN GENERAL.—The Secretary shall provide technical assistance, as described in subsection (c), for updating of model building energy codes.

“(b) TARGETS.—

“(1) IN GENERAL.—The Secretary shall provide technical assistance, for updating the model building energy codes.

“(2) TARGETS.—

“(A) IN GENERAL.—The Secretary shall provide technical assistance to States, Indian tribes, local governments, nationally recognized code and standards developers, and other interested parties for updating of model building energy codes by establishing one or more aggregate energy savings targets through rulemaking in accordance with section 553 of title 5, United States Code, to achieve the purposes of this section.

“(B) SEPARATE TARGETS.—Separate targets may be established for commercial and residential buildings.

“(C) BASELINES.—The baseline for updating model building energy codes shall be the 2009 IECC for residential buildings and ASHRAE Standard 90.1–2010 for commercial buildings.

“(D) SPECIFIC YEARS.—

“(i) IN GENERAL.—Targets for specific years shall be established and revised by the Secretary through rulemaking in accordance with section 553 of title 5, United States Code, and coordinated with nationally recognized code and standards developers at a level that—

“(I) is at the maximum level of energy efficiency that is technically feasible and cost effective, while accounting for the economic considerations under paragraph (4); and

“(II) promotes the achievement of commercial and residential high performance buildings through high performance energy efficiency (within the meaning of section 401 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17061)).

“(ii) INITIAL TARGETS.—Not later than 1 year after the date of enactment of this clause, the Secretary shall establish initial targets under this subparagraph.

“(iii) DIFFERENT TARGET YEARS.—Subject to clause (i), prior to the applicable year, the Secretary may set a later target year for any of the model building energy codes described in subparagraph (A) if the Secretary determines that a target cannot be met.

“(E) SMALL BUSINESS.—When establishing targets under this paragraph through rulemaking, the Secretary shall ensure compliance with the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note; Public Law 104–121) for any indirect economic effect on small entities that is reasonably foreseeable and a result of such rule.

“(3) APPLIANCE STANDARDS AND OTHER FACTORS AFFECTING BUILDING ENERGY USE.—In establishing energy savings targets under paragraph (2), the Secretary shall develop and adjust the targets in recognition of potential savings and costs relating to—

“(A) efficiency gains made in appliances, lighting, windows, insulation, and building envelope sealing;

“(B) advancement of distributed generation and on-site renewable power generation technologies;

“(C) equipment improvements for heating, cooling, and ventilation systems and water heating systems;

“(D) building management systems and smart grid technologies to reduce energy use; and

“(E) other technologies, practices, and building systems regarding building plug load and other energy uses.

In developing and adjusting the targets, the Secretary shall use climate zone weighted averages for equipment efficiency for heating, cooling, ventilation, and water heating systems, using equipment that is actually installed.

“(4) ECONOMIC CONSIDERATIONS.—In establishing and revising energy savings targets under paragraph (2), the Secretary shall consider the economic feasibility of achieving the proposed targets established under this section and the potential costs and savings for consumers and building owners, by conducting a return on investment analysis, using a simple payback methodology over a 3-, 5-, and 7-year period. The Secretary shall not propose or provide technical or financial assistance for any code, provision in the code, or energy target, or amendment thereto, that has a payback greater than 10 years.

“(c) TECHNICAL ASSISTANCE TO MODEL BUILDING ENERGY CODE-SETTING AND STANDARD DEVELOPMENT ORGANIZATIONS.—

“(1) IN GENERAL.—The Secretary shall, on a timely basis, provide technical assistance to model building energy code-setting and standard development organizations consistent with the goals of this section.

“(2) TECHNICAL ASSISTANCE.—The assistance shall include, as requested by the organizations, technical assistance in—

“(A) evaluating the energy savings of building energy codes;

“(B) assessing the economic considerations, under subsection (b)(4), of code or standards proposals or revisions;

“(C) building energy analysis and design tools;

“(D) energy simulation models;

“(E) building demonstrations;

“(F) developing definitions of energy use intensity and building types for use in model building energy codes to evaluate the efficiency impacts of the model building energy codes;

“(G) developing a performance-based pathway for compliance;

“(H) developing model building energy codes by Indian tribes in accordance with tribal law; and

“(I) code development meetings, including through direct Federal employee participation in committee meetings, hearings and online communication, voting, and presenting research and technical or economic analyses during such meetings.

“(3) EXCLUSION.—Except as provided in paragraph (2)(I), for purposes of this section, ‘technical assistance’ shall not include actions that promote or discourage the adoption of a particular building energy code, code provision, or energy savings target.

“(4) INFORMATION QUALITY AND TRANSPARENCY.—For purposes of this section, information provided by the Secretary, attendant to development of any energy savings targets, is influential information and shall satisfy the guidelines established by the Office of Management and Budget and published at 67 Federal Register 8,452 (Feb. 22, 2002).

“(d) AMENDMENT PROPOSALS.—

“(1) IN GENERAL.—The Secretary may submit timely model building energy code amendment proposals that are technically feasible, cost-effective, and technology-neutral to the model building energy code-setting and standard development organizations, with supporting evidence, sufficient to enable the model building energy codes to meet the targets established under subsection (b)(2).

“(2) PROCESS AND FACTORS.—All amendment proposals submitted by the Secretary shall be published in the Federal Register and made available on the Department of Energy website 90 days prior to any submittal to a code development body, and shall be subject to a public comment period of not less than 60 days. Information provided by the Secretary, attendant to submission of any amendment proposals, is influential information and shall satisfy the guidelines established by the Office of Management and Budget and published at 67 Federal Register 8,452 (Feb. 22, 2002). When calculating the costs and benefits of an amendment, the Secretary shall use climate zone weighted averages for equipment efficiency for heating, cooling, ventilation, and water heating systems, using equipment that is actually installed.

“(e) ANALYSIS METHODOLOGY.—The Secretary shall make publicly available the entire calculation methodology (including input assumptions and data) used by the Secretary to estimate the energy savings of code or standard proposals and revisions.

“(f) **METHODOLOGY DEVELOPMENT.**—The Secretary shall establish a methodology for evaluating cost effectiveness of energy code changes in multifamily buildings that incorporates economic parameters representative of typical multifamily buildings.

“(g) **DETERMINATION.**—

“(1) **REVISION OF MODEL BUILDING ENERGY CODES.**—If the provisions of the IECC or ASHRAE Standard 90.1 regarding building energy use are revised, the Secretary shall make a preliminary determination not later than 90 days after the date of the revision, and a final determination not later than 15 months after the date of the revision, on whether or not the revision—

“(A) improves energy efficiency in buildings compared to the existing IECC or ASHRAE Standard 90.1, as applicable;

“(B) meets the applicable targets under subsection (b)(2); and

“(C) is technically feasible and cost-effective.

“(2) **CODES OR STANDARDS NOT MEETING CRITERIA.**—

“(A) **IN GENERAL.**—If the Secretary makes a preliminary determination under paragraph (1)(B) that a revised IECC or ASHRAE Standard 90.1 does not meet the targets established under subsection (b)(2), is not technically feasible, or is not cost-effective, the Secretary may at the same time provide technical assistance, as described in subsection (c), to the International Code Council or ASHRAE, as applicable, with proposed changes that would result in a model building energy code or standard that meets the criteria, and with supporting evidence. Proposed changes submitted by the Secretary shall be published in the Federal Register and made available on the Department of Energy website 90 days prior to any submittal to a code development body, and shall be subject to a public comment period of not less than 60 days. Information provided by the Secretary, attendant to submission of any amendment proposals, is influential information and shall satisfy the guidelines established by the Office of Management and Budget and published at 67 Federal Register 8,452 (Feb. 22, 2002).

“(B) **INCORPORATION OF CHANGES.**—

“(i) **IN GENERAL.**—On receipt of the technical assistance, as described in subsection (c), the International Code Council or ASHRAE, as applicable, shall, prior to the Secretary making a final determination under paragraph (1), have an additional 270 days to accept or reject the proposed changes made by the Secretary to the model building energy code or standard.

“(ii) **FINAL DETERMINATION.**—A final determination under paragraph (1) shall be on the final revised model building energy code or standard.

“(h) **ADMINISTRATION.**—In carrying out this section, the Secretary shall—

“(1) publish notice of targets, amendment proposals and supporting analysis and determinations under this section in the Federal Register to provide an explanation of and the basis for such actions, including any supporting modeling, data, assumptions, protocols, and cost-benefit analysis, including return on investment;

“(2) provide an opportunity for public comment on targets and supporting analysis and determinations under this section, in accordance with section 553 of title 5, United States Code; and

“(3) provide an opportunity for public comment on amendment proposals.

“(i) **VOLUNTARY CODES AND STANDARDS.**—Notwithstanding any other provision of this section, any model building code or standard established under this section shall not be binding on a State, local government, or Indian tribe as a matter of Federal law.”

“(2) **CONFORMING AMENDMENT.**—The item relating to section 307 in the table of contents for the Energy Conservation and Production Act is amended to read as follows:

“Sec. 307. Support for model building energy codes.”.

#### **SEC. 4152. VOLUNTARY NATURE OF BUILDING ASSET RATING PROGRAM.**

(a) **IN GENERAL.**—Any program of the Secretary of Energy that may enable the owner of a commercial building or a residential building to obtain a rating, score, or label regarding the actual or anticipated energy usage or performance of a building shall be made available on a voluntary, optional, and market-driven basis.

(b) **DISCLAIMER AS TO REGULATORY INTENT.**—Information disseminated by the Secretary of Energy regarding the program described in subsection (a), including any information made available by the Secretary on a website, shall include language plainly stating that such program is not developed or intended to be the basis for a regulatory program by a Federal, State, local, or municipal government body.

## CHAPTER 6—EPCA TECHNICAL CORRECTIONS AND CLARIFICATIONS

### SEC. 4161. MODIFYING PRODUCT DEFINITIONS.

#### (a) AUTHORITY TO MODIFY DEFINITIONS.—

(1) COVERED PRODUCTS.—Section 322 of the Energy Policy and Conservation Act (42 U.S.C. 6292) is amended by adding at the end the following:

#### “(c) MODIFYING DEFINITIONS OF COVERED PRODUCTS.—

“(1) IN GENERAL.—For any covered product for which a definition is provided in section 321, the Secretary may, by rule, unless prohibited herein, modify such definition in order to—

“(A) address significant changes in the product or the market occurring since the definition was established; and

“(B) better enable improvements in the energy efficiency of the product as part of an energy using system.

“(2) ANTIBACKSLIDING EXEMPTION.—Section 325(o)(1) shall not apply to adjustments to covered product definitions made pursuant to this subsection.

#### “(3) PROCEDURE FOR MODIFYING DEFINITION.—

“(A) IN GENERAL.—Notice of any adjustment to the definition of a covered product and an explanation of the reasons therefor shall be published in the Federal Register and opportunity provided for public comment.

“(B) CONSENSUS REQUIRED.—Any amendment to the definition of a covered product under this subsection must have consensus support, as reflected in—

“(i) the outcome of negotiations conducted in accordance with the subchapter III of chapter 5 of title 5, United States Code (commonly known as the ‘Negotiated Rulemaking Act of 1990’); or

“(ii) the Secretary’s receipt of a statement that is submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary, which contains a recommended modified definition for a covered product.

#### “(4) EFFECT OF A MODIFIED DEFINITION.—

“(A) IN GENERAL.—For any type or class of consumer product which becomes a covered product pursuant to this subsection—

“(i) the Secretary may establish test procedures for such type or class of covered product pursuant to section 323 and energy conservation standards pursuant to section 325(l);

“(ii) the Commission may prescribe labeling rules pursuant to section 324 if the Commission determines that labeling in accordance with that section is technologically and economically feasible and likely to assist consumers in making purchasing decisions;

“(iii) section 327 shall begin to apply to such type or class of covered product in accordance with section 325(ii)(1); and

“(iv) standards previously promulgated under section 325 shall not apply to such type or class of product.

“(B) APPLICABILITY.—For any type or class of consumer product which ceases to be a covered product pursuant to this subsection, the provisions of this part shall no longer apply to the type or class of consumer product.”.

(2) COVERED EQUIPMENT.—Section 341 of the Energy Policy and Conservation Act (42 U.S.C. 6312) is amended by adding at the end the following:

#### “(d) MODIFYING DEFINITIONS OF COVERED EQUIPMENT.—

“(1) IN GENERAL.—For any covered equipment for which a definition is provided in section 340, the Secretary may, by rule, unless prohibited herein, modify such definition in order to—

“(A) address significant changes in the product or the market occurring since the definition was established; and

“(B) better enable improvements in the energy efficiency of the equipment as part of an energy using system.

“(2) ANTIBACKSLIDING EXEMPTION.—Section 325(o)(1) shall not apply to adjustments to covered equipment definitions made pursuant to this subsection.

#### “(3) PROCEDURE FOR MODIFYING DEFINITION.—

“(A) IN GENERAL.—Notice of any adjustment to the definition of a type of covered equipment and an explanation of the reasons therefor shall be published in the Federal Register and opportunity provided for public comment.

“(B) CONSENSUS REQUIRED.—Any amendment to the definition of a type of covered equipment under this subsection must have consensus support, as reflected in—

“(i) the outcome of negotiations conducted in accordance with the subchapter III of chapter 5 of title 5, United States Code (commonly known as the ‘Negotiated Rulemaking Act of 1990’); or

“(ii) the Secretary’s receipt of a statement that is submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered equipment, States, and efficiency advocates), as determined by the Secretary, which contains a recommended modified definition for a type of covered equipment.

“(4) EFFECT OF A MODIFIED DEFINITION.—

“(A) For any type or class of equipment which becomes covered equipment pursuant to this subsection—

“(i) the Secretary may establish test procedures for such type or class of covered equipment pursuant to section 343 and energy conservation standards pursuant to section 325(l);

“(ii) the Secretary may prescribe labeling rules pursuant to section 344 if the Secretary determines that labeling in accordance with that section is technologically and economically feasible and likely to assist purchasers in making purchasing decisions;

“(iii) section 327 shall begin to apply to such type or class of covered equipment in accordance with section 325(ii)(1); and

“(iv) standards previously promulgated under section 325, 342, or 346 shall not apply to such type or class of covered equipment.

“(B) For any type or class of equipment which ceases to be covered equipment pursuant to this subsection the provisions of this part shall no longer apply to the type or class of equipment.”.

(b) CONFORMING AMENDMENTS PROVIDING FOR JUDICIAL REVIEW.—

(1) Section 336 of the Energy Policy and Conservation Act (42 U.S.C. 6306) is amended by striking “section 323,” each place it appears and inserting “section 322, 323,”; and

(2) Section 345(a)(1) of the Energy Policy and Conservation Act (42 U.S.C. 6316(a)(1)) is amended to read as follows:

“(1) the references to sections 322, 323, 324, and 325 of this Act shall be considered as references to sections 341, 343, 344, and 342 of this Act, respectively;”.

#### SEC. 4162. CLARIFYING RULEMAKING PROCEDURES.

(a) COVERED PRODUCTS.—Section 325(p) of the Energy Policy and Conservation Act (42 U.S.C. 6295(p)) is amended—

(1) by redesignating paragraphs (1), (2), (3), and (4) as paragraphs (2), (3), (5), and (6), respectively;

(2) by inserting before paragraph (2) (as so redesignated by paragraph (1) of this subsection) the following:

“(1) The Secretary shall provide an opportunity for public input prior to the issuance of a proposed rule, seeking information—

“(A) identifying and commenting on design options;

“(B) on the existence of and opportunities for voluntary nonregulatory actions; and

“(C) identifying significant subgroups of consumers and manufacturers that merit analysis.”;

(3) in paragraph (3) (as so redesignated by paragraph (1) of this subsection)—

(A) in subparagraph (C), by striking “and” after “adequate;”;

(B) in subparagraph (D), by striking “standard.” and inserting “standard.”; and

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

“(E) whether the technical and economic analytical assumptions, methods, and models used to justify the standard to be prescribed are—

“(i) justified; and

“(ii) available and accessible for public review, analysis, and use; and

“(F) the cumulative regulatory impacts on the manufacturers of the product, taking into account—

“(i) other government standards affecting energy use; and

“(ii) other energy conservation standards affecting the same manufacturers.”; and

(4) by inserting after paragraph (3) (as so redesignated by paragraph (1) of this subsection) the following:

“(4) RESTRICTION ON TEST PROCEDURE AMENDMENTS.—

“(A) IN GENERAL.—Any proposed energy conservation standards rule shall be based on the final test procedure which shall be used to determine com-

pliance, and the public comment period on the proposed standards shall conclude no sooner than 180 days after the date of publication of a final rule revising the test procedure.

“(B) EXCEPTION.—The Secretary may propose or prescribe an amendment to the test procedures issued pursuant to section 323 for any type or class of covered product after the issuance of a notice of proposed rulemaking to prescribe an amended or new energy conservation standard for that type or class of covered product, but before the issuance of a final rule prescribing any such standard, if—

“(i) the amendments to the test procedure have consensus support achieved through a rulemaking conducted in accordance with the subchapter III of chapter 5 of title 5, United States Code (commonly known as the ‘Negotiated Rulemaking Act of 1990’); or

“(ii) the Secretary receives a statement that is submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of the type or class of covered product, States, and efficiency advocates), as determined by the Secretary, which contains a recommendation that a supplemental notice of proposed rulemaking is not necessary for the type or class of covered product.”.

(b) CONFORMING AMENDMENT.—Section 345(b)(1) of the Energy Policy and Conservation Act (42 U.S.C. 6316(b)(1)) is amended by striking “section 325(p)(4),” and inserting “section 325(p)(3), (4), and (6).”.

## CHAPTER 7—ENERGY AND WATER EFFICIENCY

### SEC. 4171. SMART ENERGY AND WATER EFFICIENCY PILOT PROGRAM.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE ENTITY.—The term “eligible entity” means—

(A) a utility;

(B) a municipality;

(C) a water district; and

(D) any other authority that provides water, wastewater, or water reuse services.

(2) SECRETARY.—The term “Secretary” means the Secretary of Energy.

(3) SMART ENERGY AND WATER EFFICIENCY PILOT PROGRAM.—The term “smart energy and water efficiency pilot program” or “pilot program” means the pilot program established under subsection (b).

(b) SMART ENERGY AND WATER EFFICIENCY PILOT PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish and carry out a smart energy and water efficiency management pilot program in accordance with this section.

(2) PURPOSE.—The purpose of the smart energy and water efficiency pilot program is to award grants to eligible entities to demonstrate advanced and innovative technology-based solutions that will—

(A) increase and improve the energy efficiency of water, wastewater, and water reuse systems to help communities across the United States make significant progress in conserving water, saving energy, and reducing costs;

(B) support the implementation of innovative processes and the installation of advanced automated systems that provide real-time data on energy and water; and

(C) improve energy and water conservation, water quality, and predictive maintenance of energy and water systems, through the use of Internet-connected technologies, including sensors, intelligent gateways, and security embedded in hardware.

(3) PROJECT SELECTION.—

(A) IN GENERAL.—The Secretary shall make competitive, merit-reviewed grants under the pilot program to not less than 3, but not more than 5, eligible entities.

(B) SELECTION CRITERIA.—In selecting an eligible entity to receive a grant under the pilot program, the Secretary shall consider—

(i) energy and cost savings anticipated to result from the project;

(ii) the innovative nature, commercial viability, and reliability of the technology to be used;

(iii) the degree to which the project integrates next-generation sensors, software, hardware, analytics, and management tools;

(iv) the anticipated cost effectiveness of the pilot project in terms of energy efficiency savings, water savings or reuse, and infrastructure costs averted;



- (v) whether the technology can be deployed in a variety of geographic regions and the degree to which the technology can be implemented on a smaller or larger scale, including whether the technology can be implemented by each type of eligible entity;
- (vi) whether the technology has been successfully deployed elsewhere;
- (vii) whether the technology is sourced from a manufacturer based in the United States; and
- (viii) whether the project will be completed in 5 years or less.

(C) APPLICATIONS.—

(i) IN GENERAL.—Subject to clause (ii), an eligible entity seeking a grant under the pilot program shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary determines to be necessary.

(ii) CONTENTS.—An application under clause (i) shall, at a minimum, include—

- (I) a description of the project;
- (II) a description of the technology to be used in the project;
- (III) the anticipated results, including energy and water savings, of the project;
- (IV) a comprehensive budget for the project;
- (V) the names of the project lead organization and any partners;
- (VI) the number of users to be served by the project; and
- (VII) any other information that the Secretary determines to be necessary to complete the review and selection of a grant recipient.

(4) ADMINISTRATION.—

(A) IN GENERAL.—Not later than 300 days after the date of enactment of this Act, the Secretary shall select grant recipients under this section.

(B) EVALUATIONS.—The Secretary shall annually carry out an evaluation of each project for which a grant is provided under this section that—

- (i) evaluates the progress and impact of the project; and
- (ii) assesses the degree to which the project is meeting the goals of the pilot program.

(C) TECHNICAL AND POLICY ASSISTANCE.—On the request of a grant recipient, the Secretary shall provide technical and policy assistance to the grant recipient to carry out the project.

(D) BEST PRACTICES.—The Secretary shall make available to the public—

- (i) a copy of each evaluation carried out under subparagraph (B); and
- (ii) a description of any best practices identified by the Secretary as a result of those evaluations.

(E) REPORT TO CONGRESS.—The Secretary shall submit to Congress a report containing the results of each evaluation carried out under subparagraph (B).

(c) FUNDING.—

(1) IN GENERAL.—To carry out this section, the Secretary shall use not more than \$15,000,000 of amounts made available to the Secretary.

(2) PRIORITIZATION.—In funding activities under this section, the Secretary shall prioritize funding in the following manner:

(A) The Secretary shall first use any unobligated amounts made available to the Secretary to carry out the activities of the Energy Efficiency and Renewable Energy Office.

(B) After any amounts described in subparagraph (A) have been used, the Secretary shall then use any unobligated amounts (other than those described in subparagraph (A)) made available to the Secretary.

**SEC. 4172. WATERSENSE.**

(a) IN GENERAL.—The Energy Policy and Conservation Act (42 U.S.C. 6201 et seq.) is amended by adding after section 324A the following:

**“SEC. 324B. WATERSENSE.**

“(a) WATERSENSE.—

“(1) IN GENERAL.—There is established within the Environmental Protection Agency a voluntary program, to be entitled ‘WaterSense’, to identify water efficient products, buildings, landscapes, facilities, processes, and services that sensibly—

- “(A) reduce water use;
- “(B) reduce the strain on public and community water systems and wastewater and stormwater infrastructure;
- “(C) conserve energy used to pump, heat, transport, and treat water; and
- “(D) preserve water resources for future generations, through voluntary labeling of, or other forms of communications about, products, buildings,

landscapes, facilities, processes, and services while still meeting strict performance criteria.

“(2) DUTIES.—The Administrator, coordinating as appropriate with the Secretary of Energy, shall—

“(A) establish—

“(i) a WaterSense label to be used for items meeting the certification criteria established in this section; and

“(ii) the procedure, including the methods and means, by which an item may be certified to display the WaterSense label;

“(B) conduct a public awareness education campaign regarding the WaterSense label;

“(C) preserve the integrity of the WaterSense label by—

“(i) establishing and maintaining feasible performance criteria so that products, buildings, landscapes, facilities, processes, and services labeled with the WaterSense label perform as well or better than less water-efficient counterparts;

“(ii) overseeing WaterSense certifications made by third parties;

“(iii) using testing protocols, from the appropriate, applicable, and relevant consensus standards, for the purpose of determining standards compliance; and

“(iv) auditing the use of the WaterSense label in the marketplace and preventing cases of misuse; and

“(D) not more often than every six years, review and, if appropriate, update WaterSense criteria for the defined categories of water-efficient product, building, landscape, process, or service, including—

“(i) providing reasonable notice to interested parties and the public of any such changes, including effective dates, and an explanation of the changes;

“(ii) soliciting comments from interested parties and the public prior to any such changes;

“(iii) as appropriate, responding to comments submitted by interested parties and the public; and

“(iv) providing an appropriate transition time prior to the applicable effective date of any such changes, taking into account the timing necessary for the manufacture, marketing, training, and distribution of the specific water-efficient product, building, landscape, process, or service category being addressed.

“(b) USE OF SCIENCE.—In carrying out this section, and, to the degree that an agency action is based on science, the Administrator shall use—

“(1) the best available peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and

“(2) data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justify use of the data).

“(c) DISTINCTION OF AUTHORITIES.—In setting or maintaining standards for Energy Star pursuant to section 324A, and WaterSense under this section, the Secretary and Administrator shall coordinate to prevent duplicative or conflicting requirements among the respective programs.

“(d) DEFINITIONS.—In this section:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Environmental Protection Agency.

“(2) FEASIBLE.—The term ‘feasible’ means feasible with the use of the best technology, treatment techniques, and other means that the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration).

“(3) SECRETARY.—The term ‘Secretary’ means the Secretary of Energy.

“(4) WATER-EFFICIENT PRODUCT, BUILDING, LANDSCAPE, PROCESS, OR SERVICE.—The term ‘water-efficient product, building, landscape, process, or service’ means a product, building, landscape, process, or service for a residence or a commercial or institutional building, or its landscape, that is rated for water efficiency and performance, the covered categories of which are—

“(A) irrigation technologies and services;

“(B) point-of-use water treatment devices;

“(C) plumbing products;

“(D) reuse and recycling technologies;

“(E) landscaping and gardening products, including moisture control or water enhancing technologies;

“(F) xeriscaping and other landscape conversions that reduce water use; and

“(G) new water efficient homes certified under the WaterSense program.”.

(b) CONFORMING AMENDMENT.—The table of contents for the Energy Policy and Conservation Act (Public Law 94–163; 42 U.S.C. 6201 et seq.) is amended by inserting after the item relating to section 324A the following new item:

“Sec. 324B. WaterSense.”.

## Subtitle B—Accountability

### CHAPTER 1—MARKET MANIPULATION, ENFORCEMENT, AND COMPLIANCE

#### SEC. 4211. FERC OFFICE OF COMPLIANCE ASSISTANCE AND PUBLIC PARTICIPATION.

Section 319 of the Federal Power Act (16 U.S.C. 825q–1) is amended to read as follows:

##### “SEC. 319. OFFICE OF COMPLIANCE ASSISTANCE AND PUBLIC PARTICIPATION.

“(a) ESTABLISHMENT.—There is established within the Commission an Office of Compliance Assistance and Public Participation (referred to in this section as the ‘Office’). The Office shall be headed by a Director.

“(b) DUTIES OF DIRECTOR.—

“(1) IN GENERAL.—The Director of the Office shall promote improved compliance with Commission rules and orders by—

“(A) making recommendations to the Commission regarding—

“(i) the protection of consumers;

“(ii) market integrity and support for the development of responsible market behavior;

“(iii) the application of Commission rules and orders in a manner that ensures that—

“(I) rates and charges for, or in connection with, the transmission or sale of electric energy subject to the jurisdiction of the Commission shall be just and reasonable and not unduly discriminatory or preferential; and

“(II) markets for such transmission and sale of electric energy are not impaired and consumers are not damaged; and

“(iv) the impact of existing and proposed Commission rules and orders on small entities, as defined in section 601 of title 5, United States Code (commonly known as the Regulatory Flexibility Act);

“(B) providing entities subject to regulation by the Commission the opportunity to obtain timely guidance for compliance with Commission rules and orders; and

“(C) providing information to the Commission and Congress to inform policy with respect to energy issues under the jurisdiction of the Commission.

“(2) REPORTS AND GUIDANCE.—The Director shall, as the Director determines appropriate, issue reports and guidance to the Commission and to entities subject to regulation by the Commission, regarding market practices, proposing improvements in Commission monitoring of market practices, and addressing potential improvements to both industry and Commission practices.

“(3) OUTREACH.—The Director shall promote improved compliance with Commission rules and orders through outreach, publications, and, where appropriate, direct communication with entities regulated by the Commission.”.

### CHAPTER 2—MARKET REFORMS

#### SEC. 4221. GAO STUDY ON WHOLESALE ELECTRICITY MARKETS.

(a) STUDY AND REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report describing the results of a study of whether and how the current market rules, practices, and structures of each regional transmission entity produce rates that are just and reasonable by—

(1) facilitating fuel diversity, the availability of generation resources during emergency and severe weather conditions, resource adequacy, and reliability, including the cost-effective retention and development of needed generation;

(2) promoting the equitable treatment of business models, including different utility types, the integration of diverse generation resources, and advanced grid technologies;

(3) identifying and addressing regulatory barriers to entry, market-distorting incentives, and artificial constraints on competition;

(4) providing transparency regarding dispatch decisions, including the need for out-of-market actions and payments, and the accuracy of day-ahead unit commitments;

(5) facilitating the development of necessary natural gas pipeline and electric transmission infrastructure;

(6) ensuring fairness and transparency in governance structures and stakeholder processes, including meaningful participation by both voting and non-voting stakeholder representatives;

(7) ensuring the proper alignment of the energy and transmission markets by including both energy and financial transmission rights in the day-ahead markets;

(8) facilitating the ability of load-serving entities to self-supply their service territory load;

(9) considering, as appropriate, State and local resource planning; and

(10) mitigating, to the extent practicable, the disruptive effects of tariff revisions on the economic decisionmaking of market participants.

(b) DEFINITIONS.—In this section:

(1) LOAD-SERVING ENTITY.—The term “load-serving entity” has the meaning given that term in section 217 of the Federal Power Act (16 U.S.C. 824q).

(2) REGIONAL TRANSMISSION ENTITY.—The term “regional transmission entity” means a Regional Transmission Organization or an Independent System Operator, as such terms are defined in section 3 of the Federal Power Act (16 U.S.C. 796).

**SEC. 4222. CLARIFICATION OF FACILITY MERGER AUTHORIZATION.**

Section 203(a)(1)(B) of the Federal Power Act (16 U.S.C. 824b(a)(1)(B)) is amended by striking “such facilities or any part thereof” and inserting “such facilities, or any part thereof, of a value in excess of \$10,000,000”.

**CHAPTER 3—CODE MAINTENANCE**

**SEC. 4231. REPEAL OF OFF-HIGHWAY MOTOR VEHICLES STUDY.**

(a) REPEAL.—Part I of title III of the Energy Policy and Conservation Act (42 U.S.C. 6373) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents for the Energy Policy and Conservation Act (Public Law 94–163; 89 Stat. 871) is amended—

(1) by striking the item relating to part I of title III; and

(2) by striking the item relating to section 385.

**SEC. 4232. REPEAL OF METHANOL STUDY.**

Section 400EE of the Energy Policy and Conservation Act (42 U.S.C. 6374d) is amended—

(1) by striking subsection (a); and

(2) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

**SEC. 4233. REPEAL OF RESIDENTIAL ENERGY EFFICIENCY STANDARDS STUDY.**

(a) REPEAL.—Section 253 of the National Energy Conservation Policy Act (42 U.S.C. 8232) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents for the National Energy Conservation Policy Act (Public Law 95–619; 92 Stat. 3206) is amended by striking the item relating to section 253.

**SEC. 4234. REPEAL OF WEATHERIZATION STUDY.**

(a) REPEAL.—Section 254 of the National Energy Conservation Policy Act (42 U.S.C. 8233) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents for the National Energy Conservation Policy Act (Public Law 95–619; 92 Stat. 3206) is amended by striking the item relating to section 254.

**SEC. 4235. REPEAL OF REPORT TO CONGRESS.**

(a) REPEAL.—Section 273 of the National Energy Conservation Policy Act (42 U.S.C. 8236b) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents for the National Energy Conservation Policy Act (Public Law 95–619; 92 Stat. 3206) is amended by striking the item relating to section 273.

**SEC. 4236. REPEAL OF REPORT BY GENERAL SERVICES ADMINISTRATION.**

(a) REPEAL.—Section 154 of the Energy Policy Act of 1992 (42 U.S.C. 8262a) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) The table of contents for the Energy Policy Act of 1992 (Public Law 102–486; 106 Stat. 2776) is amended by striking the item relating to section 154.

(2) Section 159 of the Energy Policy Act of 1992 (42 U.S.C. 8262e) is amended by striking subsection (c).

**SEC. 4237. REPEAL OF INTERGOVERNMENTAL ENERGY MANAGEMENT PLANNING AND COORDINATION WORKSHOPS.**

(a) REPEAL.—Section 156 of the Energy Policy Act of 1992 (42 U.S.C. 8262b) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents for the Energy Policy Act of 1992 (Public Law 102–486; 106 Stat. 2776) is amended by striking the item relating to section 156.

**SEC. 4238. REPEAL OF INSPECTOR GENERAL AUDIT SURVEY AND PRESIDENT’S COUNCIL ON INTEGRITY AND EFFICIENCY REPORT TO CONGRESS.**

(a) REPEAL.—Section 160 of the Energy Policy Act of 1992 (42 U.S.C. 8262f) is amended by striking the section designation and heading and all that follows through “(c) INSPECTOR GENERAL REVIEW.—Each Inspector General” and inserting the following:

**“SEC. 160. INSPECTOR GENERAL REVIEW.**

**“Each Inspector General”.**

(b) CONFORMING AMENDMENT.—The table of contents for the Energy Policy Act of 1992 (Public Law 102–486; 106 Stat. 2776) is amended by striking the item relating to section 160 and inserting the following:

“Sec. 160. Inspector General review.”.

**SEC. 4239. REPEAL OF PROCUREMENT AND IDENTIFICATION OF ENERGY EFFICIENT PRODUCTS PROGRAM.**

(a) REPEAL.—Section 161 of the Energy Policy Act of 1992 (42 U.S.C. 8262g) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents for the Energy Policy Act of 1992 (Public Law 102–486; 106 Stat. 2776) is amended by striking the item relating to section 161.

**SEC. 4240. REPEAL OF NATIONAL ACTION PLAN FOR DEMAND RESPONSE.**

(a) REPEAL.—Part 5 of title V of the National Energy Conservation Policy Act (42 U.S.C. 8279) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents for the National Energy Conservation Policy Act (Public Law 95–619; 92 Stat. 3206; 121 Stat. 1665) is amended—

(1) by striking the item relating to part 5 of title V; and

(2) by striking the item relating to section 571.

**SEC. 4241. REPEAL OF NATIONAL COAL POLICY STUDY.**

(a) REPEAL.—Section 741 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8451) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents for the Powerplant and Industrial Fuel Use Act of 1978 (Public Law 95–620; 92 Stat. 3289) is amended by striking the item relating to section 741.

**SEC. 4242. REPEAL OF STUDY ON COMPLIANCE PROBLEM OF SMALL ELECTRIC UTILITY SYSTEMS.**

(a) REPEAL.—Section 744 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8454) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents for the Powerplant and Industrial Fuel Use Act of 1978 (Public Law 95–620; 92 Stat. 3289) is amended by striking the item relating to section 744.

**SEC. 4243. REPEAL OF STUDY OF SOCIOECONOMIC IMPACTS OF INCREASED COAL PRODUCTION AND OTHER ENERGY DEVELOPMENT.**

(a) REPEAL.—Section 746 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8456) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents for the Powerplant and Industrial Fuel Use Act of 1978 (Public Law 95–620; 92 Stat. 3289) is amended by striking the item relating to section 746.

**SEC. 4244. REPEAL OF STUDY OF THE USE OF PETROLEUM AND NATURAL GAS IN COMBUSTORS.**

(a) REPEAL.—Section 747 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8457) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents for the Powerplant and Industrial Fuel Use Act of 1978 (Public Law 95–620; 92 Stat. 3289) is amended by striking the item relating to section 747.

**SEC. 4245. REPEAL OF SUBMISSION OF REPORTS.**

(a) REPEAL.—Section 807 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8483) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents for the Powerplant and Industrial Fuel Use Act of 1978 (Public Law 95–620; 92 Stat. 3289) is amended by striking the item relating to section 807.

**SEC. 4246. REPEAL OF ELECTRIC UTILITY CONSERVATION PLAN.**

(a) REPEAL.—Section 808 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8484) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) TABLE OF CONTENTS.—The table of contents for the Powerplant and Industrial Fuel Use Act of 1978 (Public Law 95–620; 92 Stat. 3289) is amended by striking the item relating to section 808.

(2) REPORT ON IMPLEMENTATION.—Section 712 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8422) is amended—

(A) by striking “(a) GENERALLY.—”; and

(B) by striking subsection (b).

**SEC. 4247. TECHNICAL AMENDMENT TO POWERPLANT AND INDUSTRIAL FUEL USE ACT OF 1978.**

The table of contents for the Powerplant and Industrial Fuel Use Act of 1978 (Public Law 95–620; 92 Stat. 3289) is amended by striking the item relating to section 742.

**SEC. 4248. EMERGENCY ENERGY CONSERVATION REPEALS.**

(a) REPEALS.—

(1) Section 201 of the Emergency Energy Conservation Act of 1979 (42 U.S.C. 8501) is amended—

(A) in the section heading, by striking “FINDINGS AND”;

(B) by striking subsection (a); and

(C) by striking “(b) PURPOSES.—”.

(2) Section 221 of the Emergency Energy Conservation Act of 1979 (42 U.S.C. 8521) is repealed.

(3) Section 222 of the Emergency Energy Conservation Act of 1979 (42 U.S.C. 8522) is repealed.

(4) Section 241 of the Emergency Energy Conservation Act of 1979 (42 U.S.C. 8531) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents for the Emergency Energy Conservation Act of 1979 (Public Law 96–102; 93 Stat. 749) is amended—

(1) by striking the item relating to section 201 and inserting the following:

“Sec. 201. Purposes.”; and

(2) by striking the items relating to sections 221, 222, and 241.

**SEC. 4249. REPEAL OF STATE UTILITY REGULATORY ASSISTANCE.**

(a) REPEAL.—Section 207 of the Energy Conservation and Production Act (42 U.S.C. 6807) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents for the Energy Conservation and Production Act (Public Law 94–385; 90 Stat. 1125) is amended by striking the item relating to section 207.

**SEC. 4250. REPEAL OF SURVEY OF ENERGY SAVING POTENTIAL.**

(a) REPEAL.—Section 550 of the National Energy Conservation Policy Act (42 U.S.C. 8258b) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) The table of contents for the National Energy Conservation Policy Act (Public Law 95–619; 92 Stat. 3206; 106 Stat. 2851) is amended by striking the item relating to section 550.

(2) Section 543(d)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8253(d)(2)) is amended by striking “, incorporating any relevant information obtained from the survey conducted pursuant to section 550”.

**SEC. 4251. REPEAL OF PHOTOVOLTAIC ENERGY PROGRAM.**

(a) REPEAL.—Part 4 of title V of the National Energy Conservation Policy Act (42 U.S.C. 8271 et seq.) is repealed.

(b) CONFORMING AMENDMENTS.—The table of contents for the National Energy Conservation Policy Act (Public Law 95–619; 92 Stat. 3206) is amended—

- (1) by striking the item relating to part 4 of title V; and
- (2) by striking the items relating to sections 561 through 570.

**SEC. 4252. REPEAL OF ENERGY AUDITOR TRAINING AND CERTIFICATION.**

(a) REPEAL.—Subtitle F of title V of the Energy Security Act (42 U.S.C. 8285 et seq.) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents for the Energy Security Act (Public Law 96–294; 94 Stat. 611) is amended by striking the items relating to subtitle F of title V.

**CHAPTER 4—USE OF EXISTING FUNDS**

**SEC. 4261. USE OF EXISTING FUNDS.**

Amounts required for carrying out this Act, other than section 1201, shall be derived from amounts appropriated under authority provided by previously enacted law.

**PURPOSE AND SUMMARY**

H.R. 8, the North American Energy Security and Infrastructure Act of 2015, was introduced by Representative Fred Upton on September 16, 2015. The legislation would advance energy infrastructure development, modernization, and protection; foster a 21st century energy and manufacturing workforce; bolster America’s energy security and diplomacy; and promote energy efficiency and government accountability.

**BACKGROUND AND NEED FOR LEGISLATION**

**A LEGISLATIVE FRAMEWORK TO MODERNIZE U.S. ENERGY INFRASTRUCTURE AND CAPITALIZE ON THE U.S. ENERGY RENAISSANCE**

America is experiencing an energy renaissance. Modern technology and American ingenuity have unlocked a wealth of energy resources, and with the right policies, this energy abundance can help fuel the nation’s economy for years to come. H.R. 8 seeks to maximize the nation’s energy potential, strengthen energy security, and keep prices affordable. The legislation establishes a framework for a targeted, solutions-based energy package. Specifically, H.R. 8 focuses on four general areas:

*Modernizing Infrastructure.* America faces different energy challenges today than it did a decade ago. Chief among them is a lack of modern energy infrastructure to carry abundant new supplies of energy to consumers. These challenges threaten energy reliability and affordability. For example, delays and red tape in the permitting process often discourage the safest, most efficient and reliable, and often most environmentally sound, modes of energy delivery. The nation’s electricity sector also continues to evolve. Its challenges include changing market dynamics and technological advances, aggressive environmental regulations, increased integration of intermittent resources, and a growing number of grid security threats. At the same time, big data and new energy analytics technologies offer novel products and services that can improve efficiency while helping utilities and software companies meet consumer needs.

*21st Century Energy Workforce.* An educated, sustainable energy and manufacturing workforce is vital to continued economic growth, particularly as the U.S. seeks to modernize and update its energy infrastructure. In addition to having a workforce capable of addressing 21st century challenges, there is also a need to ensure

that workforce opportunities are accessible to all Americans, including under-represented minority and low-income communities.

*Energy Diplomacy for a Changing World.* There are significant geopolitical benefits to be gained from the North American energy revolution, including making North America a global energy leader and making the U.S. and its allies less dependent on OPEC countries and other unstable regions of the world.

*Efficiency and Accountability.* Harnessing new technologies and private sector innovation for more efficient energy usage in households, businesses, and the Federal government is a critical component of any national energy policy. There are many methods available to improve efficiency that do not require mandates or taxpayer spending, including the establishment of voluntary programs, guidelines, and improved data gathering and information. H.R. 8 promotes simple and affordable methods to address energy demand and bring down costs for consumers and taxpayers. It also seeks to reduce government waste and prioritize budget dollars in existing programs, as well as provide important regulatory relief for U.S. manufacturers from burdensome Federal efficiency mandates.

#### OVERVIEW OF H.R. 8, NORTH AMERICAN ENERGY SECURITY AND INFRASTRUCTURE ACT OF 2015

*Modernizing natural gas pipeline infrastructure.* In recent years, technological advances have spurred dramatic growth in domestic production of oil and natural gas. While these developments have been a significant benefit to the American economy, further growth and benefits to consumers are constrained by a lack of adequate infrastructure. Changing supply and demand patterns have left industrial and residential consumers, particularly in the Northeast, vulnerable to price spikes associated with a lack of adequate natural gas pipeline capacity.

The current Federal and State permitting process for constructing new natural gas pipelines and modernizing existing pipelines is a significant impediment to infrastructure development. Despite increased authority given to the Federal Energy Regulatory Commission (FERC) under the Energy Policy Act of 2005 (EPACT), there is evidence that FERC lacks the ability to enforce agency decisional deadlines related to natural gas pipeline applications. H.R. 8 will help to alleviate constraints on natural gas pipeline infrastructure development by reinforcing FERC's role as the lead agency to coordinate concurrent permit reviews, establish timelines, and require transparency in the process.

In addition, H.R. 8 will provide assistance to low income households in order to offset rate increases resulting from accelerated replacement of natural gas distribution infrastructure. The bill also incorporates recommendations of the National Petroleum Council's 2014 report on enhancing government and industry emergency preparedness for natural disasters by enhancing communication mechanisms and leveraging existing institutional frameworks.<sup>1</sup>

*Modernizing and protecting the electricity system.* In addition to the need to modernize and expand the nation's natural gas infrastructure, ensuring the electric grid is secure, resilient, and reliable

<sup>1</sup>National Petroleum Council. "Enhancing Emergency Preparedness for Natural Disasters." December 18, 2014.



is another top priority. Changing market dynamics, new regulations, and emerging threats have created new energy security and reliability challenges. Disruptions in the delivery of electricity have far-reaching economic and public health impacts. The U.S. Energy Information Administration estimates that power outages cost Americans at least \$150 billion annually.<sup>2</sup> The legislation seeks to meet today's energy reliability and security challenges with forward-looking, commonsense solutions, including innovative and advanced technologies that offer new opportunities to improve and bolster electric infrastructure.

H.R. 8 would address threats to the electricity system, including physical and cyber-attack, electromagnetic pulse, geomagnetic disturbances, severe weather, and seismic events through enhanced emergency preparedness and utilization of advanced technologies. For example, the bill requires an evaluation of the feasibility of storing strategically located spare large power transformers, which can take up to two years to construct, that would reduce the vulnerability of the United States to these threats. In addition, H.R. 8 would provide for competitive grant programs for States, units of local government, and Indian tribe economic development entities to enhance the resilience of the electric grid, improve preparedness and restoration time to mitigate power disruptions, and continue delivery of power to facilities critical to public health and electricity-dependent essential services.

As the electric grid becomes more reliant on information technology and digital communications devices, new grid access points are created, potentially increasing the avenues for outside attacks. By establishing a voluntary Cyber Sense program to identify and promote cyber-secure products and technologies for use in the bulk-power system, the legislation provides increased certainty that new technologies are secure. H.R. 8 also provides for voluntary sharing and protection of critical electric infrastructure information between the private sector and the Federal government, to work together to anticipate and address electric grid vulnerabilities.

*Modernizing the Strategic Petroleum Reserve.* The Strategic Petroleum Reserve (SPR or Reserve), a Federal stockpile of oil stored at several underground locations in Texas and Louisiana, is one of the Nation's most valuable energy security assets; however, it is in need of life-extension and modernization in order to continue fulfilling its mission. In the event of a serious oil supply disruption, the Reserve is designed to deliver up to 4.4 million barrels of oil per day from its underground network to salt caverns to refineries where it can be turned into usable products like gasoline. In its current state, the Reserve does not meet its designed performance criteria, jeopardizing U.S. national security.

The SPR currently holds about 695 million barrels of oil or the equivalent of about 137 days of import protection, while only ninety days are required to meet the U.S. obligation under the International Energy Program. Much of the Reserve's infrastructure is reaching the end of its design life. In fact, some of the facilities are more than seventy-five years old. Investment through regular appropriations has not kept pace with need, and future obligations

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<sup>2</sup>U.S. Department of Energy. "Voices of Experience: Insights into Advanced Distribution Management Systems." February, 2015.

are challenging in the current fiscal environment. At any given time, a considerable volume of oil held within the Reserve is off-line due to maintenance issues. In addition, “cavern creep,” resulting from normal operations and naturally occurring geologic forces, eliminates available capacity each year. Compounding the structural issues with the Reserve’s facilities, the shared distribution system of pipelines and waterway infrastructure have undergone significant changes since the 1970’s, when the Reserve was created, degrading its ability to protect the U.S. economy during an emergency.

H.R. 8 directs the Secretary of Energy to develop a comprehensive study of the optimal size, location, and composition of the Reserve. H.R. 8 also would authorize a limited SPR drawdown and sale to provide for the repair and replacement of the Reserve’s facilities, as well as non-Reserve projects needed to enhance energy security by increasing the resilience, reliability, safety, and security of energy supply, transmission, and distribution infrastructure.

*Hydropower modernization and development.* Hydropower is an essential component of an “all of the above” energy strategy for the United States. Hydropower resources, including pumped storage facilities, currently provide over six percent of all electricity generated in the United States, nearly fifty percent of all renewable electricity in the United States, and approximately 100,000 megawatts of electric capacity in the United States. Tremendous potential exists for new hydropower development, including facilities at existing infrastructure such as non-powered dams, new hydropower sites, and emerging technologies that improve the capture of energy along irrigation canals, municipal water supply conduits, and other linear infrastructure.

Despite the inherent benefits of hydropower—energy security, stability, and reliability; environmental protection and enhancement; and recreation—the outdated authorization processes under Part One of the Federal Power Act (FPA), together with overlapping and duplicative requirements under other Federal laws, disadvantage hydropower as a cost-competitive resource. One of the primary impediments to greater utilization of hydropower resources is the regulatory process, which has proven costly, time-consuming, and burdensome, even for small hydropower projects. The regulatory process to license and construct a hydropower facility remains considerably longer than the process for other energy resources. For example, the Integrated Licensing Process established specifically for hydropower projects is structured to be completed in five years, while the development timeline for wind and solar projects can be as short as eighteen to twenty-four months.

Although centralized decision-making and administration of non-Federal hydropower has been the intent of the FPA since its original enactment 95 years ago, weakening of this core principle over time has resulted in increased consumer costs, reduced availability of renewable energy, capacity, and ancillary services provided by hydropower, and lost opportunities for new hydropower development. Despite the intentions of the EPACT to require better decision-making and promote efficiency in the licensing decisions of FERC, the Act has not accomplished its full purposes due to inefficient implementation and evasion of its requirements by Federal resource agencies.

H.R. 8 would expedite the review of hydropower infrastructure development by reinforcing FERC's role as the lead agency to coordinate concurrent permit reviews and establish enforceable timelines, and streamlining licensing study processes. By requiring FERC to develop a collection of existing studies and data that could be used to inform licensing proceedings, H.R. 8 prevents unnecessary, expensive, and duplicative environmental studies that significantly prolong the duration of application reviews. The bill also establishes a focused licensing process for the expeditious review of license applications for closed loop pumped storage projects, and of license amendment applications that would provide a public benefit (e.g., recreation, environmental enhancement, or increased renewable energy development) with insignificant or minimal environmental effects. The bill also would facilitate the development of new hydropower infrastructure at existing non-powered dams by authorizing FERC to issue exemptions to facilities that meet certain conditions. H.R. 8 also provides the U.S. courts of appeals jurisdiction to rule on agency requests for extensions in the event FERC's schedule for review would prevent it from complying with its own statutory mandates.

*Energy and manufacturing workforce development.* DOE has in place a number of programs to provide training for careers in the energy sector and related fields. However, the rapid growth of domestic oil and natural gas production and the related expansion of energy-intensive manufacturing have significantly changed the employment market and the skills most in demand. In addition, certain groups, including religious, ethnic minorities, women, veterans, individuals with disabilities, and socioeconomically disadvantaged individuals, historically have been underrepresented in many of these jobs, due in part to a lack of training. Furthermore, while overall energy sector job growth has been robust, certain fields, such as coal mining, have been in decline. H.R. 8 seeks to redirect DOE workforce training programs to increase the number of skilled workers trained to work in energy and manufacturing-related fields. It also would provide re-training to displaced energy and manufacturing sector workers.

*Energy security and diplomacy.* America has emerged as the world's leading energy-producing nation and is projected to become a net energy exporter.<sup>3</sup> Beyond the economic benefits of this energy abundance, there are also important opportunities to enhance the nation's energy security and help advance its foreign policy goals. However, existing energy laws are based on assumptions of energy scarcity and are ill-suited to take advantage of these opportunities. In particular, there is no formalized process to incorporate the geopolitical benefits of increased domestic energy production into government decision-making. This includes the benefits of reduced reliance on energy imports, as well as the potential opportunities for energy exports to allies and trading partners. H.R. 8 creates an interagency task force to coordinate with Canada and Mexico on mutually-beneficial energy policy decisions affecting North America, as well as Trans-Atlantic and Trans-Pacific forums reaching

<sup>3</sup>Energy Information Administration, "Annual Energy Outlook 2015," [http://www.eia.gov/forecasts/AEO.section\\_\\_\\_\\_energyprod.cfm](http://www.eia.gov/forecasts/AEO.section____energyprod.cfm).

out to allies on energy matters. It also would expedite the Federal approval of liquefied natural gas (LNG) export projects.

*Energy efficiency.* America's energy policy addresses demand as well as supply. The Federal government has a host of programs that seek to improve energy efficiency at Federal facilities and throughout the economy. These programs occasionally need to be revised to reflect technological change, address emerging problems, and improve accountability and transparency. For example, there are a host of unexplored opportunities to save energy at Federal facilities, as well as a number of efficiency standards and voluntary measures facing implementation challenges. H.R. 8 contains a number of provisions applicable to Federal facilities, such as those reducing energy use at data centers and expanding the use of energy savings performance contracts. It also clarifies the role of DOE in advising States on building codes, provides a resolution to concerns about residential gas furnace efficiency standards, and takes steps to encourage wider participation in voluntary energy savings programs.

*Accountability.* H.R. 8 seeks to promote government accountability and transparency in regulatory decision-making. The legislation requires FERC to establish an Office of Compliance Assistance and Public Participation to be responsible for promoting improved compliance with Commission regulations, make recommendations on energy market behavior and enforcement, and perform outreach to the regulated community. The legislation also requires the Government Accountability Office to study whether and how market rules, practices, and structures of regional transmission organizations produce rates that are just and reasonable.

#### HEARINGS

The Subcommittee on Energy and Power held a hearing entitled "Title II: 21st Century Workforce" on April 23, 2015. The Subcommittee received testimony from:

- Tracy Brundage, Vice President, Workforce Development and Continuing Education, Pennsylvania College of Technology, on behalf of ShaleNET;
- Rick Jarvis, Vice President of Field Construction, Morrow-Meadows Corporation, on behalf of National Electrical Contractors Association;
- Ramanan Krishnamoorti, Chief Energy Officer, University of Houston;
- Monica Martinez, President, Hispanics in Energy;
- Felix W. Ortiz, Founder, Chairman and CEO, Viridis Learning; and
- Charles Wilson, Senior Reactor Operator Trainer and Managing Partner, CW Consulting Group, LLC.

The Subcommittee on Energy and Power held a hearing entitled "Strategic Petroleum Reserve Discussion Draft and Title IV Energy Efficiency" on April 30, 2015. The Subcommittee received testimony from:

- Christopher A. Smith, Assistant Secretary for Fossil Energy, U.S. Department of Energy;
- Christopher Peel, Corporate Senior Vice President and COO, Rheem Manufacturing Company, on behalf of the Air-Conditioning, Heating, and Refrigeration Institute;

- Kateri Callahan, President, Alliance to Save Energy;
- Frank Thompson, President, Sweetwater Builders, Inc., on behalf of the National Association of Home Builders;
- Elizabeth Noll, Energy Efficiency Advocate, Natural Resources Defense Council;
- John W. Somerhalder II, Chairman, President, and CEO, on behalf of the American Gas Association;
- Rona Newmark, Vice President, Intelligent Efficiency Strategy, EMC Corp., on behalf of the Information Technology Council; and
- Mark Wagner, Vice President, U.S. Government Relations, Johnson Controls, Inc., on behalf of the Federal Performance Contracting Coalition.

The Subcommittee on Energy and Power held a hearing entitled “Discussion Drafts Addressing Hydropower Regulatory Modernization and FERC Process Coordination under the Natural Gas Act” on May 13, 2015. The Subcommittee received testimony from:

- Paul R. LePage, Governor of Maine;
- Ann F. Miles, Director, Office of Energy Projects, Federal Energy Regulatory Commission;
- Donald F. Santa, President and CEO, Interstate Natural Gas Association of America;
- Carolyn Elefant, Member of the Board, The Pipeline Safety Coalition and Principal, The Law Offices of Carolyn Elefant;
- Randy Livingston, Vice President, Power Generation, Pacific Gas and Electric Company;
- John J. Suloway, Board Member, National Hydropower Association;
- John Collins, Managing Director of Business Development, Cube Hydro Partners; and
- Richard Roos-Collins, General Counsel, The Hydropower Reform Coalition and Principal, Water and Power Law Group, PC, on behalf of The Hydropower Reform Coalition.

The Subcommittee on Energy and Power held a hearing entitled “Discussion Draft Addressing Energy Reliability and Security” on May 19, 2015. The Subcommittee received testimony from:

- Michael Bardee, Director, Office of Electric Reliability, Federal Energy Regulatory Commission;
- Gerry W. Cauley, President and CEO, North American Electric Reliability Corporation;
- Thomas Fanning, Chairman, President, and CEO, Southern Company;
- Elinor Haider, Vice President, Market Development, Veolia Energy North America, on behalf of the Alliance for Industrial Efficiency;
- Joseph Dominguez, Executive Vice President, Governmental and Regulatory Affairs and Public Policy, Exelon Corporation;
- Mike Bergey, President and CEO, Bergey Wind Power and Board President, Distributed Wind Energy Association, on behalf of the Distributed Wind Energy Association;
- John Di Stasio, President, Large Public Power Council;
- Emily Heitman, Vice President and General Manager, Demand Side Organization Power Transformers, ABB, Inc., on

behalf of the National Electrical Manufacturers Association; and

- Elgie Holstein, Senior Director for Strategic Planning, Environmental Defense Fund.

The Subcommittee on Energy and Power held a hearing entitled “Quadrennial Energy Review and Related Discussion Drafts” on June 2, 2015. The Subcommittee received testimony from:

- Ernest J. Moniz, Secretary, U.S. Department of Energy;
- Rudolf Dolzer, Advisory Board Member, Association of International Petroleum Negotiators and Professor of International Law, University of Bonn;
- Jason Grumet, President, Bipartisan Policy Center;
- Scott Martin, Commissioner, Lancaster County, PA;
- Gerald Keeps, Vice President, Upstream Research and Consulting, HIS;
- Alison Cassady, Director of Domestic Energy Policy, Center for American Progress; and
- Emily Hammond, Professor of Law, George Washington University Law School.

The Subcommittee on Energy and Power held a hearing entitled “Discussion Draft on Accountability and Department of Energy Perspectives on Title IV: Energy Efficiency” on June 4, 2015. The Subcommittee received testimony from:

- Kathleen Hogan, Deputy Assistant Secretary for Energy Efficiency, U.S. Department of Energy;
- J. Arnold Quinn, Director, Office of Energy Policy and Innovation, Federal Energy Regulatory Commission;
- Larry R. Parkinson, Director, Office of Enforcement, Federal Energy Regulatory Commission;
- Sue Kelly, President and CEO, American Public Power Association;
- John E. Shelk, President and CEO, Electric Power Supply Association;
- Christopher Cook, President and General Counsel, Solar Grid Storage LLC;
- Jonathan M. Weisgall, Vice President, Legislative and Regulatory Affairs, Berkshire Hathaway Energy;
- William S. Scherman, Partner, Gibson, Dunn & Crutcher LLP; and
- Peter Gaibraith Kelly, Senior Vice President, External Affairs, Competitive Power Ventures, Inc.

#### COMMITTEE CONSIDERATION

On July 22, 2015, the Subcommittee on Energy and Power met in open markup session and forwarded the Committee Print entitled “To modernize energy infrastructure, build a 21st century workforce, bolster America’s energy security and diplomacy, and promote energy efficiency and government accountability” to the full Committee by a voice vote. On September 29 and 30, 2015, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 8 reported to the House, as amended, by a recorded vote of 32 yeas and 20 nays.

## COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The following reflects the recorded votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS  
ROLL CALL VOTE # 23**

**BILL: H.R. 8**, the "North American Energy Security and Infrastructure Act of 2015"

**AMENDMENT:** An amendment to the amendment in the nature of a substitute, offered by Mr. Kennedy, No. 1a, to strike section 1110.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 22 yeas and 26 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton				Mr. Rush	X		
Mr. Whitfield		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel			
Mr. Pitts		X		Mr. Green	X		
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn		X		Ms. Schakowsky	X		
Mr. Scalise				Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers				Ms. Castor	X		
Mr. Harper		X		Mr. Sarbanes	X		
Mr. Lance				Mr. McNerney	X		
Mr. Guthrie		X		Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth	X		
Mr. Kinzinger		X		Ms. Clarke	X		
Mr. Griffith		X		Mr. Loeb sack	X		
Mr. Bilirakis		X		Mr. Schrader	X		
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bueshon		X					
Mr. Flores		X					
Mrs. Brooks		X					
Mr. Mullin		X					
Mr. Hudson							
Mr. Collins		X					
Mr. Cramer		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS  
ROLL CALL VOTE # 24**

**BILL: H.R. 8**, the "North American Energy Security and Infrastructure Act of 2015"

**AMENDMENT:** An amendment to the amendment in the nature of a substitute, offered by Mr. Pompeo, No. 21b, to require State regulatory authorities to evaluate specified impacts of subsidizing the deployment, construction, maintenance, or operation of a customer-side technology.

**DISPOSITION: AGREED TO**, by a roll call vote of 28 yeas and 21 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Pallone		X	
Mr. Barton	X			Mr. Rush		X	
Mr. Whitfield	X			Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Engel			
Mr. Pitts	X			Mr. Green		X	
Mr. Walden	X			Ms. DeGette		X	
Mr. Murphy	X			Ms. Capps		X	
Mr. Burgess				Mr. Doyle		X	
Mrs. Blackburn	X			Ms. Schakowsky		X	
Mr. Scalise				Mr. Butterfield		X	
Mr. Latta	X			Ms. Matsui		X	
Mrs. McMorris Rodgers				Ms. Castor		X	
Mr. Harper	X			Mr. Sarbanes		X	
Mr. Lance	X			Mr. McNerney		X	
Mr. Guthrie	X			Mr. Welch		X	
Mr. Olson	X			Mr. Lujan		X	
Mr. McKinley	X			Mr. Tonko		X	
Mr. Pompeo	X			Mr. Yarmuth		X	
Mr. Kinzinger	X			Ms. Clarke		X	
Mr. Griffith	X			Mr. Loeb sack		X	
Mr. Bilirakis	X			Mr. Schrader	X		
Mr. Johnson	X			Mr. Kennedy		X	
Mr. Long	X			Mr. Cardenas		X	
Mrs. Ellmers	X						
Mr. Bucshon	X						
Mr. Flores	X						
Mrs. Brooks	X						
Mr. Mullin	X						
Mr. Hudson							
Mr. Collins	X						
Mr. Cramer	X						

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**COMMITTEE ON ENERGY AND COMMERCE – 114TH CONGRESS  
ROLL CALL VOTE # 25**

**BILL: H.R. 8**, the “North American Energy Security and Infrastructure Act of 2015”

**AMENDMENT:** An amendment to the amendment in the nature of a substitute, offered by Mr. Tonko, No. 1c, to provide that specified analysis by a Regional Transmission Organization or an Independent System Operator shall include an evaluation of the impact of meeting specified reliability requirements; to provide that recommendations by the Federal Energy Regulatory Commission in a report to Congressional committees may not include any recommendations that would raise electricity rates; and to exempt Regional Transmission Organizations and Independent System Operators that have prepared a Comprehensive Reliability Plan that is based on an evaluation of all possible resources available within the system for meeting reliability needs from application of section 215B of the Federal Power Act, as added by section 1110.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 22 yeas and 27 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush	X		
Mr. Whitfield		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel	X		
Mr. Pitts		X		Mr. Green	X		
Mr. Walden				Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess				Mr. Doyle		X	
Mrs. Blackburn		X		Ms. Schakowsky	X		
Mr. Scalise				Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers				Ms. Castor	X		
Mr. Harper		X		Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth	X		
Mr. Kinzinger		X		Ms. Clarke	X		
Mr. Griffith		X		Mr. Loeb sack	X		
Mr. Bilirakis		X		Mr. Schrader	X		
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bucshon		X					
Mr. Flores		X					
Mrs. Brooks		X					
Mr. Mullin		X					
Mr. Hudson							
Mr. Collins		X					
Mr. Cramer		X					

**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS  
ROLL CALL VOTE # 26**

**BILL: H.R. 8**, the "North American Energy Security and Infrastructure Act of 2015"

**AMENDMENT:** An amendment to the amendment in the nature of a substitute, offered by Mr. Pallone, No. 1f, to strike section 1108.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 22 yeas and 27 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush	X		
Mr. Whitfield		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel	X		
Mr. Pitts		X		Mr. Green	X		
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn		X		Ms. Schakowsky	X		
Mr. Scalise				Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers		X		Ms. Castor	X		
Mr. Harper				Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNerney	X		
Mr. Guthrie				Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth			
Mr. Kinzinger		X		Ms. Clarke	X		
Mr. Griffith		X		Mr. Loeb sack	X		
Mr. Bilirakis		X		Mr. Schrader	X		
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bucshon		X					
Mr. Flores		X					
Mrs. Brooks		X					
Mr. Mullin		X					
Mr. Hudson							
Mr. Collins		X					
Mr. Cramer		X					

09/30/2015

**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS  
ROLL CALL VOTE # 27**

**BILL: H.R. 8**, the "North American Energy Security and Infrastructure Act of 2015"

**AMENDMENT:** An amendment to the amendment in the nature of a substitute, offered by Mr. Tonko, No. 1g, to strike section 1101.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 20 yeas and 29 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush	X		
Mr. Whitfield		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel	X		
Mr. Pitts		X		Mr. Green		X	
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess		X		Mr. Doyle		X	
Mrs. Blackburn		X		Ms. Schakowsky	X		
Mr. Scalise				Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers		X		Ms. Castor	X		
Mr. Harper				Mr. Sarbanes	X		
Mr. Lance	X			Mr. McNerney	X		
Mr. Guthrie				Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth			
Mr. Kinzinger		X		Ms. Clarke	X		
Mr. Griffith		X		Mr. Loeb sack	X		
Mr. Bilirakis		X		Mr. Schrader		X	
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bueshon		X					
Mr. Flores		X					
Mrs. Brooks		X					
Mr. Mullin		X					
Mr. Hudson							
Mr. Collins		X					
Mr. Cramer		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS  
ROLL CALL VOTE # 28**

**BILL: H.R. 8**, the "North American Energy Security and Infrastructure Act of 2015"

**AMENDMENT:** An amendment to the amendment in the nature of a substitute, offered by Mr. Pallone, No. 1j, to amend the authorization of appropriations for the program to modernize the Strategic Petroleum Reserve (SPR) from \$500 million for the period encompassing fiscal years 2017 through 2020 to \$2 billion for the period encompassing fiscal years 2017 through 2021; to amend the authorization of appropriations for the program to enhance electric infrastructure resilience, reliability, and energy security from \$250 million for the period encompassing fiscal years 2017 through 2020 to \$1.5 billion for the period encompassing fiscal years 2017 through 2021; and to amend the authorization for the Secretary to drawdown and sell crude oil from the SPR from the end of fiscal year 2020 to fiscal year 2021.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 23 yeas and 25 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush	X		
Mr. Whitfield		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel	X		
Mr. Pitts		X		Mr. Green	X		
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn		X		Ms. Schakowsky	X		
Mr. Scalise				Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers				Ms. Castor	X		
Mr. Harper				Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo				Mr. Yarmuth	X		
Mr. Kinzinger		X		Ms. Clarke	X		
Mr. Griffith		X		Mr. Loeb sack	X		
Mr. Bilirakis		X		Mr. Schrader	X		
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bucshon		X					
Mr. Flores		X					
Mrs. Brooks		X					
Mr. Mullin							
Mr. Hudson							
Mr. Collins		X					
Mr. Cramer		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS  
ROLL CALL VOTE # 29**

**BILL: H.R. 8**, the "North American Energy Security and Infrastructure Act of 2015"

**AMENDMENT:** An amendment to the amendment in the nature of a substitute, offered by Mr. Rush, No. 1k, to make findings and to direct the Secretary of Energy to establish a competitive program to provide financial assistance to States to incentivize natural gas distribution companies to accelerate or expand utility programs that improve the public safety and environmental performance of the natural gas distribution system through investment in specified activities.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 23 yeas and 25 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush	X		
Mr. Whitfield		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel	X		
Mr. Pitts		X		Mr. Green	X		
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn		X		Ms. Schakowsky	X		
Mr. Scalise				Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers				Ms. Castor	X		
Mr. Harper				Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth	X		
Mr. Kinzinger				Ms. Clarke	X		
Mr. Griffith		X		Mr. Loeb	X		
Mr. Bilirakis		X		Mr. Schrader	X		
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bucshon		X					
Mr. Flores							
Mrs. Brooks		X					
Mr. Mullin		X					
Mr. Hudson							
Mr. Collins		X					
Mr. Cramer		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS  
ROLL CALL VOTE # 30**

**BILL: H.R. 8**, the "North American Energy Security and Infrastructure Act of 2015"

**AMENDMENT:** An amendment to the amendment in the nature of a substitute, offered by Mr. Tonko, No. 1p, reauthorizing the Weatherization Assistance Program at \$450 million for each fiscal year 2016-2020.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 22 yeas and 24 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton				Mr. Rush	X		
Mr. Whitfield		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel	X		
Mr. Pitts		X		Mr. Green	X		
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess				Mr. Doyle	X		
Mrs. Blackburn		X		Ms. Schakowsky	X		
Mr. Scalise				Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui			
Mrs. McMorris Rodgers				Ms. Castor	X		
Mr. Harper		X		Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo				Mr. Yarmuth	X		
Mr. Kinzinger		X		Ms. Clarke	X		
Mr. Griffith		X		Mr. Loeb sack	X		
Mr. Bilirakis		X		Mr. Schrader	X		
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bueshon		X					
Mr. Flores							
Mrs. Brooks		X					
Mr. Mullin		X					
Mr. Hudson							
Mr. Collins		X					
Mr. Cramer		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS  
ROLL CALL VOTE # 31**

**BILL: H.R. 8**, the "North American Energy Security and Infrastructure Act of 2015"

**AMENDMENT:** An amendment to the amendment in the nature of a substitute, offered by Ms. Schakowsky.  
No. 1r, to establish an Office of Consumer Advocacy and Compliance Assistance at the Federal Energy Regulatory Commission.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 22 yeas and 25 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton				Mr. Rush	X		
Mr. Whitfield		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel	X		
Mr. Pitts		X		Mr. Green	X		
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn		X		Ms. Schakowsky	X		
Mr. Scalise				Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui			
Mrs. McMorris Rodgers				Ms. Castor	X		
Mr. Harper		X		Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNeerney	X		
Mr. Guthrie		X		Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo				Mr. Yarmuth	X		
Mr. Kinzinger		X		Ms. Clarke	X		
Mr. Griffith		X		Mr. Loeb sack	X		
Mr. Bilirakis		X		Mr. Schrader	X		
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bucshon		X					
Mr. Flores							
Mrs. Brooks		X					
Mr. Mullin		X					
Mr. Hudson							
Mr. Collins		X					
Mr. Cramer		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS**  
**ROLL CALL VOTE # 32**

**BILL: H.R. 8**, the "North American Energy Security and Infrastructure Act of 2015"

**AMENDMENT:** An amendment to the amendment in the nature of a substitute, offered by Mr. Loeb sack, No. 1s, to direct the Secretary of Energy to establish an initiative to promote the development of distributed wind energy systems within the Wind Energy program of the Department.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 23 yeas and 25 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton				Mr. Rush	X		
Mr. Whitfield		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel	X		
Mr. Pitts		X		Mr. Green	X		
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn		X		Ms. Schakowsky	X		
Mr. Scalise				Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers				Ms. Castor	X		
Mr. Harper		X		Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo				Mr. Yarmuth	X		
Mr. Kinzinger		X		Ms. Clarke	X		
Mr. Griffith		X		Mr. Loeb sack	X		
Mr. Bilirakis		X		Mr. Schrader	X		
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bueshon		X					
Mr. Flores							
Mrs. Brooks		X					
Mr. Mullin		X					
Mr. Hudson							
Mr. Collins		X					
Mr. Cramer		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS  
ROLL CALL VOTE # 33**

**BILL: H.R. 8**, the "North American Energy Security and Infrastructure Act of 2015"

**AMENDMENT:** An amendment to the amendment in the nature of a substitute, offered by Mr. Cardenas, No. 1u, to establish a program under which the Secretary shall provide loans and grants to eligible entities for the purpose of developing new photovoltaic solar projects in the United States for low-income households and individuals who otherwise would likely be unable to afford or purchase photovoltaic solar systems.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 23 yeas and 28 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush	X		
Mr. Whitfield		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel	X		
Mr. Pitts		X		Mr. Green	X		
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn		X		Ms. Schakowsky	X		
Mr. Scalise				Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers				Ms. Castor	X		
Mr. Harper		X		Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth	X		
Mr. Kinzinger		X		Ms. Clarke	X		
Mr. Griffith		X		Mr. Loeb sack	X		
Mr. Bilirakis		X		Mr. Schrader	X		
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bucshon		X					
Mr. Flores		X					
Mrs. Brooks		X					
Mr. Mullin		X					
Mr. Hudson							
Mr. Collins		X					
Mr. Cramer		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS  
ROLL CALL VOTE # 34**

**BILL: H.R. 8**, the "North American Energy Security and Infrastructure Act of 2015"

**AMENDMENT:** An amendment to the amendment in the nature of a substitute, offered by Mr. Pallone, No. 1v, to strike chapter 5 of subtitle A of title IV.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 20 yeas and 28 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush			
Mr. Whitfield		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel	X		
Mr. Pitts		X		Mr. Green	X		
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess				Mr. Doyle	X		
Mrs. Blackburn		X		Ms. Schakowsky	X		
Mr. Scalise				Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers				Ms. Castor	X		
Mr. Harper		X		Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Welch	X		
Mr. Olson		X		Mr. Lujan		X	
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo				Mr. Yarmuth	X		
Mr. Kinzinger		X		Ms. Clarke	X		
Mr. Griffith		X		Mr. Loeb sack	X		
Mr. Bilirakis		X		Mr. Schrader		X	
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bucshon		X					
Mr. Flores		X					
Mrs. Brooks		X					
Mr. Mullin		X					
Mr. Hudson							
Mr. Collins		X					
Mr. Cramer		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS  
ROLL CALL VOTE # 35**

**BILL: H.R. 8**, the "North American Energy Security and Infrastructure Act of 2015"

**AMENDMENT:** An amendment to the amendment in the nature of a substitute, offered by Mr. Butterfield, No. 1w, to direct the Administrator of the Environmental Protection Agency to establish a grant program to subsidize up to 15 percent of the costs borne by landlords to participate in either the ENERGY STAR Home Performance Program or the ENERGY STAR New Homes Program; and to undertake a rulemaking to determine how landlords can apply for the grant program and how grant funds will be distributed.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 22 yeas and 27 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush			
Mr. Whitfield		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel	X		
Mr. Pitts		X		Mr. Green	X		
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn		X		Ms. Schakowsky	X		
Mr. Scalise				Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers				Ms. Castor	X		
Mr. Harper		X		Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNeerney	X		
Mr. Guthrie		X		Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth	X		
Mr. Kinzinger		X		Ms. Clarke	X		
Mr. Griffith		X		Mr. Loebsack	X		
Mr. Bilirakis		X		Mr. Schrader	X		
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bucshon		X					
Mr. Flores		X					
Mrs. Brooks		X					
Mr. Mullin							
Mr. Hudson							
Mr. Collins		X					
Mr. Cramer		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS  
ROLL CALL VOTE # 36**

**BILL: H.R. 8**, the "North American Energy Security and Infrastructure Act of 2015"

**AMENDMENT:** An amendment to the amendment in the nature of a substitute, offered by Ms. Castor, No. 1x, to direct the Secretary of Energy to establish a program to provide eligible entities loans for the deployment of distributed energy systems in a specific project and to provide funding for programs to finance the deployment of multiple distributed energy systems through a revolving loan fund, credit enhancement program, or other financial assistance program; and to establish a technical assistance and grant program to disseminate information and provide technical assistance directly to eligible entities so the eligible entities can identify, evaluate, plan, and design distributed energy systems and to make grants to eligible entities so that the eligible entities may contract to obtain technical assistance to identify, evaluate, plan and design distributed energy systems.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 22 yeas and 27 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush	X		
Mr. Whitfield		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel	X		
Mr. Pitts		X		Mr. Green	X		
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn		X		Ms. Schakowsky			
Mr. Scalise				Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers		X		Ms. Castor	X		
Mr. Harper		X		Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth	X		
Mr. Kinzinger				Ms. Clarke	X		
Mr. Griffith		X		Mr. Loeb sack	X		
Mr. Bilirakis		X		Mr. Schrader	X		
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bueshon		X					
Mr. Flores		X					
Mrs. Brooks		X					
Mr. Mullin							
Mr. Hudson							
Mr. Collins		X					
Mr. Cramer		X					

**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS  
ROLL CALL VOTE # 37**

**BILL: H.R. 8**, the "North American Energy Security and Infrastructure Act of 2015"

**AMENDMENT:** An amendment to the amendment in the nature of a substitute, offered by Ms. Schakowsky, No. 1aa, to strike section 4125.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 21 yeas and 30 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush	X		
Mr. Whitfield		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel	X		
Mr. Pitts		X		Mr. Green	X		
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn		X		Ms. Schakowsky	X		
Mr. Scalise				Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers		X		Ms. Castor	X		
Mr. Harper		X		Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNeerney	X		
Mr. Guthrie		X		Mr. Welch		X	
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth	X		
Mr. Kinzinger		X		Ms. Clarke	X		
Mr. Griffith		X		Mr. Loeb sack	X		
Mr. Bilirakis		X		Mr. Schrader		X	
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bucshon		X					
Mr. Flores		X					
Mrs. Brooks		X					
Mr. Mullin							
Mr. Hudson							
Mr. Collins		X					
Mr. Cramer		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS  
ROLL CALL VOTE # 38**

**BILL: H.R. 8**, the "North American Energy Security and Infrastructure Act of 2015"

**AMENDMENT:** An amendment to the amendment in the nature of a substitute, offered by Mr. Pallone, No. 1bb, ensuring the Act shall not take effect until the Energy Information Administration publishes a report on the carbon impacts of the Act.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 23 yeas and 29 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush	X		
Mr. Whitfield		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel	X		
Mr. Pitts		X		Mr. Green	X		
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn		X		Ms. Schakowsky	X		
Mr. Scalise				Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers		X		Ms. Castor	X		
Mr. Harper		X		Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth	X		
Mr. Kinzinger		X		Ms. Clarke	X		
Mr. Griffith		X		Mr. Loeb sack	X		
Mr. Bilirakis		X		Mr. Schrader	X		
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bucshon		X					
Mr. Flores		X					
Mrs. Brooks		X					
Mr. Mullin		X					
Mr. Hudson							
Mr. Collins		X					
Mr. Cramer		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS  
ROLL CALL VOTE # 39**

**BILL: H.R. 8**, the "North American Energy Security and Infrastructure Act of 2015"

**AMENDMENT:** A motion by Mr. Upton to order H.R. 8 favorably reported to the House, as amended. (Final Passage)

**DISPOSITION: AGREED TO**, by a roll call vote of 32 yeas and 20 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Pallone		X	
Mr. Barton	X			Mr. Rush		X	
Mr. Whitfield	X			Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Engel		X	
Mr. Pitts	X			Mr. Green	X		
Mr. Walden	X			Ms. DeGette		X	
Mr. Murphy	X			Ms. Capps		X	
Mr. Burgess	X			Mr. Doyle		X	
Mrs. Blackburn	X			Ms. Schakowsky		X	
Mr. Scalise				Mr. Butterfield		X	
Mr. Latta	X			Ms. Matsui		X	
Mrs. McMorris Rodgers	X			Ms. Castor		X	
Mr. Harper	X			Mr. Sarbanes		X	
Mr. Lance	X			Mr. McNerney	X		
Mr. Guthrie	X			Mr. Welch		X	
Mr. Olson	X			Mr. Lujan		X	
Mr. McKinley	X			Mr. Tonko		X	
Mr. Pompeo	X			Mr. Yarmuth		X	
Mr. Kinzinger	X			Ms. Clarke		X	
Mr. Griffith	X			Mr. Loeb sack		X	
Mr. Bilirakis	X			Mr. Schrader	X		
Mr. Johnson	X			Mr. Kennedy		X	
Mr. Long	X			Mr. Cardenas		X	
Mrs. Ellmers	X						
Mr. Bueshon	X						
Mr. Flores	X						
Mrs. Brooks	X						
Mr. Mullin	X						
Mr. Hudson							
Mr. Collins	X						
Mr. Cramer	X						

09/30/2015



## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held hearings and made findings that are reflected in this report.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of this legislation is to modernize energy infrastructure, build a 21st century workforce, bolster America's energy security and diplomacy, and promote energy efficiency and government accountability.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 8 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

## EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 8 contains no earmarks, limited tax benefits, or limited tariff benefits.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, October 19, 2015.*

Hon. FRED UPTON,  
*Chairman, Committee on Energy and Commerce,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 8, the North American Energy Security and Infrastructure Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

KEITH HALL.

Enclosure.

*H.R. 8—North American Energy Security and Infrastructure Act of 2015*

Summary: H.R. 8 would amend current law and authorize activities—to be administered primarily by the Department of Energy (DOE)—to promote energy efficiency and enhance the reliability and security of energy-related infrastructure. The bill also would expand and extend federal agencies' authority to use certain types of long-term contracts to invest in energy conservation measures and related services and specify various energy-related goals and requirements for federal agencies.

CBO estimates that enacting H.R. 8 would increase direct spending by \$414 million over the 2016–2025 period. In addition, CBO estimates that implementing the legislation would, on net, reduce spending subject to appropriation by \$411 million over the 2016–2020 period, assuming appropriation actions consistent with the legislation. Enacting H.R. 8 could affect revenues, but CBO estimates that any such effects would total less than \$500,000 in any year.

Because H.R. 8 would affect direct spending and revenues, pay-as-you-go procedures apply.

CBO estimates that enacting H.R. 8 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2026.

H.R. 8 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the aggregate cost of complying with the intergovernmental mandates would fall below the annual threshold established in UMRA (\$77 million in 2015, adjusted annually for inflation). CBO cannot determine whether the aggregate cost of the private-sector mandates would exceed the annual threshold established in UMRA (\$154 million, adjusted annually for inflation).

CBO has not reviewed some provisions of sections 1102 and 1104 for mandates because section 4 of UMRA excludes from the application of that act any legislative provisions that are necessary for national security; CBO has determined that those provisions fall within that exclusion.

Estimated Cost to the Federal Government: The estimated budgetary effects of this legislation are shown in the following table. The costs of this legislation primarily fall within budget function 270 (energy).

TABLE 1—SUMMARY OF THE BUDGETARY EFFECTS OF H.R. 8 <sup>a</sup>

	By fiscal year, in millions of dollars—											2016- 2025
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2016- 2020	
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority .....	46	46	46	46	46	46	46	46	46	46	230	460
Estimated Outlays .....	14	32	46	46	46	46	46	46	46	46	184	414
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Estimated Authorization Level .....	33	14	8	5	0	-4	-8	-12	-16	-21	60	-1
Estimated Outlays .....	6	-204	-149	-49	-15	185	136	59	14	-12	-411	-29

<sup>a</sup>The estimates presented in this table reflect CBO's view of how cash flows related to energy savings performance contracts (ESPCs) should be reflected in the federal budget. Since ESPCs were first implemented in 1998, however, the Administration has not recorded the full extent of federal obligations under ESPCs upfront when contracts were signed. Instead, the Administration records ongoing contract payments to vendors under ESPCs on a year-by-year basis as appropriations for such payments are provided. If the Administration was to continue following that practice for executing ESPCs under H.R. 8, agencies' total energy-related costs would be largely unchanged during the contract period when savings from reduced energy costs would go toward making contractual payments to vendors. As a result, CBO estimates that there would be significant reduction in appropriations from implementing H.R. in the 10-year period covered by this estimate. If expected reductions in energy use continued beyond the contract period, budgetary savings would accrue to the federal government if annual appropriations for agencies' energy-related spending were reduced accordingly.

Basis of estimate: For this estimate, CBO assumes that H.R. 8 will be enacted near the start of fiscal year 2016.

*Changes in direct spending*

Estimated increases in direct spending under H.R. 8 stem from provisions that would modify agencies' authority to enter into energy savings performance contracts (ESPCs), a specific type of long-term contract used to procure equipment and services to conserve energy in federal buildings. The bill also would specify a variety of energy-related goals and requirements for federal agencies, but CBO estimates such provisions would not significantly affect direct spending.

**Expanded Authority To Use ESPCs.** Under current law, a variety of statutory provisions and executive orders direct federal agencies to meet certain goals to reduce the amount of energy used, increase the consumption of electricity that is generated from renewable sources, reduce emissions of greenhouse gases, and ensure that federal facilities meet certain standards related to sustainable resource use. To support investments in energy-efficiency and renewable technologies necessary to achieve those goals, federal agencies sometimes use ESPCs—a specific type of long-term contract that enables a nonfederal vendor to finance energy-related investments on behalf of the government.

CBO generally considers that implementing ESPCs will affect both direct spending and spending subject to appropriation. The rationale for CBO's longstanding budgetary treatment of ESPCs and similar contracts, and differences between CBO's view and the Administration's, are discussed in depth in a recent CBO report on that topic.<sup>1</sup> In brief, upon entering into an ESPC, the government effectively commits to making payments to a vendor in future years before having appropriations to cover all of the resulting costs; in CBO's view, the authority to enter into such contractually binding agreements without appropriations is a form of direct spending. ESPCs permit agencies to pay vendors for energy conservation measures and related financing costs over time on the basis of anticipated and realized reductions in energy costs, which are generally paid from annual discretionary appropriations. Thus, proposals that affect agencies' use of such contracts also affect spending subject to appropriation.

H.R. 8 would modify federal agencies' authority to use ESPCs to finance necessary capital investments. Key changes would:

- Permit agencies to use, sell, or transfer energy incentives, rebates, or credits (such as renewable energy certificates) as a means of making payments to vendors under ESPCs;<sup>2</sup>
- Expand the definition of an "energy conservation measure" to include the acquisition of energy-consuming devices and support structures (such as appliances located within federal buildings); and,

<sup>1</sup>See Congressional Budget Office, *Using ESPCs to Finance Federal Investments in Energy-Efficient Equipment*, (February 2015), <https://www.cbo.gov/publication/49869>.

<sup>2</sup>Renewable energy certificates represent the right to the nonpower renewable and environmental attributes of electricity generated from renewable resources. Such certificates, and other similar incentives and rebates, can be sold separately from the underlying units of physical electricity. For purposes of complying with certain energy-related requirements, the purchase of a renewable energy certificate is equal to purchasing the renewable attributes of the underlying electricity without consuming or purchasing the energy itself.

- Require federal agencies to include, in estimating the value of energy savings attributable to an ESPC, any anticipated reduction in operation and maintenance expenses related to energy conservation measures financed under the contract.

CBO expects that those proposed changes to agencies' authority to use ESPCs would enable agencies to pursue new projects that are otherwise unlikely to be undertaken under current law. In particular, we expect that authorizing agencies to use incentives such as renewable energy certificates to finance contract payments would enable greater investments in renewable technologies. Under current law, agencies' authority to use such incentives to pay for ESPC costs is uncertain in light of a 2013 decision by a federal contract appeals board.<sup>3</sup> As a result of that decision and based on information from DOE, CBO expects that, under current law, federal agencies are unlikely to pursue ESPCs that involve renewable energy technologies as a significant component.

Thus, CBO anticipates that allowing agencies to use such incentives would lead them to make larger investments in renewable projects than would otherwise occur. CBO estimates that, under H.R. 8, agencies would use ESPCs to adopt additional energy conservation measures with an investment value of about \$35 million annually. That estimate is based on historical information from DOE on the potential magnitude of renewable energy projects that are likely to be pursued through ESPCs if agencies were explicitly permitted to use incentives such as renewable energy certificates to fund contracts. The estimate represents a relatively modest incremental increase in anticipated spending for energy-related investments. By comparison, since 2003 overall spending by federal agencies for such investments has averaged nearly \$1.5 billion annually, with roughly one-third of energy conservation measures—or about \$500 million annually—acquired through ESPCs or similar long-term contracts.

It is possible that incremental commitments through ESPCs would be even greater under H.R. 8 to the extent that agencies that currently plan to undertake projects using appropriated funds for the upfront costs shift instead toward using such contracts, given the expanded flexibility under the bill. However, based on information from DOE about the multi-billion dollar pipeline of energy-related improvements that agencies intend to pursue under current law over the next several years, CBO does not expect that increased use of contracts to finance projects would reduce the need for future appropriations for energy-related investments. Rather, our estimate reflects the expectation that, under the bill, overall levels of investment would increase relative to current law.

Under H.R. 8, CBO estimates that increased direct spending for the upfront cost of contractual commitments to acquire additional energy conservation measures through ESPCs would total \$46 million annually. CBO's estimate of direct spending reflects an amount equal to the annual cost of energy conservation measures as installed (about \$35 million), plus the net present value of the portion of borrowing costs attributable to contract interest rates that would exceed U.S. Treasury interest rates (about \$11 million). (Bor-

<sup>3</sup>Honeywell International Inc., Armed Services Board of Contract Appeals No. 57779 (August 7, 2013).

rowing costs equivalent to the amount of Treasury interest that would be paid if projects were financed with appropriated funds are not included in our estimate because, for the enforcement of Congressional budget rules, changes in Treasury interest costs are not counted as a cost or savings related to any particular legislative provision.) CBO's estimate of spending reflects its judgment as to when equipment or services would be provided—typically over a three-year period for equipment.

In addition, CBO estimates that projects financed through ESPCs would, on net, reduce federal agencies' energy costs, which are typically paid for using annual discretionary appropriations. (See the subsequent discussion on changes in spending subject to appropriation for details on such effects.)

**Energy-Related Goals and Requirements for Federal Agencies.** As previously mentioned, existing statutory provisions and executive orders direct federal agencies to meet certain energy-related goals and requirements. According to DOE, federal agencies have identified a multi-billion dollar pipeline of additional energy-related improvements that they intend to pursue under current law over the next several years in order to comply with existing energy-related goals and requirements. Under current law, CBO expects that agencies will pursue some of those improvements through ESPCs and similar arrangements involving an increase in estimated direct spending.

H.R. 8 would extend statutory goals for federal agencies to reduce energy consumption, expand requirements for federal buildings to meet certain standards related to sustainable resource use, and broaden definitions of the types of energy that can be considered renewable for purposes of complying with an existing requirement related to federal agencies' use of renewable electricity. According to DOE, the goals and requirements specified by those provisions are largely consistent with existing statutory and administrative policy, and CBO expects that they would not significantly affect the timing or magnitude of federal spending on energy-related technologies.

#### *Spending subject to appropriation*

Assuming appropriation action consistent with the legislation, CBO estimates that implementing H.R. 8 would, on net, reduce spending subject to appropriation by \$411 million over the 2016–2020 period (see Table 2). That estimate includes \$74 million in increased costs for DOE and other agencies to pursue activities related to energy infrastructure and energy efficiency that would be more than offset by estimated reductions in spending subject to appropriation totaling \$485 million. Those reductions include the effects of a provision that would establish an Energy Security and Infrastructure Modernization Fund with proceeds from the sale of oil in the Strategic Petroleum Reserve, estimated reductions in energy-related spending attributable to increased use of ESPCs under the bill, and forgone costs to comply with an existing requirement for federal agencies to reduce their use of fossil fuels.

In addition, several provisions—particularly those related to the security of the nation's electricity transmission grid and other aspects of the nation's energy infrastructure—would specify a variety of new procedural and analytical requirements for the Federal En-

ergy Regulatory Commission (FERC), which regulates the interstate transmission of electricity, natural gas, and oil and plays a role in approving and licensing certain energy projects. Such provisions could affect FERC's workload; however, because FERC recovers 100 percent of its costs through user fees, any change in that agency's costs (which are controlled through annual appropriation acts) would be offset by an equal change in fees that the commission charges, resulting in no net change in federal spending.

TABLE 2—CHANGES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 8

	By Fiscal year, in millions of dollars—					
	2016	2017	2018	2019	2020	2016–2020
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Energy-Related Infrastructure and Energy Efficiency						
Estimated Authorization Level .....	34	18	17	17	17	103
Estimated Outlays .....	7	14	17	18	18	74
Energy Security and Infrastructure Modernization Fund						
Estimated Authorization Level .....	0	0	0	0	0	0
Estimated Outlays .....	0	–214	–157	–55	–16	–442
Net Reductions in Energy and Energy-Related Costs Attributable to ESPCs						
Estimated Authorization Level .....	–1	–3	–6	–9	–12	–31
Estimated Outlays .....	–1	–3	–6	–9	–12	–31
Repeal of Requirement to Reduce Fossil Fuel Use						
Estimated Authorization Level .....	0	–1	–3	–3	–5	–12
Estimated Outlays .....	0	–1	–3	–3	–5	–12
Total Changes						
Estimated Authorization Level .....	33	14	8	5	0	60
Estimated Outlays .....	6	–204	–149	–49	–15	–411

Note: ESPCs = energy savings performance contracts.

**Energy-Related Infrastructure and Energy Efficiency.** H.R. 8 would authorize DOE and other agencies to pursue activities to modernize and improve the security of energy-related infrastructure and promote the development and use of energy-efficient technologies in buildings, appliances, and industrial processes. The bill also would direct DOE, in collaboration with the Department of State, to undertake a variety of analytical and diplomatic efforts related to energy security.

According to DOE, many of the requirements specified in H.R. 8 are consistent with ongoing efforts and likely to be achieved within existing levels of funding; as a result, CBO estimates that implementing such provisions would not significantly affect the agency's costs. Based on information from DOE, CBO estimates that fully funding those activities would require appropriations totaling \$103 million over the 2016–2020 period (and \$85 million in later years). That five-year total includes:

- \$50 million in specified authorizations for incentive payments to certain producers of hydroelectricity;
- \$25 million in estimated authorizations for a new program to identify and promote technologies to enhance the cybersecurity of the nation's bulk-power system;
- \$15 million in specified authorizations for grants to utilities and local governments to demonstrate advanced and innovative technologies related to efficient use of energy and water; and

- \$13 million in estimated authorizations for a variety of energy-related studies, reports, and other activities.

Assuming appropriation of the amounts authorized and estimated to be necessary, CBO estimates resulting outlays would total \$74 million over the 2016–2020 period and \$114 million in later years. That estimate is based on historical spending patterns for existing and similar activities carried out by DOE.

That estimate includes the costs for DOE to develop, in consultation with other federal agencies and owners and operators of critical electric infrastructure and military installations, a plan to establish a national storage system for spare large power transformers and other equipment that could be used to replace critically damaged components of the bulk-power system; however, our estimate does not include any costs that DOE might incur to subsequently implement such a plan because we have no basis for predicting what it might recommend. Based on information from DOE, CBO expects the agency would need about two years to collaborate and develop the proposed plan, which would assess the need for such a storage system and options for covering its costs, which CBO expects could cost up to a few hundred million dollars to establish. Any federal spending for such a system would be subject to appropriation, and could be offset by fees paid by users depending on the details of the plan.

Energy Security and Infrastructure Modernization Fund. Section 1201 would authorize the appropriation of \$850 million over the 2017–2020 period for certain infrastructure projects and establish the terms and conditions under which those costs would be offset during that period by authorizing the sale of oil from the Strategic Petroleum Reserve (SPR) for that purpose. Any amounts appropriated or collected from the sale of oil would be deposited in a new Energy Security and Infrastructure Modernization Fund. Such oil sales would be in amounts specified in the bill and would be contingent on authority provided in future appropriation acts. Other provisions would direct DOE to deposit proceeds in the year the oil is sold and would preclude sales if the sale price would be lower than the average price paid to acquire the oil for the SPR or if the oil was needed to meet certain emergency conditions.

For this estimate, CBO assumes that future appropriation acts would appropriate the amounts authorized in the bill and authorize DOE to sell volumes of oil from the SPR as necessary to generate proceeds equivalent to those amounts. CBO also assumes that DOE would ensure that the net proceeds from the sales would equal or exceed the amounts required by those acts.<sup>4</sup> Because of differences in the timing of such collections and spending, CBO estimates that implementing the program would reduce discretionary spending by about \$442 million over the 2016–2020 period, but increase it by the same amount after 2021 as projects are completed, resulting in no net cost over the 2016–2025 period.

Net Reductions in Energy and Energy-Related Costs Attributable to ESPCs. As previously discussed, CBO expects that changes to the ESPC statute under H.R. 8 would increase agencies' use of

<sup>4</sup> Given the volatility of oil prices, it may be difficult for DOE to match sales proceeds with appropriated amounts. CBO expects that DOE would deposit any excess proceeds in the SPR Petroleum Account, which is available to be spent without further appropriation for certain purposes.



ESPCs to finance energy-related investments, which also would affect energy-related spending subject to appropriation. ESPCs allow agencies to pay for energy-related investments over time on the basis of anticipated and realized reductions in energy costs, which are generally paid from annual appropriations. CBO estimates that reductions in such costs attributable to contracts entered into under H.R. 8 would occur gradually over the period of time covered by such contracts—up to 25 years. As a result, most anticipated savings attributable to increased ESPCs would occur beyond the period covered by this estimate. CBO estimates that such savings would total \$41 million over the 2016–2020 period and \$182 million over the 2016–2025 period.

Those estimated savings would be partially offset by increased spending for certain services related to ESPCs entered into under the bill. Typically, when using such a contract, an agency agrees to make payments for services related to the operation and maintenance of newly installed equipment. Such agreements include measurement and verification activities to confirm that projects reduce energy consumption as guaranteed by the contract. Because the government can opt out of those services at any time, such contract-related costs are considered discretionary. For this estimate, CBO estimates that the cost of such services would total about 2.5 percent of the value of energy conservation measures acquired through ESPCs. Assuming appropriation of the necessary amounts, CBO estimates that discretionary spending for optional ESPC contract-related services would total \$10 million over the 2016–2020 period and gradually increase as new contracts are entered into each year and payments on older contracts continue, totaling \$45 million over the 2016–2025 period.

Repeal of Requirement to Reduce Fossil Fuel Use. H.R. 8 would eliminate section 433 of the Energy Independence and Security Act of 2007 (EISA), which requires federal agencies to gradually phase out, and eliminate by 2030, the use of energy generated from fossil fuel in newly constructed federal buildings and buildings undergoing major renovations. Under current law, that provision is one of several energy-related requirements with which federal agencies must comply; for example, other statutory provisions and executive orders direct agencies to reduce overall consumption of energy and water, reduce greenhouse gas emissions, increase use of energy generated from renewable sources, and meet certain sustainability-related standards. According to DOE, agencies are expected, under current law, to make significant investments in energy-related technologies, many of which will help agencies simultaneously achieve multiple requirements.

For that reason, CBO estimates that repealing any single energy-related requirement would not necessarily change the overall amount of federal investments in energy-related technologies. In particular, during the 2016–2020 period covered by this estimate, agencies must also ensure that newly constructed buildings and major renovations are designed to achieve certain energy-efficiency standards; according to DOE, many investments that agencies pursue to comply with such standards are likely to simultaneously fulfill the requirement under section 433 of EISA. After 2020, CBO expects that incremental spending attributable to federal agencies'

efforts to comply with the standard would increase as it becomes more stringent.

Nevertheless, CBO expects that repealing section 433 of EISA would, on the margin, reduce agencies' near-term costs. Although DOE has not yet finalized a rule to implement that provision, the department expects that, as an alternative to reducing the use of energy generated by fossil fuels, agencies will be allowed to achieve compliance by purchasing renewable energy certificates from firms that generate electricity from renewable resources. (Under current law, federal agencies purchase such certificates to comply with certain other energy-related requirements.)

Based on information from DOE, CBO estimates that under current law, agencies will use discretionary appropriations to purchase renewable energy certificates worth as much as \$12 million over the next five years and \$52 million over the 2016–2025 period in order to comply with section 433 of EISA. Thus, CBO estimates that repealing that provision would lead to discretionary savings of those amounts, assuming future appropriations for compliance costs are reduced accordingly.

#### *Revenues*

H.R. 8 would amend existing law regarding actions taken by electric utilities when DOE determines that the electric power system is experiencing emergency conditions. Under current law, during a designated emergency, DOE can require firms to produce or supply electricity to avoid or resolve blackouts or other risks to the electric power system. If those actions violate other regulatory requirements, such as air pollution limits, the affected firms may be liable for penalties under those laws. H.R. 8 would revise this framework by establishing new procedures for ensuring compliance with environmental standards during designated emergencies. The bill also would exempt firms from certain civil and criminal liability if the actions taken to comply with DOE's emergency orders violate environmental or other regulatory standards.

According to DOE, it has issued emergency orders to electric utilities six times since 1978, and none of those transactions resulted in the payment of penalties. Based on that historical experience, CBO estimates that revenues from such penalties would not be significant over the next 10 years under current law; as a result, CBO estimates that reducing firms' liability for such penalties would not result in any significant loss of federal revenues.

Pay-as-you-go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in Table 3.

By fiscal year, in millions of dollars—											
2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2016–2020	2016–2025
NET INCREASE OR DECREASE (–) IN THE DEFICIT											
Statutory Pay-As-You-Go Impact .....	14	32	46	46	46	46	46	46	46	184	414

Increase in long-term deficit and net direct spending: CBO estimates that enacting the legislation would not increase net on-budget deficits or net direct spending by \$5 billion or more in any of the four consecutive 10-year periods beginning in 2026.

Intergovernmental and private-sector impact: H.R. 8 would impose intergovernmental and private-sector mandates as defined in UMRA. Based on information from DOE, feedback from state agencies and industry sources, and analyses of similar requirements, CBO estimates that the aggregate cost of complying with the intergovernmental mandates would fall below the annual threshold established in UMRA (\$77 million in 2015, adjusted annually for inflation). The cost of most of the private-sector mandates would be small. However, because the cost of one of the mandates would depend on future action by DOE, CBO cannot determine whether the aggregate cost of the mandates would exceed the annual threshold established in UMRA (\$154 million, adjusted annually for inflation).

*Mandates that apply to public and private entities*

The bill could impose an intergovernmental and private-sector mandate on entities that are required to pay fees to FERC. If FERC increases those fees to offset the costs of implementing the bill, the bill would increase the cost of an existing mandate on entities required to pay those fees. The amount of fees collected would depend on the level of future appropriations. Based on incremental changes in past appropriations following other energy legislation, CBO estimates that any change in fees collected would not be substantial.

The bill would require state utility commissions and nonregulated electric utilities to consider the adoption of new standards related to electric grid resiliency and reliability, and the use of new energy technologies. The requirement to consider those standards would be an intergovernmental and private-sector mandate because it would increase those entities' responsibilities under existing mandates in the Public Utilities Regulatory Policies Act. Based on information from public utility commissions and industry sources, CBO expects that state utility commissions and nonregulated utilities would comply with the mandate using existing resources so that the incremental costs would be small.

*Mandates that apply to public entities only*

The bill also would impose an intergovernmental mandate by requiring state, local, and tribal agencies involved in the federal review process for natural gas and hydropower projects licensed by FERC to comply with new administrative requirements for expediting those reviews. Based on information from FERC and public utility commissions about workloads associated with those activities, CBO estimates that the costs of those mandates would be small.

In addition, H.R. 8 contains several preemptions of state and local authority. Because preemptions limit the authority of state and local governments, they are considered intergovernmental mandates under UMRA, but CBO estimates that those preemptions would not impose any duty that would result in additional

spending or a loss of revenues by state, local, or tribal governments:

- Section 1102 would exempt electric utilities from complying with state and local environmental and liability laws if those laws would conflict with an emergency order by FERC to maintain grid reliability.
- Section 1106 would exempt companies from state and local laws that otherwise would require them to disclose vulnerabilities in cybersecurity products that the companies discover as part of the certification process in DOE's Cyber Sense program.
- Section 4125 would preempt state and local consumer protection laws by stating that the inclusion of an Energy Star label on a product does not create an express or implied warranty and shall not give rise to any private claims or rights of action.
- Section 4161 would preempt state disclosure laws relating to appliance energy use labels in cases where DOE revises definitions of covered appliances.

*Mandates that apply to private entities only*

The bill would impose private-sector mandates on electric transmission organizations, manufacturers of consumer products and equipment, and exporters of liquefied natural gas. The bill also would impose a private-sector mandate to the extent that it eliminates an existing right to seek compensation for damages under environmental laws.

Reporting requirement for electric transmission organizations. The bill would impose mandates on electric transmission organizations (Regional Transmission Organizations and Independent System Operators) that operate capacity markets. In capacity markets, power plants receive compensation for their capacity, or the power that they will provide at some point in the future. Under the bill the electric transmission organizations would be required to submit an analysis to FERC concerning the structure of each market that operates as a capacity market. Those organizations also would have to submit an analysis with each filing to establish a new capacity market or to substantially modify the design of an existing capacity market. Based on information from FERC, CBO anticipates that about 30 analyses would be submitted annually by electric transmission organizations. Based on the cost of similar types of reports, CBO estimates that the cost of completing each report could total a few million dollars.

Energy efficiency standards and labeling requirements. The bill would authorize DOE to modify the definitions of consumer products and equipment that are subject to energy efficiency standards if there is consensus among interested parties, including manufacturers. If DOE modifies a definition so that products or equipment are subject to more stringent standards for energy efficiency, the bill would impose a mandate on manufacturers of those products or equipment. The cost of the mandate would depend on future action by DOE. As such, CBO has no basis to estimate the cost of the mandate.

The bill also would allow the Federal Trade Commission (FTC) to issue labeling requirements for consumer products or equipment

covered by a modified definition. Additionally, the bill would require FTC to consider including information about Smart Grid capability in product labels. Based on analyses of other labeling requirements, CBO expects that the cost to comply with any such changes to labeling requirements would not be substantial.

Disclosure requirement for exports of liquefied natural gas. The bill would impose a private-sector mandate on entities seeking DOE approval to export liquefied natural gas (LNG). The Natural Gas Act requires entities seeking to export natural gas to obtain approval from DOE. The bill would require that applicants, as a condition for approval, publicly disclose the countries that would receive the exports. Exporters currently report information about destination countries to DOE on a monthly basis. According to DOE, close to 100 applications have been approved or are pending for export of LNG. Because the number of applications for export is small and the cost to disclose destination countries is low, CBO estimates that the cost of this mandate would be small.

Elimination of a right of action. The bill would impose a private-sector mandate to the extent that it eliminates an existing right to seek compensation for damages under environmental laws from utilities operating in compliance with certain federal emergency orders issued by FERC. The cost of the mandate would be the foregone value of awards and settlements in such claims. Because FERC has issued emergency orders infrequently, CBO expects that such claims would be uncommon in the future. Consequently, CBO expects that the cost of the mandate would be small.

Previous CBO estimate: On October 15, 2015, CBO transmitted a cost estimate for S. 2012, the Energy Policy Modernization Act of 2015, as reported by the Senate Committee on Energy and Natural Resources on September 9, 2015. Title I of that legislation contains several provisions that are substantively similar to provisions of H.R. 8. In particular, both bills would authorize funding for activities to increase the energy-efficiency of buildings and appliances and eliminate the existing requirement (under section 433 of EISA) for federal agencies to reduce consumption of energy generated from fossil fuels. Our cost estimates of those provisions are the same for both bills.

In addition, both H.R. 8 and S. 2012 contain substantively similar provisions that would modify federal agencies' authority to use ESPCs to finance energy-related investments, and our estimates of additional direct spending and changes in spending subject to appropriation attributable to those provisions are the same. However, S. 2012 would make additional changes—by modifying certain energy-related requirements for federal agencies and expanding agencies' authority to use utility service energy contracts—that CBO expects would result in higher levels of direct spending and larger changes in spending subject to appropriation than H.R. 8.

Estimate prepared by: Federal Costs: Megan Carroll, Kathleen Gramp, and Jon Sperl; Impact on State, Local, and Tribal Governments: Jon Sperl; Impact on the Private Sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

## FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

## DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 8 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 8 specifically directs to be completed no rule makings within the meaning of 5 U.S.C. 551.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

TITLE I—MODERNIZING AND PROTECTING  
INFRASTRUCTURE*Sec. 1101. FERC process coordination*

This section would reinforce the FERC's role as the lead agency for siting interstate natural gas pipelines. This section would require FERC to identify all agencies considering an aspect of an application and set the schedule for review, including a deadline for a final decision. Cooperating agencies should carry out reviews concurrently, identifying any issues of concern that may delay or prevent an agency from meeting the schedule established by FERC, and defer to FERC on the scope of the environmental review when appropriate and in accordance with applicable Federal law. If issues arise, the Commission could forward them to the heads of the relevant agency for resolution. In cases where there is a failure to meet the schedule that is established by FERC, the head of the relevant agency would notify Congress and set forth a recommended implementation plan to ensure a final decision is reached. Clarification also is provided to ensure that if a Federal or State agency considering an aspect of an application for Federal authorization requires the applicant to submit environmental data, the agency shall consider data gathered by aerial or other remote means that the applicant submits and may grant conditional ap-

proval for Federal authorization, conditioned on the verification of such data by subsequent onsite inspection. FERC also would be directed to track, and make available to the public on its website, information related to the review of applications requiring multiple Federal authorizations.

*Sec. 1102. Resolving environmental and grid reliability conflicts*

This section would resolve conflicts between the Federal Power Act and environmental laws and regulations in order to avoid forcing electric generators from choosing between complying with an emergency order from the Department of Energy (DOE) or violating an environmental obligation. Under current law, if DOE orders a generating unit to operate pursuant to section 202(c), such operation could conflict with environmental requirements, and the owner of the unit would have to choose between violating an order from DOE and violating the environmental requirement. If the owner of the generating unit chooses to comply with the section 202(c) order to address the DOE-identified reliability emergency, the owner could be fined or sued for non-compliance with an environmental regulation, even though the party would not have violated the regulation but for its compliance with the DOE order. Left unresolved, the current statutory structure creates the potential for conflicting legal mandates that could threaten the reliability of the grid.

To ensure that the tools needed to maintain the reliability of the grid are available and effective despite potentially conflicting environmental requirements, H.R. 8 amends section 202(c) of the FPA to clarify that when a party is under an emergency directive to operate pursuant to section 202(c), it will not be deemed in violation of environmental laws or regulations or subject to civil or criminal liability, or citizen enforcement actions, as a result of actions taken that are necessary to comply with a DOE-issued emergency order.

*Sec. 1103. Emergency preparedness for energy supply disruptions*

This section would include the finding that recent natural disasters have underscored the importance of having resilient oil and natural gas infrastructure and effective ways for industry and government to communicate to address energy supply disruptions. This section also would direct the Secretary of Energy to develop and adopt procedures to enhance communication and coordination between the DOE, Federal partners, State and local government, and the private sector to improve emergency response and recovery.

*Sec. 1104. Critical electric infrastructure security*

This section would establish a new section 215A of the Federal Power Act that:

- Provides the Secretary of Energy the authority to address grid security emergencies if the President provides a written directive or determination identifying a grid security emergency. The Secretary is authorized to take emergency measures to protect the bulk power system or defense critical electric infrastructure, including ordering critical electric infrastructure owners and operators to take appropriate actions,



with such measures to expire no later than fifteen days from issuance; and

- Facilitates the protection and voluntary sharing of critical electric infrastructure information between private sector asset owners and the Federal government by: (1) exempting designated Critical Electric Infrastructure Information from certain Federal and State disclosure laws for a period up to five years; (2) requiring FERC to facilitate voluntary information sharing between Federal, State, local and tribal authorities, the Electric Reliability Organization, regional entities, and owners, operators and users of the bulk-power system in the U.S.; and (3) establishing sanctions for the unauthorized disclosure of shared information.

*Sec. 1105. Strategic transformer reserve*

This section would require DOE to submit a plan to Congress evaluating the feasibility of establishing a Strategic Transformer Reserve for the storage, in strategically-located facilities, of spare large power transformers and emergency mobile substations in sufficient numbers to temporarily replace critically damaged large power transformers and substations. Strategically-located spare large power transformers and emergency mobile substations will diminish the vulnerability of the United States to multiple risks facing electric grid reliability, including physical attack, cyber-attack, electromagnetic pulse, geomagnetic disturbances, severe weather, and seismic events.

*Sec. 1106. Cyber sense*

This section would direct DOE to establish a voluntary Cyber Sense program to identify and promote cyber-secure products and technologies intended for use in the bulk-power system, including products relating to industrial control systems, such as supervisory control and data acquisition systems.

*Sec. 1107. State coverage and consideration of PURPA standards for electric utilities*

This section would direct electric utilities and State public utility commissions to consider:

- Increasing the utilization of, and cost recovery for, resiliency-related technologies designed to improve the resilience of electric infrastructure, mitigate power outages, continue delivery of vital services, and maintain the flow of power to facilities critical to public health, safety, and welfare;
- Promoting investments in advanced energy analytics technology for the purposes of realizing operational efficiencies, cost savings, enhanced energy management and customer engagement, improvements in system reliability, safety, and cybersecurity, or other benefits to ratepayers. For the purposes of financial accounting, the Financial Accounting Standards Board has recognized the changing technology landscape of Internet-based and cloud-based computing solution and subscription licensing models, and issued a new standard entitled “Customer’s Accounting for Fees Paid in a Cloud Computing Arrangement” (ASU No. 2015–05). This subsection recognizes the need for State regulatory authorities to update their regu-

latory accounting to provide appropriately for recovery and a reasonable rate of return for such technologies, solutions, and models. Regulatory accounting practices differ from financial accounting practices, but there is a clear interest in updating both practices;

- Adopting or modifying policies to ensure the incorporation of sufficient reliable generation into integrated resource plans to assure the reliable availability of electric energy over a ten-year planning period; and
- Impacts of subsidizing the deployment, construction, maintenance, or operation of a customer-side technology; including costs and benefits, resource utilization, fuel diversity, and grid security.

*Sec. 1108. Reliability analysis for certain rules that affect electric generating facilities*

This section would require the FERC, in coordination with the Electric Reliability Organization, to complete an independent reliability analysis of any proposed or final “billion dollar” Federal rule that affects electric generating units. The reliability analysis must evaluate the potential impacts of the rule on: (1) electric reliability and resource adequacy; (2) the electricity generation portfolio of the United States; (3) the operation of wholesale electricity markets; and (4) energy delivery and infrastructure, including electric transmission facilities and natural gas pipelines.

*Section 1109. Carbon capture, utilization, and sequestration technologies*

This section would permit the continued cost-competitive use of coal by advancing clean coal research and technology—specifically carbon capture, utilization, and sequestration (CCUS) technologies—towards large scale demonstration and commercial use. This section also would increase accountability at DOE with respect to CCUS research by directing the agency to evaluate all CCUS projects that have been awarded funds by DOE every two years.

*Section 1110. Reliability and Performance Assurance in Regional Transmission Organizations:*

This section would amend the Federal Power Act to require each regional transmission organization (RTO) and independent system operator (ISO) that operates a capacity market to provide to FERC an analysis of: (1) how such market utilizes competitive market forces in procuring capacity resources, and (2) whether the structure of such market includes resource-neutral performance criteria that ensure the procurement of sufficient capacity from physical generation facilities that have certain reliability attributes, such as fuel on-site, dual fuel capability, and contractual obligations that ensure adequate fuel supply to enable operation for an extended period of time. After such an analysis is submitted, FERC is required to submit to Congress a report containing an evaluation of whether the structure of such market, as detailed in the analysis, meets the required criteria and, if it does not, provide recommendations with respect to the procurement of sufficient capacity meeting the identified reliability attributes.

### Subtitle B—Energy Security and Infrastructure Modernization

#### *Sec. 1201. Energy Security and Infrastructure Modernization Fund*

This section would establish a budget-neutral Energy Security and Infrastructure Modernization Fund to (1) provide for the construction, maintenance, repair, and replacement of Strategic Petroleum Reserve facilities; (2) establish a grant program to States to offset rate increases to low income customers for upgrades the natural gas distribution system; and (3) establish a competitive grant program to provide grants to States, units of local government, and Indian tribe economic development entities to enhance the resilience and reliability of the electric grid. The Secretary of Energy would be authorized to drawdown and sell crude oil from the Strategic Petroleum Reserve to reinvest in energy security for the United States.

### Subtitle C—Hydropower Regulatory Modernization

#### *Sec. 1301. Hydroelectric production and efficiency incentives*

This section would amend the Energy Policy Act of 2005 to reauthorize through fiscal year (FY) 2025 the program of hydroelectric production incentives and incentive payments to the owners or operators of hydroelectric facilities at existing dams to make capital improvements directly related to improving efficiency.

#### *Sec. 1302. Protection of private property rights in hydropower licensing*

This section would amend the Federal Power Act to require FERC to minimize infringement on the exercise and enjoyment of property rights in issuing hydropower licenses. It also requires the licensee, in developing any recreational resource within the project boundary, to consider private landownership as a means to encourage and facilitate private investment, increased tourism, and recreational use.

#### *Sec. 1303. Extension of time for FERC project involving W. Kerr Scott Dam*

This section would authorize FERC to extend the project start time for construction of the W. Kerr Scott Dam in North Carolina for six years.

#### *Sec. 1304. Hydropower licensing and process improvement*

This section would designate the Federal Energy Regulatory Commission as the lead agency for purposes of compliance with the National Environmental Policy Act, with respect to all Federal licenses, permits, and other approvals needed for non-Federal hydropower projects under Federal law. It requires FERC to develop a schedule, in consultation with Federal and State agencies and Indian tribes, with respect to such Federal authorizations, and it directs agencies and tribes to comply with the schedule. Under this section, FERC is required to promulgate regulations, after notice and opportunity for public comment, governing the procedures for developing the schedule for Federal authorizations in each individual proceeding, including measures for dispute resolution. The section also authorizes (but does not require) applicants for a

FERC license to provide direct funding to third party contractors to assist agencies and tribes in their review of license applications.

The new section 34(f) of the Federal Power Act would authorize, but not require, applicants for a Federal authorization to fund a third party contractor selected by the permitting agency or tribe to assist in reviewing the application. This provision is intended to facilitate the timely processing of applications in cases where the permitting agency or tribe may otherwise have difficulty meeting the deadlines set forth in FERC's schedule and the applicant is willing and able to provide additional funding. It is intended to supplement, not supplant, agency budgets. The bill provides that costs directly funded by the applicant shall not also be collected through annual charges under section 10(e) of the FPA, to prevent collecting twice for the same costs.

*Sec. 1305. Judicial review of delayed federal authorizations*

This section would add a new section 313(b)(2) to the Federal Power Act to extend jurisdiction to the U.S. courts of appeals to rule upon petitions, filed by a Federal, State, or local government agency or Indian tribe, for additional time to complete their final disposition of a Federal authorization required for the licensing, construction, operation, or maintenance of a jurisdictional non-Federal hydropower project. New section 313(b)(2) would authorize the court to grant extensions of up to ninety days for the agency or tribe to complete its disposition of a Federal authorization. If the court denies the extension, or if the agency or tribe fails to file for an extension and also fails to complete a timely disposition of the Federal authorization, the bill provides that the Commission and the applicant may move forward with the proposed action. This is intended to allow the Commission to issue a license in a case where a Federal authorization that would otherwise have been a prerequisite for Commission action was not issued in a timely manner, thus preventing unreasonable delay of the Commission license. In such cases, as well as circumstances in which a Federal authorization is not a prerequisite to Commission action, but would otherwise be required for the applicant to construct, operate, or maintain the project, the applicant will be able to proceed based exclusively on the FERC license and any timely Federal authorizations.

*Sec. 1306. Licensing study improvements*

This section would make the licensing study process more efficient by requiring FERC to compile current and accepted best practices for licensing studies, and to develop a collection of existing studies and data that could be used to inform licensing proceedings. This section also requires FERC and other agencies to use current, accepted science in support of their Federal authorizations concerning hydropower applications, and to demonstrate that any requested new studies is not duplicative of current, existing studies that could be used. Finally, this section establishes a voluntary program for reviewing hydropower projects on a basin-wide scale.

*Sec. 1307. Closed loop pumped storage projects*

Section 1307 would add a new section 36 to the Federal Power Act, which recognizes that closed-loop pumped storage projects are

essential to energy storage and grid reliability and, as specialized facilities serving a specific purpose, should not be subjected to the comprehensive development licensing standards and requirements of the Federal Power Act that apply to conventional hydropower projects. In lieu of such standards and requirements, section 1307 authorizes the inclusion in any license or Federal authorization for a closed-loop pumped storage project only such measures that are necessary to protect public safety, or to prevent or mitigate adverse effects to fish and wildlife resources caused by the construction and operation of the project. Section 1307 would also facilitate the development of closed-loop pumped storage projects, which are often large, capital intensive projects that may benefit from public-private partnerships and other creative financing mechanisms by creating an exception to FERC's policy regarding "abuse of municipal preference." Pursuant to this provision, where the preliminary permittee or the licensee has claimed municipal preference under section 7(a) of the Act, section 1307 would authorize the Commission to approve the addition of joint permittees to an existing preliminary permit or transfer a license to one or more entities as co-licensee with a municipality, regardless of whether the partnering entities are municipalities or non-municipalities.

*Sec. 1308. License amendment improvements:*

This section would establish an expeditious process for FERC's review of license amendment applications that would provide a public benefit (e.g., recreation, environmental enhancement, or increased renewable energy development), with insignificant or minimal environmental effects. The program establishes deadlines for FERC and agency actions, and it focuses conditioning authority to address only impacts related to the amendment proposal. In addition, this section requires FERC to undertake a rulemaking, following notice and opportunity for public comment, to promulgate new standards and procedures for license amendment applications generally. The new standards and procedures must be commensurate with the range of differences in environmental impacts associated with various license amendment proposals.

*Sec. 1309. Promoting hydropower development at existing non-powered dams*

This section would facilitate the development of new hydropower infrastructure at existing non-powered dams by authorizing FERC to issue exemptions for qualifying facilities. To qualify under this section, a new hydropower facility must be located at an existing non-powered dam or similar infrastructure and must not, among other criteria, materially change release regimes or operations of the existing non-powered dam or other infrastructure.

## TITLE II—21st CENTURY WORKFORCE

*Sec. 2101. Energy and manufacturing workforce development*

This section would direct the Secretary of Energy to establish a comprehensive program to improve education and training for energy and manufacturing-related jobs. This section would direct the Secretary to collaborate with representatives from the energy and manufacturing industry to identify the areas of highest need, in-

cluding operations scheduled for closure, and develop guidelines for the skills necessary to enter the workforce. The Secretary also would be directed to provide direct assistance to schools, community colleges, workforce development organizations, non-profit organizations, labor organizations, apprenticeship programs, and minority serving institutions to carry out the program established in this section. This section also would provide special consideration for increasing outreach to employers and job trainers preparing displaced and unemployed energy and manufacturing workers to re-enter the workforce.

### TITLE III—ENERGY SECURITY AND DIPLOMACY

#### *Sec. 3101. Sense of Congress*

This section would provide several findings, including: 1) North America's energy revolution has significantly enhanced energy security in the United States and fundamentally changed the Nation's energy future from that of scarcity to abundance; 2) North America's energy abundance has increased global energy supplies and reduced the price of energy for consumers in the United States and abroad; 3) allies and trading partners of the United States, including in Europe and Asia, are seeking stable and affordable energy supplies from North America to enhance their energy security; 4) the United States has an opportunity to promote greater stability and affordability of energy supplies for its allies and trading partners through a more integrated, secure, and competitive North American energy system; and 5) the United States also has an opportunity to promote such objectives through greater Federal agency coordination relating to regulations or agency actions that significantly affect the supply, distribution, or use of energy.

#### *Sec. 3102. Energy security valuation*

This section would direct the Secretary of Energy, in collaboration with the Secretary of State, to establish U.S. energy security valuation methods to ensure that energy-related actions that significantly affect the supply, distribution, or use of energy are evaluated with respect to their potential impact on energy security, including their impact on consumers and the economy; energy supply, diversity, and resiliency; well-functioning and competitive energy markets; United States trade balance; and national security objectives.

#### *Sec. 3103. North American energy security plan*

This section would direct the Secretary of Energy, in collaboration with the Secretary of State, to report to Congress with a plan to improve planning and coordination with Canada and Mexico to enhance energy integration, strengthen North American energy security, and promote efficiencies; and improve collaboration with Caribbean and Central American partners on energy security.

#### *Sec. 3104. Collective energy security*

This section would direct the Secretary of Energy, in collaboration with the Secretary of State, to convene at least one Trans-Atlantic and one Trans-Pacific forum to foster dialogue among the governments of U.S. allies and trading partners, independent ex-

perts, and industry representatives with the goal to promote energy security.

*Sec. 3105. Strategic Petroleum Reserve mission readiness plan*

In seeking to ensure that the nation's strategic stockpiles of petroleum are kept safely and readily accessible in times of national emergency, this section would direct DOE to conduct a long-range strategic review to specify the near and long-term roles of the Strategic Petroleum Reserve and recommend an action plan to achieve the optimal 1) capacity, location, and composition of petroleum products in the Reserve; and, 2) storage and distributional capabilities.

*Sec. 3006. Authorization to export natural gas*

This section would streamline the regulatory process for authorizing U.S. LNG exports by establishing a thirty day deadline for DOE to act on applications at the conclusion of the review required by the National Environmental Policy Act.

## TITLE IV—ENERGY EFFICIENCY AND ACCOUNTABILITY

### Subtitle A—Energy Efficiency

#### CHAPTER 1—FEDERAL AGENCY ENERGY EFFICIENCY

*Sec. 4111. Energy-efficient and energy-saving information technologies*

This section would require Federal agencies to coordinate with the Office of Management and Budget (OMB), DOE, and the Environmental Protection Agency (EPA) to develop an implementation strategy—including best practices and measurement and verification techniques—for the maintenance, purchase, and use of energy-efficient and energy saving information technologies. OMB would be required to track and report on each agency's progress.

*Sec. 4112. Energy efficient data centers*

This section would improve the energy efficiency of Federal data centers by, among other items, requiring DOE to update a 2007 report on data center energy efficiency and maintain a data center energy practitioner certification program. DOE also would establish an open data initiative to help share best practices and support further innovation, and develop a metric that measures data center energy efficiency.

*Sec. 4113. Report on energy and water savings potential from thermal insulation*

This section would direct DOE to submit a report within one year on the impact of thermal insulation on both energy and water use systems for potable hot and chilled water in Federal buildings and on the return on investment of installing the insulation. The report must include: (1) an analysis based on the cost of municipal or regional water for delivered water and the avoided cost of new water; and (2) a summary of energy and water savings, including short-term and long-term (twenty years) projections of such savings.

*Sec. 4114. Federal purchase requirement*

This section would expand the definition of “renewable energy” in section 203 of the Energy Policy Act of 2005 to include thermal energy and qualified waste heat resources. In addition, the amendment clarifies that a Federal agency can continue to take credit for purchasing energy generated from a waste-to-energy facility so long as the waste feedstock used to generate electricity is collected separately from recyclable paper and processed in a way that keeps the paper segregated from non-recyclable waste. In using the term “collected separately” the Committee intends the term to have the same meaning as “separate collection” used in 40 C.F.R. 246.101(z), EPA’s guidelines applicable to source separation of residential, commercial, and industrial solid wastes. The Committee, however, recognizes that even when garbage is collected separately from commonly recycled paper, there will always be some paper mixed in with garbage. The Committee included language to make clear that in cases where garbage and recyclable paper are collected and processed separately, the separately collected municipal solid waste when used as a feedstock for generating electricity is considered renewable energy even if it contains incidental commonly recycled paper. The Committee also recognizes that in some cases, facilities are required under contract to segregate certain types of paper such as currency, sensitive legal documents, and medical documents for assured destruction through incineration. In such cases, the Committee intends that any energy purchased by a Federal department, from a facility required to burn such paper for assured destruction, is renewable energy. Also, the Committee clarifies that this provision does not require any community to collect recyclable paper separately from trash or change any of its waste collection or processing requirements or systems.

*Sec. 4115. Energy performance requirement for federal buildings*

This section would, in part, repeal a provision included in section 433 of the Energy Independence and Security Act of 2007 that requires a 100 percent reduction in “fossil fuel-generated energy,” such as coal and natural gas, in all new and modified Federal buildings by the year 2030. In addition this section would:

- Extend existing Federal building energy efficiency improvement targets;
- Require DOE to review the results of the implementation of the energy performance requirements and to analyze the cost-effectiveness and feasibility of extending the energy savings targets; and
- Require Federal energy managers to provide, as part of their compliance certifications, an explanation regarding any life-cycle cost-effective energy-saving or water-saving measures that have not been implemented.

*Sec. 4116. Federal building energy efficiency performance standards; certification system and level for Federal buildings*

This section would expand the scope of existing energy standards for new Federal buildings to cover major renovations. It also would ensure that significant alterations and additions to Federal buildings (i.e., major renovations) meet minimum efficiency levels unless demonstrated not to be life-cycle cost-effective. Also, it would re-



quire the use of commissioning of large Federal buildings to ensure that their energy systems are operating as designed.

*Sec. 4117. Operation of battery recharging stations in parking areas used by Federal employees*

This section would authorize the head of any office of the Federal Government, which owns or operates a parking area for the use of its employees, to install, construct, operate, and maintain a battery recharging station in such area for the use of its employees; and shall charge fees to users in amounts necessary to ensure that office recovers all costs incurred in installing, constructing, operating, and maintaining the station.

CHAPTER 2—ENERGY EFFICIENT TECHNOLOGY AND MANUFACTURING

*Sec. 4121. Inclusion of smart grid capability on energy guide labels*

This section would direct the Federal Trade Commission to initiate a rulemaking to develop Energy Guide labels that promote the smart grid capabilities of certain products.

*Sec. 4122. Voluntary verification programs for air conditioning, furnace, boiler, heat pump, and water heater products*

This section requires the DOE to recognize voluntary verification programs for air conditioning, furnace, boiler, heat pump, and water heating products to demonstrate compliance with DOE energy efficiency and conservation standards and the Energy Star program.

*Sec. 4123. Facilitating consensus furnace standards*

This section would provide gas furnace stakeholders the opportunity to continue negotiations to facilitate the proposal for adoption of gas furnace standards that enjoy consensus support, while not delaying the current rulemaking, except to the extent necessary to provide such opportunity.

*Sec. 4124. Future of industry program*

This section would direct DOE-funded higher education-based Industrial Assessment Centers (IACs) to identify opportunities for optimizing energy efficiency and environmental performance, including implementation of information technology advancements for supply chain analysis, logistics, system monitoring, and industrial and manufacturing processes. IACs also would be directed to coordinate with the Manufacturing Extension Partnership Centers of the National Institute of Standards and Technology and DOE's Building Technologies Program to increase partnerships with the national laboratories and energy service and technology providers to leverage private sector expertise.

*Sec. 4125. No warranty for certain certified energy star products*

This section would promote continued development of energy efficient appliances through the Energy Star Program by deterring class action lawsuits that could undermine participation in the program.

*Sec. 4126. Clarification to effective date for regional standards*

This section would replace the “installed by” date with the “manufactured by” date for purposes of the enforcement scheme for residential heating and cooling appliances subject to regional energy efficiency standards. This change would minimize inventory and forecasting problems for equipment contractors, distributors, and manufacturers if DOE sets regional energy conservation standards for furnaces, central air conditioners, and heat pumps.

*Sec. 4127. Internet of things report*

This section would require the Secretary of Energy to report to Congress on the efforts made to take advantage of, and promote, the utilization of advanced technologies such as “Internet of Things” end-to-end platform solutions to provide real-time actionable analytics and enable predictive maintenance and asset management to improve energy efficiency.

## CHAPTER 3—ENERGY PERFORMANCE CONTRACTING

*Sec. 4131. Use of energy and water efficiency measures in federal buildings*

This section would:

- Require DOE to report on the status of each Federal agency’s energy savings performance contracts and utility energy service contracts, the investment value of such contracts, the guaranteed energy savings for the previous year as compared to the actual energy savings for the previous year, the plan for entering into such contracts in the coming year, and information explaining why any previously submitted plans for such contracts were not implemented;
- Prohibit Federal agencies from limiting the recognition of operation and maintenance savings associated with systems modernized or replaced with the implementation of energy conservation measures, water conservation measures, or any series of energy conservation measures and water conservation measures;
- Clarify that Federal agency payments of energy, water, and wastewater treatment expenses, pursuant to an energy savings performance contract or utility energy service contracts shall include related operation and maintenance expenses; and
- Revise the definition of “energy savings” to include (1) the use, sale, or transfer of energy incentives, rebates, or credits (including renewable energy credits) from governments or utilities; and (2) any revenue generated from a reduction in energy or water use, more efficient waste recycling, or additional energy generated from more efficient equipment.

## CHAPTER 4—SCHOOL BUILDINGS

*Sec. 4141. Coordination of energy retrofitting assistance for schools*

This section would amend the Energy Policy and Conservation Act (EPCA) to direct DOE to establish a clearinghouse to disseminate information regarding available programs and financing mechanisms that could be used to help initiate, develop, and finance energy efficiency, distributed generation, and energy retro-

fitting projects for schools. DOE would be required to: (1) consult with appropriate agencies to develop a list of programs and financing mechanisms that are, or may be, used for the projects, and (2) coordinate with appropriate agencies to develop a collaborative education and outreach effort to streamline communications and promote the programs and financing mechanisms.

#### CHAPTER 5—BUILDING ENERGY CODES

##### *Sec. 4151. Greater energy efficiency in building codes*

This section would increase transparency and cost-effectiveness in the development of model building energy codes, which set the baseline for energy efficiency in buildings, by ensuring that DOE code change proposals: 1) are made available to the public, including calculations on costs and savings; 2) are subject to the official rulemaking process, allowing for public comment; and 3) take into account small business concerns. This section also would prohibit DOE from advocating for certain technologies, building materials or construction practices and requires that any code or proposal supported by the DOE has a payback of ten years or less. For purposes of the feasibility study, it is the Committee's intent that the term "Zero-Net Energy" is defined as an energy-efficient building where the actual annual source energy consumption is balanced by on-site energy production.

##### *Sec. 4152. Voluntary nature of building asset rating program*

This section would clarify that any DOE program that may enable the owner of a commercial building or a residential building to obtain a rating, score, or label regarding the actual or anticipated energy usage or performance of a building shall be made available on a voluntary, optional, and market-driven basis.

#### CHAPTER 6—EPCA TECHNICAL CORRECTIONS AND CLARIFICATIONS

##### *Sec. 4161. Modifying product definitions*

This section would amend the Energy Policy and Conservation Act to permit, if there is stakeholder consensus, DOE to prospectively revise product definitions relating to appliance energy conservation standards for residential and commercial products for purposes of standards, test procedures, labeling and preemption. Under current law, certain definitions cannot be changed without statutory change.

##### *Sec. 4162. Clarifying rulemaking procedures*

- This section would state that all DOE product standards must be based and rationalized on a final revised test procedure, if any, and that the public shall have at least 180 days between the publication of a final revised test procedure and the end of the public comment period for a proposed product standard to analyze, test and comment on its implications. The provision would allow for an exception for consensus developed revised test procedures.
- Consistent with the interest in having early stakeholder input, this section also would require DOE to provide pre-proposed rule public input on design options and voluntary non-regulatory options. In addition, this section would require the

identification of significant groups of consumers and manufacturers who merit analysis, among other relevant issues.

- This section also would require DOE, in a notice of proposed rulemaking, to:

- Seek comment and determine whether its technical and economic assumptions, methods, and models used to justify a standard are justified and available and accessible for public review, analysis, and use; and

- Take into account the cumulative regulatory impact on product manufacturers of other government standards affecting energy use and other energy conservation standards affecting the same manufacturers.

#### CHAPTER 7—ENERGY AND WATER EFFICIENCY

##### *Sec. 4171. Smart energy and water efficiency pilot program*

This section would authorize a pilot program to increase the effectiveness of water distribution networks by delivering better quality water while using less energy. Under the pilot program, a utility, municipality, water district, or other authority that provides drinking water, water recycling, or water reuse services would be able to compete for DOE project funds. Competitive grant selections for these projects will be based on a project's anticipated energy and costs savings; the novelty of technology employed; how well it integrates next generation sensors, software, analytics, and management tools; the predicted cost-effectiveness of the project due to energy efficiency savings, water savings or reuse, and averted infrastructure costs; and how the technology can be scalable and deployed across geographic regions.

##### *Sec. 4172. WaterSense*

This section would codify the voluntary WaterSense program at EPA. It specifies the categories of products that are eligible for WaterSense listing and also the guidelines for developing criteria and reviewing standards. It also clarifies the distinction of authorities between the WaterSense and Energy Star programs should any product be eligible under both programs.

#### Subtitle B—Accountability

#### CHAPTER 1—MARKET MANIPULATION, ENFORCEMENT, AND COMPLIANCE

##### *Sec. 4211. FERC Office of Compliance Assistance and Public Participation*

This section would require FERC to establish an Office of Compliance Assistance and Public Participation headed by a Director who shall be responsible for promoting improved compliance with Commission rules and orders by, among other things, providing entities regulated by the Commission the opportunity to obtain timely compliance guidance; making recommendations with respect to market behavior and enforcement; issuing reports and guidance; and performing outreach to regulated community.

## CHAPTER 2—MARKET REFORMS

*Sec. 4221. GAO Study on wholesale electricity markets*

This section would require the Government Accountability Office to study whether and how the market rules, practices, and structures of regional transmission organizations produce rates that are just and reasonable.

*Sec. 4222. Clarification of facility merger authorization*

This section would amend section 203 of the Federal Power Act to include a minimum monetary threshold of \$10,000,000 for merger and consolidation “acquisitions” of FERC-jurisdictional electric transmission facilities. Doing so would mirror the existing \$10,000,000 minimum monetary threshold set forth in the other three subsections of section 203. This amendment would require FERC to restore a previous and long-standing, minimum monetary threshold applied to public utilities’ acquisitions and dispositions of FERC-jurisdictional electric transmission facilities, would correct an apparent oversight that resulted in Congress’s intent in EPAct 2005 not being completely enacted by the Commission, and would increase administrative efficiency by ensuring that FERC reviews only those proposed transactions concerning FERC-jurisdictional facilities that are materially significant.

## CHAPTER 3—CODE MAINTENANCE

This chapter would repeal various obsolete statutes.

## CHAPTER 4—USE OF EXISTING FUNDS

*Sec. 4261. Use of existing funds*

This section states that amounts required for carrying out this Act, other than section 1201, shall be derived from amounts appropriated under authority provided by previously enacted law.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

**NATURAL GAS ACT**

\* \* \* \* \*

## EXPORTATION OR IMPORTATION OF NATURAL GAS; LNG TERMINALS

SEC. 3. (a) After six months from the date on which this act takes effect no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. The Commission may by its order grant such

application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.

(b) With respect to natural gas which is imported into the United States from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, and with respect to liquefied natural gas—

(1) the importation of such natural gas shall be treated as a “first sale” within the meaning of section 2(21) of the Natural Gas Policy Act of 1978; and

(2) the Commission shall not, on the basis of national origin, treat any such imported natural gas on an unjust, unreasonable, unduly discriminatory, or preferential basis.

(c) For purposes of subsection (a), the importation of the natural gas referred to in subsection (b), or the exportation of natural gas to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay.

(d) Except as specifically provided in this Act, nothing in this Act affects the rights of States under—

(1) the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);

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

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

(e)(1) The Commission shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal. Except as specifically provided in this Act, nothing in this Act is intended to affect otherwise applicable law related to any Federal agency’s authorities or responsibilities related to LNG terminals.

(2) Upon the filing of any application to site, construct, expand, or operate an LNG terminal, the Commission shall—

(A) set the matter for hearing;

(B) give reasonable notice of the hearing to all interested persons, including the State commission of the State in which the LNG terminal is located and, if not the same, the Governor-appointed State agency described in section 3A;

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

(D) issue or deny the appropriate order accordingly.

(3)(A) Except as provided in subparagraph (B), the Commission may approve an application described in paragraph (2), in whole or part, with such modifications and upon such terms and conditions as the Commission find necessary or appropriate.

(B) Before January 1, 2015, the Commission shall not—

(i) deny an application solely on the basis that the applicant proposes to use the LNG terminal exclusively or partially for gas that the applicant or an affiliate of the applicant will supply to the facility; or

(ii) condition an order on—

- (I) a requirement that the LNG terminal offer service to customers other than the applicant, or any affiliate of the applicant, securing the order;
  - (II) any regulation of the rates, charges, terms, or conditions of service of the LNG terminal; or
  - (III) a requirement to file with the Commission schedules or contracts related to the rates, charges, terms, or conditions of service of the LNG terminal.
- (C) Subparagraph (B) shall cease to have effect on January 1, 2030.
- (4) An order issued for an LNG terminal that also offers service to customers on an open access basis shall not result in subsidization of expansion capacity by existing customers, degradation of service to existing customers, or undue discrimination against existing customers as to their terms or conditions of service at the facility, as all of those terms are defined by the Commission.
- (f)(1) In this subsection, the term “military installation”—
- (A) means a base, camp, post, range, station, yard, center, or homeport facility for any ship or other activity under the jurisdiction of the Department of Defense, including any leased facility, that is located within a State, the District of Columbia, or any territory of the United States; and
  - (B) does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects, as determined by the Secretary of Defense.
- (2) The Commission shall enter into a memorandum of understanding with the Secretary of Defense for the purpose of ensuring that the Commission coordinate and consult with the Secretary of Defense on the siting, construction, expansion, or operation of liquefied natural gas facilities that may affect an active military installation.
- (3) The Commission shall obtain the concurrence of the Secretary of Defense before authorizing the siting, construction, expansion, or operation of liquefied natural gas facilities affecting the training or activities of an active military installation.
- (g) *PUBLIC DISCLOSURE OF LNG EXPORT DESTINATIONS.—As a condition for approval of any authorization to export LNG, the Secretary of Energy shall require the applicant to publicly disclose the specific destination or destinations of any such authorized LNG exports.*

\* \* \* \* \*

#### PROCESS COORDINATION; HEARINGS; RULES OF PROCEDURE

SEC. 15. (a) In this section, the term “Federal authorization”—

- (1) means any authorization required under Federal law with respect to an application for authorization under section 3 or a certificate of public convenience and necessity under section 7; and
  - (2) includes any permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law with respect to an application for authorization under section 3 or a certificate of public convenience and necessity under section 7.
- (b) DESIGNATION AS LEAD AGENCY.—

(1) **IN GENERAL.**—The Commission shall act as the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

[(2) **OTHER AGENCIES.**—Each Federal and State agency considering an aspect of an application for Federal authorization shall cooperate with the Commission and comply with the deadlines established by the Commission.]

(2) **OTHER AGENCIES.**—

(A) **IN GENERAL.**—*Each Federal and State agency considering an aspect of an application for Federal authorization shall cooperate with the Commission and comply with the deadlines established by the Commission.*

(B) **IDENTIFICATION.**—*The Commission shall identify, as early as practicable after it is notified by a prospective applicant of a potential project requiring Commission authorization, any Federal or State agency, local government, or Indian tribe that may consider an aspect of an application for that Federal authorization.*

(C) **NOTIFICATION.**—

(i) **IN GENERAL.**—*The Commission shall notify any agency identified under subparagraph (B) of the opportunity to cooperate or participate in the review process.*

(ii) **DEADLINE.**—*A notification issued under clause (i) shall establish a deadline by which a response to the notification shall be submitted, which may be extended by the Commission for good cause.*

(c) **SCHEDULE.**—

(1) **COMMISSION AUTHORITY TO SET SCHEDULE.**—The Commission shall establish a schedule for all Federal authorizations. In establishing the schedule, the Commission shall—

(A) ensure expeditious completion of all such proceedings; [and]

(B) set deadlines for all such Federal authorizations; and

[(B)] (C) comply with applicable schedules established by Federal law.

[(2) **FAILURE TO MEET SCHEDULE.**—If a Federal or State administrative agency does not complete a proceeding for an approval that is required for a Federal authorization in accordance with the schedule established by the Commission, the applicant may pursue remedies under section 19(d).]

(2) **DEADLINE FOR FEDERAL AUTHORIZATIONS.**—*A final decision on a Federal authorization is due no later than 90 days after the Commission issues its final environmental document, unless a schedule is otherwise established by Federal law.*

(3) **CONCURRENT REVIEWS.**—*Each Federal and State agency considering an aspect of an application for a Federal authorization shall—*

(A) carry out the obligations of that agency under applicable law concurrently, and in conjunction, with the review required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), unless doing so would impair the ability of the agency to conduct needed analysis or otherwise carry out those obligations;



(B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of required Federal authorizations no later than 90 days after the Commission issues its final environmental document; and

(C) transmit to the Commission a statement—

(i) acknowledging receipt of the schedule established under paragraph (1); and

(ii) setting forth the plan formulated under subparagraph (B) of this paragraph.

(4) *ISSUE IDENTIFICATION AND RESOLUTION.*—

(A) *IDENTIFICATION.*—Federal and State agencies that may consider an aspect of an application for Federal authorization shall identify, as early as possible, any issues of concern that may delay or prevent an agency from working with the Commission to resolve such issues and granting such authorization.

(B) *ISSUE RESOLUTION.*—The Commission may forward any issue of concern identified under subparagraph (A) to the heads of the relevant agencies (including, in the case of a failure by the State agency, the Federal agency overseeing the delegated authority) for resolution.

(5) *FAILURE TO MEET SCHEDULE.*—If a Federal or State agency does not complete a proceeding for an approval that is required for a Federal authorization in accordance with the schedule established by the Commission under paragraph (1)—

(A) the applicant may pursue remedies under section 19(d); and

(B) the head of the relevant Federal agency (including, in the case of a failure by a State agency, the Federal agency overseeing the delegated authority) shall notify Congress and the Commission of such failure and set forth a recommended implementation plan to ensure completion of the proceeding for an approval.

(d) *REMOTE SURVEYS.*—If a Federal or State agency considering an aspect of an application for Federal authorization requires the applicant to submit environmental data, the agency shall consider any such data gathered by aerial or other remote means that the applicant submits. The agency may grant a conditional approval for Federal authorization, conditioned on the verification of such data by subsequent onsite inspection.

(e) *APPLICATION PROCESSING.*—The Commission, and Federal and State agencies, may allow an applicant seeking Federal authorization to fund a third-party contractor to assist in reviewing the application.

(f) *ACCOUNTABILITY, TRANSPARENCY, EFFICIENCY.*—For applications requiring multiple Federal authorizations, the Commission, with input from any Federal or State agency considering an aspect of an application, shall track and make available to the public on the Commission's website information related to the actions required to complete permitting, reviews, and other actions required. Such information shall include the following:

(1) The schedule established by the Commission under subsection (c)(1).

(2) *A list of all the actions required by each applicable agency to complete permitting, reviews, and other actions necessary to obtain a final decision on the Federal authorization.*

(3) *The expected completion date for each such action.*

(4) *A point of contact at the agency accountable for each such action.*

(5) *In the event that an action is still pending as of the expected date of completion, a brief explanation of the reasons for the delay.*

[(d)] (g) CONSOLIDATED RECORD.—The Commission shall, with the cooperation of Federal and State administrative agencies and officials, maintain a complete consolidated record of all decisions made or actions taken by the Commission or by a Federal administrative agency or officer (or State administrative agency or officer acting under delegated Federal authority) with respect to any Federal authorization. Such record shall be the record for—

(1) appeals or reviews under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), provided that the record may be supplemented as expressly provided pursuant to section 319 of that Act; or

(2) judicial review under section 19(d) of decisions made or actions taken of Federal and State administrative agencies and officials, provided that, if the Court determines that the record does not contain sufficient information, the Court may remand the proceeding to the Commission for further development of the consolidated record.

[(e)] (h) Hearings under this act may be held before the Commission, any member or members thereof, or any representative of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before it, the Commission in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality or any representative of interested consumers or security holders, or any competitor of a party to such proceeding, or any other person whose participation in the proceeding may be in the public interest.

[(f)] (i) All hearings, investigations, and proceedings under this act shall be governed by rules of practice and procedure to be adopted by the Commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation issued under the authority of this act.

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## FEDERAL POWER ACT

### PART I

\* \* \* \* \*

SEC. 4. The Commission is hereby authorized and empowered—

(a) To make investigations and to collect and record data concerning the utilization of the water resources of any region to be developed, the water-power industry and its relation to other in-

dustries and to interstate or foreign commerce, and concerning the location, capacity, development cost, and relation to markets of power sites, and whether the power from Government dams can be advantageously used by the United States for its public purposes, and what is a fair value of such power, to the extent the Commission may deem necessary or useful for the purposes of this Act.

(b) To determine the actual legitimate original cost of and the net investment in a licensed project, and to aid the Commission in such determinations, each licensee shall, upon oath, within a reasonable period of time to be fixed by the Commission, after the construction of the original project or any addition thereto or betterment thereof, file with the Commission in such detail as the Commission may require, a statement in duplicate showing the actual legitimate original cost of construction of such project, addition, or betterment, and of the price paid for water rights, rights-of-way, lands, or interest in lands. The licensee shall grant to the Commission or to its duly authorized agent or agents, at all reasonable times, free access to such project, addition, or betterment, and to all maps, profiles, contracts, reports of engineers, accounts, books, records, and all other papers and documents relating thereto. The statement of actual legitimate original cost of said project, and revisions thereof as determined by the Commission, shall be filed with the Secretary of the Treasury.

(c) To cooperate with the executive departments and other agencies of State or National Governments in such investigations; and for such purpose the several departments and agencies of the National Government are authorized and directed upon the request of the Commission to furnish such records, papers, and information in their possession as may be requested by the Commission, and temporarily to detail to the Commission such officers or experts as may be necessary in such investigations.

(d) To make public from time to time the information secured hereunder and to provide for the publication of its reports and investigations in such form and manner as may be best adapted for public information and use. The Commission, on or before the 3d day of January of each year, shall submit to Congress for the fiscal year preceding a classified report showing the permits and licenses issued under this Part, and in each case the parties thereto, the terms prescribed, and the moneys received if any, on account thereof.

(e) To issue licenses to citizens of the United States, or to any association of such citizens, or to any corporation organized under the laws of the United States or any State thereof, or to any State or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from or in any of the streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam, except as herein provided: *Provided*, That licenses shall be issued within any res-

ervation only after a finding by the Commission that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation: *Provided further*, That no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting navigation have been approved by the Chief of Engineers and the Secretary of the Army. Whenever the contemplated improvement is, in the judgment of the Commission, desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, a finding to that effect shall be made by the Commission and shall become a part of the records of the Commission: *Provided further*, That in case the Commission shall find that any Government dam may be advantageously used by the United States for public purposes in addition to navigation, no license therefor shall be issued until two years after it shall have reported to Congress the facts and conditions relating thereto, except that this provision shall not apply to any Government dam constructed prior to June 10, 1920: *And provided further*, That upon the filing of any application for a license which has not been preceded by a preliminary permit under subsection (f) of this section, notice shall be given and published as required by the proviso of said subsection. In deciding whether to issue any license under this Part for any project, the Commission, in addition to the power and development purposes for which licenses are issued, shall give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, [and] the preservation of other aspects of environmental quality, and minimizing infringement on the useful exercise and enjoyment of property rights held by nonlicensees.

(f) To issue preliminary permits for the purpose of enabling applicants for a license hereunder to secure the data and to perform the acts required by section 9 hereof: *Provided, however*, That upon the filing of any application for a preliminary permit by any person, association or corporation the Commission, before granting such application, shall at once give notice of such application in writing to any State or municipality likely to be interested in or affected by such application; and shall also publish notice of such application once each week for four weeks in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated.

(g) Upon its own motion to order an investigation of any occupancy of, or evidenced intention to occupy, for the purpose of developing electric power, public lands, reservations, or streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States by any person, corporation, state or municipality and to issue such order as it may find appropriate, expedient, and in

the public interest to conserve and utilize the navigation and water-power resources of the region.

\* \* \* \* \*

SEC. 10. All licenses issued under this Part shall be on the following conditions:

(a)(1) That the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e), *including minimizing infringement on the useful exercise and enjoyment of property rights held by nonlicensees*; and if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

(2) In order to ensure that the project adopted will be best adapted to the comprehensive plan described in paragraph (1), the Commission shall consider each of the following:

(A) The extent to which the project is consistent with a comprehensive plan (where one exists) for improving, developing, or conserving a waterway or waterways affected by the project that is prepared by—

- (i) an agency established pursuant to Federal law that has the authority to prepare such a plan; or
- (ii) the State in which the facility is or will be located.

(B) The recommendations of Federal and State agencies exercising administration over flood control, navigation, irrigation, recreation, cultural and other relevant resources of the State in which the project is located, and the recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project.

(C) In the case of a State or municipal applicant, or an applicant which is primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities), the electricity consumption efficiency improvement program of the applicant, including its plans, performance and capabilities for encouraging or assisting its customers to conserve electricity cost-effectively, taking into account the published policies, restrictions, and requirements of relevant State regulatory authorities applicable to such applicant.

(3) Upon receipt of an application for a license, the Commission shall solicit recommendations from the agencies and Indian tribes identified in subparagraphs (A) and (B) of paragraph (2) for proposed terms and conditions for the Commission's consideration for inclusion in the license.

(b) That except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works constructed hereunder of an in-

stalled capacity in excess of two thousand horsepower without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct.

(c) That the licensee shall maintain the project works in a condition or repair adequate for the purposes of navigation and for the efficient operation of said works in the development and transmission of power, shall make all necessary renewals and replacements, shall establish and maintain adequate depreciation reserves for such purposes, shall so maintain and operate said works as not to impair navigation, and shall conform to such rules and regulations as the Commission may from time to time prescribe for the protection of life, health, and property. Each licensee hereunder shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto, constructed under the license, and in no event shall the United States be liable therefor.

(d) That after the first twenty years of operation, out of surplus earned thereafter, if any, accumulated in excess of a specified reasonable rate of return upon the net investment of a licensee in any project or projects, under license, the licensee shall establish and maintain amortization reserves, which reserves shall, in the discretion of the Commission, be held until the termination of the license or be applied from time to time in reduction of the net investment. Such specified rate of return and the proportion of such surplus earnings to be paid into and held in such reserves shall be set forth in the license. For any new license issued under section 15, the amortization reserves under this subsection shall be maintained on and after the effective date of such new license.

(e)(1) That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this Part, including any reasonable and necessary costs incurred by Federal and State fish and wildlife agencies and other natural and cultural resource agencies in connection with studies or other reviews carried out by such agencies for purposes of administering their responsibilities under this part; for recompensing it for the use, occupancy, and enjoyment of its lands or other property; and for the expropriation to the Government of excessive profits until the respective States shall make provision for preventing excessive profits or for the expropriation thereof to themselves, or until the period of amortization as herein provided is reached, and in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges, and any such charges may be adjusted from time to time by the Commission as conditions may require: *Provided*, That, subject to annual appropriations Acts, the portion of such annual charges imposed by the Commission under this subsection to cover the reasonable and necessary costs of such agencies shall be available to such agencies (in addition to other funds appropriated for such purposes) solely for carrying out such studies and reviews and shall remain available until expended: *Provided*, That when licenses are issued involving the use of Government dams or other structures owned by the United States or tribal lands embraced

within Indian reservations the Commission shall, subject to the approval of the Secretary of the Interior in the case of such dams or structures in reclamation projects and, in the case of such tribal lands, subject to the approval of the Indian tribe having jurisdiction of such lands as provided in section 16 of the Act of June 18, 1934 (48 Stat. 984), fix a reasonable annual charge for the use thereof, and such charges may with like approval be readjusted by the Commission at the end of twenty years after the project is available for service and at periods of not less than ten years thereafter upon notice and opportunity for hearing: *Provided further*, That licenses for the development, transmission, or distribution of power by States or municipalities shall be issued and enjoyed without charge to the extent such power is sold to the public without profit or is used by such State or municipality for State or municipal purposes, except that as to projects constructed or to be constructed by States or municipalities primarily designed to provide or improve navigation, licenses therefor shall be issued without charge; and that licenses for the development, transmission, or distribution of power for domestic, mining, or other beneficial use in projects of not more than two thousand horsepower installed capacity may be issued without charges, except on tribal lands within Indian reservations; but in no case shall a license be issued free of charge for the development and utilization of power created by any Government dam and that the amount charged therefor in any license shall be such as determined by the Commission : *Provided however*, That no charge shall be assessed for the use of any Government dam or structure by any licensee if, before January 1, 1985, the Secretary of the Interior has entered into a contract with such licensee that meets each of the following requirements:

(A) The contract covers one or more projects for which a license was issued by the Commission before January 1, 1985.

(B) The contract contains provisions specifically providing each of the following:

(i) A powerplant may be built by the licensee utilizing irrigation facilities constructed by the United States.

(ii) The powerplant shall remain in the exclusive control, possession, and ownership of the licensee concerned.

(iii) All revenue from the powerplant and from the use, sale, or disposal of electric energy from the powerplant shall be, and remain, the property of such licensee.

(C) The contract is an amendatory, supplemental and replacement contract between the United States and: (i) the Quincy-Columbia Basin Irrigation District (Contract No. 14-06-100-6418); (ii) the East Columbia Basin Irrigation District (Contract No. 14-06-100-6419); or, (iii) the South Columbia Basin Irrigation District (Contract No. 14-06-100-6420).

This paragraph shall apply to any project covered by a contract referred to in this paragraph only during the term of such contract unless otherwise provided by subsequent Act of Congress. In the event an overpayment of any charge due under this section shall be made by a licensee, the Commission is authorized to allow a credit for such overpayment when charges are due for any subsequent period.

(2) In the case of licenses involving the use of Government dams or other structures owned by the United States, the charges fixed

(or readjusted) by the Commission under paragraph (1) for the use of such dams or structures shall not exceed 1 mill per kilowatt-hour for the first 40 gigawatt-hours of energy a project produces in any year, 1½ mills per kilowatt-hour for over 40 up to and including 80 gigawatt-hours in any year, and 2 mills per kilowatt-hour for any energy the project produces over 80 gigawatt-hours in any year. Except as provided in subsection (f), such charge shall be the only charge assessed by any agency of the United States for the use of such dams or structures.

(3) The provisions of paragraph (2) shall apply with respect to—

(A) all licenses issued after the date of the enactment of this paragraph; and

(B) all licenses issued before such date which—

(i) did not fix a specific charge for the use of the Government dam or structure involved; and

(ii) did not specify that no charge would be fixed for the use of such dam or structure.

(4) Every 5 years, the Commission shall review the appropriateness of the annual charge limitations provided for in this subsection and report to Congress concerning its recommendations thereon.

(f) That whenever any licensee hereunder is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Commission shall require as a condition of the license that the licensee so benefited shall reimburse the owner of such reservoir or other improvements for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable. The proportion of such charges to be paid by any licensee shall be determined by the Commission. The licensees or permittees affected shall pay to the United States the cost of making such determination as fixed by the Commission.

Whenever such reservoir or other improvement is constructed by the United States the Commission shall assess similar charges against any licensee directly benefited thereby, and any amount so assessed shall be paid into the Treasury of the United States, to be reserved and appropriated as a part of the special fund for headwater improvements as provided in section 17 hereof.

Whenever any power project not under license is benefited by the construction work of a licensee or permittee, the United States or any agency thereof, the Commission, after notice to the owner or owners of such unlicensed project, shall determine and fix a reasonable and equitable annual charge to be paid to the licensee or permittee on account of such benefits, or to the United States if it be the owner of such headwater improvement.

(g) Such other conditions not inconsistent with the provisions of this Act as the Commission may require.

(h)(1) That combinations, agreements, arrangements, or understandings, express or implied, to limit the output of electrical energy, to restrain trade, or to fix, maintain, or increase prices for electrical energy or service are hereby prohibited.

(2) That conduct under the license that: (A) results in the contravention of the policies expressed in the antitrust laws; and (B) is not otherwise justified by the public interest considering regulatory policies expressed in other applicable law (including but not



limited to those contained in Part II of this Act) shall be prevented or adequately minimized by means of conditions included in the license prior to its issuance. In the event it is impossible to prevent or adequately minimize the contravention, the Commission shall refuse to issue any license to the applicant for the project and, in the case of an existing project, shall take appropriate action to provide thereafter for the operation and maintenance of the affected project and for the issuing of a new license in accordance with section 15 of this Part.

(i) In issuing licenses for a minor part only of a complete project, or for a complete project of not more than two thousand horsepower installed capacity, the Commission may in its discretion waive such conditions, provisions, and requirements of this Part, except the license period of fifty years, as it may deem to be to the public interest to waive under the circumstances: *Provided*, That the provision hereof shall not apply annual charges for use of lands within Indian reservations.

(j)(1) That in order to adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the project, each license issued under this Part shall include conditions for such protection, mitigation, and enhancement. Subject to paragraph (2), such conditions shall be based on recommendations received pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) from the National Marine Fisheries Service, the United States Fish and Wildlife Service, and State fish and wildlife agencies.

(2) Whenever the Commission believes that any recommendation referred to in paragraph (1) may be inconsistent with the purposes and requirements of this Part or other applicable law, the Commission and the agencies referred to in paragraph (1) shall attempt to resolve any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agencies. If, after such attempt, the Commission does not adopt in whole or in part a recommendation of any such agency, the Commission shall publish each of the following findings (together with a statement of the basis for each of the findings):

(A) A finding that adoption of such recommendation is inconsistent with the purposes and requirements of this Part or with other applicable provisions of law.

(B) A finding that the conditions selected by the Commission comply with the requirements of paragraph (1).

Subsection (i) shall not apply to the conditions required under this subsection.

(k) *PRIVATE LANDOWNERSHIP.*—*In developing any recreational resource within the project boundary, the licensee shall consider private landownership as a means to encourage and facilitate—*

(1) *private investment; and*

(2) *increased tourism and recreational use.*

\* \* \* \* \*

#### **SEC. 34. HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS.**

(a) *DEFINITION.*—*In this section, the term “Federal authorization” —*

(1) means any authorization required under Federal law with respect to an application for a license, license amendment, or exemption under this part; and

(2) includes any permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law to approve or implement the license, license amendment, or exemption under this part.

(b) DESIGNATION AS LEAD AGENCY.—

(1) IN GENERAL.—The Commission shall act as the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) OTHER AGENCIES AND INDIAN TRIBES.—

(A) IN GENERAL.—Each Federal, State, and local government agency and Indian tribe considering an aspect of an application for Federal authorization shall coordinate with the Commission and comply with the deadline established in the schedule developed for the project in accordance with the rule issued by the Commission under subsection (c).

(B) IDENTIFICATION.—The Commission shall identify, as early as practicable after it is notified by the applicant of a project or facility requiring Commission action under this part, any Federal or State agency, local government, or Indian tribe that may consider an aspect of an application for a Federal authorization.

(C) NOTIFICATION.—

(i) IN GENERAL.—The Commission shall notify any agency and Indian tribe identified under subparagraph (B) of the opportunity to participate in the process of reviewing an aspect of an application for a Federal authorization.

(ii) DEADLINE.—Each agency and Indian tribe receiving a notice under clause (i) shall submit a response acknowledging receipt of the notice to the Commission within 30 days of receipt of such notice and request.

(D) ISSUE IDENTIFICATION AND RESOLUTION.—

(i) IDENTIFICATION OF ISSUES.—Federal, State, and local government agencies and Indian tribes that may consider an aspect of an application for Federal authorization shall identify, as early as possible, and share with the Commission and the applicant, any issues of concern identified during the pendency of the Commission's action under this part relating to any Federal authorization that may delay or prevent the granting of such authorization, including any issues that may prevent the agency or Indian tribe from meeting the schedule established for the project in accordance with the rule issued by the Commission under subsection (c).

(ii) ISSUE RESOLUTION.—The Commission may forward any issue of concern identified under clause (i) to the heads of the relevant State and Federal agencies (including, in the case of scheduling concerns identified by a State or local government agency or Indian tribe,

*the Federal agency overseeing the delegated authority, or the Secretary of the Interior with regard to scheduling concerns identified by an Indian tribe) for resolution. The Commission and any relevant agency shall enter into a memorandum of understanding to facilitate interagency coordination and resolution of such issues of concern, as appropriate.*

*(c) SCHEDULE.—*

*(1) COMMISSION RULEMAKING TO ESTABLISH PROCESS TO SET SCHEDULE.—Within 180 days of the date of enactment of this section the Commission shall, in consultation with the appropriate Federal agencies, issue a rule, after providing for notice and public comment, establishing a process for setting a schedule following the filing of an application under this part for the review and disposition of each Federal authorization.*

*(2) ELEMENTS OF SCHEDULING RULE.—In issuing a rule under this subsection, the Commission shall ensure that the schedule for each Federal authorization—*

*(A) includes deadlines for actions by—*

*(i) any Federal or State agency, local government, or Indian tribe that may consider an aspect of an application for the Federal authorization;*

*(ii) the applicant;*

*(iii) the Commission; and*

*(iv) other participants in a proceeding;*

*(B) is developed in consultation with the applicant and any agency and Indian tribe that submits a response under subsection (b)(2)(C)(ii);*

*(C) provides an opportunity for any Federal or State agency, local government, or Indian tribe that may consider an aspect of an application for the applicable Federal authorization to identify and resolve issues of concern, as provided in subsection (b)(2)(D);*

*(D) complies with applicable schedules established under Federal and State law;*

*(E) ensures expeditious completion of all proceedings required under Federal and State law, to the extent practicable; and*

*(F) facilitates completion of Federal and State agency studies, reviews, and any other procedures required prior to, or concurrent with, the preparation of the Commission's environmental document required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).*

*(d) TRANSMISSION OF FINAL SCHEDULE.—*

*(1) IN GENERAL.—For each application for a license, license amendment, or exemption under this part, the Commission shall establish a schedule in accordance with the rule issued by the Commission under subsection (c). The Commission shall publicly notice and transmit the final schedule to the applicant and each agency and Indian tribe identified under subsection (b)(2)(B).*

*(2) RESPONSE.—Each agency and Indian tribe receiving a schedule under this subsection shall acknowledge receipt of such schedule in writing to the Commission within 30 days.*

(e) *ADHERENCE TO SCHEDULE.*—All applicants, other licensing participants, and agencies and tribes considering an aspect of an application for a Federal authorization shall meet the deadlines set forth in the schedule established pursuant to subsection (d)(1).

(f) *APPLICATION PROCESSING.*—The Commission, Federal, State, and local government agencies, and Indian tribes may allow an applicant seeking a Federal authorization to fund a third-party contractor selected by such agency or tribe to assist in reviewing the application. All costs of an agency or tribe incurred pursuant to direct funding by the applicant, including all costs associated with the third party contractor, shall not be considered costs of the United States for the administration of this part under section 10(e).

(g) *COMMISSION RECOMMENDATION ON SCOPE OF ENVIRONMENTAL REVIEW.*—For the purposes of coordinating Federal authorizations for each project, the Commission shall consult with and make a recommendation to agencies and Indian tribes receiving a schedule under subsection (d) on the scope of the environmental review for all Federal authorizations for such project. Each Federal and State agency and Indian tribe shall give due consideration and may give deference to the Commission's recommendations, to the extent appropriate under Federal law.

(h) *FAILURE TO MEET SCHEDULE.*—A Federal, State, or local government agency or Indian tribe that anticipates that it will be unable to complete its disposition of a Federal authorization by the deadline set forth in the schedule established under subsection (d)(1) may file for an extension as provided under section 313(b)(2).

(i) *CONSOLIDATED RECORD.*—The Commission shall, with the cooperation of Federal, State, and local government agencies and Indian tribes, maintain a complete consolidated record of all decisions made or actions taken by the Commission or by a Federal administrative agency or officer (or State or local government agency or officer or Indian tribe acting under delegated Federal authority) with respect to any Federal authorization. Such record shall constitute the record for judicial review under section 313(b).

#### **SEC. 35. LICENSING STUDY IMPROVEMENTS.**

(a) *IN GENERAL.*—To facilitate the timely and efficient completion of the license proceedings under this part, the Commission shall, in consultation with applicable Federal and State agencies and interested members of the public—

(1) compile current and accepted best practices in performing studies required in such license proceedings, including methodologies and the design of studies to assess the full range of environmental impacts of a project that reflect the most recent peer-reviewed science;

(2) compile a comprehensive collection of studies and data accessible to the public that could be used to inform license proceedings under this part; and

(3) encourage license applicants, agencies, and Indian tribes to develop and use, for the purpose of fostering timely and efficient consideration of license applications, a limited number of open-source methodologies and tools applicable across a wide array of projects, including water balance models and streamflow analyses.

(b) *USE OF STUDIES.*—To the extent practicable, the Commission and other Federal, State, and local government agencies and Indian

tribes considering an aspect of an application for Federal authorization shall use current, accepted science toward studies and data in support of their actions. Any participant in a proceeding with respect to a Federal authorization shall demonstrate a study requested by the party is not duplicative of current, existing studies that are applicable to the project.

(c) **BASIN-WIDE OR REGIONAL REVIEW.**—The Commission shall establish a program to develop comprehensive plans, at the request of project applicants, on a regional or basin-wide scale, in consultation with the applicants, appropriate Federal agencies, and affected States, local governments, and Indian tribes, in basins or regions with respect to which there are more than one project or application for a project. Upon such a request, the Commission, in consultation with the applicants, such Federal agencies, and affected States, local governments, and Indian tribes, may conduct or commission regional or basin-wide environmental studies, with the participation of at least 2 applicants. Any study conducted under this subsection shall apply only to a project with respect to which the applicant participates.

**SEC. 36. CLOSED-LOOP PUMPED STORAGE PROJECTS.**

(a) **DEFINITION.**—For purposes of this section, a closed-loop pumped storage project is a project—

- (1) in which the upper and lower reservoirs do not impound or directly withdraw water from navigable waters; or
- (2) that is not continuously connected to a naturally flowing water feature.

(b) **IN GENERAL.**—As provided in this section, the Commission may issue and amend licenses and preliminary permits, as appropriate, for closed-loop pumped storage projects.

(c) **DAM SAFETY.**—Before issuing any license for a closed-loop pumped storage project, the Commission shall assess the safety of existing dams and other structures related to the project (including possible consequences associated with failure of such structures).

(d) **LICENSE CONDITIONS.**—With respect to a closed-loop pumped storage project, the authority of the Commission to impose conditions on a license under sections 4(e), 10(a), 10(g), and 10(j) shall not apply, and any condition included in or applicable to a closed-loop pumped storage project licensed under this section, including any condition or other requirement of a Federal authorization, shall be limited to those that are—

- (1) necessary to protect public safety; or
- (2) reasonable, economically feasible, and essential to prevent loss of or damage to, or to mitigate adverse effects on, fish and wildlife resources directly caused by the construction and operation of the project, as compared to the environmental baseline existing at the time the Commission completes its environmental review.

(e) **TRANSFERS.**—Notwithstanding section 5, and regardless of whether the holder of a preliminary permit for a closed-loop pumped storage project claimed municipal preference under section 7(a) when obtaining the permit, the Commission may, to facilitate development of a closed-loop pumped storage project—

- (1) add entities as joint permittees following issuance of a preliminary permit; and

(2) transfer a license in part to one or more nonmunicipal entities as co-licensees with a municipality.

**SEC. 37. LICENSE AMENDMENT IMPROVEMENTS.**

**(a) QUALIFYING PROJECT UPGRADES.—**

(1) *IN GENERAL.*—As provided in this section, the Commission may approve an application for an amendment to a license issued under this part for a qualifying project upgrade.

(2) *APPLICATION.*—A licensee filing an application for an amendment to a project license under this section shall include in such application information sufficient to demonstrate that the proposed change to the project described in the application is a qualifying project upgrade.

(3) *INITIAL DETERMINATION.*—Not later than 15 days after receipt of an application under paragraph (2), the Commission shall make an initial determination as to whether the proposed change to the project described in the application for a license amendment is a qualifying project upgrade. The Commission shall publish its initial determination and issue notice of the application filed under paragraph (2). Such notice shall solicit public comment on the initial determination within 45 days.

(4) *PUBLIC COMMENT ON QUALIFYING CRITERIA.*—The Commission shall accept public comment regarding whether a proposed license amendment is for a qualifying project upgrade for a period of 45 days beginning on the date of publication of a public notice described in paragraph (3), and shall—

(A) if no entity contests whether the proposed license amendment is for a qualifying project upgrade during such comment period, immediately publish a notice stating that the initial determination has not been contested; or

(B) if an entity contests whether the proposed license amendment is for a qualifying project upgrade during the comment period, issue a written determination in accordance with paragraph (5).

(5) *WRITTEN DETERMINATION.*—If an entity contests whether the proposed license amendment is for a qualifying project upgrade during the comment period under paragraph (4), the Commission shall, not later than 30 days after the date of publication of the public notice of the initial determination under paragraph (3), issue a written determination as to whether the proposed license amendment is for a qualifying project upgrade.

(6) *PUBLIC COMMENT ON AMENDMENT APPLICATION.*—If no entity contests whether the proposed license amendment is for a qualifying project upgrade during the comment period under paragraph (4) or the Commission issues a written determination under paragraph (5) that a proposed license amendment is a qualifying project upgrade, the Commission shall—

(A) during the 60-day period beginning on the date of publication of a notice under paragraph (4)(A) or the date on which the Commission issues the written determination under paragraph (5), as applicable, solicit comments from each Federal, State, and local government agency and Indian tribe considering an aspect of an application for Federal authorization (as defined in section 34) with respect to the proposed license amendment, as well as other interested agencies, Indian tribes, and members of the public; and

(B) during the 90-day period beginning on the date of publication of a notice under paragraph (4)(A) or the date on which the Commission issues the written determination under paragraph (5), as applicable, consult with—

(i) appropriate Federal agencies and the State agency exercising administrative control over the fish and wildlife resources, and water quality and supply, of the State in which the qualifying project upgrade is located;

(ii) any Federal department supervising any public lands or reservations occupied by the qualifying project upgrade; and

(iii) any Indian tribe affected by the qualifying project upgrade.

(7) **FEDERAL AUTHORIZATIONS.**—The schedule established by the Commission under section 34 for any project upgrade under this subsection shall require final disposition on all necessary Federal authorizations (as defined in section 34), other than final action by the Commission, by not later than 120 days after the date on which the Commission issues a notice under paragraph (4)(A) or a written determination under paragraph (5), as applicable.

(8) **COMMISSION ACTION.**—Not later than 150 days after the date on which the Commission issues a notice under paragraph (4)(A) or a written determination under paragraph (5), as applicable, the Commission shall take final action on the license amendment application.

(9) **LICENSE AMENDMENT CONDITIONS.**—Any condition included in or applicable to a license amendment approved under this subsection, including any condition or other requirement of a Federal authorization, shall be limited to those that are—

(A) necessary to protect public safety; or

(B) reasonable, economically feasible, and essential to prevent loss of or damage to, or to mitigate adverse effects on, fish and wildlife resources, water supply, and water quality that are directly caused by the construction and operation of the qualifying project upgrade, as compared to the environmental baseline existing at the time the Commission approves the application for the license amendment.

(10) **PROPOSED LICENSE AMENDMENTS THAT ARE NOT QUALIFYING PROJECT UPGRADES.**—If the Commission determines under paragraph (3) or (5) that a proposed license amendment is not for a qualifying project upgrade, the procedures under paragraphs (6) through (9) shall not apply to the application.

(11) **RULEMAKING.**—Not later than 180 days after the date of enactment of this section, the Commission shall, after notice and opportunity for public comment, issue a rule to implement this subsection.

(12) **DEFINITIONS.**—For purposes of this subsection:

(A) **QUALIFYING PROJECT UPGRADE.**—The term “qualifying project upgrade” means a change to a project licensed under this part that meets the qualifying criteria, as determined by the Commission.

(B) **QUALIFYING CRITERIA.**—*The term “qualifying criteria” means, with respect to a project license under this part, a change to the project that—*

*(i) if carried out, would be unlikely to adversely affect any species listed as threatened or endangered under the Endangered Species Act of 1973 or result in the destruction or adverse modification of critical habitat, as determined in consultation with the Secretary of the Interior or Secretary of Commerce, as appropriate, in accordance with section 7 of the Endangered Species Act of 1973;*

*(ii) is consistent with any applicable comprehensive plan under section 10(a)(2);*

*(iii) includes only changes to project lands, waters, or operations that, in the judgment of the Commission, would result in only insignificant or minimal cumulative adverse environmental effects;*

*(iv) would be unlikely to adversely affect water quality and water supply; and*

*(v) proposes to implement—*

*(I) capacity increases, efficiency improvements, or other enhancements to hydropower generation at the licensed project;*

*(II) environmental protection, mitigation, or enhancement measures to benefit fish and wildlife resources or other natural and cultural resources; or*

*(III) improvements to public recreation at the licensed project.*

(b) **AMENDMENT APPROVAL PROCESSES.**—

*(1) RULE.*—*Not later than 1 year after the date of enactment of this section, the Commission shall, after notice and opportunity for public comment, issue a rule establishing new standards and procedures for license amendment applications under this part. In issuing such rule, the Commission shall seek to develop the most efficient and expedient process, consultation, and review requirements, commensurate with the scope of different categories of proposed license amendments. Such rule shall account for differences in environmental effects across a wide range of categories of license amendment applications.*

*(2) CAPACITY.*—*In issuing a rule under this subsection, the Commission shall take into consideration that a change in generating or hydraulic capacity may indicate the potential environmental effects of a proposed amendment but is not determinative of such effects.*

*(3) PROCESS OPTIONS.*—*In issuing a rule under this subsection, the Commission shall take into consideration the range of process options available under the Commission’s regulations for new and original license applications and adapt such options to amendment applications, where appropriate.*

**SEC. 38. PROMOTING HYDROPOWER DEVELOPMENT AT EXISTING NON-POWERED DAMS.**

(a) **EXEMPTIONS FOR QUALIFYING FACILITIES.**—

*(1) EXEMPTION QUALIFICATIONS.*—*Subject to the requirements of this subsection, the Commission may grant an exemption in whole or in part from the requirements of this part, including*



any license requirements contained in this part, to any facility the Commission determines is a qualifying facility.

(2) *CONSULTATION WITH FEDERAL AND STATE AGENCIES.*—In granting any exemption under this subsection, the Commission shall consult with—

(A) the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the State agency exercising administrative control over the fish and wildlife resources of the State in which the facility will be located, in the manner provided by the Fish and Wildlife Coordination Act;

(B) any Federal department supervising any public lands or reservations occupied by the project; and

(C) any Indian tribe affected by the project.

(3) *EXEMPTION CONDITIONS.*—

(A) *IN GENERAL.*—The Commission shall include in any exemption granted under this subsection only such terms and conditions that the Commission determines are—

(i) necessary to protect public safety; or

(ii) reasonable, economically feasible, and essential to prevent loss of or damage to, or to mitigate adverse effects on, fish and wildlife resources directly caused by the construction and operation of the qualifying facility, as compared to the environmental baseline existing at the time the Commission grants the exemption.

(B) *NO CHANGES TO RELEASE REGIME.*—No Federal authorization required with respect to a qualifying facility described in paragraph (1), including an exemption granted by the Commission under this subsection, may include any condition or other requirement that results in any material change to the storage, control, withdrawal, diversion, release, or flow operations of the associated qualifying non-powered dam.

(4) *ENVIRONMENTAL REVIEW.*—The Commission's environmental review under the National Environmental Policy Act of 1969 of a proposed exemption under this subsection shall consist only of an environmental assessment, unless the Commission determines, by rule or order, that the Commission's obligations under such Act for granting exemptions under this subsection can be met through a categorical exclusion.

(5) *VIOLATION OF TERMS OF EXEMPTION.*—Any violation of a term or condition of any exemption granted under this subsection shall be treated as a violation of a rule or order of the Commission under this Act.

(6) *ANNUAL CHARGES FOR ENHANCEMENT ACTIVITIES.*—Exemptees under this subsection for any facility located at a non-Federal dam shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of funding environmental enhancement projects in watersheds in which facilities exempted under this subsection are located. Such annual charges shall be equivalent to the annual charges for use of a Government dam under section 10(e), unless the Commission determines, by rule, that a lower charge is appropriate to protect exemptees' investment in the project or avoid increasing the price to consumers of power due to such

*charges. The proceeds of charges made by the Commission under this paragraph shall be paid into the Treasury of the United States and credited to miscellaneous receipts. Subject to annual appropriation Acts, such proceeds shall be available to Federal and State fish and wildlife agencies for purposes of carrying out specific environmental enhancement projects in watersheds in which one or more facilities exempted under this subsection are located. Not later than 180 days after the date of enactment of this section, the Commission shall establish rules, after notice and opportunity for public comment, for the collection and administration of annual charges under this paragraph.*

*(7) EFFECT OF JURISDICTION.—The jurisdiction of the Commission over any qualifying facility exempted under this subsection shall extend only to the qualifying facility exempted and any associated primary transmission line, and shall not extend to any conduit, dam, impoundment, shoreline or other land, or any other project work associated with the qualifying facility exempted under this subsection.*

*(b) DEFINITIONS.—For purposes of this section—*

*(1) FEDERAL AUTHORIZATION.—The term “Federal authorization” has the same meaning as provided in section 34.*

*(2) QUALIFYING CRITERIA.—The term “qualifying criteria” means, with respect to a facility—*

*(A) as of the date of enactment of this section, the facility is not licensed under, or exempted from the license requirements contained in, this part;*

*(B) the facility will be associated with a qualifying non-powered dam;*

*(C) the facility will be constructed, operated, and maintained for the generation of electric power;*

*(D) the facility will use for such generation any withdrawals, diversions, releases, or flows from the associated qualifying nonpowered dam, including its associated impoundment or other infrastructure; and*

*(E) the operation of the facility will not result in any material change to the storage, control, withdrawal, diversion, release, or flow operations of the associated qualifying non-powered dam.*

*(3) QUALIFYING FACILITY.—The term “qualifying facility” means a facility that is determined under this section to meet the qualifying criteria.*

*(4) QUALIFYING NONPOWERED DAM.—The term “qualifying nonpowered dam” means any dam, dike, embankment, or other barrier—*

*(A) the construction of which was completed on or before the date of enactment of this section;*

*(B) that is operated for the control, release, or distribution of water for agricultural, municipal, navigational, industrial, commercial, environmental, recreational, aesthetic, or flood control purposes;*

*(C) that, as of the date of enactment of this section, is not equipped with hydropower generating works that are licensed under, or exempted from the license requirements contained in, this part; and*

*(D) that, in the case of a non-Federal dam, has been certified by an independent consultant approved by the Commission as complying with the Commission's dam safety requirements.*

## PART II—REGULATION OF ELECTRIC UTILITY COMPANIES ENGAGED IN INTERSTATE COMMERCE

### DECLARATION OF POLICY; APPLICATION OF PART; DEFINITIONS

SECTION 201. (a) It is hereby declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this Part and the Part next following and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.

(b)(1) The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but except as provided in paragraph (2) shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this Part and the Part next following, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.

(2) Notwithstanding section 201(f), the provisions of sections 203(a)(2), 206(e), 210, 211, 211A, 212, 215, 215A, 216, 217, 218, 219, 220, 221, and 222 shall apply to the entities described in such provisions, and such entities shall be subject to the jurisdiction of the Commission for purposes of carrying out such provisions and for purposes of applying the enforcement authorities of this Act with respect to such provisions. Compliance with any order of the Commission under the provisions of section 203(a)(2), 206(e), 210, 211, 211A, 212, 215, 215A, 216, 217, 218, 219, 220, 221, or 222, shall not make an electric utility or other entity subject to the jurisdiction of the Commission for any purposes other than the purposes specified in the preceding sentence.

(c) For the purpose of this Part, electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof: but only insofar as such transmission takes place within the United States.

(d) The term "sale of electric energy at wholesale" when used in this Part means a sale of electric energy to any person for resale.

(e) The term "public utility" when used in this Part or in the Part next following means any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part (other than facilities subject to such jurisdiction solely by reason of sec-

tion 206(e), 206(f), 210, 211, 211A, 212, 215, 215A, 216, 217, 218, 219, 220, 221, or 222).

(f) No provision in this Part shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, an electric cooperative that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) or that sells less than 4,000,000 megawatt hours of electricity per year, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(g) BOOKS AND RECORDS.—(1) Upon written order of a State commission, a State commission may examine the books, accounts, memoranda, contracts, and records of—

(A) an electric utility company subject to its regulatory authority under State law,

(B) any exempt wholesale generator selling energy at wholesale to such electric utility, and

(C) any electric utility company, or holding company thereof, which is an associate company or affiliate of an exempt wholesale generator which sells electric energy to an electric utility company referred to in subparagraph (A),

wherever located, if such examination is required for the effective discharge of the State commission's regulatory responsibilities affecting the provision of electric service.

(2) Where a State commission issues an order pursuant to paragraph (1), the State commission shall not publicly disclose trade secrets or sensitive commercial information.

(3) Any United States district court located in the State in which the State commission referred to in paragraph (1) is located shall have jurisdiction to enforce compliance with this subsection.

(4) Nothing in this section shall—

(A) preempt applicable State law concerning the provision of records and other information; or

(B) in any way limit rights to obtain records and other information under Federal law, contracts, or otherwise.

(5) As used in this subsection the terms “affiliate”, “associate company”, “electric utility company”, “holding company”, “subsidiary company”, and “exempt wholesale generator” shall have the same meaning as when used in the Public Utility Holding Company Act of 2005.

#### INTERCONNECTION AND COORDINATION OF FACILITIES; EMERGENCIES; TRANSMISSION TO FOREIGN COUNTRIES

SEC. 202. (a) For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon its own motion or upon application, make such modifications thereof as in its judgment will promote the public interest. Each such district shall embrace an area which, in the

judgment of the Commission, can economically be served by such interconnected and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts. Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district, and shall afford each such State commission reasonable opportunity to present its views and recommendations, and shall receive and consider such views and recommendations.

(b) Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical connection of its transmission facilities with the facilities of one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons: *Provided*, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them.

(c) (1) During the continuance of any war in which the United States is engaged, or whenever the Commission determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, the Commission shall have authority, either upon its own motion or upon complaint, with or without notice, hearing, or report, to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest. If the parties affected by such order fail to agree upon the terms of any arrangement between them in carrying out such order, the Commission, after hearing held either before or after such order takes effect, may prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party.

(2) *With respect to an order issued under this subsection that may result in a conflict with a requirement of any Federal, State, or local environmental law or regulation, the Commission shall ensure that such order requires generation, delivery, interchange, or transmission of electric energy only during hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable, is consistent with any applicable Federal, State, or local environmental law or regulation and minimizes any adverse environmental impacts.*

(3) *To the extent any omission or action taken by a party, that is necessary to comply with an order issued under this subsection, including any omission or action taken to voluntarily comply with such order, results in noncompliance with, or causes such party to not comply with, any Federal, State, or local environmental law or regulation, such omission or action shall not be considered a violation of such environmental law or regulation, or subject such party to any requirement, civil or criminal liability, or a citizen suit under such environmental law or regulation.*

(4)(A) *An order issued under this subsection that may result in a conflict with a requirement of any Federal, State, or local environmental law or regulation shall expire not later than 90 days after it is issued. The Commission may renew or reissue such order pursuant to paragraphs (1) and (2) for subsequent periods, not to exceed 90 days for each period, as the Commission determines necessary to meet the emergency and serve the public interest.*

(B) *In renewing or reissuing an order under subparagraph (A), the Commission shall consult with the primary Federal agency with expertise in the environmental interest protected by such law or regulation, and shall include in any such renewed or reissued order such conditions as such Federal agency determines necessary to minimize any adverse environmental impacts to the extent practicable. The conditions, if any, submitted by such Federal agency shall be made available to the public. The Commission may exclude such a condition from the renewed or reissued order if it determines that such condition would prevent the order from adequately addressing the emergency necessitating such order and provides in the order, or otherwise makes publicly available, an explanation of such determination.*

(5) *If an order issued under this subsection is subsequently stayed, modified, or set aside by a court pursuant to section 313 or any other provision of law, any omission or action previously taken by a party that was necessary to comply with the order while the order was in effect, including any omission or action taken to voluntarily comply with the order, shall remain subject to paragraph (3).*

(d) *During the continuance of any emergency requiring immediate action, any person or municipality engaged in the transmission or sale of electric energy and not otherwise subject to the jurisdiction of the Commission may make such temporary connections with any public utility subject to the jurisdiction of the Commission or may construct such temporary facilities for the transmission of electric energy in interstate commerce as may be necessary or appropriate to meet such emergency, and shall not become subject to the jurisdiction of the Commission by reason of such temporary connection or temporary construction: *Provided*, That such temporary connection shall be discontinued or such temporary construction removed or otherwise disposed of upon the termination of such emergency: *Provided further*, That upon approval of the Commission permanent connections for emergency use only may be made hereunder.*

(e) *After six months from the date on which this Part takes effect, no person shall transmit any electric energy from the United States to a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application unless, after opportunity for*

hearing, it finds that the proposed transmission would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission. The Commission may by its order grant such application in whole or in part, with such modifications and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it may find necessary or appropriate.

(f) The ownership or operation of facilities for the transmission or sale at wholesale of electric energy which is (a) generated within a State and transmitted from that State across an international boundary and not thereafter transmitted into any other State, or (b) generated in a foreign country and transmitted across an international boundary into a State and not thereafter transmitted into any other State, shall not make a person a public utility subject to regulation as such under other provisions of this part. The State within which any such facilities are located may regulate any such transaction insofar as such State regulation does not conflict with the exercise of the Commission's powers under or relating to subsection 202(e).

(g) In order to insure continuity of service to customers of public utilities, the Commission shall require by rule, each public utility to—

(1) report promptly to the Commission and any appropriate State regulatory authorities any anticipated shortage of electric energy or capacity which would affect such utility's capability of serving its wholesale customers,

(2) submit to the Commission, and to any appropriate State regulatory authority, and periodically revise, contingency plans respecting—

(A) shortages of electric energy or capacity, and

(B) circumstances which may result in such shortages, and

(3) accommodate any such shortages or circumstances in a manner which shall—

(A) give due consideration to the public health, safety, and welfare, and

(B) provide that all persons served directly or indirectly by such public utility will be treated, without undue prejudice or disadvantage.

#### DISPOSITION OF PROPERTY; CONSOLIDATION; PURCHASE OF SECURITIES

SEC. 203. (a)(1) No public utility shall, without first having secured an order of the Commission authorizing it to do so—

(A) sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of \$10,000,000;

(B) merge or consolidate, directly or indirectly, [such facilities or any part thereof] *such facilities, or any part thereof, of a value in excess of \$10,000,000* with those of any other person, by any means whatsoever;

(C) purchase, acquire, or take any security with a value in excess of \$10,000,000 of any other public utility; or

(D) purchase, lease, or otherwise acquire an existing generation facility—

(i) that has a value in excess of \$10,000,000; and

(ii) that is used for interstate wholesale sales and over which the Commission has jurisdiction for rate-making purposes.

(2) No holding company in a holding company system that includes a transmitting utility or an electric utility shall purchase, acquire, or take any security with a value in excess of \$10,000,000 of, or, by any means whatsoever, directly or indirectly, merge or consolidate with, a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility, or an electric utility company, with a value in excess of \$10,000,000 without first having secured an order of the Commission authorizing it to do so.

(3) Upon receipt of an application for such approval the Commission shall give reasonable notice in writing to the Governor and State commission of each of the States in which the physical property affected, or any part thereof, is situated, and to such other persons as it may deem advisable.

(4) After notice and opportunity for hearing, the Commission shall approve the proposed disposition, consolidation, acquisition, or change in control, if it finds that the proposed transaction will be consistent with the public interest, and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest.

(5) The Commission shall, by rule, adopt procedures for the expeditious consideration of applications for the approval of dispositions, consolidations, or acquisitions, under this section. Such rules shall identify classes of transactions, or specify criteria for transactions, that normally meet the standards established in paragraph (4). The Commission shall provide expedited review for such transactions. The Commission shall grant or deny any other application for approval of a transaction not later than 180 days after the application is filed. If the Commission does not act within 180 days, such application shall be deemed granted unless the Commission finds, based on good cause, that further consideration is required to determine whether the proposed transaction meets the standards of paragraph (4) and issues an order tolling the time for acting on the application for not more than 180 days, at the end of which additional period the Commission shall grant or deny the application.

(6) For purposes of this subsection, the terms “associate company”, “holding company”, and “holding company system” have the meaning given those terms in the Public Utility Holding Company Act of 2005.

(b) The Commission may grant any application for an order under this section in whole or in part and upon such terms and



conditions as it finds necessary or appropriate to secure the maintenance of adequate service and the coordination in the public interest of facilities subject to the jurisdiction of the Commission. The Commission may from time to time for good cause shown make such orders supplemental to any order made under this section as it may find necessary or appropriate.

\* \* \* \* \*

**SEC. 215A. CRITICAL ELECTRIC INFRASTRUCTURE SECURITY.**

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

(1) *BULK-POWER SYSTEM; ELECTRIC RELIABILITY ORGANIZATION; REGIONAL ENTITY.*—The terms “bulk-power system”, “Electric Reliability Organization”, and “regional entity” have the meanings given such terms in paragraphs (1), (2), and (7) of section 215(a), respectively.

(2) *CRITICAL ELECTRIC INFRASTRUCTURE.*—The term “critical electric infrastructure” means a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters.

(3) *CRITICAL ELECTRIC INFRASTRUCTURE INFORMATION.*—The term “critical electric infrastructure information” means information related to critical electric infrastructure, or proposed critical electrical infrastructure, generated by or provided to the Commission or other Federal agency, other than classified national security information, that is designated as critical electric infrastructure information by the Commission under subsection (d)(2). Such term includes information that qualifies as critical energy infrastructure information under the Commission’s regulations.

(4) *DEFENSE CRITICAL ELECTRIC INFRASTRUCTURE.*—The term “defense critical electric infrastructure” means any electric infrastructure located in the United States (including the territories) that serves a facility designated by the Secretary pursuant to subsection (c), but is not owned or operated by the owner or operator of such facility.

(5) *ELECTROMAGNETIC PULSE.*—The term “electromagnetic pulse” means 1 or more pulses of electromagnetic energy emitted by a device capable of disabling or disrupting operation of, or destroying, electronic devices or communications networks, including hardware, software, and data, by means of such a pulse.

(6) *GEOMAGNETIC STORM.*—The term “geomagnetic storm” means a temporary disturbance of the Earth’s magnetic field resulting from solar activity.

(7) *GRID SECURITY EMERGENCY.*—The term “grid security emergency” means the occurrence or imminent danger of—

(A)(i) a malicious act using electronic communication or an electromagnetic pulse, or a geomagnetic storm event, that could disrupt the operation of those electronic devices or communications networks, including hardware, software, and data, that are essential to the reliability of critical electric infrastructure or of defense critical electric infrastructure; and

(ii) *disruption of the operation of such devices or networks, with significant adverse effects on the reliability of critical electric infrastructure or of defense critical electric infrastructure, as a result of such act or event; or*

(B)(i) *a direct physical attack on critical electric infrastructure or on defense critical electric infrastructure; and*

(ii) *significant adverse effects on the reliability of critical electric infrastructure or of defense critical electric infrastructure as a result of such physical attack.*

(8) *SECRETARY.*—*The term “Secretary” means the Secretary of Energy.*

(b) *AUTHORITY TO ADDRESS GRID SECURITY EMERGENCY.*—

(1) *AUTHORITY.*—*Whenever the President issues and provides to the Secretary a written directive or determination identifying a grid security emergency, the Secretary may, with or without notice, hearing, or report, issue such orders for emergency measures as are necessary in the judgment of the Secretary to protect or restore the reliability of critical electric infrastructure or of defense critical electric infrastructure during such emergency. As soon as practicable but not later than 180 days after the date of enactment of this section, the Secretary shall, after notice and opportunity for comment, establish rules of procedure that ensure that such authority can be exercised expeditiously.*

(2) *NOTIFICATION OF CONGRESS.*—*Whenever the President issues and provides to the Secretary a written directive or determination under paragraph (1), the President shall promptly notify congressional committees of relevant jurisdiction, including the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, of the contents of, and justification for, such directive or determination.*

(3) *CONSULTATION.*—*Before issuing an order for emergency measures under paragraph (1), the Secretary shall, to the extent practicable in light of the nature of the grid security emergency and the urgency of the need for action, consult with appropriate governmental authorities in Canada and Mexico, entities described in paragraph (4), the Electricity Sub-sector Coordinating Council, the Commission, and other appropriate Federal agencies regarding implementation of such emergency measures.*

(4) *APPLICATION.*—*An order for emergency measures under this subsection may apply to—*

(A) *the Electric Reliability Organization;*

(B) *a regional entity; or*

(C) *any owner, user, or operator of critical electric infrastructure or of defense critical electric infrastructure within the United States.*

(5) *EXPIRATION AND REISSUANCE.*—

(A) *IN GENERAL.*—*Except as provided in subparagraph (B), an order for emergency measures issued under paragraph (1) shall expire no later than 15 days after its issuance.*

(B) *EXTENSIONS.*—*The Secretary may reissue an order for emergency measures issued under paragraph (1) for subsequent periods, not to exceed 15 days for each such period,*

*provided that the President, for each such period, issues and provides to the Secretary a written directive or determination that the grid security emergency identified under paragraph (1) continues to exist or that the emergency measure continues to be required.*

**(6) COST RECOVERY.—**

*(A) CRITICAL ELECTRIC INFRASTRUCTURE.—If the Commission determines that owners, operators, or users of critical electric infrastructure have incurred substantial costs to comply with an order for emergency measures issued under this subsection and that such costs were prudently incurred and cannot reasonably be recovered through regulated rates or market prices for the electric energy or services sold by such owners, operators, or users, the Commission shall, consistent with the requirements of section 205, after notice and an opportunity for comment, establish a mechanism that permits such owners, operators, or users to recover such costs.*

*(B) DEFENSE CRITICAL ELECTRIC INFRASTRUCTURE.—To the extent the owner or operator of defense critical electric infrastructure is required to take emergency measures pursuant to an order issued under this subsection, the owners or operators of a critical defense facility or facilities designated by the Secretary pursuant to subsection (c) that rely upon such infrastructure shall bear the full incremental costs of the measures.*

**(7) TEMPORARY ACCESS TO CLASSIFIED INFORMATION.—***The Secretary, and other appropriate Federal agencies, shall, to the extent practicable and consistent with their obligations to protect classified information, provide temporary access to classified information related to a grid security emergency for which emergency measures are issued under paragraph (1) to key personnel of any entity subject to such emergency measures to enable optimum communication between the entity and the Secretary and other appropriate Federal agencies regarding the grid security emergency.*

**(c) DESIGNATION OF CRITICAL DEFENSE FACILITIES.—***Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with other appropriate Federal agencies and appropriate owners, users, or operators of infrastructure that may be defense critical electric infrastructure, shall identify and designate facilities located in the United States (including the territories) that are—*

*(1) critical to the defense of the United States; and*

*(2) vulnerable to a disruption of the supply of electric energy provided to such facility by an external provider.*

*The Secretary may, in consultation with appropriate Federal agencies and appropriate owners, users, or operators of defense critical electric infrastructure, periodically revise the list of designated facilities as necessary.*

**(d) PROTECTION AND SHARING OF CRITICAL ELECTRIC INFRASTRUCTURE INFORMATION.—**

**(1) PROTECTION OF CRITICAL ELECTRIC INFRASTRUCTURE INFORMATION.—***Critical electric infrastructure information—*

(A) shall be exempt from disclosure under section 552(b)(3) of title 5, United States Code; and

(B) shall not be made available by any Federal, State, political subdivision or tribal authority pursuant to any Federal, State, political subdivision or tribal law requiring public disclosure of information or records.

(2) *DESIGNATION AND SHARING OF CRITICAL ELECTRIC INFRASTRUCTURE INFORMATION.*—Not later than one year after the date of enactment of this section, the Commission, in consultation with the Secretary of Energy, shall promulgate such regulations and issue such orders as necessary to—

(A) designate information as critical electric infrastructure information;

(B) prohibit the unauthorized disclosure of critical electric infrastructure information;

(C) ensure there are appropriate sanctions in place for Commissioners, officers, employees, or agents of the Commission who knowingly and willfully disclose critical electric infrastructure information in a manner that is not authorized under this section; and

(D) taking into account standards of the Electric Reliability Organization, facilitate voluntary sharing of critical electric infrastructure information with, between, and by—

(i) Federal, State, political subdivision, and tribal authorities;

(ii) the Electric Reliability Organization;

(iii) regional entities;

(iv) information sharing and analysis centers established pursuant to Presidential Decision Directive 63;

(v) owners, operators, and users of critical electric infrastructure in the United States; and

(vi) other entities determined appropriate by the Commission.

(3) *CONSIDERATIONS.*—In promulgating regulations and issuing orders under paragraph (2), the Commission shall take into consideration the role of State commissions in reviewing the prudence and cost of investments, determining the rates and terms of conditions for electric services, and ensuring the safety and reliability of the bulk-power system and distribution facilities within their respective jurisdictions.

(4) *PROTOCOLS.*—The Commission shall, in consultation with Canadian and Mexican authorities, develop protocols for the voluntary sharing of critical electric infrastructure information with Canadian and Mexican authorities and owners, operators, and users of the bulk-power system outside the United States.

(5) *NO REQUIRED SHARING OF INFORMATION.*—Nothing in this section shall require a person or entity in possession of critical electric infrastructure information to share such information with Federal, State, political subdivision, or tribal authorities, or any other person or entity.

(6) *SUBMISSION OF INFORMATION TO CONGRESS.*—Nothing in this section shall permit or authorize the withholding of information from Congress, any committee or subcommittee thereof, or the Comptroller General.

(7) *DISCLOSURE OF NONPROTECTED INFORMATION.*—In implementing this section, the Commission shall protect from disclosure only the minimum amount of information necessary to protect the security and reliability of the bulk-power system and distribution facilities. The Commission shall segregate critical electric infrastructure information within documents and electronic communications, wherever feasible, to facilitate disclosure of information that is not designated as critical electric infrastructure information.

(8) *DURATION OF DESIGNATION.*—Information may not be designated as critical electric infrastructure information for longer than 5 years, unless specifically re-designated by the Commission.

(9) *REMOVAL OF DESIGNATION.*—The Commission shall remove the designation of critical electric infrastructure information, in whole or in part, from a document or electronic communication if the Commission determines that the unauthorized disclosure of such information could no longer be used to impair the security or reliability of the bulk-power system or distribution facilities.

(10) *JUDICIAL REVIEW OF DESIGNATIONS.*—Notwithstanding section 313(b), any determination by the Commission concerning the designation of critical electric infrastructure information under this subsection shall be subject to review under chapter 7 of title 5, United States Code, except that such review shall be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in the District of Columbia. In such a case the court shall examine in camera the contents of documents or electronic communications that are the subject of the determination under review to determine whether such documents or any part thereof were improperly designated or not designated as critical electric infrastructure information.

(e) *SECURITY CLEARANCES.*—The Secretary shall facilitate and, to the extent practicable, expedite the acquisition of adequate security clearances by key personnel of any entity subject to the requirements of this section, to enable optimum communication with Federal agencies regarding threats to the security of the critical electric infrastructure. The Secretary, the Commission, and other appropriate Federal agencies shall, to the extent practicable and consistent with their obligations to protect classified and critical electric infrastructure information, share timely actionable information regarding grid security with appropriate key personnel of owners, operators, and users of the critical electric infrastructure.

(f) *CLARIFICATIONS OF LIABILITY.*—

(1) *COMPLIANCE WITH OR VIOLATION OF THIS ACT.*—Except as provided in paragraph (4), to the extent any action or omission taken by an entity that is necessary to comply with an order for emergency measures issued under subsection (b)(1), including any action or omission taken to voluntarily comply with such order, results in noncompliance with, or causes such entity not to comply with any rule, order, regulation, or provision of this Act, including any reliability standard approved by the Commission pursuant to section 215, such action or omission shall

not be considered a violation of such rule, order, regulation, or provision.

(2) *RELATION TO SECTION 202(C).*—Except as provided in paragraph (4), an action or omission taken by an owner, operator, or user of critical electric infrastructure or of defense critical electric infrastructure to comply with an order for emergency measures issued under subsection (b)(1) shall be treated as an action or omission taken to comply with an order issued under section 202(c) for purposes of such section.

(3) *SHARING OR RECEIPT OF INFORMATION.*—No cause of action shall lie or be maintained in any Federal or State court for the sharing or receipt of information under, and that is conducted in accordance with, subsection (d).

(4) *RULE OF CONSTRUCTION.*—Nothing in this subsection shall be construed to require dismissal of a cause of action against an entity that, in the course of complying with an order for emergency measures issued under subsection (b)(1) by taking an action or omission for which they would be liable but for paragraph (1) or (2), takes such action or omission in a grossly negligent manner.

**SEC. 215B. RELIABILITY AND PERFORMANCE ASSURANCE IN REGIONAL TRANSMISSION ORGANIZATIONS.**

**(a) EXISTING CAPACITY MARKETS.**—

(1) *ANALYSIS CONCERNING CAPACITY MARKET DESIGN.*—Not later than 180 days after the date of enactment of this section, each Regional Transmission Organization, and each Independent System Operator, that operates a capacity market, or a comparable market intended to ensure the procurement and availability of sufficient future electric energy resources, that is subject to the jurisdiction of the Commission, shall provide to the Commission an analysis of how the structure of such market meets the following criteria:

(A) The structure of such market utilizes competitive market forces to the extent practicable in procuring capacity resources.

(B) Consistent with subparagraph (A), the structure of such market includes resource-neutral performance criteria that ensure the procurement of sufficient capacity from physical generation facilities that have reliability attributes that include—

(i)(I) possession of adequate fuel on-site to enable operation for an extended period of time;

(II) the operational ability to generate electric energy from more than one fuel source; or

(III) fuel certainty, through firm contractual obligations, that ensures adequate fuel supply to enable operation, for an extended period of time, for the duration of an emergency or severe weather conditions;

(ii) operational characteristics that enable the generation of electric energy for the duration of an emergency or severe weather conditions; and

(iii) unless procured through other markets or procurement mechanisms, essential reliability services, including frequency support and regulation services.

(2) *COMMISSION EVALUATION AND REPORT.*—Not later than 1 year after the date of enactment of this section, the Commission shall make publicly available, and submit to the Committee on Energy and Commerce in the House of Representatives and the Committee on Energy and Natural Resources in the Senate, a report containing—

(A) *evaluation of whether the structure of each market addressed in an analysis submitted pursuant to paragraph (1) meets the criteria under such paragraph, based on the analysis; and*

(B) *to the extent a market so addressed does not meet such criteria, any recommendations with respect to the procurement of sufficient capacity, as described in paragraph (1)(B).*

(b) *COMMISSION EVALUATION AND REPORT FOR NEW SCHEDULES.*—

(1) *INCLUSION OF ANALYSIS IN FILING.*—Except as provided in subsection (a)(2), whenever a Regional Transmission Organization or Independent System Operator files a new schedule under section 205 to establish a market described in subsection (a)(1), or that substantially modifies the capacity market design of a market described in subsection (a)(1), the Regional Transmission Organization or Independent System Operator shall include in any such filing the analysis required by subsection (a)(1).

(2) *EVALUATION AND REPORT.*—Not later than 180 days of receiving an analysis under paragraph (1), the Commission shall make publicly available, and submit to the Committee on Energy and Commerce in the House of Representatives and the Committee on Energy and Natural Resources in the Senate, a report containing—

(A) *an evaluation of whether the structure of the market addressed in the analysis meets the criteria under subsection (a)(1), based on the analysis; and*

(B) *to the extent the market does not meet such criteria, any recommendations with respect to the procurement of sufficient capacity, as described in subsection (a)(1)(B).*

(c) *EFFECT ON EXISTING APPROVALS.*—Nothing in this section shall be considered to—

(1) *require a modification of the Commission's approval of the capacity market design approved pursuant to docket numbers ER15-623-000, EL15-29-000, EL14-52-000, and ER14-2419-000; or*

(2) *provide grounds for the Commission to grant rehearing or otherwise modify orders issued in those dockets.*

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### PART III—LICENSEES AND PUBLIC UTILITIES; PROCEDURAL AND ADMINISTRATIVE PROVISIONS

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#### REHEARINGS; COURT REVIEW OF ORDERS

SEC. 313. (a) Any person, electric utility, State, municipality, or State commission aggrieved by an order issued by the Commission

in a proceeding under this Act to which such person, electric utility, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any orders of the Commission shall be brought by any entity unless such entity shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this act.

**[(b) Any party]**

**(b) JUDICIAL REVIEW.—**

**(1) IN GENERAL.**—*Any party* to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the Circuit Court of Appeals of the United States for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The Commission may modify its findings as to the facts by reason of additional evidence so taken, and it shall file with the court such modified or new findings which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification



or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347).

(2) *DELAY OF A FEDERAL AUTHORIZATION.*—Any Federal, State, or local government agency or Indian tribe that will not complete its disposition of a Federal authorization by the deadline set forth in the schedule by the Commission under section 34 may file for an extension in the United States court of appeals for any circuit wherein the project or proposed project is located, or in the United States Court of Appeals for the District of Columbia. Such petition shall be filed not later than 30 days prior to such deadline. The court shall only grant an extension if the agency or tribe demonstrates, based on the record maintained under section 34, that it otherwise complied with the requirements of section 34 and that complying with the schedule set by the Commission would have prevented the agency or tribe from complying with applicable Federal or State law. If the court grants the extension, the court shall set a reasonable schedule and deadline, not to exceed 90 days, for the agency to act on remand. If the court denies the extension, or if an agency or tribe does not file for an extension as provided in this subsection and does not complete its disposition of a Federal authorization by the applicable deadline, the Commission and applicant may move forward with the proposed action.

(c) The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

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#### [OFFICE OF PUBLIC PARTICIPATION]

【SEC. 319. (a)(1) There shall be an office in the Commission to be known as the Office of Public Participation (hereinafter in this section referred to as the "Office").

【(2)(A) The Office shall be administered by a Director. The Director shall be appointed by the Chairman with the approval of the Commission. The Director may be removed during his term of office by the Chairman, with the approval of the Commission, only for inefficiency, neglect of duty, or malfeasance in office.

【(B) The term of office of the Director shall be 4 years. The Director shall be responsible for the discharge of the functions and duties of the Office. He shall be appointed and compensated at a rate not in excess of the maximum rate prescribed for GS-18 of the General Schedule under section 5332 of title 5 of the United States Code.

【(3) The Director may appoint, and assign the duties of, employees of such Office, and with the concurrence of the Commission he may fix the compensation of such employees and procure tem-

porary and intermittent services to the same extent as is authorized under section 3109 of title 5, United States Code.

[(b)(1) The Director shall coordinate assistance to the public with respect to authorities exercised by the Commission. The Director shall also coordinate assistance available to persons intervening or participating or proposing to intervene or participate in proceedings before the Commission.

[(2) The Commission may, under rules promulgated by it, provide compensation for reasonable attorney's fees, expert witness fees, and other costs of intervening or participating in any proceeding before the Commission to any person whose intervention, or participation substantially contributed to the approval, in whole or in part, of a position advocated by such person. Such compensation may be paid only if the Commission has determined that—

[(A) the proceeding is significant, and

[(B) such person's intervention or participation in such proceeding without receipt of compensation constitutes a significant financial hardship to him.

[(3) Nothing in this subsection affects or restricts any rights of any intervenor or participant under any other applicable law or rule of law.

[(4) There are to be appropriated to the Secretary of Energy to be used by the Office for purposes of compensation of persons under the provisions of this subsection not to exceed \$500,000 for the fiscal year 1978, not to exceed \$2,000,000 for the fiscal year 1979, not to exceed \$2,200,000 for the fiscal year 1980, and not to exceed \$2,400,000 for the fiscal year 1981.]

**SEC. 319. OFFICE OF COMPLIANCE ASSISTANCE AND PUBLIC PARTICIPATION.**

(a) *ESTABLISHMENT.*—*There is established within the Commission an Office of Compliance Assistance and Public Participation (referred to in this section as the "Office"). The Office shall be headed by a Director.*

(b) *DUTIES OF DIRECTOR.*—

(1) *IN GENERAL.*—*The Director of the Office shall promote improved compliance with Commission rules and orders by—*

(A) *making recommendations to the Commission regarding—*

- (i) *the protection of consumers;*
- (ii) *market integrity and support for the development of responsible market behavior;*
- (iii) *the application of Commission rules and orders in a manner that ensures that—*

(I) *rates and charges for, or in connection with, the transmission or sale of electric energy subject to the jurisdiction of the Commission shall be just and reasonable and not unduly discriminatory or preferential; and*

(II) *markets for such transmission and sale of electric energy are not impaired and consumers are not damaged; and*

(iv) *the impact of existing and proposed Commission rules and orders on small entities, as defined in section 601 of title 5, United States Code (commonly known as the Regulatory Flexibility Act);*

(B) providing entities subject to regulation by the Commission the opportunity to obtain timely guidance for compliance with Commission rules and orders; and

(C) providing information to the Commission and Congress to inform policy with respect to energy issues under the jurisdiction of the Commission.

(2) *REPORTS AND GUIDANCE.*—The Director shall, as the Director determines appropriate, issue reports and guidance to the Commission and to entities subject to regulation by the Commission, regarding market practices, proposing improvements in Commission monitoring of market practices, and addressing potential improvements to both industry and Commission practices.

(3) *OUTREACH.*—The Director shall promote improved compliance with Commission rules and orders through outreach, publications, and, where appropriate, direct communication with entities regulated by the Commission.

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## **PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978**

\* \* \* \* \*

# **TITLE I—RETAIL REGULATORY POLICIES FOR ELECTRIC UTILITIES**

## **Subtitle A—General Provisions**

\* \* \* \* \*

### **SEC. 102. COVERAGE.**

(a) *VOLUME OF TOTAL RETAIL SALES.*—This title applies to each utility in any calendar year, and to each proceeding relating to each electric utility in such year, if the total sales of electric energy by such utility for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

(b) *EXCLUSION OF WHOLESALE SALES.*—The requirements of this title do not apply to the operations of an electric utility, or to proceedings respecting such operations, to the extent that such operations or proceedings relate to sales of electric energy for purposes of resale.

(c) *LIST OF COVERED UTILITIES.*—Before the beginning of each calendar year, the Secretary shall publish a list identifying each electric utility to which this title applies during such calendar year. Promptly after publication of such list each State regulatory authority shall notify the Secretary of each electric utility on the list for which such State regulatory authority has ratemaking authority.

(d) *COVERAGE FOR COMPETITIVE MARKETS.*—The requirements of this title do not apply to the operations of an electric utility, or to proceedings respecting such operations, to the extent that such operations or proceedings, or any portion thereof, relate to the competi-

*tive sale of retail electric energy that is unbundled or separated from the regulated provision or sale of distribution service.*

\* \* \* \* \*

## **Subtitle B—Standards For Electric Utilities**

### **SEC. 111. CONSIDERATION AND DETERMINATION RESPECTING CERTAIN RATEMAKING STANDARDS.**

(a) CONSIDERATION AND DETERMINATION.—Each State regulatory authority (with respect to each electric utility for which it has rate-making authority) and each nonregulated electric utility shall consider each standard established by subsection (d) and make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this title. For purposes of such consideration and determination in accordance with subsections (b) and (c), and for purposes of any review of such consideration and determination in any court in accordance with section 123, the purposes of this title supplement otherwise applicable State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

(b) PROCEDURAL REQUIREMENTS FOR CONSIDERATION AND DETERMINATION.—(1) The consideration referred to in subsection (a) shall be made after public notice and hearing. The determination referred to in subsection (a) shall be—

- (A) in writing,
- (B) based upon findings included in such determination and upon the evidence presented at the hearing, and
- (C) available to the public.

(2) Except as otherwise provided in paragraph (1), in the second sentence of section 112(a), and in sections 121 and 122, the procedures for the consideration and determination referred to in subsection (a) shall be those established by the State regulatory authority or the nonregulated electric utility.

(c) IMPLEMENTATION.—(1) The State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility may, to the extent consistent with otherwise applicable State law—

- (A) implement any such standard determined under subsection (a) to be appropriate to carry out the purposes of this title, or
- (B) decline to implement any such standard.

(2) If a State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility declines to implement any standard established by subsection (d) which is determined under subsection (a) to be appropriate to carry out the purposes of this title, such authority or nonregulated electric utility shall state in writing the reasons therefor. Such statement of reasons shall be available to the public.

(3) If a State regulatory authority implements a standard established by subsection (d)(7) or (8), such authority shall—

(A) consider the impact that implementation of such standard would have on small businesses engaged in the design, sale, supply, installation or servicing of energy conservation, energy efficiency or other demand side management measures, and

(B) implement such standard so as to assure that utility actions would not provide such utilities with unfair competitive advantages over such small businesses.

(d) ESTABLISHMENT.—The following Federal standards are hereby established:

(1) COST OF SERVICE.—Rates charged by any electric utility for providing electric service to each class of electric consumers shall be designed, to the maximum extent practicable, to reflect the cost of providing electric service to such class, as determined under section 115(a).

(2) DECLINING BLOCK RATES.—The energy component of a rate, or the amount attributable to the energy component in a rate, charged by any electric utility for providing electric service during any period to any class of electric consumers may not decrease as kilowatt-hour consumption by such class increases during such period except to the extent that such utility demonstrates that the costs to such utility of providing electric service to such class, which costs are attributable to such energy component, decrease as such consumption increases during such period.

(3) TIME-OF-DAY RATES.—The rates charged by any electric utility for providing electric service to such class of electric consumers shall be on a time-of-day basis which reflects the costs of providing electric service to such class of electric consumers at different times of the day unless such rates are not cost-effective with respect to such class, as determined under section 115(b).

(4) SEASONAL RATES.—The rates charged by an electric utility for providing electric service to each class of electric consumers shall be on a seasonal basis which reflects the costs of providing service to each class of consumers at different seasons of the year to the extent that such costs vary seasonally for such utility.

(5) INTERRUPTIBLE RATES.—Each electric utility shall offer each industrial and commercial electric consumer an interruptible rate which reflects the cost of providing interruptible service to the class of which such consumer is a member.

(6) LOAD MANAGEMENT TECHNIQUES.—Each electric utility shall offer to its electric consumers such load management techniques as the State regulatory authority (or the nonregulated electric utility) has determined will—

(A) be practicable and cost-effective, as determined under section 115(c),

(B) be reliable, and

(C) provide useful energy or capacity management advantages to the electric utility.

(7) INTEGRATED RESOURCE PLANNING.—Each electric utility shall employ integrated resource planning. All plans or filings before a State regulatory authority to meet the requirements of this paragraph must be updated on a regular basis, must

provide the opportunity for public participation and comment, and contain a requirement that the plan be implemented.

(8) INVESTMENTS IN CONSERVATION AND DEMAND MANAGEMENT.—The rates allowed to be charged by a State regulated electric utility shall be such that the utility's investment in and expenditures for energy conservation, energy efficiency resources, and other demand side management measures are at least as profitable, giving appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in and expenditures for the construction of new generation, transmission, and distribution equipment. Such energy conservation, energy efficiency resources and other demand side management measures shall be appropriately monitored and evaluated.

(9) ENERGY EFFICIENCY INVESTMENTS IN POWER GENERATION AND SUPPLY.—The rates charged by any electric utility shall be such that the utility is encouraged to make investments in, and expenditures for, all cost-effective improvements in the energy efficiency of power generation, transmission and distribution. In considering regulatory changes to achieve the objectives of this paragraph, State regulatory authorities and non-regulated electric utilities shall consider the disincentives caused by existing ratemaking policies, and practices, and consider incentives that would encourage better maintenance, and investment in more efficient power generation, transmission and distribution equipment.

(10) CONSIDERATION OF THE EFFECTS OF WHOLESALE POWER PURCHASES ON UTILITY COST OF CAPITAL; EFFECTS OF LEVERAGED CAPITAL STRUCTURES ON THE RELIABILITY OF WHOLESALE POWER SELLERS; AND ASSURANCE OF ADEQUATE FUEL SUPPLIES.—(A) To the extent that a State regulatory authority requires or allows electric utilities for which it has ratemaking authority to consider the purchase of long-term wholesale power supplies as a means of meeting electric demand, such authority shall perform a general evaluation of:

(i) the potential for increases or decreases in the costs of capital for such utilities, and any resulting increases or decreases in the retail rates paid by electric consumers, that may result from purchases of long-term wholesale power supplies in lieu of the construction of new generation facilities by such utilities;

(ii) whether the use by exempt wholesale generators (as defined in section 32 of the Public Utility Holding Company Act of 1935) of capital structures which employ proportionally greater amounts of debt than the capital structures of such utilities threatens reliability or provides an unfair advantage for exempt wholesale generators over such utilities;

(iii) whether to implement procedures for the advance approval or disapproval of the purchase of a particular long-term wholesale power supply; and

(iv) whether to require as a condition for the approval of the purchase of power that there be reasonable assurances of fuel supply adequacy.

(B) For purposes of implementing the provisions of this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

(C) Notwithstanding any other provision of Federal law, nothing in this paragraph shall prevent a State regulatory authority from taking such action, including action with respect to the allowable capital structure of exempt wholesale generators, as such State regulatory authority may determine to be in the public interest as a result of performing evaluations under the standards of subparagraph (A).

(D) Notwithstanding section 124 and paragraphs (1) and (2) of section 112(a), each State regulatory authority shall consider and make a determination concerning the standards of subparagraph (A) in accordance with the requirements of subsections (a) and (b) of this section, without regard to any proceedings commenced prior to the enactment of this paragraph.

(E) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standards set out in subparagraph (A) not later than one year after the date of enactment of this paragraph.

(11) NET METERING.—Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term “net metering service” means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

(12) FUEL SOURCES.—Each electric utility shall develop a plan to minimize dependence on 1 fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.

(13) FOSSIL FUEL GENERATION EFFICIENCY.—Each electric utility shall develop and implement a 10-year plan to increase the efficiency of its fossil fuel generation.

(14) TIME-BASED METERING AND COMMUNICATIONS.—(A) Not later than 18 months after the date of enactment of this paragraph, each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility’s costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

(B) The types of time-based rate schedules that may be offered under the schedule referred to in subparagraph (A) include, among others—

(i) time-of-use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year, based on the utility's cost of generating and/or purchasing such electricity at the wholesale level for the benefit of the consumer. Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall;

(ii) critical peak pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and/or purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy consumption;

(iii) real-time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis, reflecting the utility's cost of generating and/or purchasing electricity at the wholesale level, and may change as often as hourly; and

(iv) credits for consumers with large loads who enter into pre-established peak load reduction agreements that reduce a utility's planned capacity obligations.

(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

(D) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

(E) In a State that permits third-party marketers to sell electric energy to retail electric consumers, such consumers shall be entitled to receive the same time-based metering and communications device and service as a retail electric consumer of the electric utility.

(F) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall, not later than 18 months after the date of enactment of this paragraph conduct an investigation in accordance with section 115(i) and issue a decision whether it is appropriate to implement the standards set out in subparagraphs (A) and (C).

(15) INTERCONNECTION.—Each electric utility shall make available, upon request, interconnection service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term “interconnection service” means service to an electric consumer under which an on-site generating facility on the consumer's premises shall be connected to the local distribution facilities. Interconnection services shall be offered based upon the standards developed by the Institute of Electrical and Electronics Engineers: IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems, as they may be amended from time to time. In addition,



agreements and procedures shall be established whereby the services are offered shall promote current best practices of interconnection for distributed generation, including but not limited to practices stipulated in model codes adopted by associations of state regulatory agencies. All such agreements and procedures shall be just and reasonable, and not unduly discriminatory or preferential.

(16) INTEGRATED RESOURCE PLANNING.—Each electric utility shall—

(A) integrate energy efficiency resources into utility, State, and regional plans; and

(B) adopt policies establishing cost-effective energy efficiency as a priority resource.

(17) RATE DESIGN MODIFICATIONS TO PROMOTE ENERGY EFFICIENCY INVESTMENTS.—

(A) IN GENERAL.—The rates allowed to be charged by any electric utility shall—

(i) align utility incentives with the delivery of cost-effective energy efficiency; and

(ii) promote energy efficiency investments.

(B) POLICY OPTIONS.—In complying with subparagraph (A), each State regulatory authority and each nonregulated utility shall consider—

(i) removing the throughput incentive and other regulatory and management disincentives to energy efficiency;

(ii) providing utility incentives for the successful management of energy efficiency programs;

(iii) including the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives;

(iv) adopting rate designs that encourage energy efficiency for each customer class;

(v) allowing timely recovery of energy efficiency-related costs; and

(vi) offering home energy audits, offering demand response programs, publicizing the financial and environmental benefits associated with making home energy efficiency improvements, and educating homeowners about all existing Federal and State incentives, including the availability of low-cost loans, that make energy efficiency improvements more affordable.

(18) CONSIDERATION OF SMART GRID INVESTMENTS.—

(A) IN GENERAL.—Each State shall consider requiring that, prior to undertaking investments in nonadvanced grid technologies, an electric utility of the State demonstrate to the State that the electric utility considered an investment in a qualified smart grid system based on appropriate factors, including—

(i) total costs;

(ii) cost-effectiveness;

(iii) improved reliability;

(iv) security;

(v) system performance; and

(vi) societal benefit.

(B) RATE RECOVERY.—Each State shall consider authorizing each electric utility of the State to recover from ratepayers any capital, operating expenditure, or other costs of the electric utility relating to the deployment of a qualified smart grid system, including a reasonable rate of return on the capital expenditures of the electric utility for the deployment of the qualified smart grid system.

(C) OBSOLETE EQUIPMENT.—Each State shall consider authorizing any electric utility or other party of the State to deploy a qualified smart grid system to recover in a timely manner the remaining book-value costs of any equipment rendered obsolete by the deployment of the qualified smart grid system, based on the remaining depreciable life of the obsolete equipment.

(19) SMART GRID INFORMATION.—

(A) STANDARD.—All electricity purchasers shall be provided direct access, in written or electronic machine-readable form as appropriate, to information from their electricity provider as provided in subparagraph (B).

(B) INFORMATION.—Information provided under this section, to the extent practicable, shall include:

(i) PRICES.—Purchasers and other interested persons shall be provided with information on—

(I) time-based electricity prices in the wholesale electricity market; and

(II) time-based electricity retail prices or rates that are available to the purchasers.

(ii) USAGE.—Purchasers shall be provided with the number of electricity units, expressed in kwh, purchased by them.

(iii) INTERVALS AND PROJECTIONS.—Updates of information on prices and usage shall be offered on not less than a daily basis, shall include hourly price and use information, where available, and shall include a day-ahead projection of such price information to the extent available.

(iv) SOURCES.—Purchasers and other interested persons shall be provided annually with written information on the sources of the power provided by the utility, to the extent it can be determined, by type of generation, including greenhouse gas emissions associated with each type of generation, for intervals during which such information is available on a cost-effective basis.

(C) ACCESS.—Purchasers shall be able to access their own information at any time through the Internet and on other means of communication elected by that utility for Smart Grid applications. Other interested persons shall be able to access information not specific to any purchaser through the Internet. Information specific to any purchaser shall be provided solely to that purchaser.

(20) IMPROVING THE RESILIENCE OF ELECTRIC INFRASTRUCTURE.—

(A) *IN GENERAL.*—Each electric utility shall develop a plan to use resiliency-related technologies, upgrades, measures, and other approaches designed to improve the resilience of electric infrastructure, mitigate power outages, continue delivery of vital services, and maintain the flow of power to facilities critical to public health, safety, and welfare, to the extent practicable using the most current data, metrics, and frameworks related to current and future threats, including physical and cyber attacks, electromagnetic pulse attacks, geomagnetic disturbances, seismic events, and severe weather and other environmental stressors.

(B) *RESILIENCY-RELATED TECHNOLOGIES.*—For purposes of this paragraph, examples of resiliency-related technologies, upgrades, measures, and other approaches include—

(i) hardening, or other enhanced protection, of utility poles, wiring, cabling, and other distribution components, facilities, or structures;

(ii) advanced grid technologies capable of isolating or repairing problems remotely, such as advanced metering infrastructure, high-tech sensors, grid monitoring and control systems, and remote reconfiguration and redundancy systems;

(iii) cybersecurity products and components;

(iv) distributed generation, including back-up generation to power critical facilities and essential services, and related integration components, such as advanced inverter technology;

(v) microgrid systems, including hybrid microgrid systems for isolated communities;

(vi) combined heat and power;

(vii) waste heat resources;

(viii) non-grid-scale energy storage technologies;

(ix) wiring, cabling, and other distribution components, including submersible distribution components, and enclosures;

(x) electronically controlled reclosers and similar technologies for power restoration, including emergency mobile substations, as defined in section 1105 of the North American Energy Security and Infrastructure Act of 2015;

(xi) advanced energy analytics technology, such as Internet-based and cloud-based computing solutions and subscription licensing models;

(xii) measures that enhance resilience through planning, preparation, response, and recovery activities;

(xiii) operational capabilities to enhance resilience through rapid response recovery; and

(xiv) measures to ensure availability of key critical components through contracts, cooperative agreements, stockpiling and prepositioning, or other measures.

(C) *RATE RECOVERY.*—Each State regulatory authority (with respect to each electric utility for which it has rate-making authority) shall consider authorizing each such

*electric utility to recover any capital, operating expenditure, or other costs of the electric utility related to the procurement, deployment, or use of resiliency-related technologies, including a reasonable rate of return on the capital expenditures of the electric utility for the procurement, deployment, or use of resiliency-related technologies.*

(21) *PROMOTING INVESTMENTS IN ADVANCED ENERGY ANALYTICS TECHNOLOGY.—*

(A) *IN GENERAL.—Each electric utility shall develop and implement a plan for deploying advanced energy analytics technology.*

(B) *RATE RECOVERY.—Each State regulatory authority (with respect to each electric utility for which it has rate-making authority) shall consider confirming and clarifying, if necessary, that each such electric utility is authorized to recover the costs of the electric utility relating to the procurement, deployment, or use of advanced energy analytics technology, including a reasonable rate of return on all such costs incurred by the electric utility for the procurement, deployment, or use of advanced energy analytics technology, provided such technology is used by the electric utility for purposes of realizing operational efficiencies, cost savings, enhanced energy management and customer engagement, improvements in system reliability, safety, and cybersecurity, or other benefits to ratepayers.*

(C) *ADVANCED ENERGY ANALYTICS TECHNOLOGY.—For purposes of this paragraph, examples of advanced energy analytics technology include Internet-based and cloud-based computing solutions and subscription licensing models, including software as a service that uses cyber-physical systems to allow the correlation of data aggregated from appropriate data sources and smart grid sensor networks, employs analytics and machine learning, or employs other advanced computing solutions and models.*

(22) *ASSURING ELECTRIC RELIABILITY WITH RELIABLE GENERATION.—*

(A) *ASSURANCE OF ELECTRIC RELIABILITY.—Each electric utility shall adopt or modify policies to ensure that such electric utility incorporates reliable generation into its integrated resource plan to assure the availability of electric energy over a 10-year planning period.*

(B) *RELIABLE GENERATION.—For purposes of this paragraph, “reliable generation” means electric generation facilities with reliability attributes that include—*

*(i)(I) possession of adequate fuel on-site to enable operation for an extended period of time;*

*(II) the operational ability to generate electric energy from more than one source; or*

*(III) fuel certainty, through firm contractual obligations, that ensures adequate fuel supply to enable operation, for an extended period of time, for the duration of an emergency or severe weather conditions;*

*(ii) operational characteristics that enable the generation of electric energy for the duration of an emergency or severe weather conditions; and*

(iii) *unless procured through other procurement mechanisms, essential reliability services, including frequency support and regulation services.*

(23) **SUBSIDIZATION OF CUSTOMER-SIDE TECHNOLOGY.**—

(A) **CONSIDERATION.**—*To the extent that a State regulatory authority may require or allow rates charged by any electric utility for which it has ratemaking authority to electric consumers that do not use a customer-side technology to include any cost, fee, or charge that directly or indirectly cross-subsidizes the deployment, construction, maintenance, or operation of that customer-side technology, such authority shall evaluate whether subsidizing the deployment, construction, maintenance, or operation of a customer-side technology would—*

(i) *result in benefits predominately enjoyed by only the users of that customer-side technology;*

(ii) *shift costs of a customer-side technology to electricity consumers that do not use that customer-side technology, particularly where disparate economic or resource conditions exist among the electricity consumers cross-subsidizing the customer-side technology;*

(iii) *negatively affect resource utilization, fuel diversity, or grid security;*

(iv) *provide any unfair competitive advantage to market the customer-side technology; and*

(v) *be necessary to fulfill an obligation to serve electric consumers.*

(B) **PUBLIC NOTICE.**—*Each State regulatory authority shall make available to the public the evaluation completed under subparagraph (A) at least 90 days prior to any proceedings in which such authority considers the cross-subsidization of a customer-side technology.*

(C) **CUSTOMER-SIDE TECHNOLOGY.**—*For purposes of this paragraph, the term “customer-side technology” means a device connected to the electricity distribution system—*

(i) *at, or on the customer side of, the meter; or*

(ii) *that, if owned or operated by or on behalf of an electric utility, would otherwise be at, or on the customer side of, the meter.*

**SEC. 112. OBLIGATIONS TO CONSIDER AND DETERMINE.**

(a) **REQUEST FOR CONSIDERATION AND DETERMINATION.**—Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility may undertake the consideration and make the determination referred to in section 111 with respect to any standard established by section 111(d) in any proceeding respecting the rates of the electric utility. Any participant or intervenor (including an intervenor referred to in section 121) in such a proceeding may request, and shall obtain, such consideration and determination in such proceeding. In undertaking such consideration and making such determination in any such proceeding with respect to the application to any electric utility of any standard established by section 111(d), a State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or nonregulated electric utility may take into account in such proceeding—

(1) any appropriate prior determination with respect to such standard—

(A) which is made in a proceeding which takes place after the date of the enactment of this Act, or

(B) which was made before such date (or is made in a proceeding pending on such date) and complies, as provided in section 124, with the requirements of this title; and

(2) the evidence upon which such prior determination was based (if such evidence is referenced in such proceeding).

(b) TIME LIMITATIONS.—(1) Not later than 2 years after the date of the enactment of this Act (or after the enactment of the Comprehensive National Energy Policy Act in the case of standards under paragraphs (7), (8), and (9) of section 111(d)), each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to each standard established by section 111(d).

(2) Not later than three years after the date of the enactment of this Act (or after the enactment of the Comprehensive National Energy Policy Act in the case of standards under paragraphs (7), (8), and (9) of section 111(d)), each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to each standard established by section 111(d).

(3)(A) Not later than 2 years after the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to each standard established by paragraphs (11) through (13) of section 111(d).

(B) Not later than 3 years after the date of the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to each standard established by paragraphs (11) through (13) of section 111(d).

(4)(A) Not later than 1 year after the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to the standard established by paragraph (14) of section 111(d).

(B) Not later than 2 years after the date of the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to the standard established by paragraph (14) of section 111(d).

(5)(A) Not later than 1 year after the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated utility shall commence the consideration referred to in section 111, or set a hearing date for consideration, with respect to the standard established by paragraph (15) of section 111(d).

(B) Not later than two years after the date of the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to each standard established by paragraph (15) of section 111(d).

(6)(A) Not later than 1 year after the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated utility shall commence the consideration referred to in section 111, or set a hearing date for consideration, with respect to the standards established by paragraphs (16) through (19) of section 111(d).

(B) Not later than 2 years after the date of the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to each standard established by paragraphs (16) through (19) of section 111(d).

*(7)(A) Not later than 1 year after the date of enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility, as applicable, shall commence the consideration referred to in section 111, or set a hearing date for consideration, with respect to the standards established by paragraphs (20), (22), and (23) of section 111(d).*

*(B) Not later than 2 years after the date of the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility, as applicable, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to each standard established by paragraphs (20), (22), and (23) of section 111(d).*

*(8)(A) Not later than 6 months after the date of enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 111, or set a hearing date for consideration, with respect to the standard established by paragraph (21) of section 111(d).*

*(B) Not later than 1 year after the date of enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall complete the consideration, and shall make the determination, referred to in section 111*

*with respect to the standard established by paragraph (21) of section 111(d).*

(c) FAILURE TO COMPLY.—Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall undertake the consideration, and make the determination, referred to in section 111 with respect to each standard established by section 111(d) in the first rate proceeding commenced after the date three years after the date of enactment of this Act respecting the rates of such utility if such State regulatory authority or nonregulated electric utility has not, before such date, complied with subsection (b)(2) with respect to such standard. In the case of each standard established by paragraphs (11) through (13) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraphs (11) through (13). In the case of the standard established by paragraph (14) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraph (14). In the case of the standard established by paragraph (15), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of paragraph (15). In the case of the standards established by paragraphs (16) through (19) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraphs. *In the case of the standards established by paragraphs (20) through (23) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraphs.*

(d) PRIOR STATE ACTIONS.—Subsections (b) and (c) of this section shall not apply to the standards established by paragraphs (11) through (13) and paragraphs (16) through (19) of section 111(d) in the case of any electric utility in a State if, before the enactment of this subsection—

(1) the State has implemented for such utility the standard concerned (or a comparable standard);

(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility; or

(3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility.

(e) PRIOR STATE ACTIONS.—Subsections (b) and (c) of this section shall not apply to the standard established by paragraph (14) of section 111(d) in the case of any electric utility in a State if, before the enactment of this subsection—

(1) the State has implemented for such utility the standard concerned (or a comparable standard);

(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility within the previous 3 years; or



(3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility within the previous 3 years.

(f) **PRIOR STATE ACTIONS.**—Subsections (b) and (c) of this section shall not apply to the standard established by paragraph (15) of section 111(d) in the case of any electric utility in a State if, before the enactment of this subsection—

(1) the State has implemented for such utility the standard concerned (or a comparable standard);

(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility; or

(3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility.

(g) **PRIOR STATE ACTIONS.**—*Subsections (b) and (c) of this section shall not apply to a standard established by paragraph (20), (21), (22), or (23) of section 111(d) in the case of any electric utility in a State if—*

*(1) before the date of enactment of this subsection, the State has implemented for such utility the standard concerned (or a comparable standard);*

*(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility during the 3-year period ending on the date of enactment of this subsection; or*

*(3) the State legislature has voted on the implementation of the standard concerned (or a comparable standard) for such utility during the 3-year period ending on the date of enactment of this subsection.*

\* \* \* \* \*

## ENERGY POLICY ACT OF 2005

\* \* \* \* \*

## TITLE II—RENEWABLE ENERGY

### Subtitle A—General Provisions

\* \* \* \* \*

#### SEC. 203. FEDERAL PURCHASE REQUIREMENT.

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

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

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

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

(b) **DEFINITIONS.**—In this section:

(1) **BIOMASS.**—The term “biomass” means any lignin waste material that is segregated from other waste materials and is determined to be nonhazardous by the Administrator of the Environmental Protection Agency and any solid, nonhazardous, cellulosic material that is derived from—

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

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

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

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

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

(2) *RENEWABLE ENERGY.*—*The term “renewable energy” means electric energy, or thermal energy if resulting from a thermal energy project placed in service after December 31, 2014, generated from, or avoided by, solar, wind, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), geothermal, municipal solid waste (in accordance with subsection (e)), qualified waste heat resource, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project.*

(3) **QUALIFIED WASTE HEAT RESOURCE.**—The term “qualified waste heat resource” means—

(A) *exhaust heat or flared gas from any industrial process;*

(B) *waste gas or industrial tail gas that would otherwise be flared, incinerated, or vented;*

(C) *a pressure drop in any gas for an industrial or commercial process; or*

(D) *such other forms of waste heat as the Secretary determines appropriate.*

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

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

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

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

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

(e) **PAPER RECYCLING.**—

(1) **SEPARATE COLLECTION.**—*For purposes of this section, any Federal agency may consider electric energy generation purchased from a facility to be renewable energy if the municipal solid waste used by the facility to generate the electricity is—*

*(A) separately collected (within the meaning of section 246.101(z) of title 40, Code of Federal Regulations, as in effect on the date of enactment of the North American Energy Security and Infrastructure Act of 2015) from paper that is commonly recycled; and*

*(B) processed in a way that keeps paper that is commonly recycled segregated from non-recyclable solid waste.*

(2) **INCIDENTAL INCLUSION.**—*Municipal solid waste used to generate electric energy that meets the conditions described in paragraph (1) shall be considered renewable energy even if the municipal solid waste contains incidental commonly recycled paper.*

(3) **NO EFFECT ON EXISTING PROCESSES.**—*Nothing in paragraph (1) shall be interpreted to require a State or political subdivision of a State, directly or indirectly, to change the systems, processes, or equipment it uses to collect, treat, dispose of, or otherwise use municipal solid waste, within the meaning of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), nor require a change to the regulations that implement subtitle D of such Act (42 U.S.C. 6941 et seq.).*

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## Subtitle C—Hydroelectric

\* \* \* \* \*

### SEC. 242. HYDROELECTRIC PRODUCTION INCENTIVES.

(a) **INCENTIVE PAYMENTS.**—For electric energy generated and sold by a qualified hydroelectric facility during the incentive period, the Secretary shall make, subject to the availability of appropriations, incentive payments to the owner or operator of such facility. The amount of such payment made to any such owner or operator shall be as determined under subsection (e) of this section. Payments under this section may only be made upon receipt by the Secretary of an incentive payment application which establishes that the applicant is eligible to receive such payment and which satisfies such other requirements as the Secretary deems necessary. Such application shall be in such form, and shall be submitted at such time, as the Secretary shall establish.

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

(1) **QUALIFIED HYDROELECTRIC FACILITY.**—The term “qualified hydroelectric facility” means a turbine or other generating device owned or solely operated by a non-Federal entity which generates hydroelectric energy for sale and which is added to an existing dam or conduit.

(2) EXISTING DAM OR CONDUIT.—The term “existing dam or conduit” means any dam or conduit the construction of which was completed before the date of the enactment of this section and which does not require any construction or enlargement of impoundment or diversion structures (other than repair or reconstruction) in connection with the installation of a turbine or other generating device.

(3) CONDUIT.—The term “conduit” has the same meaning as when used in section 30(a)(2) of the Federal Power Act (16 U.S.C. 823a(a)(2)).

The terms defined in this subsection shall apply without regard to the hydroelectric kilowatt capacity of the facility concerned, without regard to whether the facility uses a dam owned by a governmental or nongovernmental entity, and without regard to whether the facility begins operation on or after the date of the enactment of this section.

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

(d) INCENTIVE PERIOD.—A qualified hydroelectric facility may receive payments under this section for a period of 10 fiscal years (referred to in this section as the “incentive period”). Such period shall begin with the fiscal year in which electric energy generated from the facility is first eligible for such payments.

(e) AMOUNT OF PAYMENT.—

(1) IN GENERAL.—Payments made by the Secretary under this section to the owner or operator of a qualified hydroelectric facility shall be based on the number of kilowatt hours of hydroelectric energy generated by the facility during the incentive period. For any such facility, the amount of such payment shall be 1.8 cents per kilowatt hour (adjusted as provided in paragraph (2)), subject to the availability of appropriations under subsection (g), except that no facility may receive more than \$750,000 in 1 calendar year.

(2) ADJUSTMENTS.—The amount of the payment made to any person under this section as provided in paragraph (1) shall be adjusted for inflation for each fiscal year beginning after calendar year 2005 in the same manner as provided in the provisions of section 29(d)(2)(B) of the Internal Revenue Code of 1986, except that in applying such provisions the calendar year 2005 shall be substituted for calendar year 1979.

(f) SUNSET.—No payment may be made under this section to any qualified hydroelectric facility after the expiration of the period of **[20]** 30 fiscal years beginning with the first full fiscal year occurring after the date of enactment of this subtitle, and no payment may be made under this section to any such facility after a payment has been made with respect to such facility for a period of 10 fiscal years.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out the purposes of this section \$10,000,000 for **[each of the fiscal years 2006 through 2015]** *each of fiscal years 2016 through 2025*.

**SEC. 243. HYDROELECTRIC EFFICIENCY IMPROVEMENT.**

(a) **INCENTIVE PAYMENTS.**—The Secretary shall make incentive payments to the owners or operators of hydroelectric facilities at existing dams to be used to make capital improvements in the facilities that are directly related to improving the efficiency of such facilities by at least 3 percent.

(b) **LIMITATIONS.**—Incentive payments under this section shall not exceed 10 percent of the costs of the capital improvement concerned and not more than 1 payment may be made with respect to improvements at a single facility. No payment in excess of \$750,000 may be made with respect to improvements at a single facility.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section not more than \$10,000,000 for [each of the fiscal years 2006 through 2015] *each of fiscal years 2016 through 2025.*

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## TITLE IX—RESEARCH AND DEVELOPMENT

\* \* \* \* \*

### Subtitle F—Fossil Energy

**SEC. 961. FOSSIL ENERGY.**

(a) **IN GENERAL.**—The Secretary shall carry out research, development, demonstration, and commercial application programs in fossil energy, including activities under this subtitle, with the goal of improving the efficiency, effectiveness, and environmental performance of fossil energy production, upgrading, conversion, and consumption. Such programs take into consideration the following objectives:

- (1) Increasing the energy conversion efficiency of all forms of fossil energy through improved technologies.
- (2) Decreasing the cost of all fossil energy production, generation, and delivery.
- (3) Promoting diversity of energy supply.
- (4) Decreasing the dependence of the United States on foreign energy supplies.
- (5) Improving United States energy security.
- (6) Decreasing the environmental impact of energy-related activities.
- (7) Increasing the export of fossil energy-related equipment, technology, and services from the United States.
- (8) *Improving the conversion, use, and storage of carbon dioxide produced from fossil fuels.*

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary to carry out fossil energy research, development, demonstration, and commercial application activities, including activities authorized under this subtitle—

- (1) \$611,000,000 for fiscal year 2007;
- (2) \$626,000,000 for fiscal year 2008; and

- (3) \$641,000,000 for fiscal year 2009.
  - (c) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:
    - (1) For activities under section 962—
      - (A) \$367,000,000 for fiscal year 2007;
      - (B) \$376,000,000 for fiscal year 2008; and
      - (C) \$394,000,000 for fiscal year 2009.
    - (2) For activities under section 964—
      - (A) \$20,000,000 for fiscal year 2007;
      - (B) \$25,000,000 for fiscal year 2008; and
      - (C) \$30,000,000 for fiscal year 2009.
    - (3) For activities under section 966—
      - (A) \$1,500,000 for fiscal year 2007; and
      - (B) \$450,000 for each of fiscal years 2008 and 2009.
    - (4) For the Office of Arctic Energy under section 3197 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (42 U.S.C. 7144d) \$25,000,000 for each of fiscal years 2007 through 2009.
  - (d) EXTENDED AUTHORIZATION.—There are authorized to be appropriated to the Secretary for the Office of Arctic Energy established under section 3197 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (42 U.S.C. 7144d) \$25,000,000 for each of fiscal years 2010 through 2012.
  - (e) LIMITATIONS.—
    - (1) USES.—None of the funds authorized under this section may be used for Fossil Energy Environmental Restoration or Import/Export Authorization.
    - (2) INSTITUTIONS OF HIGHER EDUCATION.—Of the funds authorized under subsection (c)(2), not less than 20 percent of the funds appropriated for each fiscal year shall be dedicated to research and development carried out at institutions of higher education.
- SEC. 962. COAL AND RELATED TECHNOLOGIES PROGRAM.**
- (a) IN GENERAL.—In addition to the programs authorized under title IV, the Secretary shall conduct a program of technology research, development, demonstration, and commercial application for coal and power systems, including programs to facilitate production and generation of coal-based power through—
    - (1) innovations for existing plants (including mercury removal);
    - (2) gasification systems;
    - (3) advanced combustion systems;
    - (4) turbines for synthesis gas derived from coal;
    - (5) carbon capture and sequestration research and development;
    - (6) coal-derived chemicals and transportation fuels;
    - (7) liquid fuels derived from low rank coal water slurry;
    - (8) solid fuels and feedstocks;
    - (9) advanced coal-related research;
    - (10) advanced separation technologies; and
    - (11) fuel cells for the operation of synthesis gas derived from coal.
  - (b) COST AND PERFORMANCE GOALS.—
    - (1) IN GENERAL.—In carrying out programs authorized by this section, [during each of calendar years 2008, 2010, 2012,

and 2016, and during each fiscal year beginning after September 30, 2021,] *during each fiscal year beginning after September 30, 2016*, the Secretary shall identify cost and performance goals for coal-based technologies that would *allow for large-scale demonstration and* permit the continued cost-competitive use of coal for *commercial use*, the production of electricity, chemical feedstocks, and transportation fuels.

(2) ADMINISTRATION.—In establishing the cost and performance goals, the Secretary shall—

(A) consider activities and studies undertaken as of the date of enactment of this Act by industry in cooperation with the Department in support of the identification of the goals;

(B) consult with interested entities, including—

- (i) coal producers;
- (ii) industries using coal;
- (iii) organizations that promote coal and advanced coal technologies;
- (iv) environmental organizations;
- (v) organizations representing workers; and
- (vi) organizations representing consumers;

(C) not later than 120 days after the date of enactment of this Act, publish in the Federal Register proposed draft cost and performance goals for public comments; and

(D) not later than 180 days after the date of enactment of this Act and every 4 years thereafter, submit to Congress a report describing the final cost and performance goals for the technologies that includes—

- (i) a list of technical milestones; and
- (ii) an explanation of how programs authorized in this section will not duplicate the activities authorized under the Clean Coal Power Initiative authorized under title IV.

(c) POWDER RIVER BASIN AND FORT UNION LIGNITE COAL MERCURY REMOVAL.—

(1) IN GENERAL.—In addition to the programs authorized by subsection (a), the Secretary shall establish a program to test and develop technologies to control and remove mercury emissions from subbituminous coal mined in the Powder River Basin, and Fort Union lignite coals, that are used for the generation of electricity.

(2) EFFICACY OF MERCURY REMOVAL TECHNOLOGY.—In carrying out the program under paragraph (1), the Secretary shall examine the efficacy of mercury removal technologies on coals described in that paragraph that are blended with other types of coal.

(d) FUEL CELLS.—

(1) IN GENERAL.—The Secretary shall conduct a program of research, development, demonstration, and commercial application on fuel cells for low-cost, high-efficiency, fuel-flexible, modular power systems.

(2) DEMONSTRATIONS.—The demonstrations referred to in paragraph (1) shall include solid oxide fuel cell technology for commercial, residential, and transportation applications, and

distributed generation systems, using improved manufacturing production and processes.

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## ENERGY INDEPENDENCE AND SECURITY ACT OF 2007

### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Energy Independence and Security Act of 2007”.

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

\* \* \* \* \*

#### TITLE IV—ENERGY SAVINGS IN BUILDINGS AND INDUSTRY

\* \* \* \* \*

##### Subtitle D—Industrial Energy Efficiency

\* \* \* \* \*

**[Sec. 452. Energy-intensive industries program.]**

*Sec. 452. Future of Industry program.*

\* \* \* \* \*

#### TITLE V—ENERGY SAVINGS IN GOVERNMENT AND PUBLIC INSTITUTIONS

\* \* \* \* \*

##### Subtitle C—Energy Efficiency in Federal Agencies

\* \* \* \* \*

*Sec. 530. Energy-efficient and energy-saving information technologies.*

\* \* \* \* \*

## TITLE IV—ENERGY SAVINGS IN BUILDINGS AND INDUSTRY

\* \* \* \* \*

### Subtitle D—Industrial Energy Efficiency

\* \* \* \* \*

#### SEC. 452. [ENERGY-INTENSIVE INDUSTRIES PROGRAM.] *FUTURE OF INDUSTRY PROGRAM.*

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE ENTITY.—The term “eligible entity” means—

(A) an energy-intensive industry;

(B) a national trade association representing an energy-intensive industry; or

(C) a person acting on behalf of 1 or more energy-intensive industries or sectors, as determined by the Secretary.

(2) ENERGY-INTENSIVE INDUSTRY.—The term “energy-intensive industry” means an industry that uses significant quantities of energy as part of its primary economic activities, including—



(A) information technology, including data centers containing electrical equipment used in processing, storing, and transmitting digital information;

(B) consumer product manufacturing;

(C) food processing;

(D) materials manufacturers, including—

(i) aluminum;

(ii) chemicals;

(iii) forest and paper products;

(iv) metal casting;

(v) glass;

(vi) petroleum refining;

(vii) mining; and

(viii) steel;

(E) other energy-intensive industries, as determined by the Secretary.

(3) *ENERGY SERVICE PROVIDER.*—The term “energy service provider” means any business providing technology or services to improve the energy efficiency, water efficiency, power factor, or load management of a manufacturing site or other industrial process in an energy-intensive industry, or any utility operating under a utility energy service project.

[(3)] (4) *FEEDSTOCK.*—The term “feedstock” means the raw material supplied for use in manufacturing, chemical, and biological processes.

[(4)] (5) *PARTNERSHIP.*—The term “partnership” means an energy efficiency partnership established under subsection (c)(1)(A).

[(5)] (6) *PROGRAM.*—The term “program” means the energy-intensive industries program established under subsection (b).

(b) *ESTABLISHMENT OF PROGRAM.*—The Secretary shall establish a program under which the Secretary, in cooperation with energy-intensive industries and national industry trade associations representing the energy-intensive industries, shall support, research, develop, and promote the use of new materials processes, technologies, and techniques to optimize energy efficiency and the economic competitiveness of the United States’ industrial and commercial sectors.

(c) *PARTNERSHIPS.*—

(1) *IN GENERAL.*—As part of the program, the Secretary shall establish energy efficiency partnerships between the Secretary and eligible entities to conduct research on, develop, and demonstrate new processes, technologies, and operating practices and techniques to significantly improve the energy efficiency of equipment and processes used by energy-intensive industries, including the conduct of activities to—

(A) increase the energy efficiency of industrial processes and facilities;

(B) research, develop, and demonstrate advanced technologies capable of energy intensity reductions and increased environmental performance; and

(C) promote the use of the processes, technologies, and techniques described in subparagraphs (A) and (B).

(2) *ELIGIBLE ACTIVITIES.*—Partnership activities eligible for funding under this subsection include—

(A) feedstock and recycling research, development, and demonstration activities to identify and promote—

(i) opportunities for meeting industry feedstock requirements with more energy efficient and flexible sources of feedstock or energy supply;

(ii) strategies to develop and deploy technologies that improve the quality and quantity of feedstocks recovered from process and waste streams; and

(iii) other methods using recycling, reuse, and improved industrial materials;

(B) research to develop and demonstrate technologies and processes that utilize alternative energy sources to supply heat, power, and new feedstocks for energy-intensive industries;

(C) research to achieve energy efficiency in steam, power, control system, and process heat technologies, and in other manufacturing processes; and

(D) industrial and commercial energy efficiency and sustainability assessments to—

(i) assist individual industrial and commercial sectors in developing tools, techniques, and methodologies to assess—

(I) the unique processes and facilities of the sectors;

(II) the energy utilization requirements of the sectors; and

(III) the application of new, more energy efficient technologies; and

(ii) conduct energy savings assessments;

(E) the incorporation of technologies and innovations that would significantly improve the energy efficiency and utilization of energy-intensive commercial applications; and

(F) any other activities that the Secretary determines to be appropriate.

(3) PROPOSALS.—

(A) IN GENERAL.—To be eligible for funding under this subsection, a partnership shall submit to the Secretary a proposal that describes the proposed research, development, or demonstration activity to be conducted by the partnership.

(B) REVIEW.—After reviewing the scientific, technical, and commercial merit of a proposals submitted under subparagraph (A), the Secretary shall approve or disapprove the proposal.

(C) COMPETITIVE AWARDS.—The provision of funding under this subsection shall be on a competitive basis.

(4) COST-SHARING REQUIREMENT.—In carrying out this section, the Secretary shall require cost sharing in accordance with section 988 of the Energy Policy Act of 2005 (42 U.S.C. 16352).

(d) GRANTS.—The Secretary may award competitive grants for innovative technology research, development and demonstrations to universities, individual inventors, and small companies, based on energy savings potential, commercial viability, and technical merit.

(e) INSTITUTION OF HIGHER EDUCATION-BASED INDUSTRIAL RESEARCH AND ASSESSMENT CENTERS.—**【The Secretary】**

(1) *IN GENERAL.*—*The Secretary shall provide funding to institution of higher education-based industrial research and assessment centers, whose purpose shall be—*

**【(1)】** (A) *to identify opportunities for optimizing energy efficiency and environmental performance, including assessments of sustainable manufacturing goals and the implementation of information technology advancements for supply chain analysis, logistics, system monitoring, industrial and manufacturing processes, and other purposes;*

**【(2)】** (B) *to promote applications of emerging concepts and technologies in small- and medium-sized manufacturers;*

**【(3)】** (C) *to promote research and development for the use of alternative energy sources to supply heat, power, and new feedstocks for energy-intensive industries;*

**【(4)】** (D) *to coordinate with appropriate Federal and State research offices, and provide a clearinghouse for industrial process and energy efficiency technical assistance resources; and*

**【(5)】** (E) *to coordinate with State-accredited technical training centers and community colleges, while ensuring appropriate services to all regions of the United States.*

(2) *COORDINATION.*—*To increase the value and capabilities of the industrial research and assessment centers, the centers shall—*

(A) *coordinate with Manufacturing Extension Partnership Centers of the National Institute of Standards and Technology;*

(B) *coordinate with the Building Technologies Office of the Department of Energy to provide building assessment services to manufacturers;*

(C) *increase partnerships with the National Laboratories of the Department of Energy to leverage the expertise and technologies of the National Laboratories for national industrial and manufacturing needs; and*

(D) *increase partnerships with energy service providers and technology providers to leverage private sector expertise and accelerate deployment of new and existing technologies and processes for energy efficiency, power factor, and load management.*

(3) *OUTREACH.*—*The Secretary shall provide funding for—*

(A) *outreach activities by the industrial research and assessment centers to inform small- and medium-sized manufacturers of the information, technologies, and services available; and*

(B) *coordination activities by each industrial research and assessment center to leverage efforts with—*

(i) *Federal and State efforts;*

(ii) *the efforts of utilities and energy service providers;*

(iii) *the efforts of regional energy efficiency organizations; and*

(iv) the efforts of other industrial research and assessment centers.

(4) *SMALL BUSINESS LOANS.*—The Administrator of the Small Business Administration shall, to the maximum extent practicable, expedite consideration of applications from eligible small business concerns for loans under the Small Business Act (15 U.S.C. 631 et seq.) to implement recommendations of industrial research and assessment centers established under paragraph (1).

(f) *AUTHORIZATION OF APPROPRIATIONS.*—

(1) *IN GENERAL.*—There are authorized to be appropriated to the Secretary to carry out this section—

- (A) \$184,000,000 for fiscal year 2008;
- (B) \$190,000,000 for fiscal year 2009;
- (C) \$196,000,000 for fiscal year 2010;
- (D) \$202,000,000 for fiscal year 2011;
- (E) \$208,000,000 for fiscal year 2012; and
- (F) such sums as are necessary for fiscal year 2013 and each fiscal year thereafter.

(2) *PARTNERSHIP ACTIVITIES.*—Of the amounts made available under paragraph (1), not less than 50 percent shall be used to pay the Federal share of partnership activities under subsection (c).

(3) *COORDINATION AND NONDUPLICATION.*—The Secretary shall coordinate efforts under this section with other programs of the Department and other Federal agencies to avoid duplication of effort.

#### **SEC. 453. ENERGY EFFICIENCY FOR DATA CENTER BUILDINGS.**

(a) *DEFINITIONS* In this section:

(1) *DATA CENTER.*—The term “data center” means any facility that primarily contains electronic equipment used to process, store, and transmit digital information, which may be—

- (A) a free-standing structure; or
- (B) a facility within a larger structure, that uses environmental control equipment to maintain the proper conditions for the operation of electronic equipment.

(2) *DATA CENTER OPERATOR.*—The term “data center operator” means any person or government entity that builds or operates a data center or purchases data center services, equipment, and facilities.

(b) *VOLUNTARY NATIONAL INFORMATION PROGRAM.*—

(1) *IN GENERAL.*—Not later than 90 days after the date of enactment of this Act, the Secretary and the Administrator of the Environmental Protection Agency shall, after consulting with information technology industry and other interested parties, initiate a voluntary national information program for those types of data centers and data center equipment and facilities that are widely used and for which there is a potential for significant data center energy savings as a result of the program.

(2) *REQUIREMENTS.*—The program described in paragraph (1) shall—

- (A) address data center efficiency holistically, reflecting the total energy consumption of data centers as whole systems, including both equipment and facilities;

(B) consider prior work and studies undertaken in this area, including by the Environmental Protection Agency and the Department of Energy;

(C) consistent with the objectives described in paragraph (1), determine the type of data center and data center equipment and facilities to be covered under the program;

(D) produce specifications, measurements, best practices, and benchmarks that will enable data center operators to make more informed decisions about the energy efficiency and costs of data centers, and that take into account—

(i) the performance and use of servers, data storage devices, and other information technology equipment;

(ii) the efficiency of heating, ventilation, and air conditioning, cooling, and power conditioning systems, provided that no modification shall be required of a standard then in effect under the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq.) for any covered heating, ventilation, air-conditioning, cooling or power-conditioning product;

(iii) energy savings from the adoption of software and data management techniques; and

(iv) other factors [determined by the organization] *proposed by the stakeholders* described in subsection (c);

(E) allow for creation of separate specifications, measurements, and benchmarks based on data center size and function, as well as other appropriate characteristics;

(F) advance the design and implementation of efficiency technologies to the maximum extent economically practical;

(G) provide to data center operators in the private sector and the Federal Government information about best practices and purchasing decisions that reduce the energy consumption of data centers; and

(H) publish the information described in subparagraph (G), which may be disseminated through catalogs, trade publications, the Internet, or other mechanisms, that will allow data center operators to assess the energy consumption and potential cost savings of alternative data centers and data center equipment and facilities.

[(3) PROCEDURES.—The program described in paragraph (1) shall be developed in consultation with and coordinated by the organization described in subsection (c) according to commonly accepted procedures for the development of specifications, measurements, and benchmarks.]

[(c) DATA CENTER EFFICIENCY ORGANIZATION.—

[(1) IN GENERAL.—After the establishment of the program described in subsection (b), the Secretary and the Administrator shall jointly designate an information technology industry organization to consult with and to coordinate the program.

[(2) REQUIREMENTS.—The organization designated under paragraph (1), whether preexisting or formed specifically for the purposes of subsection (b), shall—

[(A) consist of interested parties that have expertise in energy efficiency and in the development, operation, and

functionality of computer data centers, information technology equipment, and software, as well as representatives of hardware manufacturers, data center operators, and facility managers;

[(B) obtain and address input from Department of Energy National Laboratories or any college, university, research institution, industry association, company, or public interest group with applicable expertise in any of the areas listed in paragraph (1);

[(C) follow commonly accepted procedures for the development of specifications and accredited standards development processes;

[(D) have a mission to develop and promote energy efficiency for data centers and information technology; and

[(E) have the primary responsibility to consult in the development and publishing of the information, measurements, and benchmarks described in subsection (b) and transmission of the information to the Secretary and the Administrator for consideration under subsection (d).

[(d) MEASUREMENTS AND SPECIFICATIONS.—

[(1) IN GENERAL.—The Secretary and the Administrator shall consider the specifications, measurements, and benchmarks described in subsection (b) for use by the Federal Energy Management Program, the Energy Star Program, and other efficiency programs of the Department of Energy and Environmental Protection Agency, respectively.

[(2) REJECTIONS.—If the Secretary or the Administrator rejects 1 or more specifications, measurements, or benchmarks described in subsection (b), the rejection shall be made consistent with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note; Public Law 104–113).

[(3) DETERMINATION OF IMPRACTICABILITY.—A determination that a specification, measurement, or benchmark described in subsection (b) is impractical may include consideration of the maximum efficiency that is technologically feasible and economically justified.

[(e) MONITORING.—The Secretary and the Administrator shall—

[(1) monitor and evaluate the efforts to develop the program described in subsection (b); and

[(2) not later than 3 years after the date of enactment of this Act, make a determination as to whether the program is consistent with the objectives of subsection (b).

[(f) ALTERNATIVE SYSTEM.—If the Secretary and the Administrator make a determination under subsection (e) that a voluntary national information program for data centers consistent with the objectives of subsection (b) has not been developed, the Secretary and the Administrator shall, after consultation with the National Institute of Standards and Technology and not later than 2 years after the determination, develop and implement the program under subsection (b).

[(g) PROTECTION OF PROPRIETARY INFORMATION.—The Secretary, the Administrator, or the data center efficiency organization shall not disclose any proprietary information or trade secrets provided

by any individual or company for the purposes of carrying out this section or the program established under this section.】

(c) *STAKEHOLDER INVOLVEMENT.*—*The Secretary and the Administrator shall carry out subsection (b) in collaboration with the information technology industry and other key stakeholders, with the goal of producing results that accurately reflect the most relevant and useful information available. In such collaboration, the Secretary and the Administrator shall pay particular attention to organizations that—*

(1) *have members with expertise in energy efficiency and in the development, operation, and functionality of data centers, information technology equipment, and software, such as representatives of hardware manufacturers, data center operators, and facility managers;*

(2) *obtain and address input from Department of Energy National Laboratories or any college, university, research institution, industry association, company, or public interest group with applicable expertise;*

(3) *follow—*

(A) *commonly accepted procedures for the development of specifications; and*

(B) *accredited standards development processes; and*

(4) *have a mission to promote energy efficiency for data centers and information technology.*

(d) *MEASUREMENTS AND SPECIFICATIONS.*—*The Secretary and the Administrator shall consider and assess the adequacy of the specifications, measurements, best practices, and benchmarks described in subsection (b) for use by the Federal Energy Management Program, the Energy Star Program, and other efficiency programs of the Department of Energy or the Environmental Protection Agency.*

(e) *STUDY.*—*The Secretary, in collaboration with the Administrator, shall, not later than 18 months after the date of enactment of the North American Energy Security and Infrastructure Act of 2015, make available to the public an update to the Report to Congress on Server and Data Center Energy Efficiency published on August 2, 2007, under section 1 of Public Law 109–431 (120 Stat. 2920), that provides—*

(1) *a comparison and gap analysis of the estimates and projections contained in the original report with new data regarding the period from 2008 through 2015;*

(2) *an analysis considering the impact of information technologies, including virtualization and cloud computing, in the public and private sectors;*

(3) *an evaluation of the impact of the combination of cloud platforms, mobile devices, social media, and big data on data center energy usage;*

(4) *an evaluation of water usage in data centers and recommendations for reductions in such water usage; and*

(5) *updated projections and recommendations for best practices through fiscal year 2020.*

(f) *DATA CENTER ENERGY PRACTITIONER PROGRAM.*—*The Secretary, in collaboration with key stakeholders and the Director of the Office of Management and Budget, shall maintain a data center energy practitioner program that leads to the certification of energy practitioners qualified to evaluate the energy usage and efficiency*

opportunities in Federal data centers. Each Federal agency shall consider having the data centers of the agency evaluated every 4 years, in accordance with section 543(f) of the National Energy Conservation Policy Act (42 U.S.C. 8253), by energy practitioners certified pursuant to such program.

(g) *OPEN DATA INITIATIVE.*—The Secretary, in collaboration with key stakeholders and the Director of the Office of Management and Budget, shall establish an open data initiative for Federal data center energy usage data, with the purpose of making such data available and accessible in a manner that encourages further data center innovation, optimization, and consolidation. In establishing the initiative, the Secretary shall consider the use of the online Data Center Maturity Model.

(h) *INTERNATIONAL SPECIFICATIONS AND METRICS.*—The Secretary, in collaboration with key stakeholders, shall actively participate in efforts to harmonize global specifications and metrics for data center energy and water efficiency.

(i) *DATA CENTER UTILIZATION METRIC.*—The Secretary, in collaboration with key stakeholders, shall facilitate the development of an efficiency metric that measures the energy efficiency of a data center (including equipment and facilities).

(j) *PROTECTION OF PROPRIETARY INFORMATION.*—The Secretary and the Administrator shall not disclose any proprietary information or trade secrets provided by any individual or company for the purposes of carrying out this section or the programs and initiatives established under this section.

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## TITLE V—ENERGY SAVINGS IN GOVERNMENT AND PUBLIC INSTITUTIONS

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### Subtitle C—Energy Efficiency in Federal Agencies

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#### SEC. 530. ENERGY-EFFICIENT AND ENERGY-SAVING INFORMATION TECHNOLOGIES.

(a) *DEFINITIONS.*—In this section:

(1) *DIRECTOR.*—The term “Director” means the Director of the Office of Management and Budget.

(2) *INFORMATION TECHNOLOGY.*—The term “information technology” has the meaning given that term in section 11101 of title 40, United States Code.

(b) *DEVELOPMENT OF IMPLEMENTATION STRATEGY.*—Not later than 1 year after the date of enactment of this section, each Federal agency shall coordinate with the Director, the Secretary, and the Administrator of the Environmental Protection Agency to develop an implementation strategy (that includes best practices and measurement and verification techniques) for the maintenance, purchase, and use by the Federal agency of energy-efficient and energy-saving



information technologies, taking into consideration the performance goals established under subsection (d).

(c) **ADMINISTRATION.**—In developing an implementation strategy under subsection (b), each Federal agency shall consider—

- (1) advanced metering infrastructure;
- (2) energy-efficient data center strategies and methods of increasing asset and infrastructure utilization;
- (3) advanced power management tools;
- (4) building information modeling, including building energy management;
- (5) secure telework and travel substitution tools; and
- (6) mechanisms to ensure that the agency realizes the energy cost savings brought about through increased efficiency and utilization.

(d) **PERFORMANCE GOALS.**—

(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of this section, the Director, in consultation with the Secretary, shall establish performance goals for evaluating the efforts of Federal agencies in improving the maintenance, purchase, and use of energy-efficient and energy-saving information technology.

(2) **BEST PRACTICES.**—The Chief Information Officers Council established under section 3603 of title 44, United States Code, shall recommend best practices for the attainment of the performance goals, which shall include Federal agency consideration of, to the extent applicable by law, the use of—

- (A) energy savings performance contracting; and
- (B) utility energy services contracting.

(e) **REPORTS.**—

(1) **AGENCY REPORTS.**—Each Federal agency shall include in the report of the agency under section 527 a description of the efforts and results of the agency under this section.

(2) **OMB GOVERNMENT EFFICIENCY REPORTS AND SCORECARDS.**—Effective beginning not later than October 1, 2017, the Director shall include in the annual report and scorecard of the Director required under section 528 a description of the efforts and results of Federal agencies under this section.

## NATIONAL ENERGY CONSERVATION POLICY ACT

### SEC. 101. SHORT TITLE AND TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “National Energy Conservation Policy Act”.

(b) **TABLE OF CONTENTS.**—

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### TITLE II—RESIDENTIAL ENERGY CONSERVATION

\* \* \* \* \*

#### PART 4—MISCELLANEOUS

\* \* \* \* \*

[Sec. 253. Residential energy efficiency standards study.

[Sec. 254. Weatherization study.]

\* \* \* \* \*

## PART 6—RESIDENTIAL ENERGY EFFICIENCY RATING GUIDELINES

\* \* \* \* \*

【Sec. 273. Report.】

\* \* \* \* \*

## TITLE V—FEDERAL ENERGY INITIATIVES

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## PART 3—FEDERAL ENERGY MANAGEMENT

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【Sec. 550. Survey of energy saving potential.】

\* \* \* \* \*

## 【PART 4—FEDERAL PHOTOVOLTAIC UTILIZATION

【Sec. 561. Short title of part.

【Sec. 562. Definitions.

【Sec. 563. Photovoltaic energy program.

【Sec. 564. Purpose of program.

【Sec. 565. Acquisition of systems.

【Sec. 566. Administration.

【Sec. 567. System evaluation and purchase program.

【Sec. 568. Advisory committee.

【Sec. 569. Authorization of appropriations.

【Sec. 570. Use of photovoltaic energy in public buildings.】

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## 【PART 5—PEAK DEMAND REDUCTION

【Sec. 571. National Action Plan for Demand Response.】

\* \* \* \* \*

TITLE II—RESIDENTIAL ENERGY  
CONSERVATION

\* \* \* \* \*

## PART 4—MISCELLANEOUS

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**【SEC. 253. RESIDENTIAL ENERGY EFFICIENCY STANDARDS STUDY.**

【(a) GENERAL AUTHORITY.—The Secretary of Housing and Urban Development (hereinafter in this section referred to as the “Secretary”) shall, in coordination with the Secretary of Agriculture, the Secretary of the Treasury, the Secretary of Veterans Affairs, the Secretary of Energy, and such other representatives of Federal, State, and local governments as the Secretary shall designate, conduct a study, utilizing the services of the National Institute of Building Sciences pursuant to appropriate contractual arrangements, for the purpose of determining the need for, the feasibility of, and the problems of requiring, by mandatory Federal action, that all residential dwelling units meet applicable energy efficient standards. The subjects to be examined shall include, but not be limited to, mandatory notification to purchasers, and policies to prohibit exchange or sale, of properties which do not conform to such standards.

【(b) SPECIFIC FACTORS.—In conducting such study, the Secretary shall consider at least the following factors—

[(1) the extent to which such requirement would protect a prospective purchaser from the uncertainty of not knowing the energy efficiency of the property he proposes to purchase;

[(2) the extent to which such requirement would contribute to the Nation's energy conservation goals;

[(3) the extent to which such a requirement would affect the real estate, home building, and mortgage banking industries;

[(4) the sanctions which might be necessary to make such a requirement effective and the administrative impediments there might be to enforcement of such sanctions;

[(5) the possible impact on sellers and purchasers as a result of the implementation of mandatory Federal actions, taking into account the experience of the Federal Government in imposing mandatory requirements concerning the purchase and sale of real property as occurred under the Real Estate Settlement Procedures Act of 1974 and the Federal Disaster Protection Act of 1973;

[(6) an analysis of the effect of such a requirement on the economy as a whole and on the Nation's security as compared to the impact on the credit and housing markets caused by such a requirement;

[(7) the effect of such a requirement on availability of credit in the housing industry;

[(8) the extent to which the imposition of mandatory Federal requirements would temporarily reduce the number of residential dwellings available for sale and the resulting effect of such mandatory actions on the price of those remaining dwelling units eligible for sale; and

[(9) the possible uncertainty, during the period of developing the standards, as to what standards might be imposed and any resulting effect on major housing rehabilitation efforts and voluntary efforts for energy conservation.

[(c) COMMENTS AND FINDINGS BY SECRETARY OF ENERGY.—The Secretary shall incorporate into such study comments by the Secretary of Energy on the effects on the economy as a whole and on the Nation's security which may result from the requirement described in subsection (a) as compared to the impact on the credit and housing markets likely to be caused by such a requirement. In addition, the Secretary shall incorporate into such study the following findings by the Secretary of Energy:

[(1) the savings in energy costs resulting from the requirement described in subsection (a) throughout the estimated remaining useful life of the existing residential buildings to which such requirement would apply; and

[(2) the total cost per barrel of oil equivalent, in obtaining the energy savings likely to result from such requirement, computed for each class of existing residential buildings to which such requirement would apply.

[(d) REPORT DATE.—The Secretary shall report, no later than one year after the date of enactment of this section, to both Houses of the Congress with regard to the findings made as a result of such study along with any recommendations for legislative proposals which the Secretary determines should be enacted with respect to the subject of such study.

**[SEC. 254. WEATHERIZATION STUDY.**

【The President shall conduct a study which shall monitor the weatherization activities authorized by this Act and amendments made thereby and those weatherization activities undertaken, independently of this Act and such amendments. The President shall report to the Congress within one year from the date of enactment of this Act, and annually thereafter, concerning—

【(1) the extent of progress being made through weatherization activities toward the achievement of national energy conservation goals;

【(2) adequacy and costs of materials necessary for weatherization activities; and

【(3) the need for and desirability of modifying weatherization activities authorized by this Act, and amendments made thereby and of extending such activities to a broader range of income groups than are being assisted under this Act and such amendments.】

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## **PART 6—RESIDENTIAL ENERGY EFFICIENCY RATING GUIDELINES**

\* \* \* \* \*

**[SEC. 273. REPORT.**

【Not later than 3 years after the date of the enactment of the Energy Policy Act of 1992, the Secretary shall transmit to the President and the Congress a final report containing—

【(1) a description of actions taken by the Secretary and other Federal agencies to implement this part;

【(2) a description of the action taken by States, local governments, and other organizations to implement the voluntary guidelines issued under section 271 and any problems encountered in implementing such guidelines; and

【(3) recommendations on the feasibility of requiring, as a prerequisite to receiving federally assisted, guaranteed, or insured mortgages, the achievement of a minimum energy efficiency rating.】

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## **TITLE V—FEDERAL ENERGY INITIATIVE**

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### **PART 3—FEDERAL ENERGY MANAGEMENT**

\* \* \* \* \*

**SEC. 543. ENERGY MANAGEMENT REQUIREMENTS.**

【(a) ENERGY PERFORMANCE REQUIREMENT FOR FEDERAL BUILDINGS.—(1) Subject to paragraph (2), each agency shall apply energy conservation measures to, and shall improve the design for the construction of, the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in fiscal

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

<b>[Fiscal Year</b>	<b>Percentage Reduction</b>
2006 .....	2
2007 .....	4
2008 .....	9
2009 .....	12
2010 .....	15
2011 .....	18
2012 .....	21
2013 .....	24
2014 .....	27
2015 .....	30.

[(2) An agency may exclude from the requirements of paragraph (1) any building, and the associated energy consumption and gross square footage, in which energy intensive activities are carried out. Each agency shall identify and list in each report made under section 548(a) the buildings designated by it for such exclusion.

[(3) Not later than December 31, 2014, the Secretary shall review the results of the implementation of the energy performance requirement established under paragraph (1) and submit to Congress recommendations concerning energy performance requirements for fiscal years 2016 through 2025.]

(a) *ENERGY PERFORMANCE REQUIREMENT FOR FEDERAL BUILDINGS.*—

(1) *REQUIREMENT.*—Subject to paragraph (2), each agency shall apply energy conservation measures to, and shall improve the design for the construction of, the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in fiscal years 2006 through 2017 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in fiscal year 2003, by the percentage specified in the following table:

<b>Fiscal Year</b>	<b>Percentage Reduction</b>
2006 .....	2
2007 .....	4
2008 .....	9
2009 .....	12
2010 .....	15
2011 .....	18
2012 .....	21
2013 .....	24
2014 .....	27
2015 .....	30
2016 .....	33
2017 .....	36.

(2) *EXCLUSION FOR BUILDINGS WITH ENERGY INTENSIVE ACTIVITIES.*—

(A) *IN GENERAL.*—An agency may exclude from the requirements of paragraph (1) any building (including the associated energy consumption and gross square footage) in which energy intensive activities are carried out.

(B) *REPORTS.*—Each agency shall identify and list in each report made under section 548(a) the buildings des-

*ignated by the agency for exclusion under subparagraph (A).*

(3) *REVIEW.*—Not later than December 31, 2017, the Secretary shall—

(A) *review the results of the implementation of the energy performance requirements established under paragraph (1); and*

(B) *based on the review conducted under subparagraph (A), submit to Congress a report that addresses the feasibility of requiring each agency to apply energy conservation measures to, and improve the design for the construction of, the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in each of fiscal years 2018 through 2030 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in the prior fiscal year, by 3 percent.*

(b) **ENERGY MANAGEMENT REQUIREMENT FOR FEDERAL AGENCIES.**—(1) Not later than January 1, 2005, each agency shall, to the maximum extent practicable, install in Federal buildings owned by the United States all energy and water conservation measures with payback periods of less than 10 years, as determined by using the methods and procedures developed pursuant to section 544.

(2) The Secretary may waive the requirements of this subsection for any agency for such periods as the Secretary may determine if the Secretary finds that the agency is taking all practicable steps to meet the requirements and that the requirements of this subsection will pose an unacceptable burden upon the agency. If the Secretary waives the requirements of this subsection, the Secretary shall, as part of the report required under section 548(b), notify the Congress in writing with an explanation and a justification of the reasons for such waiver.

(3) This subsection shall not apply to an agency's facilities that generate or transmit electric energy or to the uranium enrichment facilities operated by the Department of Energy.

(4) An agency may participate in the Environmental Protection Agency's "Green Lights" program for purposes of receiving technical assistance in complying with the requirements of this section.

(c) **EXCLUSIONS.**—(1)(A) An agency may exclude, from the energy performance requirement for a fiscal year established under subsection (a) and the energy management requirement established under subsection (b), any Federal building or collection of Federal buildings, if the head of the agency finds that—

(i) compliance with those requirements would be impracticable;

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

(iii) the agency has achieved compliance with the energy efficiency requirements of this Act, the Energy Policy Act of 1992, Executive orders, and other Federal law; and

(iv) the agency has implemented all practicable, life cycle cost-effective projects with respect to the Federal building or collection of Federal buildings to be excluded.

(B) A finding of impracticability under subparagraph (A)(i) shall be based on—

- (i) the energy intensiveness of activities carried out in the Federal building or collection of Federal buildings; or
- (ii) the fact that the Federal building or collection of Federal buildings is used in the performance of a national security function.

(2) Each agency shall identify and list, in each report made under section 548(a), the Federal buildings designated by it for such exclusion. The Secretary shall review such findings for consistency with the standards for exclusion set forth in paragraph (1), and may within 90 days after receipt of the findings, reverse the exclusion. In the case of any such reversal, the agency shall comply with the requirements of subsections (a) and (b)(1) for the building concerned.

(3) Not later than 180 days after the date of enactment of this paragraph, the Secretary shall issue guidelines that establish criteria for exclusions under paragraph (1).

(d) IMPLEMENTATION STEPS.—The Secretary shall consult with the Secretary of Defense and the Administrator of General Services in developing guidelines for the implementation of this part. To meet the requirements of this section, each agency shall—

(1) prepare and submit to the Secretary, not later than December 31, 1993, a plan describing how the agency intends to meet such requirements, including how it will—

(A) designate personnel primarily responsible for achieving such requirements;

(B) identify high priority projects through calculation of payback periods;

(C) take maximum advantage of contracts authorized under title VIII of this Act, of financial incentives and other services provided by utilities for efficiency investment, and of other forms of financing to reduce the direct costs to the Government; and

(D) otherwise implement this part;

(2) perform energy surveys of its Federal buildings to the extent necessary and update such surveys as needed[, incorporating any relevant information obtained from the survey conducted pursuant to section 550];

(3) using such surveys, determine the cost and payback period of energy and water conservation measures likely to achieve the requirements of this section;

(4) install energy and water conservation measures that will achieve the requirements of this section through the methods and procedures established pursuant to section 544; and

(5) ensure that the operation and maintenance procedures applied under this section are continued.

(e) METERING OF ENERGY USE.—

(1) DEADLINE.—By October 1, 2012, in accordance with guidelines established by the Secretary under paragraph (2), all Federal buildings shall, for the purposes of efficient use of energy and reduction in the cost of electricity used in such buildings, be metered. Each agency shall use, to the maximum extent practicable, advanced meters or advanced metering devices that provide data at least daily and that measure at least

hourly consumption of electricity in the Federal buildings of the agency. Not later than October 1, 2016, each agency shall provide for equivalent metering of natural gas and steam, in accordance with guidelines established by the Secretary under paragraph (2). Such data shall be incorporated into existing Federal energy tracking systems and made available to Federal facility managers.

(2) GUIDELINES.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary, in consultation with the Department of Defense, the General Services Administration, representatives from the metering industry, utility industry, energy services industry, energy efficiency industry, energy efficiency advocacy organizations, national laboratories, universities, and Federal facility managers, shall establish guidelines for agencies to carry out paragraph (1).

(B) REQUIREMENTS FOR GUIDELINES.—The guidelines shall—

(i) take into consideration—

(I) the cost of metering and the reduced cost of operation and maintenance expected to result from metering;

(II) the extent to which metering is expected to result in increased potential for energy management, increased potential for energy savings and energy efficiency improvement, and cost and energy savings due to utility contract aggregation; and

(III) the measurement and verification protocols of the Department of Energy;

(ii) include recommendations concerning the amount of funds and the number of trained personnel necessary to gather and use the metering information to track and reduce energy use;

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

(iv) establish exclusions from the requirements specified in paragraph (1) based on the de minimis quantity of energy use of a Federal building, industrial process, or structure.

(3) PLAN.—Not later than 180 days after the date on which guidelines are established under paragraph (2), in a report submitted by the agency under section 548(a), each agency shall submit to the Secretary a plan describing the manner in which the agency will implement the requirements of paragraph (1), including—

(A) how the agency will designate personnel primarily responsible for achieving the requirements; and

(B) a demonstration by the agency, complete with documentation, of any finding that advanced meters or ad-



vanced metering devices (as those terms are used in paragraph (1)), are not practicable.

(4) BEST PRACTICES REPORT.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this paragraph, the Secretary of Energy, in consultation with the Secretary of Defense and the Administrator of General Services, shall develop, and issue a report on, best practices for the use of advanced metering of energy use in Federal facilities, buildings, and equipment by Federal agencies.

(B) COMPONENTS.—The report shall include, at a minimum—

(i) summaries and analysis of the reports by agencies under paragraph (3);

(ii) recommendations on standard requirements or guidelines for automated energy management systems, including—

(I) potential common communications standards to allow data sharing and reporting;

(II) means of facilitating continuous commissioning of buildings and evidence-based maintenance of buildings and building systems; and

(III) standards for sufficient levels of security and protection against cyber threats to ensure systems cannot be controlled by unauthorized persons; and

(iii) an analysis of—

(I) the types of advanced metering and monitoring systems being piloted, tested, or installed in Federal buildings; and

(II) existing techniques used within the private sector or other non-Federal government buildings.

(f) USE OF ENERGY AND WATER EFFICIENCY MEASURES IN FEDERAL BUILDINGS.—

(1) DEFINITIONS.—In this subsection:

(A) COMMISSIONING.—The term “commissioning”, with respect to a facility, means a systematic process—

(i) of ensuring, using appropriate verification and documentation, during the period beginning on the initial day of the design phase of the facility and ending not earlier than 1 year after the date of completion of construction of the facility, that all facility systems perform interactively in accordance with—

(I) the design documentation and intent of the facility; and

(II) the operational needs of the owner of the facility, including preparation of operation personnel; and

(ii) the primary goal of which is to ensure fully functional systems that can be properly operated and maintained during the useful life of the facility.

(B) ENERGY MANAGER.—

(i) IN GENERAL.—The term “energy manager”, with respect to a facility, means the individual who is responsible for—

(I) ensuring compliance with this subsection by the facility; and

(II) reducing energy use at the facility.

(ii) INCLUSIONS.—The term “energy manager” may include—

(I) a contractor of a facility;

(II) a part-time employee of a facility; and

(III) an individual who is responsible for multiple facilities.

(C) FACILITY.—

(i) IN GENERAL.—The term “facility” means any building, installation, structure, or other property (including any applicable fixtures) owned or operated by, or constructed or manufactured and leased to, the Federal Government.

(ii) INCLUSIONS.—The term “facility” includes—

(I) a group of facilities at a single location or multiple locations managed as an integrated operation; and

(II) contractor-operated facilities owned by the Federal Government.

(iii) EXCLUSIONS.—The term “facility” does not include any land or site for which the cost of utilities is not paid by the Federal Government.

(D) LIFE CYCLE COST-EFFECTIVE.—The term “life cycle cost-effective”, with respect to a measure, means a measure, the estimated savings of which exceed the estimated costs over the lifespan of the measure, as determined in accordance with section 544.

(E) ONGOING COMMISSIONING.—*The term “ongoing commissioning” means an ongoing process of commissioning using monitored data, the primary goal of which is to ensure continuous optimum performance of a facility, in accordance with design or operating needs, over the useful life of the facility, while meeting facility occupancy requirements.*

[(E)] (F) PAYBACK PERIOD.—

(i) IN GENERAL.—Subject to clause (ii), the term “payback period”, with respect to a measure, means a value equal to the quotient obtained by dividing—

(I) the estimated initial implementation cost of the measure (other than financing costs); by

(II) the annual cost savings resulting from the measure, including—

(aa) net savings in estimated energy and water costs; and

(bb) operations, maintenance, repair, replacement, and other direct costs.

(ii) MODIFICATIONS AND EXCEPTIONS.—The Secretary, in guidelines issued pursuant to paragraph (6), may make such modifications and provide such exceptions to the calculation of the payback period of a measure as the Secretary determines to be appropriate to achieve the purposes of this Act.

[(F)] (G) RECOMMISSIONING.—The term “recommissioning” means a process—

(i) of commissioning a facility or system beyond the project development and warranty phases of the facility or system; and

(ii) the primary goal of which is to ensure optimum performance of a facility, in accordance with design or current operating needs, over the useful life of the facility, while meeting building occupancy requirements.

[(G)] (H) RETROCOMMISSIONING.—The term “retrocommissioning” means a process of commissioning a facility or system that was not commissioned at the time of construction of the facility or system.

(2) FACILITY ENERGY MANAGERS.—

(A) IN GENERAL.—Each Federal agency shall designate an energy manager responsible for implementing this subsection and reducing energy use at each facility that meets criteria under subparagraph (B).

(B) COVERED FACILITIES.—The Secretary shall develop criteria, after consultation with affected agencies, energy efficiency advocates, and energy and utility service providers, that cover, at a minimum, Federal facilities, including central utility plants and distribution systems and other energy intensive operations, that constitute at least 75 percent of facility energy use at each agency.

(C) *ENERGY MANAGEMENT SYSTEM.*—*An energy manager designated under subparagraph (A) shall consider use of a system to manage energy use at the facility and certification of the facility in accordance with the International Organization for Standardization standard numbered 50001 and entitled “Energy Management Systems”.*

[(3) ENERGY AND WATER EVALUATIONS.—

[(A) EVALUATIONS.—Effective beginning on the date that is 180 days after the date of enactment of this subsection and annually thereafter, energy managers shall complete, for each calendar year, a comprehensive energy and water evaluation for approximately 25 percent of the facilities of each agency that meet the criteria under paragraph (2)(B) in a manner that ensures that an evaluation of each such facility is completed at least once every 4 years.

[(B) RECOMMISSIONING AND RETROCOMMISSIONING.—As part of the evaluation under subparagraph (A), the energy manager shall identify and assess recommissioning measures (or, if the facility has never been commissioned, retrocommissioning measures) for each such facility.

[(4) IMPLEMENTATION OF IDENTIFIED ENERGY AND WATER EFFICIENCY MEASURES.—Not later than 2 years after the completion of each evaluation under paragraph (3), each energy manager may—

[(A) implement any energy- or water-saving measure that the Federal agency identified in the evaluation conducted under paragraph (3) that is life cycle cost-effective; and

[(B) bundle individual measures of varying paybacks together into combined projects.]

(3) *ENERGY AND WATER EVALUATIONS AND COMMISSIONING.*—

(A) *EVALUATIONS.*—*Except as provided in subparagraph (B), effective beginning on the date that is 180 days after the date of enactment of the North American Energy Security and Infrastructure Act of 2015, and annually thereafter, each energy manager shall complete, for each calendar year, a comprehensive energy and water evaluation and recommissioning or retrocommissioning for approximately 25 percent of the facilities of that energy manager's agency that meet the criteria under paragraph (2)(B) in a manner that ensures that an evaluation of each facility is completed at least once every 4 years.*

(B) *EXCEPTIONS.*—*An evaluation and recommissioning or retrocommissioning shall not be required under subparagraph (A) with respect to a facility that—*

*(i) has had a comprehensive energy and water evaluation during the 8-year period preceding the date of the evaluation;*

*(ii)(I) has been commissioned, recommissioned, or retrocommissioned during the 10-year period preceding the date of the evaluation; or*

*(II) is under ongoing commissioning, recommissioning, or retrocommissioning;*

*(iii) has not had a major change in function or use since the previous evaluation and commissioning, recommissioning, or retrocommissioning;*

*(iv) has been benchmarked with public disclosure under paragraph (8) within the year preceding the evaluation; and*

*(v)(I) based on the benchmarking, has achieved at a facility level the most recent cumulative energy savings target under subsection (a) compared to the earlier of—*

*(aa) the date of the most recent evaluation; or*

*(bb) the date—*

*(AA) of the most recent commissioning, recommissioning, or retrocommissioning; or*

*(BB) on which ongoing commissioning, recommissioning, or retrocommissioning began;*

*or*

*(II) has a long-term contract in place guaranteeing energy savings at least as great as the energy savings target under subclause (I).*

(4) *IMPLEMENTATION OF IDENTIFIED ENERGY AND WATER EFFICIENCY MEASURES.*—

(A) *IN GENERAL.*—*Not later than 2 years after the date of completion of each evaluation under paragraph (3), each energy manager may—*

*(i) implement any energy- or water-saving measure that the Federal agency identified in the evaluation conducted under paragraph (3) that is life-cycle cost effective; and*

*(ii) bundle individual measures of varying paybacks together into combined projects.*

(B) *MEASURES NOT IMPLEMENTED.*—*Each energy manager, as part of the certification system under paragraph*

*(7) and using guidelines developed by the Secretary, shall provide an explanation regarding any life-cycle cost-effective measures described in subparagraph (A)(i) that have not been implemented.*

(5) FOLLOW-UP ON IMPLEMENTED MEASURES.—For each measure implemented under paragraph (4), each energy manager shall ensure that—

(A) equipment, including building and equipment controls, is fully commissioned at acceptance to be operating at design specifications;

(B) a plan for appropriate operations, maintenance, and repair of the equipment is in place at acceptance and is followed;

(C) equipment and system performance is measured during its entire life to ensure proper operations, maintenance, and repair; and

(D) energy and water savings are measured and verified.

(6) GUIDELINES.—

(A) IN GENERAL.—The Secretary shall issue guidelines and necessary criteria that each Federal agency shall follow for implementation of—

(i) paragraphs (2) and (3) not later than 180 days after the date of enactment of this subsection; and

(ii) paragraphs (4) and (5) not later than 1 year after the date of enactment of this subsection.

(B) RELATIONSHIP TO FUNDING SOURCE.—The guidelines issued by the Secretary under subparagraph (A) shall be appropriate and uniform for measures funded with each type of funding made available under paragraph (10), but may distinguish between different types of measures project size, and other criteria the Secretary determines are relevant.

(7) WEB-BASED CERTIFICATION.—

(A) IN GENERAL.—For each facility that meets the criteria established by the Secretary under paragraph (2)(B), the energy manager shall use the web-based tracking system under subparagraph (B)—

(i) to certify compliance with the requirements for—

(I) energy and water evaluations under paragraph (3);

(II) implementation of identified energy and water measures under paragraph (4); and

(III) follow-up on implemented measures under paragraph (5); and

(ii) to publish energy and water consumption data on an individual facility basis.

(B) DEPLOYMENT.—

(i) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall develop and deploy a web-based tracking system required under this paragraph in a manner that tracks, at a minimum—

(I) the covered facilities;

(II) the status of meeting the requirements specified in subparagraph (A);

(III) the estimated cost and savings for measures required to be implemented in a facility;

(IV) the measured savings and persistence of savings for implemented measures; and

(V) the benchmarking information disclosed under paragraph (8)(C).

(ii) EASE OF COMPLIANCE.—The Secretary shall ensure that energy manager compliance with the requirements in this paragraph, to the maximum extent practicable—

(I) can be accomplished with the use of streamlined procedures and templates that minimize the time demands on Federal employees; and

(II) is coordinated with other applicable energy reporting requirements.

(C) AVAILABILITY.—

(i) IN GENERAL.—Subject to clause (ii), the Secretary shall make the web-based tracking system required under this paragraph available to Congress, other Federal agencies, and the public through the Internet.

(ii) EXEMPTIONS.—At the request of a Federal agency, the Secretary may exempt specific data for specific facilities from disclosure under clause (i) for national security purposes.

(iii) SUMMARY REPORT.—*The Secretary shall make publicly available a report that summarizes the information tracked under subparagraph (B)(i) by each agency and, as applicable, by each type of measure.*

(8) BENCHMARKING OF FEDERAL FACILITIES.—

(A) IN GENERAL.—The energy manager shall enter energy use data for each metered building that is (or is a part of) a facility that meets the criteria established by the Secretary under paragraph (2)(B) into a building energy use benchmarking system, such as the Energy Star Portfolio Manager.

(B) SYSTEM AND GUIDANCE.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall—

(i) select or develop the building energy use benchmarking system required under this paragraph for each type of building; and

(ii) issue guidance for use of the system.

(C) PUBLIC DISCLOSURE.—Each energy manager shall post the information entered into, or generated by, a benchmarking system under this subsection, on the web-based tracking system under paragraph (7)(B). The energy manager shall update such information each year, and shall include in such reporting previous years' information to allow changes in building performance to be tracked over time.

(9) FEDERAL AGENCY SCORECARDS.—

(A) IN GENERAL.—The Director of the Office of Management and Budget shall issue semiannual scorecards for energy management activities carried out by each Federal agency that includes—

(i) summaries of the status of implementing the various requirements of the agency and its energy managers under this subsection; and

(ii) any other means of measuring performance that the Director considers appropriate.

(B) AVAILABILITY.—The Director shall make the scorecards required under this paragraph available to Congress, other Federal agencies, and the public through the Internet.

(10) FUNDING AND IMPLEMENTATION.—

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

(B) FUNDING OPTIONS.—

(i) IN GENERAL.—To carry out this subsection, a Federal agency may use any combination of—

(I) appropriated funds made available under subparagraph (A); and

(II) private financing otherwise authorized under Federal law, including financing available through energy savings performance contracts or utility energy service contracts.

(ii) COMBINED FUNDING FOR SAME MEASURE.—A Federal agency may use any combination of appropriated funds and private financing described in clause (i) to carry out the same measure under this subsection.

(C) IMPLEMENTATION.—Each Federal agency may implement the requirements under this subsection itself or may contract out performance of some or all of the requirements.

(11) RULE OF CONSTRUCTION.—This subsection shall not be construed to require or to obviate any contractor savings guarantees.

(g) LARGE CAPITAL ENERGY INVESTMENTS.—

(1) IN GENERAL.—Each Federal agency shall ensure that any large capital energy investment in an existing building that is not a major renovation but involves replacement of installed equipment (such as heating and cooling systems), or involves renovation, rehabilitation, expansion, or remodeling of existing space, employs the most energy efficient designs, systems, equipment, and controls that are life-cycle cost effective.

(2) PROCESS FOR REVIEW OF INVESTMENT DECISIONS.—Not later than 180 days after the date of enactment of this subsection, each Federal agency shall—

(A) develop a process for reviewing each decision made on a large capital energy investment described in paragraph (1) to ensure that the requirements of this subsection are met; and

(B) report to the Director of the Office of Management and Budget on the process established.

(3) COMPLIANCE REPORT.—Not later than 1 year after the date of enactment of this subsection, the Director of the Office of Management and Budget shall evaluate and report to Congress on the compliance of each agency with this subsection.

\* \* \* \* \*

**SEC. 548. REPORTS.**

(a) **REPORTS TO THE SECRETARY.**—Each agency shall transmit a report to the Secretary, at times specified by the Secretary but at least annually, with complete information on its activities under this part, including information on—

(1) the agency's progress in achieving the goals established by section 543; and

(2) the procedures being used by the agency pursuant to section 546(a)(2), the number of contracts entered into by such agency under title VIII of this Act, the energy and cost savings that have resulted from such contracts and any termination penalty exposure, the use of such cost savings under section 546(c), and any problem encountered in entering into such contracts and otherwise implementing section 546.

(b) **REPORTS TO THE PRESIDENT AND CONGRESS.**—The Secretary shall report, not later than April 2 of each year, with respect to each fiscal year beginning after the date of the enactment of this subsection, to the President and Congress—

(1) on all activities carried out under this part and on the progress made toward achievement of the objectives of this part, including—

(A) a copy of the list of the exclusions made under sections 543(a)(2) and 543(c)(3);

(B) the information required under section 543(b)(2); and

(C) a statement detailing the amount of funds awarded to each agency under section 546(b), the energy and water conservation measures installed with such funds, the projected energy and water savings to be realized from installed measures, and, for each installed measure for which the projected energy and water savings reported in the previous year were not realized, the percentage of such projected savings that was not realized, the reasons such savings were not realized, and proposals for, and projected costs of, achieving such projected savings in the future;

(2) the number of contracts entered into by all agencies under title VIII of this Act, the difficulties (if any) encountered in attempting to enter into such contracts, and proposed solutions to those difficulties;

(3) the extent and nature of interagency exchange of information concerning the conservation and efficient utilization of energy; **[and]**

(4) the information required under section 161(d) of the Energy Policy Act of 1992~~...~~; and

(5) *the status of each agency's energy savings performance contracts and utility energy service contracts, the investment value of such contracts, the guaranteed energy savings for the previous year as compared to the actual energy savings for the previous year, the plan for entering into such contracts in the coming year, and information explaining why any previously submitted plans for such contracts were not implemented.*

(c) **OTHER REPORT.**—The Secretary, in consultation with the Administrator of General Services, shall—

(1) conduct a study and evaluate legal, institutional, and other constraints to connecting buildings owned or leased by



the Federal Government to district heating and district cooling systems; and

(2) not later than 18 months after the date of the enactment of this subsection, transmit to the Congress a report containing the findings and conclusions of such study, including recommendations for the development of streamlined processes for the consideration of connecting buildings owned or leased by the Federal Government to district heating and cooling systems.

\* \* \* \* \*

**[SEC. 550. SURVEY OF ENERGY SAVING POTENTIAL.**

**[(a) IN GENERAL.—**The Secretary shall, in consultation with the Interagency Energy Management Task Force established under section 547, carry out an energy survey for the purposes of—

**[(1)** determining the maximum potential cost effective energy savings that may be achieved in a representative sample of buildings owned or leased by the Federal Government in different areas of the country;

**[(2)** making recommendations for cost effective energy efficiency and renewable energy improvements in those buildings and in other similar Federal buildings; and

**[(3)** identifying barriers which may prevent an agency's ability to comply with section 543 and other energy management goals.

**[(b) IMPLEMENTATION.—**(1) The Secretary shall transmit to the Committee on Energy and Natural Resources and the Committee on Governmental Affairs of the Senate and the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives, within 180 days after the date of the enactment of the Energy Policy Act of 1992, a plan for implementing this section.

**[(2)** The Secretary shall designate buildings to be surveyed in the project so as to obtain a sample of the buildings of the types and in the climates that is representative of buildings owned or leased by Federal agencies in the United States that consume the major portion of the energy consumed in Federal buildings. Such sample shall include, where appropriate, the following types of Federal facility space:

- [(A)** Housing.
- [(B)** Storage.
- [(C)** Office.
- [(D)** Services.
- [(E)** Schools.
- [(F)** Research and Development.
- [(G)** Industrial.
- [(H)** Prisons.
- [(I)** Hospitals.

**[(3)** For purposes of this section, an improvement shall be considered cost effective if the cost of the energy saved or displaced by the improvement exceeds the cost of the improvement over the remaining life of a Federal building or the remaining term of a lease of a building leased by the Federal Government as determined by the life cycle costing methodology developed under section 544.

[(c) PERSONNEL.—(1) In carrying out this section, the Secretary shall utilize personnel who are—

[(A) employees of the Department of Energy; or

[(B) selected by the agencies utilizing the buildings which are being surveyed under this section.

[(2) Such personnel shall be detailed for the purpose of carrying out this section without any reduction of salary or benefits.

[(d) REPORT.—As soon as practicable after the completion of the project carried out under this section, the Secretary shall transmit a report of the findings and conclusions of the project to the Committee on Energy and Natural Resources and the Committee on Governmental Affairs of the Senate, the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives, and the agencies who own the buildings involved in such project. Such report shall include an analysis of the probability of each agency achieving each of the energy reduction goals established under section 543(a).]

#### SEC. 551. DEFINITIONS.

For the purposes of this part—

(1) the term “agency” has the meaning given it in section 551(1) of title 5, United States Code;

(2) the term “construction” means new construction or substantial rehabilitation of existing structures;

(3) the term “cogeneration facilities” has the same meaning given such term in section 3(18)(A) of the Federal Power Act (16 U.S.C. 796(18)(A));

(4) the term “energy conservation measures” means measures that are applied to a Federal building that improve energy efficiency and are life cycle cost effective and that involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operations and maintenance efficiencies, [or retrofit activities] *retrofit activities, or energy consuming devices and required support structures*;

(5) the term “energy survey” means a procedure used to determine energy and cost savings likely to result from the use of appropriate energy related maintenance and operating procedures and modifications, including the purchase and installation of particular energy-related equipment and the use of renewable energy sources;

(6) the term “Federal building” means any building, structure, or facility, or part thereof, including the associated energy consuming support systems, which is constructed, renovated, leased, or purchased in whole or in part for use by the Federal Government and which consumes energy; such term also means a collection of such buildings, structures, or facilities and the energy consuming support systems for such collection;

(7) the term “life cycle cost” means the total costs of owning, operating, and maintaining a building over its useful life (including such costs as fuel, energy, labor, and replacement components) determined on the basis of a systematic evaluation and comparison of alternative building systems, except that in the case of leased buildings, the life cycle costs shall be calculated over the effective remaining term of the lease;

- (8) the term “renewable energy sources” includes, but is not limited to, sources such as agriculture and urban waste, geothermal energy, solar energy, and wind energy; and
- (9) the term “Secretary” means the Secretary of Energy.

\* \* \* \* \*

#### **[PART 4—FEDERAL PHOTOVOLTAIC UTILIZATION**

##### **[SEC. 561. SHORT TITLE OF PART.**

    [This part may be cited as the “Federal Photovoltaic Utilization Act”.

##### **[SEC. 562. DEFINITIONS.**

    [For purposes of this part—

        [(1) The term “Federal facility” means any building, structure, or fixture or part thereof which is owned by the United States or any Federal agency or which is held by the United States or any Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of such agreement without further negotiation. Such term also applies to facilities related to programs administered by Federal agencies.

        [(2) The term “Secretary” means the Secretary of Energy.

##### **[SEC. 563. PHOTOVOLTAIC ENERGY PROGRAM.**

    [There is hereby established a photovoltaic energy commercialization program for the accelerated procurement and installation of photovoltaic solar electric systems for electric production in Federal facilities.

##### **[SEC. 564. PURPOSE OF PROGRAM.**

    [The purpose of the program established by section 563 is to—

        [(1) accelerate the growth of a commercially viable and competitive industry to make photovoltaic solar electric systems available to the general public as an option in order to reduce national consumption of fossil fuel;

        [(2) reduce fossil fuel costs to the Federal Government;

        [(3) stimulate the general use within the Federal Government of methods for the minimization of life cycle costs; and

        [(4) develop performance data on the program established by section 563.

##### **[SEC. 565. ACQUISITION OF SYSTEMS.**

    [The program established by section 563 shall provide for the acquisition of photovoltaic solar electric systems and associated storage capability by the Secretary for their use by Federal agencies, and for the acquisition of such systems and associated capability by Federal agencies for their own use in cases where the authority to make such acquisition has been delegated to the agency involved by the Secretary. The acquisition of photovoltaic solar electric systems shall be at an annual level substantial enough to allow use of low-cost production techniques by suppliers of such systems. The Secretary (or other Federal agency acting under delegation from the Secretary) is authorized to make such acquisitions through the use of multiyear contracts. Authority under this part to enter into acquisition contracts shall be only to the extent as may be provided in advance in appropriation Acts.

**[SEC. 566. ADMINISTRATION.**

【The Secretary shall administer the program established under section 563 and shall—

【(1) consult with the Secretary of Defense to insure that the installation and purchase of photovoltaic solar electric systems pursuant to this part shall not interfere with defense-related activities;

【(2) prescribe such requirements as may be appropriate to monitor and assess the performance and operation of photovoltaic electric systems installed pursuant to this part; and

【(3) report annually to the Congress on the status of the program.

Notwithstanding any other provision of law, the Secretary shall not be subject to the requirements of section 553 of title 5, United States Code, in the performance of his functions under this part.

**[SEC. 567. SYSTEM EVALUATION AND PURCHASE PROGRAM.**

【(a) PROGRAM.—The Secretary shall establish, within 60 days after the date of the enactment of this part, a photovoltaic systems evaluation and purchase program to provide such systems as are required by the Federal agencies to carry out this part. In acquiring photovoltaic solar electric systems under this part, the Secretary (or other Federal agency acting under delegation from the Secretary) shall insure that such systems reflect to the maximum extent practicable the most advanced and reliable technologies and shall schedule purchases in a manner which will stimulate the early development of a permanent low-cost private photovoltaic production capability in the United States, and to stimulate the private sector market for photovoltaic power systems. The Secretary and other Federal agencies acting under delegation from the Secretary shall, subject to the availability of appropriated funds, procure not more than 30 megawatts of photovoltaic solar electric systems during fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.

【(b) OTHER PROCUREMENT.—Nothing in this part shall preclude any Federal agency from directly procuring a photovoltaic solar electric system (in lieu of obtaining one under the program under subsection (a)), except that any such Federal agency shall consult with the Secretary before procuring such a system.

**[SEC. 568. ADVISORY COMMITTEE.**

【(a) ESTABLISHMENT.—There is hereby established an advisory committee to assist the Secretary in the establishment and conduct of the programs established under this part.

【(b) MEMBERSHIP.—Such committee shall be composed of the Secretary of Defense, the Secretary of Housing and Urban Development, the Administrator of the National Aeronautics and Space Administration, the Administrator of the General Services Administration, the Secretary of Transportation, the Administrator of the Small Business Administration, the chairman of the Federal Trade Commission, the Postmaster General, and such other persons as the Secretary deems necessary. The Secretary shall appoint such other nongovernmental persons to the extent necessary to assure that the membership of the committee will be fairly balanced in terms of the point of view represented and the functions to be performed by the committee.

[(c) TERMINATION.—The advisory committee shall terminate October 1, 1981.]

**[SEC. 569. AUTHORIZATION OF APPROPRIATIONS.]**

[For the purposes of this part, there is authorized to be appropriated to the Secretary not to exceed \$98,000,000, for the period beginning October 1, 1978, and ending September 30, 1981.]

**[PART 5—PEAK DEMAND REDUCTION]**

**[SEC. 571. NATIONAL ACTION PLAN FOR DEMAND RESPONSE.]**

[(a) NATIONAL ASSESSMENT AND REPORT.—The Federal Energy Regulatory Commission (“Commission”) shall conduct a National Assessment of Demand Response. The Commission shall, within 18 months of the date of enactment of this part, submit a report to Congress that includes each of the following:

[(1) Estimation of nationwide demand response potential in 5 and 10 year horizons, including data on a State-by-State basis, and a methodology for updates of such estimates on an annual basis.

[(2) Estimation of how much of this potential can be achieved within 5 and 10 years after the enactment of this part accompanied by specific policy recommendations that if implemented can achieve the estimated potential. Such recommendations shall include options for funding and/or incentives for the development of demand response resources.

[(3) The Commission shall further note any barriers to demand response programs offering flexible, non-discriminatory, and fairly compensatory terms for the services and benefits made available, and shall provide recommendations for overcoming such barriers.

[(4) The Commission shall seek to take advantage of pre-existing research and ongoing work, and shall insure that there is no duplication of effort.

[(b) NATIONAL ACTION PLAN ON DEMAND RESPONSE.—The Commission shall further develop a National Action Plan on Demand Response, soliciting and accepting input and participation from a broad range of industry stakeholders, State regulatory utility commissioners, and non-governmental groups. The Commission shall seek consensus where possible, and decide on optimum solutions to issues that defy consensus. Such Plan shall be completed within 1 year after the completion of the National Assessment of Demand Response, and shall meet each of the following objectives:

[(1) Identification of requirements for technical assistance to States to allow them to maximize the amount of demand response resources that can be developed and deployed.

[(2) Design and identification of requirements for implementation of a national communications program that includes broad-based customer education and support.

[(3) Development or identification of analytical tools, information, model regulatory provisions, model contracts, and other support materials for use by customers, States, utilities and demand response providers.

[(c) Upon completion, the National Action Plan on Demand Response shall be published, together with any favorable and dis-

senting comments submitted by participants in its preparation. Six months after publication, the Commission, together with the Secretary of Energy, shall submit to Congress a proposal to implement the Action Plan, including specific proposed assignments of responsibility, proposed budget amounts, and any agreements secured for participation from State and other participants.

[(d) AUTHORIZATION.—There are authorized to be appropriated to the Commission to carry out this section not more than \$10,000,000 for each of the fiscal years 2008, 2009, and 2010.]

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## TITLE VIII—ENERGY SAVINGS PERFORMANCE CONTRACTS

### SEC. 801. AUTHORITY TO ENTER INTO CONTRACTS.

(a) IN GENERAL.—(1) The head of a Federal agency may enter into contracts under this title solely for the purpose of achieving energy savings and benefits ancillary to that purpose. Each such contract may, notwithstanding any other provision of law, be for a period not to exceed 25 years. Such contract shall provide that the contractor shall incur costs of implementing energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel, in exchange for a share of any energy savings directly resulting from implementation of such measures during the term of the contract.

(2)(A) Contracts under this title shall be energy savings performance contracts and shall require an annual energy audit and specify the terms and conditions of any Government payments and performance guarantees. Any such performance guarantee shall provide that the contractor is responsible for maintenance and repair services for any energy related equipment, including computer software systems.

(B) Aggregate annual payments by an agency to both utilities and energy savings performance contractors, under an energy savings performance contract, may not exceed the amount that the agency would have paid for utilities without an energy savings performance contract (as estimated through the procedures developed pursuant to this section) during contract years. The contract shall provide for a guarantee of savings to the agency, and shall establish payment schedules reflecting such guarantee, taking into account any capital costs under the contract.

(C) Federal agencies may incur obligations pursuant to such contracts to finance energy conservation measures provided guaranteed savings exceed the debt service requirements.

(D) A Federal agency may enter into a multiyear contract under this title for a period not to exceed 25 years beginning on the date of the delivery order, without funding of cancellation charges before cancellation, if—

(i) such contract was awarded in a competitive manner pursuant to subsection (b)(2), using procedures and methods established under this title;

(ii) funds are available and adequate for payment of the costs of such contract for the first fiscal year; and

(iii) such contract is governed by part 17.1 of the Federal Acquisition Regulation promulgated under section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421) or the applicable rules promulgated under this title.

(E) FUNDING OPTIONS.—In carrying out a contract under this title, a Federal agency may use any combination of—

(i) appropriated funds; and

(ii) private financing under an energy savings performance contract.

(F) PROMOTION OF CONTRACTS.—In carrying out this section, a Federal agency shall not—

(i) establish a Federal agency policy that limits the maximum contract term under subparagraph (D) to a period shorter than 25 years; [or]

(ii) limit the total amount of obligations under energy savings performance contracts or other private financing of energy savings measures[.]; or

(iii) *limit the recognition of operation and maintenance savings associated with systems modernized or replaced with the implementation of energy conservation measures, water conservation measures, or any series of energy conservation measures and water conservation measures.*

(G) MEASUREMENT AND VERIFICATION REQUIREMENTS FOR PRIVATE FINANCING.—

(i) IN GENERAL.—In the case of energy savings performance contracts, the evaluations and savings measurement and verification required under paragraphs (2) and (4) of section 543(f) shall be used by a Federal agency to meet the requirements for the need for energy audits, calculation of energy savings, and any other evaluation of costs and savings needed to implement the guarantee of savings under this section.

(ii) MODIFICATION OF EXISTING CONTRACTS.—Not later than 18 months after the date of enactment of this subparagraph, each Federal agency shall, to the maximum extent practicable, modify any indefinite delivery and indefinite quantity energy savings performance contracts, and other indefinite delivery and indefinite quantity contracts using private financing, to conform to the amendments made by subtitle B of title V of the Energy Independence and Security Act of 2007.

(H) MISCELLANEOUS AUTHORITY.—*Notwithstanding any other provision of law, a Federal agency may sell or transfer energy savings and apply the proceeds of such sale or transfer to fund a contract under this title.*

(b) IMPLEMENTATION.—(1)(A) The Secretary, with the concurrence of the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act, not later than 180 days after the date of the enactment of the Energy Policy Act of 1992, shall, by rule, establish appropriate procedures and methods for use by Federal agencies to select, monitor, and terminate contracts with energy service contractors in accordance with laws governing Federal procurement that will achieve the in-

tent of this section in a cost-effective manner. In developing such procedures and methods, the Secretary, with the concurrence of the Federal Acquisition Regulatory Council, shall determine which existing regulations are inconsistent with the intent of this section and shall formulate substitute regulations consistent with laws governing Federal procurement.

(B) The procedures and methods established pursuant to subparagraph (A) shall be the procedures and contracting methods for selection, by an agency, of a contractor to provide energy savings performance services. Such procedures and methods shall provide for the calculation of energy savings based on sound engineering and financial practices.

(2) The procedures and methods established pursuant to paragraph (1)(A) shall—

(A) allow the Secretary to—

(i) request statements of qualifications, which shall, at a minimum, include prior experience and capabilities of contractors to perform the proposed types of energy savings services and financial and performance information, from firms engaged in providing energy savings services; and

(ii) from the statements received, designate and prepare a list, with an update at least annually, of those firms that are qualified to provide energy savings services;

(B) require each agency to use the list prepared by the Secretary pursuant to subparagraph (A)(ii) unless the agency elects to develop an agency list of firms qualified to provide energy savings performance services using the same selection procedures and methods as are required of the Secretary in preparing such lists; and

(C) allow the head of each agency to—

(i) select firms from the list prepared pursuant to subparagraph (A)(ii) or the list prepared by the agency pursuant to subparagraph (B) to conduct discussions concerning a particular proposed energy savings project, including requesting a technical and price proposal from such selected firms for such project;

(ii) select from such firms the most qualified firm to provide energy savings services based on technical and price proposals and any other relevant information;

(iii) permit receipt of unsolicited proposals for energy savings performance contracting services from a firm that such agency has determined is qualified to provide such services under the procedures established pursuant to paragraph (1)(A), and require agency facility managers to place a notice in the Commerce Business Daily announcing they have received such a proposal and invite other similarly qualified firms to submit competing proposals; and

(iv) enter into an energy savings performance contract with a firm qualified under clause (iii), consistent with the procedures and methods established pursuant to paragraph (1)(A).

(3) A firm not designated as qualified to provide energy savings services under paragraph (2)(A)(i) or paragraph (2)(B) may request a review of such decision to be conducted in accordance with proce-



dures to be developed by the board of contract appeals of the General Services Administration.

(c) TASK OR DELIVERY ORDERS.—(1) The head of a Federal agency may issue a task or delivery order under an energy savings performance contract by—

(A) notifying all contractors that have received an award under such contract that the agency proposes to discuss energy savings performance services for some or all of its facilities and, following a reasonable period of time to provide a proposal in response to the notice, soliciting from such contractors the submission of expressions of interest in, and contractor qualifications for, performing site surveys or investigations and feasibility designs and studies, and including in the notice summary information concerning energy use for any facilities that the agency has specific interest in including in such task or delivery order;

(B) reviewing all expressions of interest and qualifications submitted pursuant to the notice under subparagraph (A);

(C) selecting two or more contractors (from among those reviewed under subparagraph (B)) to conduct discussions concerning the contractors' respective qualifications to implement potential energy conservation measures, including—

(i) requesting references and specific detailed examples with respect to similar efforts and the resulting energy savings of such similar efforts; and

(ii) requesting an explanation of how such similar efforts relate to the scope and content of the task or delivery order concerned;

(D) selecting and authorizing—

(i) more than one contractor (from among those selected under subparagraph (C)) to conduct site surveys, investigations, feasibility designs and studies, or similar assessments for the energy savings performance contract services (or for discrete portions of such services), for the purpose of allowing each such contractor to submit a firm, fixed-price proposal to implement specific energy conservation measures; or

(ii) one contractor (from among those selected under subparagraph (C)) to conduct a site survey, investigation, feasibility design and study, or similar assessment for the purpose of allowing the contractor to submit a firm, fixed-price proposal to implement specific energy conservation measures;

(E) providing a debriefing to any contractor not selected under subparagraph (D);

(F) negotiating a task or delivery order for energy savings performance contracting services with the contractor or contractors selected under subparagraph (D) based on the energy conservation measures identified; and

(G) issuing a task or delivery order for energy savings performance contracting services to such contractor or contractors.

(2) The issuance of a task or delivery order for energy savings performance contracting services pursuant to paragraph (1) is deemed to satisfy the task and delivery order competition requirements in section 2304c(d) of title 10, United States Code, and sec-

tion 303J(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253j(d)).

(3) The Secretary may issue guidance as necessary to agencies issuing task or delivery orders pursuant to paragraph (1).

**SEC. 802. PAYMENT OF COSTS.**

Any amount paid by a Federal agency pursuant to any contract entered into under this title may be paid only from funds appropriated or otherwise made available to the agency for fiscal year 1986 or any fiscal year thereafter for the payment of energy, water, or wastewater treatment expenses ~~[(and related operation and maintenance expenses)]~~, *including related operations and maintenance expenses.*

\* \* \* \* \*

**SEC. 804. DEFINITIONS.**

For purposes of this title, the following definitions apply:

(1) The term “Federal agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency.

(2) The term “energy savings” means—

(A) a reduction in the cost of energy, water, or wastewater treatment, from a base cost established through a methodology set forth in the contract, used in an existing ~~[[federally owned building or buildings or other federally owned facilities]]~~ *Federal building (as defined in section 551 (42 U.S.C. 8259))* as a result of—

(i) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

(ii) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a ~~[[federally owned building or buildings or other federally owned facilities]]~~ *Federal building (as defined in section 551 (42 U.S.C. 8259))*; or

(iii) the increased efficient use of existing water sources in either interior or exterior applications;

(B) the increased efficient use of an existing energy source by cogeneration or heat recovery;

(C) if otherwise authorized by Federal or State law (including regulations), the sale or transfer of electrical or thermal energy generated on-site from renewable energy sources or cogeneration, but in excess of Federal needs, to utilities or non-Federal energy users~~]; and~~];

(D) the increased efficient use of existing water sources in interior or exterior applications~~].~~];

~~(E) the use, sale, or transfer of energy incentives, rebates, or credits (including renewable energy credits) from Federal, State, or local governments or utilities; and~~

~~(F) any revenue generated from a reduction in energy or water use, more efficient waste recycling, or additional energy generated from more efficient equipment.~~

(3) The terms “energy savings contract” and “energy savings performance contract” mean a contract that provides for the performance of services for the design, acquisition, installation,

testing, and, where appropriate, operation, maintenance, and repair, of an identified energy or water conservation measure or series of measures at 1 or more locations. Such contracts shall, with respect to an agency facility that is a public building (as such term is defined in section 3301 of title 40, United States Code), be in compliance with the prospectus requirements and procedures of section 3307 of title 40, United States Code.

(4) The term “energy or water conservation measure” means—

(A) an energy conservation measure, as defined in section 551; or

(B) a water conservation measure that improves the efficiency of water use, is life-cycle cost-effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities, or other related activities, not at a Federal hydroelectric facility.

## ENERGY CONSERVATION AND PRODUCTION ACT

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Energy Conservation and Production Act”.*

\* \* \* \* \*

### TITLE II—ELECTRIC UTILITIES RATE DESIGN INITIATIVES

\* \* \* \* \*

【Sec. 207. State utility regulatory assistance.】

\* \* \* \* \*

### TITLE III—ENERGY CONSERVATION STANDARDS FOR NEW BUILDINGS

\* \* \* \* \*

【Sec. 307. Support for voluntary building energy codes.】

*Sec. 307. Support for model building energy codes.*

\* \* \* \* \*

## TITLE II—ELECTRIC UTILITY RATE DESIGN INITIATIVES

\* \* \* \* \*

### 【STATE UTILITY REGULATORY ASSISTANCE

【SEC. 207. (a) The Secretary may make grants to State utility regulatory commissions and nonregulated electric utilities (as defined in the Public Utility Regulatory Policies Act of 1978) to carry out duties and responsibilities under titles I and III, and section 210, of the Public Utility Regulatory Policies Act of 1978. No grant may be made under this section to any Federal agency.

【(b) Any requirements established by the Secretary with respect to grants under this section may be only such requirements as are necessary to assure that such grants are expended solely to carry out duties and responsibilities referred to in subsection (a) or such as are otherwise required by law.

[(c) No grant may be made under this section unless an application for such grant is submitted to the Secretary in such form and manner as the Secretary may require. The Secretary may not approve an application of a State utility regulatory commission or nonregulated electric utility unless such commission or nonregulated electric utility assures the Secretary that funds made available under this section will be in addition to, and not in substitution for, funds made available to such commission or nonregulated electric utility from other governmental sources.

[(d) The funds appropriated for purposes of this section shall be apportioned among the States in such manner that grants made under this section in each State shall not exceed the lesser of—

[(1) the amount determined by dividing equally among all States the total amount available under this section for such grants, or

[(2) the amount which the Secretary is authorized to provide pursuant to subsections (b) and (c) of this section for such State.]

\* \* \* \* \*

### TITLE III—ENERGY CONSERVATION STANDARDS FOR NEW BUILDINGS

\* \* \* \* \*

#### DEFINITIONS

SEC. 303. As used in this title:

(1) The term “Administrator” means the Administrator of the Federal Energy Administration; except that after such Administration ceases to exist, such term means any officer of the United States designated by the President for purposes of this title.

(2) The term “building” means any structure to be constructed which includes provision for a heating or cooling system, or both, or for a hot water system.

(3) The term “building code” means a legal instrument which is in effect in a State or unit of general purpose local government, the provisions of which must be adhered to if a building is to be considered to be in conformance with law and suitable for occupancy and use.

(4) The term “commercial building” means any building other than a residential building, including any building developed for industrial or public purposes.

(5) The term “Federal agency” means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, including the United States Postal Service, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(6) The term “Federal building” means any building [to be constructed] *constructed or altered* by, or for the use of, any Federal agency. Such term shall include buildings built for the purpose of being leased by a Federal agency, and privatized military housing.

(7) The term “Federal financial assistance” means (A) any form of loan, grant, guarantee, insurance, payment, rebate,

subsidy, or any other form of direct or indirect Federal assistance (other than general or special revenue sharing or formula grants made to States) approved by any Federal officer or agency; or (B) any loan made or purchased by any bank, savings and loan association, or similar institution subject to regulation by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration.

(8) The term “National Institute of Building Sciences” means the institute established by section 809 of the Housing and Community Development Act of 1974.

(9) The term “residential building” means any structure which is constructed and developed for residential occupancy.

(10) The term “Secretary” means the Secretary of Housing and Urban Development.

(11) The term “State” includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory and possession of the United States.

(12) The term “unit of general purpose local government” means any city, county, town, municipality, or other political subdivision of a State (or any combination thereof), which has a building code or similar authority over a particular geographic area.

(13) The term “Federal building energy standards” means energy consumption objectives to be met without specification of the methods, materials, or equipment to be employed in achieving those objectives, but including statements of the requirements, criteria, and evaluation methods to be used, and any necessary commentary.

[(14) The term “voluntary building energy code” means a building energy code developed and updated through a consensus process among interested persons, such as that used by the Council of American Building Officials; the American Society of Heating, Refrigerating, and Air-Conditioning Engineers; or other appropriate organizations.]

(14) *MODEL BUILDING ENERGY CODE.—The term “model building energy code” means a voluntary building energy code or standard developed and updated through a consensus process among interested persons, such as the IECC or ASHRAE Standard 90.1 or a code used by other appropriate organizations regarding which the Secretary has issued a determination that buildings subject to it would achieve greater energy efficiency than under a previously developed code.*

(15) The term “CABO” means the Council of American Building Officials.

(16) The term “ASHRAE” means the American Society of Heating, Refrigerating, and Air-Conditioning Engineers.

(17) *MAJOR RENOVATION.—The term “major renovation” means a modification of building energy systems sufficiently extensive that the whole building can meet energy standards for new buildings, based on criteria to be established by the Secretary through notice and comment rulemaking.*

(18) *ASHRAE STANDARD 90.1*.—The term “ASHRAE Standard 90.1” means the American Society of Heating, Refrigerating and Air-Conditioning Engineers ANSI/ASHRAE/IES Standard 90/1 Energy Standard for Buildings Except Low-Rise Residential Buildings.

(19) *COST-EFFECTIVE*.—The term “cost-effective” means having a simple payback of 10 years or less.

(20) *IECC*.—The term “IECC” means the International Energy Conservation Code as published by the International Code Council.

(21) *INDIAN TRIBE*.—The term “Indian tribe” has the meaning given the term in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103).

(22) *SIMPLE PAYBACK*.—The term “simple payback” means the time in years that is required for energy savings to exceed the incremental first cost of a new requirement or code.

(23) *TECHNICALLY FEASIBLE*.—The term “technically feasible” means capable of being achieved, based on widely available appliances, equipment, technologies, materials, and construction practices.

#### **[SEC. 304. UPDATING STATE BUILDING ENERGY EFFICIENCY CODES.]**

[(a) CONSIDERATION AND DETERMINATION RESPECTING RESIDENTIAL BUILDING ENERGY CODES.—(1) Not later than 2 years after the date of the enactment of the Energy Policy Act of 1992, each State shall certify to the Secretary that it has reviewed the provisions of its residential building code regarding energy efficiency and made a determination as to whether it is appropriate for such State to revise such residential building code provisions to meet or exceed CABO Model Energy Code, 1992.

[(2) The determination referred to in paragraph (1) shall be—

[(A) made after public notice and hearing;

[(B) in writing;

[(C) based upon findings included in such determination and upon the evidence presented at the hearing; and

[(D) available to the public.

[(3) Each State may, to the extent consistent with otherwise applicable State law, revise the provisions of its residential building code regarding energy efficiency to meet or exceed CABO Model Energy Code, 1992, or may decline to make such revisions.

[(4) If a State makes a determination under paragraph (1) that it is not appropriate for such State to revise its residential building code, such State shall submit to the Secretary, in writing, the reasons for such determination, and such statement shall be available to the public.

[(5)(A) Whenever CABO Model Energy Code, 1992, (or any successor of such code) is revised, the Secretary shall, not later than 12 months after such revision, determine whether such revision would improve energy efficiency in residential buildings. The Secretary shall publish notice of such determination in the Federal Register.

[(B) If the Secretary makes an affirmative determination under subparagraph (A), each State shall, not later than 2 years after the date of the publication of such determination, certify that it has reviewed the provisions of its residential building code regarding energy efficiency and made a determination as to whether it is appro-

priate for such State to revise such residential building code provisions to meet or exceed the revised code for which the Secretary made such determination.

[(C) Paragraphs (2), (3), and (4) shall apply to any determination made under subparagraph (B).

[(b) CERTIFICATION OF COMMERCIAL BUILDING ENERGY CODE UPDATES.—(1) Not later than 2 years after the date of the enactment of the Energy Policy Act of 1992, each State shall certify to the Secretary that it has reviewed and updated the provisions of its commercial building code regarding energy efficiency. Such certification shall include a demonstration that such State's code provisions meet or exceed the requirements of ASHRAE Standard 90.1–1989.

[(2)(A) Whenever the provisions of ASHRAE Standard 90.1–1989 (or any successor standard) regarding energy efficiency in commercial buildings are revised, the Secretary shall, not later than 12 months after the date of such revision, determine whether such revision will improve energy efficiency in commercial buildings. The Secretary shall publish a notice of such determination in the Federal Register.

[(B)(i) If the Secretary makes an affirmative determination under subparagraph (A), each State shall, not later than 2 years after the date of the publication of such determination, certify that it has reviewed and updated the provisions of its commercial building code regarding energy efficiency in accordance with the revised standard for which such determination was made. Such certification shall include a demonstration that the provisions of such State's commercial building code regarding energy efficiency meet or exceed such revised standard.

[(ii) If the Secretary makes a determination under subparagraph (A) that such revised standard will not improve energy efficiency in commercial buildings, State commercial building code provisions regarding energy efficiency shall meet or exceed ASHRAE Standard 90.1–1989, or if such standard has been revised, the last revised standard for which the Secretary has made an affirmative determination under subparagraph (A).

[(c) EXTENSIONS.—The Secretary shall permit extensions of the deadlines for the certification requirements under subsections (a) and (b) if a State can demonstrate that it has made a good faith effort to comply with such requirements and that it has made significant progress in doing so.

[(d) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to States to implement the requirements of this section, and to improve and implement State residential and commercial building energy efficiency codes or to otherwise promote the design and construction of energy efficient buildings.

[(e) AVAILABILITY OF INCENTIVE FUNDING.—(1) The Secretary shall provide incentive funding to States to implement the requirements of this section, and to improve and implement State residential and commercial building energy efficiency codes, including increasing and verifying compliance with such codes. In determining whether, and in what amount, to provide incentive funding under this subsection, the Secretary shall consider the actions proposed by the State to implement the requirements of this section, to improve and implement residential and commercial building energy

efficiency codes, and to promote building energy efficiency through the use of such codes.

[(2) Additional funding shall be provided under this subsection for implementation of a plan to achieve and document at least a 90 percent rate of compliance with residential and commercial building energy efficiency codes, based on energy performance—

[(A) to a State that has adopted and is implementing, on a statewide basis—

[(i) a residential building energy efficiency code that meets or exceeds the requirements of the 2004 International Energy Conservation Code, or any succeeding version of that code that has received an affirmative determination from the Secretary under subsection (a)(5)(A); and

[(ii) a commercial building energy efficiency code that meets or exceeds the requirements of the ASHRAE Standard 90.1–2004, or any succeeding version of that standard that has received an affirmative determination from the Secretary under subsection (b)(2)(A); or

[(B) in a State in which there is no statewide energy code either for residential buildings or for commercial buildings, to a local government that has adopted and is implementing residential and commercial building energy efficiency codes, as described in subparagraph (A).

[(3) Of the amounts made available under this subsection, the Secretary may use \$500,000 for each fiscal year to train State and local officials to implement codes described in paragraph (2).

[(4)(A) There are authorized to be appropriated to carry out this subsection—

[(i) \$25,000,000 for each of fiscal years 2006 through 2010; and

[(ii) such sums as are necessary for fiscal year 2011 and each fiscal year thereafter.

[(B) Funding provided to States under paragraph (2) for each fiscal year shall not exceed one-half of the excess of funding under this subsection over \$5,000,000 for the fiscal year.】

**SEC. 304. UPDATING STATE BUILDING ENERGY EFFICIENCY CODES.**

(a) *IN GENERAL.*—*The Secretary shall provide technical assistance, as described in subsection (e), for the purposes of—*

*(1) implementation of building energy codes by States, Indian tribes, and, as appropriate, by local governments, that are technically feasible and cost-effective; and*

*(2) supporting full compliance with the State, tribal, and local codes.*

(b) *STATE AND INDIAN TRIBE CERTIFICATION OF BUILDING ENERGY CODE UPDATES.*—

*(1) REVIEW AND UPDATING OF CODES BY EACH STATE AND INDIAN TRIBE.*—

*(A) IN GENERAL.*—*Not later than 3 years after the date on which a model building energy code is published, each State or Indian tribe shall certify whether or not the State or Indian tribe, respectively, has reviewed and updated the energy provisions of the building code of the State or Indian tribe, respectively.*



(B) *DEMONSTRATION.*—The certification shall include a statement of whether or not the energy savings for the code provisions that are in effect throughout the State or Indian tribal territory meet or exceed—

(i) the energy savings of the most recently published model building energy code; or

(ii) the targets established under section 307(b)(2).

(C) *NO MODEL BUILDING ENERGY CODE UPDATE.*—If a model building energy code is not updated by a target date established under section 307(b)(2)(D), each State or Indian tribe shall, not later than 3 years after the specified date, certify whether or not the State or Indian tribe, respectively, has reviewed and updated the energy provisions of the building code of the State or Indian tribe, respectively, to meet or exceed the target in section 307(b)(2).

(2) *VALIDATION BY SECRETARY.*—Not later than 90 days after a State or Indian tribe certification under paragraph (1), the Secretary shall—

(A) determine whether the code provisions of the State or Indian tribe, respectively, meet the criteria specified in paragraph (1);

(B) determine whether the certification submitted by the State or Indian tribe, respectively, is complete; and

(C) if the requirements of subparagraph (B) are satisfied, validate the certification.

(3) *LIMITATION.*—Nothing in this section shall be interpreted to require a State or Indian tribe to adopt any building code or provision within a code.

(c) *IMPROVEMENTS IN COMPLIANCE WITH BUILDING ENERGY CODES.*—

(1) *REQUIREMENT.*—

(A) *IN GENERAL.*—Not later than 3 years after the date of a certification under subsection (b), each State and Indian tribe shall certify whether or not the State or Indian tribe, respectively, has—

(i) achieved full compliance under paragraph (3) with the applicable certified State or Indian tribe building energy code or with the associated model building energy code; or

(ii) made significant progress under paragraph (4) toward achieving compliance with the applicable certified State or Indian tribe building energy code or with the associated model building energy code.

(B) *REPEAT CERTIFICATIONS.*—If the State or Indian tribe certifies progress toward achieving compliance, the State or Indian tribe shall repeat the certification until the State or Indian tribe certifies that the State or Indian tribe has achieved full compliance.

(2) *MEASUREMENT OF COMPLIANCE.*—A certification under paragraph (1) shall include documentation of the rate of compliance based on—

(A) inspections of a random sample of the buildings covered by the code in the preceding year; or

(B) an alternative method that yields an accurate measure of compliance.

(3) *ACHIEVEMENT OF COMPLIANCE.*—A State or Indian tribe shall be considered to achieve full compliance under paragraph (1) if—

(A) at least 90 percent of building space covered by the code in the preceding year substantially meets all the requirements of the applicable code specified in paragraph (1), or achieves equivalent or greater energy savings level; or

(B) the estimated excess energy use of buildings that did not meet the applicable code specified in paragraph (1) in the preceding year, compared to a baseline of comparable buildings that meet this code, is not more than 5 percent of the estimated energy use of all buildings covered by this code during the preceding year.

(4) *SIGNIFICANT PROGRESS TOWARD ACHIEVEMENT OF COMPLIANCE.*—A State or Indian tribe shall be considered to have made significant progress toward achieving compliance for purposes of paragraph (1) if the State or Indian tribe—

(A) has developed and is implementing a plan for achieving compliance during the 8-year period beginning on the date of enactment of this paragraph, including annual targets for compliance and active training and enforcement programs; and

(B) has met the most recent target under subparagraph (A).

(5) *VALIDATION BY SECRETARY.*—Not later than 90 days after a State or Indian tribe certification under paragraph (1), the Secretary shall—

(A) determine whether the State or Indian tribe has demonstrated meeting the criteria of this subsection, including accurate measurement of compliance;

(B) determine whether the certification submitted by the State or Indian tribe is complete; and

(C) if the requirements of subparagraph (B) are satisfied, validate the certification.

(6) *LIMITATION.*—Nothing in this section shall be interpreted to require a State or Indian tribe to adopt any building code or provision within a code.

(d) *STATES OR INDIAN TRIBES THAT DO NOT ACHIEVE COMPLIANCE.*—

(1) *REPORTING.*—A State or Indian tribe that has not made a certification required under subsection (b) or (c) by the applicable deadline shall submit to the Secretary a report on the status of the State or Indian tribe with respect to meeting the requirements and submitting the certification.

(2) *STATE SOVEREIGNTY.*—Nothing in this section shall be interpreted to require a State or Indian tribe to adopt any building code or provision within a code.

(3) *LOCAL GOVERNMENT.*—In any State or Indian tribe for which the Secretary has not validated a certification under subsection (b) or (c), a local government may be eligible for Federal support by meeting the certification requirements of subsections (b) and (c).

(4) *ANNUAL REPORTS BY SECRETARY.*—

(A) *IN GENERAL.*—The Secretary shall annually submit to Congress, and publish in the Federal Register, a report on—

- (i) the status of model building energy codes;
- (ii) the status of code adoption and compliance in the States and Indian tribes;
- (iii) implementation of this section; and
- (iv) improvements in energy savings over time as a result of the targets established under section 307(b)(2).

(B) *IMPACTS.*—The report shall include estimates of impacts of past action under this section, and potential impacts of further action, on—

- (i) upfront financial and construction costs, cost benefits and returns (using a return on investment analysis), and lifetime energy use for buildings;
- (ii) resulting energy costs to individuals and businesses; and
- (iii) resulting overall annual building ownership and operating costs.

(e) *TECHNICAL ASSISTANCE TO STATES AND INDIAN TRIBES.*—

(1) *IN GENERAL.*—The Secretary shall, upon request, provide technical assistance to States and Indian tribes to implement the goals and requirements of this section—

- (A) to implement State residential and commercial building energy codes; and
- (B) to document the rate of compliance with a building energy code.

(2) *TECHNICAL ASSISTANCE.*—The assistance shall include, as requested by the State or Indian tribe, technical assistance in—

- (A) evaluating the energy savings of building energy codes;
- (B) assessing the economic considerations, referenced in section 307(b)(4), of implementing building energy codes;
- (C) building energy analysis and design tools;
- (D) energy simulation models;
- (E) building demonstrations;
- (F) developing the definitions of energy use intensity and building types for use in model building energy codes to evaluate the efficiency impacts of the model building energy codes; and
- (G) complying with a performance-based pathway referenced in the model code.

(3) *EXCLUSION.*—For purposes of this section, “technical assistance” shall not include actions that promote or discourage the adoption of a particular building energy code, code provision, or energy savings target to a State or Indian tribe.

(4) *INFORMATION QUALITY AND TRANSPARENCY.*—For purposes of this section, information provided by the Secretary, attendant to any technical assistance provided to a State or Indian tribe, is “influential information” and shall satisfy the guidelines established by the Office of Management and Budget and published at 67 Federal Register 8,452 (Feb. 22, 2002).

(f) *FEDERAL SUPPORT.*—

(1) *IN GENERAL.*—The Secretary shall provide support to States and Indian tribes—

(A) to implement the reporting requirements of this section; and

(B) to implement residential and commercial building energy codes, including increasing and verifying compliance with the codes and training of State, tribal, and local building code officials to implement and enforce the codes.

(2) *EXCLUSION.*—Support shall not be given to support adoption and implementation of model building energy codes for which the Secretary has made a determination under section 307(g)(1)(C) that the code is not cost-effective.

(3) *TRAINING.*—Support shall be offered to States to train State and local building code officials to implement and enforce codes described in paragraph (1)(B).

(4) *LOCAL GOVERNMENTS.*—States may work under this subsection with local governments that implement and enforce codes described in paragraph (1)(B).

(g) *VOLUNTARY PROGRAMS TO EXCEED MODEL BUILDING ENERGY CODE.*—

(1) *IN GENERAL.*—The Secretary shall provide technical assistance, as described in subsection (e), for the development of voluntary programs that exceed the model building energy codes for residential and commercial buildings for use as—

(A) voluntary incentive programs adopted by local, tribal, or State governments; and

(B) nonbinding guidelines for energy-efficient building design.

(2) *TARGETS.*—The voluntary programs described in paragraph (1) shall be designed—

(A) to achieve substantial energy savings compared to the model building energy codes; and

(B) to meet targets under section 307(b), if available, up to 3 to 6 years in advance of the target years.

(h) *STUDIES.*—

(1) *GAO STUDY.*—

(A) *IN GENERAL.*—The Comptroller General of the United States shall conduct a study of the impacts of updating the national model building energy codes for residential and commercial buildings. In conducting the study, the Comptroller General shall consider and report, at a minimum—

(i) the actual energy consumption savings stemming from updated energy codes compared to the energy consumption savings predicted during code development;

(ii) the actual consumer cost savings stemming from updated energy codes compared to predicted consumer cost savings; and

(iii) an accounting of expenditures of the Federal funds under each program authorized by this title.

(B) *REPORT TO CONGRESS.*—Not later than 3 years after the date of enactment of the North American Energy Security and Infrastructure Act of 2015, the Comptroller General of the United States shall submit a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives including the study findings and conclusions.

(2) *FEASIBILITY STUDY.*—*The Secretary, in consultation with building science experts from the National Laboratories and institutions of higher education, designers and builders of energy-efficient residential and commercial buildings, code officials, and other stakeholders, shall undertake a study of the feasibility, impact, economics, and merit of—*

*(A) code improvements that would require that buildings be designed, sited, and constructed in a manner that makes the buildings more adaptable in the future to become zero-net-energy after initial construction, as advances are achieved in energy-saving technologies;*

*(B) code procedures to incorporate a ten-year payback, not just first-year energy use, in trade-offs and performance calculations; and*

*(C) legislative options for increasing energy savings from building energy codes, including additional incentives for effective State and local verification of compliance with and enforcement of a code.*

(3) *ENERGY DATA IN MULTITENANT BUILDINGS.*—*The Secretary, in consultation with appropriate representatives of the utility, utility regulatory, building ownership, and other stakeholders, shall—*

*(A) undertake a study of best practices regarding delivery of aggregated energy consumption information to owners and managers of residential and commercial buildings with multiple tenants and uses; and*

*(B) consider the development of a memorandum of understanding between and among affected stakeholders to reduce barriers to the delivery of aggregated energy consumption information to such owners and managers.*

(i) *EFFECT ON OTHER LAWS.*—*Nothing in this section or section 307 supersedes or modifies the application of sections 321 through 346 of the Energy Policy and Conservation Act (42 U.S.C. 6291 et seq.).*

(j) *FUNDING LIMITATIONS.*—*No Federal funds shall be—*

*(1) used to support actions by the Secretary, or States, to promote or discourage the adoption of a particular building energy code, code provision, or energy saving target to a State or Indian tribe; or*

*(2) provided to private third parties or non-governmental organizations to engage in such activities.*

#### **SEC. 305. FEDERAL BUILDING ENERGY EFFICIENCY STANDARDS.**

(a)(1) *IN GENERAL.*—Not later than 2 years after the date of the enactment of the Energy Policy Act of 1992, the Secretary, after consulting with appropriate Federal agencies, CABO, ASHRAE, the National Association of Home Builders, the Illuminating Engineering Society, the American Institute of Architects, the National Conference of the States on Building Codes and Standards, and other appropriate persons, shall establish, by rule, Federal building energy standards that require in new Federal buildings those energy efficiency measures that are technologically feasible and economically justified. Such standards shall become effective no later than 1 year after such rule is issued.

(2) The standards established under paragraph (1) shall—

(A) contain energy saving and renewable energy specifications that meet or exceed the energy saving and renewable energy specifications of the 2004 International Energy Conservation Code (in the case of residential buildings) or ASHRAE Standard 90.1–2004 (in the case of commercial buildings);

(B) to the extent practicable, use the same format as the appropriate [voluntary building energy code] *model building energy code*; and

(C) consider, in consultation with the Environmental Protection Agency and other Federal agencies, and where appropriate contain, measures with regard to radon and other indoor air pollutants.

[(3)][(A)] Not later than 1 year after the date of enactment of this paragraph, the Secretary shall establish, by rule, revised Federal building energy efficiency performance standards that require that—

[(i)] if life-cycle cost-effective for new Federal buildings—

[(I)] the buildings be designed to achieve energy consumption levels that are at least 30 percent below the levels established in the version of the ASHRAE Standard or the International Energy Conservation Code, as appropriate, that is in effect as of the date of enactment of this paragraph; and

[(II)] sustainable design principles are applied to the siting, design, and construction of all new and replacement buildings;

[(ii)] if water is used to achieve energy efficiency, water conservation technologies shall be applied to the extent that the technologies are life-cycle cost-effective; and

[(iii)] if lifecycle cost-effective, as compared to other reasonably available technologies, not less than 30 percent of the hot water demand for each new Federal building or Federal building undergoing a major renovation be met through the installation and use of solar hot water heaters.]

[(B)] Not later than 1 year after the date of approval of each subsequent revision of the ASHRAE Standard or the International Energy Conservation Code, as appropriate, the Secretary shall determine, based on the cost-effectiveness of the requirements under the amendment, whether the revised standards established under this paragraph should be updated to reflect the amendment.]

(3) REVISED FEDERAL BUILDING ENERGY EFFICIENCY PERFORMANCE STANDARDS; CERTIFICATION FOR GREEN BUILDINGS.—

(A) REVISED FEDERAL BUILDING ENERGY EFFICIENCY PERFORMANCE STANDARDS.—

(i) IN GENERAL.—Not later than 1 year after the date of enactment of the North American Energy Security and Infrastructure Act of 2015, the Secretary shall establish, by rule, revised Federal building energy efficiency performance standards that require that—

(I) new Federal buildings and alterations and additions to existing Federal buildings—

(aa) meet or exceed the most recent revision of the IECC (in the case of residential buildings) or ASHRAE Standard 90.1 (in the case

*of commercial buildings) as of the date of enactment of the North American Energy Security and Infrastructure Act of 2015; and*

*(bb) meet or exceed the energy provisions of State and local building codes applicable to the building, if the codes are more stringent than the IECC or ASHRAE Standard 90.1, as applicable;*

*(II) unless demonstrated not to be life-cycle cost effective for new Federal buildings and Federal buildings with major renovations—*

*(aa) the buildings be designed to achieve energy consumption levels that are at least 30 percent below the levels established in the version of the ASHRAE Standard or the IECC, as appropriate, that is applied under subclause (I)(aa), including updates under subparagraph (B); and*

*(bb) sustainable design principles are applied to the location, siting, design, and construction of all new Federal buildings and replacement Federal buildings;*

*(III) if water is used to achieve energy efficiency, water conservation technologies shall be applied to the extent that the technologies are life-cycle cost effective; and*

*(IV) if life-cycle cost effective, as compared to other reasonably available technologies, not less than 30 percent of the hot water demand for each new Federal building or Federal building undergoing a major renovation be met through the installation and use of solar hot water heaters.*

*(ii) LIMITATION.—Clause (i)(I) shall not apply to unaltered portions of existing Federal buildings and systems that have been added to or altered.*

*(B) UPDATES.—Not later than 1 year after the date of approval of each subsequent revision of ASHRAE Standard 90.1 or the IECC, as appropriate, the Secretary shall determine whether the revised standards established under subparagraph (A) should be updated to reflect the revisions, based on the energy savings and life-cycle cost effectiveness of the revisions.*

**[(C) In the budget request]**

*(C) BUDGET REQUEST.—In the budget request of the Federal agency for each fiscal year and each report submitted by the Federal agency under section 548(a) of the National Energy Conservation Policy Act (42 U.S.C. 8258(a)), the head of each Federal agency shall include—*

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

*(ii) a statement specifying whether the Federal buildings meet or exceed the revised standards established under this paragraph.*

**[(D) Not later than 1 year after the date of enactment of the Energy Independence and Security Act of 2007, the Secretary shall es-**

tablish, by rule, revised Federal building energy efficiency performance standards that require that:】

【(i) For new Federal buildings and Federal buildings undergoing major renovations, with respect to which the Administrator of General Services is required to transmit a prospectus to Congress under section 3307 of title 40, United States Code, in the case of public buildings (as defined in section 3301 of title 40, United States Code), or of at least \$2,500,000 in costs adjusted annually for inflation for other buildings:】

【(I) The buildings shall be designed so that the fossil fuel-generated energy consumption of the buildings is reduced, as compared with such energy consumption by a similar building in fiscal year 2003 (as measured by Commercial Buildings Energy Consumption Survey or Residential Energy Consumption Survey data from the Energy Information Agency), by the percentage specified in the following table:

<b>【Fiscal Year</b>	<b>Percentage Reduction</b>
2010 .....	55
2015 .....	65
2020 .....	80
2025 .....	90
2030 .....	100.

【(II) Upon petition by an agency subject to this subparagraph, the Secretary may adjust the applicable numeric requirement under subclause (I) downward with respect to a specific building, if the head of the agency designing the building certifies in writing that meeting such requirement would be technically impracticable in light of the agency's specified functional needs for that building and the Secretary concurs with the agency's conclusion. This subclause shall not apply to the General Services Administration.

【(III) Sustainable design principles shall be applied to the siting, design, and construction of such buildings.】

**(D) CERTIFICATION FOR GREEN BUILDINGS.—**

(i) *IN GENERAL.*—Not later than 90 days after the date of enactment of the Energy Independence and Security Act of 2007, the Secretary, after reviewing the findings of the Federal Director under section 436(h) of that Act, in consultation with the Administrator of General Services, and in consultation with the Secretary of Defense for considerations relating to those facilities under the custody and control of the Department of Defense, shall identify a certification system and level for green buildings that the Secretary determines to be the most likely to encourage a comprehensive and environmentally-sound approach to certification of green buildings. The identification of the certification system and level shall be based on a review of the Federal Director's findings under section 436(h) of the Energy Independence and Security Act of 2007 and the criteria specified in clause (iii), shall identify the highest level the Secretary determines is appro-



priate above the minimum level required for certification under the system selected, and shall achieve results at least comparable to the system used by and highest level referenced by the General Services Administration as of the date of enactment of the Energy Independence and Security Act of 2007. Within 90 days of the completion of each study required by clause (iv), the Secretary, in consultation with the Administrator of General Services, and in consultation with the Secretary of Defense for considerations relating to those facilities under the custody and control of the Department of Defense, shall review and update the certification system and level, taking into account the conclusions of such study.

[(ii) In establishing criteria for identifying major renovations that are subject to the requirements of this subparagraph, the Secretary shall take into account the scope, degree, and types of renovations that are likely to provide significant opportunities for substantial improvements in energy efficiency.]

[(iii) In identifying]

(ii) *CONSIDERATIONS.*—*In identifying the green building certification system and level, the Secretary shall take into consideration—*

(I) the ability and availability of assessors and auditors to independently verify the criteria and measurement of metrics at the scale necessary to implement this subparagraph;

(II) the ability of the applicable certification organization to collect and reflect public comment;

(III) the ability of the standard to be developed and revised through a consensus-based process;

(IV) an evaluation of the robustness of the criteria for a high-performance green building, which shall give credit for promoting—

(aa) efficient and sustainable use of water, energy, and other natural resources;

(bb) use of renewable energy sources;

(cc) improved indoor environmental quality through enhanced indoor air quality, thermal comfort, acoustics, day lighting, pollutant source control, and use of low-emission materials and building system controls; and

(dd) such other criteria as the Secretary determines to be appropriate; and

(V) national recognition within the building industry.

[(iv) At least once]

(iii) *STUDY.*—*At least once every 5 years, and in accordance with section 436 of the Energy Independence and Security Act of 2007, the Administrator of General Services shall conduct a study to evaluate and compare available third-party green building certification systems and levels, taking into account the criteria listed in [clause (iii)] clause (ii).*

[(v) The Secretary may]

(iv) *INTERNAL CERTIFICATION PROCESSES.*—*The Secretary may by rule allow Federal agencies to develop internal certifi-*

cation processes, using certified professionals, in lieu of certification by the certification entity identified under **【clause (i)(III)】 clause (i)**. The Secretary shall include in any such rule guidelines to ensure that the certification process results in buildings meeting the applicable certification system and level identified under **【clause (i)(III)】 clause (i)**. An agency employing an internal certification process must continue to obtain external certification by the certification entity identified under **【clause (i)(III)】 clause (i)** for at least 5 percent of the total number of buildings certified annually by the agency.

**【(vi) With respect】**

*(v) PRIVATIZED MILITARY HOUSING.—With respect to privatized military housing, the Secretary of Defense, after consultation with the Secretary may, through rulemaking, 【develop alternative criteria to those established by subclauses (I) and (III) of clause (i) that achieve an equivalent result in terms of energy savings, sustainable design, and】 develop alternative certification systems and levels than the systems and levels identified under clause (i) that achieve an equivalent result in terms of green building performance.*

**【(vii) In addition to】**

*(vi) WATER CONSERVATION TECHNOLOGIES.—In addition to any use of water conservation technologies otherwise required by this section, water conservation technologies shall be applied to the extent that the technologies are life-cycle cost-effective.*

**(b) REPORT ON COMPARATIVE STANDARDS.**—The Secretary shall identify and describe, in the report required under section 308, the basis for any substantive difference between the Federal building energy standards established under this section (including differences in treatment of energy efficiency and renewable energy) and the appropriate **【voluntary building energy code】 model building energy code**.

**【(c) PERIODIC REVIEW.**—The Secretary shall periodically, but not less than once every 5 years, review the Federal building energy standards established under this section and shall, if significant energy savings would result, upgrade such standards to include all new energy efficiency and renewable energy measures that are technologically feasible and economically justified.

**【(d) INTERIM STANDARDS.**—Interim energy performance standards for new Federal buildings issued by the Secretary under this title as it existed before the date of the enactment of the Energy Policy Act of 1992 shall remain in effect until the standards established under subsection (a) become effective.】

*(c) PERIODIC REVIEW.—The Secretary shall—*

*(1) every 5 years, review the Federal building energy standards established under this section; and*

*(2) on completion of a review under paragraph (1), if the Secretary determines that significant energy savings would result, upgrade the standards to include all new energy efficiency and renewable energy measures that are technologically feasible and economically justified.*

\* \* \* \* \*

**[SEC. 307. SUPPORT FOR VOLUNTARY BUILDING ENERGY CODES.**

[(a) *IN GENERAL.*—Not later than 1 year after the date of the enactment of the Energy Policy Act of 1992, the Secretary, after consulting with the Secretary of Housing and Urban Development, the Secretary of Veterans Affairs, other appropriate Federal agencies, CABO, ASHRAE, the National Conference of States on Building Codes and Standards, and any other appropriate building codes and standards organization, shall support the upgrading of voluntary building energy codes for new residential and commercial buildings. Such support shall include—

[(1) a compilation of data and other information regarding building energy efficiency standards and codes in the possession of the Federal Government, State and local governments, and industry organizations;

[(2) assistance in improving the technical basis for such standards and codes;

[(3) assistance in determining the cost-effectiveness and the technical feasibility of the energy efficiency measures included in such standards and codes; and

[(4) assistance in identifying appropriate measures with regard to radon and other indoor air pollutants.

[(b) *REVIEW.*—The Secretary shall periodically review the technical and economic basis of voluntary building energy codes and, based upon ongoing research activities—

[(1) recommend amendments to such codes including measures with regard to radon and other indoor air pollutants;

[(2) seek adoption of all technologically feasible and economically justified energy efficiency measures; and

[(3) otherwise participate in any industry process for review and modification of such codes.]

**SEC. 307. SUPPORT FOR MODEL BUILDING ENERGY CODES.**

(a) *IN GENERAL.*—*The Secretary shall provide technical assistance, as described in subsection (c), for updating of model building energy codes.*

(b) *TARGETS.*—

(1) *IN GENERAL.*—*The Secretary shall provide technical assistance, for updating the model building energy codes.*

(2) *TARGETS.*—

(A) *IN GENERAL.*—*The Secretary shall provide technical assistance to States, Indian tribes, local governments, nationally recognized code and standards developers, and other interested parties for updating of model building energy codes by establishing one or more aggregate energy savings targets through rulemaking in accordance with section 553 of title 5, United States Code, to achieve the purposes of this section.*

(B) *SEPARATE TARGETS.*—*Separate targets may be established for commercial and residential buildings.*

(C) *BASELINES.*—*The baseline for updating model building energy codes shall be the 2009 IECC for residential buildings and ASHRAE Standard 90.1–2010 for commercial buildings.*

(D) *SPECIFIC YEARS.*—

(i) *IN GENERAL.*—*Targets for specific years shall be established and revised by the Secretary through rule-*

making in accordance with section 553 of title 5, United States Code, and coordinated with nationally recognized code and standards developers at a level that—

(I) is at the maximum level of energy efficiency that is technically feasible and cost effective, while accounting for the economic considerations under paragraph (4); and

(II) promotes the achievement of commercial and residential high performance buildings through high performance energy efficiency (within the meaning of section 401 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17061)).

(ii) INITIAL TARGETS.—Not later than 1 year after the date of enactment of this clause, the Secretary shall establish initial targets under this subparagraph.

(iii) DIFFERENT TARGET YEARS.—Subject to clause (i), prior to the applicable year, the Secretary may set a later target year for any of the model building energy codes described in subparagraph (A) if the Secretary determines that a target cannot be met.

(E) SMALL BUSINESS.—When establishing targets under this paragraph through rulemaking, the Secretary shall ensure compliance with the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note; Public Law 104–121) for any indirect economic effect on small entities that is reasonably foreseeable and a result of such rule.

(3) APPLIANCE STANDARDS AND OTHER FACTORS AFFECTING BUILDING ENERGY USE.—In establishing energy savings targets under paragraph (2), the Secretary shall develop and adjust the targets in recognition of potential savings and costs relating to—

(A) efficiency gains made in appliances, lighting, windows, insulation, and building envelope sealing;

(B) advancement of distributed generation and on-site renewable power generation technologies;

(C) equipment improvements for heating, cooling, and ventilation systems and water heating systems;

(D) building management systems and smart grid technologies to reduce energy use; and

(E) other technologies, practices, and building systems regarding building plug load and other energy uses.

In developing and adjusting the targets, the Secretary shall use climate zone weighted averages for equipment efficiency for heating, cooling, ventilation, and water heating systems, using equipment that is actually installed.

(4) ECONOMIC CONSIDERATIONS.—In establishing and revising energy savings targets under paragraph (2), the Secretary shall consider the economic feasibility of achieving the proposed targets established under this section and the potential costs and savings for consumers and building owners, by conducting a return on investment analysis, using a simple payback methodology over a 3-, 5-, and 7-year period. The Secretary shall not propose or provide technical or financial assistance for any

code, provision in the code, or energy target, or amendment thereto, that has a payback greater than 10 years.

(c) **TECHNICAL ASSISTANCE TO MODEL BUILDING ENERGY CODE-SETTING AND STANDARD DEVELOPMENT ORGANIZATIONS.**—

(1) **IN GENERAL.**—*The Secretary shall, on a timely basis, provide technical assistance to model building energy code-setting and standard development organizations consistent with the goals of this section.*

(2) **TECHNICAL ASSISTANCE.**—*The assistance shall include, as requested by the organizations, technical assistance in—*

(A) *evaluating the energy savings of building energy codes;*

(B) *assessing the economic considerations, under subsection (b)(4), of code or standards proposals or revisions;*

(C) *building energy analysis and design tools;*

(D) *energy simulation models;*

(E) *building demonstrations;*

(F) *developing definitions of energy use intensity and building types for use in model building energy codes to evaluate the efficiency impacts of the model building energy codes;*

(G) *developing a performance-based pathway for compliance;*

(H) *developing model building energy codes by Indian tribes in accordance with tribal law; and*

(I) *code development meetings, including through direct Federal employee participation in committee meetings, hearings and online communication, voting, and presenting research and technical or economic analyses during such meetings.*

(3) **EXCLUSION.**—*Except as provided in paragraph (2)(I), for purposes of this section, “technical assistance” shall not include actions that promote or discourage the adoption of a particular building energy code, code provision, or energy savings target.*

(4) **INFORMATION QUALITY AND TRANSPARENCY.**—*For purposes of this section, information provided by the Secretary, attendant to development of any energy savings targets, is influential information and shall satisfy the guidelines established by the Office of Management and Budget and published at 67 Federal Register 8,452 (Feb. 22, 2002).*

(d) **AMENDMENT PROPOSALS.**—

(1) **IN GENERAL.**—*The Secretary may submit timely model building energy code amendment proposals that are technically feasible, cost-effective, and technology-neutral to the model building energy code-setting and standard development organizations, with supporting evidence, sufficient to enable the model building energy codes to meet the targets established under subsection (b)(2).*

(2) **PROCESS AND FACTORS.**—*All amendment proposals submitted by the Secretary shall be published in the Federal Register and made available on the Department of Energy website 90 days prior to any submittal to a code development body, and shall be subject to a public comment period of not less than 60 days. Information provided by the Secretary, attendant to submission of any amendment proposals, is influential information*

and shall satisfy the guidelines established by the Office of Management and Budget and published at 67 *Federal Register* 8,452 (Feb. 22, 2002). When calculating the costs and benefits of an amendment, the Secretary shall use climate zone weighted averages for equipment efficiency for heating, cooling, ventilation, and water heating systems, using equipment that is actually installed.

(e) **ANALYSIS METHODOLOGY.**—The Secretary shall make publicly available the entire calculation methodology (including input assumptions and data) used by the Secretary to estimate the energy savings of code or standard proposals and revisions.

(f) **METHODOLOGY DEVELOPMENT.**—The Secretary shall establish a methodology for evaluating cost effectiveness of energy code changes in multifamily buildings that incorporates economic parameters representative of typical multifamily buildings.

(g) **DETERMINATION.**—

(1) **REVISION OF MODEL BUILDING ENERGY CODES.**—If the provisions of the IECC or ASHRAE Standard 90.1 regarding building energy use are revised, the Secretary shall make a preliminary determination not later than 90 days after the date of the revision, and a final determination not later than 15 months after the date of the revision, on whether or not the revision—

(A) improves energy efficiency in buildings compared to the existing IECC or ASHRAE Standard 90.1, as applicable;

(B) meets the applicable targets under subsection (b)(2); and

(C) is technically feasible and cost-effective.

(2) **CODES OR STANDARDS NOT MEETING CRITERIA.**—

(A) **IN GENERAL.**—If the Secretary makes a preliminary determination under paragraph (1)(B) that a revised IECC or ASHRAE Standard 90.1 does not meet the targets established under subsection (b)(2), is not technically feasible, or is not cost-effective, the Secretary may at the same time provide technical assistance, as described in subsection (c), to the International Code Council or ASHRAE, as applicable, with proposed changes that would result in a model building energy code or standard that meets the criteria, and with supporting evidence. Proposed changes submitted by the Secretary shall be published in the *Federal Register* and made available on the Department of Energy website 90 days prior to any submittal to a code development body, and shall be subject to a public comment period of not less than 60 days. Information provided by the Secretary, attendant to submission of any amendment proposals, is influential information and shall satisfy the guidelines established by the Office of Management and Budget and published at 67 *Federal Register* 8,452 (Feb. 22, 2002).

(B) **INCORPORATION OF CHANGES.**—

(i) **IN GENERAL.**—On receipt of the technical assistance, as described in subsection (c), the International Code Council or ASHRAE, as applicable, shall, prior to the Secretary making a final determination under paragraph (1), have an additional 270 days to accept

or reject the proposed changes made by the Secretary to the model building energy code or standard.

(ii) *FINAL DETERMINATION.*—A final determination under paragraph (1) shall be on the final revised model building energy code or standard.

(h) *ADMINISTRATION.*—In carrying out this section, the Secretary shall—

(1) publish notice of targets, amendment proposals and supporting analysis and determinations under this section in the Federal Register to provide an explanation of and the basis for such actions, including any supporting modeling, data, assumptions, protocols, and cost-benefit analysis, including return on investment;

(2) provide an opportunity for public comment on targets and supporting analysis and determinations under this section, in accordance with section 553 of title 5, United States Code; and

(3) provide an opportunity for public comment on amendment proposals.

(i) *VOLUNTARY CODES AND STANDARDS.*—Notwithstanding any other provision of this section, any model building code or standard established under this section shall not be binding on a State, local government, or Indian tribe as a matter of Federal law.

\* \* \* \* \*

## ENERGY POLICY AND CONSERVATION ACT

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Energy Policy and Conservation Act”.*

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#### TITLE III—IMPROVING ENERGY EFFICIENCY

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##### PART B—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS OTHER THAN AUTOMOBILES

\* \* \* \* \*

#### COVERAGE

**SEC. 322. (a) IN GENERAL.**—The following consumer products, excluding those consumer products designed solely for use in rec-

reational vehicles and other mobile equipment, are covered products:

- (1) Refrigerators, refrigerator-freezers, and freezers which can be operated by alternating current electricity, excluding—
    - (A) any type designed to be used without doors; and
    - (B) any type which does not include a compressor and condenser unit as an integral part of the cabinet assembly.
  - (2) Room air conditioners.
  - (3) Central air conditioners and central air conditioning heat pumps.
  - (4) Water heaters.
  - (5) Furnaces.
  - (6) Dishwashers.
  - (7) Clothes washers.
  - (8) Clothes dryers.
  - (9) Direct heating equipment.
  - (10) Kitchen ranges and ovens.
  - (11) Pool heaters.
  - (12) Television sets.
  - (13) Fluorescent lamp ballasts.
  - (14) General service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps.
  - (15) Showerheads, except safety shower showerheads.
  - (16) Faucets.
  - (17) Water closets.
  - (18) Urinals.
  - (19) Metal halide lamp fixtures.
  - (20) Any other type of consumer product which the Secretary classifies as a covered product under subsection (b).
- (b) SPECIAL CLASSIFICATION OF CONSUMER PRODUCT.—(1) The Secretary may classify a type of consumer product as a covered product if he determines that—
- (A) classifying products of such type as covered products is necessary or appropriate to carry out the purposes of this Act, and
  - (B) average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours (or its Btu equivalent) per year.
- (2) For purposes of this subsection:
- (A) The term “average annual per-household energy use with respect to a type of product” means the estimated aggregate annual energy use (in kilowatt-hours or the Btu equivalent) of consumer products of such type which are used by households in the United States, divided by the number of such households which use products of such type.
  - (B) The Btu equivalent of one kilowatt-hour is 3,412 British thermal units.
  - (C) The term “household” shall be defined under rules of the Secretary.
- (c) MODIFYING DEFINITIONS OF COVERED PRODUCTS.—
- (1) IN GENERAL.—For any covered product for which a definition is provided in section 321, the Secretary may, by rule, unless prohibited herein, modify such definition in order to—
    - (A) address significant changes in the product or the market occurring since the definition was established; and



(B) better enable improvements in the energy efficiency of the product as part of an energy using system.

(2) *ANTIBACKSLIDING EXEMPTION.*—Section 325(o)(1) shall not apply to adjustments to covered product definitions made pursuant to this subsection.

(3) *PROCEDURE FOR MODIFYING DEFINITION.*—

(A) *IN GENERAL.*—Notice of any adjustment to the definition of a covered product and an explanation of the reasons therefor shall be published in the Federal Register and opportunity provided for public comment.

(B) *CONSENSUS REQUIRED.*—Any amendment to the definition of a covered product under this subsection must have consensus support, as reflected in—

(i) the outcome of negotiations conducted in accordance with the subchapter III of chapter 5 of title 5, United States Code (commonly known as the “Negotiated Rulemaking Act of 1990”); or

(ii) the Secretary’s receipt of a statement that is submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary, which contains a recommended modified definition for a covered product.

(4) *EFFECT OF A MODIFIED DEFINITION.*—

(A) *IN GENERAL.*—For any type or class of consumer product which becomes a covered product pursuant to this subsection—

(i) the Secretary may establish test procedures for such type or class of covered product pursuant to section 323 and energy conservation standards pursuant to section 325(l);

(ii) the Commission may prescribe labeling rules pursuant to section 324 if the Commission determines that labeling in accordance with that section is technologically and economically feasible and likely to assist consumers in making purchasing decisions;

(iii) section 327 shall begin to apply to such type or class of covered product in accordance with section 325(ii)(1); and

(iv) standards previously promulgated under section 325 shall not apply to such type or class of product.

(B) *APPLICABILITY.*—For any type or class of consumer product which ceases to be a covered product pursuant to this subsection, the provisions of this part shall no longer apply to the type or class of consumer product.

\* \* \* \* \*

#### LABELING

SEC. 324. (a) *IN GENERAL.*—(1) The Commission shall prescribe labeling rules under this section applicable to all covered products of each of the types specified in paragraphs (1), (2), (4), (6), and (8) through (12) of section 322(a), except to the extent that, with respect to any such type (or class thereof), the Commission deter-

mines under the second sentence of subsection (b)(5) that labeling in accordance with this section is not technologically or economically feasible.

(2)(A) The Commission shall prescribe labeling rules under this section applicable to all covered products of each of the types specified in paragraphs (3), (5), and (7) of section 322(a), except to the extent that with respect to any such type (or class thereof), the Commission determines under the second sentence of subsection (b)(5) that labeling in accordance with this section is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions.

(B) The Commission shall prescribe labeling rules under this section applicable to the covered product specified in paragraph (13) of section 322(a) and to which standards are applicable under section 325. Such rules shall provide that the labeling of any fluorescent lamp ballast manufactured on or after January 1, 1990, will indicate conspicuously, in a manner prescribed by the Commission under subsection (b) by July 1, 1989, a capital letter “E” printed within a circle on the ballast and on the packaging of the ballast or of the luminaire into which the ballast has been incorporated.

(C) METAL HALIDE LAMP FIXTURES.—

(i) IN GENERAL.—The Commission shall issue labeling rules under this section applicable to the covered product specified in section 322(a)(19) and to which standards are applicable under section 325.

(ii) LABELING.—The rules shall provide that the labeling of any metal halide lamp fixture manufactured on or after the later of January 1, 2009, or the date that is 270 days after the date of enactment of this subparagraph, shall indicate conspicuously, in a manner prescribed by the Commission under subsection (b) by July 1, 2008, a capital letter “E” printed within a circle on the packaging of the fixture, and on the ballast contained in the fixture.

(D)(i) Not later than 18 months after the date of the enactment of the Energy Policy Act of 1992, the Commission shall prescribe labeling rules under this section applicable to general service fluorescent lamps, medium base compact fluorescent lamps, and general service incandescent lamps. Except as provided in clause (ii), such rules shall provide that the labeling of any general service fluorescent lamp, medium base compact fluorescent lamp, and general service incandescent lamp manufactured after the 12-month period beginning on the date of the publication of such rule shall indicate conspicuously on the packaging of the lamp, in a manner prescribed by the Commission under subsection (b), such information as the Commission deems necessary to enable consumers to select the most energy efficient lamps which meet their requirements. Labeling information for incandescent lamps shall be based on performance when operated at 120 volts input, regardless of the rated lamp voltage.

(ii) If the Secretary determines that compliance with the standards specified in section 325(i) for any lamp will result in the discontinuance of the manufacture of such lamp, the Commission may exempt such lamp from the labeling rules prescribed under clause (i).

(iii) RULEMAKING TO CONSIDER EFFECTIVENESS OF LAMP LABELING.—

(I) IN GENERAL.—Not later than 1 year after the date of enactment of this clause, the Commission shall initiate a rulemaking to consider—

(aa) the effectiveness of current lamp labeling for power levels or watts, light output or lumens, and lamp lifetime; and

(bb) alternative labeling approaches that will help consumers to understand new high-efficiency lamp products and to base the purchase decisions of the consumers on the most appropriate source that meets the requirements of the consumers for lighting level, light quality, lamp lifetime, and total lifecycle cost.

(II) COMPLETION.—The Commission shall—

(aa) complete the rulemaking not later than the date that is 30 months after the date of enactment of this clause; and

(bb) consider reopening the rulemaking not later than 180 days before the effective dates of the standards for general service incandescent lamps established under section 325(i)(1)(A), if the Commission determines that further labeling changes are needed to help consumers understand lamp alternatives.

(E)(i) Not later than one year after the date of the enactment of the Energy Policy Act of 1992, the Commission shall prescribe labeling rules under this section for showerheads and faucets to which standards are applicable under subsection (j) of section 325. Such rules shall provide that the labeling of any showerhead or faucet manufactured after the 12-month period beginning on the date of the publication of such rule shall be consistent with the marking and labeling requirements of ASME A112.18.1M–1989, except that each showerhead and flow restricting or controlling spout-end device shall bear a permanent legible marking indicating the flow rate, expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 325.

(ii) If the marking and labeling requirements of ASME A112.18.1M–1989 are revised at any time and approved by ANSI, the Commission shall amend the labeling rules established pursuant to clause (i) to be consistent with such revised ASME/ANSI requirements unless such requirements are inconsistent with the purposes of this Act or the requirement specified in clause (i) requiring each showerhead and flow restricting or controlling spout-end device to bear a permanent legible marking indicating the flow rate of such product.

(F)(i) Not later than one year after the date of the enactment of the Energy Policy Act of 1992, the Commission shall prescribe labeling rules under this section for water closets and urinals to which standards are applicable under subsection (k) of section 325. Such rules shall provide that the labeling of any water closet or urinal manufactured after the 12-month period beginning on the date of the publication of such rule shall be consistent with the marking and labeling requirements of ASME A112.19.2M–1990, ex-

cept that each fixture (and flushometer valve associated with such fixture) shall bear a permanent legible marking indicating the water use, expressed in gallons per flush (gpf), and the water use value shall be the actual water use or the maximum water use specified by the standards established in subsection (k) of section 325.

(ii) If the marking and labeling requirements of ASME A112.19.2M–1990 are revised at any time and approved by ANSI, the Commission shall amend the labeling rules established pursuant to clause (i) to be consistent with such revised ASME/ANSI requirements unless such requirements are inconsistent with the purposes of this Act or the requirement specified in clause (i) requiring each fixture and flushometer valve to bear a permanent legible marking indicating the water use of such fixture or flushometer valve.

(iii) Any labeling rules prescribed under this subparagraph before January 1, 1997, shall provide that, with respect to any gravity tank-type white 2-piece toilet which has a water use greater than 1.6 gallons per flush (gpf), any printed matter distributed or displayed in connection with such product (including packaging and point of sale material, catalog material, and print advertising) shall include, in a conspicuous manner, the words “For Commercial Use Only”.

(G)(i) Not later than 90 days after the date of enactment of this subparagraph, the Commission shall initiate a rulemaking to consider—

(I) the effectiveness of the consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency; and

(II) changes to the labeling rules (including categorical labeling) that would improve the effectiveness of consumer product labels.

(ii) Not later than 2 years after the date of enactment of this subparagraph, the Commission shall complete the rulemaking initiated under clause (i).

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

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

(I) January 1, 2009; or

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

(I) LABELING REQUIREMENTS.—

(i) IN GENERAL.—Subject to clauses (ii) through (iv), not later than 18 months after the date of issuance of applicable Department of Energy testing procedures, the Commission, in consultation with the Secretary and the Administrator of the Environmental Protection Agency (acting through the Energy Star program), shall, by regulation, prescribe labeling or other disclosure requirements for the energy use of—

(I) televisions;

(II) personal computers;

(III) cable or satellite set-top boxes;

- (IV) stand-alone digital video recorder boxes; and
- (V) personal computer monitors.

(ii) **ALTERNATE TESTING PROCEDURES.**—In the absence of applicable testing procedures described in clause (i) for products described in subclauses (I) through (V) of that clause, the Commission may, by regulation, prescribe labeling or other disclosure requirements for a consumer product category described in clause (i) if the Commission—

- (I) identifies adequate non-Department of Energy testing procedures for those products; and
- (II) determines that labeling of, or other disclosures relating to, those products is likely to assist consumers in making purchasing decisions.

(iii) **DEADLINE AND REQUIREMENTS FOR LABELING.**—

(I) **DEADLINE.**—Not later than 18 months after the date of promulgation of any requirements under clause (i) or (ii), the Commission shall require labeling of, or other disclosure requirements for, electronic products described in clause (i).

(II) **REQUIREMENTS.**—The requirements prescribed under clause (i) or (ii) may include specific requirements for each electronic product to be labeled with respect to the placement, size, and content of Energy Guide labels.

(iv) **DETERMINATION OF FEASIBILITY.**—Clause (i) or (ii) shall not apply in any case in which the Commission determines that labeling in accordance with this subsection—

- (I) is not technologically or economically feasible; or
- (II) is not likely to assist consumers in making purchasing decisions.

(J) **SMART GRID CAPABILITY ON ENERGY GUIDE LABELS.**—

(i) **RULE.**—*Not later than 1 year after the date of enactment of this subparagraph, the Commission shall initiate a rulemaking to consider making a special note in a prominent manner on any Energy Guide label for any product that includes Smart Grid capability that—*

- (I) *Smart Grid capability is a feature of that product;*
- (II) *the use and value of that feature depend on the Smart Grid capability of the utility system in which the product is installed and the active utilization of that feature by the customer; and*

(III) *on a utility system with Smart Grid capability, the use of the product's Smart Grid capability could reduce the customer's cost of the product's annual operation as a result of the incremental energy and electricity cost savings that would result from the customer taking full advantage of such Smart Grid capability.*

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

(3) The Commission may prescribe a labeling rule under this section applicable to covered products of a type specified in paragraph (19) of section 322(a) (or a class thereof) if—

(A) the Commission or the Secretary has made a determination with respect to such type (or class thereof) that labeling in accordance with this section will assist purchasers in making purchasing decisions,

(B) the Secretary has prescribed test procedures under section 323(b)(1)(B) for such type (or class thereof), and

(C) the Commission determines with respect to such type (or class thereof) that application of labeling rules under this section to such type (or class thereof) is economically and technologically feasible.

(4) Any determination under this subsection shall be published in the Federal Register.

(5)(A) For covered products described in subsections (u) through (ff) of section 325, after a test procedure has been prescribed under section 323, the Secretary or the Commission, as appropriate, may prescribe, by rule, under this section labeling requirements for the products.

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

(C) In the case of dehumidifiers covered under section 325(dd), the Commission shall not require an "Energy Guide" label.

(6) **AUTHORITY TO INCLUDE ADDITIONAL PRODUCT CATEGORIES.**—The Commission may, by regulation, require labeling or other disclosures in accordance with this subsection for any consumer product not specified in this subsection or section 322 if the Commission determines that labeling for the product is likely to assist consumers in making purchasing decisions.

(b) **RULES IN EFFECT; NEW RULES.**—(1)(A) Any labeling rule in effect on the date of the enactment of the National Appliance Energy Conservation Act of 1987 shall remain in effect until amended, by rule, by the Commission.

(B) After the date of the enactment of the National Appliance Energy Conservation Act of 1987 and not later than 30 days after the date on which a proposed test procedure applicable to a covered product of any of the types specified in paragraphs (1) through (13), and paragraphs (15) through (19) of section 322(a) (or class thereof) is prescribed under section 323(b), the Commission shall publish a proposed labeling rule applicable to such type (or class thereof).

(2) The Commission shall afford interested persons an opportunity to present written or oral data, views, and comments with respect to the proposed labeling rules published under paragraph (1). The period for such presentations shall not be less than 45 days.

(3) Not earlier than 45 days nor later than 60 days after the date on which test procedures are prescribed under section 323(b) with respect to covered products of any type (or class thereof) specified in paragraphs (1) through (12) of section 322(a), the Commission shall prescribe labeling rules with respect to covered products of such type (or class thereof). Not earlier than 45 days after the date on which test procedures are prescribed under section 323(b) with

respect to covered products of a type specified in paragraph (19) of section 322(a), the Commission may prescribe labeling rules with respect to covered products of such type (or class thereof).

(4) A labeling rule prescribed under paragraph (3) shall take effect not later than 3 months after the date of prescription of such rule, except that such rules may take effect not later than 6 months after such date of prescription if the Commission determines that such extension is necessary to allow persons subject to such rules adequate time to come into compliance with such rules.

(5) The Commission may delay the publication of a proposed labeling rule, or the prescription of a labeling rule, beyond the dates specified in paragraph (1) or (3), if it determines that it cannot publish proposed labeling rules or prescribe labeling rules which meet the requirements of this section on or prior to the date specified in the applicable paragraph and publishes such determination in the Federal Register, together with the reasons therefor. In any such case, it shall publish proposed labeling rules or prescribe labeling rules for covered products of such type (or class thereof) as soon as practicable unless it determines (A) that labeling in accordance with this section is not economically or technically feasible, or (B) in the case of a type specified in paragraphs (3), (5), and (7) of section 322(a), that labeling in accordance with this section is not likely to assist consumers in purchasing decisions. Any such determination shall be published in the Federal Register, together with the reasons therefor. This paragraph shall not apply to the prescription of a labeling rule with respect to covered products of a type specified in paragraph (19) of section 322(a).

(c) CONTENT OF LABEL.—(1) Subject to paragraph (6), a rule prescribed under this section shall require that each covered product in the type or class of covered products to which the rule applies bear a label which discloses—

(A) the estimated annual operating cost of such product (determined in accordance with test procedures prescribed under section 323), except that if—

(i) the Secretary determines that disclosure of estimated annual operating cost is not technologically feasible, or

(ii) the Commission determines that such disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible,

the Commission shall require disclosure of a different useful measure of energy consumption (determined in accordance with test procedures prescribed under section 323); and

(B) information respecting the range of estimated annual operating costs for covered products to which the rule applies; except that if the Commission requires disclosure under subparagraph (A) of a measure of energy consumption different from estimated annual operating cost, then the label shall disclose the range of such measure of energy consumption of covered products to which such rule applies.

(2) A rule under this section shall include the following:

(A) A description of the type or class of covered products to which such rule applies.

(B) Subject to paragraph (6), information respecting the range of estimated annual operating costs or other useful measure of energy consumption (determined in such manner as

the rule may prescribe) for such type or class of covered products.

(C) A description of the test procedures under section 323 used in determining the estimated annual operating costs or other measure of energy consumption of the type or class of covered products.

(D) A prototype label and directions for displaying such label.

(3) A rule under this section shall require that the label be displayed in a manner that the Commission determines is likely to assist consumers in making purchasing decisions and is appropriate to carry out this part. The Commission may permit a tag to be used in lieu of a label in any case in which the Commission finds that a tag will carry out the purposes for which the label was intended.

(4) A rule under this section applicable to a covered product may require disclosure, in any printed matter displayed or distributed at the point of sale of such product, of any information which may be required under this section to be disclosed on the label of such product. Requirements under this paragraph shall not apply to any broadcast advertisement or any advertisement in any newspaper, magazine, or other periodical.

(5) The Commission may require that a manufacturer of a covered product to which a rule under this section applies—

(A) include on the label,

(B) separately attach to the product, or

(C) ship with the product,

additional information relating to energy consumption, including instructions for the maintenance, use, or repair of the covered product, if the Commission determines that such additional information would assist consumers in making purchasing decisions or in using such product, and that such requirement would not be unduly burdensome to manufacturers.

(6) The Commission may delay the effective date of the requirement specified in paragraph (1)(B) of this subsection applicable to a type or class of covered product, insofar as it requires the disclosure on the label of information respecting range of measure of energy consumption, for not more than 12 months after the date on which the rule under this section is first applicable to such type or class, if the Commission determines that such information will not be available within an adequate period of time before such date.

(7) Paragraphs (1), (2), (3), (5), and (6) of this subsection shall not apply to the covered product specified in paragraphs (13), (14), (15), (16), (17), and (18) of section 322(a).

(8) If a manufacturer of a covered product specified in paragraph (15) or (17) of section 322(a) elects to provide a label for such covered product conveying the estimated annual operating cost of such product or the range of estimated annual operating costs for the type or class of such product—

(A) such estimated cost or range of costs shall be determined in accordance with test procedures prescribed under section 323;

(B) the format of such label shall be in accordance with a format prescribed by the Commission; and

(C) such label shall be displayed in a manner, prescribed by the Commission, to be likely to assist consumers in making



purchasing decisions and appropriate to carry out the purposes of this Act.

(9) DISCRETIONARY APPLICATION.—The Commission may apply paragraphs (1), (2), (3), (5), and (6) of this subsection to the labeling of any product covered by paragraph (2)(I) or (6) of subsection (a).

(d) EFFECTIVE DATE.—A rule under this section (or an amendment thereto) shall not apply to any covered product the manufacture of which was completed prior to the effective date of such rule or amendment, as the case may be.

(e) STUDY OF CERTAIN PRODUCTS.—The Secretary, in consultation with the Commission, shall study consumer products for which labeling rules under this section have not been proposed, in order to determine (1) the aggregate energy consumption of such products, and (2) whether the imposition of labeling requirements under this section would be feasible and useful to consumers in making purchasing decisions. The Secretary shall include the results of such study in the annual report under section 338.

(f) CONSULTATION.—The Secretary and the Commission shall consult with each other on a continuing basis as may be necessary or appropriate to carry out their respective responsibilities under this part. Before the Commission makes any determination under subsection (a)(1), it shall obtain the views of the Secretary and shall take such views into account in making such determination.

(g) OTHER AUTHORITY OF THE COMMISSION.—Until such time as labeling rules under this section take effect with respect to a type or class of covered product, this section shall not affect any authority of the Commission under the Federal Trade Commission Act to require labeling with respect to energy consumption of such type or class of covered product.

#### ENERGY STAR PROGRAM

SEC. 324A. (a) IN GENERAL.—There is established within the Department of Energy and the Environmental Protection Agency a voluntary program to identify and promote energy-efficient products and buildings in order to reduce energy consumption, improve energy security, and reduce pollution through voluntary labeling of, or other forms of communication about, products and buildings that meet the highest energy conservation standards.

(b) DIVISION OF RESPONSIBILITIES.—Responsibilities under the program shall be divided between the Department of Energy and the Environmental Protection Agency in accordance with the terms of applicable agreements between those agencies.

(c) DUTIES.—The Administrator and the Secretary shall—

(1) promote Energy Star compliant technologies as the preferred technologies in the marketplace for—

(A) achieving energy efficiency; and

(B) reducing pollution;

(2) work to enhance public awareness of the Energy Star label, including by providing special outreach to small businesses;

(3) preserve the integrity of the Energy Star label;

(4) regularly update Energy Star product criteria for product categories;

(5) solicit comments from interested parties prior to establishing or revising an Energy Star product category, specification, or criterion (or prior to effective dates for any such product category, specification, or criterion);

(6) on adoption of a new or revised product category, specification, or criterion, provide reasonable notice to interested parties of any changes (including effective dates) in product categories, specifications, or criteria, along with—

(A) an explanation of the changes; and

(B) as appropriate, responses to comments submitted by interested parties; and

(7) provide appropriate lead time (which shall be 270 days, unless the Agency or Department specifies otherwise) prior to the applicable effective date for a new or a significant revision to a product category, specification, or criterion, taking into account the timing requirements of the manufacturing, product marketing, and distribution process for the specific product addressed.

(d) DEADLINES.—The Secretary shall establish new qualifying levels—

(1) not later than January 1, 2006, for clothes washers and dishwashers, effective beginning January 1, 2007; and

(2) not later than January 1, 2008, for clothes washers, effective beginning July 1, 2009.

(e) NO WARRANTY.—

(1) *IN GENERAL.*—Any disclosure relating to participation of a product in the Energy Star program shall not create an express or implied warranty or give rise to any private claims or rights of action under State or Federal law relating to the disqualification of that product from Energy Star if—

(A) the product has been certified by a certification body recognized by the Energy Star program;

(B) the Administrator has approved corrective measures, including a determination of whether or not consumer compensation is appropriate; and

(C) the responsible party has fully complied with all approved corrective measures.

(2) *CONSTRUAL.*—Nothing in this subsection shall be construed to require the Administrator to modify any procedure or take any other action.

#### **SEC. 324B. WATERSENSE.**

(a) *WATERSENSE.*—

(1) *IN GENERAL.*—There is established within the Environmental Protection Agency a voluntary program, to be entitled “WaterSense”, to identify water efficient products, buildings, landscapes, facilities, processes, and services that sensibly—

(A) reduce water use;

(B) reduce the strain on public and community water systems and wastewater and stormwater infrastructure;

(C) conserve energy used to pump, heat, transport, and treat water; and

(D) preserve water resources for future generations, through voluntary labeling of, or other forms of communications about, products, buildings, landscapes, facilities,

*processes, and services while still meeting strict performance criteria.*

(2) *DUTIES.—The Administrator, coordinating as appropriate with the Secretary of Energy, shall—*

*(A) establish—*

*(i) a WaterSense label to be used for items meeting the certification criteria established in this section; and*

*(ii) the procedure, including the methods and means, by which an item may be certified to display the WaterSense label;*

*(B) conduct a public awareness education campaign regarding the WaterSense label;*

*(C) preserve the integrity of the WaterSense label by—*

*(i) establishing and maintaining feasible performance criteria so that products, buildings, landscapes, facilities, processes, and services labeled with the WaterSense label perform as well or better than less water-efficient counterparts;*

*(ii) overseeing WaterSense certifications made by third parties;*

*(iii) using testing protocols, from the appropriate, applicable, and relevant consensus standards, for the purpose of determining standards compliance; and*

*(iv) auditing the use of the WaterSense label in the marketplace and preventing cases of misuse; and*

*(D) not more often than every six years, review and, if appropriate, update WaterSense criteria for the defined categories of water-efficient product, building, landscape, process, or service, including—*

*(i) providing reasonable notice to interested parties and the public of any such changes, including effective dates, and an explanation of the changes;*

*(ii) soliciting comments from interested parties and the public prior to any such changes;*

*(iii) as appropriate, responding to comments submitted by interested parties and the public; and*

*(iv) providing an appropriate transition time prior to the applicable effective date of any such changes, taking into account the timing necessary for the manufacture, marketing, training, and distribution of the specific water-efficient product, building, landscape, process, or service category being addressed.*

*(b) USE OF SCIENCE.—In carrying out this section, and, to the degree that an agency action is based on science, the Administrator shall use—*

*(1) the best available peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and*

*(2) data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justify use of the data).*

*(c) DISTINCTION OF AUTHORITIES.—In setting or maintaining standards for Energy Star pursuant to section 324A, and WaterSense under this section, the Secretary and Administrator*

shall coordinate to prevent duplicative or conflicting requirements among the respective programs.

(d) **DEFINITIONS.**—In this section:

(1) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) **FEASIBLE.**—The term “feasible” means feasible with the use of the best technology, treatment techniques, and other means that the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration).

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

(4) **WATER-EFFICIENT PRODUCT, BUILDING, LANDSCAPE, PROCESS, OR SERVICE.**—The term “water-efficient product, building, landscape, process, or service” means a product, building, landscape, process, or service for a residence or a commercial or institutional building, or its landscape, that is rated for water efficiency and performance, the covered categories of which are—

(A) irrigation technologies and services;

(B) point-of-use water treatment devices;

(C) plumbing products;

(D) reuse and recycling technologies;

(E) landscaping and gardening products, including moisture control or water enhancing technologies;

(F) xeriscaping and other landscape conversions that reduce water use; and

(G) new water efficient homes certified under the WaterSense program.

#### ENERGY CONSERVATION STANDARDS

SEC. 325. (a) **PURPOSES.**—The purposes of this section are to—

(1) provide Federal energy conservation standards applicable to covered products; and

(2) authorize the Secretary to prescribe amended or new energy conservation standards for each type (or class) of covered product.

(b) **STANDARDS FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS.**—(1) The following is the maximum energy use allowed in kilowatt hours per year for the following products (other than those described in paragraph (2)) manufactured on or after January 1, 1990:

	Energy Standards Equations
Refrigerators and Refrigerator-Freezers with manual defrost .....	16.3 AV+316
Refrigerator-Freezers—partial automatic defrost .....	21.8 AV+429
Refrigerator-Freezers—automatic defrost with:	
Top mounted freezer without ice .....	23.5 AV+471
Side mounted freezer without ice .....	27.7 AV+488
Bottom mounted freezer without ice .....	27.7 AV+488
Top mounted freezer with through the door ice service .....	26.4 AV+535
Side mounted freezer with through the door ice .....	30.9 AV+547
Upright Freezers with:	
Manual defrost .....	10.9 AV+422
Automatic defrost .....	16.0 AV+623
Chest Freezers and all other freezers .....	14.8 AV+223

(2) The standards described in paragraph (1) do not apply to refrigerators and refrigerator-freezers with total refrigerated volume

exceeding 39 cubic feet or freezers with total refrigerated volume exceeding 30 cubic feet.

(3)(A)(i) The Secretary shall publish a proposed rule, no later than July 1, 1988, to determine if the standards established by paragraph (1) should be amended. The Secretary shall publish a final rule no later than July 1, 1989, which shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1993. If such a final rule is not published before January 1, 1990, any amendment of such standards shall apply to products manufactured on or after January 1, 1995. Nothing in this subsection provides any justification or defense for a failure by the Secretary to comply with the nondiscretionary duty to publish final rules by the dates stated in this paragraph.

(ii)(I) If the Secretary does not publish a final rule before January 1, 1990, relating to the revision of the energy conservation standards for refrigerators, refrigerator-freezers and freezers, the regulations which established standards for such products and were promulgated by the California Energy Commission on December 14, 1984, to be effective January 1, 1992 (or any amendments to such standards that are not more stringent than the standards in the original regulations), shall apply in California to such products, effective beginning January 1, 1993, and shall not be preempted after such effective date by any energy conservation standard established in this section or prescribed, on or after January 1, 1990, under this section.

(II) If the Secretary does not publish a final rule before January 1, 1992, relating to the revision of the energy conservation standards for refrigerators, refrigerator-freezers and freezers, State regulations which apply to such products manufactured on or after January 1, 1995, shall apply to such products until the effective date of a rule issued under this section with respect to such products.

(B) After the publication of a final rule under subparagraph (A), the Secretary shall publish a final rule no later than five years after the date of publication of the previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for the products described in paragraph (1).

(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standards, the earliest date by which the previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

(4) REFRIGERATORS AND FREEZERS MANUFACTURED ON OR AFTER JANUARY 1, 2014.—

(A) IN GENERAL.—Not later than December 31, 2010, the Secretary shall publish a final rule determining whether to amend the standards in effect for refrigerators, refrigerator-freezers, and freezers manufactured on or after January 1, 2014.

(B) AMENDED STANDARDS.—The final rule shall contain any amended standards.

(c) STANDARDS FOR ROOM AIR CONDITIONERS.—(1) The energy efficiency ratio of room air conditioners shall be not less than the following for products manufactured on or after January 1, 1990:

Product Class:	Ratio
Without Reverse Cycle and With Louvered Sides:	
Less than 6,000 Btu .....	8.0
6,000 to 7,999 Btu .....	8.5
8,000 to 13,999 Btu .....	9.0
14,000 to 19,999 Btu .....	8.8
20,000 and more Btu .....	8.2
Without Reverse Cycle and Without Louvered Sides:	
Less than 6,000 Btu .....	8.0
6,000 to 7,999 Btu .....	8.5
8,000 to 13,999 Btu .....	8.5
14,000 to 19,999 Btu .....	8.5
20,000 and more Btu .....	8.2
With Reverse Cycle and With Louvered Sides .....	8.5
With Reverse Cycle, Without Louvered Sides .....	8.0

(2)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

(B) After January 1, 1992, the Secretary shall publish a final rule no later than five years after the date of publication of a previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for room air conditioners.

(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standards, the earliest date by which a previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

(d) STANDARDS FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS.—(1) The seasonal energy efficiency ratio of central air conditioners and central air conditioning heat pumps shall be not less than the following:

(A) Split Systems: 10.0 for products manufactured on or after January 1, 1992.

(B) Single Package Systems: 9.7 for products manufactured on or after January 1, 1993.

(2) The heating seasonal performance factor of central air conditioning heat pumps shall be not less than the following:

(A) Split Systems: 6.8 for products manufactured on or after January 1, 1992.

(B) Single Package Systems: 6.6 for products manufactured on or after January 1, 1993.

(3)(A) The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall

apply to products manufactured on or after January 1, 1999. The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established under paragraph (2) shall be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 2002.

(B) The Secretary shall publish a final rule after January 1, 1994, and no later than January 1, 2001, to determine whether the standards in effect for central air conditioners and central air conditioning heat pumps should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 2006.

(4) STANDARDS FOR THROUGH-THE-WALL CENTRAL AIR CONDITIONERS, THROUGH-THE-WALL CENTRAL AIR CONDITIONING HEAT PUMPS, AND SMALL DUCT, HIGH VELOCITY SYSTEMS.—

(A) DEFINITIONS.—In this paragraph:

(i) SMALL DUCT, HIGH VELOCITY SYSTEM.—The term “small duct, high velocity system” means a heating and cooling product that contains a blower and indoor coil combination that—

(I) is designed for, and produces, at least 1.2 inches of external static pressure when operated at the certified air volume rate of 220–350 CFM per rated ton of cooling; and

(II) when applied in the field, uses high velocity room outlets generally greater than 1,000 fpm that have less than 6.0 square inches of free area.

(ii) THROUGH-THE-WALL CENTRAL AIR CONDITIONER; THROUGH-THE-WALL CENTRAL AIR CONDITIONING HEAT PUMP.—The terms “through-the-wall central air conditioner” and “through-the-wall central air conditioning heat pump” mean a central air conditioner or heat pump, respectively, that is designed to be installed totally or partially within a fixed-size opening in an exterior wall, and—

(I) is not weatherized;

(II) is clearly and permanently marked for installation only through an exterior wall;

(III) has a rated cooling capacity no greater than 30,000 Btu/hr;

(IV) exchanges all of its outdoor air across a single surface of the equipment cabinet; and

(V) has a combined outdoor air exchange area of less than 800 square inches (split systems) or less than 1,210 square inches (single packaged systems) as measured on the surface area described in subclause (IV).

(iii) REVISION.—The Secretary may revise the definitions contained in this subparagraph through publication of a final rule.

(B) SMALL-DUCT HIGH-VELOCITY SYSTEMS.—

(i) SEASONAL ENERGY EFFICIENCY RATIO.—The seasonal energy efficiency ratio for small-duct high-velocity systems shall be not less than—

(I) 11.00 for products manufactured on or after January 23, 2006; and

(II) 12.00 for products manufactured on or after January 1, 2015.

(ii) HEATING SEASONAL PERFORMANCE FACTOR.—The heating seasonal performance factor for small-duct high-velocity systems shall be not less than—

(I) 6.8 for products manufactured on or after January 23, 2006; and

(II) 7.2 for products manufactured on or after January 1, 2015.

(C) SUBSEQUENT RULEMAKINGS.—The Secretary shall conduct subsequent rulemakings for through-the-wall central air conditioners, through-the-wall central air conditioning heat pumps, and small duct, high velocity systems as part of any rulemaking under this section used to review or revise standards for other central air conditioners and heat pumps.

(e) STANDARDS FOR WATER HEATERS; POOL HEATERS; DIRECT HEATING EQUIPMENT.—(1) The energy factor of water heaters shall be not less than the following for products manufactured on or after January 1, 1990:

(A) Gas Water Heater:	$.62 - (.0019 \times \text{Rated Storage Volume in gallons})$
(B) Oil Water Heater:	$.59 - (.0019 \times \text{Rated Storage Volume in gallons})$
(C) Electric Water Heater:	$.95 - (.00132 \times \text{Rated Storage Volume in gallons})$

(2) The thermal efficiency of pool heaters manufactured on or after January 1, 1990, shall not be less than 78 percent.

(3) The efficiencies of gas direct heating equipment manufactured on or after January 1, 1990, shall be not less than the following:

Wall		
Fan type		
Up to 42,000 Btu/hour .....		73% AFUE
Over 42,000 Btu/hour .....		74% AFUE
Gravity type		
Up to 10,000 Btu/hour .....		59% AFUE
Over 10,000 Btu/hour up to 12,000 Btu/hour .....		60% AFUE
Over 12,000 Btu/hour up to 15,000 Btu/hour .....		61% AFUE
Over 15,000 Btu/hour up to 19,000 Btu/hour .....		62% AFUE
Over 19,000 Btu/hour up to 27,000 Btu/hour .....		63% AFUE
Over 27,000 Btu/hour up to 46,000 Btu/hour .....		64% AFUE
Over 46,000 Btu/hour .....		65% AFUE
Floor		
Up to 37,000 Btu/hour .....		56% AFUE
Over 37,000 Btu/hour .....		57% AFUE
Room		
Up to 18,000 Btu/hour .....		57% AFUE
Over 18,000 Btu/hour up to 20,000 Btu/hour .....		58% AFUE
Over 20,000 Btu/hour up to 27,000 Btu/hour .....		63% AFUE
Over 27,000 Btu/hour up to 46,000 Btu/hour .....		64% AFUE
Over 46,000 Btu/hour .....		65% AFUE

(4)(A) The Secretary shall publish final rules no later than January 1, 1992, to determine whether the standards established by paragraph (1), (2), or (3) for water heaters, pool heaters, and direct heating equipment should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 1995.



(B) The Secretary shall publish a final rule no later than January 1, 2000, to determine whether standards in effect for such products should be amended. Such rule shall provide that any such amendment shall apply to products manufactured on or after January 1, 2005.

(5) UNIFORM EFFICIENCY DESCRIPTOR FOR COVERED WATER HEATERS.—

(A) DEFINITIONS.—In this paragraph:

(i) COVERED WATER HEATER.—The term “covered water heater” means—

(I) a water heater; and

(II) a storage water heater, instantaneous water heater, and unfired hot water storage tank (as defined in section 340).

(ii) FINAL RULE.—The term “final rule” means the final rule published under this paragraph.

(B) PUBLICATION OF FINAL RULE.—Not later than 1 year after the date of enactment of this paragraph, the Secretary shall publish a final rule that establishes a uniform efficiency descriptor and accompanying test methods for covered water heaters.

(C) PURPOSE.—The purpose of the final rule shall be to replace with a uniform efficiency descriptor—

(i) the energy factor descriptor for water heaters established under this subsection; and

(ii) the thermal efficiency and standby loss descriptors for storage water heaters, instantaneous water heaters, and unfired water storage tanks established under section 342(a)(5).

(D) EFFECT OF FINAL RULE.—

(i) IN GENERAL.—Notwithstanding any other provision of this title, effective beginning on the effective date of the final rule, the efficiency standard for covered water heaters shall be denominated according to the efficiency descriptor established by the final rule.

(ii) EFFECTIVE DATE.—The final rule shall take effect 1 year after the date of publication of the final rule under subparagraph (B).

(E) CONVERSION FACTOR.—

(i) IN GENERAL.—The Secretary shall develop a mathematical conversion factor for converting the measurement of efficiency for covered water heaters from the test procedures in effect on the date of enactment of this paragraph to the new energy descriptor established under the final rule.

(ii) APPLICATION.—The conversion factor shall apply to models of covered water heaters affected by the final rule and tested prior to the effective date of the final rule.

(iii) EFFECT ON EFFICIENCY REQUIREMENTS.—The conversion factor shall not affect the minimum efficiency requirements for covered water heaters otherwise established under this title.

(iv) USE.—During the period described in clause (v), a manufacturer may apply the conversion factor estab-

lished by the Secretary to rerate existing models of covered water heaters that are in existence prior to the effective date of the rule described in clause (v)(II) to comply with the new efficiency descriptor.

(v) PERIOD.—Clause (iv) shall apply during the period—

(I) beginning on the date of publication of the conversion factor in the Federal Register; and

(II) ending on the later of 1 year after the date of publication of the conversion factor, or December 31, 2015.

(F) EXCLUSIONS.—The final rule may exclude a specific category of covered water heaters from the uniform efficiency descriptor established under this paragraph if the Secretary determines that the category of water heaters—

(i) does not have a residential use and can be clearly described in the final rule; and

(ii) are effectively rated using the thermal efficiency and standby loss descriptors applied (as of the date of enactment of this paragraph) to the category under section 342(a)(5).

(G) OPTIONS.—The descriptor set by the final rule may be—

(i) a revised version of the energy factor descriptor in use as of the date of enactment of this paragraph;

(ii) the thermal efficiency and standby loss descriptors in use as of that date;

(iii) a revised version of the thermal efficiency and standby loss descriptors;

(iv) a hybrid of descriptors; or

(v) a new approach.

(H) APPLICATION.—The efficiency descriptor and accompanying test method established under the final rule shall apply, to the maximum extent practicable, to all water heating technologies in use as of the date of enactment of this paragraph and to future water heating technologies.

(I) PARTICIPATION.—The Secretary shall invite interested stakeholders to participate in the rulemaking process used to establish the final rule.

(J) TESTING OF ALTERNATIVE DESCRIPTORS.—In establishing the final rule, the Secretary shall contract with the National Institute of Standards and Technology, as necessary, to conduct testing and simulation of alternative descriptors identified for consideration.

(K) EXISTING COVERED WATER HEATERS.—A covered water heater shall be considered to comply with the final rule on and after the effective date of the final rule and with any revised labeling requirements established by the Federal Trade Commission to carry out the final rule if the covered water heater—

(i) was manufactured prior to the effective date of the final rule; and

(ii) complied with the efficiency standards and labeling requirements in effect prior to the final rule.

(6) ADDITIONAL STANDARDS FOR GRID-ENABLED WATER HEATERS.—

(A) DEFINITIONS.—In this paragraph:

(i) **ACTIVATION LOCK.**—The term “activation lock” means a control mechanism (either a physical device directly on the water heater or a control system integrated into the water heater) that is locked by default and contains a physical, software, or digital communication that must be activated with an activation key to enable the product to operate at its designed specifications and capabilities and without which activation the product will provide not greater than 50 percent of the rated first hour delivery of hot water certified by the manufacturer.

(ii) **GRID-ENABLED WATER HEATER.**—The term “grid-enabled water heater” means an electric resistance water heater that—

(I) has a rated storage tank volume of more than 75 gallons;

(II) is manufactured on or after April 16, 2015;

(III) has—

(aa) an energy factor of not less than 1.061 minus the product obtained by multiplying—

(AA) the rated storage volume of the tank, expressed in gallons; and

(BB) 0.00168; or

(bb) an equivalent alternative standard prescribed by the Secretary and developed pursuant to paragraph (5)(E);

(IV) is equipped at the point of manufacture with an activation lock; and

(V) bears a permanent label applied by the manufacturer that—

(aa) is made of material not adversely affected by water;

(bb) is attached by means of non-water-soluble adhesive; and

(cc) advises purchasers and end-users of the intended and appropriate use of the product with the following notice printed in 16.5 point Arial Narrow Bold font:

“**IMPORTANT INFORMATION:** This water heater is intended only for use as part of an electric thermal storage or demand response program. It will not provide adequate hot water unless enrolled in such a program and activated by your utility company or another program operator. Confirm the availability of a program in your local area before purchasing or installing this product.”.

(B) **REQUIREMENT.**—The manufacturer or private labeler shall provide the activation key for a grid-enabled water heater only to a utility or other company that operates an electric thermal storage or demand response program that uses such a grid-enabled water heater.

(C) **REPORTS.**—

(i) **MANUFACTURERS.**—The Secretary shall require each manufacturer of grid-enabled water heaters to re-

port to the Secretary annually the quantity of grid-enabled water heaters that the manufacturer ships each year.

(ii) OPERATORS.—The Secretary shall require utilities and other demand response and thermal storage program operators to report annually the quantity of grid-enabled water heaters activated for their programs using forms of the Energy Information Agency or using such other mechanism that the Secretary determines appropriate after an opportunity for notice and comment.

(iii) CONFIDENTIALITY REQUIREMENTS.—The Secretary shall treat shipment data reported by manufacturers as confidential business information.

(D) PUBLICATION OF INFORMATION.—

(i) IN GENERAL.—In 2017 and 2019, the Secretary shall publish an analysis of the data collected under subparagraph (C) to assess the extent to which shipped products are put into use in demand response and thermal storage programs.

(ii) PREVENTION OF PRODUCT DIVERSION.—If the Secretary determines that sales of grid-enabled water heaters exceed by 15 percent or greater the quantity of such products activated for use in demand response and thermal storage programs annually, the Secretary shall, after opportunity for notice and comment, establish procedures to prevent product diversion for non-program purposes.

(E) COMPLIANCE.—

(i) IN GENERAL.—Subparagraphs (A) through (D) shall remain in effect until the Secretary determines under this section that—

(I) grid-enabled water heaters do not require a separate efficiency requirement; or

(II) sales of grid-enabled water heaters exceed by 15 percent or greater the quantity of such products activated for use in demand response and thermal storage programs annually and procedures to prevent product diversion for non-program purposes would not be adequate to prevent such product diversion.

(ii) EFFECTIVE DATE.—If the Secretary exercises the authority described in clause (i) or amends the efficiency requirement for grid-enabled water heaters, that action will take effect on the date described in subsection (m)(4)(A)(ii).

(iii) CONSIDERATION.—In carrying out this section with respect to electric water heaters, the Secretary shall consider the impact on thermal storage and demand response programs, including any impact on energy savings, electric bills, peak load reduction, electric reliability, integration of renewable resources, and the environment.

(iv) REQUIREMENTS.—In carrying out this paragraph, the Secretary shall require that grid-enabled

water heaters be equipped with communication capability to enable the grid-enabled water heaters to participate in ancillary services programs if the Secretary determines that the technology is available, practical, and cost-effective.

(f) STANDARDS FOR FURNACES AND BOILERS.—(1) Furnaces (other than furnaces designed solely for installation in mobile homes) manufactured on or after January 1, 1992, shall have an annual fuel utilization efficiency of not less than 78 percent, except that—

(A) boilers (other than gas steam boilers) shall have an annual fuel utilization efficiency of not less than 80 percent and gas steam boilers shall have an annual fuel utilization efficiency of not less than 75 percent; and

(B) the Secretary shall prescribe a final rule not later than January 1, 1989, establishing an energy conservation standard—

(i) which is for furnaces (other than furnaces designed solely for installation in mobile homes) having an input of less than 45,000 Btu per hour and manufactured on or after January 1, 1992;

(ii) which provides that the annual fuel utilization efficiency of such furnaces shall be a specific percent which is not less than 71 percent and not more than 78 percent; and

(iii) which the Secretary determines is not likely to result in a significant shift from gas heating to electric resistance heating with respect to either residential construction or furnace replacement.

(2) Furnaces which are designed solely for installation in mobile homes and which are manufactured on or after September 1, 1990, shall have an annual fuel utilization efficiency of not less than 75 percent.

(3) BOILERS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), boilers manufactured on or after September 1, 2012, shall meet the following requirements:

Boiler Type	Minimum Annual Fuel Utilization Efficiency	Design Requirements
Gas Hot Water .....	82%	No Constant Burning Pilot, Automatic Means for Adjusting Water Temperature
Gas Steam .....	80%	No Constant Burning Pilot
Oil Hot Water .....	84%	Automatic Means for Adjusting Temperature
Oil Steam .....	82%	None
Electric Hot Water .....	None	Automatic Means for Adjusting Temperature
Electric Steam .....	None	None

(B) AUTOMATIC MEANS FOR ADJUSTING WATER TEMPERATURE.—

(i) IN GENERAL.—The manufacturer shall equip each gas, oil, and electric hot water boiler (other than a boiler equipped with a tankless domestic water heating coil) with automatic means for adjusting the temperature of the water supplied by the boiler to ensure that an incremental change in inferred heat load produces a corresponding incremental change in the temperature of water supplied.

(ii) SINGLE INPUT RATE.—For a boiler that fires at 1 input rate, the requirements of this subparagraph may be satisfied by providing an automatic means that allows the burner or heating element to fire only when the means has determined that the inferred heat load cannot be met by the residual heat of the water in the system.

(iii) NO INFERRED HEAT LOAD.—When there is no inferred heat load with respect to a hot water boiler, the automatic means described in clauses (i) and (ii) shall limit the temperature of the water in the boiler to not more than 140 degrees Fahrenheit.

(iv) OPERATION.—A boiler described in clause (i) or (ii) shall be operable only when the automatic means described in clauses (i), (ii), and (iii) is installed.

(C) EXCEPTION.—A boiler that is manufactured to operate without any need for electricity or any electric connection, electric gauges, electric pumps, electric wires, or electric devices shall not be required to meet the requirements of this paragraph.

(4)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine whether the standards established by paragraph (2) for mobile home furnaces should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 1994.

(B) The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established by this subsection for furnaces (including mobile home furnaces) should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 2002.

(C) After January 1, 1997, and before January 1, 2007, the Secretary shall publish a final rule to determine whether standards in effect for such products should be amended. Such rule shall contain such amendment, if any, and provide that any amendment shall apply to products manufactured on or after January 1, 2012.

(D) Notwithstanding any other provision of this Act, if the requirements of subsection (o) are met, not later than December 31, 2013, the Secretary shall consider and prescribe energy conservation standards or energy use standards for electricity used for purposes of circulating air through duct work.

(E)(i) *Unless the Secretary has published such a notice prior to the date of enactment of this Act, the Secretary shall publish, not later than October 31, 2015, a supplemental notice of proposed rule-making or a notice of data availability updating the proposed rule entitled “Energy Conservation Program for Consumer Products: En-*

ergy Conservation Standards for Residential Furnaces” and published in the Federal Register on March 12, 2015 (80 Fed. Reg. 13119), to provide notice and an opportunity for comment on—

(I) dividing nonweatherized gas furnaces into two or more product classes with separate energy conservation standards based on capacity; and

(II) any other matters the Secretary determines appropriate.

(ii) On receipt of a statement that is submitted on or before January 1, 2016, jointly by interested persons that are fairly representative of relevant points of view, that contains recommended standards for nonweatherized gas furnaces and mobile home gas furnaces that are consistent with the requirements of this part (except that the date on which such standards will apply may be earlier or later than the date required under this part), the Secretary shall evaluate the standards proposed in the joint statement for consistency with the requirements of subsection (o), and shall publish notice of the potential adoption of the standards proposed in the joint statement, modified as necessary to ensure consistency with subsection (o). The Secretary shall solicit public comment for a period of at least 30 days with respect to such notice.

(iii) Not later than July 31, 2016, but not before July 1, 2016, the Secretary shall publish a final rule containing a determination of whether the standards for nonweatherized gas furnaces and mobile home gas furnaces should be amended. Such rule shall contain any such amendments to the standards.

(g) STANDARDS FOR DISHWASHERS; CLOTHES WASHERS; CLOTHES DRYERS, FLUORESCENT LAMP BALLASTS.—(1) Dishwashers manufactured on or after January 1, 1988, shall be equipped with an option to dry without heat.

(2) All rinse cycles of clothes washers shall include an unheated water option, but may have a heated water rinse option, for products manufactured on or after January 1, 1988.

(3) Gas clothes dryers shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1988.

(4)(A) The Secretary shall publish final rules no later than January 1, 1990, to determine if the standards established under this subsection for products described in paragraphs (1), (2), and (3) should be amended. Such rules shall provide that any amendment shall apply to products the manufacture of which is completed on or after January 1, 1993.

(B) After January 1, 1990, the Secretary shall publish a final rule no later than five years after the date of publication of the previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for such products.

(C) Any such amendment shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standard, the earliest date by which a previous amendment could have been in effect;

except that in no case may any amended standard apply to products manufactured within 3 years after publication of the final rule establishing such standard.

(5) Except as provided in paragraph (6), each fluorescent lamp ballast—

- (A)(i) manufactured on or after January 1, 1990;
- (ii) sold by the manufacturer on or after April 1, 1990; or
- (iii) incorporated into a luminaire by a luminaire manufacturer on or after April 1, 1991; and

(B) designed—

(i) to operate at nominal input voltages of 120 or 277 volts;

(ii) to operate with an input current frequency of 60 Hertz; and

(iii) for use in connection with an F40T12, F96T12, or F96T12HO lamps;

shall have a power factor of 0.90 or greater and shall have a ballast efficacy factor not less than the following:

Application for Operation of	Ballast Input Voltage	Total Nomi- nal Lamp Watts	Ballast Efficacy Factor
one F40T12 lamp .....	120	40	1.805
	277	40	1.805
two F40T12 lamps .....	120	80	1.060
	277	80	1.050
two F96T12 lamps .....	120	150	0.570
	277	150	0.570
two F96T12HO lamps .....	120	220	0.390
	277	220	0.390

(6) The standards described in paragraph (5) do not apply to (A) a ballast which is designed for dimming or for use in ambient temperatures of 0° F or less, or (B) a ballast which has a power factor of less than 0.90 and is designed and labeled for use only in residential building applications.

(7)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established under paragraph (5) should be amended, including whether such standards should be amended so that they would be applicable to ballasts described in paragraph (6) and other fluorescent lamp ballasts. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

(B) After January 1, 1992, the Secretary shall publish a final rule no later than five years after the date of publication of a previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for fluorescent lamp ballasts, including whether such standards should be amended so that they would be applicable to additional fluorescent lamp ballasts.

(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standards, the earliest date by which a previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.



(8)(A) Each fluorescent lamp ballast (other than replacement ballasts or ballasts described in subparagraph (C))—

(i)(I) manufactured on or after July 1, 2009;

(II) sold by the manufacturer on or after October 1, 2009; or

(III) incorporated into a luminaire by a luminaire manufacturer on or after July 1, 2010; and

(ii) designed—

(I) to operate at nominal input voltages of 120 or 277 volts;

(II) to operate with an input current frequency of 60 Hertz; and

(III) for use in connection with F34T12 lamps, F96T12/ES lamps, or F96T12HO/ES lamps;  
shall have a power factor of 0.90 or greater and shall have a ballast efficacy factor of not less than the following:

Application for operation of	Ballast input voltage	Total nominal lamp watts	Ballast efficacy factor
One F34T12 lamp	120/277	34	2.61
Two F34T12 lamps	120/277	68	1.35
Two F96T12/ES lamps	120/277	120	0.77
Two F96T12HO/ES lamps	120/277	190	0.42.

(B) The standards described in subparagraph (A) shall apply to all ballasts covered by subparagraph (A)(ii) that are manufactured on or after July 1, 2010, or sold by the manufacturer on or after October 1, 2010.

(C) The standards described in subparagraph (A) do not apply to—

- (i) a ballast that is designed for dimming to 50 percent or less of the maximum output of the ballast;
- (ii) a ballast that is designed for use with 2 F96T12HO lamps at ambient temperatures of negative 20°F or less and for use in an outdoor sign; or
- (iii) a ballast that has a power factor of less than 0.90 and is designed and labeled for use only in residential applications.

(9) RESIDENTIAL CLOTHES WASHERS MANUFACTURED ON OR AFTER JANUARY 1, 2011.—

(A) IN GENERAL.—A top-loading or front-loading standard-size residential clothes washer manufactured on or after January 1, 2011, shall have—

- (i) a Modified Energy Factor of at least 1.26; and
- (ii) a water factor of not more than 9.5.

(B) AMENDMENT OF STANDARDS.—

(i) IN GENERAL.—Not later than December 31, 2011, the Secretary shall publish a final rule determining whether to amend the standards in effect for clothes washers manufactured on or after January 1, 2015.

(ii) AMENDED STANDARDS.—The final rule shall contain any amended standards.

(10) RESIDENTIAL DISHWASHERS MANUFACTURED ON OR AFTER JANUARY 1, 2010.—

(A) IN GENERAL.—A dishwasher manufactured on or after January 1, 2010, shall—

- (i) for a standard size dishwasher not exceed 355 kWh/year and 6.5 gallons per cycle; and
- (ii) for a compact size dishwasher not exceed 260 kWh/year and 4.5 gallons per cycle.

(B) AMENDMENT OF STANDARDS.—

(i) IN GENERAL.—Not later than January 1, 2015, the Secretary shall publish a final rule determining whether to amend the standards for dishwashers manufactured on or after January 1, 2018.

(ii) AMENDED STANDARDS.—The final rule shall contain any amended standards.

(h) STANDARDS FOR KITCHEN RANGES AND OVENS.—(1) Gas kitchen ranges and ovens having an electrical supply cord shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1990.

(2)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established for kitchen ranges and ovens in this subsection should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

(B) The Secretary shall publish a final rule no later than January 1, 1997, to determine whether standards in effect for such

products should be amended. Such rule shall apply to products manufactured on or after January 1, 2000.

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

(1) STANDARDS.—

(A) DEFINITION OF EFFECTIVE DATE.—In this paragraph (other than subparagraph (D)), the term “effective date” means, with respect to each type of lamp specified in a table contained in subparagraph (B), the last day of the period of months corresponding to that type of lamp (as specified in the table) that follows October 24, 1992.

(B) MINIMUM STANDARDS.—Each of the following general service fluorescent lamps and incandescent reflector lamps manufactured after the effective date specified in the tables contained in this paragraph shall meet or exceed the following lamp efficacy and CRI standards:

FLUORESCENT LAMPS

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

INCANDESCENT REFLECTOR LAMPS

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

(C) EXEMPTIONS.—The standards specified in subparagraph (B) shall not apply to the following types of incandescent reflector lamps:

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

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

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

(D) EFFECTIVE DATES.—

(i) ER, BR, AND BPAR LAMPS.—The standards specified in subparagraph (B) shall apply with respect to ER incandescent reflector lamps, BR incandescent reflector lamps, BPAR incandescent reflector lamps, and similar bulb shapes on and after January 1, 2008.

(ii) LAMPS BETWEEN 2.25–2.75 INCHES IN DIAMETER.—The standards specified in subparagraph (B) shall apply with respect to incandescent reflector lamps with a diameter of more than 2.25 inches, but not more than 2.75 inches, on and after the later of January 1, 2008, or the date that is 180 days after the date of enactment of the Energy Independence and Security Act of 2007.

(2) Notwithstanding section 332(a)(5) and section 332(b), it shall not be unlawful for a manufacturer to sell a lamp which is in compliance with the law at the time such lamp was manufactured.

(3) Not less than 36 months after the date of the enactment of this subsection, the Secretary shall initiate a rulemaking procedure and shall publish a final rule not later than the end of the 54-month period beginning on the date of the enactment of this subsection to determine if the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after the 36-month period beginning on the date such final rule is published.

(4) Not less than eight years after the date of the enactment of this subsection, the Secretary shall initiate a rulemaking procedure and shall publish a final rule not later than nine years and six months after the date of the enactment of this subsection to determine if the standards in effect for fluorescent lamps and incandescent lamps should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after the 36-month period beginning on the date such final rule is published.

(5) Not later than the end of the 24-month period beginning on the date labeling requirements under section 324(a)(2)(C) become effective, the Secretary shall initiate a rulemaking procedure to determine if the standards in effect for fluorescent lamps and incandescent lamps should be amended so that they would be applicable to additional general service fluorescent and shall publish, not later than 18 months after initiating such rulemaking, a final rule including such amended standards, if any. Such rule shall provide that the amendment shall apply to products manufactured after a date which is 36 months after the date such rule is published.

(6) STANDARDS FOR GENERAL SERVICE LAMPS.—

(A) RULEMAKING BEFORE JANUARY 1, 2014.—

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

(I) standards in effect for general service lamps should be amended to establish more stringent standards than the standards specified in paragraph (1)(A); and

(II) the exemptions for certain incandescent lamps should be maintained or discontinued

based, in part, on exempted lamp sales collected by the Secretary from manufacturers.

(ii) SCOPE.—The rulemaking—

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

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

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

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

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

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

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

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

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

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

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

(B) RULEMAKING BEFORE JANUARY 1, 2020.—

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

(I) standards in effect for general service incandescent lamps should be amended to reflect lumen

ranges with more stringent maximum wattage than the standards specified in paragraph (1)(A); and

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

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

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

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

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

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

(7)(A) With respect to any lamp to which standards are applicable under this subsection or any lamp specified in section 346, the Secretary shall inform any Federal entity proposing actions which would adversely impact the energy consumption or energy efficiency of such lamp of the energy conservation consequences of such action. It shall be the responsibility of such Federal entity to carefully consider the Secretary's comments.

(B) Notwithstanding section 325(n)(1), the Secretary shall not be prohibited from amending any standard, by rule, to permit increased energy use or to decrease the minimum required energy efficiency of any lamp to which standards are applicable under this subsection if such action is warranted as a result of other Federal action (including restrictions on materials or processes) which would have the effect of either increasing the energy use or decreasing the energy efficiency of such product.

(8) Not later than the date on which standards established pursuant to this subsection become effective, or, with respect to high-intensity discharge lamps covered under section 346, the effective date of standards established pursuant to such section, each manufacturer of a product to which such standards are applicable shall file with the Secretary a laboratory report certifying compliance with the applicable standard for each lamp type. Such report shall include the lumen output and wattage consumption for each lamp type as an average of measurements taken over the preceding 12-month period. With respect to lamp types which are not manufactured during the 12-month period preceding the date such standards become effective, such report shall be filed with the Secretary not later than the date which is 12 months after the date manufacturing is commenced and shall include the lumen output and watt-

age consumption for each such lamp type as an average of measurements taken during such 12-month period.

(j) STANDARDS FOR SHOWERHEADS AND FAUCETS.—(1) The maximum water use allowed for any showerhead manufactured after January 1, 1994, is 2.5 gallons per minute when measured at a flowing water pressure of 80 pounds per square inch. Any such showerhead shall also meet the requirements of ASME/ANSI A112.18.1M–1989, 7.4.3(a).

(2) The maximum water use allowed for any of the following faucets manufactured after January 1, 1994, when measured at a flowing water pressure of 80 pounds per square inch, is as follows:

Lavatory faucets .....	2.5 gallons per minute
Lavatory replacement aerators .....	2.5 gallons per minute
Kitchen faucets .....	2.5 gallons per minute
Kitchen replacement aerators .....	2.5 gallons per minute
Metering faucets .....	0.25 gallons per cycle

(3)(A) If the maximum flow rate requirements or the design requirements of ASME/ANSI Standard A112.18.1M–1989 are amended to improve the efficiency of water use of any type or class of showerhead or faucet and are approved by ANSI, the Secretary shall, not later than 12 months after the date of such amendment, publish a final rule establishing an amended uniform national standard for that product at the level specified in the amended ASME/ANSI Standard A112.18.1M and providing that such standard shall apply to products manufactured after a date which is 12 months after the publication of such rule, unless the Secretary determines, by rule published in the Federal Register, that adoption of a uniform national standard at the level specified in such amended ASME/ANSI Standard A112.18.1M—

(i) is not technologically feasible and economically justified under subsection (o);

(ii) is not consistent with the maintenance of public health and safety; or

(iii) is not consistent with the purposes of this Act.

(B)(i) As part of the rulemaking conducted under subparagraph (A), the Secretary shall also determine if adoption of a uniform national standard for any type or class of showerhead or faucet more stringent than such amended ASME/ANSI Standard A112.18.1M—

(I) would result in additional conservation of energy or water;

(II) would be technologically feasible and economically justified under subsection (o); and

(III) would be consistent with the maintenance of public health and safety.

(ii) If the Secretary makes an affirmative determination under clause (i), the final rule published under subparagraph (A) shall waive the provisions of section 327(c) with respect to any State regulation concerning the water use or water efficiency of such type or class of showerhead or faucet if such State regulation—

(I) is more stringent than amended ASME/ANSI Standard A112.18.1M for such type or class of showerhead or faucet and the standard in effect for such product on the day before the date on which a final rule is published under subparagraph (A); and



(II) is applicable to any sale or installation of all products in such type or class of showerhead or faucet.

(C) If, after any period of five consecutive years, the maximum flow rate requirements of the ASME/ANSI standard for showerheads are not amended to improve the efficiency of water use of such products, or after any such period such requirements for faucets are not amended to improve the efficiency of water use of such products, the Secretary shall, not later than six months after the end of such five-year period, publish a final rule waiving the provisions of section 327(c) with respect to any State regulation concerning the water use or water efficiency of such type or class of showerhead or faucet if such State regulation—

(i) is more stringent than the standards in effect for such type or class of showerhead or faucet; and

(ii) is applicable to any sale or installation of all products in such type or class of showerhead or faucet.

(k) STANDARDS FOR WATER CLOSETS AND URINALS.—(1)(A) Except as provided in subparagraph (B), the maximum water use allowed in gallons per flush for any of the following water closets manufactured after January 1, 1994, is the following:

Gravity tank-type toilets .....	1.6 gpf.
Flushometer tank toilets .....	1.6 gpf.
Electromechanical hydraulic toilets .....	1.6 gpf.
Blowout toilets .....	3.5 gpf.

(B) The maximum water use allowed for any gravity tank-type white 2-piece toilet which bears an adhesive label conspicuous upon installation consisting of the words “Commercial Use Only” manufactured after January 1, 1994, and before January 1, 1997, is 3.5 gallons per flush.

(C) The maximum water use allowed for flushometer valve toilets, other than blowout toilets, manufactured after January 1, 1997, is 1.6 gallons per flush.

(2) The maximum water use allowed for any urinal manufactured after January 1, 1994, is 1.0 gallon per flush.

(3)(A) If the maximum flush volume requirements of ASME Standard A112.19.6–1990 are amended to improve the efficiency of water use of any low consumption water closet or low consumption urinal and are approved by ANSI, the Secretary shall, not later than 12 months after the date of such amendment, publish a final rule establishing an amended uniform national standard for that product at the level specified in amended ASME/ANSI Standard A112.19.6 and providing that such standard shall apply to products manufactured after a date which is one year after the publication of such rule, unless the Secretary determines, by rule published in the Federal Register, that adoption of a uniform national standard at the level specified in such amended ASME/ANSI Standard A112.19.6—

(i) is not technologically feasible and economically justified under subsection (o);

(ii) is not consistent with the maintenance of public health and safety; or

(iii) is not consistent with the purposes of this Act.

(B)(i) As part of the rulemaking conducted under subparagraph (A), the Secretary shall also determine if adoption of a uniform national standard for any type or class of low consumption water clos-

et or low consumption urinal more stringent than such amended ASME/ANSI Standard A112.19.6 for such product—

(I) would result in additional conservation of energy or water;

(II) would be technologically feasible and economically justified under subsection (o); and

(III) would be consistent with the maintenance of public health and safety.

(ii) If the Secretary makes an affirmative determination under clause (i), the final rule published under subparagraph (A) shall waive the provisions of section 327(c) with respect to any State regulation concerning the water use or water efficiency of such type or class of low consumption water closet or low consumption urinal if such State regulation—

(I) is more stringent than amended ASME/ANSI Standard A112.19.6 for such type or class of low consumption water closet or low consumption urinal and the standard in effect for such product on the day before the date on which a final rule is published under subparagraph (A); and

(II) is applicable to any sale or installation of all products in such type or class of low consumption water closet or low consumption urinal.

(C) If, after any period of five consecutive years, the maximum flush volume requirements of the ASME/ANSI standard for low consumption water closets are not amended to improve the efficiency of water use of such products, or after any such period such requirements for low consumption urinals are not amended to improve the efficiency of water use of such products, the Secretary shall, not later than six months after the end of such five-year period, publish a final rule waiving the provisions of section 327(c) with respect to any State regulation concerning the water use or water efficiency of such type or class of water closet or urinal if such State regulation—

(i) is more stringent than the standards in effect for such type or class of water closet or urinal; and

(ii) is applicable to any sale or installation of all products in such type or class of water closet or urinal.

(I) STANDARDS FOR OTHER COVERED PRODUCTS.—(1) The Secretary may prescribe an energy conservation standard for any type (or class) of covered products of a type specified in paragraph (19) of section 322(a) if the requirements of subsections (o) and (p) are met and the Secretary determines that—

(A) the average per household energy use within the United States by products of such type (or class) exceeded 150 kilowatt-hours (or its Btu equivalent) for any 12-month period ending before such determination;

(B) the aggregate household energy use within the United States by products of such type (or class) exceeded 4,200,000,000 kilowatt-hours (or its Btu equivalent) for any such 12-month period;

(C) substantial improvement in the energy efficiency of products of such type (or class) is technologically feasible; and

(D) the application of a labeling rule under section 324 to such type (or class) is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to

purchase, covered products of such type (or class) which achieve the maximum energy efficiency which is technologically feasible and economically justified.

(2) Any new or amended standard for covered products of a type specified in paragraph (19) of section 322(a) shall not apply to products manufactured within five years after the publication of a final rule establishing such standard.

(3) The Secretary may, in accordance with subsections (o) and (p), prescribe an energy conservation standard for television sets. Any such standard may not become effective with respect to products manufactured before January 1, 1992.

(4) ENERGY EFFICIENCY STANDARDS FOR CERTAIN LAMPS.—

(A) IN GENERAL.—The Secretary shall prescribe an energy efficiency standard for rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps in accordance with this paragraph.

(B) BENCHMARKS.—Not later than 1 year after the date of enactment of this paragraph, the Secretary, in consultation with the National Electrical Manufacturers Association, shall—

(i) collect actual data for United States unit sales for each of calendar years 1990 through 2006 for each of the 5 types of lamps described in subparagraph (A) to determine the historical growth rate of the type of lamp; and

(ii) construct a model for each type of lamp based on coincident economic indicators that closely match the historical annual growth rate of the type of lamp to provide a neutral comparison benchmark to model future unit sales after calendar year 2006.

(C) ACTUAL SALES DATA.—

(i) IN GENERAL.—Effective for each of calendar years 2010 through 2025, the Secretary, in consultation with the National Electrical Manufacturers Association, shall—

(I) collect actual United States unit sales data for each of 5 types of lamps described in subparagraph (A); and

(II) not later than 90 days after the end of each calendar year, compare the lamp sales in that year with the sales predicted by the comparison benchmark for each of the 5 types of lamps described in subparagraph (A).

(ii) CONTINUATION OF TRACKING.—

(I) DETERMINATION.—Not later than January 1, 2023, the Secretary shall determine if actual sales data should be tracked for the lamp types described in subparagraph (A) after calendar year 2025.

(II) CONTINUATION.—If the Secretary finds that the market share of a lamp type described in subparagraph (A) could significantly erode the market share for general service lamps, the Secretary

shall continue to track the actual sales data for the lamp type.

(D) ROUGH SERVICE LAMPS.—

(i) IN GENERAL.—Effective beginning with the first year that the reported annual sales rate for rough service lamps demonstrates actual unit sales of rough service lamps that achieve levels that are at least 100 percent higher than modeled unit sales for that same year, the Secretary shall—

(I) not later than 90 days after the end of the previous calendar year, issue a finding that the index has been exceeded; and

(II) not later than the date that is 1 year after the end of the previous calendar year, complete an accelerated rulemaking to establish an energy conservation standard for rough service lamps.

(ii) BACKSTOP REQUIREMENT.—If the Secretary fails to complete an accelerated rulemaking in accordance with clause (i)(II), effective beginning 1 year after the date of the issuance of the finding under clause (i)(I), the Secretary shall require rough service lamps to—

(I) have a shatter-proof coating or equivalent technology that is compliant with NSF/ANSI 51 and is designed to contain the glass if the glass envelope of the lamp is broken and to provide effective containment over the life of the lamp;

(II) have a maximum 40-watt limitation; and

(III) be sold at retail only in a package containing 1 lamp.

(E) VIBRATION SERVICE LAMPS.—

(i) IN GENERAL.—Effective beginning with the first year that the reported annual sales rate for vibration service lamps demonstrates actual unit sales of vibration service lamps that achieve levels that are at least 100 percent higher than modeled unit sales for that same year, the Secretary shall—

(I) not later than 90 days after the end of the previous calendar year, issue a finding that the index has been exceeded; and

(II) not later than the date that is 1 year after the end of the previous calendar year, complete an accelerated rulemaking to establish an energy conservation standard for vibration service lamps.

(ii) BACKSTOP REQUIREMENT.—If the Secretary fails to complete an accelerated rulemaking in accordance with clause (i)(II), effective beginning 1 year after the date of the issuance of the finding under clause (i)(I), the Secretary shall require vibration service lamps to—

(I) have a maximum 40-watt limitation; and

(II) be sold at retail only in a package containing 1 lamp.

(F) 3-WAY INCANDESCENT LAMPS.—

(i) IN GENERAL.—Effective beginning with the first year that the reported annual sales rate for 3-way in-

candescent lamps demonstrates actual unit sales of 3-way incandescent lamps that achieve levels that are at least 100 percent higher than modeled unit sales for that same year, the Secretary shall—

(I) not later than 90 days after the end of the previous calendar year, issue a finding that the index has been exceeded; and

(II) not later than the date that is 1 year after the end of the previous calendar year, complete an accelerated rulemaking to establish an energy conservation standard for 3-way incandescent lamps.

(ii) BACKSTOP REQUIREMENT.—If the Secretary fails to complete an accelerated rulemaking in accordance with clause (i)(II), effective beginning 1 year after the date of issuance of the finding under clause (i)(I), the Secretary shall require that—

(I) each filament in a 3-way incandescent lamp meet the new maximum wattage requirements for the respective lumen range established under subsection (i)(1)(A); and

(II) 3-way lamps be sold at retail only in a package containing 1 lamp.

(G) 2,601–3,300 LUMEN GENERAL SERVICE INCANDESCENT LAMPS.—Effective beginning with the first year that the reported annual sales rate demonstrates actual unit sales of 2,601–3,300 lumen general service incandescent lamps in the lumen range of 2,601 through 3,300 lumens (or, in the case of a modified spectrum, in the lumen range of 1,951 through 2,475 lumens) that achieve levels that are at least 100 percent higher than modeled unit sales for that same year, the Secretary shall impose—

(i) a maximum 95-watt limitation on general service incandescent lamps in the lumen range of 2,601 through 3,300 lumens; and

(ii) a requirement that those lamps be sold at retail only in a package containing 1 lamp.

(H) SHATTER-RESISTANT LAMPS.—

(i) IN GENERAL.—Effective beginning with the first year that the reported annual sales rate for shatter-resistant lamps demonstrates actual unit sales of shatter-resistant lamps that achieve levels that are at least 100 percent higher than modeled unit sales for that same year, the Secretary shall—

(I) not later than 90 days after the end of the previous calendar year, issue a finding that the index has been exceeded; and

(II) not later than the date that is 1 year after the end of the previous calendar year, complete an accelerated rulemaking to establish an energy conservation standard for shatter-resistant lamps.

(ii) BACKSTOP REQUIREMENT.—If the Secretary fails to complete an accelerated rulemaking in accordance with clause (i)(II), effective beginning 1 year after the

date of issuance of the finding under clause (i)(I), the Secretary shall impose—

(I) a maximum wattage limitation of 40 watts on shatter resistant lamps; and

(II) a requirement that those lamps be sold at retail only in a package containing 1 lamp.

(I) RULEMAKINGS BEFORE JANUARY 1, 2025.—

(i) IN GENERAL.—Except as provided in clause (ii), if the Secretary issues a final rule prior to January 1, 2025, establishing an energy conservation standard for any of the 5 types of lamps for which data collection is required under any of subparagraphs (D) through (G), the requirement to collect and model data for that type of lamp shall terminate unless, as part of the rulemaking, the Secretary determines that continued tracking is necessary.

(ii) BACKSTOP REQUIREMENT.—If the Secretary imposes a backstop requirement as a result of a failure to complete an accelerated rulemaking in accordance with clause (i)(II) of any of subparagraphs (D) through (G), the requirement to collect and model data for the applicable type of lamp shall continue for an additional 2 years after the effective date of the backstop requirement.

(m) AMENDMENT OF STANDARDS.—

(1) IN GENERAL.—Not later than 6 years after issuance of any final rule establishing or amending a standard, as required for a product under this part, the Secretary shall publish—

(A) a notice of the determination of the Secretary that standards for the product do not need to be amended, based on the criteria established under subsection (n)(2); or

(B) a notice of proposed rulemaking including new proposed standards based on the criteria established under subsection (o) and the procedures established under subsection (p).

(2) NOTICE.—If the Secretary publishes a notice under paragraph (1), the Secretary shall—

(A) publish a notice stating that the analysis of the Department is publicly available; and

(B) provide an opportunity for written comment.

(3) AMENDMENT OF STANDARD; NEW DETERMINATION.—

(A) AMENDMENT OF STANDARD.—Not later than 2 years after a notice is issued under paragraph (1)(B), the Secretary shall publish a final rule amending the standard for the product.

(B) NEW DETERMINATION.—Not later than 3 years after a determination under paragraph (1)(A), the Secretary shall make a new determination and publication under subparagraph (A) or (B) of paragraph (1).

(4) APPLICATION TO PRODUCTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), an amendment prescribed under this subsection shall apply to—

(i) with respect to refrigerators, refrigerator-freezers, freezers, room air conditioners, dishwashers, clothes washers, clothes dryers, fluorescent lamp ballasts, and kitchen ranges and ovens, such a product that is manufactured after the date that is 3 years after publication of the final rule establishing an applicable standard; and

(ii) with respect to central air conditioners, heat pumps, water heaters, pool heaters, direct heating equipment, and furnaces, such a product that is manufactured after the date that is 5 years after publication of the final rule establishing an applicable standard.

(B) OTHER NEW STANDARDS.—A manufacturer shall not be required to apply new standards to a product with respect to which other new standards have been required during the prior 6-year period.

(5) REPORTS.—The Secretary shall promptly submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate—

(A) a progress report every 180 days on compliance with this section, including a specific plan to remedy any failures to comply with deadlines for action established under this section; and

(B) all required reports to the Court or to any party to the Consent Decree in *State of New York v Bodman*, Consolidated Civil Actions No. 05 Civ. 7807 and No. 05 Civ. 7808.

(n) PETITION FOR AN AMENDED STANDARD.—(1) With respect to each covered product described in paragraphs (1) through (11), and in paragraphs (13) and (14) of section 322(a), any person may petition the Secretary to conduct a rulemaking to determine for a covered product if the standards contained either in the last final rule required under subsections (b) through (i) of this section or in a final rule published under this section should be amended.

(2) The Secretary shall grant a petition if he finds that it contains evidence which, assuming no other evidence were considered, provides an adequate basis for amending the standards under the following criteria—

(A) amended standards will result in significant conservation of energy;

(B) amended standards are technologically feasible; and

(C) amended standards are cost effective as described in subsection (o)(2)(B)(i)(II).

The grant of a petition by the Secretary under this subsection creates no presumption with respect to the Secretary's determination of any of the criteria in a rulemaking under this section.

(3) NOTICE OF DECISION.—Not later than 180 days after the date of receiving a petition, the Secretary shall publish in the Federal Register a notice of, and explanation for, the decision of the Secretary to grant or deny the petition.

(4) NEW OR AMENDED STANDARDS.—Not later than 3 years after the date of granting a petition for new or amended standards, the Secretary shall publish in the Federal Register—

- (A) a final rule that contains the new or amended standards; or
  - (B) a determination that no new or amended standards are necessary.
- (5) An amendment prescribed under this subsection shall apply to products manufactured after a date which is 5 years after—
- (A) the effective date of the previous amendment pursuant to this part; or
  - (B) if the previous final rule published under this part did not amend the standard, the earliest date by which a previous amendment could have been in effect, except that in no case may an amended standard apply to products manufactured within 3 years (for refrigerators, refrigerator-freezers, and freezers, room air conditioners, dishwashers, clothes washers, clothes dryers, fluorescent lamp ballasts, general service fluorescent lamps, incandescent reflector lamps, and kitchen ranges and ovens) or 5 years (for central air conditioners and heat pumps, water heaters, pool heaters, direct heating equipment and furnaces) after publication of the final rule establishing a standard.
- (6) CRITERIA FOR PRESCRIBING NEW OR AMENDED STANDARDS.—
- (1) The Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or, in the case of showerheads, faucets, water closets, or urinals, water use, or decreases the minimum required energy efficiency, of a covered product.
- (2)(A) Any new or amended energy conservation standard prescribed by the Secretary under this section for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency, or, in the case of showerheads, faucets, water closets, or urinals, water efficiency, which the Secretary determines is technologically feasible and economically justified.
- (B)(i) In determining whether a standard is economically justified, the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering—
- (I) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;
  - (II) the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;
  - (III) the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;
  - (IV) any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;
  - (V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;



(VI) the need for national energy and water conservation; and

(VII) other factors the Secretary considers relevant.

(ii) For purposes of clause (i)(V), the Attorney General shall make a determination of the impact, if any, of any lessening of competition likely to result from such standard and shall transmit such determination, not later than 60 days after the publication of a proposed rule prescribing or amending an energy conservation standard, in writing to the Secretary, together with an analysis of the nature and extent of such impact. Any such determination and analysis shall be published by the Secretary in the Federal Register.

(iii) If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy, and as applicable, water, savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified.

(3) The Secretary may not prescribe an amended or new standard under this section for a type (or class) of covered product if—

(A) for products other than dishwashers, clothes washers, clothes dryers, and kitchen ranges and ovens, a test procedure has not been prescribed pursuant to section 323 with respect to that type (or class) of product; or

(B) the Secretary determines, by rule, that the establishment of such standard will not result in significant conservation of energy or, in the case of showerheads, faucets, water closets, or urinals, water, or that the establishment of such standard is not technologically feasible or economically justified.

For purposes of section 327, a determination under subparagraph (B) with respect to any type (or class) of covered products shall have the same effect as would a standard prescribed for such type (or class).

(4) The Secretary may not prescribe an amended or new standard under this section if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. The failure of some types (or classes) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a standard for other types (or classes).

(5) The Secretary may set more than 1 energy conservation standard for products that serve more than 1 major function by setting 1 energy conservation standard for each major function.

(6) REGIONAL STANDARDS FOR FURNACES, CENTRAL AIR CONDITIONERS, AND HEAT PUMPS.—

(A) IN GENERAL.—In any rulemaking to establish a new or amended standard, the Secretary may consider the es-

establishment of separate standards by geographic region for furnaces (except boilers), central air conditioners, and heat pumps.

(B) NATIONAL AND REGIONAL STANDARDS.—

(i) NATIONAL STANDARD.—If the Secretary establishes a regional standard for a product, the Secretary shall establish a base national standard for the product.

(ii) REGIONAL STANDARDS.—If the Secretary establishes a regional standard for a product, the Secretary may establish more restrictive standards for the product by geographic region as follows:

(I) For furnaces, the Secretary may establish 1 additional standard that is applicable in a geographic region defined by the Secretary.

(II) For any cooling product, the Secretary may establish 1 or 2 additional standards that are applicable in 1 or 2 geographic regions as may be defined by the Secretary.

(C) BOUNDARIES OF GEOGRAPHIC REGIONS.—

(i) IN GENERAL.—Subject to clause (ii), the boundaries of additional geographic regions established by the Secretary under this paragraph shall include only contiguous States.

(ii) ALASKA AND HAWAII.—The States of Alaska and Hawaii may be included under this paragraph in a geographic region that the States are not contiguous to.

(iii) INDIVIDUAL STATES.—Individual States shall be placed only into a single region under this paragraph.

(D) PREREQUISITES.—In establishing additional regional standards under this paragraph, the Secretary shall—

(i) establish additional regional standards only if the Secretary determines that—

(I) the establishment of additional regional standards will produce significant energy savings in comparison to establishing only a single national standard; and

(II) the additional regional standards are economically justified under this paragraph; and

(ii) consider the impact of the additional regional standards on consumers, manufacturers, and other market participants, including product distributors, dealers, contractors, and installers.

(E) APPLICATION; EFFECTIVE DATE.—

(i) BASE NATIONAL STANDARD.—Any base national standard established for a product under this paragraph shall—

(I) be the minimum standard for the product; and

(II) apply to all products manufactured or imported into the United States on and after the effective date for the standard.

(ii) REGIONAL STANDARDS.—Any additional and more restrictive regional standard established for a product under this paragraph shall apply to any such product

**[installed]** *manufactured or imported into the United States* on or after the effective date of the standard in States in which the Secretary has designated the standard to apply.

(F) CONTINUATION OF REGIONAL STANDARDS.—

(i) IN GENERAL.—In any subsequent rulemaking for any product for which a regional standard has been previously established, the Secretary shall determine whether to continue the establishment of separate regional standards for the product.

(ii) REGIONAL STANDARD NO LONGER APPROPRIATE.—Except as provided in clause (iii), if the Secretary determines that regional standards are no longer appropriate for a product, beginning on the effective date of the amended standard for the product—

(I) there shall be 1 base national standard for the product with Federal enforcement; and

(II) State authority for enforcing a regional standard for the product shall terminate.

(iii) REGIONAL STANDARD APPROPRIATE BUT STANDARD OR REGION CHANGED.—

(I) STATE NO LONGER CONTAINED IN REGION.—Subject to subclause (III), if a State is no longer contained in a region in which a regional standard that is more stringent than the base national standard applies, the authority of the State to enforce the regional standard shall terminate.

(II) STANDARD OR REGION REVISED SO THAT EXISTING REGIONAL STANDARD EQUALS BASE NATIONAL STANDARD.—If the Secretary revises a base national standard for a product or the geographic definition of a region so that an existing regional standard for a State is equal to the revised base national standard—

(aa) the authority of the State to enforce the regional standard shall terminate on the effective date of the revised base national standard; and

(bb) the State shall be subject to the revised base national standard.

(III) STANDARD OR REGION REVISED SO THAT EXISTING REGIONAL STANDARD EQUALS BASE NATIONAL STANDARD.—If the Secretary revises a base national standard for a product or the geographic definition of a region so that the standard for a State is lower than the previously approved regional standard, the State may continue to enforce the previously approved standard level.

(iv) WAIVER OF FEDERAL PREEMPTION.—Nothing in this paragraph diminishes the authority of a State to enforce a State regulation for which a waiver of Federal preemption has been granted under section 327(d).

(G) ENFORCEMENT.—

(i) BASE NATIONAL STANDARD.—

(I) IN GENERAL.—The Secretary shall enforce any base national standard.

(II) TRADE ASSOCIATION CERTIFICATION PROGRAMS.—In enforcing the base national standard, the Secretary shall use, to the maximum extent practicable, national standard nationally recognized certification programs of trade associations.

(ii) REGIONAL STANDARDS.—

(I) ENFORCEMENT PLAN.—Not later than 90 days after the date of the issuance of a final rule that establishes a regional standard, the Secretary shall initiate a rulemaking to develop and implement an effective enforcement plan for regional standards for the products that are covered by the final rule.

(II) RESPONSIBLE ENTITIES.—Any rules regarding enforcement of a regional standard shall clearly specify which entities are legally responsible for compliance with the standards and for making any required information or labeling disclosures.

(III) FINAL RULE.—Not later than 15 months after the date of the issuance of a final rule that establishes a regional standard for a product, the Secretary shall promulgate a final rule covering enforcement of regional standards for the product.

(IV) INCORPORATION BY STATES AND LOCALITIES.—A State or locality may incorporate any Federal regional standard into State or local building codes or State appliance standards.

(V) STATE ENFORCEMENT.—A State agency may seek enforcement of a Federal regional standard in a Federal court of competent jurisdiction.

(H) INFORMATION DISCLOSURE.—

(i) IN GENERAL.—Not later than 90 days after the date of the publication of a final rule that establishes a regional standard for a product, the Federal Trade Commission shall undertake a rulemaking to determine the appropriate 1 or more methods for disclosing information so that consumers, distributors, contractors, and installers can easily determine whether a specific piece of equipment that is installed in a specific building is in conformance with the regional standard that applies to the building.

(ii) METHODS.—A method of disclosing information under clause (i) may include—

(I) modifications to the Energy Guide label; or

(II) other methods that make it easy for consumers and installers to use and understand at the point of installation.

(iii) COMPLETION OF RULEMAKING.—The rulemaking shall be completed not later 15 months after the date of the publication of a final rule that establishes a regional standard for a product.

(p) PROCEDURE FOR PRESCRIBING NEW OR AMENDED STANDARDS.—Any new or amended energy conservation standard shall be prescribed in accordance with the following procedure:

(1) *The Secretary shall provide an opportunity for public input prior to the issuance of a proposed rule, seeking information—*

(A) *identifying and commenting on design options;*

(B) *on the existence of and opportunities for voluntary nonregulatory actions; and*

(C) *identifying significant subgroups of consumers and manufacturers that merit analysis.*

[(1)] (2) A proposed rule which prescribes an amended or new energy conservation standard or prescribes no amendment or no new standard for a type (or class) of covered products shall be published in the Federal Register. In prescribing any such proposed rule with respect to a standard, the Secretary shall determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for each type (or class) of covered products. If such standard is not designed to achieve such efficiency or use, the Secretary shall state in the proposed rule the reasons therefor.

[(2)] (3) After the publication of such proposed rulemaking, the Secretary shall, in accordance with section 336, afford interested persons an opportunity, during a period of not less than 60 days, to present oral and written comments (including an opportunity to question those who make such presentations, as provided in such section) on matters relating to such proposed rule, including—

(A) whether the standard to be prescribed is economically justified (taking into account those factors which the Secretary must consider under subsection (o)(2)) or will result in the effects described in subsection (o)(4);

(B) whether the standard will achieve the maximum improvement in energy efficiency which is technologically feasible;

(C) if the standard will not achieve such improvement, whether the reasons for not achieving such improvement are adequate; [and]

(D) whether such rule should prescribe a level of energy use or efficiency which is higher or lower than that which would otherwise apply in the case of any group of products within the type (or class) that will be subject to such [standard.] standard;

(E) *whether the technical and economic analytical assumptions, methods, and models used to justify the standard to be prescribed are—*

(i) *justified; and*

(ii) *available and accessible for public review, analysis, and use; and*

(F) *the cumulative regulatory impacts on the manufacturers of the product, taking into account—*

(i) *other government standards affecting energy use; and*

(ii) other energy conservation standards affecting the same manufacturers.

(4) **RESTRICTION ON TEST PROCEDURE AMENDMENTS.**—

(A) **IN GENERAL.**—Any proposed energy conservation standards rule shall be based on the final test procedure which shall be used to determine compliance, and the public comment period on the proposed standards shall conclude no sooner than 180 days after the date of publication of a final rule revising the test procedure.

(B) **EXCEPTION.**—The Secretary may propose or prescribe an amendment to the test procedures issued pursuant to section 323 for any type or class of covered product after the issuance of a notice of proposed rulemaking to prescribe an amended or new energy conservation standard for that type or class of covered product, but before the issuance of a final rule prescribing any such standard, if—

(i) the amendments to the test procedure have consensus support achieved through a rulemaking conducted in accordance with the subchapter III of chapter 5 of title 5, United States Code (commonly known as the “Negotiated Rulemaking Act of 1990”); or

(ii) the Secretary receives a statement that is submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of the type or class of covered product, States, and efficiency advocates), as determined by the Secretary, which contains a recommendation that a supplemental notice of proposed rulemaking is not necessary for the type or class of covered product.

[(3)] (5) A final rule prescribing an amended or new energy conservation standard or prescribing no amended or new standard for a type (or class) of covered products shall be published as soon as is practicable, but not less than 90 days, after publication of the proposed rule in the Federal Register.

[(4)] (6) **DIRECT FINAL RULES.**—

(A) **IN GENERAL.**—On receipt of a statement that is submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary, and contains recommendations with respect to an energy or water conservation standard—

(i) if the Secretary determines that the recommended standard contained in the statement is in accordance with subsection (o) or section 342(a)(6)(B), as applicable, the Secretary may issue a final rule that establishes an energy or water conservation standard and is published simultaneously with a notice of proposed rulemaking that proposes a new or amended energy or water conservation standard that is identical to the standard established in the final rule to establish the recommended standard (referred to in this paragraph as a “direct final rule”); or

(ii) if the Secretary determines that a direct final rule cannot be issued based on the statement, the Secretary shall publish a notice of the determination, together with an explanation of the reasons for the determination.

(B) PUBLIC COMMENT.—The Secretary shall solicit public comment for a period of at least 110 days with respect to each direct final rule issued by the Secretary under subparagraph (A)(i).

(C) WITHDRAWAL OF DIRECT FINAL RULES.—

(i) IN GENERAL.—Not later than 120 days after the date on which a direct final rule issued under subparagraph (A)(i) is published in the Federal Register, the Secretary shall withdraw the direct final rule if—

(I) the Secretary receives 1 or more adverse public comments relating to the direct final rule under subparagraph (B)(i) or any alternative joint recommendation; and

(II) based on the rulemaking record relating to the direct final rule, the Secretary determines that such adverse public comments or alternative joint recommendation may provide a reasonable basis for withdrawing the direct final rule under subsection (o), section 342(a)(6)(B), or any other applicable law.

(ii) ACTION ON WITHDRAWAL.—On withdrawal of a direct final rule under clause (i), the Secretary shall—

(I) proceed with the notice of proposed rulemaking published simultaneously with the direct final rule as described in subparagraph (A)(i); and

(II) publish in the Federal Register the reasons why the direct final rule was withdrawn.

(iii) TREATMENT OF WITHDRAWN DIRECT FINAL RULES.—A direct final rule that is withdrawn under clause (i) shall not be considered to be a final rule for purposes of subsection (o).

(D) EFFECT OF PARAGRAPH.—Nothing in this paragraph authorizes the Secretary to issue a direct final rule based solely on receipt of more than 1 statement containing recommended standards relating to the direct final rule.

(q) SPECIAL RULE FOR CERTAIN TYPES OR CLASSES OF PRODUCTS.—(1) A rule prescribing an energy conservation standard for a type (or class) of covered products shall specify a level of energy use or efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if the Secretary determines that covered products within such group—

(A) consume a different kind of energy from that consumed by other covered products within such type (or class); or

(B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class).

In making a determination under this paragraph concerning whether a performance-related feature justifies the establishment of a higher or lower standard, the Secretary shall consider such factors as the utility to the consumer of such a feature, and such other factors as the Secretary deems appropriate.

(2) Any rule prescribing a higher or lower level of energy use or efficiency under paragraph (1) shall include an explanation of the basis on which such higher or lower level was established.

(r) INCLUSION IN STANDARDS OF TEST PROCEDURES AND OTHER REQUIREMENTS.—Any new or amended energy conservation standard prescribed under this section shall include, where applicable, test procedures prescribed in accordance with section 323 and may include any requirement which the Secretary determines is necessary to assure that each covered product to which such standard applies meets the required minimum level of energy efficiency or maximum quantity of energy use specified in such standard.

(s) DETERMINATION OF COMPLIANCE WITH STANDARDS.—Compliance with, and performance under, the energy conservation standards (except for design standards authorized by this part) established in, or prescribed under, this section shall be determined using the test procedures and corresponding compliance criteria prescribed under section 323.

(t) SMALL MANUFACTURER EXEMPTION.—(1) Subject to paragraph (2), the Secretary may, on application of any manufacturer, exempt such manufacturer from all or part of the requirements of any energy conservation standard established in or prescribed under this section for any period not longer than the 24-month period beginning on the date such rule becomes effective, if the Secretary finds that the annual gross revenues of such manufacturer from all its operations (including the manufacture and sale of covered products) does not exceed \$8,000,000 for the 12-month period preceding the date of the application. In making such finding with respect to any manufacturer, the Secretary shall take into account the annual gross revenues of any other person who controls, is controlled by, or is under common control with, such manufacturer.

(2) The Secretary may not exercise the authority granted under paragraph (1) with respect to any type (or class) of covered product subject to an energy conservation standard under this section unless the Secretary makes a finding, after obtaining the written views of the Attorney General, that a failure to allow an exemption under paragraph (1) would likely result in a lessening of competition.

(u) BATTERY CHARGER AND EXTERNAL POWER SUPPLY ELECTRIC ENERGY CONSUMPTION.—(1)(A) Not later than 18 months after the date of enactment of this subsection, the Secretary shall, after providing notice and an opportunity for comment, prescribe, by rule, definitions and test procedures for the power use of battery chargers and external power supplies.

(B) In establishing the test procedures under subparagraph (A), the Secretary shall—

(i) consider existing definitions and test procedures used for measuring energy consumption in standby mode and other modes; and

(ii) assess the current and projected future market for battery chargers and external power supplies.



(C) The assessment under subparagraph (B)(ii) shall include—

(i) estimates of the significance of potential energy savings from technical improvements to battery chargers and external power supplies; and

(ii) suggested product classes for energy conservation standards.

(D) Not later than 18 months after the date of enactment of this subsection, the Secretary shall hold a scoping workshop to discuss and receive comments on plans for developing energy conservation standards for energy use for battery chargers and external power supplies.

(E) EXTERNAL POWER SUPPLIES AND BATTERY CHARGERS.—

(i) ENERGY CONSERVATION STANDARDS.—

(I) EXTERNAL POWER SUPPLIES.—Not later than 2 years after the date of enactment of this subsection, the Secretary shall issue a final rule that determines whether energy conservation standards shall be issued for external power supplies or classes of external power supplies.

(II) BATTERY CHARGERS.—Not later than July 1, 2011, the Secretary shall issue a final rule that prescribes energy conservation standards for battery chargers or classes of battery chargers or determine that no energy conservation standard is technically feasible and economically justified.

(ii) For each product class, any energy conservation standards issued under clause (i) shall be set at the lowest level of energy use that—

(I) meets the criteria and procedures of subsections (o), (p), (q), (r), (s), and (t); and

(II) would result in significant overall annual energy savings, considering standby mode and other operating modes.

(2) The Secretary and the Administrator shall collaborate and develop programs (including programs under section 324A and other voluntary industry agreements or codes of conduct) that are designed to reduce standby mode energy use.

(3) EFFICIENCY STANDARDS FOR CLASS A EXTERNAL POWER SUPPLIES.—

(A) IN GENERAL.—Subject to subparagraphs (B) through (E), a class A external power supply manufactured on or after the later of July 1, 2008, or the date of enactment of this paragraph shall meet the following standards:

Active Mode	
Nameplate Output	Required Efficiency (decimal equivalent of a percentage)
Less than 1 watt	0.5 times the Nameplate Output
From 1 watt to not more than 51 watts	The sum of 0.09 times the Natural Logarithm of the Nameplate Output and 0.5

<b>Active Mode</b>	
<b>Nameplate Output</b>	<b>Required Efficiency (decimal equivalent of a percent- age)</b>
Greater than 51 watts	0.85
<b>No-Load Mode</b>	
<b>Nameplate Output</b>	<b>Maximum Consumption</b>
Not more than 250 watts	0.5 watts

(B) NONCOVERED SUPPLIES.—A class A external power supply shall not be subject to subparagraph (A) if the class A external power supply is—

- (i) manufactured during the period beginning on July 1, 2008, and ending on June 30, 2015; and
- (ii) made available by the manufacturer as a service part or a spare part for an end-use product—
  - (I) that constitutes the primary load; and
  - (II) was manufactured before July 1, 2008.

(C) MARKING.—Any class A external power supply manufactured on or after the later of July 1, 2008 or the date of enactment of this paragraph shall be clearly and permanently marked in accordance with the External Power Supply International Efficiency Marking Protocol, as referenced in the “Energy Star Program Requirements for Single Voltage External AC–DC and AC–AC Power Supplies, version 1.1” published by the Environmental Protection Agency.

(D) AMENDMENT OF STANDARDS.—

(i) FINAL RULE BY JULY 1, 2011.—

(I) IN GENERAL.—Not later than July 1, 2011, the Secretary shall publish a final rule to determine whether the standards established under subparagraph (A) should be amended.

(II) ADMINISTRATION.—The final rule shall—

- (aa) contain any amended standards; and
- (bb) apply to products manufactured on or after July 1, 2013.

(ii) FINAL RULE BY JULY 1, 2015.—

(I) IN GENERAL.—Not later than July 1, 2015 the Secretary shall publish a final rule to determine whether the standards then in effect should be amended.

(II) ADMINISTRATION.—The final rule shall—

- (aa) contain any amended standards; and
- (bb) apply to products manufactured on or after July 1, 2017.

(E) NONAPPLICATION OF NO-LOAD MODE ENERGY EFFICIENCY STANDARDS TO EXTERNAL POWER SUPPLIES FOR CERTAIN SECURITY OR LIFE SAFETY ALARMS OR SURVEILLANCE SYSTEMS.—

(i) DEFINITION OF SECURITY OR LIFE SAFETY ALARM OR SURVEILLANCE SYSTEM.—In this subparagraph:

(I) IN GENERAL.—The term “security or life safety alarm or surveillance system” means equipment designed and marketed to perform any of the following functions (on a continuous basis):

(aa) Monitor, detect, record, or provide notification of intrusion or access to real property or physical assets or notification of threats to life safety.

(bb) Deter or control access to real property or physical assets, or prevent the unauthorized removal of physical assets.

(cc) Monitor, detect, record, or provide notification of fire, gas, smoke, flooding, or other physical threats to real property, physical assets, or life safety.

(II) EXCLUSION.—The term “security or life safety alarm or surveillance system” does not include any product with a principal function other than life safety, security, or surveillance that—

(aa) is designed and marketed with a built-in alarm or theft-deterrent feature; or

(bb) does not operate necessarily and continuously in active mode.

(ii) NONAPPLICATION OF NO-LOAD MODE REQUIREMENTS.—The No-Load Mode energy efficiency standards established by this paragraph shall not apply to an external power supply manufactured before July 1, 2017, that—

(I) is an AC-to-AC external power supply;

(II) has a nameplate output of 20 watts or more;

(III) is certified to the Secretary as being designed to be connected to a security or life safety alarm or surveillance system component; and

(IV) on establishment within the External Power Supply International Efficiency Marking Protocol, as referenced in the “Energy Star Program Requirements for Single Voltage External Ac-Dc and Ac-Ac Power Supplies”, published by the Environmental Protection Agency, of a distinguishing mark for products described in this clause, is permanently marked with the distinguishing mark.

(iii) ADMINISTRATION.—In carrying out this subparagraph, the Secretary shall—

(I) require, with appropriate safeguard for the protection of confidential business information, the submission of unit shipment data on an annual basis; and

(II) restrict the eligibility of external power supplies for the exemption provided under this subparagraph on a finding that a substantial number of the external power supplies are being marketed to or installed in applications other than security or life safety alarm or surveillance systems.

(4) END-USE PRODUCTS.—An energy conservation standard for external power supplies shall not constitute an energy conservation standard for the separate end-use product to which the external power supply is connected.

(5) EXEMPT SUPPLIES.—

(A) FEBRUARY 10, 2014, RULE.—

(i) IN GENERAL.—An external power supply shall not be subject to the final rule entitled “Energy Conservation Program: Energy Conservation Standards for External Power Supplies”, published at 79 Fed. Reg. 7845 (February 10, 2014), if the external power supply—

(I) is manufactured during the period beginning on February 10, 2016, and ending on February 10, 2020;

(II) is marked in accordance with the External Power Supply International Efficiency Marking Protocol, as in effect on February 10, 2016;

(III) meets, where applicable, the standards under paragraph (3)(A), and has been certified to the Secretary as meeting International Efficiency Level IV or higher of the External Power Supply International Efficiency Marking Protocol, as in effect on February 10, 2016; and

(IV) is made available by the manufacturer as a service part or a spare part for an end-use product that—

(aa) constitutes the primary load; and

(bb) was manufactured before February 10, 2016.

(ii) REPORTING.—The Secretary may require manufacturers of products exempted pursuant to clause (i) to report annual total units shipped as service and spare parts that fall below International Efficiency Level VI.

(iii) LIMITATION OF EXEMPTION.—The Secretary may issue a rule, after providing public notice and opportunity for public comment, to limit the applicability of the exemption established under clause (i) if the Secretary determines that the exemption is resulting in a significant reduction of the energy savings that would otherwise result from the final rule described in such clause.

(B) AMENDED STANDARDS.—

(i) IN GENERAL.—The Secretary may exempt an external power supply from any amended standard under this subsection if the external power supply—

(I) is manufactured within four years of the compliance date of the amended standard;

(II) complies with applicable marking requirements adopted by the Secretary prior to the amendment;

(III) meets the standards that were in effect prior to the amendment; and

(IV) is made available by the manufacturer as a service part or a spare part for an end-use product that—

(aa) constitutes the primary load; and

(bb) was manufactured before the compliance date of the amended standard.

(ii) REPORTING.—The Secretary may require manufacturers of a product exempted pursuant to clause (i) to report annual total units shipped as service and spare parts that do not meet the amended standard.

(v) REFRIGERATED BEVERAGE VENDING MACHINES.—(1) Not later than 4 years after the date of enactment of this subsection, the Secretary shall prescribe, by rule, energy conservation standards for refrigerated bottle or canned beverage vending machines.

(2) In establishing energy conservation standards under this subsection, the Secretary shall use the criteria and procedures prescribed under subsections (o) and (p).

(3) Any energy conservation standard prescribed under this subsection shall apply to products manufactured 3 years after the date of publication of a final rule establishing the energy conservation standard.

(w) ILLUMINATED EXIT SIGNS.—An illuminated exit sign manufactured on or after January 1, 2006, shall meet the version 2.0 Energy Star Program performance requirements for illuminated exit signs prescribed by the Environmental Protection Agency.

(x) TORCHIERES.—A torchiere manufactured on or after January 1, 2006—

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

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

(y) LOW VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS.—The efficiency of a low voltage dry-type distribution transformer manufactured on or after January 1, 2007, shall be the Class I Efficiency Levels for distribution transformers specified in table 4–2 of the “Guide for Determining Energy Efficiency for Distribution Transformers” published by the National Electrical Manufacturers Association (NEMA TP–1–2002).

(z) TRAFFIC SIGNAL MODULES AND PEDESTRIAN MODULES.—Any traffic signal module or pedestrian module manufactured on or after January 1, 2006, shall—

(1) meet the performance requirements used under the Energy Star program of the Environmental Protection Agency for traffic signals, as in effect on the date of enactment of this subsection; and

(2) be installed with compatible, electrically connected signal control interface devices and conflict monitoring systems.

(aa) UNIT HEATERS.—A unit heater manufactured on or after the date that is 3 years after the date of enactment of this subsection shall—

(1) be equipped with an intermittent ignition device; and

(2) have power venting or an automatic flue damper.

(bb) MEDIUM BASE COMPACT FLUORESCENT LAMPS.—(1) A bare lamp and covered lamp (no reflector) medium base compact fluorescent lamp manufactured on or after January 1, 2006, shall meet the following requirements prescribed by the August 9, 2001,

version of the Energy Star Program Requirements for Compact Fluorescent Lamps, Energy Star Eligibility Criteria, Energy-Efficiency Specification issued by the Environmental Protection Agency and Department of Energy:

- (A) Minimum initial efficacy.
- (B) Lumen maintenance at 1000 hours.
- (C) Lumen maintenance at 40 percent of rated life.
- (D) Rapid cycle stress test.
- (E) Lamp life.

(2) The Secretary may, by rule, establish requirements for color quality (CRI), power factor, operating frequency, and maximum allowable start time based on the requirements prescribed by the August 9, 2001, version of the Energy Star Program Requirements for Compact Fluorescent Lamps.

(3) The Secretary may, by rule—

(A) revise the requirements established under paragraph (2); or

(B) establish other requirements, after considering energy savings, cost effectiveness, and consumer satisfaction.

(cc) DEHUMIDIFIERS.—(1) Dehumidifiers manufactured on or after October 1, 2007, shall have an Energy Factor that meets or exceeds the following values:

Product Capacity (pints/day):	Minimum Energy Factor (Liters/kWh)
25.00 or less .....	1.00
25.01 – 35.00 .....	1.20
35.01 – 54.00 .....	1.30
54.01 – 74.99 .....	1.50
75.00 or more .....	2.25.

(2) DEHUMIDIFIERS MANUFACTURED ON OR AFTER OCTOBER 1, 2012.—Dehumidifiers manufactured on or after October 1, 2012, shall have an Energy Factor that meets or exceeds the following values:

Product Capacity (pints/day):	Minimum Energy Factor (liters/kWh)
Up to 35.00 .....	1.35
35.01–45.00 .....	1.50
45.01–54.00 .....	1.60
54.01–75.00 .....	1.70
Greater than 75.00 .....	2.5.

(dd) COMMERCIAL PRERINSE SPRAY VALVES.—Commercial prerinse spray valves manufactured on or after January 1, 2006, shall have a flow rate of not more than 1.6 gallons per minute.

(ee) MERCURY VAPOR LAMP BALLASTS.—Mercury vapor lamp ballasts (other than specialty application mercury vapor lamp ballasts) shall not be manufactured or imported after January 1, 2008.

(ff) CEILING FANS AND CEILING FAN LIGHT KITS.—(1)(A) All ceiling fans manufactured on or after January 1, 2007, shall have the following features:

- (i) Fan speed controls separate from any lighting controls.
- (ii) Adjustable speed controls (either more than 1 speed or variable speed).
- (iii) The capability of reversible fan action, except for—

- (I) fans sold for industrial applications;
- (II) fans sold for outdoor applications; and
- (III) cases in which safety standards would be violated by the use of the reversible mode.

(B) The Secretary may define the exceptions described in clause (iv) in greater detail, but shall not substantively expand the exceptions.

(2)(A) Ceiling fan light kits with medium screw base sockets manufactured on or after January 1, 2007, shall be packaged with screw-based lamps to fill all screw base sockets.

(B) The screw-based lamps required under subparagraph (A) shall—

- (i) meet the Energy Star Program Requirements for Compact Fluorescent Lamps, version 3.0, issued by the Department of Energy; or
- (ii) use light sources other than compact fluorescent lamps that have lumens per watt performance at least equivalent to comparably configured compact fluorescent lamps meeting the Energy Star Program Requirements described in clause (i).

(3) Ceiling fan light kits with pin-based sockets for fluorescent lamps manufactured on or after January 1, 2007 shall—

(A) meet the Energy Star Program Requirements for Residential Light Fixtures version 4.0 issued by the Environmental Protection Agency; and

(B) be packaged with lamps to fill all sockets.

(4)(A) By January 1, 2007, the Secretary shall consider and issue requirements for any ceiling fan lighting kits other than those covered in paragraphs (2) and (3), including candelabra screw base sockets.

(B) The requirements issued under subparagraph (A) shall be effective for products manufactured 2 years after the date of the final rule.

(C) If the Secretary fails to issue a final rule by the date specified in subparagraph (A), any type of ceiling fan lighting kit described in subparagraph (A) that is manufactured after January 1, 2009—

- (i) shall not be capable of operating with lamps that total more than 190 watts; and
- (ii) shall be packaged with lamps to fill all sockets.

(5)(A) After January 1, 2010, the Secretary may consider, and issue, if the requirements of subsections (o) and (p) are met, amended energy efficiency standards for ceiling fan light kits.

(B) Any amended standards issued under subparagraph (A) shall apply to products manufactured not earlier than 2 years after the date of publication of the final rule establishing the amended standard.

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

(B) In issuing the standards under subparagraph (A), the Secretary shall consider—

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

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

(7) Section 327 shall apply to the products covered in paragraphs (1) through (4) beginning on the date of enactment of this subsection, except that any State or local labeling requirement for ceiling fans prescribed or enacted before the date of enactment of this subsection shall not be preempted until the labeling requirements applicable to ceiling fans established under section 324 take effect.

(gg) STANDBY MODE ENERGY USE.—

(1) DEFINITIONS.—

(A) IN GENERAL.—Unless the Secretary determines otherwise pursuant to subparagraph (B), in this subsection:

(i) ACTIVE MODE.—The term “active mode” means the condition in which an energy-using product—

(I) is connected to a main power source;

(II) has been activated; and

(III) provides 1 or more main functions.

(ii) OFF MODE.—The term “off mode” means the condition in which an energy-using product—

(I) is connected to a main power source; and

(II) is not providing any standby or active mode function.

(iii) STANDBY MODE.—The term “standby mode” means the condition in which an energy-using product—

(I) is connected to a main power source; and

(II) offers 1 or more of the following user-oriented or protective functions:

(aa) To facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer.

(bb) Continuous functions, including information or status displays (including clocks) or sensor-based functions.

(B) AMENDED DEFINITIONS.—The Secretary may, by rule, amend the definitions under subparagraph (A), taking into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission.

(2) TEST PROCEDURES.—

(A) IN GENERAL.—Test procedures for all covered products shall be amended pursuant to section 323 to include standby mode and off mode energy consumption, taking into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission, with such energy consumption integrated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless the Secretary determines that—

(i) the current test procedures for a covered product already fully account for and incorporate the standby mode and off mode energy consumption of the covered product; or



(ii) such an integrated test procedure is technically infeasible for a particular covered product, in which case the Secretary shall prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible.

(B) DEADLINES.—The test procedure amendments required by subparagraph (A) shall be prescribed in a final rule no later than the following dates:

(i) December 31, 2008, for battery chargers and external power supplies.

(ii) March 31, 2009, for clothes dryers, room air conditioners, and fluorescent lamp ballasts.

(iii) June 30, 2009, for residential clothes washers.

(iv) September 30, 2009, for residential furnaces and boilers.

(v) March 31, 2010, for residential water heaters, direct heating equipment, and pool heaters.

(vi) March 31, 2011, for residential dishwashers, ranges and ovens, microwave ovens, and dehumidifiers.

(C) PRIOR PRODUCT STANDARDS.—The test procedure amendments adopted pursuant to subparagraph (B) shall not be used to determine compliance with product standards established prior to the adoption of the amended test procedures.

(3) INCORPORATION INTO STANDARD.—

(A) IN GENERAL.—Subject to subparagraph (B), based on the test procedures required under paragraph (2), any final rule establishing or revising a standard for a covered product, adopted after July 1, 2010, shall incorporate standby mode and off mode energy use into a single amended or new standard, pursuant to subsection (o), if feasible.

(B) SEPARATE STANDARDS.—If not feasible, the Secretary shall prescribe within the final rule a separate standard for standby mode and off mode energy consumption, if justified under subsection (o).

(hh) METAL HALIDE LAMP FIXTURES.—

(1) STANDARDS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), metal halide lamp fixtures designed to be operated with lamps rated greater than or equal to 150 watts but less than or equal to 500 watts shall contain—

(i) a pulse-start metal halide ballast with a minimum ballast efficiency of 88 percent;

(ii) a magnetic probe-start ballast with a minimum ballast efficiency of 94 percent; or

(iii) a nonpulse-start electronic ballast with—

(I) a minimum ballast efficiency of 92 percent for wattages greater than 250 watts; and

(II) a minimum ballast efficiency of 90 percent for wattages less than or equal to 250 watts.

(B) EXCLUSIONS.—The standards established under subparagraph (A) shall not apply to—

(i) fixtures with regulated lag ballasts;

(ii) fixtures that use electronic ballasts that operate at 480 volts; or

(iii) fixtures that—

(I) are rated only for 150 watt lamps;

(II) are rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A); and

(III) contain a ballast that is rated to operate at ambient air temperatures above 50°C, as specified by UL 1029–2001.

(C) APPLICATION.—The standards established under subparagraph (A) shall apply to metal halide lamp fixtures manufactured on or after the later of—

(i) January 1, 2009; or

(ii) the date that is 270 days after the date of enactment of this subsection.

(2) FINAL RULE BY JANUARY 1, 2012.—

(A) IN GENERAL.—Not later than January 1, 2012, the Secretary shall publish a final rule to determine whether the standards established under paragraph (1) should be amended.

(B) ADMINISTRATION.—The final rule shall—

(i) contain any amended standard; and

(ii) apply to products manufactured on or after January 1, 2015.

(3) FINAL RULE BY JANUARY 1, 2019.—

(A) IN GENERAL.—Not later than January 1, 2019, the Secretary shall publish a final rule to determine whether the standards then in effect should be amended.

(B) ADMINISTRATION.—The final rule shall—

(i) contain any amended standards; and

(ii) apply to products manufactured after January 1, 2022.

(4) DESIGN AND PERFORMANCE REQUIREMENTS.—Notwithstanding any other provision of law, any standard established pursuant to this subsection may contain both design and performance requirements.

(ii) APPLICATION DATE.—Section 327 applies—

(1) to products for which energy conservation standards are to be established under subsection (l), (u), or (v) beginning on the date on which a final rule is issued by the Secretary, except that any State or local standard prescribed or enacted for the product before the date on which the final rule is issued shall not be preempted until the energy conservation standard established under subsection (l), (u), or (v) for the product takes effect; and

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

## REQUIREMENTS OF MANUFACTURERS

SEC. 326. (a) IN GENERAL.—Each manufacturer of a covered product to which a rule under section 324 applies shall provide a label which meets, and is displayed in accordance with, the requirements of such rule. If such manufacturer or any distributor, retailer, or private labeler of such product advertises such product in a catalog from which it may be purchased, such catalog shall contain all information required to be displayed on the label, except as otherwise provided by rule of the Commission. The preceding sentence shall not require that a catalog contain information respecting a covered product if the distribution of such catalog commenced before the effective date of the labeling rule under section 324 applicable to such product.

(b) NOTIFICATION.—(1) Each manufacturer of a covered product to which a rule under section 324 applies shall notify the Secretary or the Commission—

(A) not later than 60 days after the date such rule takes effect, of the models in current production (and starting serial numbers of those models) to which such rule applies; and

(B) prior to commencement of production, of all models subsequently produced (and starting serial numbers of those models) to which such rule applies.

(2) If requested by the Secretary or Commission, the manufacturer of a covered product to which a rule under section 324 applies shall provide, within 30 days of the date of the request, the data from which the information included on the label and required by the rule was derived. Data shall be kept on file by the manufacturer for a period specified in the rule.

(3) When requested—

(A) by the Secretary for purposes of ascertaining whether a product subject to a standard established in or prescribed under section 325 is in compliance with that standard, or

(B) by the Commission for purposes of ascertaining whether the information set out on a label of a product, as required under section 324, is accurate,

each manufacturer of such a product shall supply at his expense a reasonable number of such covered products to any laboratory designated by the Secretary or the Commission, as the case may be. Any reasonable charge levied by the laboratory for such testing shall be borne by the United States, if and to the extent provided in appropriation Acts.

(4) Each manufacturer of a covered product to which a rule under section 324 applies shall annually, at a time specified by the Commission, supply to the Commission relevant data respecting energy consumption or water use developed in accordance with the test procedures applicable to such product under section 323.

(5) A rule under section 323, 324, or 325 may require the manufacturer or his agent to permit a representative designated by the Commission or the Secretary to observe any testing required by this part and inspect the results of such testing.

(6) *VOLUNTARY VERIFICATION PROGRAMS FOR AIR CONDITIONING, FURNACE, BOILER, HEAT PUMP, AND WATER HEATER PRODUCTS.*—

(A) *RELIANCE ON VOLUNTARY PROGRAMS.*—For the purpose of verifying compliance with energy conservation standards established under sections 325 and 342 for covered products described in paragraphs (3), (4), (5), (9), and (11) of section 322(a) and covered equipment described in subparagraphs (B), (C), (D), (F), (I), (J), and (K) of section 340(1), the Secretary shall rely on testing conducted by recognized voluntary verification programs that are recognized by the Secretary in accordance with subparagraph (B).

(B) *RECOGNITION OF VOLUNTARY VERIFICATION PROGRAMS.*—

(i) *IN GENERAL.*—Not later than 180 days after the date of enactment of this paragraph, the Secretary shall initiate a negotiated rulemaking in accordance with subchapter III of chapter 5 of title 5, United States Code (commonly known as the “Negotiated Rulemaking Act of 1990”) to develop criteria that have consensus support for achieving recognition by the Secretary as an approved voluntary verification program. Any subsequent amendment to such criteria may be made only pursuant to a subsequent negotiated rulemaking in accordance with subchapter III of chapter 5 of title 5, United States Code.

(ii) *MINIMUM REQUIREMENTS.*—The criteria developed under clause (i) shall, at a minimum, ensure that a voluntary verification program—

(I) is nationally recognized;

(II) is operated by a third party and not directly operated by a program participant;

(III) satisfies any applicable elements of—

(aa) International Organization for Standardization standard numbered 17025; and

(bb) any other relevant International Organization for Standardization standards identified and agreed to through the negotiated rulemaking under clause (i);

(IV) at least annually tests independently obtained products following the test procedures established under this title to verify the certified rating of a representative sample of products and equipment within the scope of the program;

(V) maintains a publicly available list of all ratings of products subject to verification;

(VI) requires the changing of the performance rating or removal of the product or equipment from the program if testing determines that the performance rating does not meet the levels the manufacturer has certified to the Secretary;

(VII) requires new program participants to substantiate ratings through test data generated in accordance with Department of Energy regulations;

(VIII) allows for challenge testing of products and equipment within the scope of the program;

(IX) requires program participants to disclose the performance rating of all covered products and

*equipment within the scope of the program for the covered product or equipment;*

*(X) provides to the Secretary—*

*(aa) an annual report of all test results, the contents of which shall be determined through the negotiated rulemaking process under clause (i); and*

*(bb) test reports, on the request of the Secretary, that note any instructions specified by the manufacturer or the representative of the manufacturer for the purpose of conducting the verification testing, to be exempted from disclosure under section 552(b)(4) of title 5, United States Code; and*

*(XI) satisfies any additional requirements or standards that the Secretary shall establish consistent with this subparagraph.*

*(iii) CESSATION OF RECOGNITION.—The Secretary may only cease recognition of a voluntary verification program as an approved program described in subparagraph (A) upon a finding that the program is not meeting its obligations for compliance through program review criteria developed during the negotiated rulemaking conducted under subparagraph (B).*

*(C) ADMINISTRATION.—*

*(i) IN GENERAL.—The Secretary shall not require—*

*(I) manufacturers to participate in a recognized voluntary verification program described in subparagraph (A); or*

*(II) participating manufacturers to provide information that has already been provided to the Secretary.*

*(ii) LIST OF COVERED PRODUCTS.—The Secretary may maintain a publicly available list of covered products and equipment that distinguishes between products that are and are not covered products and equipment verified through a recognized voluntary verification program described in subparagraph (A).*

*(iii) PERIODIC VERIFICATION TESTING.—The Secretary—*

*(I) shall not subject products or equipment that have been verification tested under a recognized voluntary verification program described in subparagraph (A) to periodic verification testing to verify the accuracy of the certified performance rating of the products or equipment; but*

*(II) may require testing of products or equipment described in subclause (I)—*

*(aa) if the testing is necessary—*

*(AA) to assess the overall performance of a voluntary verification program;*

*(BB) to address specific performance issues;*

*(CC) for use in updating test procedures and standards; or*

*(DD) for other purposes consistent with this title; or*

*(bb) if such testing is agreed to during the negotiated rulemaking conducted under subparagraph (B).*

*(D) EFFECT ON OTHER AUTHORITY.—Nothing in this paragraph limits the authority of the Secretary to enforce compliance with any law.*

(c) DEADLINE.—Each manufacturer shall use labels reflecting the range data required to be disclosed under section 324(c)(1)(B) after the expiration of 60 days following the date of publication of any revised table of ranges unless the rule under section 324 provides for a later date. The Commission may not require labels be changed to reflect revised tables of ranges more often than annually.

(d) INFORMATION REQUIREMENTS.—(1) For purposes of carrying out this part, the Secretary may require, under this part or other provision of law administered by the Secretary, each manufacturer of a covered product to submit information or reports to the Secretary with respect to energy efficiency, energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use of such covered product and the economic impact of any proposed energy conservation standard, as the Secretary determines may be necessary to establish and revise test procedures, labeling rules, and energy conservation standards for such product and to insure compliance with the requirements of this part. In making any determination under this paragraph, the Secretary shall consider existing public sources of information, including nationally recognized certification programs of trade associations.

(2) The Secretary shall exercise authority under this section in a manner designed to minimize unnecessary burdens on manufacturers of covered products.

(3) The provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 shall apply with respect to information obtained under this subsection to the same extent and in the same manner as they apply with respect to energy information obtained under section 11 of such Act.

\* \* \* \* \*

#### ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 336. (a)(1) In addition to the requirements of section 553 of title 5, United States Code, rules prescribed under [section 323,] section 322, 323, 324, 325, 327, or 328 of this part shall afford interested persons an opportunity to present written and oral data, views, and arguments with respect to any proposed rule.

(2) In the case of a rule prescribed under section 325, the Secretary shall, by means of conferences or other informal procedures, afford any interested person an opportunity to question—

(A) other interested persons who have made oral presentations; and

(B) employees of the United States who have made written or oral presentations with respect to disputed issues of material fact.

Such opportunity shall be afforded to the extent the Secretary determines that questioning pursuant to such procedures is likely to result in a more timely and effective resolution of such issues.

(3) A transcript shall be kept of any oral presentations made under this subsection.

(b)(1) Any person who will be adversely affected by a rule prescribed under [section 323,] *section 322, 323, 324, or 325* may, at any time within 60 days after the date on which such rule is prescribed, file a petition with the United States court of appeals for the circuit in which such person resides or has his principal place of business, for judicial review of such rule. A copy of the petition shall be transmitted by the clerk of the court to the agency which prescribed the rule. Such agency shall file in the court the written submissions to, and transcript of, the proceedings on which the rule was based, as provided in section 2112 of title 28, United States Code.

(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter. No rule under [section 323,] *section 322, 323, 324, or 325* may be affirmed unless supported by substantial evidence.

(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(4) The remedies provided for in this subsection shall be in addition to, and not in substitution for, any other remedies provided by law.

(5) The procedures applicable under this part shall not—

(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this part (or provisions of law cited herein); or

(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms by referring to this part and declaring that such provision supersedes, in whole or in part, the procedures of this part.

(c) Jurisdiction is vested in the Federal district courts of the United States over actions brought by—

(1) any adversely affected person to determine whether a State or local government is complying with the requirements of this part; and

(2) any person who files a petition under section 325(n) which is denied by the Secretary.

\* \* \* \* \*

## PART C—CERTAIN INDUSTRIAL EQUIPMENT

\* \* \* \* \*

### PURPOSES AND COVERAGE

SEC. 341. (a) It is the purpose of this part to improve the efficiency of electric motors and pumps and certain other industrial equipment in order to conserve the energy resources of the Nation.

(b) The Secretary may, by rule, include a type of industrial equipment as covered equipment if he determines that to do so is necessary to carry out the purposes of this part.

(c) The Secretary may, by rule, include as industrial equipment articles which are component parts of consumer products, if he determines that—

(1) such articles are, to a significant extent, distributed in commerce other than as component parts for consumer products; and

(2) such articles meet the requirements of section 340(2)(A) (other than clauses (ii) and (iii)).

(d) *MODIFYING DEFINITIONS OF COVERED EQUIPMENT.*—

(1) *IN GENERAL.*—*For any covered equipment for which a definition is provided in section 340, the Secretary may, by rule, unless prohibited herein, modify such definition in order to—*

(A) *address significant changes in the product or the market occurring since the definition was established; and*

(B) *better enable improvements in the energy efficiency of the equipment as part of an energy using system.*

(2) *ANTIBACKSLIDING EXEMPTION.*—*Section 325(o)(1) shall not apply to adjustments to covered equipment definitions made pursuant to this subsection.*

(3) *PROCEDURE FOR MODIFYING DEFINITION.*—

(A) *IN GENERAL.*—*Notice of any adjustment to the definition of a type of covered equipment and an explanation of the reasons therefor shall be published in the Federal Register and opportunity provided for public comment.*

(B) *CONSENSUS REQUIRED.*—*Any amendment to the definition of a type of covered equipment under this subsection must have consensus support, as reflected in—*

(i) *the outcome of negotiations conducted in accordance with the subchapter III of chapter 5 of title 5, United States Code (commonly known as the “Negotiated Rulemaking Act of 1990”); or*

(ii) *the Secretary’s receipt of a statement that is submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered equipment, States, and efficiency advocates), as determined by the Secretary, which contains a recommended modified definition for a type of covered equipment.*

(4) *EFFECT OF A MODIFIED DEFINITION.*—

(A) *For any type or class of equipment which becomes covered equipment pursuant to this subsection—*

(i) *the Secretary may establish test procedures for such type or class of covered equipment pursuant to section 343 and energy conservation standards pursuant to section 325(l);*

(ii) *the Secretary may prescribe labeling rules pursuant to section 344 if the Secretary determines that labeling in accordance with that section is technologically and economically feasible and likely to assist purchasers in making purchasing decisions;*



(iii) section 327 shall begin to apply to such type or class of covered equipment in accordance with section 325(ii)(1); and

(iv) standards previously promulgated under section 325, 342, or 346 shall not apply to such type or class of covered equipment.

(B) For any type or class of equipment which ceases to be covered equipment pursuant to this subsection the provisions of this part shall no longer apply to the type or class of equipment.

\* \* \* \* \*

#### ADMINISTRATION, PENALTIES, ENFORCEMENT, AND PREEMPTION

SEC. 345. (a) The provisions of section 326 (a), (b), and (d), the provisions of subsections (l) through (s) of section 325, and section 327 through 336 shall apply with respect to this part (other than the equipment specified in subparagraphs (B), (C), (D), (I), (J), and (K) of section 340(1)) to the same extent and in the same manner as they apply in part B. In applying such provisions for the purposes of this part—

[(1) references to sections 323, 324, and 325 shall be considered as references to sections 343, 344, and 342, respectively;]

(1) the references to sections 322, 323, 324, and 325 of this Act shall be considered as references to sections 341, 343, 344, and 342 of this Act, respectively;

(2) references to “this part” shall be treated as referring to part C;

(3) the term “equipment” shall be substituted for the term “product”;

(4) the term “Secretary” shall be substituted for “Commission” each place it appears (other than in section 333(c));

(5) section 327(a) shall be applied, in the case of electric motors, as if the National Appliance Energy Conservation Act of 1987 was the Energy Policy Act of 1992;

(6) section 327(b)(1) shall be applied as if electric motors were fluorescent lamp ballasts and as if the National Appliance Energy Conservation Amendments of 1988 were the Energy Policy Act of 1992;

(7) section 327(b)(4) shall be applied as if electric motors were fluorescent lamp ballasts and as if paragraph (5) of section 325(g) were section 342;

(8) notwithstanding any other provision of law, a regulation or other requirement adopted by a State or subdivision of a State contained in a State or local building code for new construction concerning the energy efficiency or energy use of an electric motor covered under this part is not superseded by the standards for such electric motor established or prescribed under section 342(b) if such regulation or requirement is identical to the standards established or prescribed under such section;

(9) in the case of commercial clothes washers, section 327(b)(1) shall be applied as if the National Appliance Energy Conservation Act of 1987 was the Energy Policy Act of 2005; and

(10) section 327 shall apply with respect to the equipment described in section 340(1)(L) beginning on the date on which a final rule establishing an energy conservation standard is issued by the Secretary, except that any State or local standard prescribed or enacted for the equipment before the date on which the final rule is issued shall not be preempted until the energy conservation standard established by the Secretary for the equipment takes effect.

(b)(1) The provisions of [section 325(p)(4),] *section 325(p)(3), (4), and (6)*, section 326(a), (b), and (d), section 327(a), and sections 328 through 336 shall apply with respect to the equipment specified in subparagraphs (B), (C), (D), (I), (J), and (K) of section 340(1) to the same extent and in the same manner as they apply in part B. In applying such provisions for the purposes of such equipment, paragraphs (1), (2), (3), and (4) of subsection (a) shall apply.

(2)(A) A standard prescribed or established under section 342(a) shall, beginning on the effective date of such standard, supersede any State or local regulation concerning the energy efficiency or energy use of a product for which a standard is prescribed or established pursuant to such section.

(B) Notwithstanding subparagraph (A), a standard prescribed or established under section 342(a) shall not supersede a standard for such a product contained in a State or local building code for new construction if—

(i) the standard in the building code does not require that the energy efficiency of such product exceed the applicable minimum energy efficiency requirement in amended ASHRAE/IES Standard 90.1; and

(ii) the standard in the building code does not take effect prior to the effective date of the applicable minimum energy efficiency requirement in amended ASHRAE/IES Standard 90.1.

(C) Notwithstanding subparagraph (A), a standard prescribed or established under section 342(a) shall not supersede the standards established by the State of California set forth in Table C-6, California Code of Regulations, Title 24, Part 2, Chapter 2-53, for water-source heat pumps below 135,000 Btu per hour (cooling capacity) that become effective on January 1, 1993.

(D) Notwithstanding subparagraph (A), a standard prescribed or established under section 342(a) shall not supersede a State regulation which has been granted a waiver by the Secretary. The Secretary may grant a waiver pursuant to the terms, conditions, criteria, procedures, and other requirements specified in section 327(d) of this Act.

(c) With respect to any electric motor to which standards are applicable under section 342(b), the Secretary shall require manufacturers to certify, through an independent testing or certification program nationally recognized in the United States, that such motor meets the applicable standard.

(d)(1) Except as provided in paragraphs (2) and (3), section 327 shall apply with respect to very large commercial package air conditioning and heating equipment to the same extent and in the same manner as section 327 applies under part B on the date of enactment of this subsection.

(2) Any State or local standard issued before the date of enactment of this subsection shall not be preempted until the standards established under section 342(a)(9) take effect on January 1, 2010.

(e)(1)(A) Subsections (a), (b), and (d) of section 326, subsections (m) through (s) of section 325, and sections 328 through 336 shall apply with respect to commercial refrigerators, freezers, and refrigerator-freezers to the same extent and in the same manner as those provisions apply under part B.

(B) In applying those provisions to commercial refrigerators, freezers, and refrigerator-freezers, paragraphs (1), (2), (3), and (4) of subsection (a) shall apply.

(2)(A) Section 327 shall apply to commercial refrigerators, freezers, and refrigerator-freezers for which standards are established under paragraphs (2) and (3) of section 342(c) to the same extent and in the same manner as those provisions apply under part B on the date of enactment of this subsection, except that any State or local standard issued before the date of enactment of this subsection shall not be preempted until the standards established under paragraphs (2) and (3) of section 342(c) take effect.

(B) In applying section 327 in accordance with subparagraph (A), paragraphs (1), (2), and (3) of subsection (a) shall apply.

(3)(A) Section 327 shall apply to commercial refrigerators, freezers, and refrigerator-freezers for which standards are established under section 342(c)(4) to the same extent and in the same manner as the provisions apply under part B on the date of publication of the final rule by the Secretary, except that any State or local standard issued before the date of publication of the final rule by the Secretary shall not be preempted until the standards take effect.

(B) In applying section 327 in accordance with subparagraph (A), paragraphs (1), (2), and (3) of subsection (a) shall apply.

(4)(A) If the Secretary does not issue a final rule for a specific type of commercial refrigerator, freezer, or refrigerator-freezer within the time frame specified in section 342(c)(5), subsections (b) and (c) of section 327 shall not apply to that specific type of refrigerator, freezer, or refrigerator-freezer for the period beginning on the date that is 2 years after the scheduled date for a final rule and ending on the date on which the Secretary publishes a final rule covering the specific type of refrigerator, freezer, or refrigerator-freezer.

(B) Any State or local standard issued before the date of publication of the final rule shall not be preempted until the final rule takes effect.

(5)(A) In the case of any commercial refrigerator, freezer, or refrigerator-freezer to which standards are applicable under paragraphs (2) and (3) of section 342(c), the Secretary shall require manufacturers to certify, through an independent, nationally recognized testing or certification program, that the commercial refrigerator, freezer, or refrigerator-freezer meets the applicable standard.

(B) The Secretary shall, to the maximum extent practicable, encourage the establishment of at least 2 independent testing and certification programs.

(C) As part of certification, information on equipment energy use and interior volume shall be made available to the Secretary.

(f)(1)(A)(i) Except as provided in clause (ii), section 327 shall apply to automatic commercial ice makers for which standards have been established under section 342(d)(1) to the same extent and in the same manner as the section applies under part B on the date of enactment of this subsection.

(ii) Any State standard issued before the date of enactment of this subsection shall not be preempted until the standards established under section 342(d)(1) take effect.

(B) In applying section 327 to the equipment under subparagraph (A), paragraphs (1), (2), and (3) of subsection (a) shall apply.

(2)(A)(i) Except as provided in clause (ii), section 327 shall apply to automatic commercial ice makers for which standards have been established under section 342(d)(2) to the same extent and in the same manner as the section applies under part B on the date of publication of the final rule by the Secretary.

(ii) Any State standard issued before the date of publication of the final rule by the Secretary shall not be preempted until the standards established under section 342(d)(2) take effect.

(B) In applying section 327 in accordance with subparagraph (A), paragraphs (1), (2), and (3) of subsection (a) shall apply.

(3)(A) If the Secretary does not issue a final rule for a specific type of automatic commercial ice maker within the time frame specified in section 342(d), subsections (b) and (c) of section 327 shall no longer apply to the specific type of automatic commercial ice maker for the period beginning on the day after the scheduled date for a final rule and ending on the date on which the Secretary publishes a final rule covering the specific type of automatic commercial ice maker.

(B) Any State standard issued before the publication of the final rule shall not be preempted until the standards established in the final rule take effect.

(4)(A) The Secretary shall monitor whether manufacturers are reducing harvest rates below tested values for the purpose of bringing non-complying equipment into compliance.

(B) If the Secretary finds that there has been a substantial amount of manipulation with respect to harvest rates under subparagraph (A), the Secretary shall take steps to minimize the manipulation, such as requiring harvest rates to be within 5 percent of tested values.

(g)(1)(A) If the Secretary does not issue a final rule for commercial clothes washers within the timeframe specified in section 342(e)(2), subsections (b) and (c) of section 327 shall not apply to commercial clothes washers for the period beginning on the day after the scheduled date for a final rule and ending on the date on which the Secretary publishes a final rule covering commercial clothes washers.

(B) Any State or local standard issued before the date on which the Secretary publishes a final rule shall not be preempted until the standards established under section 342(e)(2) take effect.

(2) The Secretary shall undertake an educational program to inform owners of laundromats, multifamily housing, and other sites where commercial clothes washers are located about the new standard, including impacts on washer purchase costs and options for recovering those costs through coin collection.

(h) WALK-IN COOLERS AND WALK-IN FREEZERS.—

## (1) COVERED TYPES.—

## (A) RELATIONSHIP TO OTHER LAW.—

(i) IN GENERAL.—Except as otherwise provided in this subsection, section 327 shall apply to walk-in coolers and walk-in freezers for which standards have been established under paragraphs (1), (2), and (3) of section 342(f) to the same extent and in the same manner as the section applies under part B on the date of enactment of this subsection.

(ii) STATE STANDARDS.—Any State standard prescribed before the date of enactment of this subsection shall not be preempted until the standards established under paragraphs (1) and (2) of section 342(f) take effect.

(B) ADMINISTRATION.—In applying section 327 to equipment under subparagraph (A), paragraphs (1), (2), and (3) of subsection (a) shall apply.

## (2) FINAL RULE NOT TIMELY.—

(A) IN GENERAL.—If the Secretary does not issue a final rule for a specific type of walk-in cooler or walk-in freezer within the timeframe established under paragraph (4) or (5) of section 342(f), subsections (b) and (c) of section 327 shall no longer apply to the specific type of walk-in cooler or walk-in freezer during the period—

(i) beginning on the day after the scheduled date for a final rule; and

(ii) ending on the date on which the Secretary publishes a final rule covering the specific type of walk-in cooler or walk-in freezer.

(B) STATE STANDARDS.—Any State standard issued before the publication of the final rule shall not be preempted until the standards established in the final rule take effect.

(3) CALIFORNIA.—Any standard issued in the State of California before January 1, 2011, under title 20 of the California Code of Regulations, that refers to walk-in coolers and walk-in freezers, for which standards have been established under paragraphs (1), (2), and (3) of section 342(f), shall not be preempted until the standards established under section 342(f)(4) take effect.

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## PART G—ENERGY CONSERVATION PROGRAM FOR SCHOOLS AND HOSPITALS

\* \* \* \* \*

### GUIDELINES

SEC. 392. (a) the Secretary shall, by rule, not later than 60 days after the date of enactment of this part—

(1) prescribe guidelines for the conduct of preliminary energy audits, including a description of the type, number, and distribution of preliminary energy audits of school and hospital facilities that will provide a reasonably accurate evaluation of

the energy conservation needs of all such facilities in each State, and

(2) prescribe guidelines for the conduct of energy audits.

(b) The Secretary shall, by rule, not later than 90 days after the date of enactment of this part, prescribe guidelines for State plans for the implementation of energy conservation projects in schools and hospitals. The guidelines shall include—

(1) a description of the factors which the State energy agency may consider in determining which energy conservation projects will be given priority in making grants pursuant to this part, including such factors as cost, energy consumption, energy savings, and energy conservation goals,

(2) a description of the suggested criteria to be used in establishing a State program to identify persons qualified to implement energy conservation projects, and

(3) a description of the types of energy conservation measures deemed appropriate for each region of the Nation.

(c) Guidelines prescribed under this section may be revised from time to time after notice and opportunity for comment.

(d) The Secretary shall, by rule prescribe criteria for determining schools and hospitals which are in a class of severe hardship. Such criteria shall take into account climate, fuel costs, fuel availability, ability to provide the non-Federal share of the costs, and such other factors that he deems appropriate.

(e) *COORDINATION OF ENERGY RETROFITTING ASSISTANCE FOR SCHOOLS.*—

(1) *DEFINITION OF SCHOOL.*—*Notwithstanding section 391(6), for the purposes of this subsection, the term “school” means—*

(A) *an elementary school or secondary school (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801));*

(B) *an institution of higher education (as defined in section 102(a) of the Higher Education Act of 1965 (20 U.S.C. 1002(a)));*

(C) *a school of the defense dependents’ education system under the Defense Dependents’ Education Act of 1978 (20 U.S.C. 921 et seq.) or established under section 2164 of title 10, United States Code;*

(D) *a school operated by the Bureau of Indian Affairs;*

(E) *a tribally controlled school (as defined in section 5212 of the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2511)); and*

(F) *a Tribal College or University (as defined in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b))).*

(2) *ESTABLISHMENT OF CLEARINGHOUSE.*—*The Secretary, acting through the Office of Energy Efficiency and Renewable Energy, shall establish a clearinghouse to disseminate information regarding available Federal programs and financing mechanisms that may be used to help initiate, develop, and finance energy efficiency, distributed generation, and energy retrofitting projects for schools.*

(3) *REQUIREMENTS.*—*In carrying out paragraph (2), the Secretary shall—*

*(A) consult with appropriate Federal agencies to develop a list of Federal programs and financing mechanisms that are, or may be, used for the purposes described in paragraph (2); and*

*(B) coordinate with appropriate Federal agencies to develop a collaborative education and outreach effort to streamline communications and promote available Federal programs and financing mechanisms described in subparagraph (A), which may include the development and maintenance of a single online resource that includes contact information for relevant technical assistance in the Office of Energy Efficiency and Renewable Energy that States, local education agencies, and schools may use to effectively access and use such Federal programs and financing mechanisms.*

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#### **【PART I—OFF-HIGHWAY MOTOR VEHICLES**

##### **【OFF-HIGHWAY MOTOR VEHICLE CONSERVATION STUDY**

**【SEC. 385.** Not later than 1 year after the date of the enactment of this section, the Secretary of Transportation shall complete a study of the energy conservation potential of recreational motor vehicles, including, but not limited to, aircraft and motor boats which are designed for recreational use, and shall submit a report to the President and to the Congress containing the results of such study.】

#### **PART J—ENCOURAGING THE USE OF ALTERNATIVE FUELS**

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##### **SEC. 400EE. STUDIES AND REPORTS.**

**【(a) METHANOL STUDY.—**(1) The Secretary shall study methanol plants, including the costs and practicability of such plants, that are—

**【(A)** capable of utilizing current domestic supplies of unutilized natural gas;

**【(B)** relocatable; or

**【(C)** suitable for natural gas to methanol conversion by natural gas distribution companies.

**【(2)** For purposes of this subsection, the term “unutilized natural gas” means gas that is available in small remote fields and cannot be economically transported to natural gas pipelines, or gas the quality of which is so poor that extensive and uneconomic pretreatment is required prior to its introduction into the natural gas distribution system.

**【(3)** The Secretary shall submit a report under this subsection to the Committees on Commerce, Science, and Transportation and Governmental Affairs of the Senate, and the Committee on Energy and Commerce of the House of Representatives, no later than September 30, 1990.】

**【(b)】** (a) **INDEPENDENT ENVIRONMENTAL STUDY.—**(1) The Administrator of the Environmental Protection Agency shall submit to the

Committees on Commerce, Science, and Transportation and Governmental Affairs of the Senate, and the Committee on Energy and Commerce of the House of Representatives, in December of 1990, and once every two years thereafter, a report which includes—

(A) a comprehensive analysis of the air quality, global climate change, and other positive and negative environmental impacts, if any, including fuel displacement effects, associated with the production, storage, distribution, and use of all alternative motor vehicle fuels under the Alternative Motor Fuels Act of 1988, as compared to gasoline and diesel fuels; and

(B) an extended reasonable forecast of the change, if any, in air quality, global climate change, and other environmental effects of producing, storing, distributing, and using alternative motor vehicle fuels, utilizing such reasonable energy security, policy, economic, and other scenarios as may be appropriate.

(2) In carrying out the study under this subsection, the Administrator of the Environmental Protection Agency shall consult with the Secretaries of Energy and Transportation. Nothing in this paragraph shall be construed to require such Administrator to obtain the approval of the Secretary of Energy or the Secretary of Transportation for any actions taken under this subsection.

(3) There are authorized to be appropriated to carry out the purposes of this subsection \$500,000.

[(c)] (b) PUBLIC PARTICIPATION.—Adequate opportunity shall be provided for public comment on the reports required by this section before they are submitted to the Congress, and a summary of such comments shall be attached to such reports.

\* \* \* \* \*

## ENERGY POLICY ACT OF 1992

### SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the “Energy Policy Act of 1992”.

(b) TABLE OF CONTENTS.—

#### TITLE I—ENERGY EFFICIENCY

\* \* \* \* \*

##### Subtitle F—Federal Agency Energy Management

\* \* \* \* \*

[Sec. 154. Report by General Services Administration]

\* \* \* \* \*

[Sec. 156. Intergovernmental energy management planning and coordination.]

\* \* \* \* \*

[Sec. 160. Inspector General Review and agency accountability.]

*Sec. 160. Inspector General review.*

[Sec. 161. Procurement and identification of energy efficient products.]

\* \* \* \* \*

## TITLE I—ENERGY EFFICIENCY

\* \* \* \* \*



## Subtitle F—Federal Agency Energy Management

\* \* \* \* \*

### SEC. 154. REPORT BY GENERAL SERVICES ADMINISTRATION.

Not later than one year after the date of the enactment of this Act, and annually thereafter, the Administrator of General Services shall report to the Committee on Governmental Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives on the activities of the General Services Administration conducted pursuant to this subtitle.]

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### SEC. 156. INTERGOVERNMENTAL ENERGY MANAGEMENT PLANNING AND COORDINATION.

[(a) CONFERENCE WORKSHOPS.—The Administrator of General Services, in consultation with the Secretary and the Task Force, shall hold regular, biennial conference workshops in each of the 10 standard Federal regions on energy management, conservation, efficiency, and planning strategy. The Administrator shall work and consult with the Department of Energy and other Federal agencies to plan for particular regional conferences. The Administrator shall invite Department of Energy, State, local, tribal, and county public officials who have responsibilities for energy management or may have an interest in such conferences and shall seek the input of, and be responsive to, the views of such officials in the planning and organization of such workshops.

[(b) FOCUS OF WORKSHOPS.—Such workshops and conferences shall focus on the following (but may include other topics):

[(1) Developing strategies among Federal, State, tribal, and local governments to coordinate energy management policies and to maximize available intergovernmental energy management resources within the region regarding the use of governmental facilities and buildings.

[(2) The design, construction, maintenance, and retrofitting of governmental facilities to incorporate energy efficient techniques.

[(3) Procurement and use of energy efficient products.

[(4) Dissemination of energy information on innovative programs, technologies, and methods which have proven successful in government.

[(5) Technical assistance to design and incorporate effective energy management strategies.

[(c) ESTABLISHMENT OF WORKSHOP TIMETABLE.—As a part of the first report to be submitted pursuant to section 154, the Administrator shall set forth the schedule for the regional energy management workshops to be conducted under this section. Not less than five such workshops shall be held by September 30, 1993, and at

least one such workshop shall be held in each of the 10 Federal regions every two years beginning on September 30, 1993.】

\* \* \* \* \*

**SEC. 159. FEDERAL ENERGY COST ACCOUNTING AND MANAGEMENT.**

(a) **GUIDELINES.**—Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Management and Budget, in cooperation with the Secretary, the Administrator of General Services, and the Secretary of Defense, shall establish guidelines to be employed by each Federal agency to assess accurate energy consumption for all buildings or facilities which the agency owns, operates, manages or leases, where the Government pays utilities separate from the lease and the Government operates the leased space. Such guidelines are to be used in reports required under section 548 of the National Energy Conservation Policy Act (42 U.S.C. 8258). Each agency shall implement such guidelines no later than 120 days after their establishment. Each facility energy manager shall maintain energy consumption and energy cost records for review by the Inspector General, the Congress, and the general public.

(b) **CONTENTS OF GUIDELINES.**—Such guidelines shall include the establishment of a monitoring system to determine—

- (1) which facilities are the most costly to operate when measured on an energy consumption per square foot basis or other relevant analytical basis;
- (2) unusual or abnormal changes in energy consumption; and
- (3) the accuracy of utility charges for electric and gas consumption.

【(c) **FEDERALLY LEASED SPACE ENERGY REPORTING REQUIREMENT.**—The Administrator of General Services shall include, in each report submitted under section 154, the estimated energy cost of leased buildings or space in which the Federal Government does not directly pay the utility bills.】

**SEC. 160. INSPECTOR GENERAL REVIEW [AND AGENCY ACCOUNTABILITY].**

【(a) **AUDIT SURVEY.**—Not later than 120 days after the date of the enactment of this Act, each Inspector General created to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 11(2) of the Inspector General Act of 1978 (5 U.S.C. App.), and the Chief Postal Inspector of the United States Postal Service, in accordance with section 8E(f)(1) as established by section 8E(a)(2) of the Inspector General Act Amendments of 1988 (Public Law 100–504) shall—

- 【(1) identify agency compliance activities to meet the requirements of section 543 of the National Energy Conservation Policy Act (42 U.S.C. 8253) and any other matters relevant to implementing the goals of such Act; and

- 【(2) determine if the agency has the internal accounting mechanisms necessary to assess the accuracy and reliability of energy consumption and energy cost figures required under such section.

【(b) **PRESIDENTS COUNCIL ON INTEGRITY AND EFFICIENCY REPORT TO CONGRESS.**—Not later than 150 days after the date of the enactment of this Act, the President's Council on Integrity and Effi-

ciency shall submit a report to the Committee on Energy and Natural Resources and the Committee on Governmental Affairs of the Senate, the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives, on the review conducted by the Inspector General of each agency under this section.

**[(c) INSPECTOR GENERAL REVIEW.—]** Each Inspector General established under section 2 of the Inspector General Act of 1978 (5 U.S.C. App.) is encouraged to conduct periodic reviews of agency compliance with part 3 of title V of the National Energy Conservation Policy Act, the provisions of this subtitle, and other laws relating to energy consumption. Such reviews shall not be inconsistent with the performance of the required duties of the Inspector General's office.

**[SEC. 161. PROCUREMENT AND IDENTIFICATION OF ENERGY EFFICIENT PRODUCTS.**

**[(a) PROCUREMENT.—]**The Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency, each shall undertake a program to include energy efficient products in carrying out their procurement and supply functions.

**[(b) IDENTIFICATION PROGRAM.—]**The Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency, in consultation with the Secretary of Energy, each shall implement, in conjunction with carrying out their procurement and supply functions, a program to identify and designate those energy efficient products that offer significant potential savings, using, to the extent practicable, the life cycle cost methods and procedures developed under section 544 of the National Energy Conservation Policy Act (42 U.S.C. 8254). The Secretary of Energy shall, to the extent necessary to carry out this section and after consultation with the aforementioned agency heads, provide estimates of the degree of relative energy efficiency of products.

**[(c) GUIDELINES.—]**The Administrator for Federal Procurement Policy, in consultation with the Administrator of General Services, the Secretary of Energy, the Secretary of Defense, and the Director of the Defense Logistics Agency, shall issue guidelines to encourage the acquisition and use by all Federal agencies of products identified pursuant to this section. The Secretary of Defense and the Director of the Defense Logistics Agency shall consider, and place emphasis on, the acquisition of such products as part of the Agency's ongoing review of military specifications.

**[(d) REPORT TO CONGRESS.—]**Not later than December 31 of 1993 and of each year thereafter, the Secretary of Energy, in consultation with the Administrator for Federal Procurement Policy, the Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency, shall report on the progress, status, activities, and results of the programs under subsections (a), (b), and (c). The report shall include—

**[(1)]** the types and functions of each product identified under subsection (b), and efforts undertaken by the Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency to encourage the acquisition and use of such products;

[(2) the actions taken by the Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency to identify products under subsection (b), the barriers which inhibit implementation of identification of such products, and recommendations for legislative action, if necessary;

[(3) progress on the development and issuance of guidelines under subsection (c);

[(4) an indication of whether energy cost savings technologies identified by the Advanced Building Technology Council, under section 809(h) of the National Housing Act (12 U.S.C. 1701j-2), have been used in the identification of products under subsection (b);

[(5) an estimate of the potential cost savings to the Federal Government from acquiring products identified under subsection (b) with respect to which energy is a significant component of life cycle cost, based on the quantities of such products that could be utilized throughout the Government; and

[(6) the actual quantities acquired of products described in paragraph (5).]

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## POWERPLANT AND INDUSTRIAL FUEL USE ACT OF 1978

\* \* \* \* \*

### SEC. 101. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Powerplant and Industrial Fuel Use Act of 1978”.

(b) TABLE OF CONTENTS.—

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### TITLE VII—ADMINISTRATION AND ENFORCEMENT

\* \* \* \* \*

#### Subtitle E—Studies

[Sec. 741. National coal policy study.

[Sec. 742. Coal industry performance and competition study.]

Sec. 743. Impact on employees.

[Sec. 744. Study of compliance problems of small electric utility systems.

[Sec. 746. Socioeconomic impacts of increased coal production and other energy development.

[Sec. 747. Use of petroleum and natural gas in combustors.]

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### TITLE VIII—MISCELLANEOUS PROVISIONS

\* \* \* \* \*

[Sec. 807. Submission of reports.

[Sec. 808. Electric utility conservation plan.]

\* \* \* \* \*

## TITLE VII—ADMINISTRATION AND ENFORCEMENT

\* \* \* \* \*

## Subtitle B—Information and Reporting

\* \* \* \* \*

### SEC. 712. COMPLIANCE REPORT.

[(a) GENERALLY.—] Any person owning, operating, or proposing to operate one or more existing electric powerplants required to come into compliance with the prohibitions of this Act shall on or before January 1, 1980, and annually thereafter, submit to the Secretary a report identifying all such existing electric powerplants owned or operated by such person. Such report shall—

(1) set forth the anticipated schedule for compliance with the applicable requirements and prohibitions by each such electric powerplant;

(2) indicate proposed or existing contracts or other commitments or good faith negotiations for such contracts or commitments for coal or another alternate fuel, equipment, or combinations thereof, which would enable such powerplant to comply with such prohibitions; and

(3) identify those electric powerplants, if any, for which application for temporary or permanent exemption from the prohibitions of this Act may be filed.

[(b) REPORT ON IMPLEMENTATION OF SECTION 808 PLAN.—Any electric utility required to submit a conservation plan under section 808 shall annually submit to the Secretary a report identifying the steps taken during the preceding year to implement such plan.]

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## Subtitle E—Studies

### [SEC. 741. NATIONAL COAL POLICY STUDY.

[(a) STUDY.—The President, acting through the Secretary and the Administrator of the Environmental Protection Agency, shall make a full and complete investigation and study of the alternative national uses of coal available in the United States to meet the Nation's energy requirements consistent with national policies for the protection and enhancement of the quality of the environment and for economic recovery and full employment. In particular the study should identify and evaluate—

[(1) current and prospective coal requirements of the United States;

[(2) current and prospective voluntary and mandatory energy conservation measures and their potential for reduction of the United States coal requirements;

[(3) current and prospective coal resource production, transportation, conversion, and utilization requirements;

[(4) the extent and adequacy of coal research, development, and demonstration programs being carried out by Federal, State, local, and nongovernmental entities (including financial resources, manpower, and statutory authority);

[(5) programs for the development of coal mining technologies which increase coal production and utilization while protecting the health and safety of coal miners;

[(6) alternative strategies for meeting anticipated United States coal requirements, consistent with achieving other na-

tional goals, including national security and environmental protection;

[(7) existing and prospective governmental policies and laws affecting the coal industry with the view of determining what, if any, changes in and implementation of such policies and laws may be advisable in order to consolidate, coordinate, and provide an effective and equitable national energy policy consistent with other national policies; and

[(8) the most efficient use of the Nation's coal resources considering economic (including capital and consumer costs, and balance of payments), social (including employment), environmental, technological, national defense, and other aspects.

[(b) REPORT.—Within 18 months after the effective date of this Act, the President shall submit to the Congress a report with respect to the studies and investigations, together with findings and recommendations in order that the Congress may have such information in a timely fashion. Such report shall include the President's determinations and recommendations with respect to—

[(1) the Nation's projected coal needs nationally and regionally, for the next 2 decades with particular reference to electric power;

[(2) the coal resources available or which must be developed to meet those needs, including, as applicable, the programs for research, development, and demonstration necessary to provide technological advances which may greatly enhance the Nation's ability to efficiently and economically utilize its fuel resources, consistent with applicable environmental requirements;

[(3) the air, water, and other pollution created by coal requirements, including any programs to overcome promptly and efficiently any technological or economic barriers to the elimination of such pollution;

[(4) the existing policies and programs of the Federal Government and of State and local governments, which have any significant impact on the availability, production or efficient and economic utilization of coal resources and on the ability to meet the Nation's energy needs and environmental requirements; and

[(5) the adequacy of various transportation systems, including roads, railroads, and waterways to meet projected increases in coal production and utilization.

Before submitting a report to the Congress under subsection (b), the President shall publish in the Federal Register a notice and summary of the proposed report, make copies of such report available, and accord interested persons an opportunity (of not less than 90 days' duration) to present written comments; and shall make such modifications of such report as he may consider appropriate on the basis of such comments.

[(c) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Secretary for allocation between the Department of Energy and the Environmental Protection Agency for fiscal years 1979 and 1980, not to exceed \$18,000,000, for use in carrying out the purposes of this section.]

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**[SEC. 744. STUDY OF COMPLIANCE PROBLEM OF SMALL ELECTRIC UTILITY SYSTEMS.**

[(a) STUDY.—The Secretary shall conduct a study of the problems of compliance with this Act experienced by those electric utility systems which have a total system generating capacity of less than 2,000 megawatts. The Secretary shall report his findings and his recommendations to the Congress not later than 2 years after the effective date of this Act.

[(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary for the fiscal year 1979 not to exceed \$500,000 to carry out the provisions of this section.

**[SEC. 746. SOCIOECONOMIC IMPACTS OF INCREASED COAL PRODUCTION AND OTHER ENERGY DEVELOPMENT.**

[(a) COMMITTEE.—There is hereby established an interagency committee composed of the heads of the Departments of Energy, Commerce, Interior, Transportation, Housing and Urban Development, and Health, Education, and Welfare, the Environmental Protection Agency, the Appalachian Regional Commission, the Farmers' Home Administration, the Office of Management and Budget, and such other Federal agencies as the Secretary shall designate. In carrying out its functions the committee shall consult with the National Governors' Conference and interested persons, organizations, and entities. The chairman of the committee shall be designated by the President. The committee shall terminate 90 days after the submission of its report under subsection (c).

[(b) FUNCTIONS OF COMMITTEE.—It is the function of the committee to conduct a study of the socioeconomic impacts of expanded coal production and rapid energy development in general, on States, including local communities, and on the public, including the adequacy of housing and public, recreational, and cultural facilities for coal miners and their families and the effect of any Federal or State laws or regulations on providing such housing and facilities. The committee shall gather data and information on—

[(1) the level of assistance provided under this Act and any other programs related to impact assistance,

[(2) the timeliness of assistance in meeting impacts caused by Federal decisions on energy policy as well as private sector decisions, and

[(3) the obstacles to effective assistance contained in regulations of existing programs related to impact assistance.

[(c) REPORT.—Within 1 year after the effective date of this Act, the committee shall submit a detailed report on the results of such study to the Congress, together with any recommendations for additional legislation it may consider appropriate.

**[SEC. 747. USE OF PETROLEUM AND NATURAL GAS IN COMBUSTORS.**

[The Secretary shall conduct a detailed study of the uses of petroleum and natural gas as a primary energy source for combustors and installations not subject to the prohibitions of this Act. In conducting such study, the Secretary shall—

[(1) identify those categories of major fuel-burning installations in which the substitution of coal or other alternate fuels for petroleum and natural gas is economically and technically feasible, and

[(2) determine the estimated savings of natural gas and petroleum expected from such substitution.

Within 1 year after the effective date of this Act, the Secretary shall submit a detailed report on the results of such study to the Congress, together with any recommendations for legislation he may consider appropriate.】

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## TITLE VIII—MISCELLANEOUS PROVISIONS

\* \* \* \* \*

### 【SEC. 807. SUBMISSION OF REPORTS.

【Copies of any report required by this Act to be submitted to the Congress shall be separately submitted to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

### 【SEC. 808. ELECTRIC UTILITY CONSERVATION PLAN.

【(a) APPLICABILITY.—An electric utility is subject to this subsection if—

【(1) the utility owns or operates any existing electric powerplant in which natural gas was used as a primary energy source at any time during the 1-year period ending on the date of the enactment of this section, and

【(2) the utility plans to use natural gas as a primary energy source in any electric powerplant.

【(b) SUBMISSION AND APPROVAL OF PLAN.—The Secretary shall require each electric utility subject to this section to—

【(1) submit, within 1 year after the date of the enactment of this section, and have approved by the Secretary, a conservation plan which meets the requirements of subsection (c); and

【(2) implement such plan during the 5-year period beginning on the date of the initial approval of such plan.

【(c) CONTENTS OF PLAN.—(1) Any conservation plan under this section shall set forth means determined by the utility to achieve conservation of electric energy not later than the 5th year after its initial approval at a level, measured on an annual basis, at least equal to 10 percent of the electric energy output of that utility during the most recent 4 calendar quarters ending prior to the date of the enactment of this section which is attributable to natural gas.

【(2) The conservation plan shall include—

【(A) all activities required for such utility by part 1 of title II of the National Energy Conservation Policy Act;

【(B) an effective public information program for conservation; and

【(C) such other measures as the utility may consider appropriate.

【(3) Any such plan may set forth a program for the use of renewable energy sources (other than hydroelectric power).

【(4) Any such plan shall contain procedures to permit the amounts expended by such utility in developing and implementing the plan to be recovered in a manner specified by the appropriate State regulatory authority (or by the utility in the case of a non-regulated utility).

【(d) PLAN APPROVAL.—(1) The Secretary shall, by order, approve or disapprove any conservation plan proposed under this subsection



by an electric utility within 120 days after its submission. The Secretary shall approve any such proposed plan unless the Secretary finds that such plan does not meet the requirements of subsection (c) and states in writing the reasons therefor.

[(2) In the event the Secretary disapproves under paragraph (1) the plan originally submitted, the Secretary shall provide a reasonable period of time for resubmission.

[(3) An electric utility may amend any approved plan, except that the plan as amended shall be subject to approval in accordance with paragraph (1).]

\* \* \* \* \*

## EMERGENCY ENERGY CONSERVATION ACT OF 1979

### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Emergency Energy Conservation Act of 1979”.

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

\* \* \* \* \*

#### TITLE II—EMERGENCY ENERGY CONSERVATION

[Sec. 201. Findings and purposes.]

*Sec. 201. Purposes.*

\* \* \* \* \*

#### PART B—OTHER AUTOMOBILE FUEL PURCHASE MEASURES

[Sec. 221. Minimum automobile fuel purchases.

[Sec. 222. Out-of-State vehicles to be exempted from odd-even motor fuel purchase restrictions.]

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#### PART D—STUDIES

[Sec. 241. Studies.]

\* \* \* \* \*

## TITLE II—EMERGENCY ENERGY CONSERVATION

### SEC. 201. [FINDINGS AND] PURPOSES.

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

[(1) serious disruptions have recently occurred in the gasoline and diesel fuel markets of the United States;

[(2) it is likely that such disruptions will recur;

[(3) interstate commerce is significantly affected by those market disruptions;

[(4) an urgent need exists to provide for emergency conservation and other measures with respect to gasoline, diesel fuel, home heating oil, and other energy sources in potentially short supply in order to cope with market disruptions and protect interstate commerce; and

[(5) up-to-date and reliable information concerning the supply and demand of gasoline, diesel fuel, and other related data is not available to the President, the Congress, or the public.

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

(1) provide a means for the Federal Government, States, and units of local government to establish emergency conservation measures with respect to gasoline, diesel fuel, home heating oil, and other energy sources which may be in short supply;

(2) establish other emergency measures to alleviate disruptions in gasoline and diesel fuel markets;

(3) obtain data concerning such fuels; and

(4) protect interstate commerce.

\* \* \* \* \*

### **Part B—Other Automobile Fuel Purchase Measures**

#### **[SEC. 221. MINIMUM AUTOMOBILE FUEL PURCHASES.]**

**[(a) GENERAL RULE.]**—If the provisions of this subsection are made applicable under subsection (c), no person shall purchase motor fuel from a motor fuel retailer in any transaction for use in any automobile or other vehicle unless—

**[(1)]** the price for the quantity purchased and placed into the fuel tank of that vehicle equals or exceeds \$5.00; or

**[(2)]** in any case in which the amount paid for the quantity of motor fuel necessary to fill the fuel tank of that vehicle to capacity is less than \$5.00, such person pays to the retailer an additional amount so that the total amount paid in that transaction equals \$5.00.

Any person selling motor fuel in transactions to which the provisions of this subsection apply shall display at the point of sale notice of such provisions in accordance with regulations prescribed by the Secretary.

**[(b) \$7.00 TO BE APPLICABLE IN THE CASE OF 8-CYLINDER VEHICLES.]**—In applying subsection (a) in the case of any vehicle with an engine having 8 cylinders (or more), “\$7.00” shall be substituted for “\$5.00”.

**[(c) APPLICABILITY.]**—(1) Unless applicable pursuant to paragraph (2), the requirements of subsection (a) shall apply in any State and shall be administered and enforced as provided in subsection (g) only if—

**[(A)]** the Governor of that State submits a request to the Secretary to have such requirements applicable in that State; and

**[(B)]** the attorney general of that State has found that (i) absent a delegation of authority under a Federal law, the Governor lacks the authority under the laws of the State to invoke comparable requirements, (ii) under applicable State law, the Governor and other appropriate State officers and employees are not prevented from administering and enforcing such requirements under a delegation of authority pursuant to Federal law, and (iii) if implemented such requirements would not be contrary to State law.

Subject to paragraph (2), such provisions shall cease to apply in any State if the Governor of the State withdraws any request under subparagraph (A).

**[(2)]** The requirements of subsection (a) shall apply in every State if there is in effect a finding by the President that nationwide implementation of such requirements would be appropriate and consistent with the purposes of this title.

[(3) Such requirements shall take effect in any State beginning on the 5th day after the Secretary or the President (as the case may be) publishes notice in the Federal Register of the applicability of the requirements to the State pursuant to paragraph (1) or (2).

[(4) Notwithstanding any other provision of law, the authority vested in the President under paragraph (2) may not be delegated.

[(d) EXEMPTIONS.—The requirements of subsection (a) shall not apply to any motorcycle or motorpowered bicycle, or to any comparable vehicle as may be determined by the Secretary by regulation.

[(e) ADJUSTMENT OF MINIMUM LEVELS.—The Secretary may increase the \$5.00 and \$7.00 amounts specified in subsections (a) and (b) if the Secretary considers it appropriate. Adjustments under this subsection shall be only in even dollar amounts.

[(f) CIVIL PENALTIES.—(1) Whoever violates the requirements of subsection (a) shall be subject to a civil penalty of not to exceed \$100 for each violation.

[(2) Any penalty under paragraph (1) may be assessed by the court in any action under this section brought in any appropriate United States district court or any other court of competent jurisdiction. Except to the extent provided in paragraph (3), any such penalty collected shall be deposited into the general fund of the United States Treasury as miscellaneous receipts.

[(3) The Secretary may enter into an agreement with the Governor of any State under which amounts collected pursuant to this subsection may be collected and retained by the State to the extent necessary to cover costs incurred by that State in connection with the administration and enforcement of the requirements of subsection (a) the authority for which is delegated under subsection (g).

[(g) ADMINISTRATION AND ENFORCEMENT DELEGATED TO STATES.—(1) There is hereby delegated to the Governor of any State, and other State and local officers and employees designated by the Governor, the authority to administer and enforce, within that State, any provision of this part which is to be administered and enforced in accordance with this section. Such authority includes the authority to institute actions on behalf of the United States for the imposition and collection of civil penalties under subsection (f).

[(2)(A) All delegation of authority under paragraph (1) with respect to any State shall be considered revoked effective (i) upon the receipt of a written waiver of authority signed by the Governor of such State or (ii) upon a determination by the President that such delegation should be revoked, but only to the extent of that determination.

[(B) If at any time the conditions of subsection (c)(1)(B) are no longer satisfied in any State to which a delegation has been made under paragraph (1), the attorney general of that State shall transmit a written statement to that effect to the Governor of that State and to the President. Such delegation shall be considered revoked effective upon receipt by the President of such written statement and a determination by the President that such conditions are no longer satisfied, but only to the extent of that determination and consistent with such attorney general's statement.

[(C) Any revocation under subparagraph (A) or (B) shall not affect any action or pending proceedings, administrative or civil, not finally determined on the date of such revocation, nor any administrative or civil action or proceeding, whether or not pending, based on any act committed or liability incurred prior to such revocation.

[(D) The Secretary shall administer and enforce any provision of this part which has been made effective under subsection (c)(2) and for which a delegation of authority is considered revoked under subparagraph (A).

[(h) COORDINATION WITH OTHER LAW.—The charging and collecting of amounts referred to in subsection (a)(2) under the requirements of subsection (a), or similar amounts collected under comparable requirements under any State law, shall not be considered a violation of—

[(1) the Emergency Petroleum Allocation Act of 1973 or any regulation thereunder; or

[(2) any Federal or State law requiring the labeling or disclosure of the maximum price per gallon of any fuel.

**[SEC. 222. OUT-OF-STATE VEHICLES TO BE EXEMPTED FROM ODD-EVEN MOTOR FUEL PURCHASE RESTRICTIONS.**

[(a) GENERAL RULE.—Notwithstanding any provision of any Federal, State, or local law, any odd-even fuel purchase plan in effect in any State may not prohibit the sale of motor fuel to any person for use in a vehicle bearing a license plate issued by any authority other than that State or a State contiguous to that State.

[(b) DEFINITIONS.—For purposes of this section the term “odd-even fuel purchase plan” means any motor fuel sales restriction under which a person may purchase motor fuel for use in any vehicle only on days (or other periods of time) determined on the basis of a number or letter appearing on the license plate of that vehicle (or on any similar basis).]

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## Part D—Studies

**[SEC. 241. STUDIES.**

[(a) STUDY OF COMMERCIAL AND INDUSTRIAL STORAGE OF FUEL.—Not later than 180 days after the date of the enactment of this part, the Secretary shall conduct a study and report to the Congress regarding the commercial and industrial storage of gasoline and middle distillates (other than storage in facilities which have capacities of less than 500 gallons or storage used exclusively and directly for agricultural, residential, petroleum refining, or pipeline transportation purposes).

[(b) CONTENTS OF REPORT.—Such report shall—

[(1) indicate to what extent storage activities have increased since November 1, 1978, and what business establishments (including utilities) have been involved;

[(2) the estimated amount of gasoline and middle distillates (in the aggregate and by type and region) which are in storage within the United States at the time of the study, the amounts which were in storage at the same time during the calendar year preceding the study, and the purposes for which such storage is maintained; and

[(3) contain such findings and recommendations for legislation and administrative action as the Secretary considers appropriate, including recommendations for improving the availability and quality of data concerning such storage.]

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## ENERGY SECURITY ACT

\* \* \* \* \*

### TITLE V—SOLAR ENERGY AND ENERGY CONSERVATION

\* \* \* \* \*

#### [Subtitle F—Energy Auditor Training and Certification

[Sec. 581. Purpose.

[Sec. 582. Definitions.

[Sec. 583. Grants.

[Sec. 584. Authorization of appropriations.]

### TITLE V—SOLAR ENERGY AND ENERGY CONSERVATION

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#### [SUBTITLE F—ENERGY AUDITOR TRAINING AND CERTIFICATION

##### [PURPOSE

[SEC. 581. It is the purpose of this subtitle to encourage the training and certification of individuals to conduct energy audits for residential and commercial buildings in order to serve the various private and public needs of the Nation for energy audits.

##### [DEFINITIONS

[SEC. 582. For the purposes of this subtitle—

[(1) the term “Governor” means the chief executive officer of each State, including the Mayor of the District of Columbia;

[(2) the term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands;

[(3) the term “energy audit” means an inspection as described in section 215 (b)(1)(A) of the National Energy Conservation Policy Act, or an energy audit as defined in section 710(b)(7) of such Act, which in addition may provide information on the utilization of renewable resources and may make energy-related improvements in the building; and

[(4) the term “Secretary” means the Secretary of Energy.

##### [GRANTS

[SEC. 583. (a) The Secretary may make grants to any Governor of a State for the training and certification of individuals to conduct energy audits.

[(b) Before making a grant under subsection (a) to a Governor, the Secretary must receive from the Governor an application containing—

[(A) any information which the Secretary deems is necessary to carry out this subtitle; and

[(B) an assurance that the grant will supplement and not supplant other funds available for such training and certification and will be used to increase the total amount of funds available for such training and certification.

[(c)(1) Before making any grant under subsection (a) the Secretary shall establish minimum standards for the training and certification of individuals to conduct energy audits.

[(2) The Secretary shall require each Governor receiving any grant under this subtitle to agree to meet the standards established pursuant to paragraph (1) in any training and certification conducted using funds provided under this subtitle.

#### [AUTHORIZATION OF APPROPRIATIONS

[SEC. 584. (a) To carry out this subtitle there is authorized to be appropriated the sum of \$10,000,000 for the fiscal year ending on September 30, 1981, and the sum of \$15,000,000 for the fiscal year ending on September 30, 1982.

[(b) Any funds appropriated under the authorization contained in this section shall remain available until expended.

\* \* \* \* \*

## DISSENTING VIEWS

We agree that America's energy picture is changing rapidly and that we need to update and modernize our energy infrastructure. The Obama Administration's common-sense energy policies have already started us on that road: our country is experiencing record energy surpluses, significant reductions in demand, and prices at the pump that have fallen nearly 50 percent from where they were a year ago.

Unfortunately, H.R. 8 fails to build on these successes. The bill does not include any meaningful language to advance clean and renewable energy and the energy efficiency title would actually result in a net increase in consumption and carbon emissions. The bill is opposed by environmental groups, efficiency and consumer advocates, and the clean energy sector.

The Majority cited a number of legislative hearings as part of the record behind the development of this legislation, but all of those hearings were held to examine draft legislative text that changed so significantly prior to markup as to be nearly irrelevant. Much of the language that now comprises H.R. 8 was available only hours before being voted on in the Committee. As a result of the Majority's rushed approach, Members did not have the benefit of hearings, the Administration's views, or any other means of understanding whether the legislation would benefit or harm consumers, the economy, energy security or the environment.

### NATURAL GAS PIPELINE SITING: FIXING PHANTOM PROBLEMS, PUSHING ASIDE PUBLIC SCRUTINY

Sec. 1101, entitled "FERC Process Coordination" makes dangerous and unnecessary changes to the FERC natural gas pipeline siting process, which the Majority declares is necessary to "reinforce the Federal Energy Regulatory Commission's (FERC) role as the lead agency for siting interstate natural gas pipelines."<sup>1</sup> Nothing in the legislative record over the course of recent Congresses suggests that FERC's role is in doubt or hindered. Even recent industry publications provide strong evidence against the Majority's assertion that the certification process needs to be further reformed in favor of pipeline companies:

The first quarter of 2015 proved busier than the first quarter of 2014 for the Federal Energy Regulatory Commission's Office of Energy Projects. Through April 30 of this year, the office certified and placed in service almost twice as many natural gas projects and more than doubled

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<sup>1</sup>Memorandum from Majority Staff to Members of the Subcommittee on Energy and Power, Subcommittee Markup of a Committee Print (July 20, 2015).

the miles of pipeline that were put in service and certified through the same date in 2014.<sup>2</sup>

In point of fact, the siting of natural gas pipelines is often controversial and requires detailed regulatory scrutiny by FERC, yet Section 1101 would require FERC to decide on a pipeline application within 90 days, regardless of the complexity of the application. Because FERC has previously testified that most pipelines are already certificated within a one year period, the purpose of this section appears to have more to do with curtailing federal and state resource agencies and the public's ability to review and comment on a proposed pipeline than on actually speeding the delivery of energy to end users. This view is further supported by a major change in this section that would require the agency to consider environmental data from aerial or remote surveys, instead of onsite inspections. This policy change, added at the last minute without any public vetting, allows companies working to build natural gas pipelines the ability to circumvent property owners' rights when surveying land. In a number of cases, companies do not have the requisite permits to survey the land they are seeking to access and the language appears designed to allow them to sidestep that aspect of the application process. Rep. Tonko offered an amendment to strike this section to ensure federal and state regulators are given the time needed to carefully and thoughtfully review applications for the construction of natural gas pipelines and to ensure that the landowners and the general public at least have some ability to participate meaningfully in the siting process.

#### ELECTRICITY REGULATION: A WIN FOR INEFFICIENT UTILITIES, A LOSS FOR CONSUMERS AND CLIMATE

The provisions of H.R. 8 relating to the regulation of electric energy under Federal law represent a backward-looking, and anti-consumer approach that rewards inefficiency and penalizes innovation. Two of the provisions—Sections 1107 and 1110—mark a dramatic reversal of the pro-market and pro-consumer policies of the Energy Policy Acts of 1992 and 2005, while a third provision, Section 1108, would add unjustified regulatory and litigation burdens to the rulemaking process. All three of these provisions are being included by the Majority under the guise of enhancing the reliability of the grid. However, not a shred of hard evidence was provided to demonstrate that any of these sections would result in greater reliability or even that any portion of the nation's electrical system is in danger of becoming unreliable.

Sections 1107 and 1110 are two sides of the same harmful policy, one targeted at regulated states and the other at states participating in regional wholesale markets. Section 1107 amends Section 111 of the Public Utility Regulatory Policies Act (PURPA) to establish a new federal standard requiring electric utilities to consider adoption or modification of policies to assure reliable generation in utilities' integrated resources plans. However, what the provision actually looks to do is stack the generation deck in favor of above market coal and nuclear power. Language added by Democrats during the Energy and Power Subcommittee's consideration of the

<sup>2</sup>American Gas, Pipelines DIGEST at 6 (Oct. 2015).



bill also require consideration of approaches that would improve resilience to severe weather events resulting from catastrophic climate change. However, on balance, the language in Section 1107 would result in unnecessary additional spending by states to consider adoption of policies that would benefit owners of non-economic generation to the detriment of ratepayers.

An amendment by Rep. Pompeo narrowly adopted during markup would require states to expend additional resources to consider the impacts of subsidizing the deployment, construction, maintenance, or operation of a customer-side technology; including costs and benefits, resource utilization, fuel diversity, and grid security. This provision appears to be squarely aimed at hindering the growing integration into the grid of distributed generation and other “customer-side” technology.

As bad as Section 1107 is, still worse is Section 1110, which would amend the Federal Power Act to require each regional transmission organization (RTO) and independent system operator (ISO) that operates a capacity market to provide to FERC an analysis of how: (1) such market utilizes competitive market forces in procuring capacity resources; and (2) the structure of such market includes resource-neutral performance criteria that ensure the procurement of sufficient capacity from physical generation facilities that have certain reliability attributes, such as fuel on-site, dual fuel capability, and contractual obligations that ensure adequate fuel supply to enable operation for an extended period of time. After such an analysis is submitted, FERC is required to submit to Congress a report containing an evaluation of whether the structure of such market, as detailed in the analysis, meets the required criteria and, if it does not, provide recommendations with respect to the procurement of sufficient capacity meeting the identified reliability attributes.

At its core, Section 1110 is designed to interfere with the competitive wholesale process established in EPAct 2005 in order to prop up generating facilities that would otherwise be rejected as economically noncompetitive by the market. The situation giving rise to this effort was described well by Chuck Jones, President and CEO of FirstEnergy on a recent earnings call:

We are talking about trying to find ways to preserve major generating assets that have plenty of useful life left in them, and keep them from closing prematurely. Exelon is looking at doing that in Illinois and New York. Ohio utilities are looking at doing that in Ohio . . . These plants are at risk today, and we need to get a decision made, as to whether we’re going to look at ways to protect them, so we let all of those debates and legislation in Washington, DC and everything else play out.<sup>3</sup>

The provision is both anti-consumer and anti-environment as it seeks to aid noneconomic nuclear and coal facilities at the expense of less costly, cleaner and equally reliable generation sources such as wind and solar power. And, the provision is as unnecessary as

<sup>3</sup>*FirstEnergy (FE) Earnings Report: Q2 2015 Conference Call Transcript* at 9, The Street (Aug. 3, 2015) (online at [www.thestreet.com/story/13240841/9/firstenergy-fe-earnings-report-q2-2015-conference-call-transcript.html](http://www.thestreet.com/story/13240841/9/firstenergy-fe-earnings-report-q2-2015-conference-call-transcript.html)).

it is harmful, since FERC already has authority to address these matters and is doing so—a fact readily acknowledged by the Chairmen in their July 8, 2015 letter with Senator Murkowski to FERC Chairman Bay on this subject.

Although described by the majority as merely requiring a report, it is critical to understand that the language clearly requires ongoing reporting by RTOs and FERC and, with each report, another opportunity for owners of noneconomic generation to litigate their rejection from the market on the basis of inadequate adherence to the skewed language of this provision. If there is any doubt as to whether the Majority intends Section 1110 to be more than just a study, one need only look to subsection 1110(c). That subsection specifically exempts a discrete set of enumerated dockets from the provision's application. It further goes on to state that the section shall not "provide grounds for the Commission to grant rehearing or otherwise modify orders issued in those dockets." Yet, by specifically exempting those enumerated dockets from rehearing or modification, the provision clearly invites the Commission to grant rehearing and modifications with regard to any other relevant docket, now or in the future. It is hard to imagine a more open invitation to litigation on behalf of those who own coal and nuclear plants that were previously unable to compete in the marketplace.

Ultimately, there appears to be a fairly broad skepticism of capacity markets on both sides of the aisle. Rep. Kennedy, in his opening statement referred to "a broken, backwards forward-capacity market system" and called for oversight and "reform of the system that sets rates for our constituents so they are not left paying for shortcomings." So, what is perhaps most tragic about the inclusion of Section 1110 is that the Majority has wasted an opportunity to unite both sides of the aisle in an effort to better understand and comprehensively address problems in the market affecting all suppliers and all consumers. Instead of working with Democrats to assess and repair problems with capacity markets, the Majority chose instead to include a provision that helps only a select few providers at the expense of consumers, the environment, and the market itself. Rep. Kennedy offered an amendment to improve the AINS by striking Section 1110 that was opposed by the Majority. The subsequent rejection by the Majority of Rep. Tonko's amendment to exempt an RTO that prepared a comprehensive reliability plan from the requirements of Section 1110 casts serious doubt on the claim that Section 1110 is designed to address reliability.

The third provision the Majority included in the name of reliability, Section 1108, would impose an unprecedented requirement for FERC to complete a "reliability analysis" of covered rules that cost over a billion dollars. Ranking Member Pallone offered an amendment to strike this provision, which would not only be extremely burdensome, but also is completely unnecessary in light of the reliability requirements and authorities contained in Section 215 of the Federal Power Act added by Congress in EPAct2005.

Clearly, Section 1108 appears directed less at bolstering reliability and more toward undercutting environmental regulation, specifically the Clean Power Plan and the actions of the Obama Administration to address the threat of climate change.

Even on these terms this provision is completely unnecessary as FERC certainly has the ability to comment on EPA rules if it so chooses. In fact, FERC already coordinates routinely with other federal agencies whose proposed or final rules affect the electric power sector. It is unclear whether FERC would have either the resources or the ability to conduct an analysis within the short timeframes in this section. Moreover, state plans are the actual vehicles for implementation of the Clean Power Plan, so requiring FERC to analyze the final rule would be completely without purpose. Furthermore, the final rule already requires each state to consider reliability concerns when developing a compliance plan, and EPA and FERC are coordinating their efforts to “preserve continued reliable electricity generation and transmission.” Even if FERC were somehow able to put together the reliability in this section, the rule contains extended multi-year compliance timeframes that would limit the usefulness and accuracy of such predictions.

Ultimately, Section 1108 raises the specter of reliability failure where none exists. As EPA recently said: “Over the past 45 years, EPA has never issued a rule that has threatened the delivery of affordable and reliable electricity to American families, and the Clean Power Plan will not change that.” In fact, the final Clean Power Plan provides states with a valuable tool to guarantee the reliability of the electric grid, and will help to ensure a smooth transition to cleaner energy future. Unfortunately, rather than address climate change and its challenges to reliability, the Majority has again chosen to instead erect legislative roadblocks to prevent Congress from doing anything about it.

Another un-vetted and unjustified addition to the Majority’s bill appears in Section 4222, entitled “Clarification of Facility Merger Authorization.” In point of fact, the section does not clarify anything, but rather raises the financial threshold for FERC to consider acquisitions of electric transmission facilities. No justification for this provision was provided at any of the legislative hearings cited by the Majority in this report and, in truth, no mention of any aspect of this provisions appeared in those hearings. Further, the Majority’s statement that “[t]his amendment would require FERC to restore a previous and long-standing, minimum monetary threshold applied to public utilities’ acquisitions and dispositions of FERC-jurisdictional electric transmission facilities, would correct an apparent oversight that resulted in Congress’s intent in EAct 2005 not being completely enacted by the Commission” is factually inaccurate.

The committee-reported version of EAct 2005, as authored by former Chairman Barton, did not contain a monetary threshold for this provision and no mention of such a threshold appears in the H. Report 109–215 or the Conference Report accompanying EAct 2005. So, while establishing a statutory monetary threshold in Section 203 of the Federal Power Act may or may not be sound policy, nothing in the record supports the view that Congress intended to include a monetary threshold for FERC merger reviews in Section 203 either before or as a result of the enactment of EAct 2005.

On a final note with regard to the electricity provisions is that they solely reflect the fact that, at the time of writing these views, the Majority has yet to hold or even schedule a hearing with the

FERC Commissioners. And, this situation has been allowed to continue, despite the appointment of a new Chairman and a new Commissioner since the beginning of this Congress and the inclusion of many provisions that impact areas overseen by FERC. The same is true with regard to bill's natural gas and hydroelectric provisions. Taken as a whole this amounts to nothing less than legislative malpractice of the highest order.

#### ENERGY EFFICIENCY PROVISIONS: MORE CONSUMPTION THAN CONSERVATION

In previous omnibus energy legislation, energy efficiency was generally an area of bipartisan accord. Unfortunately, that is no longer the case as the Majority has opposed the inclusion of any meaningful language in this bill to increase the conservation of our nation's energy resources and manage demand.

H.R. 8 actually goes the opposite direction and, according to American Council for an Energy-Efficient Economy (ACEEE), the "Energy Efficiency" title would actually result in a net increase in consumption and greenhouse gas emissions relative to current law. In fact, ACEEE roughly estimates that collectively the title would result in a staggering \$20 billion in net cost to consumers, an additional 10 quads of energy use, and additional emissions of around 500 million metric tons of CO<sub>2</sub>.<sup>4</sup>

The most damaging of these provisions from an energy efficiency standpoint are the changes to the Department of Energy's authorities with regard to building codes contained in section 4151. Of particular concern is the language preventing DOE from providing any assistance—whether technical or financial—if it finds that a proposed code does not meet a simple payback period of ten years or less. This sets a dangerous federal precedent of determining what is and is not an acceptable return on investment and does not fit with the reality of mortgage durations and home ownership. Dictating a single, federally-determined simple payback model does not account for the widely varying market and climate circumstances across our vast country.

Building codes are the most-effective tool to ensure that efficiency is implemented when it is cheapest and easiest: when a building is first constructed. Building codes are particularly important because they protect homeowners by lowering the overall cost of home ownership. Unlike upgrades such as granite counter tops, efficiency is hard to see at the time of purchase and so a builder looking to cut costs may skimp on this important measure to reduce their first costs. This is short sighted and ultimately will result in greater cost to the home owner who sees the combined cost of their mortgage and utility bills each month. Skimping on efficiency probably doesn't do much to lower a mortgage payment, but it certainly will result in a higher utility bill, increasing overall monthly costs and reducing affordability.

The language included in the bill as reported takes a short-sighted view of affordability, by requiring DOE to analyze simple payback of measures over three, five and seven year periods and not

<sup>4</sup> American Council for and Energy Efficient Economy, *2015 Federal Energy Efficiency Legislation and Projected Impacts* (Sept. 8, 2015) (online at [aceee.org/sites/default/files/ee-legislation-9-15-15.pdf](http://aceee.org/sites/default/files/ee-legislation-9-15-15.pdf)).

allowing them to propose any measure that has a longer payback than ten years. Given that a mortgage will run from 15–30 years and a home will be around for many decades, limiting DOE to such short payback periods does not make sense.

ACEEE recently estimated that enactment of the building codes language included in H.R. 8 would result in a net loss in efficiency of 12.53 quads at a cost of \$23 billion to consumers. That is one of many reasons why Ranking Member Pallone offered an amendment to strike the building code provisions from the AINS.

It is also important to note that the Committee had another option beyond just either maintaining current law or adopting the language included in the AINS. In negotiations with the Majority Democrats declared their willingness to support bipartisan compromise language authored by Rep. McKinley (R-WV) and Rep. Welch (D-VT) and introduced in this Congress as part of H.R. 2177. Unfortunately, the Majority chose neither current law nor compromise.

Of course, merely eviscerating DOE's authority with regard to building code efficiency was not enough for the Majority. The Majority has continuously shown itself unable to resist any opportunity to attack any program or provision of law that would reduce greenhouse gas emissions and their impact on climate change and H.R. 8 is no exception.

H.R. 8 repeals a key portion of section 433 of the Energy Independence and Security Act, signed into law by President George W. Bush, which established energy efficiency performance standards for the design of new federal buildings and those federal buildings undergoing major renovations. The provision strikes language in current law that requires federal buildings to be designed to result in decreased consumption of fossil fuels, including a 100 percent reduction by 2030 compared to a similar building in 2003.

Sec. 433 established groundbreaking energy efficiency performance standards for the design of new Federal buildings and those Federal buildings undergoing major renovations. But H.R. 8, as reported, strikes the requirement that new federal buildings to be designed to result in decreased consumption of fossil fuels, a move that ACEEE estimates will deprive consumers of \$700 million in savings over the next 25 years.

According to the American Institute of Architects, not only are Section 433's current targets achievable, but some buildings are already meeting the 2030 target of a 100 percent reduction in fossil fuel use now. This includes, the Wayne N. Aspinall federal building in Colorado—the first net zero energy building on the National Register of Historic Places.

Maintaining Section 433 and the progress toward its goals is critical because the federal government is the largest property owner and energy consumer in the United States. Requiring federal buildings to meet aggressive energy targets not only reduces taxpayer costs through energy savings and reduces our dependence on foreign oil; it also leverages the government's large purchasing power to bring new technologies and materials to the marketplace.

Some in the Majority have gone so far as to characterize Section 433 as “a ban on the federal government using energy from fossil fuel,” but the law does not ban fossil fuels. In fact, at no point does

this provision in current law require zero fossil fuel use for any building designed or renovated before 2030. And, despite testimony by the American Gas Association that “the Section 433 fossil fuel ban is deeply flawed.” Its implementation will severely limit—and ultimately prohibit—adoption of highly efficient technologies using natural gas at federal facilities, such as combined heat and power . . . DOE has actually proposed carve-outs for on-site natural gas usage in highly efficient combined heat and power systems.

#### HYDROELECTRIC PROVISIONS: WATERING DOWN PROTECTIONS AND RIGHTS

Maintaining and expanding our nation’s hydroelectric capacity to generate electricity without carbon emissions is crucial to our ability to combat climate change and increase economic prosperity.

Ironically, climate change has increased the need to license new capacity of this carbon-free generating technology at the same time it has caused record drought that has made it more difficult to site new capacity or provide long-term relicensing of existing facilities. Climate-induced changes in hydrology—including the record drought in the west—is calling into question the reliability of existing facilities, upending the economics of siting new hydropower capacity, and increasing the challenges associated with addressing hydropower’s environmental issues. Hydroelectric power potentially poses a major source of harm to fish and wildlife populations, water quality, and other important resources if poorly operated or sited. This is a crucial point, because hydroelectric power depends on rivers for fuel and those rivers belong to all Americans, not just those who sell or buy the power generated from it. There are also numerous examples of hydroelectric dams devastating lands and waters sacred to Native American tribes. Accordingly, the Federal Power Act requires FERC to balance these competing interests in issuing a license because no single use of a river—power, drinking water, irrigation, commercial fishery support, recreation, or other use—should automatically take precedence.

Unfortunately, H.R. 8, as reported, would upend that balance, placing power generation above all other uses of the river.

The Federal Power Act authorizes States and federal natural resource agencies to place conditions on hydroelectric licenses to preserve water quality, protect public lands and Native American reservations, and ensure proper fish passage to preserve healthy ecosystems and fisheries. If, for instance, the license might impact a protected resource, such as dewatering a Wild and Scenic River or National Wildlife Refuge, releasing toxic sediment, flooding a Native American reservation, or extirpating a keystone species, the State or federal agency responsible for managing that resource can place conditions on the license to ensure the resource is protected.

Hydroelectric licenses have fixed conditions that generally remain unchanged during the 30 to 50 years they are in force. Licensees also benefit from unlimited, automatic, annual extensions after their license has expired if a new license has not been issued. As a result, the impacts of these hydropower dams often go unaddressed for more than half a century. Particularly for those facilities first licensed before enactment of the Electricity Consumers Protection Act (1986) and major environmental statutes such as

National Environmental Policy Act (1970), the Clean Water Act (1972), and the Endangered Species Act (1973), the process of developing new license conditions necessarily will require upgrades to facilities to bring them in line with modern environmental laws and attendant regulations. Rightfully, this makes the licensing process rigorous. Sometimes, the necessity of addressing these complex issues also makes the process time-consuming, frustrating, and expensive.

In order to address some of the frustration with the relicensing process, EPAct05 saw the enactment of the most significant changes to federal hydroelectric licensing law since enactment of the Electric Power Consumers Act. EPAct05 included new provisions that permit licensees to propose less costly alternatives to agency-imposed conditions and gives parties access to trial-type hearings to resolve disputed factual issues underpinning those conditions. Both of these changes represented bipartisan efforts to reduce the cost and timing associated with relicensing. In addition, FERC worked with state and federal agencies, industry, and non-governmental organizations to develop the Integrated Licensing Process (ILP), which was intended to address similar issues of cost and timing. Despite the fact that both the ILP and the EPAct05 rules have been in place for more than a decade, the Committee has never conducted meaningful oversight on the effectiveness of either change.

We repeatedly expressed our interest in working with the Majority to enact commonsense, environmentally sound reforms to speed the hydroelectric licensing process and make investments in new projects economically attractive while balancing the needs of all stakeholders. However, instead of working with Democrats to accomplish these important goals, the Majority chose to repeat the mistakes of the past, paying exclusive attention to the interests of hydroelectric developers and licensees. In the name of “reform” the provisions included in H.R. 8 give preferential treatment to electric utilities at the expense of other legitimate parties to licensing proceedings including states, Indian tribes, conservationists, irrigators, ranchers, and sportsmen.

The hydroelectric provisions included in Subtitle C of Title I, in many ways, represent all the worst shortcomings of the Majority’s approach to legislating. While Sections 1301–1303 were provided only 24 hours in advance of the markup, the 21-page amendment offered by Ms. McMorris-Rodgers which formed the basis for bulk of Subtitle C, wasn’t made public until after the markup formally commenced. Within those 21 pages are significant changes to provisions of hydroelectric statute and case law that have developed and endured over the course of nearly a century and effectively constitute an unprecedented undermining of federal, state and tribal authorities and many of our nation’s critical environmental laws. Yet, despite the massive scope and impact of these provisions on existing law and policy, not one of these changes had been subject to a hearing or review by the Committee prior to inclusion in H.R. 8. As such, Members were left with a matter of minutes to attempt to discern the impact of these changes on literally decades of policy touching on everything from state authority under the Clean Water Act to Native American tribal rights to fish, wildlife and water re-

source management, to the Endangered Species Act and the National Environmental Policy Act.

#### RENEWABLE ENERGY: CHARTING A PATH BACKWARD

H.R. 8 has one central theme binding its titles: a steadfast devotion to the energy of days gone by. It is legislation that looks to the rearview mirror for its vision of the future.

If there is any doubt that this is the case, one need only look to the provisions of the bill designed to facilitate the integration of clean and renewable generation technologies into the grid. There are none.

In fact, Republicans opposed nearly every effort to include any provision that would have advanced the adoption of clean and renewable energy generation including:

- An amendment by Rep. Loeb sack to establish a program to promote the development of distributed wind energy systems;
- An amendment by Rep. Cardenas establishing a new loan and grant program to make solar power more accessible to low income households;
- An amendment by Rep. Castor to promote distributed energy and a resilient electrical system.

#### Section By Section Analysis of Provisions Added During Full Committee Consideration

##### *Section 1101: FERC process coordination*

This section is intended to reform the siting review process for natural gas pipelines at the Federal Energy Regulatory Commission (FERC). The previous version of this section directed FERC to select which agencies are to participate in the review process, and establish deadlines for them in completing their consideration of pipeline applications.

Changes made by the Committee include:

- Directing FERC to notify, rather than formally invite, any agency that may consider an aspect of a natural gas pipeline application;
- Directing FERC to make recommendations on the appropriate scope of environmental review;
- Removing the provision related to issue resolution meetings; and
- Removing the provision allowing applicants to provide additional funding to aid FERC in the review of permit applications.

This section also included troubling language that would require other federal and state agencies to defer to the scope of environmental review determined by FERC to be appropriate for the project. Representatives of the environmental community note that the inclusion of this deference language “is an inappropriate restraint on the important work that other agencies perform to ensure that pipelines are sited responsibly.”<sup>5</sup>

<sup>5</sup>Letter from Center for Biological Diversity, Clean Water Action, Earthjustice, Friends of the Earth, GreenLatinos, League of Conservation Voters, Natural Resources Defense Council, Pub-



Finally, the Amendment in the Nature of a Substitute (AINS), included the addition of language related to aerial or remote surveys. The language would require FERC to consider environmental data from aerial or remote surveys, instead of onsite inspections. This policy change allows companies working to build natural gas pipelines the ability to circumvent property owners' rights when surveying land.

Rep. Tonko offered an amendment to strike this section during the full Committee markup. The Amendment failed by a vote of 20 yeas to 29 nays.

*Section 1107: State coverage and consideration of PURPA standards for electric utilities*

Section 1107 amends section 111 of the Public Utility Regulatory Policies Act (PURPA), which generally directs states to consider and make a determination whether or not to adopt certain federal standards.

Section 1107 establishes a new federal standard requiring each electric utility to develop plans for increased use of resiliency-related technologies and other approaches that would improve resilience and maintain the flow of power to facilities critical to public health, safety, and welfare. These plans should use "the most current data, metric, and frameworks related to current and future threats, including physical and cyber-attacks, electromagnetic pulse attacks, geomagnetic disturbances, seismic events, and severe weather and other environmental stressors." Also, "all types of distributed" generation has been added to the list of resiliency-related technologies. Each electric utility would be required to commence such consideration within one year of enactment and to complete the consideration within two years. Additionally, state regulatory authorities are directed to consider allowing rate recovery for procurement and deployment of resiliency related technologies.

Section 1107 also establishes a second federal standard requiring each electric utility to develop and implement a plan for deployment of advanced energy analytics technology. State regulatory authorities are directed to consider allowing rate recovery for the procurement, deployment, or the use of advanced energy analytics technology. Electric utilities shall commence such consideration within six months of enactment and complete the consideration within one year.

Under a third federal standard included in section 1107, electric utilities are directed to consider adoption or modification of policies to assure reliable generation in integrated resources plans of utilities. Operational characteristics of "reliable generation" include: "possession of adequate fuel onsite, the operational ability to generate electric energy from more than one fuel source or fuel certainty that ensures adequate fuel supply." Electric utilities shall commence consideration within one year of enactment and complete consideration within two years.

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lic Citizen Sierra Club, and the Southern Environmental Law Center to Members of the Committee on Energy and Commerce (July 21, 2015).

*Section 1108: Reliability analysis for certain rules that affect electric generating facilities*

Section 1108 would impose a requirement for FERC to complete a “reliability analysis” of covered rules that cost over a billion dollars, and could impact just one electric generating unit. This section appears to be aimed at the Clean Power Plan, and actions of the Administration to address the threat of climate change.

FERC already has the ability to comment on EPA rules if it so chooses, so at a minimum, this provision is unnecessary. In fact, FERC already coordinates routinely with other federal agencies whose proposed or final rules affect the electric power sector. It is unclear whether FERC would have either the resources or the ability to conduct an analysis within the short timeframes in this section.

State plans are the actual vehicles for implementation of the Clean Power Plan, so requiring FERC to analyze the final rule would not serve any purpose. In fact, it would be very difficult for FERC to develop an accurate reliability analysis prior to the submission of the state plans.

EPA’s final rule already requires each state to consider reliability concerns when developing a compliance plan, and EPA is coordinating its efforts with FERC to “preserve continued reliable electricity generation and transmission.”<sup>6</sup>

Ranking Member Pallone offered an amendment to strike this section during the full Committee markup. The amendment failed by a vote of 22 yeas to 27 nays.

*Section 1109: Carbon capture, utilization, and sequestration technologies*

Section 1109 was added by the AINS and had not been considered by the Committee prior to the markup. The provision was based on legislative language submitted for consideration by Reps. Doyle and McKinley. Section 1109 directs the Department of Energy (DOE) to perform an evaluation every two years on all clean coal technology awards to ensure the funds being allocated for clean coal projects are meeting the goals set forth in the grant.

This provision further encourages DOE to recognize the most promising clean coal projects and research as well as those technologies that have reached their full potential. It also encourages DOE to recommend new funding levels for projects and areas of research to ensure funds are being granted to projects that are truly advancing clean coal technology.

DOE is to make the evaluation findings public, publish them on the website, and present the findings and funding recommendations to Congress every three years. Finally, DOE is directed to annually identify and report cost and performance goals for coal-based technologies that would allow for large scale demonstration and permit the continued cost-competitive use of coal for commercial use.

<sup>6</sup>U.S. Environmental Protection Agency, *The Clean Power Plan: Key Topics and Issues* (Aug. 3, 2015) (online at [www3.epa.gov/airquality/cpp/cpp-key-topics.pdf](http://www3.epa.gov/airquality/cpp/cpp-key-topics.pdf)).

*Section 1110: Reliability and performance assurance in regional transmission organizations*

Section 1110 would effectively limit market forces from awarding the most efficient technologies and create an uneven system that only benefits certain power generators. While the language in Section 1110 purports to be “resource neutral,” the set of requirements for participation in capacity markets has the potential to disqualify both distributed energy and renewable energy resources.

Many states are already including aggregated resources into capacity markets. This expands market participation and increases competition which benefits both businesses and consumers. If enacted, Section 1110 would undo these benefits by preventing cost savings that could be created through distributed energy resources, including efficiency and load shifting resources. States and regional entities already take reliability into account through existing mechanisms. Federal intervention in these determinations is both unnecessary and problematic.

Rep. Kennedy offered an amendment to strike this section during the full Committee markup. The amendment failed by a vote of 22 yeas to 26 nays.

*Section 1201: Energy security and infrastructure modernization fund*

Section 1201 established an Energy Security and Infrastructure Modernization Fund in the Treasury of the United States. This fund is intended (1) to provide for the construction, maintenance, repair, and replacement of Strategic Petroleum Reserve (SPR) facilities; and (2) for carrying out non-SPR projects needed to enhance the energy security of the United States.

This section is not problematic in principle. However, the amounts authorized in this section are less than those agreed to by the Chairman in order to secure Democratic support at the subcommittee markup.

During the full Committee markup, a number of members offered amendments to restore the funding levels to what was originally agreed upon. Rep. Rush offered an amendment to include \$1.5 billion for a program to help offset the costs of replacing and repairing leaky natural gas distribution pipelines for low income households. The amendment failed by a vote of 23 yeas to 25 nays. Ranking Member Pallone also offered an amendment to increase funding for the SPR modernization to \$2 billion, and the competitive grant program for grid resiliency efforts to \$1.5 billion. The amendment failed by a vote of 23 yeas to 25 nays.

*Section 1301: Hydroelectric production and efficiency incentives*

Section 1301 would amend the the Energy Policy Act of 2005 (EPAct05) to reauthorize through fiscal year 2025 the program of hydroelectric production incentives and incentive payments to the owners or operators of hydroelectric facilities at existing dams to make capital improvements directly related to improving efficiency.

*Section 1302: Protection of private property rights in hydropower licensing*

Section 1302 amends Sections 4 and 10 of the Federal Power Act to require FERC to consider and minimize infringement on “the useful exercise and enjoyment of property rights held by non-licensees” in issuing hydropower licenses. Further, it requires a licensee developing any recreational resource within the project boundary to consider private landownership as a means to “encourage and facilitate” private investment as well as increased tourism and recreational use.

*Section 1303: Extension of time for FERC project involving W. Kerr Scott Dam*

Sec. 1303 would authorize FERC to extend the construction date of the W. Kerr Scott Dam in North Carolina for six years.

*Section 1304: Hydropower licensing and process improvements*

Section 1304 would add a new Section 34 to the Federal Power Act entitled Hydropower Licensing and Process Improvements and contains elements similar to the pipeline siting process changes in Section 1101. The section changes existing law to empower FERC to set the schedule for all federal authorizations, including those issued pursuant to the Endangered Species Act, The Federal Land Policy and Management Act and the Wild and Scenic Rivers Act, among others. FERC’s new authority would also apply to federal authorizations that have been delegated to Native American tribes and the states, including water quality certification under Section 401 of the Clean Water Act. All federal and state agencies and tribes are required to comply with FERC’s schedule and give due consideration or deference to FERC’s proposed scope of environmental review, setting up a new potential avenue for litigation and reversing standards in current law requiring FERC to give “due weight” to the recommendations, expertise, and statutory responsibilities of those agencies. FERC is also required to promulgate regulations governing the procedures for developing the schedule for Federal authorizations in each individual proceeding. Federal, state and local agencies, as well as tribes, are directed to identify and bring to FERC’s attention issues of concern that may delay or prevent the grant of an authorization or adherence to FERC’s schedule. The provision places FERC in charge of the process for resolving disputes involving such agencies or tribes and requires those entities to enter into a memorandum of understanding with FERC to facilitate dispute resolution. The section also authorizes license applicants to directly fund third party contractors to assist agencies and tribes in their review of license applications. The new section also allows an agency or tribe that is unable to comply with FERC’s schedule to file a request for extension through a court-based process set out in Section 1305 and requires FERC, together with agencies and tribes, to compile a consolidated record of decisions to serve as the basis for the court’s review of a request.

*Section 1305: Judicial review of delayed federal authorizations*

Section 1305 would add a new paragraph (2) to Section 313(b) of the Federal Power Act requiring federal, state, or local government

agencies or a tribe that is unable to meet a FERC schedule deadline to file a request for extension in the US courts of appeal not later than 30 days before such deadline. The court is only permitted to grant an extension if, based on the consolidated record, the agency or tribe demonstrates that it otherwise complied with the requirements of new Section 34 and that complying with FERC's schedule would have prevented the agency or tribe from complying with applicable federal or state law. Any extension is limited to 90 days or less. If the court denies the extension or the agency or tribe fails to meet a deadline, the agency or tribe loses its ability to condition the license, effectively waiving application of the Endangered Species Act, the Clean Water Act and other key environmental statutes. It should be noted that the provision does not require FERC to provide agencies and tribes with the information necessary to make decisions within the timeframe set by FERC.

*Section 1306: Licensing study improvements*

Section 1306 creates a new section 35 to the Federal Power Act directing FERC to compile best practices for studies used in licensing as well as a collection of studies that could inform license proceedings. It further encourages stakeholders to use "a limited number of open-source methodologies and tools applicable across a wide array of projects" to optimize the licensing process. Additionally, the section requires FERC, tribes, other federal agencies, states, and local governments to use "current, accepted science in support of their actions" and that parties requesting studies or information demonstrate that such study is "not duplicative of current, existing studies that are applicable to the project." The section also requires FERC to create a program to develop regional or basin-scale comprehensive plans and studies in support of multiple projects, but only may use such tools at the request of a license applicant, and only with regard to projects in which the license applicants choose to participate.

*Section 1307: Closed-loop pumped storage projects*

Section 1307 would add a new section 36 to the Federal Power Act to create a new, less stringent and more limited licensing regime for closed-loop pumped storage defined as projects "in which the upper and lower reservoirs do not impound or directly withdraw water from navigable waters" or "not continuously connected to a naturally flowing water feature." Specifically, this section removes the Commission's licensing and conditioning authority, comprehensive planning and equal consideration responsibilities, as well as requirements for working with federal and state agencies to protect fish and wildlife under sections 4(e), 10(a), 10(g), and 10(j) of the underlying Act. This section limits license conditions to those necessary to protect public safety or, with respect to addressing natural resource impacts, to those on fish and wildlife resources directly caused by the construction and operation of the project. It introduces a new precedent by which conditions or requirements imposed pursuant to federal authorizations such as the Endangered Species Act and the Clean Water Act must be "reasonable, economically feasible, and essential" setting up a novel and un-

known legal test for conditions and dramatically altering application of numerous critical environmental laws. Finally, the section would allow private companies to partner with municipalities in order to claim the preference afforded municipal systems under current law to gain application priority over other private companies, regardless of whether or not the municipality would construct or operate the project.

*Section 1308: License amendment improvements*

Section 1308 adds a new section 37 to the Federal Power Act to create a new class of license amendments that are exempt from the Federal Power Act's licensing requirements. It sets timeframes for processing amendment applications FERC determines are unlikely to harm the environment and would either increase capacity, improve environmental protection, or enhance public recreation. For a qualifying upgrade, this section imposes limits on conditions similar to those described for Section 1307, limiting conditions to those necessary to protect public safety or, with respect to addressing natural resource impacts, to those on fish and wildlife resources directly caused by the construction and operation of the project, including the requirement that such conditions be "reasonable, economically feasible, and essential." Those limits would not apply to an upgrade determined not to qualify by FERC, however all mandatory deadlines and other provisions of new Section 34—as added by Sections 1304 and 1305 of H.R. 8—would continue to apply.

*Section 1309: Promoting hydropower development at existing non-powered dams*

Section 1309 would add a new section 38 to the Federal Power Act that authorizing FERC to exempt from licensing requirements qualifying hydropower facilities added to existing non-powered dams. Qualifying facilities must not be currently licensed or exempt; they must not be associated with a non-power dam that was constructed before the date of enactment and operated for purposes other than power production, and they must not currently have a FERC license or an exemption from licensing. Additionally, the project must be constructed for electricity generation; it must generate power using existing releases, flows, or diversions from underlying water infrastructure; and it must leave operation, storage and control of the underlying infrastructure unchanged. Exemptions are permanent: responsibility for ensuring dam safety would fall to the states. As in new Sections 36 and 37, it limits conditions to those necessary to protect public safety or, with respect to addressing natural resource impacts, to those on fish and wildlife resources directly caused by the construction and operation of the project, including the requirement that such conditions be "reasonable, economically feasible, and essential." This section prohibits FERC from preparing an Environmental Impact Statement, limiting options to either an Environmental Assessment or a Categorical Exclusion. The section also limits FERC's jurisdiction over project works to include only the powerhouse and primary transmission line, leaving conduits, dams, impoundments, shoreline, lands, or project works associated with the underlying facility exempt from Federal environmental or safety oversight. The provi-

sion also adds a requirement that owners or operators of exempted facilities pay annual charges to the general treasury to fund watershed enhancement projects within the same watershed.

*Section 3002: Energy security valuation*

Section 3002 directs the Secretary of Energy, in consultation with the Secretary of State, to develop a report on a new valuation of energy security, taking into account a number of recommendations outlined in the Quadrennial Energy Review.

This section encourages energy trading between countries to promote energy security and economic development. This language reflects the agreement reached by the G7 countries in Germany this past May, but leaves out that agreement's critical focus on combating climate change as a major threat to energy security.<sup>7</sup>

The Natural Resources Defense Council (NRDC) opposes the omission of climate change in the new valuation of energy security. According to NRDC, "[p]romoting energy security and economic interests at the expense of environmental considerations (which [Title III] barely addresses) is highly problematic."<sup>8</sup>

*Section 3005: Strategic petroleum reserve mission readiness plan*

Section 3005 requires the Secretary of Energy, within 180 days of enactment, to conduct a strategic review of the strategic petroleum reserve (SPR), including identification of near and long-term roles for the SPR. Among other things, the Secretary is also required to develop and submit a plan to "achieve the optimal": (1) capacity, location and composition of petroleum products in the SPR; and, (2) storage and distributional capabilities of the SPR. This section also requires the plan to estimate the (financial) resources necessary for the SPR's "long-term sustainability and operational effectiveness."

*Section 3006: Authorization to export natural gas*

Subsection (a) requires DOE to issue a decision on any pending or future application for authorization to export natural gas under section 3 of the Natural Gas Act within 30 days of (1) the conclusion of the environmental review required by NEPA or (2) the date of enactment of the bill. Subsection (c) amends the Natural Gas Act to direct DOE, as a condition of approval of any authorization to export LNG, to require the applicant to publicly disclose the specific destinations of any such exports.

As a result of low domestic natural gas prices in the United States, companies have filed more than 40 applications with DOE to export LNG. To date, DOE has granted final authorizations for LNG exports to non-Free Trade Agreement (FTA) countries on nine applications, and conditional authorizations on four applications.<sup>9</sup>

<sup>7</sup> German Federal Ministry for Economic Affairs and Energy, *G7 Energy Ministerial in Hamburg COMMUNIQUE: G7 Hamburg Initiative for Sustainable Energy Security* (May 2015) (online at [www.bmwi.de/BMWi/Redaktion/PDF/E/energieministertreffen-hamburg-kommunique-englische-sprachversion,property=pdf,bereich=bmwi2012,sprache=de,rwb=true.pdf](http://www.bmwi.de/BMWi/Redaktion/PDF/E/energieministertreffen-hamburg-kommunique-englische-sprachversion,property=pdf,bereich=bmwi2012,sprache=de,rwb=true.pdf)).

<sup>8</sup> Natural Resources Defense Council, *Oppose H.R. 8—North American Energy Security and Infrastructure Act of 2015* (Sept. 2015).

<sup>9</sup> U.S. Department of Energy, *Long Term Applications Received by DOE/FE to Export Domestically Produced LNG from Lower-48 States* (Oct. 14, 2015) (online at [energy.gov/sites/prod/files/2015/10/f27/Summary%20of%20LNG%20Export%20Applications.pdf](http://energy.gov/sites/prod/files/2015/10/f27/Summary%20of%20LNG%20Export%20Applications.pdf)).

The approved applications authorize the export of over 14.05 billion cubic feet per day of LNG to non-FTA countries,<sup>10</sup> and the pending applications collectively seek an additional 29.40 billion cubic feet per day of LNG.

DOE is required to grant an application to export natural gas to a country without a free trade agreement with the United States unless it finds that the proposed export is not consistent with the public interest.<sup>11</sup> DOE evaluates a range of factors when performing a public interest review of a non-FTA application, including economic impacts, international considerations, U.S. energy security, and environmental considerations. FERC is responsible for issuing permits for specific LNG export facilities. DOE relies on FERC's environmental review to inform the DOE process. DOE prioritizes the review of applications for which FERC has completed the necessary environmental review.

Section 3006 mandates that DOE issue final decisions on the pending LNG export applications in 30 days. This will disrupt the functioning approval process for pending and future LNG export applications by arbitrarily limiting the time that DOE has to review the applications. When faced with these time limits, DOE will do one of two things: (1) DOE will approve projects without an adequate public interest review, or (2) DOE will deny applications when time constraints prevent it from creating an adequate record.

Section 3006 will not accelerate the actual export of LNG. And, because this section does not affect FERC's separate permitting process for export terminals, the truncated DOE process will not speed up the export of LNG. Further, the first LNG export terminal in the U.S. (Sabine Pass) is expected to begin partial operations in late 2015; other approved export terminals are not expected to begin operations until 2017 or 2018.

Rep. Pallone offered an amendment to strike this section during the full Committee markup. The amendment was defeated by a voice vote.

*Section 4115: Energy performance requirement for federal buildings & Section 4116 federal building energy efficiency performance standards; certification system and level for federal buildings*

Section 4115 & 4116 repeal a key portion of section 433 of the Energy Independence and Security Act, signed into law by President George W. Bush. This section established energy efficiency performance standards for the design of new federal buildings and those federal buildings undergoing major renovations. The provision strikes language in current law that requires federal buildings to be designed to result in decreased consumption of fossil fuels, including a 100 percent reduction by 2030 compared to a similar building in 2003.

Sec. 433 established groundbreaking energy efficiency performance standards for the design of new Federal buildings and those Federal buildings undergoing major renovations. But H.R. 8, as re-

<sup>10</sup> DOE has granted final export authorization for 9.998 billion cubic feet per day of LNG, and conditional authorization for 4.05 billion cubic feet per day of LNG.

<sup>11</sup> For export to the 20 countries with a FTA with the United States, the Natural Gas Act requires DOE to deem such applications consistent with the public interest and grant them without modification or delay.



ported, strikes the requirement that new federal buildings be designed to result in decreased consumption of fossil fuels, a move that ACEEE estimates will deprive consumers of \$700 million in savings over the next 25 years.<sup>12</sup>

According to the American Institute of Architects, not only are section 433's current targets achievable, but some buildings are already meeting the 2030 target of a 100 percent reduction in fossil fuel use now.<sup>13</sup>

*Section 4125: No warranty for certain certified energy star products*

Section 4125 would prevent the creation of an express or implied warranty based on a product's participation in the Energy Star program. This provision eliminates consumers' ability to seek restitution when they purchase Energy Star products that do not deliver the associated energy savings.

Rep. Schakowsky offered an amendment to strike this section during the full Committee markup. The amendment failed by a vote of 21 yeas to 30 nays.

The American Association for Justice (AAJ) strongly opposes this section. According to AAJ, "Whirlpool and other large corporations want a bailout for their Energy Star designated appliances that do not actually save energy."<sup>14</sup> This is because both consumers and manufacturers receive certain tax code benefits, including credits and rebates, from purchasing and manufacturing energy saving appliances.

AAJ also notes that threats of companies pulling out of the Energy Star program if warranty claims continue are not credible.<sup>15</sup> There are manufacturers who produce Energy Star products that are compliant and do provide energy savings to consumers.

*Section 4126: Clarification to effective date for regional standards*

Section 4126 amends Section 325 of the Energy Policy and Conservation Act by changing the effective date of regional standards from the date installed to the date "manufactured or imported into the United States." These changes severely limit DOE's ability to enforce regional standards.

*Sections 4151–4152: Building energy codes*

Sections 4151 and 4152, comprising all of Chapter 5 of Subtitle A, contain the provisions of H.R. 1273, The "Energy Savings and Building Efficiency Act," introduced by Reps. Blackburn and Schrader.<sup>16</sup> Proponents of these provisions say they are intended to increase transparency and cost-effectiveness in the development of model energy codes, which set the baseline for energy efficiency in buildings by ensuring that DOE code change proposals: (1) are made available to the public, including calculations on costs and savings; (2) are subject to the official rulemaking process, allowing

<sup>12</sup> American Council for and Energy Efficient Economy, *2015 Federal Energy Efficiency Legislation and Projected Impacts* (Sept. 8, 2015) (online at [aceee.org/sites/default/files/ee-legislation-9-15-15.pdf](http://aceee.org/sites/default/files/ee-legislation-9-15-15.pdf)).

<sup>13</sup> The American Institute of Architects, *EISA Section 433: Myth vs. Fact* (online at [www.aia.org/aiaucmp/groups/aia/documents/pdf/aiaab098644.pdf](http://www.aia.org/aiaucmp/groups/aia/documents/pdf/aiaab098644.pdf)).

<sup>14</sup> American Association for Justice, *Oppose Sec. 4125 of HR 8—Energy Star Immunity* (Sept. 2015).

<sup>15</sup> *Id.*

for public comment; and (3) take into account small business concerns. This section also prohibits DOE from advocating for certain technologies, building materials or construction practices and requires that any code or proposal supported by the DOE has a pay-back of ten years or less.

Rep. Pallone offered an amendment to strike this chapter during the full Committee markup. The amendment failed by a vote of 20 years to 28 nays.

The Alliance to Save Energy sent a letter to Chairman Upton and the members of the Energy and Commerce Committee urging opposition to the Blackburn-Schrader language on the grounds that it would (1) “weaken the already modest process of states merely reporting on state building energy code programs;” (2) “severely limit DOE’s authority to support the development and adoption of building energy codes that boost the efficiency of America’s largest energy consuming sector; and” (3) “establish a federal ‘simple pay-back’ that is confusing, flawed, and strongly opposed by a broad coalition of stakeholders.”<sup>16</sup>

The Sierra Club also opposes Sections 4151 and 4152 of H.R. 8, noting that this non-consensus proposal would “weaken the opportunity that building energy codes presents to advance energy efficiency[.]”<sup>17</sup>

#### *Section 4161: Modifying product definitions*

Section 4161 would add a new Subsection (c) to Section 322 of the Energy Policy and Conservation Act (EPCA) to permit DOE to revise prospectively product definitions relating to appliance energy conservation standards for residential and commercial products in order to address significant changes in the product or market and “enable efficiency of the product as part of an energy using system.” Under current law, certain definitions cannot be revised absent a statutory change. The provision would create a new process for modifying covered product definitions that requires obtaining consensus through either a negotiated rulemaking or submission to the Secretary of a joint statement of stakeholders including manufacturers, States and efficiency advocates. The revised product definitions would be used for standards, test procedures, labeling and preemption purposes. The new language would also exempt such revised definitions from the anti-backsliding provisions of the law contained in Section 325. This section would also create a similar process for altering prospectively the definitions for industrial equipment efficiency standards in Sec. 340 of EPCA. Finally, the section makes conforming changes to the EPCA Sec. 336 (judicial review) and Sec. 345 (regarding administration and enforcement).

#### *Section 4162: Clarifying rulemaking procedures*

Section 4162 would amend EPCA Section 325(p) to make a number of changes to the procedures for prescribing a new or amended efficiency standard that would provide more input and leverage to manufacturers of covered products. First, the section would require the Secretary to provide for public input prior to issuing a proposed

<sup>16</sup>Letter from the Alliance to Save Energy to Chairman Upton and Members of the Energy and Commerce Committee (Sept. 16, 2015).

<sup>17</sup>Letter from the Sierra Club to Ranking Member Pallone (Sept. 16, 2015).

rule establishing a new efficiency standard seeking information regarding “design options,” the potential for “voluntary non-regulatory actions” and identifying consumer and manufacturer subgroups “that merit analysis.” Next, the proposal would add two additional requirements to be taken into account during the comment period of the proposed rule: that the technical “assumptions, methods and models” used are justified and available for public review, and that the total regulatory impact on manufacturers is considered in light of other energy use standards and other standards impacting those manufacturers. The section also requires all standards be based upon a final revised test procedure, if any, and that the public shall have at least 180 days between the publication of a final revised test procedure and the end of the public comment period for a proposed product standard to analyze, test and comment on its implications. The provision would allow for an exception for consensus-revised test procedures reached between manufacturers, States and efficiency advocates.

*Section 4171: Smart Energy and Water Efficiency Pilot Program*

Section 4171 establishes a Smart Energy and Water Efficiency Pilot Program at DOE to provide grants to eligible entities to demonstrate advanced and innovative technology-based solutions that will: (1) increase and improve the energy efficiency of water, wastewater, and water reuse systems to help communities make significant progress in conserving water, saving energy, and reducing costs; (2) support the implementation of innovative processes and the installation of advanced automated systems that provide real-time data on energy and water; and (3) improve energy and water conservation, water quality, and predictive maintenance of energy and water systems, through the use of Internet-connected technologies, including sensors, intelligent gateways, and security embedded in hardware.

This section was added to the bill by the AINS, and was sponsored by Reps. McNerney and Kinzinger. While not objectionable in principle, this section had not been considered by committee members prior to the markup.

*Section 4172: WaterSense*

Section 4172 creates a voluntary program within EPA to identify water efficient products, buildings, landscapes, facilities, processes, and services that reduces water use, reduce strain on public and community water systems, conserve energy associated with water use, and preserve water resources through product labeling.

This section was added to the bill by the AINS, and while not objectionable in principle, this section had not been considered by committee members prior to the markup.

*Section 4222: Clarification of facility merger authorization*

Section 4222 amends the Federal Power Act to permit without FERC review, the merger or consolidation of public utility facilities or parts thereof with a value \$10,000,000 or less.

*Sections 4231–4251: Code maintenance*

These sections, comprising all of Chapter 3 of Subtitle B was added by the majority in the AINS. During the full committee markup, members were put in a position of voting for over 20 additional provisions to repeal energy related reports, studies, plans, surveys, and programs, without any previous consideration or discussion.

## AMENDMENTS OFFERED BY DEMOCRATIC MEMBERS

The Democratic Members of the Committee on Energy and Commerce offered substantive amendments to H.R. 8 intended to refocus the legislation on real deficiencies in America's energy security and infrastructure.

Rep. Tonko offered an amendment to the Regional Transmission Organization (RTO) and Independent System Operator (ISO) reliability language in Section 1110 that would permit RTOs and ISOs to have more flexibility in meeting reliability requirements through planning. This amendment failed by a vote of 22 yeas to 27 nays.

Ranking Member Pallone offered an amendment to restore the funding levels and dates agreed to during negotiations with the majority. The amendment failed by a vote of 23 yeas to 25 nays.

Rep. Rush offered an amendment to restore funding to natural gas distribution system pipe repair and replacement. The amendment also included language to insure that the program remains focused on improving infrastructure and mitigating rate increases for low-income consumers. This amendment failed by a vote of 23 yeas to 25 nays.

Rep. Eshoo offered an amendment designed to improve FERC transparency. The amendment was adopted by voice vote.

Rep. Green offered an amendment to provide funding to offset rate increases paid by households as a result of infrastructure maintenance, repair and replacement of natural gas distribution systems. This language was similar to the above amendment offered by Rep. Rush, but without the focus on low-income consumers. The amendment was adopted voice vote.

Rep. Tonko offered an amendment to reauthorize the weatherization assistance and state energy programs. This amendment failed by a vote of 22 yeas to 24 nays.

Rep. Schakowsky offered an amendment to establish within FERC an Offices of Consumer Advocacy and Compliance Assistance. This amendment failed by a vote of 22 yeas to 25 nays.

Mr. Loebsack offered an amendment to promote the development of distributed wind energy systems within DOE. This amendment would make grants available for research and development and provide technical assistance for entities seeking alternative means of producing energy. This amendment failed by a vote of 23 yeas to 25 nays.

Mr. Cárdenas offered an amendment to create a loan and grant program for solar installations in low-income and under-served areas. This amendment failed by a vote of 23 yeas to 28 nays.

Mr. Butterfield offered an amendment to establish a grant program for energy efficient homes. This amendment failed by a vote of 22 yeas to 27 nays.

Ms. Castor offered an amendment to promote local energy supply and resiliency through the use of distributed solar power. This amendment failed by a vote of 22 yeas to 27 nays.

Ms. Eshoo offered an amendment to authorize federal agencies to install electric vehicle charging stations or plug-in points. The amendment is cost-neutral because it requires the costs of installation to be paid for by the revenues collected from the charging stations. It is identical to the bipartisan H.R. 3509. This amendment was adopted by a voice vote.

Ranking Member Pallone offered an amendment would prevent Titles I through IV of this Act from taking effect until the Energy Information Administration analyzed and published a report on the carbon impacts of the Act's provisions. This amendment failed by a vote of 23 yeas to 29 nays.

#### CONCLUSION

It is truly unfortunate that, what began as good faith negotiations between Democrats and Republicans to develop energy legislation in the first part of this year, and bore enough promise in July to merit discharge by the subcommittee without partisan rancor, has ultimately produced one of the most backward, unbalanced and partisan pieces of energy legislation we have seen during our tenure on the Committee. At every turn the legislation favors suppliers over consumers, consumption over efficiency, energy interests over the environment and the fossil fuels of the past over the clean energy economy of the present and future.

Most importantly, H.R. 8 ignores the impact of climate change—which remains the biggest threat to our energy security, our economy and human health.

In fact, at nearly every turn, H.R. 8 goes to great length to lock in fossil fuel generation and consumption well into the future. The legislation creates new subsidies for above market coal power in Sections 1107 and 1108. It also further tilts the already lopsided natural gas pipeline siting process further toward the gas industry at the expense of land owners, states, the environment and less impactful carbon-free energy sources. H.R. 8 also helps prop up fossil fuels by actively working for greater consumption by repealing current law that is working to reduce the federal government's carbon footprint and by putting in place rollbacks and barriers to energy efficiency standards for buildings and appliances. Not only does the legislation reverse course on energy efficiency, but it erects barriers to the increasingly successful integration of clean, renewable and distributed energy technologies at almost every turn. Amazingly, the one renewable technology that receives any real boost in H.R. 8 is hydroelectric power, a 100 year old technology, which has ironically become less reliable due to the impact of climate change and will increase its negative impacts on the environment as a result of this legislation.

H.R. 8 also fails to take any meaningful steps to repair or revitalize our energy infrastructure for the future. Democrats and Republicans appeared to find common ground in the infrastructure recommendations of the Quadrennial Energy Review and yet the legislation fails to capitalize on those areas of agreement in any meaningful way. Language proposed by Democrats, backed with

meaningful funding, could have been the basis for a bipartisan energy bill that incentivized repairs of leaking natural gas distribution pipelines while protecting low-income consumers; provided funding to help communities make the grid more resilient to the effects of climate change and more responsive to the technologies that will help address its causes; and modernize both the infrastructure and operation of the Strategic Petroleum Reserve. At the end of the day, Republicans rejected the \$5.0 billion carefully targeted and paid for investment in our infrastructure which they worked with us to develop, to pursue little more than pale, meaningless copies of what had appeared to be a grand, shared vision.

Ultimately, H.R. 8 presents a vision of energy policy that is narrow, outdated, economically and environmentally unsustainable and myopically focused on producers at the expense of consumers. For those reasons and the many others we have enumerated here, we respectfully dissent from the views of the Majority on H.R. 8.

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*Ranking Member.*

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*Ranking Member,*  
*Subcommittee on Energy*  
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