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SENATE

{ REPORT  
109-78

**ENERGY POLICY ACT OF 2005**

—————  
JUNE 9, 2005.—Ordered to be printed  
—————

Mr. DOMENICI, from the Committee on Energy and Natural Resources, submitted the following

**R E P O R T**

together with

**ADDITIONAL VIEWS**

[To accompany S. 10]

The Committee on Energy and Natural Resources having considered the same, report favorably thereon an original bill (S. 10) to enhance the energy security of the United States, and for other purposes, and recommends that the bill do pass.

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**PURPOSE OF THE MEASURE**

The purpose of the measure is to provide a comprehensive national energy policy that balances domestic energy production with conservation and efficiency efforts to enhance the security of the United States and decrease dependence on foreign sources of fuel.

## SUMMARY OF MAJOR PROVISIONS

*Title I—Energy Efficiency.* Title I provides for programs to ensure that energy efficiency is a central focus of national energy policy. The title addresses Federal and state energy efficiency programs, provides funding for home weatherization, establishes numerous efficiency standards for a variety of consumer and commercial energy consuming products, requires reduction in energy use in Federal facilities, establishes and updates energy efficiency standards for public and assisted housing, and requires the President to develop methods to save 1 million barrels of petroleum per day by 2015.

*Title II—Renewable Energy.* Title II creates programs to expand the use of renewable sources of energy. The title requires the Secretary of Energy to develop a detailed inventory of the Nation's renewable energy resources. It also renews and expands the Renewable Energy Production Incentive for not-for-profit electric utilities and requires the Federal government to try to increase its use of renewable energy to 7.5 percent of the total amount of energy consumed by 2013. A major provision of the title requires that 8 billion gallons of renewable fuel be used in motor vehicle fuel markets by 2012 and requires the Federal Government to expand its use of ethanol and bio-diesel motor fuels.

Subtitle B directs the Secretary of Energy, in consultation with the Secretary of the Interior, to assess and report to Congress on projects with the greatest potential for reducing dependence on fossil fuels used in the generation of electricity, and for promoting distributed energy, in the U.S.-affiliated insular areas. The subtitle would also authorize the Secretary to provide technical and financial assistance, on a matching basis with local utilities, for feasibility studies and the implementation of those projects the Secretary determines are feasible, and appropriate for implementation.

Subtitle C establishes two biomass grant programs to encourage the removal of slash, brush, pre-commercial thinning material and other non-merchantable forest biomass from Federal lands and Indian reservations for biomass energy production.

Subtitle E addresses hydroelectric licensing and other hydro-power provisions. The licensing section requires the resource agencies (Departments of the Interior, Commerce, and Agriculture) to issue regulations establishing procedures for on the record "trial-type" hearings on disputed issues of material fact with respect to conditions or prescriptions sought by Federal resource agencies to be imposed on hydroelectric licenses. Any party to the Federal Energy Regulatory Commission (FERC) licensing proceeding can initiate the trial-type hearing. Once initiated, all disputed issues of material fact must be considered in a single hearing, which is to last no more than 90 days.

The Subtitle adds a new section to the Federal Power Act providing for the adoption of alternative conditions and prescriptions. These alternatives can be proposed by any party to the FERC proceeding and must be adopted if the Secretary determines that certain standards are met and concurs in the judgment of the license applicant that the alternative condition or prescription would cost significantly less or result in improved operation of the project works for electricity production. The Secretary of the applicable resource agency is directed to provide a written statement for the

hearing record explaining the basis for the condition or prescription selected and reason for not accepting a proposed alternative. Such statement must demonstrate that the Secretary gave equal consideration to a number of listed factors. If a resource agency does not accept a license applicant's proposed alternative and FERC finds the Secretary's condition or prescription to be inconsistent with applicable law, FERC can refer the dispute to FERC's dispute resolution service for a non-binding advisory.

Subtitle E also conforms the treatment of disagreements over fish and wildlife conditions for hydroelectric projects of less than 5 MW in Alaska to the standards under section 10(j) of the Federal Power Act. Finally, Subtitle E contains a provision reducing fees payable for the use of Federal lands with respect to the Flint Creek project in Montana.

*Title III—Oil and Gas:*

Subtitle A permanently authorizes the Strategic Petroleum Reserve and other energy programs.

Subtitle B includes provisions relating to a program for taking in-kind royalties on Federal oil and gas production, establishes an archive system for certain geological and geophysical data, addresses oil and gas leasing in the National Petroleum Reserve-Alaska, establishes a science initiative for the North Slope of Alaska, establishes a program to reclaim orphaned, abandoned or idled wells, addresses alternate energy-related uses of the Outer Continental Shelf (OCS), provides for a comprehensive inventory of OCS oil and gas resources, and provides incentives for production of oil and gas both on Federal lands and off-shore on the OCS.

Subtitle C addresses administrative and permitting issues to improve access to Federal lands for exploration and production of oil and gas.

Subtitle D provides coastal impact assistance to coastal states that help contribute to our nation's energy supply.

Subtitle E increases regulatory certainty for natural gas infrastructure; promotes investment in needed storage; increases penalties for violations of the Natural Gas Act and Natural Gas Policy Act; addresses natural gas market transparency, and provides additional market reforms.

*Title IV—Coal.* Title IV establishes programs to ensure that coal remains a major component of national energy policy. The title establishes a program to facilitate research, development and deployment of advanced coal gasification and combustion technologies for electric power generation. The title also amends the Mineral Leasing Act to allow for more efficient development of coal resources on Federal lands.

*Title V—Indian Energy.* Title V provides for programs, funding assistance and structured consultation with the Department of the Interior (DOI) and Department of Energy (DOE) to ensure that the energy resources on Indian land continue to be a major component of the Nation's energy supply should tribes wish them to be. The title amends existing law to allow tribes to submit Tribal Energy Resource Agreements to the DOI and, subsequent to DOI's approval of those plans, enter into leases, contracts and agreements with private and public business partners in furtherance of those resource development plans. The title authorizes the Federal Government to provide loans, grants and loan guarantees to qualifying

tribes for the implementation of their Tribal Energy Resource Agreements and authorizes \$20 million annually for such endeavors through 2016. The title also requires two studies, makes the Dine Power Authority, a Navajo Nation enterprise, eligible for Federal funding and renews the Navajo Electrification Project through 2011.

*Title VI—Nuclear.* Title VI provides for programs to ensure that nuclear energy continues as a major component of the Nation's energy supply. Price-Anderson liability protection is extended for both Nuclear Regulatory Commission (NRC) licensees and DOE contractors for twenty years. Coverage is increased and indexed for inflation, and non-profit contractors of the Department are made subject to payment of penalties assessed for nuclear safety violations. Title VI also provides for the export of high enriched uranium to Canada, Belgium, France, Germany or the Netherlands for the sole purpose of producing medical isotopes until a low enriched uranium alternative is commercially viable and available. Title VI also requires the DOE to propose a permanent disposal facility to Congress for Greater Than Class C waste, also known as sealed sources, within one year of enactment. This title also amplifies existing laws that contain prohibitions of nuclear exports to countries identified by the Secretary of State as engaging in State sponsored terrorism. Additionally, title VI establishes that an advanced next generation nuclear power plant reactor will be built at the Idaho National Laboratory to demonstrate both electricity and hydrogen production. This new reactor will feature improved safety, reduced waste, higher efficiency, and increased proliferation resistance and physical security. This research project is an advanced reactor hydrogen cogeneration project to move America toward advanced nuclear energy power plants and a hydrogen economy.

*Title VII—Vehicles and Fuels.* Title VII addresses the use of alternative fuels by Federal and covered vehicle fleets by ensuring greater use of alternative fuels, creating an alternative mechanism for non-Federal fleets to comply with petroleum use reduction requirements and requiring the Secretary of Energy to provide a report to Congress on program compliance. The title also creates a number of programs to enhance energy efficiency and technology development in the transportation sector.

*Title VIII—Hydrogen.* Title VIII reauthorizes and updates the Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990, which provides for basic hydrogen energy research and development programs. The title also authorizes new research and development programs for hydrogen vehicle technologies and for use of hydrogen as a transportation fuel. The title provides authorization for a variety of programs to demonstrate hydrogen and fuel cells for use in light- and heavy-duty vehicle fleets, stationary power and international projects. The title requires Federal agencies to consider how they can incorporate hydrogen and fuel cell technologies into their missions, creates an interagency task force, and requires a National Academy study of progress made toward achieving the goals of the hydrogen program.

*Title IX—Research and Development.* Title IX provides the research and development base underpinning the full range of energy-related technologies. Subtitles of the title are devoted to Energy Efficiency, Distributed Energy and Electric Energy Systems,

Renewable Energy, Nuclear Energy, Fossil Energy, Science, Energy and Environment, and Management. Authorizations are provided in each Subtitle for the programs described therein. Broad goals are established to guide the research and development activities of: diversifying energy supplies, increasing energy efficiency, decreasing dependence on foreign energy supplies, improving energy security, and decreasing environmental impact. The Secretary is annually directed to publish specific goals in major program areas consistent with these broad goals.

*Title X—Department of Energy Management.* Title X provides cost-sharing requirements for DOE research, development, demonstration, and commercial application activities from non-Federal sources. The title requires merit review of proposals, and external technical review of Department Programs. The title requires initiatives to improve technology transfer and small business interactions. The title increases the number of assistant secretaries from 6 to 8, and creates a new Undersecretary for Science and Energy.

*Title XI—Personnel and Training.* Title XI requires the Secretary of Energy to monitor energy workforce trends and, where necessary, use grants, fellowships, traineeships or other training programs to ensure a sufficient number of workers in energy fields. The bill requires establishment of training guidelines for electric energy industry personnel, establishment of centers for building technologies and power plant operations training, and increased activity by the DOE to improve recruitment of under-represented groups into energy fields of education and employment.

*Title XII—Electricity.* Title XII will reduce regulatory uncertainty, promote transmission infrastructure development and security, and increase consumer protections.

Subtitle A requires mandatory rules for operation to ensure transmission grid reliability. Subtitle B provides limited Federal backstop siting authority for electric transmission lines in areas designated by the Secretary of Energy as national interest transmission corridors. It also authorizes FERC to issue siting permits if a State withholds approval inappropriately. It would also provide FERC with eminent domain authority for electric transmission infrastructure. Subtitle C authorizes FERC to exercise limited jurisdiction over unregulated transmitting utilities (such as municipals and cooperatives) to ensure open access to the transmission grid. It encourages voluntary RTO developments. It terminates FERC's Proposed Rulemaking on Standard Market Design. It protects transmission access for native load customers. Subtitle D directs FERC to issue rules on transmission pricing policies. It authorizes FERC to approve a participant funding cost allocation plan, without regard to whether the applicant is in an RTO, as long as it results in just and reasonable rates. Subtitle E amends the Public Utility Regulatory Policies Act of 1978 (PURPA). It prospectively repeals the mandatory purchase and sale from qualifying facilities requirements on electric utilities if there is a competitive market. It amends PURPA to ensure that qualifying facilities are legitimate, commercially useful facilities. It encourages states to promote net metering, smart metering and distributed generation. Subtitle F provides consumer protections through strengthened market transparency rules, increased penalties, and prohibitions on

manipulative practices. It directs the Federal Trade Commission (FTC) to promulgate rules to increase consumer protections. It creates an Office of Consumer Advocacy at the DOE. It allows courts to prevent traders who manipulate markets from serving as officers or directors of electric utility companies. It allows FERC to consider validity of termination payment provisions in certain Western Interconnection contracts. Subtitle G repeals the Public Utility Holding Company Act of 1935 (PUHCA). It also amends section 203 of the Federal Power Act giving FERC limited jurisdiction over transactions valued over \$10 million, including acquisitions of FERC jurisdictional generation facilities. In addition to making a finding consistent with the public interest, it requires FERC to make a finding that a merger will not result in cross-subsidization to the detriment of the utility. Subtitle H amends and adds definitions to the Federal Power Act. Subtitle I makes technical changes in the Federal Power Act.

*Title XIII—Studies.* Title XIII provides for studies on a variety of energy issues.

*Title XIV—Incentives for Innovative Technologies.* Title XIV provides general requirements that the Secretary of Energy must meet in granting loan guarantees. The title directs the Secretary to offer loan guarantees for any new or significantly improved energy technology for nearly all end-uses if the technology avoids, reduces, or sequesters air pollutants or greenhouse gases. The title also specifically authorizes loan guarantees for a variety of Integrated Gas Combined Cycle technologies.

#### BACKGROUND AND NEED

Nearly five decades ago energy demand in the United States began exceeding domestic supply. That trend has increased over the years as the Nation has grown in population and expanded its economy. Current DOE projections indicate that the disparity between energy supply and demand will continue to grow. The widening gap between supply and demand, accompanied by reliance on foreign sources to close that gap, has created profound concerns in the Congress over the Nation's energy security. The supply and demand gap places pressure on the market and leads to volatile prices, exacerbating economic problems. Coupled with those concerns is the recognition that meeting demand must be accomplished in an environmentally sound manner. A combination of energy production, conservation, efficiency, and development of new technologies is the bedrock of a sound energy policy aimed at closing the supply and demand imbalance. Such a policy is necessary to ensure the country's continued growth and prosperity and to protect our national security.

#### PRODUCTION

Today, U.S. oil production is at a 50-year low and continues to decline, placing increasing importance on imports, often from unstable regimes. Oil imports accounted for roughly 60 percent of U.S. consumption in 2002, and nearly a third of the current trade deficit. Currently, the United States consumes roughly 19 million barrels of oil per day (mmbd)—12 million in the transportation sector alone. Demand in the transportation sector is projected to grow

to more than 20 million barrels per day by 2025. The growing demand for petroleum used in transportation is of particular concern to the United States for a number of reasons, including energy security issues related to increasing dependence on foreign oil, and environmental concerns over emissions of air pollutants and greenhouse gases resulting from increased oil usage.

Projected growth in domestic production of natural gas and coal provides a limited counterbalance to the dismal oil outlook. Over the next 20 years, natural gas production is expected to grow by 1.5 percent per year, and coal by 1.5 percent per year. Natural gas currently represents 24 percent of all energy consumed in the U.S. and supplies nearly one-fifth of all electricity generation. Coal remains the primary, and most efficient, fuel for electricity generation, currently accounting for over half of all electric generation in the U.S., and will remain so through 2025. Even though production is expected to grow in the two sectors, demand for natural gas is projected to outpace supply, and neither fuel is able to offset the overall gap between energy supply and energy demand in the United States.

Despite the growing dependence on imports, the Nation has a wealth of domestic resources that are currently untapped. The United States currently has an estimated 22.4 billion barrels of proven oil reserves—12th highest in the world—with over 65 percent of proven oil reserves concentrated in the Gulf of Mexico and Alaska. A 1999 National Petroleum Council study found that the lower 48 States, including the Gulf of Mexico, hold a tremendous supply of natural gas (1,466 tcf). Obstacles to development of these resources include regulatory hurdles, price volatility, and lack of infrastructure. While the price spikes in 2000 led to a significant increase in gas well drilling activity in 2001, domestic gas producers have not responded to recent higher prices as robustly. U.S. production fell by 2.3 percent in 2002. World market prices for crude oil remain high, but domestic producers need additional incentives to encourage the development of available resources.

Resource development on onshore Federal land administered by the Bureau of Land Management (BLM) provides 5 percent of the Nation's oil production; 11 percent of its natural gas production; 35 percent of its coal production; 20 percent of its wind power production; and 48 percent of its geothermal energy production. In addition to traditional sources of energy, Federal lands provide significant renewable resources, accounting for 17 percent of the Nation's hydropower, 20 percent of its wind power, and 48 percent of its geothermal production. However, various regulatory restrictions and processes hinder full development of all of these resources.

Production on Federal lands and in the OCS can be encouraged through regulatory streamlining and incentives such as royalty relief. Certain renewable energy sources have been provided royalty relief to increase their economic viability. Other energy sources such as geothermal and OCS oil and gas production, still face a significant financial burden that prevents increased development. Hydropower projects on Federal lands can take years to license, hampering long-term investment and stability.

In addition to their potential for providing new domestic energy production, Federal lands could also play an important role in developing a comprehensive interstate delivery system for the Na-

tion's energy supplies. Streamlining the permitting and siting of energy infrastructure investments on Federal lands will add to the reliability of energy supplies and help to reduce the cost of domestic production.

There are abundant energy resources available for production on Indian lands. Development of those resources must be encouraged.

Currently, nuclear power provides over 20 percent of our electricity. Reauthorization of the liability and indemnification provisions of the Price-Anderson Act is critical for protection of consumers as well as stability in the industry. The importance of continued investments in nuclear energy cannot be overstated. Only nuclear and hydroelectric power can provide significant levels of power with zero air emissions. While renewables can and must play a role in a diverse energy mix, only nuclear power offers significant long-term potential to address global climate concerns.

An important aspect of accessing available domestic energy supplies will be the assurance that supplies are able to reach the growing demand. A 1999 study published by the INGAA Foundation estimates that \$47.7 billion in new investment in pipeline infrastructure is needed to deliver new gas supplies.

Billions of dollars need to be invested in the national transmission grid to ensure reliability and to allow markets to function. Siting challenges, including a lack of coordination among States, impede the improvement of the electric system.

Regulatory uncertainty in the electricity industry also hinders needed infrastructure investment. Lack of certainty as to the viability of market structures and the financial stability of market participants impedes access to and increases the cost of capital for the electricity sector. Uncertainty in the marketplace about the rules and regulations that will govern generation and transmission facilities contributes to financial instability and endangers reliability of service.

Over the past fifteen years, energy policy has evolved toward more open access to the transmission grid and increased competition. The Energy Policy Act of 1992 facilitated the development of a competitive electric sector by allowing non-utility power producers to compete in wholesale markets. Utilities were required to open their transmission lines to these new competitors. These changes in the law allowed development of the merchant generator and power marketer sectors. In 1996, FERC issued Orders 888 and 889, which required jurisdictional public utilities to file an open access transmission tariff with FERC and encouraged the formation of Independent System Operators. In December 1999, FERC issued Order 2000, encouraging transmission owners to join voluntarily Regional Transmission Organizations that would independently operate the transmission system. In 2002, FERC proposed the Standard Market Design (SMD) as a way to address alleged continued discriminatory transmission practices. The SMD was strongly opposed because of infringement on State commissions' jurisdiction.

A balance between access to the transmission grid for the benefit of competition and access to the transmission grid to provide reliable, efficient service to retail consumers is the appropriate goal of energy policy. Clear regulatory rules and the minimization of barriers are required to achieve that goal.



## CONSERVATION AND EFFICIENCY

In addition to increasing domestic supplies of energy, reducing demand and using supplies wisely is an essential part of a balanced national energy policy. According to the Energy Information Administration, as energy prices increased between 1970 and 1986, energy intensity (measured by energy use per dollar of GDP) declined at an average annual rate of 2.3 percent. About half of that decrease comes from efficiency measures. Energy intensity is projected to continue its decline at an average annual rate of 1.5 percent through 2025 as continued efficiency gains and structural shifts in the economy offset increasing energy demand.

One of the key roles the Federal Government plays in conservation is ensuring the efficient operation of Federal facilities. The annual energy bill for the Federal Government is about \$9.6 billion. However, through the Federal Energy Management Program, the Federal Government spent \$2.3 billion less in real dollars for energy for its buildings in FY 2000 compared to FY 1985. The Energy Policy Act of 1992 set a 20 percent energy reduction goal (per square foot) for Federal facilities by FY 2000 relative to FY 1985. Preliminary FEMP data indicated that this goal was exceeded by 2.7 percent additional savings relative to the FY 1985 baseline. The current goals of the FEMP program, established in 1999 by Executive Order 13123, are to reduce energy consumption in Federal facilities by 30 percent per square foot in 2005 and 35 percent in 2010 relative to 1990 levels.

On the consumer side, efficiency standards for homes and appliances have also added to the improved use of scarce energy resources. The National Appliance Energy Conservation Act (NAECA), enacted in 1987, provided the framework for establishing minimum energy efficiency standards for more than two dozen types of appliances and equipment. Congress expanded the products covered by NAECA in 1988 and 1992. DOE estimates that the 12 standards developed by the Department have saved consumers over \$25 billion in cumulative electricity costs. A 2001 study by the American Council for an Energy Efficient Economy (ACEEE) estimated that standards in place through the year 2000 reduced U.S. electricity use by 2.5 percent and reduced peak demand by approximately 21,000 megawatts. There are several appliances and equipment types not currently covered by Federal standards that offer the significant energy savings potential in the future. Additional incentives are needed to encourage new development in these areas.

## INNOVATION

The third aspect of a balanced national energy policy looks to the long-term future. New sources of energy and improved technologies for existing resources will lead to long-term energy security. Research and development opportunities range from new advanced nuclear technologies to improved conductivity of transmission lines to improved efficiency of light bulbs.

President Bush announced a \$1.2-billion Hydrogen Fuel Initiative to develop hydrogen-powered fuel cells during his State of the Union speech on January 28, 2003. This initiative will develop the technology needed for commercially viable hydrogen-powered fuel

cells to power cars, trucks, homes, and businesses. Central to the development of hydrogen as a fuel source will be research into the technologies and infrastructure needed to produce, store, and distribute hydrogen fuel.

Nuclear cogeneration of hydrogen is a new opportunity for nuclear power, along with deployment of the next generation of nuclear reactors. New nuclear reactors offer the ability to provide energy security, add to fuel and technology diversity, and meet clean air goals. The next generation of reactors is safer and more efficient, and is vital to the nation's energy supply. A new and aggressive program into innovative nuclear technologies can foster the development of a new generation of nuclear powerplants to meet future demand.

Innovation for the future also includes improving on technologies for existing fuel resources. New advances in the oil and gas industry have led to less intrusive drilling, improved success in drilling wells, and stronger stewardship of the environment. Clean coal initiatives have resulted in drastic reductions in emissions without limiting the ability of coal to serve as the most reliable and efficient means of electric generation. Looking to the future, clean coal research will ensure that new powerplants meet high standards of economic viability and environmental protection.

Continuing innovation also is crucial to improve the economic viability of producing energy from new supplies of woody biomass produced from treatments aimed at improving the health of our forests on Federal and Indian lands. Federal land managers and other experts have recommended removing some of the slash, brush, pre-commercial thinnings and other non-merchantable wood and plant material from forests to improve forest health and reduce the threat of uncharacteristic wildfire. But land managers have indicated that in many regions of the country there currently are few economically viable enterprises using this type of biomass and that this increases the costs of forest restoration treatments. The two grant programs authorized in Title II, Subtitle C, are designed to encourage the production of energy from biomass produced from restoration treatments on Federal and Indian lands and, ultimately, to reduce the costs of those treatments.

The Committee believes that some of the newest, most innovative technologies for energy production and use, those that are cleaner and more efficient compared to existing commercial technologies, need a jump-start to get to the marketplace more quickly. The Committee believes that the provisions contained in this legislation, especially when combined with the tax provisions to be offered from the Finance Committee, are the genesis for improving the national security of this Nation, enhancing the environment, strengthening self-government for Native American communities, decreasing dependence on foreign sources of energy, aiding the economy, and diversifying the energy base of the country.

#### LEGISLATIVE HISTORY

During the 107th and 108th Congresses, both the Senate and the House of Representatives passed comprehensive energy policy legislation dealing with energy conservation and efficiency, energy research and development, renewable, hydrogen, oil, gas, coal, and

nuclear energy resources, vehicle efficiency, and electricity regulation and infrastructure.

During the 107th Congress, numerous measures were introduced dealing with energy issues either on a comprehensive or more limited basis. Both the Senate and the House of Representatives passed comprehensive energy policy legislation using H.R. 4, the Securing America's Future Energy Act of 2001, as the primary legislative vehicle. The House of Representatives passed H.R. 4 on August 2, 2001 and it was placed on the Senate Calendar on September 4, 2001 without reference to Committee. The Senate considered comprehensive legislation in the context of Senate Amendment 2917, an amendment in the nature of a substitute, offered by Senators Daschle and Bingaman. The amendment was offered to S. 517, the National Laboratories Partnership Improvement Act of 2001. The Senate debated S. 517 on February 15, March 5, 6, 7, 8, 11, 12, 13, 14, 15, 19, 20, and 21, and April 8, 9, 10, 11, 16, 17, 18, 22, 23, 24, and 25, 2002 adopting approximately 125 amendments. On April 25, 2002, the Senate passed H.R. 4 after agreeing to Amendment 2917, as amended, striking the House-passed text of H.R. 4 and inserting the text of S. 517, as amended. A conference was agreed to and met on June 27, July 25, September 12, 19, 25, and 26, and October 2 and 3, but was unable to resolve the differences between the two bodies before the 107th Congress adjourned.

In the 108th Congress, the principal legislative vehicle was H.R. 6, a bill to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes. The bill was introduced on April 7, 2003, but was not the subject of any hearings in the House of Representatives. The Committee of the Whole House on the State of the Union began consideration of H.R. 6 on April 10, 2003, and the House of Representatives passed it on April 11, 2003. H.R. 6 was placed on the Senate Calendar on May 6, 2003, without reference to committee.

The Committee conducted several hearings examining various aspects of energy. On February 13, the Committee conducted a hearing on Oil Supply and Prices; on February 25 on Natural Gas Supply and Prices; on February 27 on Energy Production on Federal Lands; on March 4 on the Financial Condition of the Electricity Market; on March 6 on Energy Use in the Transportation Sector; on March 11 on Energy Efficiency and Conservation; and on March 27 on various legislative proposals dealing with Electricity. The Committee held business meetings on April 8, addressing title V—Renewable Energy, title VI—Energy Efficiency, title VIII—Hydrogen, title X—Personnel and Training, and title XIII—State Energy Programs; on April 9 to consider title I—Oil and Gas and title II—Coal; on April 10 to consider title IV—Nuclear Matters; on April 29 to consider title III—Indian Energy, title VII—Transportation Fuels, and title IX—Research and Development; and on April 30 to consider title XI—Electricity.

On April 30, 2003, the Committee voted to report favorably an original bill. On April 30, 2003, the text of the original bill, as ordered reported, was introduced by Chairman Domenici as S. 14.

On May 1, 2003, S. 14 was read the second time and placed on the Senate Legislative Calendar. On May 6, 2003, the original bill

was reported, with technical amendments, to the Senate as S. 1005. S. Rept. 108–43.

On May 6, 2003, S. 14 was laid before the Senate by unanimous consent. The Senate debated S. 14 on May 8, 9, and 13, and June 2, 3, 4, 5, 9, 10, 11, and 12, and July 24, 25, 28, 29, 30, and 31. Over the course of the debate, the Senate agreed to approximately 20 amendments to S. 14. On July 31, 2003, in lieu of further action on S. 14, Senator Frist laid H.R. 6 before the Senate by unanimous consent and introduced Amendment 1537, which struck the text of the House-passed bill and inserted the text of H.R. 4 from the 107th Congress, as passed by the Senate on April 25, 2002. On July 31, 2003, the Senate passed the House energy bill, H.R. 6, as amended by Amendment 1537.

The Senate asked for, and the House agreed to, a conference. The conference met on September 5 and November 17, 2003. On November 18, 2003 (legislative day November 17, 2003), the conference report was filed. H. Rept. 108–375. The House passed the conference report on November 18, 2003. The Senate began consideration of the conference report on November 19, 2003. On November 21, 2003, the motion to end debate failed, and the conference report was not agreed to by the Senate.

On February 12, 2004, Senator Domenici introduced S. 2095, the Energy Policy Act of 2003, which consisted of the text of the conference report on H.R. 6, with certain provisions eliminated. On February 23, 2004, S. 2095 was placed on the Senate Legislative Calendar. No further action was taken on S. 2095.

During the 109th Congress, the Committee conducted several hearings examining various aspects of energy. On February 15, the Committee conducted a hearing on the Future of Liquefied Natural Gas: Siting and Safety; on March 8, the Committee conducted a hearing on Power Generation Resource Incentives and Diversity Standards; on April 12, the Committee conducted a hearing on the Development of America's Oil Shale Resources; and on April 26, the Committee conducted a hearing on the Department of Energy's Nuclear Power 2010 Program. In addition, the Committee conducted a series of meetings on issues to be addressed in comprehensive energy legislation. On January 24, the Committee met on Natural Gas; on March 10 and April 21, on Coal; and on April 5, on Water Supply and Resource Management.

The Committee conducted five business meetings to consider comprehensive energy policy legislation. On May 17, the Committee considered title V, Indian Energy; title X, Department of Energy Management; and title XI, Personnel and Training. On May 18, the Committee considered title IV, Coal; title VII, Vehicles and Fuels; title VIII, Hydrogen; and title IX, Research and Development. On May 19, the Committee considered title I, Energy Efficiency; and title XII, Electricity. On May 25, the Committee considered title II, Renewable Energy; title VI, Nuclear Matters; and title XVI, Studies. On May 26, the Committee considered title III, Oil and Gas; and title XIV, Incentives for Innovative Technology. At the business meeting on May 26, 2005, the Committee on Energy and Natural Resources voted to report favorably an original bill.

## COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business section on May 26, 2005, by a majority vote of a quorum present recommends that the Senate pass an original bill, as described herein.

The rollcall vote on reporting the measure was 21 yeas, 1 nay as follows:

YEAS	NAYS
Mr. Domenici	Mr. Wyden
Mr. Craig	
Mr. Thomas	
Mr. Alexander	
Ms. Murkowski	
Mr. Burr	
Mr. Martinez*	
Mr. Talent*	
Mr. Burns	
Mr. Allen	
Mr. Smith*	
Mr. Bunning	
Mr. Bingaman	
Mr. Akaka	
Mr. Dorgan*	
Mr. Johnson*	
Ms. Landrieu	
Mrs. Feinstein	
Ms. Cantwell	
Mr. Corzine*	
Mr. Salazar	

\* Indicates voted by proxy.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short Title*

Section 1 is self-explanatory.

*Section 2. Definitions*

Section 2 is self-explanatory.

## TITLE I—ENERGY EFFICIENCY

## SUBTITLE A—FEDERAL PROGRAMS

*Section 101. Energy and water saving measures in congressional buildings*

Section 101 establishes requirements for energy and water savings in Congressional Buildings.

*Section 102. Energy management requirements*

Section 102 establishes new energy conservation goals for Federal buildings. The section changes the baseline for measuring Federal energy performance from 1985 to 2004 and requires a 20 percent improvement over 2004 levels by 2015. The section provides exclusions from these requirements under certain conditions and

directs the Secretary to issue guidelines that establish criteria for excluding buildings from these requirements. Agencies are authorized to retain funds appropriated for energy expenditures that are not spent because of energy savings in agency buildings and to use those funds for energy efficiency and renewable energy projects.

*Section 103. Energy use measurement and accountability*

In order to encourage greater energy efficiency and energy cost reduction by Federal agencies section 103 requires Federal buildings to be metered or sub-metered by October 1, 2012, using advanced meters, to the maximum extent practicable. Agencies must also develop plans to use real-time electricity consumption data to reduce energy costs and consumption.

*Section 104. Procurement of energy efficient products*

Section 104 requires Federal agency managers to purchase highly energy efficient products for use by those agencies.

*Section 105. Energy savings performance contracts*

Section 105 extends the Energy Savings Performance Contracts program through FY 2016.

*Section 106. Voluntary commitments to reduce industrial energy intensity*

Section 106 encourages business and industry to enter into voluntary agreements with the DOE to reduce energy intensity by not less than 2.5 percent annually.

*Section 107. Federal building performance standards*

Section 107 requires the Secretary to revise Federal building energy efficiency performance standards.

*Section 108. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete*

Section 108 requires Federal agencies to fully implement all procurement requirements and incentives that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

SUBTITLE B—ENERGY ASSISTANCE AND STATE PROGRAMS

*Section 121. Weatherization assistance*

Section 121 authorizes the expenditure of \$1.23 billion for Weatherization Assistance for fiscal years 2006 through 2008.

*Section 122. State energy programs*

Section 122 requires the Secretary to assist States in reviewing and revising state energy conservation plans and in establishing State energy efficiency goals.

*Section 123. Energy efficient appliance rebate programs*

Section 123 provides funding for State grant programs to provide rebates to consumers purchasing residential Energy Star products. It authorizes \$50 million for each of fiscal years 2006 through 2010.

*Section 124. Energy efficient public buildings*

Section 124 provides for grants to States to assist units of local government in improving the efficiency of public buildings and facilities.

*Section 125. Low income community energy efficiency pilot program*

Section 125 allows the Secretary to provide grants to units of local government, private or non-profit community development organizations, and economic development entities of Indian tribes to improve energy efficiency, develop alternative, renewable and distributed energy supplies and to increase energy conservation in low-income rural and urban communities.

*Section 126. State technologies advancement collaborative*

Section 126 directs the Secretary, in cooperation with the States, to establish a program for research, development, demonstration, and deployment of technologies in which there is a common Federal and State energy efficiency, renewable energy, and fossil energy interest.

*Section 127. Model building energy code compliance grant program*

Section 127 directs the Secretary to carry out a program to provide grants to each State that the Secretary determines, with respect to new buildings in the State, achieves at least a 90-percent rate of compliance (based on energy performance) with the most recent model building energy codes. Funds may be used to carry out activities relating to the implementation of building energy codes and building practices that exceed efficiency requirements of the most recent model building codes. It authorizes the expenditure of \$25 million for each of fiscal years 2006 through 2010.

## SUBTITLE C—ENERGY EFFICIENT PRODUCTS

*Section 131. Energy star program*

Section 131 establishes a voluntary program within the DOE and the Environmental Protection Agency (EPA) 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. The section requires regular updating of Energy Star requirements through a transparent process that includes solicitation of comments from interested parties prior to establishment of new Energy Star categories, specifications or criteria along with responses to such comments; and allows 12 months of lead time before such changes take effect unless such time period is waived or reduced by mutual consent between EPA or DOE and the affected parties.

*Section 132. HVAC maintenance consumer education program*

Section 132 directs the Secretary to carry out a program to educate homeowners and small business owners concerning the energy savings from properly conducted maintenance of air conditioning, heating and ventilating systems. Additionally, the section author-

izes the Small Business Administration to work with the DOE and EPA to provide energy efficiency information to small business.

*Section 133. Public energy education program*

Section 133 directs the Secretary to convene an organizational conference for the purpose of establishing an ongoing, self-sustaining national public energy education program.

*Section 134. Energy efficiency public information initiative*

Section 134 directs the Secretary to carry out a comprehensive national program, including advertising and media awareness to inform consumers about the need to reduce energy consumption, the benefits to consumers of reducing energy consumption, the importance of low energy costs to economic growth and job formation, and practical, cost-effective measures consumers can take to reduce consumption of energy. \$90 million is authorized for each of fiscal years 2006 through 2010.

*Section 135. Energy conservation standards for additional products*

Section 135 establishes energy conservation standards and testing requirements for the following products: illuminated exit signs; torchiere lighting fixtures; distribution transformers; traffic and pedestrian signals; commercial unit heaters; medium base compact fluorescent lamps; dehumidifiers; pre-rinse spray valves; and mercury vapor lamp ballasts. The section also directs the DOE to prescribe standards for: refrigerated beverage vending machines; suspended ceiling fans and the standby power mode of battery chargers and external power supplies. The legislative standards reflect consensus agreements that have been negotiated by the trade associations representing the manufacturers of the products and environmental, energy efficiency and consumer groups. The section authorizes the Secretary to set standards for electricity use for residential furnace fans, to set more than one standard for a product that serves more than one function, and, under specified conditions, to use an expedited rulemaking process to establish a standard. Finally, the section provides that existing State and local standards for a new product added by the section are not preempted until the Federal standards for such product goes into effect.

*Section 136. Energy conservation standards for commercial equipment*

This section establishes conservation standards and testing requirements for: commercial air conditioning and heat pumps; commercial refrigerators and freezers; commercial clothes washers; and commercial ice makers. The standards reflect agreements that have been negotiated by the trade associations representing the manufacturers of the products and environmental, energy efficiency, and consumer groups.

*Section 137. Expedited rulemaking*

Section 137 amends the Energy Policy and Conservation Act to make conforming changes related to the expedited rulemaking in subsection 135.



*Section 138. Energy labeling*

Section 138 directs the FTC to undertake a rulemaking to consider the effectiveness of the consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency; and changes to the labeling rules (including categorical labeling) that would improve the effectiveness of consumer product labels and directs the Secretary or the FTC to prescribe labeling requirements for products for which standards are set by rule or by statute in section 135.

*Section 139. Energy efficient electric and natural gas utilities study*

Section 139 directs the Secretary, in consultation with the National Association of Regulatory Utility Commissioners and the National Association of State Energy Officials, to conduct a study of State and regional policies that promote cost-effective programs to reduce energy consumption (including energy efficiency programs) that are carried out by utilities subject to State regulation and non-regulated utilities. This section also requires the Secretary to report the findings of the study and any recommendations on model policies to promote energy efficiency programs.

*Section 140. Energy efficiency pilot program*

Section 140 directs the Secretary to establish a pilot program under which the Secretary provides financial assistance to at least 3, but not more than 7, States to carry out pilot projects in States for planning and adopting statewide programs that encourage energy efficiency and energy consumption reductions. States with adopted programs may use funds for expanding and improving their programs. It authorizes \$5 million in each of fiscal years 2006 through 2010.

*Section 141. Energy efficiency resource programs*

Section 141 amends the Public Utilities Regulatory Policy Act of 1978 to require State regulatory bodies, within 3 years after enactment, to consider implementing energy efficiency or other demand reduction programs.

## SUBTITLE D—MEASURES TO CONSERVE PETROLEUM

*Section 151. Reduction of dependence on imported petroleum*

Section 151 directs the President to develop and implement measures in end-uses throughout the economy of the United States sufficient to reduce total demand for petroleum in the United States by 1,000,000 barrels per day. It requires the President to report annually on progress toward meeting that goal.

## SUBTITLE E—ENERGY EFFICIENCY IN HOUSING

*Section 161. Public housing capital fund*

Section 161 allows the Public Housing Capital Fund to include use for certain improvements for energy efficiency, including integrated utility management and capital planning and third party contracts similar to Energy Savings Performance Contracts (ESPCs).

*Section 162. Energy efficient appliances*

Section 162 requires public housing agencies to purchase Energy Star or FEMP-designated products where cost-effective.

*Section 163. Energy efficiency standards*

Section 163 updates efficiency standards used in the Cranston-Gonzales National Affordable Housing Act low-income housing programs to current best codes and practices.

*Section 164. Energy strategy for HUD*

Section 164 requires the Department of Housing and Urban Development to develop and implement an integrated energy strategy for public and assisted housing and requires a report to Congress and updates of the report every two years.

## TITLE II—RENEWABLE ENERGY

## SUBTITLE A—GENERAL PROVISIONS

*Section 201. Assessment of renewable energy resources*

Section 201 directs the Secretary of Energy to publish a report, based on his most recent assessment, containing a detailed inventory of the available quantity and characteristics of renewable energy resources in the United States.

*Section 202. Renewable energy production incentive*

Section 202 extends funding authorization for incentive programs for producing electricity from renewable energy sources, expands eligibility to cooperatives and municipal utilities, and includes landfill gas as an eligible energy resource. The section also provides that if funds are not available for full payments in a given calendar year, 60 percent of available funds shall be assigned to solar, wind, geothermal, and closed-loop biomass.

*Section 203. Federal purchase requirement*

Section 203 requires the Federal Government to try to purchase not less than 3 percent renewable electric energy in fiscal years 2007 through 2009, increasing to not less than 7.5 percent renewable electric energy in fiscal year 2013 and thereafter. The section also provides a double credit for renewable electric energy produced and used on-site at a Federal facility, as well as for renewable energy produced on Federal or Indian lands and used at a Federal facility.

*Section 204. Renewable content of motor vehicle fuel*

Section 204 mandates that motor vehicle fuel sold or dispensed to consumers in the contiguous United States contain renewable fuel as defined by this section. Under the mandate 4 billion gallons of renewable fuel must be used in 2006 rising to 8 billion gallons in 2012. After 2012 the annual volume of renewable fuel must be at least equal to the percentage of renewable fuel, relative to the total number of gallons of gasoline introduced into commerce in 2012. The section also contains provisions relating to participation by small refiners, opportunities for a State or States to waive the

program requirements, and provisions for a fuel producer credit and trading program.

*Section 205. Federal agency ethanol-blended gasoline and biodiesel purchasing requirement*

Section 205 requires the head of each Federal agency to ensure that the agency purchases ethanol-blended gasoline containing at least 10 percent ethanol rather than nonethanol-blended gasoline for use in agency vehicles. The section also requires that Federal agencies purchase biodiesel for diesel fueled vehicles based on a schedule set forth in this section.

*Section 206. Data collection*

Section 206 requires the Administrator of the Energy Information Administration of the DOE to conduct and publish the results of a survey of renewable fuels demand in the motor vehicle fuels market in the United States on a monthly basis.

*Section 207. Sugar cane ethanol program*

Section 207 directs the Secretary of Energy to establish a multi-State project designed to study the production of ethanol from cane sugar, sugar cane, and sugar cane byproducts.

*Section 208. Modification of Commodity Credit Corporation bio-energy program*

Section 208 is self-explanatory.

*Section 209. Advanced biofuel technologies program*

Section 209 directs the Secretary of Energy, in consultation with the Secretary of Agriculture, to establish a program to demonstrate advanced technologies for the production of alternative transportation fuels.

*Section 210. Assistance for rural communities with high energy costs*

Section 210 permits the Secretary and the Administrator of the Rural Utilities Service to use authorities provided pursuant to the 1936 Rural Electrification Act and the Consolidated Farm and Rural Development Act, including the deferral, extension, refinancing, restructuring, and reduction of loans made under those Acts, to make grants available to existing rural electric projects in Alaska. The purpose of such grants is to aid electric borrowers serving rural Alaskan communities to reduce consumer rates, maintain reliable service, preserve the economic feasibility of an electric system, and avoid default.

SUBTITLE B—INSULAR ENERGY

*Section 221. Definitions*

Section 221 defines the terms used in the subtitle.

*Section 222. Assessment*

Section 222 authorizes the Secretary of Energy, in consultation with the Secretary of the Interior, to conduct an assessment of the energy needs of the U.S.-affiliated insular areas and submit a re-

port within one year of enactment to Congress that evaluates the strategies or projects with the greatest potential for reducing the dependence of each insular area on imported fossil fuels as used for the generation of electricity, and, when there is a significant need for distributed energy, identify promising strategies and projects for meeting that need.

*Section 223. Project feasibility studies*

Section 223 authorizes the Secretary of Energy, in consultation with the Secretary of the Interior, and upon the request of the local electric utility and a commitment by the utility to at least ten percent of the cost, to conduct a feasibility study of a project to implement a strategy or project identified under section 222 as having the potential to—(1) significantly reduce the dependence of an insular area on imported fossil fuels; or (2) provide needed distributed generation to an insular area.

*Section 224. Implementation*

Section 224 authorizes, upon a determination by the Secretary of Energy, in consultation with the Secretary of the Interior, that a project is feasible under section 223, and a commitment by the local electric utility to operate and maintain the project, such technical and financial assistance as the Secretary determines is appropriate for the implementation of the project.

*Section 225. Authorization of appropriations*

Section 225 authorizes to be appropriated to the Secretary of Energy: (1) \$500,000 for the completion of the assessment under section 222; (2) \$500,000 for each fiscal year for project feasibility studies under section 223; and (3) \$5,000,000 for each fiscal year for project implementation under section 224. No insular area may receive more than 20 percent of the total funds made available during any 3-year period unless the Secretary determines that providing funding in excess of that percentage best advances existing opportunities to meet the objectives of this subtitle.

SUBTITLE C—BIOMASS ENERGY

*Section 231. Definitions*

Section 231 defines the terms used in the subtitle.

*Section 232. Biomass commercial utilization grant program*

Section 232 authorizes the Secretary of the Interior and the Secretary of Agriculture to make grants to offset the cost of purchasing biomass from hazardous fuels reduction and other forest restoration projects on Federal or Indian lands to produce electricity, heat, or transportation fuels. This section authorizes appropriations of \$12.5 million to each Secretary for each of fiscal years 2006 through 2010.

*Section 233. Improved biomass utilization program*

Section 233 authorizes the Secretary of the Interior and the Secretary of Agriculture to make grants to offset the cost of developing or researching proposals to improve or add value to the use of biomass from hazardous fuels reduction and other forest restoration

projects. This section authorizes appropriations of \$12.5 million to each for each of fiscal years 2006 through 2010.

*Section 234. Report*

Section 224 directs the Secretaries of the Departments of the Interior and Agriculture to provide a joint report on the interim results of the program no later than 3 years after the date of enactment.

SUBTITLE D—GEOTHERMAL ENERGY

*Section 241. Leasing procedures*

Section 241 modifies the Geothermal Steam Act to require that all lands to be leased be made available on a competitive basis. If no competitive interest in the lands exists, they can be made available for leasing on a noncompetitive basis for a period of two years. Pending lease applications are grandfathered. The mechanics for this system of competitive leasing is patterned after the Federal onshore oil and gas leasing program.

*Section 242. Direct use*

Section 242 directs the Secretary to issue a schedule of fees (as opposed to royalties) for direct use geothermal (geothermal used for a purpose other than commercial generation of electricity and not sold—e.g., geothermal steam used for greenhouses). This section also gives the Secretary discretion to provide an exception from the requirement for competitive leasing for land to be used exclusively for direct use if the Secretary follows certain procedures and determines that no competitive interest exists.

*Section 243. Royalties*

Section 243 requires the Secretary to issue a rule within one year to provide a simplified methodology for calculating royalties on Federal geothermal resources. It requires the Secretary to consider a methodology based on gross proceeds from the sale of electricity and to ensure that the final regulation results in the same level of royalty revenues over a 10-year period as the current regulation. This section also provides that existing leases can be modified on the application of the lessee to conform to the schedule of fees for leases for direct use and to the new simplified methodology for all other leases.

*Section 244. Geothermal leasing and permitting on Federal land*

Section 244 requires the Secretaries of the Interior and Agriculture to enter into a memorandum of understanding regarding leasing and permitting for geothermal development of public lands and National Forest System lands. It requires a joint data retrieval system for tracking lease and permit applications.

*Section 245. Assessment of geothermal energy potential*

Section 245 requires the Secretary to update the 1978 Assessment of Geothermal Resources.

*Section 246. Cooperative or unit plans*

Section 246 clarifies the authority of the Secretary with respect to the creation of cooperative or unit agreements for the development of Federal geothermal resources.

*Section 247. Royalty on byproducts*

Section 247 provides that the royalty on any byproduct mineral be at the applicable rate contained in the Mineral Leasing Act.

*Section 248. Lease duration and work commitment requirements*

Section 248 requires the Secretary to establish payments at a level that ensures diligent development of the lease.

*Section 249. Annual rental*

Section 249 increases the rentals required to be paid on Federal geothermal leases, escalating over time from \$1 (for noncompetitive leases) and \$2 (for competitive leases) to \$5 per acre. This section also modifies the provisions relating to termination of a lease for failure to pay rental.

*Section 250. Advanced royalties required for cessation of production*

Section 250 provides that a lease will remain in effect if production ceases after coming into production if the lessee pays for an aggregate of not more than 10 years an advance royalty that is the monthly average royalty paid during the period of production. The advance royalty can be credited against future production royalties. There is an exception in cases where the production ceases due to a force majeure.

*Section 251. Leasing and permitting on Federal land withdrawn for military purposes*

Section 251 requires the Secretaries of the Interior and Defense to submit a joint report on leasing and permitting activities for geothermal energy on Federal land withdrawn for military purposes.

*Section 252. Technical amendments*

Section 252 makes a series of technical amendments to the Geothermal Steam Act of 1970, replacing the term "geothermal steam and associated resources" with "geothermal resources" throughout the Act, and providing section titles for each section of the Act.

## SUBTITLE E—HYDROELECTRIC

*Section 261. Alternative conditions and fishways*

Subsection (a) amends section 4(e) of the Federal Power Act to provide that the license applicant and any party to the proceeding is entitled to a determination on the record after opportunity for an agency trial-type hearing of no more than 90 days on any disputed issues of material fact with respect to 4(e) conditions. All disputed issues of material fact raised by any party are to be determined in a single trial-type hearing to be conducted within a time frame established by FERC for each license proceeding. Within 90 days of the date of enactment, the Secretaries of the Interior, Commerce, and Agriculture are directed to establish jointly by rule procedures for the expedited trial-type hearing, including an oppor-

tunity to undertake discovery and cross-examine witnesses, in consultation with the FERC.

Subsection (b) amends section 18 of the Federal Power Act to provide the same trial-type hearing requirements with respect to prescriptions sought by a resource agency.

Subsection (c) amends the Federal Power Act by adding a new section addressing alternative conditions and prescriptions. It allows the license applicant or any other party to the license proceeding to propose an alternative condition or prescription. The subsection directs the Secretary of the resource agency to accept the proposed alternative condition or prescription if the Secretary determines, based on substantial evidence provided by the license applicant, any other party to the proceeding, or otherwise available to the Secretary, that the alternative condition provides for the adequate protection and utilization of the reservation (or in the case of a prescription, that the alternative will be no less protective than the fishway initially proposed by the Secretary) and the Secretary concurs with the license applicant's judgment that the alternative condition or prescription will either cost significantly less to implement or result in improved operation of the project works for electricity production. The concurrence by any Secretary of the license applicant's judgment on costs and project operations should be based upon a determination that the judgment is supported by substantial evidence. The Secretary must submit into the record a written statement explaining the basis for any condition or prescription selected and the reason for not accepting any proposed alternative condition or prescription. The written statement must demonstrate that the Secretary gave equal consideration to a number of specified factors. The subsection provides that if the Secretary does not accept an applicant's proposed alternative condition or prescription and the FERC finds the resource agency's condition or prescription to be inconsistent with applicable law, the FERC may refer the dispute to its Dispute Resolution Service for a non-binding advisory. The Committee does not intend section 261 to shift the burden of proof or to change the standard of proof required by section 556(d) of title 5, United States Code, to support an agency determination.

*Section 262. Alaska State jurisdiction over small hydroelectric projects*

The provision is self-explanatory.

*Section 263. Flint Creek hydroelectric project*

The provision is self-explanatory.

## TITLE III—OIL AND GAS

### SUBTITLE A—PETROLEUM RESERVE AND HOME HEATING OIL

*Section 301. Permanent authority to operate the Strategic Petroleum Reserve and other energy programs*

Section 301 permanently authorizes the Strategic Petroleum Reserve (SPR). The SPR was established pursuant to the authority granted under the Energy Policy and Conservation Act (EPCA). This section authorizes the Secretary of Energy to expeditiously as

practicable, without incurring excessive cost or appreciably affecting the price of gasoline or heating oil to consumers, acquire petroleum sufficient to fill the SPR to the one billion barrel capacity authorized by the EPCA.

Section 301 also permanently authorizes the Northeast Home Heating Oil Reserves.

*Section 302. National oilheat research alliance*

Section 302 amends the Energy Act of 2000 (P.L. 106–469; 42 U.S.C. 6201) to extend the authorization for the National Oilheat Research Alliance (NORA) until nine years after the date on which NORA was established.

SUBTITLE B—PRODUCTION INCENTIVES

*Section 311. Definition of Secretary*

Section 311 is self-explanatory.

*Section 312. Program on oil and gas royalties-in-kind*

Subsection (a) provides that the section applies to all royalty-in-kind (RIK) accepted by the Secretary under specified statutes.

Subsection (b) provides that all royalty accruing for oil or gas under a Federal lease issued under those authorities shall, on the demand of the Secretary, be paid in oil or gas beginning on the date of enactment and sets forth other requirements applicable to RIK payments. The subsection gives the Secretary the authority to retain and use a portion of the revenues generated from RIK sales to pay costs of transporting, processing, or disposing of the royalty production and for salaries and administrative costs of the RIK program.

Subsection (c) provides that if a lessee, pursuant to an agreement with the United States or if provided in the lease, processes the royalty gas or delivers the oil or gas at a point not on or adjacent to the lease area, the Secretary shall compensate the lessee in a manner articulated in the subsection.

Subsection (d) provides that the Secretary may receive oil or gas royalties-in-kind only if the Secretary determines that doing so provides benefits to the United States greater than or equal to those likely to have been received had royalties been taken in value.

Subsections (e), (f), (g), (h), (i) and (j) are self-explanatory.

*Section 313. Marginal property production incentives*

Subsection (a) defines “marginal property” as set forth in the section, until such time as the Secretary issues regulations that prescribe a different definition, with respect to Federal onshore oil and gas leases.

Subsection (b) sets forth conditions for the reduction of the royalty rate on such properties.

Subsection (c) sets forth the reduced royalty rate.

Subsection (d) sets forth the authority for the termination of the reduced royalty rate.

Subsection (e) explicitly provides authority for the Secretary of the Interior to prescribe different standards for royalty relief by regulation. The subsection directs the Secretary to accept and consider petitions for royalty relief for marginal properties on the OCS



under existing authorities and to act on such petitions within 90 days.

Subsection (f) is self-explanatory.

*Section 314. Incentives for natural gas production from deep wells in the shallow waters of the Gulf of Mexico*

Section 314 is self-explanatory.

*Section 315. Royalty relief for deep water production*

Section 315 is self-explanatory.

*Section 316. Alaska offshore royalty suspension*

Section 316 authorizes the Secretary of the Interior under the Outer Continental Shelf Lands Act to give royalty relief to existing, non-producing leases for production in Alaska frontier regions, as specified in the section.

*Section 317. Oil and gas leasing in the National Petroleum Reserve in Alaska*

Subsection (a) transfers authorities and is self-explanatory.

Subsection (b) restates the requirement of current law that the Secretary conduct an expeditious program of competitive oil and gas leasing in the NPRA. It states that the Secretary should prevent to the extent practicable and mitigate adverse effects from leasing and development activities. It also states that the Secretary minimize to the extent practicable the impact to surface resources and consolidate facilities. Subsection (b) does not present a new standard for the leasing program conducted under this section, but rather is a further exposition of existing law. It does not express the view of Congress as to whether the BLM has or has not met the standard. The section provides that leases be for an initial period of not more than 10 years and so long thereafter as oil or gas is produced from the lease in paying quantities or drilling or reworking operations, as approved by the Secretary, are conducted on the leased land. The section provides that at the end of the primary term of the lease, the Secretary shall renew the lease for one additional 10-year term if certain standards as set forth in the subsection are met and the lessee pays a renewal fee of \$100 per acre. The subsection authorizes the Secretary to unitize leases and sets forth requirements relating to unit agreements. The section conforms the Secretary's authority to waive, suspend or reduce royalties on the NPRA with the authority under the Mineral Leasing Act with respect to onshore oil and gas leasing in the lower 48 states. The provision requires the Secretary to waive administration of leases where the Native Regional Corporation owns the subsurface estate; however, the provision does not limit the authority of the Secretary to manage the federally-owned surface estate within the NPRA.

Subsection (c) makes conforming amendments.

*Section 318. North Slope science initiative*

Subsection (a) establishes a North Slope Science Initiative to implement efforts to coordinate collection of scientific data to provide a better understanding of the terrestrial, aquatic, and marine ecosystems of the North Slope of Alaska.

Subsections (b), (c), (d), (e), and (f) are self-explanatory.

*Section 319. Orphaned, abandoned, or idled wells on Federal land*

Subsection (a) requires the Secretary of the Interior, in cooperation with the Secretary of Agriculture, to establish a program to remediate, reclaim, and close, orphaned, abandoned, or idled wells on Federal lands administered by the Secretaries of the Interior and Agriculture.

Subsections (b), (c), (d), and (e) sets forth requirements for the program, provisions related to cooperation and consultation, requirements for a plan, and defines “idled well”.

Subsection (f) requires the Secretary of Energy to establish a technical assistance program to provide assistance to states in dealing with orphaned and abandoned wells on state and private lands.

Subsection (g) authorizes funding for the programs.

*Section 320. Combined hydrocarbon leasing*

The section amends the Mineral Leasing Act to authorize the Secretary of the Interior to issue separately leases for exploration for and extraction of tar sand and oil and gas in areas that contain a combination of tar sand and oil and gas.

*Section 321. Alternate energy-related uses on the Outer Continental Shelf*

Section 321 amends the Outer Continental Shelf Lands Act to provide authority to the Secretary of the Interior to grant leases, easements, or rights-of-way for energy and related purposes on the OCS. The section does not allow the grant of easements or rights-of-way for activities that support the exploration, development, or production of oil and gas in areas where oil and gas preleasing, leasing and related activities are prohibited by a congressional moratorium or a withdrawal pursuant to section 12 of the Outer Continental Shelf Lands Act. The authority does not apply to any area within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, or National Marine Sanctuary System, or any National Monument. The section requires the Secretary to undertake a coordinated OCS mapping initiative to assist in decision-making relating to the siting of facilities under the section.

*Section 322. Preservation of geological and geophysical data*

Section 322 requires the Secretary to carry out an initiative with the States to archive and provide a national catalog of geologic, geophysical, and engineering data, maps, well logs and samples. The Secretary is required to establish a data archive system of repositories and to provide technical and financial assistance related to the archival material.

*Section 323. Oil and gas lease acreage limitations*

Section 323 amends the Mineral Leasing Act provision to increase the limitation on the amount of acreage that can be held by a person under lease in any one State.

*Section 324. Assessment of dependence of State of Hawaii on oil*

Section 324 requires the Secretary of Energy to assess the economic implications of the dependence of the State of Hawaii on oil as the principal source of energy for the State including; the prospects for supply disruptions and price volatility impacts on the State economy; the economic relationship between the use of residual fuel in oil-fired generation of electricity and the consumption of refined petroleum products in transportation; the feasibility of increasing the contribution of renewable energy for the generation of electricity; the feasibility of using liquefied natural gas for electric generation; the feasibility of using renewable energy (including hydrogen) for transportation; and the development of hydrogen from renewable resources and its application to the energy needs of the State.

The section further directs the Secretary to prepare and submit a report to Congress on the findings, conclusions and recommendations of this assessment within 300 days after the date of enactment.

*Section 325. Denali Commission*

Section 325 authorizes the appropriation of funds to the Denali Commission to carry out energy programs and power cost equalization programs. It also provides requirements for conducting open commission meetings including public announcements about such meetings and the maintaining transcripts or minutes.

*Section 326. Comprehensive inventory of OCS oil and natural gas resources*

Section 326 requires the Secretary of the Interior to conduct an inventory and analysis of OCS oil and gas resources. The Secretary is directed to use data on resources offshore Canada and Mexico, as well as using any available technology (except for drilling which is explicitly prohibited), including 3-D seismic technology, to develop accurate domestic oil and gas resource estimates. The Secretary is to submit a report within 6 months of enactment and update the report at least every 5 years.

*Section 327. Review and demonstration program for oil and gas production*

Section 327 requires the Secretaries of the Interior and Energy to review of opportunities to enhance production of oil and gas from public land and the OCS through royalty or production incentives to lessees that inject carbon dioxide to enhance recovery. The provision also requires the Secretary of Energy to establish a competitive grant program for enhancing recovery of oil and gas by injecting carbon dioxide. It provides for up to 10 projects in the Williston Basin of North Dakota and Montana and 1 project in the Cook Inlet Basin of Alaska.

SUBTITLE C—ACCESS TO FEDERAL LAND

*Section 341. Federal onshore oil and gas leasing practices*

Section 341 provides for a review by the National Academy of Public Administration of the Federal onshore oil and gas leasing program. The Secretary of the Interior is to conduct an internal re-

view concurrent with the work of the National Academy of Public Administration. The Secretary of the Interior and the National Academy are to report findings and recommendations to Congress within 18 months.

*Section 342. Management of Federal oil and gas leasing programs*

Section 342 directs the Secretary of the Interior to ensure expeditious compliance with the requirements of the National Environmental Policy Act of 1969, improve consultation and coordination with the States, and improve collection, storage, and retrieval of information related to onshore oil and gas leasing on lands otherwise available for leasing. The section directs the Secretary to improve inspection and enforcement of oil and gas activities under the onshore oil and gas leasing program. The section provides that the Secretary of Agriculture also ensure expeditious compliance with all applicable environmental laws and improve collection, storage and retrieval of information. The provision requires the Secretary of the Interior to develop and implement best management practice for the onshore oil and gas leasing program. The section authorizes additional appropriations for the BLM, Fish and Wildlife Service, and Forest Service for these purposes.

*Section 343. Consultation regarding oil and gas leasing on public land*

Section 343 requires the Secretaries of the Interior and Agriculture to enter into a memorandum of understanding regarding oil and gas leasing on public lands and National Forest System lands to establish procedures to ensure timely processing of leasing authorizations and applications for permits to drill. Section 343 requires Secretaries to agree to establish a joint data retrieval system and a joint Geographic Information System for mapping.

*Section 344. Pilot program to improve federal permit coordination*

Section 344 requires the Secretary of the Interior to establish a Federal Permit Streamlining Pilot Project. Seven Western offices of the BLM are identified for participation in the project. The provision requires that relevant Federal agencies deploy staff to work with BLM land managers as a team on all environmental permits and land use planning documents in order to coordinate and improve Federal decisionmaking with respect to the permits. This section also requires the Secretary to prepare a report for submission to the President. The section directs the Secretary of the Interior to assign such additional personnel to the seven BLM offices as necessary to ensure effective implementation of the Pilot Program and the other programs administered by the BLM offices pursuant to the statutory mandate for the multiple use of public lands.

*Section 345. Energy facility rights-of-ways and corridors on Federal land*

Section 345 requires the Secretary of the Interior, with respect to public lands, and the Secretary of Agriculture, with respect to National Forest System lands, to designate utility corridors in Western States and to incorporate such corridors into land use and resource management plans within 24 months following execution of the memorandum required by the section. The section requires

the Secretary of Energy to develop a memorandum of understanding with the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Defense to coordinate applicable Federal authorizations and environmental reviews related to a proposed or existing utility facility.

*Section 346. Oil shale leasing*

The section requires the Secretary of the Interior to offer lands otherwise available for leasing for a period to be determined by the Secretary for purposes of research and development of innovative technologies for the recovery of shale oil from oil shale resources on public land. Within 18 months after the date of enactment, the Secretary must complete a programmatic environmental impact statement and a report relating to the potential leasing for commercial purposes of oil shale resources on public land. The U.S. Geological Survey is directed to undertake an assessment of oil shale resources.

SUBTITLE D—COASTAL PROGRAMS

*Section 371. Coastal Impact Assistance Program*

Section 371 authorizes the appropriation for fiscal years 2006 through 2010 of \$500 million per year for payments to Producing Coastal States with approved Coastal Impact Assistance Plans and political subdivisions in accordance with a formula set forth in the section. Thirty-five percent of a State's allocable share will be paid to the coastal political subdivisions in the State. Amounts provided under the section must be used only for one or more of the following: (i) Projects and activities for the conservation, protection, or restoration of coastal areas, including wetlands; (ii) mitigating damage to fish, wildlife, or natural resources; (iii) planning assistance and administrative costs of complying with the provisions of this section; (iv) implementation of approved marine, coastal or conservation plans; (v) mitigating the impacts of OCS activities through funding onshore infrastructure and public service needs.

SUBTITLE E—NATURAL GAS

*Section 381. Exportation or importation of natural gas*

Section 381 clarifies FERC's exclusive jurisdiction under the Natural Gas Act for siting, construction, expansion and operation of import/export facilities located onshore or in State waters. This section does not provide FERC eminent domain authority over siting LNG facilities. The Committee believes that State and local government involvement should be a critical part of the FERC siting process. In particular, State and local government entities should play an important role in the development of the safety and security guidelines for proposed facilities. The committee believes that the State and local governments are in the best position to understand the needs of the community surrounding proposed sites and should remain a critical asset to the FERC during the siting process.

Section 381 also codifies FERC's *Hackberry* policy. In *Hackberry*, FERC allowed the owners of a proposed LNG regasification terminal to negotiate contracts for terminal services directly with pro-

spective LNG suppliers (eliminating open access requirements) as a way to encourage site development.

*Section 382. New natural gas storage facilities*

Section 382 allows FERC to grant new storage capacity market-based rate treatment, notwithstanding the fact the applicant may have market power, if (1) it is in the public interest, (2) it is needed storage capacity, and (3) customers are adequately protected.

*Section 383. Process coordination; hearings; rules of procedures*

Section 383 establishes FERC as the lead agency for NEPA purposes and provides FERC authority to set schedules for required Federal authorizations. Agencies with jurisdiction over natural gas infrastructure are encouraged to coordinate their proceedings with the timeframe established by FERC. If a schedule deadline is not met, the President may issue a decision.

*Section 384. Penalties*

Section 384 increases penalties under the Natural Gas Act and Natural Gas Policy Act, parallel to increases in the Federal Power Act (\$5,000 to \$1,000,000). Section 384 also creates a civil penalty under Natural Gas Act.

*Section 385. Market manipulation*

Section 385 amends the Natural Gas Act to ban any “manipulative or deceptive device or contrivance” (as those terms are used in section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j (b))), in connection with jurisdictional natural gas transactions, that are in violation of FERC rules.

*Section 386. Natural gas market transparency rules*

Section 386 authorizes FERC to establish an electronic information system to provide information about the price or transportation costs of natural gas in interstate commerce. Section 386 requires FERC to exempt from disclosure information the disclosure of which would be detrimental to the operation of an effective market or which would jeopardize system security. Section 386 shall not affect the CFTC’s exclusive jurisdiction with respect to commodities under the Commodity Exchange Act. Section 386 provides that FERC shall not compete with private sector publishers of energy prices.

*Section 387. Deadline for decision on appeals of consistency determination under the Coastal Zone Management Act of 1972*

Section 387 amends the CZMA by establishing a 270-day period in which the Secretary of Commerce must close the decision record. The Secretary may stay the 270-day clock for up to 60 days to acquire supplemental information regarding the consistency determination or clarifying information from a party to the proceeding related to information already in the record. Section 387 provides that the Secretary has 90 days after the record is closed (90 days after the 270 to 330 days, if stayed 60 days) to issue a decision or explain why it cannot, in which case the Secretary has an additional 45 days to issue a decision. In total, section 387 allows for

1 year and 100 days for the Secretary to complete action on an appeal of a consistency determination.

*Section 388. Federal-State liquefied natural gas forums*

Section 388 directs the Secretary of Energy, in cooperation and consultation with Secretary of Transportation, Secretary of Homeland Security, FERC, and Governors of coastal States, to convene at least 3 forums to discuss LNG siting issues such as siting, safety, and emergency response. The purpose of the forums is to identify and develop best practices related to LNG and to foster cooperative efforts.

*Section 389. Prohibition on trading and serving by certain persons*

Section 389 allows courts to prevent anyone who manipulates markets from serving as officers or directors of gas utility companies or engaging in the business of selling or purchasing gas or gas transmission services jurisdictional to FERC.

SUBTITLE F—FEDERAL COALBED METHANE REGULATION

*Section 391. Federal coalbed methane regulation*

Section 391 provides that any State that, as of the date of enactment of this Act, is included on the list of affected States established under section 1339(b) of the Energy Policy Act of 1992 (42 U.S.C. 13368(b)) shall be removed from the list if, not later than 3 years after the date of enactment of this Act, the State takes steps to implement a program promoting the permitting, drilling and production of coalbed methane wells within that State.

TITLE IV—COAL

SUBTITLE A—CLEAN COAL POWER INITIATIVE

*Section 401. Authorization of appropriations*

Section 401 authorizes \$200 million annually for each of fiscal years 2006 through 2014 to carry out the purposes of this subtitle. It requires a report from the Secretary of Energy that contains an 8-year plan for implementing the Clean Coal Power Initiative.

*Section 402. Project criteria*

Section 402 establishes criteria for eligibility to receive assistance under this subtitle. It establishes emissions and thermal efficiency criteria for gasification projects and “other projects.” It requires the Secretary to allocate at least 80 percent of funds to coal gasification technologies and not more than 20 percent of funds to other combustion technologies. All projects must meet increasingly strict environmental and thermal efficiency performance standards. The section permits the expenditure of funds on carbon capture and sequestration technologies. The Secretary must give priority to projects that include carbon capture and sequestration as part of the project. The section also places this program under the cost-sharing requirements of section 1002, in lieu of the existing cost-sharing requirements (including repayment requirements) that have been imposed on the program in past appropriations Acts.

*Section 403. Report*

Section 403 requires the Secretary to report within one year of the date of enactment and every two years thereafter on the status and progress of the Initiative.

*Section 404. Clean coal centers of excellence*

Section 404 requires the Secretary to award competitive grants to establish centers of excellence for clean coal technologies at institutions of higher education selected for their potential to advance new clean coal technologies.

*Section 405. Integrated coal/renewable energy system*

Section 405 allows the Secretary of Energy to provide loan guarantees to an integrated gas combined cycle project that uses coal and wind and other renewable energy sources and that has the capacity to sequester carbon dioxide and provide a source of hydrogen.

*Section 406. Loan to place Alaska Clean Coal Technology facility in service*

Section 406 allows the Secretary of Energy to grant a direct loan of not more than \$80 million to allow the borrower to place a clean coal technology plant into reliable operation for the generation of electricity.

*Section 407. Western integrated coal gasification demonstration project*

Section 407 directs the Secretary of Energy to carry out a demonstration project to produce energy from coal mined in the Western United States using integrated gasification combined cycle technology capable of sequestering carbon dioxide emissions.

## SUBTITLE B—FEDERAL COAL LEASES

*Section 411. Repeal of the 160-acre limitation for coal leases*

Section 411 amends the Mineral Leasing Act to allow leases up to 320 acres subject to certain limitations.

*Section 412. Mining plans*

Section 412 amends the Mineral Leasing Act to allow the Secretary of the Interior to allow a period of more than 40 years if the Secretary makes certain determinations regarding maximum economic recovery of a coal deposit, and that the longer period is in the interest of the orderly, efficient, or economic development of a coal resource.

*Section 413. Payment of advance royalties under coal leases*

Section 413 amends the Mineral Leasing Act to extend the aggregate number of years during the period of any lease for which advance royalties may be accepted in lieu of the condition of continued operation to no more than twenty years.



*Section 414. Elimination of deadline for submission of coal lease operation and reclamation plan*

Section 414 eliminates the deadline for submitting an operation and reclamation plan.

*Section 415. Application of amendments*

Section 415 stipulates that amendments made by this subtitle apply to any coal lease issued on or after the date of enactment of this Act. Amendments made by this Act may apply to any lease issued before the date of enactment on the date of readjustment of the lease under section 7(a) of the Mineral Leasing Act or on request by the lessee, prior to the date of adjustment.

## TITLE V—INDIAN ENERGY

*Section 501. Short title*

Section 501 contains the short title, the “Indian Tribal Energy Development and Self-Determination Act of 2005”.

*Section 502. Office of Indian Energy Policy and Programs*

Section 502 amends title II of the DOE Organization Act to create the Office of Indian Energy Policy and Programs within the DOE to support the development and use of tribal energy resources. It states that a director shall be appointed by the Secretary of Energy and outlines the duties of the director.

*Section 503. Indian energy*

Section 503 provides a complete substitute for title XXVI of the Energy Policy Act of 1992 specifically as follows:

Section 2601 defines terms used in the Act.

Section 2602(a) requires the Secretary of the Interior to implement an Indian energy resource development program to assist Indian tribes in the development of their resources and to further the goal of Indian self-determination. The Secretary is authorized to provide grants and low-interest loans to qualifying tribes and Tribal Energy Resource Development Organizations. Such sums as are necessary to carry out the subsection are authorized to be appropriated from fiscal year 2006 through 2016.

Section 2602(b) directs the Director of the Office of Indian Energy Policy and Programs at DOE to develop a program to assist consenting tribes in meeting energy education, research and development, planning and management needs and authorizes the Director to provide grants to tribes or tribal energy resource development organizations. The Director is also required to develop a program to provide tribes with the opportunity to participate in carbon sequestration practices. The sum of \$20 million is authorized to be appropriated for each of fiscal years 2006 through 2016.

Section 2602(c) authorizes, under specified conditions, the Secretary of Energy to provide loan guarantees for an amount equal to not more than 90 percent of unpaid interest and principal due on any loan made to an Indian tribe for energy development. The aggregate outstanding sum guaranteed by the Secretary of Energy shall not exceed \$2 billion.

Section 2602(d) authorizes Federal agencies to give preference in purchasing electricity or other energy products to Indian-owned or controlled entities under specified conditions.

Section 2603 authorizes the Secretary of the Interior to provide grants to tribes to inventory, study, and develop their energy resources and to enhance the legal and administrative ability of tribes to manage their energy resources.

Section 2604 establishes a program by which an Indian tribe may submit to the Secretary of the Interior for approval a tribal energy resources agreement (TERA) for the development of energy resources on tribal land and gives the Secretary one year to approve or disapprove that agreement. Upon approval of the TERA, Indian tribes are authorized to enter into leases and business agreements, or approve rights-of-way for applicable energy projects without separate approval of the Secretary of the Interior. The Secretary is required to conduct a periodic review and evaluation of the tribe's activities and the tribes must monitor the activities of their business partners. The section outlines a process for public input into proposed TERAs as well as a process to review alleged violations of the TERA by an applicable tribe and the Secretary. There are authorized to be appropriated such sums as necessary from 2006 through 2016 to carry out this section.

The program established by this section advances the ongoing policy of encouraging greater tribal self-determination in energy-related leasing and agreements. The program is consistent with policies ensuring that tribal self-determination and the Federal trusteeship are complementary, and that an Indian tribe that elects to pursue greater self-determination does not do so at the expense of the trust relationship between the United States and the Indian tribe.

Section 2605 authorizes and encourages actions by the Power Marketing Administration to assist tribal energy development. The Western Area Power Administration is authorized to make power allocations to meet the firming and reserve needs of Indian-owned energy projects and to acquire power generated by Indian tribes for firming and reserve needs, so long as the rates and terms are competitive. The Secretary of Energy is also required to complete a study that describes the use by Indian tribes of Federal power market allocations, the quantity of power allocated to tribes by Power Marketing Administrations and identification of barriers that impede tribal access to Federal power. The sum of \$750,000 is authorized to be appropriated to carry out this section.

Section 2606 authorizes a study on the feasibility of a demonstration project using wind energy generated by Indian tribes and hydropower generated by the Army Corps of Engineers on the Missouri River to supply firming power to WAPA. The sum of \$1 million is authorized to be appropriated for this study.

*Section 504. Four Corners transmission line project and electrification*

Section 504 makes the Dine Power Authority, a Navajo Nation enterprise, eligible for funding under this title for activities associated with the development of a transmission line from the Four Corners Area to southern Nevada and related power generation opportunities. This section also amends section 602 of Public Law

106–511 to extend the administration of the Navajo Electrification project through 2011.

*Section 505. Energy efficiency in Federal housing*

Section 505 directs the Secretary of Housing and Urban Development to promote energy conservation and efficiency in Federal housing located on Indian land.

*Section 506. Consultation with Indian tribes*

Section 506 requires the Secretary of the Interior and Secretary of Energy to involve and consult with Indian tribes in the implementation of this title.

## TITLE VI—NUCLEAR MATTERS

### SUBTITLE A—PRICE-ANDERSON ACT AMENDMENTS

*Section 601. Short title*

Section 601 is self-explanatory.

*Section 602. Extension of indemnification authority*

The authorization period for indemnification provisions for NRC licensees and DOE contractors is extended for a period of twenty years.

*Section 603. Maximum assessment*

Section 603 increases the maximum annual assessment under the standard deferred premium on NRC licensees from \$10 million to \$15 million, increases the overall cap from \$63 million to \$95.8 million, and adjusts these numbers for inflation in the future.

*Section 604. Department of Energy liability limit*

Section 604 sets the total amount of indemnification for DOE contractors at \$10 billion, and adjusts this number for inflation in the future.

*Section 605. Incidents outside the United States*

This section increases the amount of indemnification for DOE contractors engaged in nuclear activities outside the United States from \$100 million to \$500 million.

*Section 606. Reports*

Section 606 requires DOE and NRC to issue a report to Congress on the status of the Price-Anderson program by December 31, 2021.

*Section 607. Inflation adjustment*

Section 607 requires the NRC to adjust for inflation the standard deferred premium for NRC licensees every five years.

*Section 608. Treatment of modular reactors*

Section 608 allows NRC to consider a combination of small modular reactors at one site to be a single facility for purposes of Price-Anderson indemnification.

*Section 609. Applicability*

Section 609 clarifies that the amendments made by sections 603, 604, and 605 do not apply to a nuclear incident that occurs before the date of their enactment.

*Section 610. Civil penalties*

Section 610 ends the automatic remission of civil penalties for nuclear safety violations by DOE contractors that are nonprofit institutions and establishes a limit on such civil penalties not to exceed the total fees paid within one year to the nonprofit institution.

## SUBTITLE B—GENERAL NUCLEAR MATTERS

*Section 621. Medical isotope production*

Section 621 provides for the NRC to license the export of highly enriched uranium for medical isotope production in Canada, Belgium, France, Germany and the Netherlands. The intent of the medical isotope provision is to ensure that the United States medical community has an adequate and reliable supply of isotopes for nuclear medicine. The medical isotope provision does not mitigate or restrict the NRC's authority to require that recipients of high enriched uranium (HEU) be actively working to convert to low enriched targets. Nor does the provision reduce any security measures implemented by the NRC which ensure the safe transport and storage of HEU. Section 621 provides the NRC with more authority to add additional safeguards if it believes they are necessary.

*Section 622. Safe disposal of greater-than-class C radioactive waste*

Section 622 requires the designation of an entity within the DOE to be responsible for the final disposal of Greater-Than-Class C Radioactive Waste (GTCC). This section also requires the development of a comprehensive plan with alternatives for the disposal of GTCC. Before a final action is taken by the Secretary, a report is required to Congress describing all alternatives under consideration and await action by Congress.

*Section 623. Prohibition on nuclear exports to countries that sponsor terrorism*

Section 623 strengthens existing laws that contain prohibitions of nuclear exports to countries identified by the Secretary of State as engaging in state-sponsored terrorism.

*Section 624. Decommissioning pilot program*

Section 624 establishes a pilot program to decommission and decontaminate the sodium-cooled fast breeder experimental test-site reactor in Arkansas and authorizes appropriation of \$16,000,000.

## SUBTITLE C—NEXT GENERATION NUCLEAR PLANT PROJECT

*Section 661. Project establishment*

This section is self-explanatory.

*Section 662. Project management*

Section 662 designates the Office of Nuclear Energy, Science and Technology as the project manager. The Secretary may also call

upon the Office of Science to provide their expertise for the project. The Idaho National Laboratory (INL) is designated as the lead laboratory and directed to organize a consortium of industrial partners to participate in the project. The prototype plant will be built in Idaho at the INL. The project may utilize facilities at other national laboratories.

*Section 663. Project organization*

Section 663 establishes the major project elements, the phases in which the project will be conducted, project requirements, international collaboration, and project review. The program will be completed in phases; the first phase will validate the technologies under the major project elements. The first phase will examine whether it is appropriate to produce electricity and hydrogen concurrently and begin initial design activities for a prototype nuclear power plant. The second phase of the project includes the competitive process for reactor and plant design, licenses to construct and operate from the NRC and general construction and operation. Project requirements include making full use of the expertise of the nuclear power industry, chemical processing industry and Generation IV International Forum partners. The Nuclear Energy Research Advisory Committee (NERAC) will review all project plans on an ongoing basis to ensure all scientific, technical, safety and program management issues receive proper attention. After a review of phase one activities, the NERAC will also make a recommendation to the Secretary to proceed to phase two of the project. The Secretary shall transmit any NRG NERAC report to the Congress after reviewing it.

*Section 664. Nuclear Regulatory Commission*

Section 664 sets forth that the NRC will have licensing and regulatory authority for any reactor authorized in this program. The NRC and DOE are also required to notify Congress of the preferred licensing strategy for NRG. Requires the Secretary of the DOE to have ongoing interaction with the NRC throughout the duration of the project

*Section 665. Project timelines and authorization of appropriations*

This section is self-explanatory.

## TITLE VII—VEHICLES AND FUELS

### SUBTITLE A—EXISTING PROGRAMS

*Section 701. Use of alternative fuels by dual-fueled vehicles*

Section 701 amends current law to strengthen requirements that Federal vehicle fleets actually use alternative fuels in their alternative fuel capable vehicles.

*Section 702. Alternative fuel use by light duty vehicles*

Section 702 sunsets the alternative fuel vehicle requirements for covered motor vehicle fleets under sections 501, 507, and 508 of the Energy Policy Act of 1992 not later than 2015.

*Section 703. Incremental cost allocation*

Section 703 makes a minor technical amendment to section 303(c) of the Energy Policy Act of 1992.

*Section 704. Alternative compliance*

Section 704 amends title V of the Energy Policy Act of 1992 to allow covered fleet operators to apply for a waiver of the requirements of the Act. The amendment would provide flexibility to fleet operators and ease compliance with the fleet requirements for petroleum fuel use reductions.

*Section 705. Report concerning compliance with alternative fueled vehicle purchasing requirements*

Section 705 requires a report from the Secretary of Energy on purchasing requirements by February 15, 2006.

## SUBTITLE B—AUTOMOBILE EFFICIENCY

*Section 711. Authorization of appropriations for implementation and enforcement of fuel economy standards*

Section 711 authorizes \$2 million for each of fiscal years 2006 through 2010 for the National Highway Traffic Safety Administration to carry out its obligations with respect to fuel economy standards.

## SUBTITLE C—MISCELLANEOUS

*Section 721. Railroad efficiency*

Section 721 establishes a cost-shared, public-private research partnership to develop and demonstrate technologies that increase railroad locomotive fuel economy, reduce air emissions and lower operating costs. It authorizes \$110 million over three years for the program.

*Section 722. Conserve by bicycling program*

Section 722 establishes a program in the Department of Transportation to promote fuel conservation through greater use of bicycling as an alternative to motor vehicle use. It authorizes \$6.2 million for the program.

*Section 723. Reduction of engine idling of heavy-duty vehicles*

Section 723 establishes a program under the EPA to develop and deploy stationary and mobile technologies that will assist in reducing the amount of time large over-the-road trucks spend idling. The program is authorized to spend \$49.5 million over three years to promote stationary idling technologies. The amendment provides for a 250 pound weight exemption for large trucks that make use of auxiliary power units in lieu of engine idling.

*Section 724. Biodiesel engine testing project*

Section 724 requires the Secretary of Energy to initiate a project in partnership with the diesel engine diesel fuel injection system, and diesel vehicle manufacturers and diesel and biodiesel fuel providers to provide biodiesel testing in advanced diesel engine and

fuel system technology. It authorizes \$5 million for each of fiscal years 2006 through 2008.

#### SUBTITLE D—FEDERAL AND STATE PROCUREMENT

##### *Section 731. Definitions*

Section 731 sets forth the definitions of terms used in this subtitle.

##### *Section 732. Federal and State procurement of fuel cell vehicles and hydrogen energy systems*

Section 732 sets forth the purposes of the section: to stimulate acceptance by the market of fuel cell vehicles and hydrogen energy systems and support development of technologies relating to fuel cell vehicles, public refueling stations, and hydrogen energy systems and to require the Federal Government to adopt those technologies as soon as practicable.

This section also establishes a program for Federal leases and purchases of fuel cell technologies and authorizes a total of \$105 million over fiscal years 2008 through 2010.

##### *Section 733. Federal procurement of stationary, portable, and micro fuel cells*

Section 733 sets for the purposes of the section which are to stimulate the acceptance by the market of these technologies and support the development of technologies related to stationary, portable and micro fuel cells.

The section also establishes a program for Federal leases and purchases of stationary, portable and micro fuel cells and authorizes a total of \$345 million over fiscal years 2006 through 2010.

#### TITLE VIII—HYDROGEN

##### *Section 801. Hydrogen research, development, and demonstration*

Section 801 provides a complete substitute for the Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990 (42 U.S.C. 12401 et seq.), authorizes basic research, development and demonstration activities related to hydrogen energy, fuel cells and related infrastructure. The substitute establishes an interagency task force to advise the Secretary, provides for the transfer of critical hydrogen and fuel cell technologies to the private sector, provides for the development of safety codes and standards related to fuel cell vehicles and hydrogen energy systems, and requires a National Academy report.

#### TITLE IX—RESEARCH AND DEVELOPMENT

##### *Section 901. Short title*

Section 901 designates the title as the “Energy Research, Development, Demonstration, and Commercial Application Act of 2003”.

##### *Section 902. Goals*

Section 902 defines broad goals and requires the Secretary of Energy to publish specific goals with each annual budget submission.

*Section 903. Definitions*

This section is self-explanatory.

## SUBTITLE A—ENERGY EFFICIENCY

*Section 911. Energy efficiency*

This section sets authorization levels and is self-explanatory.

*Section 912. Next generation lighting initiative*

Section 912 authorizes a new initiative to develop advanced solid state lighting options through research, development, demonstration, and commercial application activities. A definition regarding the selection of an Industry Alliance to assist in updating roadmaps and assessing progress of the Initiative is provided within this section.

*Section 913. National building performance initiative*

Section 913 authorizes the Director of Office of Science and Technology Policy (OSTP) to establish an interagency program to address energy conservation and R&D efforts to reduce energy use in buildings. An advisory committee is established to oversee creation and implementation of a plan, and requires annual progress reports.

*Section 914. Secondary electric vehicle battery use program*

Section 914 authorizes a program to evaluate secondary use of electric vehicle batteries through research, development, demonstration, and commercial application activities.

*Section 915. Energy efficiency science initiative*

Section 915 authorizes a research program administered by the Assistant Secretary responsible for energy conservation.

## SUBTITLE B—DISTRIBUTED ENERGY AND ELECTRIC ENERGY SYSTEMS

*Section 921. Distributed energy and electric energy systems*

Section 921 provides authorization levels and is self-explanatory.

*Section 922. High power density industry program*

Section 922 authorizes the creation of a research and demonstration program for high power density facilities.

*Section 923. Micro-cogeneration energy technology*

Section 923 authorizes grants to consortia to develop small-scale combined heat and power systems for residential applications.

*Section 924. Distributed energy technology demonstration program*

Section 924 authorizes assistance to demonstration projects using distributed energy technologies in highly energy intensive commercial applications.

*Section 925. Electric transmission and distribution programs*

Section 925 authorizes research, development and demonstration programs to ensure reliability, efficiency and environmental integ-



riety of electrical transmission systems and requires a 5-year program plan to be completed within the first year. This section authorizes a Power Delivery Research Initiative focused on establishing test beds at national laboratories, universities, or in industry, to evaluate and demonstrate the technologies required to move high temperature superconductivity into commercial use. A Transmission and Distribution Grid Planning and Operations Initiative for research, development and demonstration of tools to plan, operate, and expand transmission and distribution grids in realistic market scenarios is authorized and this initiative shall use a distributed research center involving universities and national laboratories with a focus on transfer of useful technologies to industry.

#### SUBTITLE C—RENEWABLE ENERGY

##### *Section 931. Renewable energy*

Section 931 provides authorization levels and is self-explanatory.

##### *Section 932. Bioenergy programs*

Section 932 authorizes a broad program of research in biopower, biofuels and bioproducts, including technologies utilizing cellulosic feedstocks or enzyme-based processing.

##### *Section 933. Concentrating solar power research program*

Section 933 authorizes a program of research on concentrating solar power research to establish technologies and economics of both electricity and hydrogen production. A report with recommendations for future research is required within 4 years.

##### *Section 934. Hybrid solar lighting research and development program*

Section 934 authorizes a program of research on novel lighting systems that integrate sunlight and electrical lighting in complement to each other in common lighting fixtures for the purpose of increasing energy efficiency. A National Academy of Sciences report is required within 2 years.

##### *Section 935. Miscellaneous projects*

Section 935 authorizes research and development in ocean energy, combining renewable and other energy sources, and hydrogen carrier fuels.

#### SUBTITLE D—NUCLEAR ENERGY

##### *Section 941. Nuclear energy*

Section 941 provides authorization levels and is self-explanatory.

##### *Section 942. Nuclear energy research programs*

Section 942 authorizes the Nuclear Energy Research Initiative, Nuclear Energy Plant Optimization, Nuclear Power 2010, Generation IV Nuclear Energy Systems, Reactor Production of Hydrogen, and Nuclear Infrastructure Support Programs.

*Section 943. Advanced fuel cycle initiative*

Section 943 authorizes the Advanced Fuel Cycle Initiative to evaluate proliferation-resistant fuel recycling and transmutation technologies, which support evaluation of alternative national strategies for spent fuel management and Generation IV advanced reactor concepts. An annual progress report is required.

*Section 944. University nuclear science and engineering support*

Section 944 authorizes fellowship and faculty assistance programs, maintains university research and training reactors, and encourages interactions between universities and national laboratories.

*Section 945. Security of nuclear facilities*

Section 945 authorizes research and development on technologies for improving safety and security of reactors.

*Section 946. Alternatives to industrial radioactive sources*

Section 946 authorizes research and development on alternatives to large industrial radioactive sources, including well-logging sources, that reduce safety, environmental, or proliferation risks. A survey and report to Congress are required of existing types of commercial sources, along with review of available disposal options for such sources and evaluation of the need for alternative future disposal options.

## SUBTITLE E—FOSSIL ENERGY

*Section 951. Fossil energy*

Section 951 provides authorization levels and is self-explanatory.

*Section 952. Oil and gas research programs*

Section 952 authorizes research programs for oil and gas technologies with applications including exploration and production, reservoir life and extension, heavy oil and shale, and related environmental research. The section also authorizes research on fuel cells and requires a report at two year intervals on estimates of oil and gas reserves, reserves growth, and undiscovered resources.

*Section 953. Methane hydrate research*

Section 953 reauthorizes the Methane Hydrate Research and Development Act of 2000. It adds findings to the current Act, provides a new focus for ongoing activities in light of past recommendations of the National Research Council, requires a new study of the program by the National Research Council in 2009, and authorizes appropriations for the program through fiscal year 2010.

*Section 954. Research and development for coal mining technologies*

Section 954 authorizes research and development program on coal mining technologies. The research is to be guided by the Mining Industry of the Future program and relevant National Academy reports and is to include technologies to enable mining of coal with reduced contaminant levels.

*Section 955. Coal and related technologies program*

Section 955 authorizes a broad research, development, demonstration and commercial application program for coal and power systems and requires the Secretary to identify goals for coal-based technologies.

*Section 956. Carbon dioxide capture research and development*

Section 956 establishes a program of research and development aimed at developing carbon dioxide capture technologies for pulverized coal combustion units.

*Section 957. Complex well technology testing facility*

Section 957 is self-explanatory.

## SUBTITLE F—SCIENCE

*Section 961. Science*

Section 961 establishes authorization levels for the Office of Science and authorizes separate funding for construction costs associated with the international burning plasma fusion research project known as ITER.

*Section 962. United States participation in ITER*

Section 962 authorizes U.S. participation in the international burning plasma fusion research project known as ITER and requires the Secretary to submit a plan within 180 days of enactment describing the design and implementation of international or national facilities for the testing of fusion materials and technologies.

*Section 963. Support for science and energy facilities and infrastructure*

Section 963 requires the development and implementation of a strategy for maintaining or building essential facilities and infrastructure primarily supporting programs at the Office of Science, the Office of Energy Efficiency and Renewable Energy, the Office of Fossil Energy, or the Office of Nuclear Energy, Science and Technology.

*Section 964. Catalysis research program*

Section 964 authorizes a broad research and development program for catalysis science including use of precious metals and requires National Academy of Science review every 3 years.

*Section 965. Hydrogen*

Section 965 authorizes a program of fundamental research and development in support of the hydrogen and fuel cell programs authorized under Title VIII of the Act.

*Section 966. Solid state lighting*

Section 966 authorizes a program of fundamental research on advanced solid state lighting in support of the Next Generation Lighting Initiative carried out under Section 912.

*Section 967. Advanced scientific computing for energy missions*

Section 967 authorizes a scientific computing research and development program, including activities related to applied mathematics, with the goal of supporting departmental missions and providing the computational, networking, and workforce resources required for world leadership in science.

*Section 968. Genomes to life program*

Section 968 authorizes research and development in microbial and plant systems biology, protein science, and computational biology and authorizes construction of user facilities at national laboratories.

*Section 969. Fission and fusion energy materials research program*

Section 969 authorizes a research and development program on material science issues presented by advanced fission reactors and Department's fusion program.

*Section 970. Energy-water supply technologies program*

Section 970 authorizes a research and demonstration program to study energy-related issues associated with water resources and issues associated with sustaining water supplies for energy production. Program topics shall include arsenic removal, desalination, and energy and water sustainability. The arsenic removal program is to be run by the American Water Works Association Research Foundation for the Department. Desalination program is to follow the national Desalination and Water Purification Technology Roadmap in partnership with the U.S. Bureau of Reclamation. The sustainability program supports water modeling studies, on the level of major national river basins, to understand water usage patterns and the impact of energy production activities in these basins.

*Section 971. Spallation neutron source*

Section 971 requires the development of an operational plan for the Spallation Neutron Source Facility that ensures the facility is employed to its full capability in support of the study of advanced materials, nanoscience, and other missions of the Department. The section authorizes funds for completion of construction of the facility, funds for operations, and additional funds to be available in the event that Department stockpiles of heavy water are insufficient to meet the needs of the facility.

## SUBTITLE G—INTERNATIONAL COOPERATION

*Section 981. Western Hemisphere energy cooperation*

Section 981 authorizes a program to promote cooperation on energy issues with countries of the Western Hemisphere, including energy production, energy efficiency, and the development and transfer of technologies to world energy markets.

*Section 982. Cooperation between United States and Israel*

Section 982 requires the Secretary of Energy to report to Congress on the 1996 "Agreement between the Department of Energy of the United States and the Ministry of Energy and Infrastructure of Israel Concerning Energy Cooperation."

## TITLE X—DEPARTMENT OF ENERGY MANAGEMENT

*Section 1001. Availability of funds*

This section provides that all funding authorized to be appropriated under this Act or by amendments made by this Act shall remain available until expended.

*Section 1002. Cost sharing*

This section establishes Department-wide cost-sharing requirements for all research, development, demonstration, and commercial application activities initiated after the date of enactment of this Act. These requirements will take the place of the current patchwork of cost-sharing requirements that have been contained in previous authorization and appropriations laws. The cost-sharing requirements will generally require a 20 percent cost share for research and development activities and a 50 percent cost share for demonstration and commercial application activities, with an exemption for basic or fundamental research and development and the ability for the Secretary to waive cost-sharing requirements in appropriate situations. The section specifies how in-kind contributions are to be treated for purposes of calculating a cost-sharing contribution. The section also prohibits repayment or “recoupment” provisions from being made part of cost-shared research, development, demonstration, and commercial application activities in the future. Such provisions in the past have been difficult to administer, have yielded little funding back to the Department, and have been a barrier to attracting the most competent external organizations to participate in Departmental cost-shared research, development, and demonstration activities.

*Section 1003. Merit review of proposals*

Section 1003 requires merit review of proposals for the award of any funds authorized under this Act or by amendments made by this Act.

*Section 1004. External technical review of Departmental programs*

Section 1004 requires advisory boards for Department programs and authorizes the Secretary to use the National Academy of Sciences to establish such boards and to conduct other reviews and assessments of programs and goals on at least 5-year intervals.

*Section 1005. Improved technology transfer of energy technologies*

Section 1005 requires the Secretary to appoint a Technology Transfer Coordinator, establishes a Technology Transfer Working Group with representation from each of the national laboratories and single-purpose research facilities, and establishes a Technology Commercialization Fund to be used to provide matching funds to private partners to promote promising technologies.

*Section 1006. Technology infrastructure program*

Section 1006 requires the Secretary to establish a pilot program to encourage the creation of technology clusters and improve the ability of the national laboratories and single-purpose research facilities to leverage and benefit from commercial research.

*Section 1007. Small business advocacy and assistance*

Section 1007 requires each National Laboratory, and enables each single-purpose research facility, to designate a small business advocate to facilitate participation of small businesses in procurement and research opportunities.

*Section 1008. Outreach*

Section 1008 requires each program authorized under the Act to include an outreach component to provide appropriate information to manufacturers, consumers, institutions of higher education, facility planners and managers, State and local governments, and other entities.

*Section 1009. Relationship to other laws*

Section 1009 clarifies that, except as otherwise provided in this Act or the amendments made by this Act, DOE research, development, demonstration, and commercial application programs should continue to be governed by the applicable provisions of the existing statutes that provide the Department with its authorities for research, development, demonstration, and commercial application. The five leading such statutes are specifically named in this section.

*Section 1010. Improved coordination and management of civilian science and technology*

Section 1010 amends the Department of Energy Organization Act to establish an additional Under Secretary designated as the Under Secretary for Science and Energy, and an Assistant Secretary for Science to head the Office of Science. An additional Assistant Secretary position is created, accompanied by a sense of Congress that leadership in nuclear energy shall be at the Assistant Secretary level. Sections 5314 and 5315 of title 5, United States Code, are amended to show 3, instead of 2, Under Secretaries of Energy and 8, instead of 6, Assistant Secretaries of Energy.

*Section 1011. Other transactions authority*

Section 1011 amends the Department of Energy Organization Act (42 U.S.C. 7256) to allow transactions by the Secretary of Energy to further research, development, or demonstrations and exempts them from provisions of section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908). These other transactions can only be entered if standard contract, grant or cooperative agreements are not feasible or appropriate. The amendment also allows the Secretary to protect from disclosure certain business information for up to 5 years and requires that the Secretary develop guidelines within 3 months for using the other transactions mechanism.

*Section 1012. Prizes for achievement in grand challenges of science and technology*

Section 1012 authorizes cash prizes in recognition of breakthrough achievements in research, development, demonstration, and commercial application that have the potential for application to the performance of the mission of the Department. The Com-

mittee anticipates that the DOE will use such authority to overcome grand challenges in energy research and development similar in complexity to the Defense Advanced Research Projects Agency's "Grand Challenge" for autonomous robot ground vehicles.

*Section 1013. Technical corrections*

Section 1013 updates and makes technical corrections to the Act of July 7, 1960, the Federal Nonnuclear Energy Research and Development Act of 1974, the Stevenson-Wydler Technology Innovation Act of 1980, and the Department of Energy Organization Act.

TITLE XI—PERSONNEL AND TRAINING

*Section 1101. Workforce trends and traineeship grants*

Section 1101 requires the DOE, in consultation with the Department of Labor (DOL), to monitor workforce trends in the energy industry and report to Congress. It authorizes the DOE, in consultation with the DOL, to establish traineeship grants to address shortages of trained personnel.

*Section 1102. Energy research fellowships*

Section 1102 authorizes the Secretary of Energy to establish fellowships for postdoctoral and senior researchers in energy research and development fields. The fellowships are intended to be different in character from those currently offered through project funding. The postdoctoral fellowship is to be awarded to individuals, based on their promise as researchers, and is to be portable to the institution of higher education of each individual's choice. The senior fellowship is also to be awarded based on the track record of the individual, and not on the basis of a particular project proposal. The intention is to provide a mechanism in the DOE similar to the IBM Fellows program and similar programs in industry, which identify and give greater autonomy in selection of research topics to the most outstanding researchers

*Section 1103. Educational programs in science and mathematics*

Section 1103 amends the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381a) to authorize the DOE to support competitive science and mathematics events and professional development for K–12 mathematics and science teachers.

*Section 1104. Training guidelines for electric energy industry personnel*

Section 1003 requires the Secretary of Labor, in consultation with the Secretary of Energy, to develop, jointly with the electric industry and recognized employee representatives, model personnel training guidelines to support electric system reliability and safety.

*Section 1105. National Center on Energy Management and Building Technologies*

Section 1105 requires the Secretary of Energy to support the establishment of a National Center on Energy Management and Building Technologies, to carry out research, education, and training activities to facilitate the improvement of energy efficiency and

indoor air quality in industrial, commercial, and residential buildings.

*Section 1106. Improved Access to energy-related scientific and technical careers*

Section 1106 requires the Director of each National Laboratory, and, at the discretion of the Secretary of Energy, each science facility operated by the Department, to take actions to increase the participation of historically Black colleges or universities, Hispanic-serving institutions, or tribal colleges in activities that improve these institutions' ability to train students in scientific and technical careers.

*Section 1107. National Power Plant Operations Technology and Education Center*

Section 1107 requires the Secretary of Energy to support the establishment of a national training center to address the need for training and educating certified operators for electric power generation plants.

## TITLE XII—ELECTRICITY

*Section 1201. Short title*

Section 1201 is self-explanatory.

### SUBTITLE A—RELIABILITY STANDARDS

*Section 1211. Electric reliability standards*

Section 1211 changes our current voluntary rules system to a mandatory rules system under an Electricity Reliability Organization (ERO). This section grants ERO, approved by FERC, the power to establish mandatory rules for operation of the transmission grid and authority to penalize anyone who violates those standards.

### SUBTITLE B—TRANSMISSION INFRASTRUCTURE MODERNIZATION

*Section 1221. Siting of interstate electric transmission facilities*

Section 1221 directs DOE to conduct a study of transmission congestion within 1 year of enactment (and triennially thereafter). This section authorizes the Secretary of Energy to designate one or more geographic areas as national interest electric transmission corridors. This section provides limited federal backstop siting authority (eminent domain) for electric transmission lines in areas designated by the Secretary of Energy as national interest transmission corridors. This section provides for just compensation for any rights-of-way acquired by eminent domain.

Section 1221 establishes DOE as the lead agency for setting schedules and coordinating Federal authorizations required in order to site a transmission facility. This section designates the President as the arbitrator for any delays or denials of Federal permits. This section authorizes States to enter into interstate compacts for the purpose of establishing regional transmission siting agencies with authority to site transmission facilities.



*Section 1222. Third-party finance*

Section 1222 authorizes the Western Area Power Administration (WAPA) and the Southwestern Power Administration (SWPA) to enter into public-private financial arrangements (third-party finance) to build or upgrade transmission facilities if certain criteria are met.

*Section 1223. Advanced transmission technologies*

Section 1223 directs FERC to encourage the deployment of advanced transmission technologies, including: high-temperature lines; underground cables; advanced conductor technology; high-capacity ceramic electric wire, connectors and insulators; optimized transmission line configurations; and modular equipment. The Committee is aware that the DOE has conducted one or more studies on high temperature, low sag technologies, the results of which the Committee would be interested in receiving from the Department as soon as practicable.

*Section 1224. Advanced power system technology incentive program*

Section 1224 authorizes the Secretary of Energy to establish an Advanced Power System Technology Incentive Program to support deployment of certain advanced power system technologies like fuel cells, turbines, or hybrid power systems or power storage systems to generate or store electric energy.

## SUBTITLE C—TRANSMISSION OPERATION IMPROVEMENTS

*Section 1231. Open nondiscriminatory access*

Section 1231 amends the FPA to authorize FERC to require unregulated transmitting utilities to provide open access to their transmission systems at rates that are comparable to those that the unregulated transmitting utility charges itself and on terms and conditions that are comparable to those the utility charges itself that are not unduly discriminatory or preferential. Small unregulated transmitting utilities, such as distribution co-ops, as well as unregulated transmitting utilities that do not own or operate significant transmission facilities are exempt from this section.

*Section 1232. Regional Transmission Organizations*

Section 1232 amends the FPA to authorize FERC to encourage and approve the voluntary formation of Transmission Organizations.

FERC may not condition any order issued under the FPA on a requirement that a transmitting utility transfer operational control of jurisdictional facilities to a Transmission Organization. The new language added to subsection (b) of section 217 of the Federal Power Act by this section is intended to prohibit FERC from requiring, or imposing as a condition, that a transmitting utility transfer operational control of jurisdictional facilities to a Transmission Organization. It is not intended to limit FERC authority with respect to transmitting utilities that are participating in Transmission Organizations.

Transmission Organizations must report annually to FERC to demonstrate their cost effectiveness.

*Section 1233. Federal utility participation in Transmission Organizations*

Section 1233 authorizes the appropriate Federal regulatory authority (the Secretary of Energy, the Administrator of a PMA or the Board of Directors of TVA) to enter into a contract, agreement or other arrangement transferring control and use of all or part of the transmission system of a Federal utility to a Transmission Organization.

*Section 1234. Standard market design*

Section 1234 terminates FERC's Proposed Rulemaking on Standard Market Design.

*Section 1235. Native load service obligation*

Section 1235 entitles load-serving entities to exercise firm transmission rights or equivalent tradable or financial transmission rights to the extent needed to meet their service obligation. This section does not affect the Commission's authority under sections 205 and 206 to ensure that rates are just and reasonable and not unduly discriminatory or preferential. With respect to the Midwest ISO, nothing in Section 218 is intended to guarantee that an entity shall be: (1) entitled to a particular financial transmission right allocation; (2) held harmless from applicable congestion charges; or (3) exempt from an applicable congestion management methodology within the Midwest ISO. The language of subsection (c) is intended to provide the Commission with flexibility in taking into account the policies, as opposed to the strict letter of subsections (b) (1), (b) (2), and (b)(3) as well as other considerations reflected in the Act, such as reliability and system-wide customer costs, in addressing allocation methodology changes proposed by the Midwest ISO.

*Section 1236. Protection of transmission contracts in the Pacific Northwest*

Section 1236 protects firm transmission rights of entities in the Pacific Northwest by allowing only voluntary conversion of firm to financial transmission rights.

SUBTITLE D—TRANSMISSION RATE REFORM

*Section 1241. Transmission infrastructure investment*

Section 1241 directs FERC to issue rules on transmission pricing policies that provide a return on equity that attracts capital for investment in grid improvements and advanced transmission technologies. This section directs FERC to allow for the recovery of all prudently incurred costs necessary to comply with reliability standards and Federal back-stop siting needs.

*Section 1242. Funding new interconnection and transmission upgrades*

Section 1242 authorizes FERC to approve a participant funding cost allocation plan, without regard to whether the applicant is in a Transmission Organization, as long as it results in just and reasonable rates.

## SUBTITLE E—AMENDMENTS TO PURPA

*Section 1251. Net metering and additional standards*

Section 1251 amends PURPA section 111(d) to require States to consider implementing standards in the following areas:

(1) net metering (a requirement that utilities make net metering, regarding on-site energy production, measurement and billing, available to any electric consumer);

(2) fuel diversity (a requirement that utilities reduce dependency on a single fuel source and increase fuel diversity, including the use of renewables); and

(3) fossil fuel generation efficiency (a requirement that utilities implement 10 year plans to increase fossil fuel efficiency).

*Section 1252. Smart metering*

Section 1252 amends PURPA section 111(d) to require States to consider implementing smart metering standards that require electric utilities to offer time based rate schedules (such as time-of-use pricing, critical-peak pricing, and real-time pricing) that enable customers to manage energy use and cost through advanced metering and communications technology.

*Section 1253. Cogeneration and small power production purchase and sale requirements*

Section 1253 amends PURPA section 210 by ensuring that qualifying facilities (QFs) meet specific criteria to be eligible for mandatory purchase and sale benefits and that such benefits terminate when a competitive wholesale market exists. This section sets forth new criteria for future QFs to ensure that they are fundamentally designed to support commercial or industrial processes.

*Section 1254. Interconnection*

Section 1254 amends PURPA section 111(d) to require States to consider best practices for promoting interconnection for distributed generation.

SUBTITLE F—MARKET TRANSPARENCY, ENFORCEMENT, AND  
CONSUMER PROTECTION*Section 1261. Market transparency rules*

Section 1261 authorizes FERC to establish an electronic information system to provide information about the availability and price of wholesale electric energy and transmission services. This section requires FERC to exempt from disclosure information the disclosure of which would be detrimental to the operation of an effective market or which would jeopardize system security. This section provides that this section shall not affect the CFTC's exclusive jurisdiction with respect to commodities under the Commodity Exchange Act. This section provides that FERC shall not compete with private sector publishers of energy prices.

*Section 1262. False Statements*

Section 1262 amends the FPA to prohibit the filing of false information regarding price of wholesale electricity and availability of transmission capacity.

*Section 1263. Market manipulation*

Section 1263 amends the FPA to ban any manipulative or deceptive device or contrivance (as those terms are used in section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b))), in connection with the purchase or sale of electricity or FERC jurisdictional transmission services in violation of FERC rules.

*Section 1264. Enforcement*

Section 1264 amends FPA section 306 to add an electric utility to the list of persons that may file a complaint and adds a transmitting utility to the list of persons against which a complaint may be filed.

Section 1264 mends FPA section 313 to include any electric utility in the procedures for review of Commission orders.

Section 1264 amends FPA section 307 to make electric utilities and transmitting utilities subject to FERC investigations and subject to FERC authority to obtain information regarding wholesale sales of electricity and transmission in interstate commerce.

Section 1264 amends FPA section 316 by increasing criminal penalties for FPA violations to \$1 million; 5 years imprisonment; and \$25,000 per day fines.

Section 1264 amends FPA section 316A by repealing exemption from criminal penalties violations of sections 211–214.

Section 1264 amends FPA section 316A by extending civil penalties to any violation of Part II of the FPA and increases civil penalties to \$1 million per day.

*Section 1265. Refund effective date*

Section 1265 amends FPA section 206 by making the refund effective date the date of the filing instead of 60 days later.

*Section 1266. Refund authority*

Section 1266 amends FPA section 206(f) to provide that if an entity described in section 201(f) voluntarily makes a short-term (i.e., less than 31 days) sale of electricity that violates Commission rules, the entity shall be subject to FERC refund authority. The refund authority would not apply to municipal or Federal utilities that sell less than 8 million MWh of electricity per year or any electric co-ops. Special provisions are included for the Bonneville Power Administration (refund authority is limited to sales at unjust and unreasonable rates, and only for BPA sales that were higher than the highest just and reasonable rate charged by other sellers in the same geographic market). With respect to TVA and the PMAs, FERC's authority is limited to ordering refunds to achieve just and reasonable rates.

*Section 1267. Consumer privacy and unfair trade practices*

Section 1267 requires the FTC to issue rules to protect electric consumers from disclosure of consumer information obtained in connection with the sale or delivery of electricity. This section requires FTC to issue rules prohibiting slamming (switching customers' service without consent) and cramming (charging customers for services not requested).

*Section 1268. Office of Consumer Advocacy*

Section 1268 establishes within DOE an Office of Consumer Advocacy to represent energy customers on matters regarding rates or services of public utilities and natural gas companies at FERC hearings and in civil proceedings.

*Section 1269. Authority of court to prohibit persons from serving as officers, directors, and energy traders*

Section 1269 allows courts to prevent anyone who manipulates markets from serving as officers or directors of electric utility companies or engaging in the business of selling or purchasing electric or transmission services jurisdictional to FERC.

*Section 1270. Relief for extraordinary violations*

Section 1270 gives FERC exclusive jurisdiction to determine whether termination payments required by certain Western Interconnection contracts are unjust and unreasonable.

## SUBTITLE G—PUHCA REPEAL—MERGER REFORM

*Section 1271. Short Title*

Section 1271 is self-explanatory.

*Section 1272. Definitions*

Section 1272 is self-explanatory.

*Section 1273. Repeal of the Public Utility Holding Company Act of 1935*

Section 1273 repeals the Public Utility Holding Company Act of 1935 (PUHCA).

*Section 1274. Federal access to books and records*

Section 1274 gives FERC authority to require that each holding company, associate company and affiliate company make available to FERC books, accounts and records that FERC determines are relevant to costs incurred by a public utility or natural gas company that is an associate of a holding company and that are necessary and appropriate to protect utility customers with respect to jurisdictional rates.

*Section 1275. State access to books and records*

Section 1275 provides that upon request of a State commission having jurisdiction to regulate a public utility company in a holding company system, and under conditions to ensure confidentiality of trade secrets or sensitive commercial information, a holding company, associate company or affiliate company is to make available to the State commission books, accounts and records that have been identified in a proceeding of the State commission and that the State commission determines are relevant to costs incurred by such public utility company and that are necessary and appropriate to protect utility customers with respect to jurisdictional rates. States can obtain books and records under state law or other applicable Federal law.

*Section 1276. Exemption authority*

Section 1276 provides that not later than 90 days after the date of enactment, FERC is to promulgate a final rule exempting from the Federal books and records requirement any person that is a holding company solely with respect to a qualifying facility, exempt wholesale generator, or foreign utility companies. FERC can exempt other records for any class of transactions that it finds are not relevant to jurisdictional rates.

*Section 1277. Affiliate transactions*

Section 1277 preserves the authority of FERC or a State commission to determine if a jurisdictional public utility company can recover in rates costs incurred through transactions with affiliates.

*Section 1278. Applicability*

Section 1278 provides that PUHCA provisions do not apply to the U.S. Government, any state or political subdivision, any foreign government authority not operating in the United States, or any agency, authority or instrumentality of any of the above.

*Section 1279. Effect on other regulations*

Section 1279 preserves authorities of FERC or State commissions under other applicable law.

*Section 1280. Enforcement*

Section 1280 authorizes FERC to use its enforcement authorities under the FPA to enforce this subtitle.

*Section 1281. Savings provisions*

Section 1281 permits continuation of activities authorized as of the date of enactment and preserves FERC authority under the FPA and the Natural Gas Act.

*Section 1282. Implementation*

Section 1282 authorizes FERC to promulgate regulations to implement this subtitle and to submit recommendations to Congress for technical and conforming amendments within 4 months of enactment.

*Section 1283. Transfer of resources*

Section 1283 provides that the Securities and Exchange Commission is to transfer books and records to FERC.

*Section 1284. Effective date*

Section 1284 provides that this subtitle takes effect 6 months after the date of enactment.

*Section 1285. Service allocation*

Section 1285 allows FERC to allocate non-power services among associate companies in a holding company for the protection of investors and consumers.

*Section 1286. Authorization of appropriations*

Section 1286 authorizes such funds as may be necessary to carry out this subtitle.

*Section 1287. Conforming amendments to the Federal Power Act*

Section 1287 repeals FPA section 318, dealing with conflicts in jurisdiction between PUHCA and the FPA.

*Section 1288. Merger review reform*

Section 1288 expands FERC's merger review authority and increases transaction value thresholds from \$50,000 to \$10 million. Section 1288 provides FERC jurisdiction over acquisitions of generation facilities used in interstate commerce and acquisitions by public-utility companies of gas utility companies. Section 1288 requires FERC to consider factors such as effects on markets, rates, and regulation when evaluating whether a transaction is consistent with the public interest. Section 1288 also requires FERC to make an additional finding that a transaction will not result in cross-subsidizations of associate companies to the detriment of the utility.

## SUBTITLE H—DEFINITIONS

*Section 1291. Definitions*

Section 1291 clarifies the FPA definition of electric utility to include any entity described in section 201(f) of the Federal Power Act (FPA) that sells electric energy and adds Federal power marketing agencies to the definition.

Section 1291 adds to the FPA a new definition of transmitting utility. Under the new definition, a transmitting utility is an entity, including an entity described in FPA section 201(f), that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce or for the sale of electric energy at wholesale. This definition includes Transmission Organizations.

Section 1291 adds to the FPA a new definition for electric cooperative. Under the new definition, an electric cooperative is a cooperatively owned electric utility.

Section 1291 adds to the FPA a new definition for RTO. Under the new definition, an RTO is an entity of sufficient regional scope approved by FERC to exercise operational/functional control of interstate transmission facilities and to assure nondiscriminatory access to such facilities.

Section 1291 adds to the FPA a new definition for ISO. Under the new definition, an ISO is an entity approved by FERC to exercise operational/functional control of interstate transmission facilities and to assure nondiscriminatory access to such facilities.

Section 1291 adds to the FPA a new definition for Transmission Organization. Under the new definition, a Transmission Organization is an RTO, ISO, independent transmission provider or other transmission organization finally approved by FERC for the operation of transmission facilities.

Section 1291 amends FPA section 201(f) to include electric cooperatives that are either financed under the Rural Electrification Act or that sell less than 4 million MWh of electricity per year.

## SUBTITLE I—TECHNICAL AND CONFORMING AMENDMENTS

*Section 1295. Conforming amendments*

Section 1295 amends technical errors in the Federal Power Act.

## TITLE XIII—STUDIES

Title XIII requires studies on energy and water saving measures in congressional buildings (Section 1301), increased hydroelectric generation at existing Federal facilities (Section 1302), the Alaskan natural gas pipeline (Section 1303), renewable energy on Federal land (Section 1304), coalbed methane (Section 1305), backup fuel capabilities (Section 1306), energy rights-of-way on tribal lands to be conducted jointly by DOE and DOI (Section 1307), Energy Policy Act of 1992 programs (Section 1308), the feasibility and effects of reducing automobile fuel use (Section 1309), hybrid distributed power systems (Section 1310), the mobility of scientific and technical personnel (Section 1311), energy technologies (Section 1312), research and development program evaluation methodologies (Section 1313), transmission system monitoring (Section 1314), competition in the wholesale and retail markets for electric energy (Section 1315), the benefits of economic dispatch (Section 1316), rapid electrical grid restoration (Section 1317), cogeneration (Section 1318), petroleum and natural gas storage inventory (Section 1319), natural gas supply shortage (Section 1320), split-estate Federal oil and gas leasing and development practices (Section 1321), resolution of Federal resource development conflicts in the Powder River Basin (Section 1322), energy efficiency standards (Section 1323), telecommuting (Section 1324), oil bypass filtration technology (Section 1325), total integrated thermal systems (Section 1326), University collaboration (Section 1327), and reliability and consumer protection (Section 1328).

## TITLE XIV—INCENTIVES FOR INNOVATIVE TECHNOLOGIES

*Section 1401. Definitions*

Section 1401 is self-explanatory

*Section 1402. Terms and conditions*

Section 1402 provides general terms and conditions for loan guarantees made by the Secretary. The cost of a loan guarantee must be appropriated or paid by the borrower. The guarantee cannot exceed 80% of the project cost, and the term of the obligation must require full repayment within the lesser of 30 years or 90 percent of the projected useful life of the asset. The section provides specifics in the event of default by the borrower. The section allows for the Secretary to make payments on behalf of the borrower to avoid default, if appropriations are provided for that specific purpose. The section also provides for the collection of administrative fees. The full faith and credit of the United States is pledged to the payment of all guarantees.

*Section 1403. Eligible projects*

Subsection (a) contains broad criteria that any project must meet to receive a loan guarantee under this title. Subsection (b) lists the categories of eligible projects. Projects must fall within the parameters of both subsections to be eligible for a guarantee.

Subsection (c) identifies specific gasification projects that are eligible for loan guarantees.

Subsection (d) provides emission levels that eligible gasification projects must meet.



Subsection (e) clarifies that projects that receive tax credits are not disqualified from also receiving a loan guarantee under this title.

*Section 1404. Authorization of Appropriations*

Section 1404 is self-explanatory.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S.\_\_\_\_\_. The bill contains a variety of regulatory measures that impose Government-established standards on private individuals and businesses in establishing efficiency standards and similar programs. There may be some economic costs associated with certain of the requirements. There are also voluntary programs, such as the authorization for Tribal governments to enter into agreements that would allow them to assume full responsibility for development of energy resources. Compliance with those agreements will require commitments of resources and the establishment of a regulatory program by the Tribes. Various grant and other assistance programs will require submission of documentation or plans as a condition for the assistance and the amendments to the Federal Power Act may result in information being made available in different modes or times than at present, especially under market transparency provisions. The Committee believes that the effects are not undue and are reasonable in light of the benefits of the programs.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S.\_\_\_\_, as ordered reported, with the exception of the various studies required by the legislation and the reporting associated with grant and financial assistance programs, the Tribal energy development agreement implementation, or the requirements associated with amendments to the Federal Power Act and the Public Utility Regulatory Purposes Act of 1978.

EXECUTIVE COMMUNICATIONS

Executive views on the original bill have not been received.

## ADDITIONAL VIEWS OF SENATOR BINGAMAN

Bob Galvin, the former Chairman of Motorola, once said that “there are certain things that a country needs to set out to do on purpose.” I believe that establishing a good energy policy is one of them. A policy, by definition, is a plan, a reasoned course of action. Good policy does not happen by accident. It requires purposeful forethought and planning. It must be built on sound principles.

To my mind, a good energy policy must be anchored on four fundamental principles.

First, it must increase our supplies of energy from all available sources—oil, gas, coal, nuclear, and renewables. It must ensure that energy resources that have not yet been developed as extensively as they could be, such as renewable energy, are given the assistance and the incentives they need to make their maximum contribution.

Second, it must ensure that the energy we do produce is transported and consumed as efficiently as possible. It must ensure that adequate investments are made in the critical infrastructure of ports and pipelines, transmission lines, and other modes of moving energy from one place to another. It must also ensure that consumers are not hurt by price spikes and other problems caused by bottlenecks in the supply system. And, importantly, it must ensure that energy is not wasted when it reaches its point of end use.

Third, good energy policy must reduce the impact of energy production and consumption on the environment. We need to develop domestic energy resources, but we must do so without unnecessary harm and degradation to the environment. And we need to begin to address the environmental effects of energy use, as well as energy production. 98 percent of the carbon dioxide produced in the United States is associated somehow with energy production and use. We can no longer afford an energy policy that does not take into account environmental and climate impact, any more than we can afford to have a climate policy that ignores economic impacts.

Fourth and finally, sound energy policy requires energy markets that are transparent and fair to consumers. Energy markets are not inherently free markets. Yet we have increasingly come to rely on market forces and signals to set energy prices and shape our energy choices. When competitive energy markets work fairly, everyone in the energy chain from producer to consumer benefits. When they do not, as in California and the West Coast electricity crisis, great economic harm can be done. So we need to make sure that our energy markets are transparent and fair to consumers.

The Committee bill, on balance, meets these four tests. It encourages the production of both traditional and new energy resources through research and development, financial incentives, and regulatory reforms. It facilitates both the development of new energy infrastructure and improvements in efficiency. It avoids rolling

back environmental protections. And it increases consumer protections by making energy markets more transparent and imposing sanctions on those who try to manipulate those markets.

The bill is not perfect. It fails to include major initiatives that I think it should contain. It does not contain a renewable portfolio standard designed to increase the percentage of our electricity that is produced from renewable energy. It does not increase the corporate average fuel economy standards of our cars and trucks, or even close the so-called "SUV" loophole. It does little to respond to the growing challenge of global warming.

The Committee bill also contains several provisions it should not. Chief among them is the hydroelectric relicensing provision. Although it is a substantial improvement over earlier proposals, it is still troubling. It creates a tilted playing field that places the interests of dam operators over those of states, Indian tribes, and recreational users. And it creates a "trial-type" appeal process for resolving licensing disputes that will create substantial new delays of Dickensian proportions.

I hope that the Senate may yet correct the deficiencies that remain and resist amendments that would undermine the principles I have outlined. But, even as it stands, the benefits of the bill outweigh its deficiencies, and I am pleased to support it and recommend it to my colleagues.

Good energy legislation, like all good legislation, is the product of consensus, of striking a balance, of finding a compromise, between disparate and often discordant ideas. The quality of the product depends upon the quality of the process that is used to produce it. The quality of this bill owes much to Chairman's judicious leadership, his patience, his openness to new ideas, and his determined effort to reach a bipartisan consensus, for which he is to be commended.

JEFF BINGMAN.



CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the original bill, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

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**TITLE I—GENERAL PROVISIONS**

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**TITLE V—FEDERAL ENERGY INITIATIVES**

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**PART 3—FEDERAL ENERGY MANAGEMENT**

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- Sec. 551. *Energy and water savings measures in congressional buildings.*
- Sec. 552. *Federal procurement of energy efficient products.*
- Sec. [551.] 553. Definitions.

\* \* \* \* \*

**TITLE V—FEDERAL ENERGY INITIATIVES**

\* \* \* \* \*

**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, its Federal buildings so that the energy consumption per gross square foot of its Federal buildings in use dur-

ing the fiscal year 1995 is at least 10 percent less than the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 1985 and so that the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 2000 is at least 20 percent less than the energy consumption per gross square foot of its Federal buildings in use during fiscal year 1985.】 (A) *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 for each gross square foot of the Federal buildings of the agency for fiscal years 2006 through 2015 is reduced, as compared with the energy consumption for each gross square foot of the Federal buildings of the agency for fiscal year 2004, by the percentage specified in the following table:*

<i>Fiscal year</i>	<i>Percentage reduction</i>
2006 .....	2
2007 .....	4
2008 .....	6
2009 .....	8
2010 .....	10
2011 .....	12
2012 .....	14
2013 .....	16
2014 .....	18
2015 .....	20

(B) *The energy reduction goals and baseline established in subparagraph (A) supersede—*

- (i) *all goals and baselines under this paragraph in effect on the day before the date of enactment of this subparagraph; and*
- (ii) *any related reporting requirements.*

(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, 2013, the Secretary shall—*

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

(B) *submit to Congress recommendations concerning energy performance requirements for each of fiscal years 2015 through 2024.*

\* \* \* \* \*

(c) EXCLUSIONS.—(1) 【An agency may exclude, from the energy consumption requirements for the year 2000 established under subsection (a) and the requirements of subsection (b)(1), any Federal building or collection of Federal buildings, and the associated energy consumption and gross square footage, if the head of such agency finds that compliance with such requirements would be impractical. A finding of impracticability shall be based on the energy intensiveness of activities carried out in such Federal buildings or collection of Federal buildings, the type and amount of energy consumed, the technical feasibility of making the desired changes, and, in the cases of the Departments of Defense and Energy, the unique character of certain facilities operated by such Departments.】 (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 (42 U.S.C. 13201 et seq.), 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 [impracticability standards] standards for exclusion set forth in paragraph (1), and may within 90 days after receipt of the findings, reverse [a finding of impracticability] the exclusion. In the case of any such reversal, the agency shall comply with the [energy consumption requirements] 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).

\* \* \* \* \*

(e) *METERING OF ENERGY USE.*—(1)(A) Not later than October 1, 2012, in accordance with guidelines established by the Secretary under paragraph (2), each Federal building shall, for the purposes of efficient use of energy and reduction in the cost of electricity used in the building, be metered or submetered.

(B) Each agency shall use, to the maximum extent practicable, advanced meters or advanced metering devices that provide data at least daily on, and that measure at least hourly, consumption of electricity in the Federal buildings of the agency.

(C) The data shall be—

(i) incorporated into Federal energy tracking systems;

and

(ii) made available to Federal facility energy managers.

(2)(A) Not later than 180 days after the date of enactment of this subsection, the Secretary (in consultation with the Secretary of Defense, the Administrator of General Services, representatives from the metering industry, utility industry, energy services industry, en-



ergy efficiency industry, energy efficiency advocacy organizations, national laboratories, and universities, and Federal facility energy managers) shall establish guidelines for agencies to carry out paragraph (1).

(B) The guidelines shall—

(i) take into consideration—

(I) the cost of metering and submetering and the reduced cost of operation and maintenance expected to result from metering and submetering;

(II) the extent to which metering and submetering are expected to result in increased potential for energy management, increased potential for energy savings and energy efficiency improvement, and cost and energy savings because of 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 and submetered based on cost-effectiveness and a schedule of 1 or more dates, not later than 1 year after the date of issuance of the guidelines, on which paragraph (1) takes effect; and

(iv) establish exclusions from the requirements of paragraph (1) based on the de minimis quantity of energy use of a Federal building, industrial process, or structure.

(3) Not later than 180 days after the date on which guidelines are established under paragraph (2), in a report submitted by an agency under section 548(a), the agency shall submit to the Secretary a plan describing the manner in which the agency will implement paragraph (1), including—

(A) the manner in which the agency will designate personnel primarily responsible for carrying out that implementation; and

(B) demonstration by the agency, complete with documentation, of any finding that the use of advanced meters or advanced metering devices described in paragraph (1) is not practicable.

\* \* \* \* \*

SEC. 546. INCENTIVES FOR AGENCIES. \* \* \*

(d). \* \* \*

(2) \* \* \*

(G) succeeded in the implementation of the guidelines established under section 159 of the Energy Policy Act of 1992 (42 U.S.C. 8262e).

(e) RETENTION OF ENERGY AND WATER SAVINGS.—(1) An agency may retain any funds appropriated to the agency for energy expenditures, water expenditures, or wastewater treatment expenditures, at buildings subject to the requirements of subsections (a) and (b) of section 543, that are not expended because of energy savings or water savings.

(2) Except as otherwise provided by law, funds described in paragraph (1) may be used by an agency only for energy efficiency,

*water conservation, or unconventional and renewable energy resources projects.*

\* \* \* \* \*

**SEC. 548. REPORTS.**

(a) \* \* \*

(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*—

\* \* \* \* \*

**SEC. 550. SURVEY OF ENERGY SAVING POTENTIAL.**

(a) \* \* \*

\* \* \* \* \*

(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 [the 20 percent reduction goal established under section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)).] *each of the energy reduction goals established under section 543(a).*

\* \* \* \* \*

**SEC. 551. ENERGY AND WATER SAVINGS MEASURES IN CONGRESSIONAL Buildings.**

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

(1) **CONGRESSIONAL BUILDING.**—*The term “congressional building” means a facility administered by Congress.*

(2) **PLAN.**—*The term “plan” means an energy conservation and management plan developed under subsection (b)(1).*

(b) **PLAN.**—

(1) **IN GENERAL.**—*The Architect of the Capitol shall develop, update, and implement a cost-effective energy conservation and management plan for congressional buildings to meet the energy performance requirements for Federal buildings established under section 543(a)(1).*

(2) **REQUIREMENTS.**—*The plan shall include—*

(A) *a description of the life-cycle cost analysis used to determine the cost-effectiveness of proposed energy efficiency projects;*

(B) *a schedule that ensures that complete energy surveys of all congressional buildings are conducted every 5 years to determine the cost and payback period of energy and water conservation measures;*

(C) *a strategy for installation of life-cycle cost-effective energy and water conservation measures;*

(D) the results of a study of the costs and benefits of installation of submetering in congressional buildings; and

(E) information packages and “how-to” guides for each Member and employing authority of Congress that describe simple and cost-effective methods to save energy and taxpayer dollars in congressional buildings.

(3) *SUBMISSION TO CONGRESS.*—Not later than 180 days after the date of enactment of the Energy Policy Act of 2005, the Architect of the Capitol shall submit to Congress the plan developed under paragraph (1).

(c) *ANNUAL REPORT.*—

(1) *IN GENERAL.*—The Architect of the Capitol shall annually submit to Congress a report on congressional energy management and conservation programs carried out for congressional buildings under this section.

(2) *REQUIREMENTS.*—A report submitted under paragraph (1) shall describe in detail—

(A) energy expenditures and savings estimates for each congressional building;

(B) any energy management and conservation projects for congressional buildings; and

(C) future priorities to ensure compliance with this section.

\* \* \* \* \*

**SEC. 552. FEDERAL PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.**

(a) *DEFINITIONS.*—In this section:

(1) The term “Energy Star product” means a product that is rated for energy efficiency under an Energy Star program.

(2) The term “Energy Star program” means the program established by section 324A of the Energy Policy and Conservation Act.

(3) The term “executive agency” has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(4) The term “FEMP designated product” means a product that is designated under the Federal Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

(b) *PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.*—(1) Except as provided in paragraph (2), to meet the requirements of an executive agency for an energy consuming product, the head of the executive agency shall procure—

(A) an Energy Star product; or

(B) a FEMP designated product.

(2) The head of an executive agency shall not be required to comply with paragraph (1) if the head of the executive agency specifies in writing that—

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

(B) no Energy Star product or FEMP designated product is reasonably available that meets the functional requirements of the executive agency.

(3) *The head of an executive agency shall incorporate criteria for energy efficiency that are consistent with the criteria used for rating Energy Star products and FEMP designated products into—*

(A) *the specifications for any procurements involving energy consuming products and systems, including—*

(i) *guide specifications;*

(ii) *project specifications; and*

(iii) *construction, renovation, and services contracts that include the provision of energy consuming products and systems; and*

(B) *the factors for the evaluation of offers received for the procurement.*

(c) *LISTING OF ENERGY EFFICIENT PRODUCTS IN FEDERAL CATALOGS.—(1) Any inventory or listing of products by the General Services Administration or the Defense Logistics Agency shall clearly identify and prominently display Energy Star products and FEMP designated products.*

(2)(A) *Except as provided in subparagraph (B), the General Services Administration or the Defense Logistics Agency shall supply only Energy Star products or FEMP designated products for all product categories covered by the Energy Star program or the Federal Energy Management Program.*

(B) *Subparagraph (A) shall not apply if an agency ordering a product specifies in writing that—*

(i) *taking into account energy cost savings, no Energy Star product or FEMP designated product is cost-effective for the intended application over the life of the product; or*

(ii) *no Energy Star product or FEMP designated product is available to meet the functional requirements of the ordering agency.*

(d) *SPECIFIC PRODUCTS.—(1) In the case of an electric motor of 1 to 500 horsepower, an executive agency shall select only a premium efficient motor that meets the standard established by the Secretary under paragraph (2).*

(2) *Not later than 120 days after the date of enactment of this subsection and after considering the recommendations of associated electric motor manufacturers and energy efficiency groups, the Secretary shall establish a standard for premium efficient motors.*

(3)(A) *Each Federal agency is encouraged to take actions (such as appropriate cleaning and maintenance) to maximize the efficiency of air conditioning and refrigeration equipment, including the use of a system treatment or additive that—*

(i) *would reduce the electricity consumed by air conditioning and refrigeration equipment; and*

(ii) *meets the criteria specified in subparagraph (B).*

(B) *A system treatment or additive referred to in subparagraph (A) shall be—*

(i) *determined by the Secretary to be effective in increasing the efficiency of air conditioning and refrigeration equipment without having an adverse impact on—*

(I) *air conditioning and refrigeration performance (including cooling capacity); or*

(II) *the useful life of the equipment;*

(ii) determined by the Administrator of the Environmental Protection Agency to be environmentally safe; and

(iii) shown, in tests conducted by the National Institute of Standards and Technology, in accordance with Department of Energy test procedures, to increase the seasonal energy efficiency ratio (SEER) or energy efficiency ratio (EER) without having any adverse impact on the system, system components, the refrigerant or lubricant, or other materials in the system.

(4) The results of the tests described in paragraph (3)(B)(iii) shall be published in the Federal Register for public review and comment.

(5) For purposes of this subsection, a hardware device or primary refrigerant shall not be considered an additive.

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

Sec. [551.] 553. Definitions. \* \* \*

\* \* \* \* \*

**TITLE VIII—ENERGY SAVINGS PERFORMANCE CONTRACTS**

**SEC. 801. AUTHORITY TO ENTER INTO CONTRACTS.**

(a) \* \* \*

(c) SUNSET AND REPORTING REQUIREMENTS.—The authority to enter into new contracts under this section shall cease to be effective on October 1, 2016.

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**LEGISLATIVE BRANCH APPROPRIATIONS ACT,  
1999—PUBLIC LAW 105-275 (2 U.S.C. 1815)**

\* \* \* \* \*

[SEC. 310. Energy conservation and management

[The Architect of the Capitol—

[(1) shall develop and implement a cost-effective energy conservation strategy for all facilities currently administered by Congress to achieve a net reduction of 20 percent in energy consumption on the congressional campus compared to fiscal year 1991 consumption levels on a Btu-per-gross-square-foot basis not later than 7 years after October 21, 1998;

[(2) shall submit to Congress no later than 10 months after October 21, 1998, a comprehensive energy conservation and management plan which includes life cycle costs methods to determine the cost-effectiveness of proposed energy efficiency projects;

[(3) shall submit to the Committee on Appropriations in the Senate and the House of Representatives a request for the amount of appropriations necessary to carry out this section;

[(4) shall present to Congress annually a report on congressional energy management and conservation programs which details energy expenditures for each facility, energy manage-

ment and conservation projects, and future priorities to ensure compliance with the requirements of this section;

[(5) shall perform energy surveys of all congressional buildings and update such surveys as needed;

[(6) shall use such surveys to determine the cost and payback period of energy and water conservation measures likely to achieve the required energy consumption levels;

[(7) shall install energy and water conservation measures that will achieve the requirements through previously determined life cycle cost methods and procedures;

[(8) may contract with nongovernmental entities and employ private sector capital to finance energy conservation projects and achieve energy consumption targets;

[(9) may develop innovative contracting methods that will attract private sector funding for the installation of energy-efficient and renewable energy technology to meet the requirements of this section;

[(10) may participate in the Department of Energy's Financing Renewable Energy and Efficiency (FREE Savings) contracts program for Federal Government facilities; and

[(11) shall produce information packages and "how-to" guides for each Member and employing authority of the Congress that detail simple, cost-effective methods to save energy and taxpayer dollars.]

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**ENERGY CONSERVATION AND PRODUCTION  
ACT—PUBLIC LAW 94-385, AS AMENDED (42  
U.S.C. 6801 ET SEQ.)**

\* \* \* \* \*

**SEC. 305. FEDERAL BUILDING ENERGY EFFICIENCY STANDARDS.**

(a)(1) \* \* \*

(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 [CABO Model Energy Code, 1992 (in the case of residential buildings) or ASHRAE Standard 90.1-1989] *the 2004 International Energy Conservation Code (in the case of residential buildings) or ASHRAE Standard 90.1-2004 (in the case of commercial buildings);*

\* \* \* \* \*

(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; and*

*(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.*

*(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.*

*(C) 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.*

\* \* \* \* \*

SEC. 422. For the purpose of carrying out the weatherization program under this part, there are authorized to be appropriated [for fiscal years 1999 through 2003 such sums as may be necessary] \$325,000,000 for fiscal year 2006, \$400,000,000 for fiscal year 2007, and \$500,000,000 for fiscal year 2008.

**SOLID WASTE DISPOSAL ACT—PUBLIC LAW 89-272, AS AMENDED (42 U.S.C. 6901 ET SEQ.)**

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- Sec. 6004. Applicability of solid waste disposal guidelines to executive agencies.
- Sec. 6005. *Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.*

\* \* \* \* \*

**Subtitle F—Federal Responsibilities**

\* \* \* \* \*

SEC. 6005. (a) *DEFINITIONS.—In this section:*  
 (1) *AGENCY HEAD.—The term “agency head” means—*  
 (A) *the Secretary of Transportation; and*

(B) the head of any other Federal agency that, on a regular basis, procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

(2) CEMENT OR CONCRETE PROJECT.—The term “cement or concrete project” means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

(A) involves the procurement of cement or concrete; and  
(B) is carried out, in whole or in part, using Federal funds.

(3) RECOVERED MINERAL COMPONENT.—The term “recovered mineral component” means—

(A) ground granulated blast furnace slag;

(B) coal combustion fly ash; and

(C) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

(b) IMPLEMENTATION OF REQUIREMENTS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this section (including guidelines under section 6002) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

(2) PRIORITY.—In carrying out paragraph (1), an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

(3) FEDERAL PROCUREMENT REQUIREMENTS.—The Administrator and each agency head shall carry out this subsection in accordance with section 6002.

(c) FULL IMPLEMENTATION STUDY.—

(1) IN GENERAL.—The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

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

(A) quantify—

(i) the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of procurement requirements; and

(ii) the energy savings and environmental benefits associated with the substitution;



(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from the law; and

(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

(3) REPORT.—Not later than 30 months after the date of enactment of this section, the Administrator shall submit to Congress a report on the study.

(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the date on which the report under subsection (c)(3) is submitted, take additional actions under this Act to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects—

(1) to realize more fully the energy savings and environmental benefits associated with increased substitution; and

(2) to eliminate barriers identified under subsection (c)(2)(B).

(e) EFFECT OF SECTION.—Nothing in this section affects the requirements of section 6002 (including the guidelines and specifications for implementing those requirements).

**ENERGY POLICY AND CONSERVATION ACT—  
Public Law 94-163, as amended (42 U.S.C. 6201  
et seq.)**

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AUTOMOBILES

- \* \* \* \* \*
- Sec. 324. Labeling
- Sec. 324A. *Energy Star Program*
- \* \* \* \* \*

**TITLE I—MATTERS RELATED TO DOMESTIC  
SUPPLY AVAILABILITY**

\* \* \* \* \*

**Part B—Strategic Petroleum Reserve**

【SEC. 166. There are authorized to be appropriated such sums as may be necessary to implement this part, to remain available until expended.】

AUTHORIZATION OF APPROPRIATIONS

*SEC. 166. There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this part and part D, to remain available until expended.*

\* \* \* \* \*

CONDITIONS FOR RELEASE; PLAN

SEC. 183.\* \* \*

(b) DEFINITION.—For purposes of this section a “dislocation in the heating oil market” shall be deemed to occur only when—

- (1) The price differential between crude oil, as reflected in an industry daily publication such as “Platt’s Oilgram Price Report” or “Oil Daily” and No. 2 heating oil, as reported in the Energy Information Administration’s retail price data for the

Northeast, increases **[by more than 60 percent over its 5 year rolling average for the months of mid-October through March]** *by more than 60 percent over its 5-year rolling average for the months of mid-October through March (considered as a heating season average)*, and continues for 7 consecutive days; and

(2) The price differential continues to increase during the most recent week for which price information is available.

\* \* \* \* \*

**[SEC. 186. There are authorized to be appropriated such sums as may be necessary to implement this part.]**

\* \* \* \* \*

**[Part E—Expiration**

**[SEC. 191. Except as otherwise provided in title I, all authority under any provision of title I (other than a provision of such title amending another law) and any rule, regulation, or order issued pursuant to such authority, shall expire at midnight, September 30, 2008, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, September 30, 2008.]**

\* \* \* \* \*

***TITLE II—STANDBY ENERGY AUTHORITIES***

\* \* \* \* \*

***Part C—Summer Fill and Fuel Budgeting Programs***

***SEC. 273. SUMMER FILL AND FUEL BUDGETING PROGRAMS.***

Section 602(a) of P.L. 106-469 (114 Stat. 2040) indicated that this new section 273 should be added at the end of part C of title II, but, section 104(3) of the same Public Law repealed that part C.

(a) DEFINITIONS.—In this section:

(1) BUDGET CONTRACT.—The term “budget contract” means a contract between a retailer and a consumer under which the heating expenses of the consumer are spread evenly over a period of months.

(2) FIXED-PRICE CONTRACT.—The term “fixed-price contract” means a contract between a retailer and a consumer under which the retailer charges the consumer a set price for propane, kerosene, or heating oil without regard to market price fluctuations.

(3) PRICE CAP CONTRACT.—The term “price cap contract” means a contract between a retailer and a consumer under which the retailer charges the consumer the market price for propane, kerosene, or heating oil, but the cost of the propane, kerosene, or heating oil may exceed a maximum amount stated in the contract.

(b) ASSISTANCE.—At the request of the chief executive officer of a State, the Secretary shall provide information, technical assistance, and funding—

(1) to develop education and outreach programs to encourage consumers to fill their storage facilities for propane, kerosene, and heating oil during the summer months; and

(2) to promote the use of budget contracts, price cap contracts, fixed-price contracts, and other advantageous financial arrangements, to avoid severe seasonal price increases for and supply shortages of those products.

(c) PREFERENCE.—In implementing this section, the Secretary shall give preference to States that contribute public funds or leverage private funds to develop State summer fill and fuel budgeting programs.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) \$25,000,000 for fiscal year 2001; and

(2) such sums as are necessary for each fiscal year thereafter.

[(e) INAPPLICABILITY OF EXPIRATION PROVISION.—Section 281 does not apply to this section.]

\* \* \* \* \*

**[Part D—Expiration**

SEC. 281. Except as otherwise provided in title II, all authority under any provision of title II (other than a provision of such title amending another law) and any rule, regulation, or order issued pursuant to such authority, shall expire at midnight, September 30, 2008, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, September 30, 2008.]

\* \* \* \* \*

SEC. 321. For purposes of this part:

\* \* \* \* \*

(29)(D)(i) The term “F40T12 lamp” means a nominal 40 watt tubular fluorescent lamp which is 48 inches in length and one-and-a-half inches in diameter, and conforms to ANSI standard [C78.1–1978(R1984)] *C78.81–2003 (Data Sheet 7881–ANSI–1010–1)*.

(ii) The term “F96T12 lamp” means a nominal 75 watt tubular fluorescent lamp which is 96 inches in length and one-and-a-half inches in diameter, and conforms to ANSI standard [C78.3–1978(R1984)] *C78.81–2003 (Data Sheet 7881–ANSI–3007–1)*.

(iii) The term “F96T12HO lamp” means a nominal 110 watt tubular fluorescent lamp which is 96 inches in length and one-and-a-half inches in diameter, and conforms to ANSI standard [C78.1–1978(R1984)] *C78.81–2003 (Data Sheet 7881–ANSI–1019–1)*.

\* \* \* \* \*

(M) The term “F34T12 lamp” (also known as a “F40T12/ES lamp”) means a nominal 34 watt tubular fluorescent lamp that is 48 inches in length and 1½ inches in diameter, and conforms to ANSI standard C78.81–2003 (Data Sheet 7881–ANSI–1006–1).

(N) The term “F96T12/ES lamp” means a nominal 60 watt tubular fluorescent lamp that is 96 inches in length and 1½ inches in diameter, and conforms to ANSI standard C78.81–2003 (Data Sheet 7881–ANSI–3006–1).

(O) The term “F96T12HO/ES lamp” means a nominal 95 watt tubular fluorescent lamp that is 96 inches in length and 1½ inches in diameter, and conforms to ANSI standard C78.81–2003 (Data Sheet 7881–ANSI–1017–1).

(P) The term “replacement ballast” means a ballast that—

- (i) is designed for use to replace an existing ballast in a previously installed luminaire;
- (ii) is marked “FOR REPLACEMENT USE ONLY”;
- (iii) is shipped by the manufacturer in packages containing not more than 10 ballasts; and
- (iv) has output leads that when fully extended are a total length that is less than the length of the lamp with which the ballast is intended to be operated.

\* \* \* \* \*

(30)(S)(i) The term “medium base compact fluorescent lamp” means an integrally ballasted fluorescent lamp with a medium screw base and a rated input voltage of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp. (ii) The term “medium base compact fluorescent lamp” does not include—

(I) any lamp that is—

- (aa) specifically designed to be used for special purpose applications; and
- (bb) unlikely to be used in general purpose applications, such as the applications described in subparagraph (D); or

(II) any lamp not described in subparagraph (D) that is excluded by the Secretary, by rule, because the lamp is—

- “(aa) designed for special applications; and
- (bb) unlikely to be used in general purpose applications.

\* \* \* \* \*

(32) The term “battery charger” means a device that charges batteries for consumer products, including battery chargers embedded in other consumer products.

(33)(A) The term “commercial prerinse spray valve” means a handheld device designed and marketed for use with commercial dishwashing and ware washing equipment that sprays water on dishes, flatware, and other food service items for the purpose of removing food residue before cleaning the items.

(B) The Secretary may modify the definition of “commercial prerinse spray valve” by rule—

- (i) to include products—
    - (I) that are extensively used in conjunction with commercial dishwashing and ware washing equipment;
    - (II) the application of standards to which would result in significant energy savings; and
    - (III) the application of standards to which would meet the criteria specified in section 325(o)(4); and
  - (ii) to exclude products—
    - (I) that are used for special food service applications;
    - (II) that are unlikely to be widely used in conjunction with commercial dishwashing and ware washing equipment; and
    - (III) the application of standards to which would not result in significant energy savings.
- (34) The term “dehumidifier” means a self-contained, electrically operated, and mechanically encased assembly consisting of—
- (A) a refrigerated surface (evaporator) that condenses moisture from the atmosphere;
  - (B) a refrigerating system, including an electric motor;
  - (C) an air-circulating fan; and
  - (D) means for collecting or disposing of the condensate.
- (35)(A) The term “distribution transformer” means a transformer that—
- (i) has an input voltage of 34.5 kilovolts or less;
  - (ii) has an output voltage of 600 volts or less; and
  - (iii) is rated for operation at a frequency of 60 Hertz.
- (B) The term “distribution transformer” does not include—
- (i) a transformer with multiple voltage taps, the highest of which equals at least 20 percent more than the lowest;
  - (ii) a transformer that is designed to be used in a special purpose application and is unlikely to be used in general purpose applications, such as a drive transformer, rectifier transformer, auto-transformer, Uninterruptible Power System transformer, impedance transformer, regulating transformer, sealed and nonventilating transformer, machine tool transformer, welding transformer, grounding transformer, or testing transformer; or
  - (iii) any transformer not listed in clause (ii) that is excluded by the Secretary by rule because—
    - (I) the transformer is designed for a special application;
    - (II) the transformer is unlikely to be used in general purpose applications; and
    - (III) the application of standards to the transformer would not result in significant energy savings.
- (36) The term “external power supply” means an external power supply circuit that is used to convert household electric current into DC current or lower-voltage AC current to operate a consumer product.
- (37) The term “illuminated exit sign” means a sign that—
- (A) is designed to be permanently fixed in place to identify an exit; and

- (B) consists of an electrically powered integral light source that—
- (i) illuminates the legend “EXIT” and any directional indicators; and
  - (ii) provides contrast between the legend, any directional indicators, and the background.
- (38) The term “low-voltage dry-type distribution transformer” means a distribution transformer that—
- (A) has an input voltage of 600 volts or less;
  - (B) is air-cooled; and
  - (C) does not use oil as a coolant.
- (39) The term “pedestrian module” means a light signal used to convey movement information to pedestrians.
- (40) The term “refrigerated bottled or canned beverage vending machine” means a commercial refrigerator that cools bottled or canned beverages and dispenses the bottled or canned beverages on payment.
- (41) The term “standby mode” means the lowest power consumption mode, as established on an individual product basis by the Secretary, that—
- (A) cannot be switched off or influenced by the user; and
  - (B) may persist for an indefinite time when an appliance is—
    - (i) connected to the main electricity supply; and
    - (ii) used in accordance with the instructions of the manufacturer.
- (42) The term “torchiere” means a portable electric lamp with a reflector bowl that directs light upward to give indirect illumination.
- (43) The term “traffic signal module” means a standard 8-inch (200mm) or 12-inch (300mm) traffic signal indication that—
- (A) consists of a light source, a lens, and all other parts necessary for operation; and
  - (B) communicates movement messages to drivers through red, amber, and green colors.
- (44) The term “transformer” means a device consisting of 2 or more coils of insulated wire that transfers alternating current by electromagnetic induction from 1 coil to another to change the original voltage or current value.
- (45)(A) The term “unit heater” means a self-contained fan-type heater designed to be installed within the heated space.
- (B) The term “unit heater” does not include a warm air furnace.
- (46)(A) The term “high intensity discharge lamp” means an electric-discharge lamp in which—
- (i) the light-producing arc is stabilized by bulb wall temperature; and
  - (ii) the arc tube has a bulb wall loading in excess of 3 Watts/cm<sup>2</sup>.
- (B) The term “high intensity discharge lamp” includes mercury vapor, metal halide, and high-pressure sodium lamps described in subparagraph (A).

(47)(A) *The term “mercury vapor lamp” means a high intensity discharge lamp in which the major portion of the light is produced by radiation from mercury operating at a partial pressure in excess of 100,000 Pa (approximately 1 atm).*

(B) *The term “mercury vapor lamp” includes clear, phosphor-coated, and self-ballasted lamps described in subparagraph (A).*

(48) *The term “mercury vapor lamp ballast” means a device that is designed and marketed to start and operate mercury vapor lamps by providing the necessary voltage and current.*

\* \* \* \* \*

SEC. 323. \* \* \*

(b) AMENDED AND NEW PROCEDURES.—

\* \* \* \* \*

(9) *Test procedures for illuminated exit signs shall be based on the test method used under version 2.0 of the Energy Star program of the Environmental Protection Agency for illuminated exit signs.*

(10)(A) *Test procedures for distribution transformers and low voltage dry-type distribution transformers shall be based on the “Standard Test Method for Measuring the Energy Consumption of Distribution Transformers” prescribed by the National Electrical Manufacturers Association (NEMA TP 2-1998).*

(B) *The Secretary may review and revise the test procedures established under subparagraph (A).*

(C) *For purposes of section 346(a), the test procedures established under subparagraph (A) shall be considered to be the testing requirements prescribed by the Secretary under section 346(a)(1) for distribution transformers for which the Secretary makes a determination that energy conservation standards would—*

- (i) *be technologically feasible and economically justified; and*
- (ii) *result in significant energy savings.*

(11) *Test procedures for traffic signal modules and pedestrian modules shall be based on the test method used under the Energy Star program of the Environmental Protection Agency for traffic signal modules, as in effect on the date of enactment of this paragraph.*

(12)(A) *Test procedures for medium base compact fluorescent lamps shall be based on the test methods for compact fluorescent lamps used under the August 9, 2001, version of the Energy Star program of the Environmental Protection Agency and the Department of Energy.*

(B) *Except as provided in subparagraph (C), medium base compact fluorescent lamps shall meet all test requirements for regulated parameters of section 325(cc).*

(C) *Notwithstanding subparagraph (B), if manufacturers document engineering predictions and analysis that support expected attainment of lumen maintenance at 40 percent rated life and lamp lifetime, medium base compact fluorescent lamps may be marketed before completion of the testing of lamp life and lumen maintenance at 40 percent of rated life.*

(13) *Test procedures for dehumidifiers shall be based on the test criteria used under the Energy Star Program Requirements for Dehumidifiers developed by the Environmental Protection Agency, as in effect on the date of enactment of this paragraph unless revised by the Secretary pursuant to this section.*



(14) *The test procedure for measuring flow rate for commercial prerinse spray valves shall be based on American Society for Testing and Materials Standard F2324, entitled “Standard Test Method for Pre-Rinse Spray Valves.”*

(15) *The test procedure for refrigerated bottled or canned beverage vending machines shall be based on American National Standards Institute/American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 32.1-2004, entitled “Methods of Testing for Rating Vending Machines for Bottled, Canned or Other Sealed Beverages”.*

\* \* \* \* \*

(f) *ADDITIONAL CONSUMER AND COMMERCIAL PRODUCTS.—(1) Not later than 2 years after the date of enactment of this subsection, the Secretary shall prescribe testing requirements for—*

- (A) *suspended ceiling fans; and*
- (B) *refrigerated bottled or canned beverage vending machines.*

(2) *To the maximum extent practicable, the testing requirements prescribed under paragraph (1) shall be based on existing test procedures used in industry.*

\* \* \* \* \*

LABELING

SEC. 324. (a). *IN GENERAL.—(1) \* \* \**

(2) *\* \* \**

(F)(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).*

\* \* \* \* \*

(5)(A) *For covered products described in subsections (u) through (ee) 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.*

\* \* \* \* \*

## 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 January 1, 2010.

## ENERGY CONSERVATION STANDARDS

SEC. 325. (A) *PURPOSES.* \* \* \*

(F) *STANDARDS FOR FURNACES.*—

(3)(D) *Notwithstanding any other provision of this Act, if the requirements of subsection (o) are met, the Secretary may con-*

*sider and prescribe energy conservation standards or energy use standards for electricity used for purposes of circulating air through duct work.*

\* \* \* \* \*

(g) STANDARDS FOR DISHWASHERS; CLOTHES WASHERS; CLOTHES DRYERS, FLUORESCENT LAMP BALLASTS.—

\* \* \* \* \*

(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.

\* \* \* \* \*

(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:*

<i>Application for operation of—</i>	<i>Ballast input voltage</i>	<i>Total nominal lamp watts</i>	<i>Ballast efficacy factor</i>
<i>One F34T12 lamp .....</i>	<i>120/277</i>	<i>34</i>	<i>2.61</i>
<i>Two F34T12 lamps .....</i>	<i>120/277</i>	<i>68</i>	<i>1.35</i>
<i>Two F96 T12/ES lamps .....</i>	<i>120/277</i>	<i>120</i>	<i>0.77</i>
<i>Two F96 T12HO/ES lamps .....</i>	<i>120/277</i>	<i>190</i>	<i>0.42</i>

(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 subparagraphs (A) and (B) 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 20F 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.*

\* \* \* \* \*

## (o) CRITERIA FOR PRESCRIBING NEW OR AMENDED STANDARDS.—

\* \* \* \* \*

(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.*

\* \* \* \* \*

(p) PROCEDURE FOR PRESCRIBING NEW OR AMENDED STANDARDS.—[Any] *Except as provided in subsection (u), any new or amended energy conservation standard shall be prescribed in accordance with the following procedure:*

\* \* \* \* \*

(u) *SPECIAL RULEMAKING PROCEDURES.—(1) Notwithstanding any other provision of law, the Secretary may publish a notice of direct final rulemaking based on an energy conservation standard recommended by an interested person, if—*

*(A) in response to an advance notice of proposed rulemaking under paragraph (p), the interested person (including a representative of a manufacturer of a covered product, a conservation advocate, or consumer) submits a joint comment recommending an energy conservation standard; and*

*(B) the Secretary determines that the energy conservation standard complies with the substantive provisions of this Act that apply to the type (or class) of covered products to which the rule may apply.*

*(2) The Secretary shall publish a notice of direct final rulemaking under paragraph (1) with a notice of proposed rulemaking incorporating by reference the regulatory language of the direct final rule that provides for an effective date not earlier than 90 days after the date of publication.*

*(3) The Secretary may withdraw a direct final rule published under paragraph (2) before the effective date of the rule if an interested person files a significant adverse comment in response to the related notice of proposed rulemaking.*

(v) *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)(i) Not later than 3 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 battery chargers and external power supplies or classes of battery chargers and external power supplies.

(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) In determining under section 323 whether test procedures and energy conservation standards under this section should be revised with respect to covered products that are major sources of standby mode energy consumption, the Secretary shall consider whether to incorporate standby mode into the test procedures and energy conservation standards, taking into account standby mode power consumption compared to overall product energy consumption.

(3) The Secretary shall not propose an energy conservation standard under this section, unless the Secretary has issued applicable test procedures for each product under section 323.

(4) Any energy conservation standard issued under this subsection shall be applicable to products manufactured or imported beginning on the date that is 3 years after the date of issuance.

(5) 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.

(w) **SUSPENDED CEILING FANS AND 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—

(A) suspended ceiling fans; and

(B) refrigerated bottled 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.

(x) **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.

(y) *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.

(z) *LOW VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS.*—The efficiency of a low voltage dry-type distribution transformer manufactured on or after January 1, 2006, 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).

(aa) *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.

(bb) *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.

(cc) *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.

(dd) *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)(A) Not later than October 1, 2009, the Secretary shall publish a final rule in accordance with subsections (o) and (p), to determine whether the energy conservation standards established under paragraph (1) should be amended.

(B) The final rule published under subparagraph (A) shall—

(i) contain any amendment by the Secretary; and

(ii) provide that the amendment applies to products manufactured on or after October 1, 2012.

(C) If the Secretary does not publish an amendment that takes effect by 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)
25.00 or less .....	1.20
25.01–35.00 .....	1.30
35.01–45.00 .....	1.40
45.01–54.00 .....	1.50
54.01–74.99 .....	1.60
75.00 or more .....	2.5.

(ee) 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.

(ff) MERCURY VAPOR LAMP BALLASTS.—Mercury vapor lamp ballasts shall not be manufactured or imported after January 1, 2008.

(gg) APPLICATION DATE.—Section 327 applies—

(1) to products for which energy conservation standards are to be established under subsection (l), (u), (v), or (w) 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), (v), or (w) for the product takes effect; and

(2) to products for which energy conservation standards are established under subsections (x) through (ff) 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 (x) through (ff) take effect.

\* \* \* \* \*

EFFECT ON OTHER LAW

SEC. 327(a). \* \* \*

(b). GENERAL RULE OF PREEMPTION FOR ENERGY CONSERVATION STANDARDS BEFORE FEDERAL STANDARD BECOMES EFFECTIVE FOR A PRODUCT.—

- \* \* \* \* \*
- (5) is a regulation concerning the water use of lavatory or kitchen faucets adopted by the State of Rhode Island prior to the date of the enactment of the Energy Policy Act of 1992; **[or]**
- (6) is a regulation (or portion thereof) concerning the water efficiency or water use of gravity tank-type low consumption water closets for installation in public places, except that such a regulation shall be effective only until January 1, 1997**[.];** or
- (7)(A) is a regulation concerning standards for commercial prerinse spray valves adopted by the California Energy Commission before January 1, 2005; or
- (B) is an amendment to a regulation described in subparagraph (A) that was developed to align California regulations with changes in American Society for Testing and Materials Standard F2324;
- (8)(A) is a regulation concerning standards for pedestrian modules adopted by the California Energy Commission before January 1, 2005; or
- (B) is an amendment to a regulation described in subparagraph (A) that was developed to align California regulations to changes in the Institute for Transportation Engineers standards, entitled “Performance Specification: Pedestrian Traffic Control Signal Indications”.

\* \* \* \* \*

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 336. (a). \* \* \*

(b)(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]** that chapter, except, notwithstanding section 706(2)(D) of title 5, United States Code, no direct final rule prescribed or withdrawn under section 325(u) may be held unlawful or set aside because of the failure of the Secretary to observe a procedure required by law other than the procedures required under section 325(u). No rule under section 323, 324, or 325 may be affirmed unless supported by substantial evidence.

\* \* \* \* \*

CONSUMER EDUCATION

SEC. 337 (a). \* \* \*

(c) HVAC MAINTENANCE.—(1) To ensure that installed air conditioning and heating systems operate at maximum rated efficiency levels, the Secretary shall, not later than 180 days after the date of enactment of this subsection, carry out a program to educate homeowners and small business owners concerning the energy savings from properly conducted maintenance of air conditioning, heating, and ventilating systems.



(2) *The Secretary shall carry out the program under paragraph (1), on a cost-shared basis, in cooperation with the Administrator of the Environmental Protection Agency and any other entities that the Secretary determines to be appropriate, including industry trade associations, industry members, and energy efficiency organizations.*

(d) *SMALL BUSINESS EDUCATION AND ASSISTANCE.—(1) The Administrator of the Small Business Administration, in consultation with the Secretary and the Administrator of the Environmental Protection Agency, shall develop and coordinate a Government-wide program, building on the Energy Star for Small Business Program, to assist small businesses in—*

*(A) becoming more energy efficient;*

*(B) understanding the cost savings from improved energy efficiency; and*

*(C) identifying financing options for energy efficiency upgrades.*

(2) *The Secretary and the Administrator of the Small Business Administration shall make program information available directly to small businesses and through other Federal agencies, including the Federal Emergency Management Agency and the Department of Agriculture.*

\* \* \* \* \*

**PART C—CERTAIN INDUSTRIAL EQUIPMENT DEFINITIONS**

SEC. 340. For purposes of this part—

(1) The term “covered equipment” means one of the following types of industrial equipment:

(A) Electric motors and pumps.

(B) Small commercial package air conditioning and heating equipment.

(C) Large commercial package air conditioning and heating equipment.

(D) *Very large commercial package air conditioning and heating equipment.*

(E) *Commercial refrigerators, freezers, and refrigerator-freezers.*

(F) *Automatic commercial ice makers.*

(G) *Commercial clothes washers.*

**[(D)]** (H) *Packaged terminal air-conditioners and packaged terminal heat pumps.*

**[(E)]** (I) *Warm air furnaces and packaged boilers.*

**[(F)]** (J) *Storage water heaters, instantaneous water heaters, and unfired hot water storage tanks.*

**[(G)]** (K) *Any other type of industrial equipment which the Secretary classifies as covered equipment under section 341(b).*

\* \* \* \* \*

(2)(B) The types of equipment referred to in this subparagraph (in addition to electric motors and pumps, **[small and large commercial package air conditioning and heating equipment]** *commercial package air conditioning and heating equipment, commercial refrigerators, freezers, and refrigerator-freezer-*

ers, automatic commercial ice makers, commercial clothes washers, packaged terminal air-conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks) are as follows:

\* \* \* \* \*

【(8) The term “small commercial package air conditioning and heating equipment” means air-cooled, water-cooled, evaporatively-cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application which are rated below 135,000 Btu per hour (cooling capacity).】

【(9) The term “large commercial package air conditioning and heating equipment” means air-cooled, water-cooled, evaporatively-cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application which are rated at or above 135,000 Btu per hour and below 240,000 Btu per hour (cooling capacity).】

*(8)(A) The term “commercial package air conditioning and heating equipment” means air-cooled, water-cooled, evaporatively-cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application.*

*(B) The term “small commercial package air conditioning and heating equipment” means commercial package air conditioning and heating equipment that is rated below 135,000 Btu per hour (cooling capacity).*

*(C) The term “large commercial package air conditioning and heating equipment” means commercial package air conditioning and heating equipment that is rated—*

*(i) at or above 135,000 Btu per hour; and*

*(ii) below 240,000 Btu per hour (cooling capacity).*

*(D) The term “very large commercial package air conditioning and heating equipment” means commercial package air conditioning and heating equipment that is rated—*

*(i) at or above 240,000 Btu per hour; and*

*(ii) below 760,000 Btu per hour (cooling capacity).*

*(9)(A) The term “commercial refrigerator, freezer, and refrigerator-freezer” means refrigeration equipment that—*

*(i) is not a consumer product (as defined in section 321);*

*(ii) is not designed and marketed exclusively for medical, scientific, or research purposes;*

*(iii) operates at a chilled, frozen, combination chilled and frozen, or variable temperature;*

*(iv) displays or stores merchandise and other perishable materials horizontally, semivertically, or vertically;*

*(v) has transparent or solid doors, sliding or hinged doors, a combination of hinged, sliding, transparent, or solid doors, or no doors;*

*(vi) is designed for pull-down temperature applications or holding temperature applications; and*

(vii) is connected to a self-contained condensing unit or to a remote condensing unit.

(B) The term “holding temperature application” means a use of commercial refrigeration equipment other than a pull-down temperature application, except a blast chiller or freezer.

(C) The term “integrated average temperature” means the average temperature of all test package measurements taken during the test.

(D) The term “pull-down temperature application” means a commercial refrigerator with doors that, when fully loaded with 12 ounce beverage cans at 90 degrees F, can cool those beverages to an average stable temperature of 38 degrees F in 12 hours or less.

(E) The term “remote condensing unit” means a factory-made assembly of refrigerating components designed to compress and liquefy a specific refrigerant that is remotely located from the refrigerated equipment and consists of 1 or more refrigerant compressors, refrigerant condensers, condenser fans and motors, and factory supplied accessories.

(F) The term “self-contained condensing unit” means a factory-made assembly of refrigerating components designed to compress and liquefy a specific refrigerant that is an integral part of the refrigerated equipment and consists of 1 or more refrigerant compressors, refrigerant condensers, condenser fans and motors, and factory supplied accessories.

\* \* \* \* \*

(19) The term “automatic commercial ice maker” means a factory-made assembly (not necessarily shipped in 1 package) that—

(A) consists of a condensing unit and ice-making section operating as an integrated unit, with means for making and harvesting ice; and (B) may include means for storing ice, dispensing ice, or storing and dispensing ice.

(20) The term “commercial clothes washer” means a soft-mount front-loading or soft-mount top-loading clothes washer that—

(A) has a clothes container compartment that—  
 (i) for horizontal-axis clothes washers, is not more than 3.5 cubic feet ; and  
 (ii) for vertical-axis clothes washers, is not more than 4.0 cubic feet; and  
 (B) is designed for use in—  
 (i) applications in which the occupants of more than 1 household will be using the clothes washer, such as multi-family housing common areas and coin laundries; or  
 (ii) other commercial applications.

(21) The term “harvest rate” means the amount of ice (at 32 degrees F) in pounds produced per 24 hours.

\* \* \* \* \*

SEC. 342. (a) [SMALL AND LARGE] SMALL, LARGE, AND VERY LARGE Commercial Package Air Conditioning and Heating Equipment, Packaged Terminal Air Conditioners and Heat Pumps,

Warm-Air Furnaces, Packaged Boilers, Storage Water Heaters, Instantaneous Water Heaters, and Unfired Hot Water Storage Tanks.—

(1) Each small commercial package air conditioning and heating equipment manufactured on or after January 1, 1994 *but before January 1, 2010*, shall meet the following standard levels:

\* \* \* \* \*

(2) Each large commercial package air conditioning and heating equipment manufactured on or after January 1, 1995 *but before January 1, 2010*, shall meet the following standard levels:

\* \* \* \* \*

(6)(A)(i) If ASHRAE/IES Standard 90.1, as in effect on [the date of enactment of the Energy Policy Act of 1992] *January 1, 2010*, is amended with respect to any small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment *and very large commercial package air conditioning and heating equipment*, or if ASHRAE/IES Standard 90.1, as in effect on *October 24, 1992*, is amended with respect to any, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, or unfired hot water storage tanks, the Secretary shall establish an amended uniform national standard for that product at the minimum level for each effective date specified in the amended ASHRAE/IES Standard 90.1, unless the Secretary determines, by rule published in the Federal Register and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than such amended ASHRAE/IES Standard 90.1 for such product would result in significant additional conservation of energy and is technologically feasible and economically justified.

(ii) *If ASHRAE/IES Standard 90.1 is not amended with respect to small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, and very large commercial package air conditioning and heating equipment during the 5-year period beginning on the effective date of a standard, the Secretary may initiate a rulemaking to determine whether a more stringent standard—*

*(I) would result in significant additional conservation of energy; and*

*(II) is technologically feasible and economically justified.*

\* \* \* \* \*

(C)(i) \* \* \*

(ii) with respect to large commercial package air conditioning and heating equipment *and very large commercial package air conditioning and heating equipment*, on or after a date which is three years after the effective date of the applicable min-

imum energy efficiency requirement in the amended ASHRAE/IES standard referred to in subparagraph (A);

\* \* \* \* \*

(7) *Small commercial package air conditioning and heating equipment manufactured on or after January 1, 2010, shall meet the following standards:*

(A) *The minimum energy efficiency ratio of air-cooled central air conditioners at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be—*

(i) *11.2 for equipment with no heating or electric resistance heating; and*

(ii) *11.0 for equipment with all other heating system types that are integrated into the equipment (at a standard rating of 95 degrees F db).*

(B) *The minimum energy efficiency ratio of air-cooled central air conditioner heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be—*

(i) *11.0 for equipment with no heating or electric resistance heating; and*

(ii) *10.8 for equipment with all other heating system types that are integrated into the equipment (at a standard rating of 95 degrees F db).*

(C) *The minimum coefficient of performance in the heating mode of air-cooled central air conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be 3.3 (at a high temperature rating of 47 degrees F db).*

(8) *Large commercial package air conditioning and heating equipment manufactured on or after January 1, 2010, shall meet the following standards:*

(A) *The minimum energy efficiency ratio of air-cooled central air conditioners at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be—*

(i) *11.0 for equipment with no heating or electric resistance heating; and*

(ii) *10.8 for equipment with all other heating system types that are integrated into the equipment (at a standard rating of 95 degrees F db).*

(B) *The minimum energy efficiency ratio of air-cooled central air conditioner heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be—*

(i) *10.6 for equipment with no heating or electric resistance heating; and*

(ii) *10.4 for equipment with all other heating system types that are integrated into the equipment (at a standard rating of 95 degrees F db).*

(C) *The minimum coefficient of performance in the heating mode of air-cooled central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and*

less than 240,000 Btu per hour (cooling capacity) shall be 3.2 (at a high temperature rating of 47 degrees F db).

(9) Very large commercial package air conditioning and heating equipment manufactured on or after January 1, 2010, shall meet the following standards:

(A) The minimum energy efficiency ratio of air-cooled central air conditioners at or above 240,000 Btu per hour (cooling capacity) and less than 760,000 Btu per hour (cooling capacity) shall be—

(i) 10.0 for equipment with no heating or electric resistance heating; and

(ii) 9.8 for equipment with all other heating system types that are integrated into the equipment (at a standard rating of 95 degrees F db).

(B) The minimum energy efficiency ratio of air-cooled central air conditioner heat pumps at or above 240,000 Btu per hour (cooling capacity) and less than 760,000 Btu per hour (cooling capacity) shall be—

(i) 9.5 for equipment with no heating or electric resistance heating; and

(ii) 9.3 for equipment with all other heating system types that are integrated into the equipment (at a standard rating of 95 degrees F db).

(C) The minimum coefficient of performance in the heating mode of air-cooled central air conditioning heat pumps at or above 240,000 Btu per hour (cooling capacity) and less than 760,000 Btu per hour (cooling capacity) shall be 3.2 (at a high temperature rating of 47 degrees F db).

\* \* \* \* \*

(b) \* \* \*

(c) **COMMERCIAL REFRIGERATORS, FREEZERS, AND REFRIGERATOR-FREEZERS.**—(1) In this subsection:

(A) The term “AV” means the adjusted volume (ft<sup>3</sup>) (defined as 1.63 × frozen temperature compartment volume (ft<sup>3</sup>) + chilled temperature compartment volume (ft<sup>3</sup>)) with compartment volumes measured in accordance with the Association of Home Appliance Manufacturers Standard HRF1–1979.

(B) The term “V” means the chilled or frozen compartment volume (ft<sup>3</sup>) (as defined in the Association of Home Appliance Manufacturers Standard HRF1–1979).

(C) Other terms have such meanings as may be established by the Secretary, based on industry-accepted definitions and practice.

(2) Each commercial refrigerator, freezer, and refrigerator-freezer with a self-contained condensing unit designed for holding temperature applications manufactured on or after January 1, 2010, shall have a daily energy consumption (in kilowatt hours per day) that does not exceed the following:

Refrigerators with solid doors .....	0.10 V + 2.04
Refrigerators with transparent doors .....	0.12 V + 3.34
Freezers with solid doors .....	0.40 V + 1.38
Freezers with transparent doors .....	0.75 V + 4.10
Refrigerators/freezers with solid doors the greater of .....	0.27 AV– 0.71 or 0.70.

(3) Each commercial refrigerator with a self-contained condensing unit designed for pull-down temperature applications and transparent doors manufactured on or after January 1, 2010, shall have a daily energy consumption (in kilowatt hours per day) of not more than  $0.126 V + 3.51$ .

(4)(A) Not later than January 1, 2009, the Secretary shall issue, by rule, standard levels for ice-cream freezers, self-contained commercial refrigerators, freezers, and refrigerator-freezers without doors, and remote condensing commercial refrigerators, freezers, and refrigerator-freezers, with the standard levels effective for equipment manufactured on or after January 1, 2012.

(B) The Secretary may issue, by rule, standard levels for other types of commercial refrigerators, freezers, and refrigerator-freezers not covered by paragraph (2)(A) with the standard levels effective for equipment manufactured 3 or more years after the date on which the final rule is published.

(5)(A) Not later than January 1, 2013, the Secretary shall issue a final rule to determine whether the standards established under this subsection should be amended.

(B) Not later than 3 years after the effective date of any amended standards under subparagraph (A) or the publication of a final rule determining that the standards should not be amended, the Secretary shall issue a final rule to determine whether the standards established under this subsection or the amended standards, as applicable, should be amended.

(C) If the Secretary issues a final rule under subparagraph (A) or (B) establishing amended standards, the final rule shall provide that the amended standards apply to products manufactured on or after the date that is—

- (i) 3 years after the date on which the final amended standard is published; or
- (ii) if the Secretary determines, by rule, that 3 years is inadequate, not later than 5 years after the date on which the final rule is published.

(d) **AUTOMATIC COMMERCIAL ICE MAKERS.**—(1) Each automatic commercial ice maker that produces cube type ice with capacities between 50 and 2500 pounds per 24-hour period when tested according to the test standard established in section 343(a)(7) and is manufactured on or after January 1, 2010, shall meet the following standard levels:

Equipment type	Type of cooling	Harvest rate (lbs ice/24 hours)	Maximum energy use (kWh/100 lbs ice)	Maximum condenser water use (gal/100 lbs ice)
Ice Making Head	Water	<500	7.80–0.0055H	200–0.022H
		≥500 and < 1436	5.58–0.0011H	200–0.022H
		≥1436	4.0	200–0.022H
Ice Making Head	Air	<450	10.26–0.0086H	Not Applicable.
		≥450	6.89–0.0011H	Not Applicable.
Remote Condensing (but not remote compressor).	Air	<1000	8.85–0.0038H	Not Applicable.
		≥1000	5.10	Not Applicable.
Remote Condensing and Remote Compressor.	Air	<934	8.85–0.0038H	Not Applicable
		≥934	5.3	Not Applicable.
Self Contained	Water	<200	11.40–0.019H	191–0.0315H
		≥200	7.60	191–0.0315H

Equipment type	Type of cooling	Harvest rate (lbs ice/24 hours)	Maximum energy use (kWh/100 lbs ice)	Maximum condenser water use (gal/100 lbs ice)
Self Contained .....	Air .....	<175 .....	18.0–0.0469H .....	Not Applicable
		≥175 .....	9.80 .....	Not Applicable.

*H* = Harvest rate in pounds per 24 hours.

*Water use is for the condenser only and does not include potable water used to make ice.*

(2)(A) *The Secretary may issue, by rule, standard levels for types of automatic commercial ice makers that are not covered by paragraph (1).*

(B) *The standards established under subparagraph (A) shall apply to products manufactured on or after the date that is—*

(i) *3 years after the date on which the rule is published under subparagraph (A); or*

(ii) *if the Secretary determines, by rule, that 3 years is inadequate, not later than 5 years after the date on which the final rule is published.*

(3)(A) *Not later than January 1, 2015, with respect to the standards established under paragraph (1), and, with respect to the standards established under paragraph (2), not later than 5 years after the date on which the standards take effect, the Secretary shall issue a final rule to determine whether amending the applicable standards is technologically feasible and economically justified.*

(B) *Not later than 5 years after the effective date of any amended standards under subparagraph (A) or the publication of a final rule determining that amending the standards is not technologically feasible or economically justified, the Secretary shall issue a final rule to determine whether amending the standards established under paragraph (1) or the amended standards, as applicable, is technologically feasible or economically justified.*

(C) *If the Secretary issues a final rule under subparagraph (A) or (B) establishing amended standards, the final rule shall provide that the amended standards apply to products manufactured on or after the date that is—*

(i) *3 years after the date on which the final amended standard is published; or*

(ii) *if the Secretary determines, by rule, that 3 years is inadequate, not later than 5 years after the date on which the final amended standard is published.*

(4) *A final rule issued under paragraph (2) or (3) shall establish standards at the maximum level that is technically feasible and economically justified, as provided in subsections (o) and (p) of section 3.*

(e) **COMMERCIAL CLOTHES WASHERS.**—(1) *Each commercial clothes washer manufactured on or after January 1, 2007, shall have—*

(A) *a Modified Energy Factor of at least 1.26; and*

(B) *a Water Factor of not more than 9.5.*

(2)(A)(i) *Not later than January 1, 2010, the Secretary shall publish a final rule to determine whether the standards established under paragraph (1) should be amended.*



(ii) *The rule published under clause (i) shall provide that any amended standard shall apply to products manufactured 3 years after the date on which the final amended standard is published.*

(B)(i) *Not later than January 1, 2015, the Secretary shall publish a final rule to determine whether the standards established under paragraph (1) should be amended.*

(ii) *The rule published under clause (i) shall provide that any amended standard shall apply to products manufactured 3 years after the date on which the final amended standard is published.*

\* \* \* \* \*

TEST PROCEDURES

SEC. 343. (a) \* \* \*

(4)(A) With respect to small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment *very large commercial package air conditioning and heating equipment*, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks to which standards are applicable under section 342, the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigerating and Air Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.

(B) If such an industry test procedure or rating procedure for small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment *very large commercial package air conditioning and heating equipment*, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, or unfired hot water storage tanks is amended, the Secretary shall amend the test procedure for the product as necessary to be consistent with the amended industry test procedure or rating procedure unless the Secretary determines, by rule, published in the Federal Register and supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures described in paragraphs (2) and (3) of this subsection.

\* \* \* \* \*

(6)(A)(i) *In the case of commercial refrigerators, freezers, and refrigerator-freezers, the test procedures shall be—*

(I) *the test procedures determined by the Secretary to be generally accepted industry testing procedures; or*

(II) *rating procedures developed or recognized by the ASHRAE or by the American National Standards Institute.*

(ii) *In the case of self-contained refrigerators, freezers, and refrigerator-freezers to which standards are applicable under paragraphs (2) and (3) of section 342(c), the initial test proce-*

dures shall be the ASHRAE 117 test procedure that is in effect on January 1, 2005.

(B)(i) In the case of commercial refrigerators, freezers, and refrigerators-freezers with doors covered by the standards adopted in February 2002, by the California Energy Commission, the rating temperatures shall be the integrated average temperature of 38 degrees F (2 degrees F) for refrigerator compartments and 0 degrees F (2 degrees F) for freezer compartments.

(C) The Secretary shall issue a rule in accordance with paragraphs (2) and (3) to establish the appropriate rating temperatures for the other products for which standards will be established under subsection 342(c)(4).

(D) In establishing the appropriate test temperatures under this subparagraph, the Secretary shall follow the procedures and meet the requirements under section 323(e).

(E)(i) Not later than 180 days after the publication of the new ASHRAE 117 test procedure, if the ASHRAE 117 test procedure for commercial refrigerators, freezers, and refrigerator-freezers is amended, the Secretary shall, by rule, amend the test procedure for the product as necessary to ensure that the test procedure is consistent with the amended ASHRAE 117 test procedure, unless the Secretary makes a determination, by rule, and supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures under paragraphs (2) and (3).

(ii) If the Secretary determines that 180 days is an insufficient period during which to review and adopt the amended test procedure or rating procedure under clause (i), the Secretary shall publish a notice in the Federal Register stating the intent of the Secretary to wait not longer than 1 additional year before putting into effect an amended test procedure or rating procedure.

(F)(i) If a test procedure other than the ASHRAE 117 test procedure is approved by the American National Standards Institute, the Secretary shall, by rule—

(I) review the relative strengths and weaknesses of the new test procedure relative to the ASHRAE 117 test procedure; and

(II) based on that review, adopt 1 new test procedure for use in the standards program.

(ii) If a new test procedure is adopted under clause (i)—

(I) section 323(e) shall apply; and

(II) subparagraph (B) shall apply to the adopted test procedure.

(7)(A) In the case of automatic commercial ice makers, the test procedures shall be the test procedures specified in Air-Conditioning and Refrigeration Institute Standard 810-2003, as in effect on January 1, 2005.

(B)(i) If Air-Conditioning and Refrigeration Institute Standard 810-2003 is amended, the Secretary shall amend the test procedures established in subparagraph (A) as necessary to be consistent with the amended Air-Conditioning and Refrigeration Institute Standard, unless the Secretary determines, by

*rule, published in the Federal Register and supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures under paragraphs (2) and (3).*

*(ii) If the Secretary issues a rule under clause (i) containing a determination described in clause (ii), the rule may establish an amended test procedure for the product that meets the requirements of paragraphs (2) and (3).*

*(C) The Secretary shall comply with section 323(e) in establishing any amended test procedure under this paragraph.*

*(8) With respect to commercial clothes washers, the test procedures shall be the same as the test procedures established by the Secretary for residential clothes washers under section 325(g).*

\* \* \* \* \*

(d)(1) Effective 180 days (or, in the case of small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, *very large commercial package air conditioning and heating equipment, commercial refrigerators, freezers, and refrigerator-freezers, automatic commercial ice makers, commercial clothes washers*, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks, 360 days) after a test procedure rule applicable to any covered equipment is prescribed under this section, no manufacturer, distributor, retailer, or private labeler may make any representation—

\* \* \* \* \*

LABELING REQUIREMENTS

SEC. 344. (a) \* \* \*

(e) Subject to subsection (h), not later than 12 months after the Secretary establishes test procedures for small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, *very large commercial package air conditioning and heating equipment, commercial refrigerators, freezers, and refrigerator-freezers, automatic commercial ice makers, commercial clothes washers*, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks under section 343, the Secretary shall prescribe labeling rules under this section for such equipment. Such rules shall provide that the labeling of any small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, *very large commercial package air conditioning and heating equipment, commercial refrigerators, freezers, and refrigerator-freezers, automatic commercial ice makers, commercial clothes washers*, packaged terminal air conditioner, packaged terminal heat pump, warm-air furnace, packaged boiler, storage water heater, instantaneous water heater, and unfired hot water storage tank manufactured after the 12-month period beginning on the date the Secretary prescribes such rules shall—

(1) indicate the energy efficiency of the equipment on the permanent nameplate attached to such equipment or other nearby permanent marking;

(2) prominently display the energy efficiency of the equipment in new equipment catalogs used by the manufacturer to advertise the equipment; and

(3) include such other markings as the Secretary determines necessary solely to facilitate enforcement of the standards established for such equipment under section 342.

\* \* \* \* \*

ADMINISTRATION, ENFORCEMENT, PENALTIES, AND PREEMPTION

SEC. 345(a) \* \* \*

(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; **[and]**

(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**[.]**; *and*

(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.*

\* \* \* \* \*

(b)(1) The provisions of *section 325(u)*, 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), (E), and (F) of section 340(1) to the same extent and in the same manner as they apply in **[part B]** *part A*. In applying such provisions for the purposes of such equipment, paragraphs (1), (2), (3), and (4) of subsection (a) shall apply.

\* \* \* \* \*

(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 A 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 A.*

(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 A 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 A 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 A 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 A 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 subsection 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.*

\* \* \* \* \*

STATE ENERGY CONSERVATION PLANS

SEC. 362 (a) \* \* \*

(g)(1) *The Secretary shall, at least once every 3 years, invite the Governor of each State to review and, if necessary, revise the energy conservation plan of the State submitted under subsection (b) or (e).*

(2) *A review conducted under paragraph (1) should—*

(A) *consider the energy conservation plans of other States within the region; and*

*(B) identify opportunities and actions carried out in pursuit of common energy conservation goals.*

\* \* \* \* \*

STATE ENERGY EFFICIENCY GOALS

**【SEC. 364. Each State energy conservation plan with respect to which assistance is made available under this part on or after October 1, 1991, shall contain a goal, consisting of an improvement of 10 percent or more in the efficiency of use of energy in the State concerned in the calendar year 2000 as compared to the calendar year 1990, and may contain interim goals.】**

*SEC. 364. Each State energy conservation plan with respect to which assistance is made available under this part on or after the date of enactment of the Energy Policy Act of 2005—*

*(1) shall contain a goal, consisting of an improvement of 25 percent or more in the efficiency of use of energy in the State concerned in calendar year 2012 as compared to calendar year 1992; and*

*(2) may contain interim goals.*

\* \* \* \* \*

GENERAL PROVISIONS

SEC. 365 (a). \* \* \*

(e) For the purpose of carrying out this part, there are authorized to be appropriated for **【fiscal years 1999 through 2003 such sums as may be necessary】** \$100,000,000 for each of fiscal years 2006 and 2007 and \$125,000,000 for fiscal year 2008.

\* \* \* \* \*

**PART J—ENCOURAGING THE USE OF ALTERNATIVE FUELS**

**SEC. 400AA. ALTERNATIVE FUEL USE BY LIGHT DUTY FEDERAL VEHICLES.**

(a) DEPARTMENT OF ENERGY PROGRAM.—

\* \* \* \* \*

(3) \* \* \*

**【(E) Dual fueled vehicles acquired pursuant to this section shall be operated on alternative fuels unless the Secretary determines that operation on such alternative fuels is not feasible.】**

*(E)(i) Dual fueled vehicles acquired pursuant to this section shall be operated on alternative fuels unless the Secretary determines that an agency qualifies for a waiver of the requirements of this section for vehicles operated by the agency in a particular geographic area in which—*

*(I) the alternative fuel otherwise required to be used in the vehicle is not reasonably available to retail purchasers of the fuel, as certified to the Secretary by the head of the agency; or*

*(II) the cost of the alternative fuel otherwise required to be used in the vehicle is unreasonably more expen-*

sive compared to gasoline, as certified to the Secretary by the head of the agency.

(ii) The Secretary shall monitor compliance with this subparagraph by all fleets receiving a waiver.

(iii) The Secretary shall report annually to Congress on the extent to which the requirements of this subparagraph are being achieved, including information on annual reductions achieved from the use of petroleum-based fuels and the problems, if any, encountered in acquiring alternative fuels.

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**UNITED STATES HOUSING ACT OF 1937—ACT OF SEPTEMBER 1, 1937, CHAPTER 896, AS AMENDED (42 U.S.C. 1437 ET SEQ.)**

\* \* \* \* \*

SEC. 9. \* \* \*

(d) \* \* \*

(1) \* \* \*

(I) capital expenditures to improve the security and safety of residents[; and];

(J) homeownership activities, including programs under section 32[.];

(K) improvement of energy and water-use efficiency by installing fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2-1998 and A112.18.1-2000, or any revision thereto, applicable at the time of installation, and by increasing energy efficiency and water conservation by such other means as the Secretary determines are appropriate; and

(L) integrated utility management and capital planning to maximize energy conservation and efficiency measures.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(C) TREATMENT OF SAVINGS.—[The treatment] (i) IN GENERAL.—The treatment of utility and waste management costs under the formula shall provide that a public housing agency shall receive the full financial benefit from any reduction in the cost of utilities or waste management resulting from any contract with a third party to undertake energy conservation improvements in one or more of its public housing projects.

(ii) Third party contracts.—Contracts described in clause (i) may include contracts for—

(I) equipment conversions to less costly utility sources;

(II) projects with resident-paid utilities; and (III) adjustments to frozen base year consumption, including systems repaired to meet applicable building and safety



*codes and adjustments for occupancy rates increased by rehabilitation.*

(iii) *TERM OF CONTRACT.*—*The total term of a contract described in clause (i) shall not exceed 20 years to allow longer payback periods for retrofits, including—*

- (I) windows;*
- (II) heating system replacements;*
- (III) wall insulation;*
- (IV) site-based generation; and*
- (V) advanced energy savings technologies, including renewable energy generation and other such retrofits.*

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**CRANSTON-GONZALEZ NATIONAL AFFORDABLE HOUSING ACT—PUBLIC LAW 101-625, AS AMENDED (42 U.S.C. 12701 ET SEQ.)**

SEC. 109. (a) \* \* \*

(1) *IN GENERAL.*—The Secretary of Housing and Urban Development and the Secretary of Agriculture shall, not later than [1 year after the date of the enactment of the Energy Policy Act of 1992] *September 30, 2006*, jointly establish, by rule, energy efficiency standards for—

(A) new construction of public and assisted housing and single family and multifamily residential housing (other than manufactured homes) subject to mortgages insured under the National Housing Act[; and];

(B) new construction of single family housing (other than manufactured homes) subject to mortgages insured, guaranteed, or made by the Secretary of Agriculture under title V of the Housing Act of 1949[.]; and

(C) *rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants, established under section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v), where such standards are determined to be cost effective by the Secretary of Housing and Urban Development.*

(2) *CONTENTS.*—Such standards shall meet or exceed the requirements of the Council of American Building Officials Model Energy Code, 1992 (hereafter in this section referred to as “CABO Model Energy Code, 1992”), or, in the case of multifamily high rises, the requirements of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 90.1–1989 (hereafter in this section referred to as “ASHRAE Standard 90.1–1989”), and, with respect to rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants, established under section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v), the 2003 International Energy Conservation Code, and shall be cost-effective with respect to construction and operating costs on a life-cycle cost basis. In developing such standards, the Secretaries shall consult with an advisory task force composed of homebuilders, national, State, and local housing

agencies (including public housing agencies), energy agencies, building code organizations and agencies, energy efficiency organizations, utility organizations, low-income housing organizations, and other parties designated by the Secretaries.

(b) MODEL ENERGY CODE.—If the Secretaries have not, [within 1 year after the date of the enactment of the Energy Policy Act of 1992] *by September 30, 2006*, established energy efficiency standards under subsection (a), all new construction of housing specified in such subsection shall meet the requirements of CABO Model Energy Code, 1992, or, in the case of multifamily high rises, the requirements of ASHRAE Standard 90.1–1989), *and, with respect to rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants, established under section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v), the 2003 International Energy Conservation Code.*

(c) REVISIONS OF MODEL ENERGY CODE *and the International Energy Conservation Code.*—If the requirements of CABO Model Energy Code, 1992, or, in the case of multifamily high rises, ASHRAE Standard 90.1–1989 *or, with respect to rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants, established under section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v), the 2003 International Energy Conservation Code are revised at any time, the Secretaries* shall, not later than 1 year after such revision, amend the standards established under subsection (a) to meet or exceed the requirements of such revised code or standard unless the Secretaries determine that compliance with such revised code or standard would not result in a significant increase in energy efficiency or would not be technologically feasible or economically justified.

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**ENERGY POLICY ACT OF 1992—PUBLIC LAW  
102–486, AS AMENDED (42 U.S.C. 13211 ET SEQ.)**

\* \* \* \* \*

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

\* \* \* \* \*

TITLE III—NATURAL GAS

\* \* \* \* \*

**[Sec. 306.—Agency Incentives Program.]**  
***Sec. 306—Federal agency ethanol-blended gasoline and biodiesel purchasing requirements.***

\* \* \* \* \*

TITLE V—AVAILABILITY AND USE OF REPLACEMENT FUELS,  
ALTERNATIVE FUELS, AND ALTERNATIVE FUELED PRIVATE VEHICLES

\* \* \* \* \*

**[Sec. 514. Authorization of Appropriations.]**  
*Sec. 514. Alternative compliance.*  
*Sec. 515. Authorization of appropriations.*  
*Sec. 516. Termination of authority.*

\* \* \* \* \*

TITLE XXXVI—INDIAN ENERGY RESOURCES

- 【Sec. 2601. Definitions.
- 【Sec. 2602. Tribal Consultation.
- 【Sec. 2603. Promoting energy resource development and energy vertical integration on Indian reservations.
- 【Sec. 2604. Indian energy resource regulation.
- 【Sec. 2605. Indian Energy Resource Commission.
- 【Sec. 2606. Tribal government energy assistance program.】
- Sec. 2601. Definitions.*
- Sec. 2602. Indian tribal energy resource development.*
- Sec. 2603. Indian tribal energy resource regulation.*
- Sec. 2604. Leases, business agreements, and rights-of-way involving energy development or transmission.*
- Sec. 2605. Federal Power Marketing Administrations.*
- Sec. 2606. Wind and hydropower feasibility study.*

\* \* \* \* \*

**TITLE III—ALTERNATIVE FUELS—GENERAL**

\* \* \* \* \*

**SEC. 303. MINIMUM FEDERAL FLEET REQUIREMENT.**

\* \* \* \* \*

(c) **ALLOCATION OF INCREMENTAL COSTS.**—The General Services Administration and any other Federal agency that procures motor vehicles for distribution to other Federal agencies [may] *shall* allocate the incremental cost of alternative fueled vehicles over the cost of comparable gasoline vehicles across the entire fleet of motor vehicles distributed by such agency.

\* \* \* \* \*

**【SEC. 306. AGENCY INCENTIVES PROGRAM.**

【(a) **REDUCTION IN RATES.**—To encourage and promote use of alternative fueled vehicles in Federal agencies, the Administrator of General Services may offer a reduction in fees charged to agencies for the lease of alternative fueled vehicles below those fees charged for the lease of comparable conventionally fueled motor vehicles.

【(b) **SUNSET PROVISION.**—This section shall cease to be effective 3 years after the date of the enactment of this Act.】

**SEC. 306. FEDERAL AGENCY ETHANOL-BLENDED GASOLINE AND BIODIESEL PURCHASING REQUIREMENT.**

(a) **ETHANOL-BLENDED GASOLINE.**—*The head of each Federal agency shall ensure that, in areas in which ethanol-blended gasoline is reasonably available at a generally competitive price, the Federal agency purchases ethanol-blended gasoline containing at least 10 percent ethanol rather than nonethanol-blended gasoline, for use in vehicles used by the agency that use gasoline.*

(b) **BIODIESEL.**—

(1) **DEFINITION OF BIODIESEL.**—*In this subsection, the term “biodiesel” has the meaning given the term in section 312(f).*

(2) **REQUIREMENT.**—*The head of each Federal agency shall ensure that the Federal agency purchases, for use in fueling fleet vehicles that use diesel fuel used by the Federal agency at the location at which fleet vehicles of the Federal agency are centrally fueled, in areas in which the biodiesel-blended diesel*

*fuel described in subparagraphs (A) and (B) is available at a generally competitive price—*

*(A) as of the date that is 5 years after the date of enactment of this paragraph, biodiesel-blended diesel fuel that contains at least 20 percent biodiesel, rather than nonbiodiesel-blended diesel fuel; and*

*(B) as of the date that is 10 years after the date of enactment of this paragraph, biodiesel-blended diesel fuel that contains at least 20 percent biodiesel, rather than nonbiodiesel-blended diesel fuel.*

**(3) REQUIREMENT OF FEDERAL LAW.**—*The provisions of this subsection shall not be considered a requirement of Federal law for the purposes of section 312.*

**(c) EXEMPTION.**—*This section does not apply to fuel used in vehicles excluded from the definition of “fleet” by subparagraphs (A) through (H) of section 301(9).*

\* \* \* \* \*

**SEC. 310. REPORTS.**

\* \* \* \* \*

**(b) COMPLIANCE REPORT.**—

**(1) IN GENERAL.**—*Not later than [1 year after the date of enactment of this subsection] February 15, 2006, and annually thereafter for the next 14 years, the head of each Federal agency which is subject to this Act and Executive Order No. 13031 shall prepare, and submit to Congress, a report that—*

\* \* \* \* \*

**TITLE V—AVAILABILITY AND USE OF REPLACEMENT FUELS, ALTERNATIVE FUELS, AND ALTERNATIVE FUELED PRIVATE VEHICLES**

\* \* \* \* \*

**SEC. 508. CREDITS.**

**(a) IN GENERAL.**—**[The Secretary]**

*(1) The Secretary shall allocate a credit to a fleet or covered person that is required to acquire an alternative fueled vehicle under this title, if that fleet or person acquires an alternative fueled vehicle in excess of the number that fleet or person is required to acquire under this title or acquires an alternative fueled vehicle before the date that fleet or person is required to acquire an alternative fueled vehicle under such title.*

*(2) Not later than January 31, 2007, the Secretary shall—*

*(A) allocate credit in an amount to be determined by the Secretary for—*

*(i) acquisition of—*

*(I) a light-duty hybrid electric vehicle;*

*(II) a plug-in hybrid electric vehicle;*

*(III) a fuel cell electric vehicle;*

*(IV) a medium- or heavy-duty dedicated vehicle;*

*and (ii) investment in qualified alternative fuel in-*

*frastructure or nonroad equipment, as determined by the Secretary; and*  
*(B) allocate more than 1, but not to exceed 5 credits for investment in an emerging technology relating to any vehicle described in subparagraph (A) to encourage—*  
*(i) a reduction in petroleum demand;*  
*(ii) technological advancement; and*  
*(iii) environmental safety.*

\* \* \* \* \*

**SEC. 514. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Secretary for carrying out this title \$10,000,000 for each of the fiscal years 1993 through 1997, and such sums as may be necessary for fiscal years 1998 through 2000.】

**SEC. 514. ALTERNATIVE COMPLIANCE.**

*(a) APPLICATION FOR WAIVER.—Any covered person subject to section 501 and any State subject to section 507(o) may petition the Secretary for a waiver of the applicable requirements of section 501 or 507(o).*

*(b) GRANT OF WAIVER.—The Secretary shall grant a waiver of the requirements of section 501 or 507(o) on a showing that the fleet owned, operated, leased, or otherwise controlled by the State or covered person—*

*(1) will achieve a reduction in the annual consumption of petroleum fuels by the fleet equal to—*

*(A) the reduction in consumption of petroleum that would result from 100 percent cumulative compliance with the fuel use requirements of section 501; or*

*(B) in the case of an entity covered under section 507(o), a reduction equal to the annual consumption by the State entity of alternative fuels if all of the cumulative alternative fuel vehicles of the State entity given credit under section 508 were to use alternative fuel 100 percent of the time; and*

*(2) is in compliance with all applicable vehicle emission standards established by the Administrator of the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 et seq.).*

*(c) REVOCATION OF WAIVER.—The Secretary shall revoke any waiver granted under this section if the State or covered person fails to comply with subsection (b).*

\* \* \* \* \*

**SEC. 516. TERMINATION OF AUTHORITY.**

*The authority provided by sections 501, 507, and 508 terminates the earlier of—*

*(1) September 30, 2015; or*

*(2) the date, the Secretary has established, by rule, a replacement program that achieves the goals of those sections.*

\* \* \* \* \*

**SEC. 1212. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

*(a) INCENTIVE PAYMENTS.—*

(1) For electric energy generated and sold by a qualified renewable energy 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.

(2) The amount of such payment made to any such owner or operator shall be as determined under subsection (e).

(3) 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.]

(4)(A) *Subject to subparagraph (B), if there are insufficient appropriations to make full payments for electric production from all qualified renewable energy facilities for a fiscal year, the Secretary shall assign—*

*(i) 60 percent of appropriated funds for the fiscal year to facilities that use solar, wind, geothermal, or closed-loop (dedicated energy crops) biomass technologies to generate electricity; and*

*(ii) 40 percent of appropriated funds for the fiscal year to other projects.*

*(B) After submitting to Congress an explanation of the reasons for the alteration, the Secretary may alter the percentage requirements of subparagraph (A). [Such application shall be in such form, and shall be submitted at such time, as the Secretary shall establish.]*

(b) QUALIFIED RENEWABLE ENERGY FACILITY.—For purposes of this section, a qualified renewable energy facility is a facility which is owned by [a State or any political subdivision of a State (or an agency, authority, or instrumentality of a State or a political subdivision), by any corporation or association which is wholly owned, directly or indirectly, by one or more of the foregoing, or by a non-profit electrical cooperative] *a not-for-profit electric cooperative, a public utility described in section 115 of the Internal Revenue Code of 1986, a State, Commonwealth, territory, or possession of the United States, or the District of Columbia, or a political subdivision thereof, or an Indian tribal government or subdivision thereof, and which generates electric energy for sale in, or affecting, interstate commerce using solar, wind, biomass, landfill gas or geothermal energy, except that—*

(1) the burning of municipal solid waste shall not be treated as using biomass energy; and

(2) geothermal energy shall not include energy produced from a dry steam geothermal reservoir which has—

(A) no mobile liquid in its natural state;

(B) steam quality of 95 percent water; and

(C) an enthalpy for the total produced fluid greater than or equal to 1200 Btu/lb (British thermal units per pound).

(c) ELIGIBILITY WINDOW.—Payments may be made under this section only for electricity generated from a qualified renewable energy facility first used [during the 10-fiscal year period beginning with the first full fiscal year occurring after the enactment of this section] *before October 1, 2016.*

(d) PAYMENT PERIOD.—A qualified renewable energy facility may receive payments under this section for a 10-fiscal year period. Such period shall begin with the fiscal year in which electricity generated from the facility is first eligible for such payments, *or in which the Secretary determines that all necessary Federal and State authorizations have been obtained to begin construction of the facility.*

(e) AMOUNT OF PAYMENT.—

(1) IN GENERAL.—Incentive payments made by the Secretary under this section to the owner or operator of any qualified renewable energy facility shall be based on the number of kilowatt hours of electricity generated by the facility through the use of solar, wind, biomass, *landfill gas* or geothermal energy during the payment period referred to in subsection (d). For any facility, the amount of such payment shall be 1.5 cents per kilowatt hour, adjusted as provided in paragraph (2).

(2) ADJUSTMENTS.—The amount of the payment made to any person under this subsection as provided in paragraph (1) shall be adjusted for inflation for each fiscal year beginning after calendar year 1993 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 1993 shall be substituted for calendar year 1979.

(f) SUNSET.—No payment may be made under this section to any facility after **the expiration of the 20-fiscal year period beginning with the first full fiscal year occurring after the enactment of this section,** *September 30, 2026* and no payment may be made under this section to any facility after a payment has been made with respect to such facility for a 10-fiscal year period.

**[(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for fiscal years 1993, 1994, and 1995 such sums as may be necessary to carry out the purposes of this section.]**

*(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 2006 through 2026, to remain available until expended.*

\* \* \* \* \*

**[TITLE XXVI—INDIAN ENERGY RESOURCES**

**[SEC. 2601. DEFINITIONS.**

**[For purposes of this title—**

**[(1) the term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and**

**[(2) the term “Indian reservation” includes Indian reservations; public domain Indian allotments; former Indian reserva-**

tions in Oklahoma; land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State.

**[SEC. 2602. TRIBAL CONSULTATION.**

【In implementing the provisions of this Act, the Secretary of Energy shall involve and consult with Indian tribes to the maximum extent possible and where appropriate and shall do so in a manner that is consistent with the Federal trust and the Government-to-Government relationships between Indian tribes and the Federal Government.

**[SEC. 2603. PROMOTING ENERGY RESOURCE DEVELOPMENT AND ENERGY VERTICAL INTEGRATION ON INDIAN RESERVATIONS.**

【(a) DEMONSTRATION PROGRAMS.—The Secretary of Energy, in consultation with the Secretary of the Interior, shall establish and implement a demonstration program to assist Indian tribes in pursuing energy self-sufficiency and to promote the development of a vertically integrated energy industry on Indian reservations, in order to increase development of the substantial energy resources located on such Indian reservations. Such program shall include, but not be limited to, the following components:

【(1) The Secretary shall provide development grants to Indian tribes or to joint ventures which are 51 percent or more controlled by an Indian tribe to assist Indian tribes in obtaining the managerial and technical capability needed to develop the energy resources on Indian reservations. Such grants shall include provisions for management training for tribal or village members, improving the technical capacity of the Indian tribe, and the reduction of tribal unemployment. Each grant shall be for a period of 3 years.

【(2) The Secretary shall provide grants, not to exceed 50 percent of the project costs, for vertical integration projects. For purposes of this paragraph, the term “vertical integration project” means a project that promotes the vertical integration of the energy resources on an Indian reservation, so that the energy resources are used or processed on such Indian reservation. Such term includes, but is not limited to, projects involving solar and wind energy, oil refineries, the generation and transmission of electricity, hydroelectricity, cogeneration, natural gas distribution, and clean, innovative uses of coal.

【(3) The Secretary shall provide technical assistance (and such other assistance as is appropriate) to Indian tribes for energy resource development and to promote the vertical integration of energy resources on Indian reservations.

**【(b) LOW INTEREST LOANS.—**

【(1) IN GENERAL.—The Secretary shall establish a program for making low interest loans to Indian tribes. Such loans shall be used exclusively by Indian tribes in the promotion of energy resource development and vertical integration on Indian reservations.



[(2) TERMS.—The Secretary shall establish reasonable terms for loans made under this section which are to be used to carry out the purposes of this section.

[(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

[(1) \$10,000,000 for each of the fiscal years 1994, 1995, 1996, and 1997 to carry out the purposes of subsection (a)(1);

[(2) \$10,000,000 for each of the fiscal years 1994, 1995, 1996, and 1997 to carry out the purposes of subsection (a)(2); and

[(3) \$10,000,000 for each of the fiscal years 1994, 1995, 1996, and 1997 to carry out the purposes of subsection (b).

**[SEC. 2604. INDIAN ENERGY RESOURCE REGULATION.**

[(a) GRANTS.—The Secretary of the Interior is authorized to make annual grants to Indian tribes for the purpose of assisting Indian tribes in the development, administration, implementation, and enforcement of tribal laws and regulations governing the development of energy resources on Indian reservations.

[(b) PURPOSE.—The purposes for which funds provided under a grant awarded under subsection (a) may be used include, but are not limited to—

[(1) the training and education of employees responsible for enforcing or monitoring compliance with Federal and tribal laws and regulations;

[(2) the development of tribal inventories of energy resources;

[(3) the development of tribal laws and regulations;

[(4) the development of tribal legal and governmental infrastructure to regulate environmental quality pursuant to Federal and tribal laws; and

[(5) the enforcement and monitoring of Federal and tribal laws and regulations.

[(c) OTHER ASSISTANCE.—The Secretary of the Interior and the Secretary of Energy shall cooperate with and provide assistance to Indian tribes for the purpose of assisting Indian tribes in the development, administration, and enforcement of tribal programs. Such cooperation and assistance shall include the following:

[(1) Technical assistance and training, including the provision of necessary circulars and training materials.

[(2) Assistance in the preparation and maintenance of a continuing inventory of information on tribal energy resources and tribal operations. In providing assistance under this paragraph, Federal departments and agencies shall make available to Indian tribes all relevant data concerning tribal energy resource development consistent with applicable laws regarding disclosure of proprietary and confidential information.

[(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$10,000,000 for each of the fiscal years 1994, 1995, 1996, and 1997 to carry out the purposes of this section.

**[SEC. 2605. INDIAN ENERGY RESOURCE COMMISSION.**

[(a) ESTABLISHMENT.—There is hereby established the Indian Energy Resource Commission (hereafter in this section referred to as the “Commission”).

[(b) MEMBERSHIP.—The Commission shall consist of—

[(1) 8 members appointed by the Secretary of the Interior from recommendations submitted by Indian tribes with developable energy resources, at least 4 of whom shall be elected tribal leaders;

[(2) 3 members appointed by the Secretary of the Interior from recommendations submitted by the Governors of States that have Indian reservations with developable energy resources;

[(3) 2 members appointed by the Secretary of the Interior from among individuals in the private sector with expertise in tribal and State taxation of energy resources;

[(4) 2 members appointed by the Secretary of the Interior from individuals with expertise in oil and gas royalty management administration, including auditing and accounting;

[(5) 2 members appointed by the Secretary of the Interior from individuals in the private sector with expertise in energy development;

[(6) 1 member appointed by the Secretary of the Interior from recommendations submitted by National environmental organizations;

[(7) the Secretary of the Interior, or his designee; and

[(8) the Secretary of Energy, or his designee.

[(c) APPOINTMENTS.—Members of the Commission shall be appointed not later than 60 days after the date of the enactment of this title.

[(d) VACANCIES.—A vacancy in the Commission shall be filled in the same manner as the original appointment was made. A vacancy in the Commission shall not affect the powers of the Commission.

[(e) CHAIRPERSON.—The members of the Commission shall elect a Chairperson from among the members of the Commission.

[(f) QUORUM.—Eleven members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

[(g) ORGANIZATIONAL MEETING.—The Commission shall hold an organizational meeting to establish the rules and procedures of the Commission not later than 30 days after the members are first appointed to the Commission.

[(h) COMPENSATION.—Each member of the Commission who is not an officer or employee of the United States shall be compensated at a rate established by the Commission, not to exceed the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the actual performance of duties as a member of the Commission. Each member of the Commission who is an officer or employee of the United States shall receive no additional compensation.

[(i) TRAVEL.—While away from their homes or regular places of business in the performance of duties for the Commission, all members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at a rate established by the Commission not to exceed the rates authorized for employees under sections 5702 and 5703 of title 5, United States Code.

[(j) COMMISSION STAFF.—

【(1) EXECUTIVE DIRECTOR.—The Commission shall appoint an Executive Director who shall be compensated at a rate established by the Commission not to exceed the rate of basic pay payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

【(2) ADDITIONAL PERSONNEL.—With the approval of the Commission, the Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Commission. Such appointments shall be made in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, but at rates not to exceed the rate of basic pay payable for level 15 of the General Schedule.

【(3) EXPERTS AND CONSULTANTS.—Subject to such rules as may be issued by the Commission, the Chairperson may procure temporary and intermittent services of experts and consultants to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed \$200 a day for individuals.

【(4) PERSONNEL DETAIL AUTHORIZED.—Upon the request of the Chairperson, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this title. Such detail shall be without interruption or loss of civil service status or privilege.

【(k) DUTIES OF THE COMMISSION.—The Commission shall—

【(1) Develop proposals to address the dual taxation by Indian tribes and States of the extraction of mineral resources on Indian reservations;

【(2) make recommendations to improve the management, administration, accounting and auditing of royalties associated with the production of oil and gas on Indian reservations;

【(3) develop alternatives for the collection and distribution of royalties associated with production of oil and gas on Indian reservations;

【(4) develop proposals on incentives to foster the development of energy resources on Indian reservations;

【(5) identify barriers or obstacles to the development of energy resources on Indian reservations, and make recommendations designed to foster the development of energy resources on Indian reservations and promote economic development;

【(6) develop proposals for the promotion of vertical integration of the development of energy resources on Indian reservations; and

【(7) develop proposals on taxation incentives to foster the development of energy resources on Indian reservations including, but not limited to, investment tax credits and enterprise zone credits.

【(l) POWERS OF THE COMMISSION.—The powers of the Commission shall include the following:

【(1) For the purpose of carrying out its duties under this section, the Commission may hold hearings, take testimony, and receive evidence at such times and places as the Commission

considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before the Commission.

[(2) Any member or employee of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

[(3) The Commission may secure directly from any Federal agency such information as may be necessary to enable the Commission to carry out its duties under this section.

**[(m) COMMISSION REPORT.—**

[(1) IN GENERAL.—The Commission shall, within 12 months after funds are made available to carry out this section, prepare and transmit to the President, the Committee on Interior and Insular Affairs of the House of Representatives, the Select Committee on Indian Affairs: of the Senate, and the Committee on Energy and Natural Resources of the Senate, a report containing the recommendations and proposals specified in subsection (k).

[(2) REVIEW AND COMMENT.—Prior to submission of the report required under this section, the Chairman shall circulate a draft of the report to Indian tribes and States that have Indian reservations with developable energy resources and other interested tribes and States for review and comment.

[(n) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission \$1,000,000 to carry out this section. Such sum shall remain available, without fiscal year limitation, until expended.

[(o) TERMINATION.—The Commission shall terminate 30 days after submitting the final report required by subsection (m).

**[SEC. 2606. TRIBAL GOVERNMENT ENERGY ASSISTANCE PROGRAM.**

[(a) FINANCIAL ASSISTANCE.—The Secretary may grant financial assistance to Indian tribal governments, or private sector persons working in cooperation with Indian tribal governments, to carry out projects to evaluate the feasibility of, develop options for, and encourage the adoption of energy efficiency and renewable energy projects on Indian reservations. Such grants may include the costs of technical assistance in resource assessment, feasibility analysis, technology transfer, and the resolution of other technical, financial, or management issues identified by the applicants for such grants.

[(b) CONDITIONS.—Any applicant for financial assistance under this section must evidence coordination and cooperation with, and support from, local educational institutions and the affected local energy institutions.

[(c) CONSIDERATIONS.—In determining the amount of financial assistance to be provided for a proposed project, the Secretary shall consider—

[(1) the extent of involvement of local educational institutions and local energy institutions;

[(2) the ease and costs of operation and maintenance of any project contemplated as a part of the project;

[(3) whether the measure will contribute significantly to the development, or the quality of the environment, of the affected Indian reservations; and

[(4) any other factors which the Secretary may determine to be relevant to a particular project.

[(d) COST-SHARE.—With the exception of grants awarded for the purpose of feasibility studies, the Secretary shall require at least 20 percent of the costs of any project under this section to be provided from non-Federal sources, unless the grant recipient is a for-profit private sector institution, in which case the Secretary shall require at least 50 percent of the costs of any project to be provided from non-Federal sources.]

[(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to appropriated such sums as are necessary for the development and implementation of the program established by this section.】

## **TITLE XXVI—INDIAN ENERGY**

### **SEC. 2601. DEFINITIONS.**

*In this title:*

(1) *The term “Director” means the Director of the Office of Indian Energy Policy and Programs, Department of Energy.*

(2) *The term “Indian land” means—*

(A) *any land located within the boundaries of an Indian reservation, pueblo, or rancharia;*

(B) *any land not located within the boundaries of an Indian reservation, pueblo, or rancharia, the title to which is held—*

(i) *in trust by the United States for the benefit of an Indian tribe or an individual Indian;*

(ii) *by an Indian tribe or an individual Indian, subject to restriction against alienation under laws of the United States; or*

(iii) *by a dependent Indian community; and*

(C) *land that is owned by an Indian tribe and was conveyed by the United States to a Native Corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or that was conveyed by the United States to a Native Corporation in exchange for such land.*

(3) *The term “Indian reservation” includes—*

(A) *an Indian reservation in existence in any State as of the date of enactment of this paragraph;*

(B) *a public domain Indian allotment; and*

(C) *a dependent Indian community located within the borders of the United States, regardless of whether the community is located—*

(i) *on original or acquired territory of the community; or*

(ii) *within or outside the boundaries of any particular State.*

(4)(A) *The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).*

(B) *For the purpose of paragraph (12) and sections 2603(b)(1)(C) and 2604, the term “Indian tribe” does not include any Native Corporation.*

(5) *The term “integration of energy resources” means any project or activity that promotes the location and operation of a facility (including any pipeline, gathering system, transpor-*

tation system or facility, or electric transmission or distribution facility) on or near Indian land to process, refine, generate electricity from, or otherwise develop energy resources on, Indian land.

(6) The term “Native Corporation” has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(7) The term “organization” means a partnership, joint venture, limited liability company, or other unincorporated association or entity that is established to develop Indian energy resources.

(8) The term “Program” means the Indian energy resource development program established under section 2602(a).

(9) The term “Secretary” means the Secretary of the Interior.

(10) The term “sequestration” means the long-term separation, isolation, or removal of greenhouse gases from the atmosphere, including through a biological or geologic method such as reforestation or an underground reservoir.

(11) The term “tribal energy resource development organization” means an organization of 2 or more entities, at least 1 of which is an Indian tribe, that has the written consent of the governing bodies of all Indian tribes participating in the organization to apply for a grant, loan, or other assistance under section 2602.

(12) The term “tribal land” means any land or interests in land owned by any Indian tribe, title to which is held in trust by the United States, or is subject to a restriction against alienation under laws of the United States.

**SEC. 2602. INDIAN TRIBAL ENERGY RESOURCE DEVELOPMENT.**

(a) DEPARTMENT OF THE INTERIOR PROGRAM.—

(1) To assist Indian tribes in the development of energy resources and further the goal of Indian self-determination, the Secretary shall establish and implement an Indian energy resource development program to assist consenting Indian tribes and tribal energy resource development organizations in achieving the purposes of this title.

(2) In carrying out the Program, the Secretary shall—

(A) provide development grants to Indian tribes and tribal energy resource development organizations for use in developing or obtaining the managerial and technical capacity needed to develop energy resources on Indian land, and to properly account for resulting energy production and revenues;

(B) provide grants to Indian tribes and tribal energy resource development organizations for use in carrying out projects to promote the integration of energy resources, and to process, use, or develop those energy resources, on Indian land; and

(C) provide low-interest loans to Indian tribes and tribal energy resource development organizations for use in the promotion of energy resource development on Indian land and integration of energy resources.

(3) *There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2006 through 2016.*

(b) *DEPARTMENT OF ENERGY INDIAN ENERGY EDUCATION PLANNING AND MANAGEMENT ASSISTANCE PROGRAM.—*

(1) *The Director shall establish programs to assist consenting Indian tribes in meeting energy education, research and development, planning, and management needs.*

(2) *In carrying out this subsection, the Director may provide grants, on a competitive basis, to an Indian tribe or tribal energy resource development organization for use in carrying out—*

(A) *energy, energy efficiency, and energy conservation programs;*

(B) *studies and other activities supporting tribal acquisitions of energy supplies, services, and facilities, including the creation of tribal utilities to assist in securing electricity to promote electrification of homes and businesses on Indian land;*

(C) *planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities located on Indian land; and*

(D) *development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities.*

(3)(A) *The Director shall develop a program to support and implement research projects that provide Indian tribes with opportunities to participate in carbon sequestration practices on Indian land, including—*

(i) *geologic sequestration;*

(ii) *forest sequestration;*

(iii) *agricultural sequestration; and*

(iv) *any other sequestration opportunities the Director considers to be appropriate.*

(B) *The activities carried out under subparagraph (A) shall be—*

(i) *coordinated with other carbon sequestration research and development programs conducted by the Secretary of Energy;*

(ii) *conducted to determine methods consistent with existing standardized measurement protocols to account and report the quantity of carbon dioxide or other greenhouse gases sequestered in projects that may be implemented on tribal land; and*

(iii) *reviewed periodically to collect and distribute to Indian tribes information on carbon sequestration practices that will increase the sequestration of carbon without threatening the social and economic well-being of Indian tribes.*

(4)(A) *The Director, in consultation with Indian tribes, may develop a formula for providing grants under this subsection.*

(B) *In providing a grant under this subsection, the Director shall give priority to any application received from an Indian*

tribe with inadequate electric service (as determined by the Director).

(5) The Secretary of Energy may issue such regulations as the Secretary determines to be necessary to carry out this subsection.

(6) There is authorized to be appropriated to carry out this subsection \$20,000,000 for each of fiscal years 2006 through 2016.

(c) DEPARTMENT OF ENERGY LOAN GUARANTEE PROGRAM.—

(1) Subject to paragraphs (2) and (4), the Secretary of Energy may provide loan guarantees (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) for an amount equal to not more than 90 percent of the unpaid principal and interest due on any loan made to an Indian tribe for energy development.

(2) In evaluating energy development proposals for which the Secretary of Energy may provide a loan guarantee under paragraph (1), the Secretary of Energy shall give priority to any project that uses a new technology, such as coal gasification, carbon capture and sequestration, or renewable energy-based electricity generation, if competing proposals are similar with respect to the level at which the proposals meet or exceed the criteria established by the Secretary of Energy for the loan guarantee program.

(3) A loan guarantee under this subsection shall be made by—

(A) a financial institution subject to examination by the Secretary of Energy; or

(B) an Indian tribe, from funds of the Indian tribe.

(4) The aggregate outstanding amount guaranteed by the Secretary of Energy at any time under this subsection shall not exceed \$2,000,000,000.

(5) The Secretary of Energy may issue such regulations as the Secretary of Energy determines are necessary to carry out this subsection.

(6) There are authorized to be appropriated such sums as are necessary to carry out this subsection, to remain available until expended.

(7) Not later than 1 year after the date of enactment of this section, the Secretary of Energy shall submit to Congress a report on the financing requirements of Indian tribes for energy development on Indian land.

(d) PREFERENCE.—

(1) In purchasing electricity or any other energy product or byproduct, a Federal agency or department may give preference to an energy and resource production enterprise, partnership, consortium, corporation, or other type of business organization the majority of the interest in which is owned and controlled by 1 or more Indian tribes.

(2) In carrying out this subsection, a Federal agency or department shall not—

(A) pay more than the prevailing market price for an energy product or byproduct; or



(B) obtain less than prevailing market terms and conditions.

**SEC. 2603. INDIAN TRIBAL ENERGY RESOURCE REGULATION.**

(a) **GRANTS.**—The Secretary may provide to Indian tribes, on an annual basis, grants for use in accordance with subsection (b).

(b) **USE OF FUNDS.**—Funds from a grant provided under this section may be used—

(1)(A) by an Indian tribe for the development of a tribal energy resource inventory or tribal energy resource on Indian land;

(B) by an Indian tribe for the development of a feasibility study or other report necessary to the development of energy resources on Indian land;

(C) by an Indian tribe (other than an Indian Tribe in the State of Alaska, except the Metlakatla Indian Community) for—

(i) the development and enforcement of tribal laws (including regulations) relating to tribal energy resource development; and

(ii) the development of technical infrastructure to protect the environment under applicable law; or

(D) by a Native Corporation for the development and implementation of corporate policies and the development of technical infrastructure to protect the environment under applicable law; and

(2) by an Indian tribe for the training of employees that—

(A) are engaged in the development of energy resources on Indian land; or

(B) are responsible for protecting the environment.

(c) **OTHER ASSISTANCE.**—

(1) In carrying out the obligations of the United States under this title, the Secretary shall ensure, to the maximum extent practicable and to the extent of available resources, that on the request of an Indian tribe, the Indian tribe shall have available scientific and technical information and expertise, for use in the regulation, development, and management of energy resources of the Indian tribe on Indian land.

(2) The Secretary may carry out paragraph (1)—

(A) directly, through the use of Federal officials; or

(B) indirectly, by providing financial assistance to an Indian tribe to secure independent assistance.

**SEC. 2604. LEASES, BUSINESS AGREEMENTS, AND RIGHTS-OF-WAY INVOLVING ENERGY DEVELOPMENT OR TRANSMISSION.**

(a) **LEASES AND BUSINESS AGREEMENTS.**—In accordance with this section—

(1) an Indian tribe may, at the discretion of the Indian tribe, enter into a lease or business agreement for the purpose of energy resource development on tribal land, including a lease or business agreement for—

(A) exploration for, extraction of, processing of, or other development of the energy mineral resources of the Indian tribe located on tribal land; or

(B) construction or operation of—

- (i) an electric generation, transmission, or distribution facility located on tribal land; or
  - (ii) a facility to process or refine energy resources developed on tribal land; and
- (2) a lease or business agreement described in paragraph (1) shall not require the approval of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81), or any other provision of law, if—
- (A) the lease or business agreement is executed pursuant to a tribal energy resource agreement approved by the Secretary under subsection (e);
  - (B) the term of the lease or business agreement does not exceed—
    - (i) 30 years; or
    - (ii) in the case of a lease for the production of oil resources, gas resources, or both, 10 years and as long thereafter as oil or gas is produced in paying quantities; and
  - (C) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including the periodic review and evaluation of the activities of the Indian tribe under the agreement, to be conducted pursuant to subsection (e)(2)(D)(i)).
- (b) **RIGHTS-OF WAY FOR PIPELINES OR ELECTRIC TRANSMISSION OR DISTRIBUTION LINES.**—An Indian tribe may grant a right-of-way over tribal land for a pipeline or an electric transmission or distribution line without approval by the Secretary if—
- (1) the right-of-way is executed in accordance with a tribal energy resource agreement approved by the Secretary under subsection (e);
  - (2) the term of the right-of-way does not exceed 30 years;
  - (3) the pipeline or electric transmission or distribution line serves—
    - (A) an electric generation, transmission, or distribution facility located on tribal land; or
    - (B) a facility located on tribal land that processes or refines energy resources developed on tribal land; and
  - (4) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including the periodic review and evaluation of the activities of the Indian tribe under an agreement described in subparagraphs (D) and (E) of subsection (e)(2)).
- (c) **RENEWALS.**—A lease or business agreement entered into, or a right-of-way granted, by an Indian tribe under this section may be renewed at the discretion of the Indian tribe in accordance with this section.
- (d) **VALIDITY.**—No lease, business agreement, or right-of-way relating to the development of tribal energy resources under this section shall be valid unless the lease, business agreement, or right-of-way is authorized by a tribal energy resource agreement approved by the Secretary under subsection (e)(2).
- (e) **TRIBAL ENERGY RESOURCE AGREEMENTS.**—

(1) On the date on which regulations are promulgated under paragraph (8), an Indian tribe may submit to the Secretary for approval a tribal energy resource agreement governing leases, business agreements, and rights-of-way under this section.

(2)(A) Not later than 1 year after the date on which the Secretary receives a tribal energy resource agreement from an Indian tribe under paragraph (1), or not later than 60 days after the Secretary receives a revised tribal energy resource agreement from an Indian tribe under paragraph (4)(C) (or a later date, as agreed to by the Secretary and the Indian tribe), the Secretary shall approve or disapprove the tribal energy resource agreement.

(B) The Secretary shall approve a tribal energy resource agreement submitted under paragraph (1) if—

(i) the Secretary determines that the Indian tribe has demonstrated that the Indian tribe has sufficient capacity to regulate the development of energy resources of the Indian tribe;

(ii) the tribal energy resource agreement includes provisions required under subparagraph (D); and

(iii) the tribal energy resource agreement includes provisions that, with respect to a lease, business agreement, or right-of-way under this section—

(I) ensure the acquisition of necessary information from the applicant for the lease, business agreement, or right-of-way;

(II) address the term of the lease or business agreement or the term of conveyance of the right-of-way;

(III) address amendments and renewals;

(IV) address the economic return to the Indian tribe under leases, business agreements, and rights-of-way;

(V) address technical or other relevant requirements;

(VI) establish requirements for environmental review in accordance with subparagraph (C);

(VII) ensure compliance with all applicable environmental laws, including a requirement that each lease, business agreement, and right-of-way state that the lessee, operator, or right-of-way grantee shall comply with all such laws;

(VIII) identify final approval authority;

(IX) provide for public notification of final approvals;

(X) establish a process for consultation with any affected States regarding off-reservation impacts, if any, identified under subparagraph (C)(i);

(XI) describe the remedies for breach of the lease, business agreement, or right-of-way;

(XII) require each lease, business agreement, and right-of-way to include a statement that, if any of its provisions violates an express term or requirement of the tribal energy resource agreement pursuant to which the lease, business agreement, or right-of-way was executed—

(aa) the provision shall be null and void; and

(bb) if the Secretary determines the provision to be material, the Secretary may suspend or rescind the lease, business agreement, or right-of-way or take other appropriate action that the Secretary determines to be in the best interest of the Indian tribe;

(XIII) require each lease, business agreement, and right-of-way to provide that it will become effective on the date on which a copy of the executed lease, business agreement, or right-of-way is delivered to the Secretary in accordance with regulations promulgated under paragraph (8);

(XIV) include citations to tribal laws, regulations, or procedures, if any, that set out tribal remedies that must be exhausted before a petition may be submitted to the Secretary under paragraph (7)(B);

(XV) specify the financial assistance, if any, to be provided by the Secretary to the Indian tribe to assist in implementation of the tribal energy resource agreement, including environmental review of individual projects; and

(XVI) in accordance with the regulations promulgated by the Secretary under paragraph (8), require that the Indian tribe, as soon as practicable after receipt of a notice by the Indian tribe, give written notice to the Secretary of—

(aa) any breach or other violation by another party of any provision in a lease, business agreement, or right-of-way entered into under the tribal energy resource agreement; and

(bb) any activity or occurrence under a lease, business agreement, or right-of-way that constitutes a violation of Federal or tribal environmental laws.

(C) Tribal energy resource agreements submitted under paragraph (1) shall establish, and include provisions to ensure compliance with, an environmental review process that, with respect to a lease, business agreement, or right-of-way under this section, provides for, at a minimum—

(i) the identification and evaluation of all significant environmental effects (as compared to a no-action alternative), including effects on cultural resources;

(ii) the identification of proposed mitigation measures, if any, and incorporation of the mitigation measures into the lease, business agreement, or right-of-way;

(iii) a process for ensuring that—

(I) the public is informed of, and has an opportunity to comment on, the environmental impacts of the proposed action; and

(II) responses to relevant and substantive comments are provided, before tribal approval of the lease, business agreement, or right-of-way;

(iv) sufficient administrative support and technical capability to carry out the environmental review process; and

(v) oversight by the Indian tribe of energy development activities by any other party under any lease, business agreement, or right-of-way entered into pursuant to the tribal energy resource agreement, to determine whether the activities are in compliance with the tribal energy resource agreement and applicable Federal environmental laws.

(D) A tribal energy resource agreement between the Secretary and an Indian tribe under this subsection shall include—

(i) provisions requiring the Secretary to conduct a periodic review and evaluation to monitor the performance of the activities of the Indian tribe associated with the development of energy resources under the tribal energy resource agreement; and

(ii) if a periodic review and evaluation, or an investigation, by the Secretary of any breach or violation described in a notice provided by the Indian tribe to the Secretary in accordance with subparagraph (B)(iii)(XVI), results in a finding by the Secretary of imminent jeopardy to a physical trust asset arising from a violation of the tribal energy resource agreement or applicable Federal laws, provisions authorizing the Secretary to take actions determined by the Secretary to be necessary to protect the asset, including reassignment of responsibility for activities associated with the development of energy resources on tribal land until the violation and any condition that caused the jeopardy are corrected.

(E) Periodic review and evaluation under subparagraph (D) shall be conducted on an annual basis, except that, after the third annual review and evaluation, the Secretary and the Indian tribe may mutually agree to amend the tribal energy resource agreement to authorize the review and evaluation under subparagraph (D) to be conducted once every 2 years.

(3) The Secretary shall provide notice and opportunity for public comment on tribal energy resource agreements submitted for approval under paragraph (1).

(4) If the Secretary disapproves a tribal energy resource agreement submitted by an Indian tribe under paragraph (1), the Secretary shall, not later than 10 days after the date of disapproval—

(A) notify the Indian tribe in writing of the basis for the disapproval;

(B) identify what changes or other actions are required to address the concerns of the Secretary; and

(C) provide the Indian tribe with an opportunity to revise and resubmit the tribal energy resource agreement.

(5) If an Indian tribe executes a lease or business agreement, or grants a right-of-way, in accordance with a tribal energy re-

source agreement approved under this subsection, the Indian tribe shall, in accordance with the process and requirements under regulations promulgated under paragraph (8), provide to the Secretary—

(A) a copy of the lease, business agreement, or right-of-way document (including all amendments to and renewals of the document); and

(B) in the case of a tribal energy resource agreement or a lease, business agreement, or right-of-way that permits payments to be made directly to the Indian tribe, information and documentation of those payments sufficient to enable the Secretary to discharge the trust responsibility of the United States to enforce the terms of, and protect the rights of the Indian tribe under, the lease, business agreement, or right-of-way.

(6)(A) In carrying out this section, the Secretary shall—

(i) act in accordance with the trust responsibility of the United States relating to mineral and other trust resources; and

(ii) act in good faith and in the best interests of the Indian tribes.

(B) Subject to the provisions of subsections (a)(2), (b), and (c), waiving the requirement of Secretarial approval of leases, business agreements, and rights-of-way executed pursuant to tribal energy resource agreements approved under this section, and the provisions of subparagraph (D), nothing in this section shall absolve the United States from any responsibility to Indians or Indian tribes, including, but not limited to, those which derive from the trust relationship, or from any treaties, statutes, and other laws of the United States, Executive Orders, or agreements between the United States and any Indian tribe.

(C) The Secretary shall continue to fulfill the trust obligation of the United States to ensure that the rights and interests of an Indian tribe are protected if—

(i) any other party to a lease, business agreement, or right-of-way violates any applicable Federal law or the terms of any lease, business agreement, or right-of-way under this section; or

(ii) any provision in a lease, business agreement, or right-of-way violates the tribal energy resource agreement pursuant to which the lease, business agreement, or right-of-way was executed.

(D)(i) In this subparagraph, the term “negotiated term” means any term or provision that is negotiated by an Indian tribe and any other party to a lease, business agreement, or right-of-way entered into pursuant to an approved tribal energy resource agreement.

(ii) Notwithstanding subparagraph (B), the United States shall not be liable to any party (including any Indian tribe) for any negotiated term of, or any loss resulting from the negotiated terms of, a lease, business agreement, or right-of-way executed pursuant to and in accordance with a tribal energy resource agreement approved by the Secretary under paragraph (2).

(7)(A) *In this paragraph, the term “interested party” means any person (including an entity) that has demonstrated that an interest of the person has sustained, or will sustain, an adverse environmental impact as a result of the failure of an Indian tribe to comply with a tribal energy resource agreement of the Indian tribe approved by the Secretary under paragraph (2).*

(B) *After exhaustion of any tribal remedy, and in accordance with regulations promulgated by the Secretary under paragraph (8), an interested party may submit to the Secretary a petition to review the compliance by an Indian tribe with a tribal energy resource agreement of the Indian tribe approved by the Secretary under paragraph (2).*

(C)(i) *Not later than 20 days after the date on which the Secretary receives a petition under subparagraph (B), the Secretary shall—*

- (I) provide to the Indian tribe a copy of the petition; and*
- (II) consult with the Indian tribe regarding any non-compliance alleged in the petition.*

*(ii) Not later than 45 days after the date on which a consultation under clause (i)(II) takes place, the Indian tribe shall respond to any claim made in a petition under subparagraph (B).*

*(iii) The Secretary shall act in accordance with subparagraphs (D) and (E) only if the Indian tribe—*

- (I) denies, or fails to respond to, each claim made in the petition within the period described in clause (ii); or*
- (II) fails, refuses, or is unable to cure or otherwise resolve each claim made in the petition within a reasonable period, as determined by the Secretary, after the expiration of the period described in clause (ii).*

(D)(i) *Not later than 120 days after the date on which the Secretary receives a petition under subparagraph (B), the Secretary shall determine whether the Indian tribe is not in compliance with the tribal energy resource agreement.*

*(ii) The Secretary may adopt procedures under paragraph (8) authorizing an extension of time, not to exceed 120 days, for making the determination under clause (i) in any case in which the Secretary determines that additional time is necessary to evaluate the allegations of the petition.*

*(iii) Subject to subparagraph (E), if the Secretary determines that the Indian tribe is not in compliance with the tribal energy resource agreement, the Secretary shall take such action as the Secretary determines to be necessary to ensure compliance with the tribal energy resource agreement, including—*

- (I) temporarily suspending any activity under a lease, business agreement, or right-of-way under this section until the Indian tribe is in compliance with the approved tribal energy resource agreement; or*
- (II) rescinding approval of all or part of the tribal energy resource agreement, and if all of the agreement is rescinded, reassuming the responsibility for approval of any future leases, business agreements, or rights-of-way described in subsection (a) or (b).*

(E) *Before taking an action described in subparagraph (D)(iii), the Secretary shall—*

- (i) make a written determination that describes the manner in which the tribal energy resource agreement has been violated;
  - (ii) provide the Indian tribe with a written notice of the violations together with the written determination; and
  - (iii) before taking any action described in subparagraph (D)(iii) or seeking any other remedy, provide the Indian tribe with a hearing and a reasonable opportunity to attain compliance with the tribal energy resource agreement.
- (F) An Indian tribe described in subparagraph (E) shall retain all rights to appeal under any regulation promulgated by the Secretary.
- (8) Not later than 1 year after the date of enactment of the Energy Policy Act of 2005, the Secretary shall promulgate regulations that implement this subsection, including—
- (A) criteria to be used in determining the capacity of an Indian tribe under paragraph (2)(B)(i), including the experience of the Indian tribe in managing natural resources and financial and administrative resources available for use by the Indian tribe in implementing the approved tribal energy resource agreement of the Indian tribe;
  - (B) a process and requirements in accordance with which an Indian tribe may—
    - (i) voluntarily rescind a tribal energy resource agreement approved by the Secretary under this subsection; and
    - (ii) return to the Secretary the responsibility to approve any future lease, business agreement, or right-of-way under this subsection;
  - (C) provisions establishing the scope of, and procedures for, the periodic review and evaluation described in subparagraphs (D) and (E) of paragraph (2), including provisions for review of transactions, reports, site inspections, and any other review activities the Secretary determines to be appropriate; and
  - (D) provisions describing final agency actions after exhaustion of administrative appeals from determinations of the Secretary under paragraph (7).
- (f) **NO EFFECT ON OTHER LAW.**—Nothing in this section affects the application of—
- (1) any Federal environmental law;
  - (2) the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); or
  - (3) except as otherwise provided in this title, the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.).
- (g) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary such sums as are necessary for each of fiscal years 2006 through 2016 to carry out this section and to make grants or provide other appropriate assistance to Indian tribes to assist the Indian tribes in developing and implementing tribal energy resource agreements in accordance with this section.

**SEC. 2605. FEDERAL POWER MARKETING ADMINISTRATIONS.**

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



(1) The term “Administrator” means the Administrator of the Bonneville Power Administration and the Administrator of the Western Area Power Administration.

(2) The term “power marketing administration” means—

(A) the Bonneville Power Administration;

(B) the Western Area Power Administration; and

(C) any other power administration the power allocation of which is used by or for the benefit of an Indian tribe located in the service area of the administration.

(b) ENCOURAGEMENT OF INDIAN TRIBAL ENERGY DEVELOPMENT.—Each Administrator shall encourage Indian tribal energy development by taking such actions as the Administrators determine to be appropriate, including administration of programs of the power marketing administration, in accordance with this section.

(c) ACTION BY ADMINISTRATORS.—In carrying out this section, in accordance with laws in existence on the date of enactment of the Energy Policy Act of 2005—

(1) each Administrator shall consider the unique relationship that exists between the United States and Indian tribes;

(2) power allocations from the Western Area Power Administration to Indian tribes may be used to meet firming and reserve needs of Indian-owned energy projects on Indian land;

(3) the Administrator of the Western Area Power Administration may purchase non-federally generated power from Indian tribes to meet the firming and reserve requirements of the Western Area Power Administration; and

(4) each Administrator shall not—

(A) pay more than the prevailing market price for an energy product; or

(B) obtain less than prevailing market terms and conditions.

(d) ASSISTANCE FOR TRANSMISSION SYSTEM USE.—

(1) An Administrator may provide technical assistance to Indian tribes seeking to use the high-voltage transmission system for delivery of electric power.

(2) The costs of technical assistance provided under paragraph (1) shall be funded—

(A) by the Secretary of Energy using nonreimbursable funds appropriated for that purpose; or

(B) by any appropriate Indian tribe.

(e) POWER ALLOCATION STUDY.—Not later than 2 years after the date of enactment of the Energy Policy Act of 2005, the Secretary of Energy shall submit to Congress a report that—

(1) describes the use by Indian tribes of Federal power allocations of the power marketing administration (or power sold by the Southwestern Power Administration) to or for the benefit of Indian tribes in a service area of the power marketing administration; and

(2) identifies—

(A) the quantity of power allocated to, or used for the benefit of, Indian tribes by the Western Area Power Administration;

(B) the quantity of power sold to Indian tribes by any other power marketing administration; and

(C) barriers that impede tribal access to and use of Federal power, including an assessment of opportunities to remove those barriers and improve the ability of power marketing administrations to deliver Federal power.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section \$750,000, non-reimbursable, to remain available until expended.

**SEC 2606. WIND AND HYDROPOWER FEASIBILITY STUDY.**

(a) **STUDY.**—The Secretary of Energy, in coordination with the Secretary of the Army and the Secretary, shall conduct a study of the cost and feasibility of developing a demonstration project that uses wind energy generated by Indian tribes and hydropower generated by the Army Corps of Engineers on the Missouri River to supply firming power to the Western Area Power Administration.

(b) **SCOPE OF STUDY.**—The study shall—

(1) determine the feasibility of blending wind energy and hydropower generated from the Missouri River dams operated by the Army Corps of Engineers;

(2) review historical and projected requirements for, and patterns of availability and use of, firming power;

(3) assess the wind energy resource potential on tribal land and projected cost savings through a blend of wind and hydropower over a 30-year period;

(4) determine seasonal capacity needs and associated transmission upgrades for integration of tribal wind generation; and

(5) include an independent tribal engineer as a study team member.

(c) **REPORT.**—Not later than 1 year after the date of enactment of the Energy Policy Act of 2005, the Secretary and the Secretary of the Army shall submit to Congress a report that describes the results of the study, including—

(1) an analysis of the potential energy cost or benefits to the customers of the Western Area Power Administration through the use of combined wind and hydropower;

(2) an evaluation of whether a combined wind and hydropower system can reduce reservoir fluctuation, enhance efficient and reliable energy production, and provide Missouri River management flexibility;

(3) recommendations for a demonstration project to be carried out by the Western Area Power Administration, in partnership with an Indian tribal government or tribal energy resource development organization, to demonstrate the feasibility and potential of using wind energy produced on Indian land to supply firming energy to the Western Area Power Administration or any other Federal power marketing agency; and

(4) an identification of—

(A) the economic and environmental costs of, or benefits to be realized through, a Federal-tribal partnership; and

(B) the manner in which a Federal-tribal partnership could contribute to the energy security of the United States.

(d) **FUNDING.**—

(1) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section \$1,000,000, to remain available until expended.

(2) *NONREIMBURSABILITY.*—Costs incurred by the Secretary in carrying out this section shall be nonreimbursable.

**FARM SECURITY AND RURAL INVESTMENT ACT OF 2002—PUBLIC LAW 107-171, (7 U.S.C. 8108(a)(3)(A))**

TITLE IX—ENERGY

BIOENERGY PROGRAM

SEC. 9010

(a) \* \* \*

(3) **ELIGIBLE COMMODITY.**—The term “eligible commodity” means—

(A) wheat, corn, grain sorghum, barley, oats, rice, soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard, crambe, sesame seed, *potatoes, sugarcane, sugar beets, products of sugarcane or sugar beets,* and cottonseed;

**GEOHERMAL STEAM ACT OF 1970—PUBLIC LAW 91-581, AS AMENDED (30 U.S.C. 1001 ET SEQ.)**

AN ACT To authorize the Secretary of the Interior to make disposition of [geothermal steam and associated geothermal resources] *geothermal resources*, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That this]*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Geothermal Steam Act of 1970”.  
[SEC. 2. As]

**SEC. 2. DEFINITIONS.**

As used in this Act, the term—

\* \* \* \* \*

(c) “[geothermal steam and associated geothermal resources] *geothermal resources*” means (i) all products of geothermal processes, embracing indigenous steam, hot water and hot brines; (ii) steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations; (iii) heat or other associated energy found in geothermal formations; and (iv) any byproduct derived from;

\* \* \* \* \*

[(e) “known geothermal resources area” means an area in which the geology, nearby discoveries, competitive interests, or other indications would, in the opinion of the Secretary, engender a belief in men who are experienced in the subject matter that the prospects for extraction of geothermal steam or associated geothermal resources

are good enough to warrant expenditures of money for that purpose.] (e) "direct use" means use of geothermal resources for commercial, residential, agricultural, public facilities, or other energy needs other than the commercial production of electricity; and

\* \* \* \* \*

**【SEC. 3. Subject】**

**SEC. 3. LANDS SUBJECT TO GEOTHERMAL LEASING.**

Subject to the provisions of section 15 of this Act, the Secretary of the Interior may issue leases for the development and utilization of **【geothermal steam and associated geothermal resources】** *geothermal resources* (1) in lands administered by him, including public, withdrawn, and acquired lands, (2) in any national forest or other lands administered by the Department of Agriculture through the Forest Service, including Public, withdrawn, and acquired lands, and (3) in lands which have been conveyed by the United States subject to a reservation to the United States of the **【geothermal steam and associated geothermal resources】** *geothermal resources* therein.

**【SEC. 4. If lands to be leased under this Act are within any known geothermal resources area, they shall be leased to the highest responsible qualified bidder by competitive bidding under regulations formulated by the Secretary. If the lands to be leased are not within any known geothermal resources area, the qualified person first making application for the lease shall be entitled to a lease of such lands without competitive bidding. Notwithstanding the foregoing, at any time within one hundred and eighty days following the effective date of this Act:】**

**【(a) with respect to all lands which were on September 7, 1965, subject to valid leases or permits issued under the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.), or under the Mineral Leasing Act of Acquired Lands, as amended (30 U.S.C. 351, 358), or to existing mining claims located on or prior to September 7, 1965, the lessees or permittees or claimants or their successors in interest who are qualified to hold geothermal leases shall have the right to convert such leases or permits or claims to geothermal leases covering the same lands;】**

**【(b) where there are conflicting claims, leases, or permits therefore embracing the same land, the person who first was issued a lease or permit, or who first recorded the mining claim shall be entitled to first consideration;】**

**【(c) with respect to all lands which were on September 7, 1965, the subject of applications for leases or permits under the above Acts, the applicants may convert their applications to applications for geothermal leases having priorities dating from the time of filing of such applications under such Acts;】**

**【(d) no person shall be permitted to convert mineral leases, permits, applications therefore, or mining claims for more than 10,240 acres;】**

**【(e) the conversion of leases, permits, and mining claims and applications for leases and permits shall be accomplished in accordance with regulations prescribed by the Secretary. No right to conversion to a geothermal lease shall accrue to any person under this section unless such person shows to the reasonable satisfaction of**

the Secretary that substantial expenditures for the exploration, development, or production of geothermal steam have been made by the applicant who is seeking conversion, on the lands for which a lease is sought or on adjoining, adjacent, or nearby Federal or non-Federal lands; and】

【(f) with respect to lands within any known geothermal resources area and which are subject to a right to conversion to a geothermal lease, such lands shall be leased by competitive bidding: Provided, That the competitive geothermal lease shall be issued to the person owning the right to conversion to a geothermal lease if he makes payment of an amount equal to the highest bona fide bid for the competitive geothermal lease, plus the rental for the first year, within thirty days after he receives written notice from the Secretary of the amount of the highest bid.】

**SEC. 4. LEASING PROCEDURES.**

(a) *NOMINATIONS.*—*The Secretary shall accept nominations of land to be leased at any time from qualified companies and individuals under this Act.*

(b) *COMPETITIVE LEASE SALE REQUIRED.*—

(1) *IN GENERAL.*—*Except as otherwise specifically provided by this Act, all land to be leased that is not subject to leasing under subsection (c) shall be leased as provided in this subsection to the highest responsible qualified bidder, as determined by the Secretary.*

(2) *COMPETITIVE LEASE SALES.*—*The Secretary shall hold a competitive lease sale at least once every 2 years for land in a State that has nominations pending under subsection (a) if the land is otherwise available for leasing.*

(c) *NONCOMPETITIVE LEASING.*—*The Secretary shall make available for a period of 2 years for noncompetitive leasing any tract for which a competitive lease sale is held, but for which the Secretary does not receive any bids in a competitive lease sale.*

(d) *PENDING LEASE APPLICATIONS.*—

(1) *IN GENERAL.*—*It shall be a priority for the Secretary, and for the Secretary of Agriculture with respect to National Forest Systems land, to ensure timely completion of administrative actions necessary to process applications for geothermal leasing pending on May 19, 2005.*

(2) *ADMINISTRATION.*—*An application described in paragraph (1) and any lease issued pursuant to the application—*

*(A) except as provided in subparagraph (B), shall be subject to this section as in effect on the day before the date of enactment of this paragraph; or*

*(B) at the election of the applicant, shall be subject to this section as in effect on the effective date of this paragraph.*

(e) *LEASING FOR DIRECT USE OF GEOTHERMAL RESOURCES.*—*Notwithstanding subsection (b), the Secretary may identify areas in which the land to be leased under this Act exclusively for direct use of geothermal resources without sale for purposes other than commercial generation of electricity may be leased to any qualified applicant that first applies for such a lease under regulations issued by the Secretary, if the Secretary—*

*(1) publishes a notice of the land proposed for leasing not later than 120 days before the date of the issuance of the lease;*

(2) does not receive during the 120-day period beginning on the date of the publication any nomination to include the land concerned in the next competitive lease sale; and

(3) determines there is no competitive interest in the land to be leased.

(f) **AREA SUBJECT TO LEASE FOR DIRECT USE.**—

(1) **IN GENERAL.**—Subject to paragraph (2), a geothermal lease for the direct use of geothermal resources shall cover not more than the quantity of acreage determined by the Secretary to be reasonably necessary for the proposed use.

(2) **LIMITATIONS.**—The quantity of acreage covered by the lease shall not exceed the limitations established under section 7.

**[SEC. 5. Geothermal]**

**SEC. 5. RENTS AND ROYALTIES.**

(a) **IN GENERAL.**—Geothermal leases shall provide for—

**[(a)]** (1) a royalty of not less than 10 per centum or more than 15 per centum of the amount or value of steam, or any other form of heat or energy derived from production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee;

**[(b)(2)]** a royalty of not more than 5 per centum of the value of any byproduct derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee, except that as to any byproduct which is a mineral named in section 1 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181), the rate of royalty for such mineral shall be the same as that provided in that Act and the maximum rate of royalty for such mineral shall not exceed the maximum royalty applicable under that Act; (2) a royalty on any byproduct that is a mineral specified in the first section of the Mineral Leasing Act (30 U.S.C. 181), and that is derived from production under the lease, at the rate of the royalty that applies under that Act to production of the mineral under a lease under that Act;

**[(c)(3)]** payment in advance of an annual rental of not less than \$1 per acre or fraction thereof for each year of the lease. If there is no well on the leased lands capable of producing geothermal resources in commercial quantities, the failure to pay rental on or before the anniversary date shall terminate the lease by operation of law: Provided, however, That whenever the Secretary discovers that the rental payment due under a lease is paid timely but the amount of the payment is deficient because of an error or other reason and the deficiency is nominal, as determined by the Secretary pursuant to regulations prescribed by him, he shall notify the lessee of the deficiency and such lease shall not automatically terminate unless the lessee fails to pay the deficiency within the period prescribed in the notice: Provided further, That where any lease has been terminated automatically by operation of law under this section for failure to pay rental timely and it is shown to the satisfaction of the Secretary of the Interior that the failure to pay timely the lease rental was justifiable or not due to a lack of reasonable diligence, he in his judgment may reinstate the lease if—

**[(1)(A)]** a petition for reinstatement, together with the required rental, is filed with the Secretary of the Interior; and

[(2)(B) no valid lease has been issued affecting any of the lands in the terminated lease prior to the filing of the petition for reinstatement;] (3) *payment in advance of an annual rental of not less than*

(A) *for each of the first through tenth years of the lease—*

(i) *in the case of a lease awarded in a noncompetitive lease sale, \$1 per acre or fraction thereof; or*

(ii) *in the case of a lease awarded in a competitive lease sale, \$2 per acre or fraction thereof for the first year and \$3 per acre or fraction thereof for each of the second through 10th years; and*

(B) *for each year after the 10th year of the lease, \$5 per acre or fraction thereof; and*

[(d)] (4) a minimum royalty of \$2 per acre or fraction thereof in lieu of rental payable at the expiration of each lease year for each producing lease, commencing with the lease year beginning on or after the commencement of production in commercial quantities. For the purpose of determining royalties hereunder the value of any geothermal steam and byproduct used by the lessee and not sold and reasonably susceptible of sale shall be determined by the Secretary, who shall take into consideration the cost of exploration and production and the economic value of the resource in terms of its ultimate utilization.

(b) *DIRECT USE.—*

(1) *IN GENERAL.—Notwithstanding subsection (a)(1), the Secretary shall establish a schedule of fees, in lieu of royalties for geothermal resources, that a lessee or its affiliate—*

(A) *uses for a purpose other than the commercial generation of electricity; and*

(B) *does not sell.*

(2) *SCHEDULE OF FEES.—The schedule of fees—*

(A) *may be based on the quantity or thermal content, or both, of geothermal resources used or any other basis that the Secretary finds appropriate under the circumstances; and*

(B) *shall ensure a fair return to the United States for use of the resource.*

(3) *STATE OR LOCAL GOVERNMENTS.—If a State or local government is the lessee and uses geothermal resources without sale and for purposes other than commercial generation of electricity, the Secretary shall charge only a nominal fee for use of the resource.*

(c) *TERMINATION OF LEASE FOR FAILURE TO PAY RENTAL.—*

(1) *IN GENERAL.—The Secretary shall terminate any lease with respect to which rental is not paid in accordance with this Act and the terms of the lease under which the rental is required, on the expiration of the 45-day period beginning on the date of the failure to pay the rental.*

(2) *NOTIFICATION.—The Secretary shall promptly notify a lessee that has not paid rental required under the lease that the lease will be terminated at the end of the period referred to in paragraph (1).*

(3) *REINSTATEMENT.—A lease that would otherwise terminate under paragraph (1) shall not terminate under that paragraph*

*if the lessee pays to the Secretary, before the end of the period referred to in paragraph (1), the amount of rental due plus a late fee equal to 10 percent of the amount.*

(d) *ADVANCED ROYALTIES REQUIRED FOR CESSATION OF PRODUCTION.*—

(1) *IN GENERAL.*—*Subject to paragraphs (2) and (3), if, at any time after commercial production under a lease is achieved, production ceases for any reason, the lease shall remain in full force and effect for a period of not more than an aggregate number of 10 years beginning on the date production ceases, if, during the period in which production is ceased, the lessee pays royalties in advance at the monthly average rate at which the royalty was paid during the period of production.*

(2) *REDUCTION.*—*The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advanced royalties paid under the lease to the extent that the advance royalties have not been used to reduce production royalties for a prior year.*

(3) *EXCEPTIONS.*—*Paragraph (1) shall not apply if the cessation in production is required or otherwise caused by—*

- (A) *the Secretary;*
- (B) *the Secretary of the Air Force;*
- (C) *the Secretary of the Army;*
- (D) *the Secretary of the Navy;*
- (E) *a State or a political subdivision of a State; or*
- (F) *a force majeure.*

**[SEC. 6. (a) Geothermal]**

**SEC. 6. TERMS.**

(a) *Geothermal* leases shall be for a primary term of ten years. If geothermal steam is produced or utilized in commercial quantities within this term, such lease shall continue for so long thereafter as geothermal steam is produced or utilized in commercial quantities, but such continuation shall not exceed an additional forty years.

\* \* \* \* \*

(f) Minerals locatable under the mining laws of the United States in lands subject to a geothermal lease issued under the provisions of this Act which are not associated with the **[geothermal steam and associated geothermal resources]** geothermal resources of such lands as defined in section 2(c) herein shall be locatable under said mining laws in accordance with the principles of the Multiple Mineral Development Act (68 Stat. 708; found in 30 U.S.C. 521 et seq.).

\* \* \* \* \*

(i)(1) To meet the payments in lieu of commercial quantities production requirement referred to in subsection (g)(1)(A) the lessee must agree to the modification of the terms and conditions of the lease to require annual payments to the Secretary in accordance with this subsection.

**[(2)** Payments under this subsection shall commence with the first year of the extension. Payments shall be equal to the following:

**[(A)** In each of the first through the fifth payment years, at least \$3.00 per acre or fraction thereof, of lands under lease.



[(B) In each of the sixth through the tenth payment years, at least \$6.00 per acre or fraction thereof, of lands under lease.]

(2) *The Secretary shall, by regulation, establish payments under this subsection at levels that ensure the diligent development of the lease.*

\* \* \* \* \*

**[SEC. 7. A geothermal]**

**SEC. 7. ACREAGE OF GEOTHERMAL LEASE.**

A geothermal lease shall embrace a reasonably compact area of not more than two thousand five hundred and sixty acres, except where a departure therefrom is occasioned by an irregular subdivision or subdivisions. No person, association, or corporation, except as otherwise provided in this Act, shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this Act or otherwise, any direct or indirect interest in Federal geothermal leases in any one State exceeding twenty thousand four hundred and eighty acres, including leases acquired under the provisions of section 4 of this Act.

At any time after fifteen years from the effective date of this Act the Secretary, after public hearings, may increase this maximum holding in any one State by regulation, not to exceed fifty-one thousand two hundred acres.

**[SEC. 8. (a) The]**

**SEC. 8. READJUSTMENT OF LEASE TERMS AND CONDITIONS.**

(a) *The Secretary may readjust the terms and conditions, except as otherwise provided herein, of any geothermal lease issued under this Act at not less than ten-year intervals beginning ten years after the date the geothermal steam is produced, as determined by the Secretary. Each geothermal lease issued under this Act shall provide for such readjustment. The Secretary shall give notice of any proposed readjustment of terms and conditions, and, unless the lessee files with the Secretary objection to the proposed terms or relinquishes the lease within thirty days after receipts of such notice, the lessee shall conclusively be deemed to have agreed with such terms and conditions. If the lessee files objections, and no agreement can be reached between the Secretary and the lessee within a period of not less than sixty days, the lease may be terminated by either party.*

\* \* \* \* \*

**[SEC. 9. If]**

**SEC. 9. BYPRODUCTS.**

*If the production, use, or conversion of geothermal steam is susceptible of producing a valuable byproduct or byproducts, including commercially demineralized water for beneficial uses in accordance with applicable State water laws, the Secretary shall require substantial beneficial production or use thereof unless, in individual circumstances he modifies or waives this requirement in the interest of conservation of natural resources or for other reasons satisfactory to him. However, the production or use of such byproducts shall be subject to the rights of the holders of preexisting leases,*

claims, or permits covering the same land or the same minerals, if any.

**[SEC. 10. The]**

**SEC. 10. RELINQUISHMENT OF GEOTHERMAL RIGHTS.**

*The* holder of any geothermal lease at any time may make and file in the appropriate land office a written relinquishment of all rights under such lease or of any legal subdivision of the area covered by such lease. Such relinquishment shall be effective as of the date of its filing. Thereupon the lessee shall be released of all obligations thereafter accruing under said lease with respect to the lands relinquished, but no such relinquishment shall release such lessee, or his surety or bond, from any liability for breach of any obligation of the lease, other than an obligation to drill, accrued at the date of the relinquishment, or from the continued obligation, in accordance with the applicable lease terms and regulations, (1) to make payment of all accrued rentals any royalties, (2) to place all wells on the relinquished lands in condition for suspension or abandonment, and (3) to protect or restore substantially the surface and surface resources.

**[SEC. 11. The]**

**SEC. 11. SUSPENSION OF OPERATIONS AND PRODUCTION.**

*The* Secretary, upon application by the lessee, may authorize the lessee to suspend operations and production on a producing lease and he may, on his own motion, in the interest of conservation suspend operations on any lease but in either case he may extend the lease term for the period of any suspension, and he may waive, suspend, or reduce the rental or royalty required in such lease.

**[SEC. 12. Leases]**

**SEC. 12. TERMINATION OF LEASES.**

*Leases* may be terminated by the Secretary for any violation of the regulations or lease terms after thirty days notice provided that such violation is not corrected within the notice period, or in the event the violation is such that it cannot be corrected within the notice period then provided that lessee has not commenced in good faith within said notice period to correct such violation and thereafter to proceed diligently to correct such violation. Lessee shall be entitled to a hearing on the matter of such claimed violation or proposed termination of lease if request for a hearing is made to the Secretary within the thirty-day period after notice. The period for correction of violation or commencement to correct such violation of regulations or of lease terms, as aforesaid, shall be extended to thirty days after the Secretary's decision after such hearing if the Secretary shall find that a violation exists.

**[SEC. 13. The]**

**SEC. 13. WAIVER, SUSPENSION, OR REDUCTION OF RENTAL OR ROYALTY.**

*The* Secretary may waive, suspend, or reduce the rental or royalty for any lease or portion thereof in the interests of conservation and to encourage the greatest ultimate recovery of geothermal resources, if he determines that this is necessary to promote development or that the lease cannot be successfully operated under the lease terms.

**[SEC. 14. Subject]**

**SEC. 14. SURFACE LAND USE.**

*Subject* to the other provisions of this Act, a lessee shall be entitled to use so much of the surface of the land covered by his geothermal lease as may be found by the Secretary to be necessary for the production, utilization, and conservation of geothermal resources.

**【SEC. 15. (a) Geothermal】****SEC. 15. LANDS SUBJECT TO GEOTHERMAL LEASING.**

(a) *Geothermal* leases for lands withdrawn or acquired in aid of functions of the Department of the Interior may be issued only under such terms and conditions as the Secretary may prescribe to insure adequate utilization of the lands for the purposes for which they were withdrawn or acquired.

\* \* \* \* \*

**【SEC. 16. Leases】****SEC. 16. REQUIREMENT FOR LESSEES.**

*Leases* under this Act may be issued only to citizens of the United States, associations of such citizens, corporations organized under the laws of the United States or of any State or the District of Columbia, or governmental units, including, without limitation, municipalities.

**【SEC. 17. Administration】****SEC. 17. ADMINISTRATION.**

*Administration* of this Act shall be under the principles of multiple use of lands and resources, and geothermal leases shall, insofar as feasible, allow for coexistence of other leases of the same lands for deposits of minerals under the laws applicable to them, for the location and production of claims under the mining laws, and for other uses of the areas covered by them. Operations under such other leases or for such other uses, however, shall not unreasonably interfere with or endanger operations under any lease issued pursuant to this Act, nor shall operations under leases so issued unreasonably interfere with or endanger operations under any lease, license, claim, or permit issued pursuant to the provisions of any other Act.

**【SEC. 18.** For the purpose of properly conserving the natural resources of any geothermal pool, field, or like area, or any part thereof, lessees thereof and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of such pool, field, or like area, or any part thereof, whenever this is determined and certified by the Secretary to be necessary or advisable in the public interest. The Secretary may in his discretion and with the consent of the holders of leases involved, establish, alter, change, revoke, and make such regulations with reference to such leases in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure reasonable protection of the public interest. He may include in geothermal leases a provision requiring the lessee to operate under such a reasonable cooperative or unit plan, and he may prescribe such a plan under which such lessee shall operate, which shall adequately protect the rights of all

parties in interest, including the United States. Any such plan may, in the discretion of the Secretary, provide for vesting in the Secretary or any other person, committee, or Federal or State agency designated therein, authority to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under such plan. All leases operated under any such plan approved or prescribed by the Secretary shall be excepted in determining holdings or control for the purposes of section 7 of this Act.

No more than five years after approval of any cooperative or unit plan of development or operation, and at least every five years thereafter, the Secretary shall review each such plan and, after notice and opportunity for comment, eliminate from inclusion in such plan any lease or part of a lease not regarded as reasonably necessary to cooperative or unit operations under the plan. In the case of a cooperative or unit plan approved before the enactment of the Geothermal Steam Act Amendments of 1988, the Secretary shall complete such review and elimination within 5 years after the enactment of such Act. Such elimination shall be based on scientific evidence, and shall occur only when it is determined by the Secretary to be for the purpose of conserving and properly managing the geothermal resource. Any lease or part of a lease so eliminated shall be eligible for an extension under subsection (c) or (g) of section 6 if it separately meets the requirements for such an extension.

When separate tracts cannot be independently developed and operated in conformity with an established well-spacing or development program, any lease, or a portion thereof, may be pooled with other lands, whether or not owned by the United States, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the Secretary to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each lease committed thereto.

The Secretary is hereby authorized, on such conditions as he may prescribe, to approve operating, drilling, or development contracts made by one or more lessees of geothermal leases, with one or more persons, associations, or corporations whenever, in his discretion, the conservation of natural products or the public convenience or necessity may require or the interests of the United States may be best served thereby. All leases operated under such approved operating, drilling, or development contracts, and interests thereunder, shall be excepted in determining holdings or control under section 7 of this Act. ]

**SEC. 18. UNIT AND COMMUNITIZATION AGREEMENTS.**

*(a) ADOPTION OF UNITS BY LESSEES.—*

*(1) IN GENERAL.—For the purpose of more properly conserving the natural resources of any geothermal reservoir, field, or like area, or any part thereof (whether or not any part of the geothermal reservoir, field, or like area, is subject to any cooperative plan of development or operation (referred to in this section as a “unit agreement”)), lessees thereof and their representatives may unite with each other, or jointly or separately with others,*

*in collectively adopting and operating under a unit agreement for the reservoir, field, or like area, or any part thereof, including direct use resources, if determined and certified by the Secretary to be necessary or advisable in the public interest.*

(2) *MAJORITY INTEREST OF SINGLE LEASES.—A majority interest of owners of any single lease shall have the authority to commit the lease to a unit agreement.*

(3) *INITIATIVE OF SECRETARY.—The Secretary may also initiate the formation of a unit agreement, or require an existing Federal lease to commit to a unit agreement, if in the public interest.*

(4) *MODIFICATION OF LEASE REQUIREMENTS BY SECRETARY.—*

(A) *IN GENERAL.—The Secretary may, in the discretion of the Secretary and with the consent of the holders of leases involved, establish, alter, change, or revoke rates of operations (including drilling, operations, production, and other requirements) of the leases and make conditions with respect to the leases, with the consent of the lessees, in connection with the creation and operation of any such unit agreement as the Secretary may consider necessary or advisable to secure the protection of the public interest.*

(B) *UNLIKE TERMS OR RATES.—Leases with unlike lease terms or royalty rates shall not be required to be modified to be in the same unit.*

(b) *REQUIREMENT OF PLANS UNDER NEW LEASES.—The Secretary may—*

(1) *provide that geothermal leases issued under this Act shall contain a provision requiring the lessee to operate under a unit agreement; and*

(2) *prescribe the unit agreement under which the lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States.*

(c) *MODIFICATION OF RATE OF PROSPECTING, DEVELOPMENT, AND PRODUCTION.—The Secretary may require that any unit agreement authorized by this section that applies to land owned by the United States contain a provision under which authority is vested in the Secretary, or any person, committee, or State or Federal officer or agency as may be designated in the unit agreement to alter or modify, from time to time, the rate of prospecting and development and the quantity and rate of production under the unit agreement.*

(d) *EXCLUSION FROM DETERMINATION OF HOLDING OR CONTROL.—Any land that is subject to a unit agreement approved or prescribed by the Secretary under this section shall not be considered in determining holdings or control under section 7.*

(e) *POOLING OF CERTAIN LAND.—If separate tracts of land cannot be independently developed and operated to use geothermal steam and associated geothermal resources pursuant to any section of this Act—*

(1) *the land, or a portion of the land, may be pooled with other land, whether or not owned by the United States, for purposes of development and operation under a communitization agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the produc-*

tion unit, if the pooling is determined by the Secretary to be in the public interest; and

(2) operation or production pursuant to the communitization agreement shall be treated as operation or production with respect to each tract of land that is subject to the communitization agreement.

(f) **UNIT AGREEMENT REVIEW.**—

(1) **IN GENERAL.**—Not later than 5 years after the date of approval of any unit agreement and at least every 5 years thereafter, the Secretary shall—

(A) review each unit agreement; and

(B) after notice and opportunity for comment, eliminate from inclusion in the unit agreement any land that the Secretary determines is not reasonably necessary for unit operations under the unit agreement.

(2) **BASIS FOR ELIMINATION.**—The elimination shall—

(A) be based on scientific evidence; and

(B) occur only if the elimination is determined by the Secretary to be for the purpose of conserving and properly managing the geothermal resource.

(3) **EXTENSION.**—Any land eliminated under this subsection shall be eligible for an extension under section 6(g) if the land meets the requirements for the extension.

(g) **DRILLING OR DEVELOPMENT CONTRACTS.**—

(1) **IN GENERAL.**—The Secretary may, on such conditions as the Secretary may prescribe, approve drilling or development contracts made by 1 or more lessees of geothermal leases, with 1 or more persons, associations, or corporations if, in the discretion of the Secretary, the conservation of natural resources or the public convenience or necessity may require or the interests of the United States may be best served by the approval.

(2) **HOLDINGS OR CONTROL.**—Each lease operated under an approved drilling or development contract, and interest under the contract, shall be excepted in determining holdings or control under section 7.

(h) **COORDINATION WITH STATE GOVERNMENTS.**—The Secretary shall coordinate unitization and pooling activities with appropriate State agencies.

**[SEC. 19. Upon]**

**SEC. 19. DATA FROM FEDERAL AGENCIES.**

Upon request of the Secretary, other Federal departments and agencies shall furnish him with any relevant data then in their possession or knowledge concerning or having bearing upon fair and adequate charges to be made for geothermal steam produced or to be produced for conversion to electric power or other purposes. Data given to any department or agency as confidential under law shall not be furnished in any fashion which identifies or tends to identify the business entity whose activities are the subject of such data or the person or persons who furnished such information.

**[SEC. 20. Subject]**

**SEC. 20. DISPOSITION OF AMOUNTS RECEIVED FROM SALES, BONUSES, ROYALTIES, AND RENTALS.**

*Subject* to the provisions of section 35(b) of the Mineral Leasing Act (30 U.S.C. 191(b)), all moneys received from the sales, bonuses, royalties and rentals under the provisions of this Act, including the payments referred to in section 6(i), shall be disposed of in the same manner as such moneys received pursuant to section 35 of the Mineral Leasing Act or pursuant to section 6 of the Mineral Leasing Act for Acquired Lands, as the case may be.

【SEC. 21. (a) Within one hundred and twenty days after the effective date of this Act, the Secretary shall cause to be published in the Federal Register a determination of all lands which were included within any known geothermal resources area on the effective date of the Act. He shall likewise publish in the Federal Register from time to time his determination of other known geothermal resources areas specifying in each case the date the lands were included in such area; and

【(b) Geothermal】

**SEC. 21. PUBLICATION IN FEDERAL REGISTER; RESERVATION OF MINERAL RIGHTS.**

*Geothermal* resources in lands the surface of which has passed from Federal ownership but in which the minerals have been reserved to the United States shall not be developed or produced except under geothermal leases made pursuant to this Act. If the Secretary of the Interior finds that such development is imminent, or that production from a well heretofore drilled on such lands is imminent, he shall so report to the Attorney General, and the Attorney General is authorized and directed to institute an appropriate proceeding in the United States district court of the district in which such lands are located, to quiet the title of the United States in such resources, and if the court determines that the reservation of minerals to the United States in the lands involved included the geothermal resources, to enjoin their production otherwise than under the terms of this Act: Provided, That upon an authoritative judicial determination that Federal mineral reservation does not include 【geothermal steam and associated geothermal resources】 *geothermal resources* the duties of the Secretary of the Interior to report and of the Attorney General to institute proceedings, as hereinbefore set forth, shall cease.

【SEC. 22. Nothing】

**SEC. 22. FEDERAL EXEMPTION FROM STATE WATER LAWS.**

*Nothing* in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to its exemption from State water laws.

【SEC. 23. (a) All】

**SEC. 23. PREVENTION OF WASTE; EXCLUSIVITY.**

(a) *All* leases under this Act shall be subject to the condition that the lessee will, in conducting his exploration, development and producing operations, use all reasonable precautions to prevent waste of 【geothermal steam and associated geothermal resources】 *geothermal resources* developed in lands leased.

(b) Rights to develop and utilize 【geothermal steam and associated geothermal resources】 *geothermal resources* underlying lands

owned by the United States may be acquired solely in accordance with the provisions of this Act.

**[SEC. 24. The]**

**SEC. 24. RULES AND REGULATIONS.**

*The Secretary shall prescribe such rules and regulations as he may deem appropriate to carry out the provisions of this Act. Such regulations may include, without limitation, provisions for (a) the prevention of waste, (b) development and conservation of geothermal and other natural resources, (c) the protection of the public interest, (d) assignment, segregation, extension of terms, relinquishment of leases, development contracts, unitization, pooling, and drilling agreements, (e) compensatory royalty agreements, suspension of operations or production, and suspension or reduction of rentals or royalties, (f) the filing of surety bonds to assure compliance with the terms of the lease and to protect surface use and resources, (g) use of the surface by a lessee of the lands embraced in his lease, (h) the maintenance by the lessee of an active development program, and (i) protection of water quality and other environmental qualities.*

**[SEC. 25. As]**

**SEC. 25. INCLUSION OF GEOTHERMAL LEASING UNDER CERTAIN OTHER LAWS.**

*As to any land subject to geothermal leasing under section 3 of this Act, all laws which either (a) provide for the disposal of land by patent or other form of conveyance or by grant or by operation of law subject to a reservation of any mineral or (b) prevent or restrict the disposal of such land because of the mineral character of the land, shall hereafter be deemed to embrace **[geothermal steam and associated geothermal resources]** *geothermal resources* as a substance which either must be reserved or must prevent or restrict the disposal of such land, as the case may be. This section shall not be construed to affect grants, patents, or other forms of conveyances made prior to the date of enactment of this Act.*

**[SEC. 26. The]**

**SEC. 26. AMENDMENT.**

*The first two clauses in section 11 of the Act of August 13, 1954 (68 Stat. 708, 716), are amended to read as follows:*

*“As used in this Act, “mineral leasing laws” shall mean the Act of February 25, 1920 (41 Stat. 437); the Act of April 17, 1926 (44 Stat. 301); the Act of February 7, 1927 (44 Stat. 1057); Geothermal Steam Act of 1970, and all Acts heretofore or hereafter enacted which are amendatory of or supplementary to any of the foregoing Acts; “Leasing Act minerals” shall mean all minerals which, upon the effective date of this Act, are provided in the mineral leasing laws to be disposed of thereunder and all **[geothermal steam and associated geothermal resources]** *geothermal resources* which, upon the effective date of the Geothermal Steam Act of 1970, are provided in that Act to be disposed of thereunder;”*

**[SEC. 27. The]**

**SEC. 27. FEDERAL RESERVATION OF CERTAIN MINERAL RIGHTS.**

*The United States reserves the ownership of and the right to extract under such rules and regulations as the Secretary may prescribe oil, hydrocarbon gas, and helium from all **[geothermal steam***



and associated geothermal resources] *geothermal resources* produced from lands leased under this Act in accordance with presently applicable laws: Provided, That whenever the right to extract oil, hydrocarbon gas, and helium from [geothermal steam and associated geothermal resources] *geothermal resources* produced from such lands is exercised pursuant to this section, it shall be exercised so as to cause no substantial interference with the production of [geothermal steam and associated geothermal resources] *geothermal resources* from such lands.

[SEC. 28. (a)(1) The]

**SEC. 28. SIGNIFICANT THERMAL FEATURES.**

(a)(1) The Secretary shall maintain a list of significant thermal features, as defined in section 2(f), within units of the National Park System, including but not limited to the following units:

(A) Mount Rainier National Park.

\* \* \* \* \*

(d) With respect to all leases or drilling permits issued, extended, renewed or modified under this Act, the Secretary shall include stipulations in such leases and permits necessary to protect significant thermal features within units of the National Park System where the Secretary determines that, based on scientific evidence, the exploration, development or utilization of the land subject to the lease or drilling permit is reasonably likely to adversely affect any such significant thermal feature. Stipulations shall include, but not be limited to—

- (1) requiring the lessee to reinject geothermal fluids into the rock formations from which they originate;
- (2) requiring the lessee to report annually to the Secretary on activities taken on the lease;
- (3) requiring the lessee to continuously monitor [geothermal steam and associated geothermal resources] *geothermal resources* production and injection wells; and

\* \* \* \* \*

[SEC. 29. The]

**SEC. 29. LAND SUBJECT TO PROHIBITION ON LEASING.**

The Secretary shall not issue any lease under this Act on those lands subject to the prohibition provided under section 43 of the Mineral Leasing Act.

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**FEDERAL POWER ACT—ACT OF JUNE 10, 1920,  
CHAPTER 285, AS AMENDED (16 U.S.C. 791A-  
825R)**

**PART I**

\* \* \* \* \*

SEC. 3. The words defined in this section shall have the following meanings for the purpose of this Act, to wit:

\* \* \* \* \*

(17)(A) \* \* \*

[(C) “qualifying small power production facility” means a small power production facility—

(i) which the Commission determines, by rule, meets such requirements (including requirements respecting fuel use, fuel efficiency, and reliability) as the Commission may, by rule, prescribe; and

(ii) which is owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities);]

*(C) “qualifying small power production facility” means a small power production facility that the Commission determines, by rule, meets such requirements (including requirements respecting fuel use, fuel efficiency, and reliability) as the Commission may, by rule, prescribe;*

\* \* \* \* \*

(18)(A) “cogeneration facility” means a facility which produces—

(i) electric energy, and

(ii) steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes;

[(B) “qualifying cogeneration facility” means a cogeneration facility which—

(i) the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe; and

(ii) is owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities);

*(B) “qualifying cogeneration facility” means a cogeneration facility that the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe;]*

\* \* \* \* \*

[(22) “electric utility” means any person or State agency (including any municipality) which sells electric energy; such term includes the Tennessee Valley Authority, but does not include any Federal power marketing agency.]

[(23) TRANSMITTING UTILITY.—The term “transmitting utility” means any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale.]

*(22) ELECTRIC UTILITY.—(A) The term “electric utility” means a person or Federal or State agency (including an entity described in section 201(f)) that sells electric energy.*

*(B) The term “electric utility” includes the Tennessee Valley Authority and each Federal power marketing administration.*

(23) *TRANSMITTING UTILITY.*—The term “transmitting utility” means an entity (including an entity described in section 201(f)) that owns, operates, or controls facilities used for the transmission of electric energy—

- (A) in interstate commerce;
- (B) for the sale of electric energy at wholesale.

\* \* \* \* \*

(26) *ELECTRIC COOPERATIVE.*—The term “electric cooperative” means a cooperatively owned electric utility.

(27) *RTO.*—The term “Regional Transmission Organization” or “RTO” means an entity of sufficient regional scope approved by the Commission—

- (A) to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce; and
- (B) to ensure nondiscriminatory access to the facilities.

(28) *ISO.*—The term “Independent System Operator” or “ISO” means an entity approved by the Commission—

- (A) to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce; and
- (B) to ensure nondiscriminatory access to the facilities.

(29) *TRANSMISSION ORGANIZATION.*—The term “Transmission Organization” means a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.

\* \* \* \* \*

SEC. 4. \* \* \*

(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 reservation 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. *The license applicant and any party to the proceeding shall be entitled to a determination on the record, after opportunity for an agency trial-type hearing of no more than 90 days, on any disputed*

*issues of material fact with respect to such conditions. All disputed issues of material fact raised by any party shall be determined in a single trial-type hearing to be conducted within a time frame established by the Commission for each license proceeding. Within 90 days of the date of enactment of this Act, the Secretaries of the Interior, Commerce, and Agriculture shall establish jointly, by rule, the procedures for such expedited trial-type hearing, including the opportunity to undertake discovery and cross-examine witnesses, in consultation with the Federal Energy Regulatory Commission. 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.*

\* \* \* \* \*

SEC. 18. The Commission shall require the construction, maintenance, and operation by a licensee at its own expense of such lights and signals as may be directed by the Secretary of the Department in which the Coast Guard is operating, and such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce. *The license applicant and any party to the proceeding shall be entitled to a determination on the record, after opportunity for an agency trial-type hearing of no more than 90 days, on any disputed issues of material fact with respect to such fishways. All disputed issues of material fact raised by any party shall be determined in a single trial-type hearing to be conducted within a time frame established by the Commission for each license proceeding. Within 90 days of the date of enactment of this Act, the Secretaries of the Interior, Commerce, and Agriculture shall establish jointly, by rule, the procedures for such expedited trial-type hearing, including the opportunity to undertake discovery and cross-examine witnesses, in consultation with the Federal Energy Regulatory Commission.* The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure built under the provisions of this Act, whether at the expense of a licensee hereunder or of the United States, shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure as may be made from time to time by the Secretary of the Army, and for willful failure to comply with any such rule or regulation such licensee shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section 316 hereof.

\* \* \* \* \*

**SEC. 32. ALASKA STATE JURISDICTION OVER SMALL HYDROELECTRIC PROJECTS.**

SEC. (a). \* \* \*

(3)(C) *except as provided in subsection (j)*, conditions for the protection, mitigation, and enhancement of fish and wildlife based on recommendations received pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) from the Na-

tional Marine Fisheries Service, the United States Fish and Wildlife Service, and State fish and wildlife agencies.

\* \* \* \* \*

(j) *FISH AND WILDLIFE.*—If the State of Alaska determines that a recommendation under subsection (a)(3)(C) is inconsistent with paragraphs (1) and (2) of subsection (a), the State of Alaska may decline to adopt all or part of the recommendations in accordance with the procedures established under section 10(j)(2).

\* \* \* \* \*

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

*(a) ALTERNATIVE CONDITIONS—*

(1) *Whenever any person applies for a license for any project works within any reservation of the United States, and the Secretary of the department under whose supervision such reservation falls (referred to in this subsection as “the Secretary”) deems a condition to such license to be necessary under the first proviso of section 4(e), the license applicant or any other party to the license proceeding may propose an alternative condition.*

(2) *Notwithstanding the first proviso of section 4(e), the Secretary shall accept the proposed alternative condition referred to in paragraph (1), and the Commission shall include in the license such alternative condition, if the Secretary determines, based on substantial evidence provided by the license applicant, any other party to the proceeding, or otherwise available to the Secretary, that such alternative condition—*

*(A) provides for the adequate protection and utilization of the reservation; and*

*(B) the Secretary concurs with the license applicant’s judgment that the alternative condition will either—*

*(i) cost significantly less to implement; or*

*(ii) result in improved operation of the project works for electricity production, as compared to the condition initially deemed necessary by the Secretary.*

(3) *The Secretary concerned shall submit into the public record of the Commission proceeding with any condition under section 4(e) or alternative condition it accepts under this section, a written statement explaining the basis for such condition, and reason for not accepting any alternative condition under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the condition adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality); based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary’s decision.*

(4) *If the Secretary does not accept an applicant’s alternative condition under this section, and the Commission finds that the Secretary’s condition would be inconsistent with the purposes of*

*this part, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a non-binding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will not adequately protect the reservation. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.*

*(b) ALTERNATIVE PRESCRIPTIONS—*

*(1) Whenever the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under section 18, the license applicant or any other party to the proceeding may propose an alternative to such prescription to construct, maintain, or operate a fishway.*

*(2) Notwithstanding section 18, the Secretary of the Interior or the Secretary of Commerce, as appropriate, shall accept and prescribe, and the Commission shall require, the proposed alternative referred to in paragraph (1), if the Secretary of the appropriate department determines, based on substantial evidence provided by the license applicant, any other party to the proceeding, or otherwise available to the Secretary, that such alternative—*

*(A) will be no less protective than the fishway initially prescribed by the Secretary; and*

*(B) the Secretary concurs with the license applicant's judgment that the alternative prescription will either—*

*(i) cost significantly less to implement; or*

*(ii) result in improved operation of the project works for electricity production, as compared to the fishway initially deemed necessary by the Secretary.*

*(3) The Secretary concerned shall submit into the public record of the Commission proceeding with any prescription under section 18 or alternative prescription it accepts under this section, a written statement explaining the basis for such prescription, and reason for not accepting any alternative prescription under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the prescription adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality); based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary's decision.*

*(4) If the Secretary concerned does not accept an applicant's alternative prescription under this section, and the Commission finds that the Secretary's prescription would be inconsistent with the purposes of this part, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult*

*with the Secretary and the Commission and issue a non-binding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will not adequately protect the fish resources. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.*

\* \* \* \* \*

**PART II—REGULATION OF ELECTRIC UTILITY COMPANIES ENGAGED IN INTERSTATE COMMERCE  
DECLARATION OF POLICY; APPLICATION OF PART;  
DEFINITIONS**

SECTION 201. \* \* \*

(b) \* \* \*

(2) **[The]** *Notwithstanding section 201(f), the provisions of sections [210, 211, and 212] 203(a)(2), 206(e), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, 222, and 223 of this title 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 chapter with respect to such provisions. Compliance with any order or rule of the Commission under the provisions of sections [210 or 211] 203(a)(2), 206(e), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, 222, and 223 of this title, 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.*

\* \* \* \* \*

(e) The term “public utility” when used in this subchapter and subchapter III of this chapter means any person who owns or operates facilities subject to the jurisdiction of the Commission under this subchapter (other than facilities subject to such jurisdiction solely by reason of section **[210, 211, or 212]** 206(e), 206(f), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, 222, or 223 of this title).

(f) No provision in this subchapter shall apply to, or be deemed to include, the United States, a State or any **[political subdivision of a State]** *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 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, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.*

(g) \* \* \*

(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 [1935] 2005.

\* \* \* \* \*

**DISPOSITION OF PROPERTY; CONSOLIDATION;  
PURCHASE OF SECURITIES**

【SEC. 203. (a) No public utility shall 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 \$50,000, or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person, or purchase, acquire, or take any security of any other public utility, without first having secured an order of the Commission authorizing it to do so. Upon 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. After notice and opportunity for hearing, if the Commission finds that the proposed disposition, consolidation, acquisition, or control will be consistent with the public interest, it shall approve the same.】

*(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 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 ratemaking 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 gas utility company, or a holding company in a holding company system that includes a transmitting utility, an electric utility company, or a gas 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—

(A) will be consistent with the public interest, taking into account the effect of the transaction on competition in the electricity markets, electric rates, and effective regulation; and

(B) shall 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 would not be harmful.

(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.

\* \* \* \* \*

**FIXING RATES AND CHARGES; DETERMINATION OF COST OF PRODUCTION OR TRANSPORTATION**

SEC. 206. (a) Whenever the Commission, after a [hearing had] hearing held \* \* \*

(b) Whenever the Commission institutes a proceeding under this section, the Commission shall establish a refund effective date. In the case of a proceeding instituted on complaint, the refund effective date shall not be earlier than [the date 60 days after the filing of such complaint nor later than 5 months after the expiration of such 60-day period] the date of the filing of such complaint nor later than 5 months after the filing of such complaint. In the case of a proceeding instituted by the Commission on its own motion, the refund effective date shall not be earlier than the date [60 days after] of the publication by the Commission of notice of its intention to initiate such proceeding nor later than 5 months after the [expiration of such 60-day period] publication date. Upon institution of a proceeding under this section, the Commission shall give

to the decision of such proceeding the same preference as provided under section 205 of this Act and otherwise act as speedily as possible. [If no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision.] *If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision.* In any proceeding under this section, the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant. At the conclusion of any proceeding under this section, the Commission may order [the public utility to make] refunds of any amounts paid, for the period subsequent to the refund \* \* \*

\* \* \* \* \*

(e)(1) *In this subsection:*

(A) *The term “short-term sale” means an agreement for the sale of electric energy at wholesale in interstate commerce that is for a period of 48 hours or less.*

(B) *The term “applicable Commission rule” means a Commission rule applicable to sales at wholesale by public utilities that the Commission determines after notice and comment should also be applicable to entities subject to this subsection.*

(2) *If an entity described in section 201(f) voluntarily makes a short-term sale of electric energy through an organized market in which the rates for the sale are established by Commission-approved tariff (rather than by contract) and the sale violates the terms of the tariff or applicable Commission rules in effect at the time of the sale, the entity shall be subject to the refund authority of the Commission under this section with respect to the violation.*

(3) *This section shall not apply to—*

(A) *any entity that sells in total (including affiliates of the entity) less than 8,000,000 megawatt hours of electricity per year;*  
or

(B) *any electric cooperative.*

(4)(A) *The Commission shall have refund authority under paragraph (2) with respect to a voluntary short-term sale of electric energy by the Bonneville Power Administration only if the sale is at an unjust and unreasonable rate.*

(B) *The Commission may order a refund under subparagraph (A) only for short-term sales made by the Bonneville Power Administration at rates that are higher than the highest just and reasonable rate charged by any other entity for a short-term sale of electric energy in the same geographic market for the same, or most nearly comparable, period as the sale by the Bonneville Power Administration.*

(5) *In the case of any Federal power marketing agency or the Tennessee Valley Authority, the Commission shall not assert or exercise*

*any regulatory authority or power under paragraph (2) other than the ordering of refunds to achieve a just and reasonable rate.*

\* \* \* \* \*

**CERTAIN WHEELING AUTHORITY**

SEC. 211. (a) \* \* \*

(c)**[(2)]** No order may be issued under subsection (a) or (b) which requires the transmitting utility subject to the order to transmit, during any period, an amount of electric energy which replaces any amount of electric energy—

**[(A)]** (1) required to be provided to such applicant pursuant to a contract during such period, or

**[(B)]** (2) currently provided to the applicant by the utility subject to the order pursuant to a rate schedule on file during such period with the Commission: Provided, That nothing in this subparagraph shall prevent an application for an order hereunder to be filed prior to **[termination of modification]** *termination or modification* of an existing rate schedule: Provided, That such order shall not become effective until termination of such rate schedule or the modification becomes effective.

(d)(1) Any transmitting utility ordered under subsection (a) or (b) to provide transmission services may apply to the Commission for an order permitting such transmitting utility to cease providing all, or any portion of, such services. After public notice, notice to each affected State regulatory authority, each affected Federal power marketing agency, each affected transmitting utility, and each affected electric utility, and after an opportunity for an evidentiary hearing, the Commission shall issue an order terminating or modifying the order issued under subsection (a) or (b), if the **[electric utility]** *transmitting utility* providing such transmission services has demonstrated, and the Commission has found, that—

(A) due to changed circumstances, the requirements applicable, under this section and section 212, to the issuance of an order under subsection (a) or (b) are no longer met, or

(B) any transmission capacity of the utility providing transmission services under such order which was, at the time such order was issued, in excess of the capacity necessary to serve its own customers is no longer in excess of the capacity necessary for such purposes, or

(C) the ordered transmission services require enlargement of transmission capacity and the transmitting utility subject to the order has failed, after making a good faith effort, to obtain the necessary approvals or property rights under applicable Federal, State, and local laws.

No order shall be issued under this subsection pursuant to a finding under subparagraph (A) unless the Commission finds that such order is in the public interest.

\* \* \* \* \*

**SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES.**

(a) **DEFINITION OF UNREGULATED TRANSMITTING UTILITY.**—*In this section, the term “unregulated transmitting utility” means an entity that—*

(1) *owns or operates facilities used for the transmission of electric energy in interstate commerce; and*

(2) *is an entity described in section 201(f).*

(b) **TRANSMISSION PREPERATION IMPROVEMENTS.**—*Subject to section 212(h), the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—*

(1) *at rates that are comparable to those that the unregulated transmitting utility charges itself; and*

(2) *on terms and conditions (not relating to rates) that are comparable to those under which such unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential.*

(c) **EXEMPTION.**—*The Commission shall exempt from any rule or order under this subsection any unregulated transmitting utility that—*

(1) *sells not more than 4,000,000 megawatt hours of electricity per year;*

(2) *does not own or operate any transmission facilities that are necessary for operating an interconnected transmission system (or any portion of the system); or*

(3) *meets other criteria the Commission determines to be in the public interest.*

(d) **LOCAL DISTRIBUTION FACILITIES.**—*The requirements of subsection (b) shall not apply to facilities used in local distribution.*

(e) **EXEMPTION TERMINATION.**—*If the Commission, after an evidentiary hearing held on a complaint and after giving consideration to reliability standards established under section 215, finds on the basis of a preponderance of the evidence that any exemption granted pursuant to subsection (c) unreasonably impairs the continued reliability of an interconnected transmission system, the Commission shall revoke the exemption granted to the transmitting utility.*

(f) **APPLICATION TO UNREGULATED TRANSMITTING UTILITIES.**—*The rate changing procedures applicable to public utilities under subsections (c) and (d) of section 205 are applicable to unregulated transmitting utilities for purposes of this section.*

(g) **REMAND.**—*In exercising its authority under subsection (b)(1), the Commission may remand transmission rates to an unregulated transmitting utility for review and revision where necessary to meet the requirements of subsection (b).*

(h) **OTHER REQUESTS.**—*The provision of transmission services under subsection (a) does not preclude a request for transmission services under section 211.*

(i) **LIMITATION.**—*The Commission may not require a State or municipality to take action under this section that would violate a private activity bond rule for purposes of section 141 of the Internal Revenue Code of 1986.*

(j) **TRANSFER OF CONTROL OF TRANSMITTING FACILITIES.**—*Nothing in this section authorizes the Commission to require an unregulated transmitting utility to transfer control or operational control*

*of its transmitting facilities to a Transmission Organization that is designated to provide non-discriminatory transmission access.*

\* \* \* \* \*

**SEC. 214. SALES BY EXEMPT WHOLESALE GENERATORS.**

No rate or charge received by an exempt wholesale generator for the sale of electric energy shall be lawful under section 824d of this title if, after notice and opportunity for hearing, the Commission finds that such rate or charge results from the receipt of any undue preference or advantage from an electric utility which is an associate company or an affiliate of the exempt wholesale generator. For purposes of this section, the terms associate company and affiliate shall have the same meaning as provided in section 2(a) of the Public Utility Holding Company Act of [1935] 2005.

**SEC. 215. ELECTRIC RELIABILITY.**

(a) *DEFINITIONS.—In this section:*

(1)(A) *The term “bulk-power system” means—*

*(i) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion of such a network); and*

*(ii) electric energy from generation facilities needed to maintain transmission system reliability.*

*(B) The term “bulk-power system” does not include facilities used in the local distribution of electric energy.*

(2) *The terms “Electric Reliability Organization” and “ERO” mean the organization certified by the Commission under subsection (c) the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to review by the Commission.*

(3)(A) *The term “reliability standard” means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system.*

*(B) The term “reliability standard” includes requirements for the operation of existing bulk-power system components and the design of planned additions or modifications to those components to the extent necessary to provide for reliable operation of the bulk-power system, except that the term does not include any requirement to enlarge those components or to construct new transmission capacity or generation capacity.*

(4) *The term “reliable operation” means operating the components of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of the system will not occur as a result of a sudden disturbance or unanticipated failure of system components.*

(5) *The term “interconnection” means a geographic area in which the operation of bulk-power system components is synchronized such that the failure of 1 or more of the components may adversely affect the ability of the operators of other components within the system to maintain reliable operation of the portion of the system within their control.*

(6) *The term “regional entity” means an entity having enforcement authority pursuant to subsection (e)(4).*

(b) *JURISDICTION AND APPLICABILITY.*—(1) *The Commission shall have jurisdiction, within the United States, over the ERO certified by the Commission under subsection (c), any regional entities, and all users, owners and operators of the bulk-power system (including the entities described in section 201(f)), for purposes of approving reliability standards established under this section and enforcing compliance with this section.*

(2) *All users, owners, and operators of the bulk-power system shall comply with reliability standards that take effect under this section.*

(3) *The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.*

(c) *CERTIFICATION.*—(1) *Following the issuance of a Commission rule under subsection (b)(3), any person may submit an application to the Commission for certification as the Electric Reliability Organization.*

(2) *The Commission may certify 1 such ERO if the Commission determines that the ERO—*

(A) *has the ability to develop and enforce, subject to subsection (e)(2), reliability standards that provide for an adequate level of reliability of the bulk-power system; and*

(B) *has established rules that—*

(i) *ensure the independence of the ERO from the users and owners and operators of the bulk-power system, while ensuring fair stakeholder representation in the selection of the directors of the ERO and balanced decisionmaking in any ERO committee or subordinate organizational structure;*

(ii) *allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section;*

(iii) *provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties in accordance with subsection (e) (including limitations on activities, functions, or operations, or other appropriate sanctions);*

(iv) *provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising the duties of the ERO; and*

(v) *provide for taking, after certification, appropriate steps to gain recognition in Canada and Mexico.*

(d) *RELIABILITY STANDARDS.*—(1) *The ERO shall file each reliability standard or modification to a reliability standard that the ERO proposes to be made effective under this section with the Commission.*

(2)(A) *The Commission may approve, by rule or order, a proposed reliability standard or modification to a reliability standard if the Commission determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.*

(B) *The Commission—*

(i) *shall give due weight to the technical expertise of the ERO with respect to the content of a proposed standard or modifica-*

tion to a reliability standard and to the technical expertise of a regional entity organized on an interconnection-wide basis with respect to a reliability standard to be applicable within that interconnection; but

(ii) shall not defer with respect to the effect of a standard on competition.

(C) A proposed standard or modification shall take effect on approval by the Commission.

(3) The ERO shall rebuttably presume that a proposal from a regional entity organized on an interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an interconnection-wide basis is just, reasonable, not unduly discriminatory or preferential, and in the public interest.

(4) The Commission shall remand to the ERO for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

(5) The Commission, on a motion of the Commission or on complaint, may order the ERO to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

(6)(A) The final rule adopted under subsection (b)(2) shall include fair processes for the identification and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a transmission organization.

(B) The transmission organization shall continue to comply with such function, rule, order, tariff, rate schedule or agreement accepted, approved, or ordered by the Commission until—

(i) the Commission finds a conflict exists between a reliability standard and any such provision;

(ii) the Commission orders a change to the provision pursuant to section 206; and

(iii) the ordered change becomes effective under this part.

(C) If the Commission determines that a reliability standard needs to be changed as a result of such a conflict, the Commission shall order the ERO to develop and file with the Commission a modified reliability standard under paragraph (4) or (5).

(e) ENFORCEMENT.—(1) Subject to paragraph (2), the ERO may impose a penalty on a user or owner or operator of the bulk-power system for a violation of a reliability standard approved by the Commission under subsection (d) if the ERO, after notice and an opportunity for a hearing—

(A) finds that the user or owner or operator has violated a reliability standard approved by the Commission under subsection (d); and

(B) files notice and the record of the proceeding with the Commission.

(2)(A) A penalty imposed under paragraph (1) may take effect not earlier than the day that is 31 days after the date on which the ERO files with the Commission notice of the penalty and the record of proceedings.

(B) *The penalty shall be subject to review by the Commission on—*  
 (i) *a motion by the Commission; or*  
 (ii) *application by the user, owner or operator that is the subject of the penalty filed not later than 30 days after the date on which the notice is filed with the Commission.*

(C) *Application to the Commission for review, or the initiation of review by the Commission on a motion of the Commission, shall not operate as a stay of the penalty unless the Commission orders otherwise on a motion of the Commission or on application by the user, owner or operator that is the subject of the penalty.*

(D) *In any proceeding to review a penalty imposed under paragraph (1), the Commission, after notice and opportunity for hearing (which hearing may consist solely of the record before the ERO and opportunity for the presentation of supporting reasons to—*

(i) *affirm, modify, or set aside the penalty), shall by order affirm, set aside, reinstate, or modify the penalty; and*

(ii) *if appropriate, remand to the ERO for further proceedings.*

(E) *The Commission shall implement expedited procedures for the hearings described in subparagraph (D).*

(3) *On a motion of the Commission or on complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk-power system if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk-power system has engaged or is about to engage in any act or practice that constitutes or will constitute a violation of a reliability standard.*

(4)(A) *The Commission shall issue regulations authorizing the ERO to enter into an agreement to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards under paragraph (1) if—*

(i) *the regional entity is governed by—*

(I) *an independent board;*

(II) *a balanced stakeholder board; or*

(III) *a combination independent and balanced stakeholder board;*

(ii) *the regional entity otherwise meets the requirements of paragraphs (1) and (2) of subsection (c); and*

(iii) *the agreement promotes effective and efficient administration of bulk-power system reliability.*

(B) *The Commission may modify a delegation under this paragraph.*

(C) *The ERO and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an inter-connection-wide basis promotes effective and efficient administration of bulk-power system reliability and should be approved.*

(D) *The regulation issued under this paragraph may provide that the Commission may assign the authority of the ERO to enforce reliability standards under paragraph (1) directly to a regional entity in accordance with this paragraph.*

(5) *The Commission may take such action as is necessary or appropriate against the ERO or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the ERO or a regional entity.*



(6) Any penalty imposed under this section shall—

(A) bear a reasonable relation to the seriousness of the violation; and

(B) take into consideration the efforts of the user, owner, or operator to remedy the violation in a timely manner.

(f) *CHANGES IN ELECTRIC RELIABILITY ORGANIZATION RULES.*—(1) The Electric Reliability Organization shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of the basis and purpose of the rule and proposed rule change.

(2) The Commission, upon a motion of the Commission or upon complaint, may propose a change to the rules of the ERO.

(3) A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, and not unduly discriminatory or preferential, is in the public interest, and meets the requirements of subsection (c).

(g) *RELIABILITY REPORTS.*—The ERO shall conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America.

(h) *COORDINATION WITH CANADA AND MEXICO.*—The President is urged to negotiate international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the ERO in the United States and Canada or Mexico.

(i) *SAVINGS PROVISIONS.*—(1) The ERO may develop and enforce compliance with reliability standards for only the bulk-power system.

(2) Nothing in this section authorizes the ERO or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

(3) Nothing in this section preempts any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as the action is not inconsistent with any reliability standard.

(4) Not later than 90 days after the date of application of the Electric Reliability Organization or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a State action is inconsistent with a reliability standard, taking into consideration any recommendation of the ERO.

(5) The Commission, after consultation with the ERO and the State taking action, may stay the effectiveness of any State action, pending the issuance by the Commission of a final order.

(j) *REGIONAL ADVISORY BODIES.*—(1) The Commission shall establish a regional advisory body on the petition of at least  $\frac{2}{3}$  of the States within a region that have more than  $\frac{1}{2}$  of the electric load of the States served within the region.

(2) A regional advisory body—

(A) shall be composed of 1 member from each participating State in the region, appointed by the Governor of the State; and

(B) may include representatives of agencies, States, and provinces outside the United States.

(3) A regional advisory body may provide advice to the Electric Reliability Organization, a regional entity, or the Commission regarding—

(A) the governance of an existing or proposed regional entity within the same region;

(B) whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest;

(C) whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest; and

(D) any other responsibilities requested by the Commission.

(4) The Commission may give deference to the advice of a regional advisory body if that body is organized on an interconnection-wide basis.

(k) ALASKA AND HAWAII.—This section does not apply to Alaska or Hawaii.

(l) STATUS OF ERO.—The Electric Reliability Organization certified by the Commission under section 215(c) of the Federal Power Act (as added by subsection (a)) and any regional entity delegated enforcement authority pursuant to section 215(e)(4) of that Act (as so added) are not departments, agencies, or instrumentalities of the Federal Government.

**SEC. 216. SITING OF INTERSTATE ELECTRIC TRANSMISSION FACILITIES.**

(a) DESIGNATION OF NATIONAL INTEREST ELECTRIC TRANSMISSION CORRIDORS.—(1) Not later than 1 year after the date of enactment of this section and every 3 years thereafter, the Secretary of Energy (referred to in this section as the “Secretary”), in consultation with affected States, shall conduct a study of electric transmission congestion.

(2) After considering alternatives and recommendations from interested parties (including an opportunity for comment from affected States), the Secretary shall issue a report, based on the study, which may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a national interest electric transmission corridor.

(3) The Secretary shall conduct the study and issue the report in consultation with any appropriate regional entity referred to in section 215.

(4) In determining whether to designate a national interest electric transmission corridor under paragraph (2), the Secretary may consider whether—

(A) the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity;

(B)(i) economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and

(ii) a diversification of supply is warranted;

(C) the energy independence of the United States would be served by the designation;

(D) the designation would be in the interest of national energy policy; and

(E) the designation would enhance national defense and homeland security.

(b) CONSTRUCTION PERMIT.—Except as provided in subsection (i), the Commission may, after notice and an opportunity for hearing, issue 1 or more permits for the construction or modification of electric transmission facilities in a national interest electric transmission corridor designated by the Secretary under subsection (a) if the Commission finds that—

(1)(A) a State in which the transmission facilities are to be constructed or modified does not have authority to—

(i) approve the siting of the facilities; or

(ii) consider the interstate benefits expected to be achieved by the proposed construction or modification of transmission facilities in the State;

(B) the applicant for a permit is a transmitting utility under this Act but does not qualify to apply for a permit or siting approval for the proposed project in a State because the applicant does not serve end-use customers in the State; or

(C) a State commission or other entity that has authority to approve the siting of the facilities has—

(i) withheld approval for more than 1 year after the filing of an application seeking approval pursuant to applicable law or 1 year after the designation of the relevant national interest electric transmission corridor, whichever is later; or

(ii) conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission congestion in interstate commerce or is not economically feasible;

(2) the facilities to be authorized by the permit will be used for the transmission of electric energy in interstate commerce;

(3) the proposed construction or modification is consistent with the public interest;

(4) the proposed construction or modification will significantly reduce transmission congestion in interstate commerce and protects or benefits consumers;

(5) the proposed construction or modification is consistent with sound national energy policy and will enhance energy independence; and

(6) the proposed modification will maximize, to the extent reasonable and economical, the transmission capabilities of existing towers or structures so as to minimize the environmental and visual impact of the proposed modification.

(c) PERMIT APPLICATIONS.—(1) Permit applications under subsection (b) shall be made in writing to the Commission.

(2) The Commission shall issue rules specifying—

(A) the form of the application;

(B) the information to be contained in the application; and

(C) the manner of service of notice of the permit application on interested persons.

(d) COMMENTS.—In any proceeding before the Commission under subsection (b), the Commission shall afford each State in which a transmission facility covered by the permit is or will be located, each affected Federal agency and Indian tribe, private property owners, and other interested persons, a reasonable opportunity to

present their views and recommendations with respect to the need for and impact of a facility covered by the permit.

(e) *RIGHTS-OF-WAY.*—(1) In the case of a permit under subsection (b) for electric transmission facilities to be located on property other than property owned by the United States or a State, if the permit holder cannot acquire by contract, or is unable to agree with the owner of the property to the compensation to be paid for, the necessary right-of-way to construct or modify the transmission facilities, the permit holder may acquire the right-of-way by the exercise of the right of eminent domain in the district court of the United States for the district in which the property concerned is located, or in the appropriate court of the State in which the property is located.

(2) Any right-of-way acquired under paragraph (1) shall be used exclusively for the construction or modification of electric transmission facilities within a reasonable period of time after the acquisition.

(3) The practice and procedure in any action or proceeding under this subsection in the district court of the United States shall conform as nearly as practicable to the practice and procedure in a similar action or proceeding in the courts of the State in which the property is located.

(f) *COMPENSATION.*—(1) Any right-of-way acquired pursuant to subsection (e) shall be considered a taking of private property for which just compensation is due.

(2) Just compensation shall be an amount equal to the fair market value (including applicable severance damages) of the property taken on the date of the exercise of eminent domain authority.

(g) *STATE LAW.*—Nothing in this section precludes any person from constructing or modifying any transmission facility in accordance with State law.

(h) *COORDINATION OF FEDERAL AUTHORIZATIONS FOR TRANSMISSION FACILITIES.*—(1) In this subsection:

(A) The term “Federal authorization” means any authorization required under Federal law in order to site a transmission facility.

(B) The term “Federal authorization” includes such permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law in order to site a transmission facility.

(2) The Department of Energy shall act as the lead agency for purposes of coordinating all applicable Federal authorizations and related environmental reviews of the facility.

(3) To the maximum extent practicable under applicable Federal law, the Secretary shall coordinate the Federal authorization and review process under this subsection with any Indian tribes, multistate entities, and State agencies that are responsible for conducting any separate permitting and environmental reviews of the facility, to ensure timely and efficient review and permit decisions.

(4)(A) As head of the lead agency, the Secretary, in consultation with agencies responsible for Federal authorizations and, as appropriate, with Indian tribes, multistate entities, and State agencies that are willing to coordinate their own separate permitting and environmental reviews with the Federal authorization and environ-

mental reviews, shall establish prompt and binding intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, the proposed facility.

(B) The Secretary shall ensure that, once an application has been submitted with such data as the Secretary considers necessary, all permit decisions and related environmental reviews under all applicable Federal laws shall be completed—

(i) within 1 year; or

(ii) if a requirement of another provision of Federal law does not permit compliance with clause (i), as soon thereafter as is practicable.

(C) The Secretary shall provide an expeditious pre-application mechanism for prospective applicants to confer with the agencies involved to have each such agency determine and communicate to the prospective applicant not later than 60 days after the prospective applicant submits a request for such information concerning—

(i) the likelihood of approval for a potential facility; and

(ii) key issues of concern to the agencies and public.

(5)(A) As lead agency head, the Secretary, in consultation with the affected agencies, shall prepare a single environmental review document, which shall be used as the basis for all decisions on the proposed project under Federal law.

(B) The Secretary and the heads of other agencies shall streamline the review and permitting of transmission within corridors designated under section 503 of the Federal Land Policy and Management Act (43 U.S.C. 1763) by fully taking into account prior analyses and decisions relating to the corridors.

(C) The document shall include consideration by the relevant agencies of any applicable criteria or other matters as required under applicable law.

(6)(A) If any agency has denied a Federal authorization required for a transmission or distribution facility, or has failed to act by the deadline established by the Secretary pursuant to this section for deciding whether to issue the authorization, the applicant or any State in which the facility would be located may file an appeal with the President, who shall, in consultation with the affected agency, review the denial or failure to take action on the pending application.

(B) Based on the overall record and in consultation with the affected agency, the President may—

(i) issue the necessary authorization with any appropriate conditions; or

(ii) deny the application.

(C) The President shall issue a decision not later than 90 days after the date of the filing of the appeal.

(D) In making a decision under this paragraph, the President shall comply with applicable requirements of Federal law, including any requirements of—

(i) the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.);

(ii) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(iii) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(iv) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(v) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(7)(A) Not later than 18 months after the date of enactment of this section, the Secretary shall issue any regulations necessary to implement this subsection.

(B)(i) Not later than 1 year after the date of enactment of this section, the Secretary and the heads of all Federal agencies with authority to issue Federal authorizations shall enter into a memorandum of understanding to ensure the timely and coordinated review and permitting of electricity transmission facilities.

(ii) Interested Indian tribes, multistate entities, and State agencies may enter the memorandum of understanding.

(C) The head of each Federal agency with authority to issue a Federal authorization shall designate a senior official responsible for, and dedicate sufficient other staff and resources to ensure, full implementation of the regulations and memorandum required under this paragraph.

(8)(A) Each Federal land use authorization for an electricity transmission or distribution facility shall be issued—

(i) for a duration, as determined by the Secretary, commensurate with the anticipated use of the facility; and

(ii) with appropriate authority to manage the right-of-way for reliability and environmental protection.

(B) On the expiration of the authorization (including an authorization issued before the date of enactment of this section), the authorization shall be reviewed for renewal taking fully into account reliance on such electricity infrastructure, recognizing the importance of the authorization for public health, safety, and economic welfare and as a legitimate use of Federal land.

(9) In exercising the responsibilities under this section, the Secretary shall consult regularly with—

(A) the Federal Energy Regulatory Commission;

(B) electric reliability organizations (including related regional entities) approved by the Commission; and

(C) Transmission Organizations approved by the Commission.

(i) INTERSTATE COMPACTS.—(1) The consent of Congress is given for 3 or more contiguous States to enter into an interstate compact, subject to approval by Congress, establishing regional transmission siting agencies to—

(A) facilitate siting of future electric energy transmission facilities within those States; and

(B) carry out the electric energy transmission siting responsibilities of those States.

(2) The Secretary may provide technical assistance to regional transmission siting agencies established under this subsection.

(3) The regional transmission siting agencies shall have the authority to review, certify, and permit siting of transmission facilities, including facilities in national interest electric transmission corridors (other than facilities on property owned by the United States).

(4) The Commission shall have no authority to issue a permit for the construction or modification of an electric transmission facility

*within a State that is a party to a compact, unless the members of the compact are in disagreement and the Secretary makes, after notice and an opportunity for a hearing, the finding described in subsection (b)(1)(C).*

*(j) RELATIONSHIP TO OTHER LAWS.—(1) Except as specifically provided, nothing in this section affects any requirement of an environmental law of the United States, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).*

*(2) Subsection (h)(6) shall not apply to any unit of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Trails System, the National Wilderness Preservation System, or a National Monument.*

**SEC. 217. PROMOTION OF VOLUNTARY TRANSMISSION ORGANIZATIONS.**

*(a) IN GENERAL.—The Commission may encourage and may approve the voluntary formation of RTOs, ISOs, or other similar organizations approved by the Commission for the purposes of—*

- (1) promoting fair, open access to electric transmission service;*
- (2) facilitating wholesale competition;*
- (3) improving efficiencies in transmission grid management;*
- (4) promoting grid reliability;*
- (5) removing opportunities for unduly discriminatory or preferential transmission practices; and*
- (6) providing for the efficient development of transmission infrastructure needed to meet the growing demands of competitive wholesale power markets.*

*(b) OPERATIONAL CONTROL.—No order issued under this Act shall be conditioned on or require a transmitting utility to transfer operational control of jurisdictional facilities to a Transmission Organization approved by the Commission.*

*(c) ANNUAL AUDITS.—(1) Each Transmission Organization shall report to the Commission on a scheduled basis, as determined by the Commission, the means by which the Transmission Organization will ensure that the Transmission Organization will operate and perform the functions of the Transmission Organization in a cost effective manner that is also consistent with the obligations of the Transmission Organization under the Commission-approved tariffs and agreements of the Transmission Organization.*

*(2) The Commission shall annually audit the compliance of the Transmission Organization with the filed plan and any additional Commission requirements concerning the performance, operations, and cost efficiencies of the Transmission Organization.*

*(3) The Commission shall establish appropriate accounting procedures for recording costs to facilitate comparisons among Transmission Organizations and, to the extent practicable, among other transmitting utilities performing similar functions.*

**SEC. 218. NATIVE LOAD SERVICE OBLIGATION.**

*(a) DEFINITIONS.—In this section:*

- (1) The term “distribution utility” means an electric utility that has a service obligation to end-users or to a State utility or electric cooperative that, directly or indirectly, through 1 or*

more additional State utilities or electric cooperatives, provides electric service to end-users.

(2) The term “load-serving entity” means a distribution utility or an electric utility that has a service obligation.

(3) The term “service obligation” means a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State, or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.

(4) The term “State utility” means a State or any political subdivision of a State, or any agency, authority, or instrumentality of any 1 or more States or political subdivisions, or a corporation that is wholly owned, directly or indirectly, by any 1 or more of the States or political subdivisions, competent to carry on the business of developing, transmitting, using, or distributing power.

(b) MEETING SERVICE OBLIGATIONS.—(1) Paragraph (2) applies to any load-serving entity that, as of the date of enactment of this section—

(A) owns generation facilities, markets the output of Federal generation facilities, or holds rights under 1 or more wholesale contracts to purchase electric energy, for the purpose of meeting a service obligation; and

(B) by reason of ownership of transmission facilities, or 1 or more contracts or service agreements for firm transmission service, holds firm transmission rights for delivery of the output of the generation facilities or the purchased energy to meet the service obligation.

(2) Any load-serving entity described in paragraph (1) is entitled to use the firm transmission rights, or, equivalent tradable or financial transmission rights, in order to deliver the output or purchased energy, or the output of other generating facilities or purchased energy to the extent deliverable using the rights, to the extent required to meet the service obligation of the load-serving entity.

(3)(A) To the extent that all or a portion of the service obligation covered by the firm transmission rights or equivalent tradable or financial transmission rights is transferred to another load-serving entity, the successor load-serving entity shall be entitled to use the firm transmission rights or equivalent tradable or financial transmission rights associated with the transferred service obligation.

(B) Subsequent transfers to another load-serving entity, or back to the original load-serving entity, shall be entitled to the same rights.

(4) The Commission shall exercise the authority of the Commission under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long term basis for long term power supply arrangements made, or planned, to meet such needs.

(c) ALLOCATION OF TRANSMISSION RIGHTS.—Nothing in subsections (b)(1), (b)(2) and (b)(3) of this section shall affect any existing or future methodology employed by a Transmission Organization for allocating or auctioning transmission rights if such Trans-



mission Organization was authorized by the Commission to allocate or auction financial transmission rights on its system as of January 1, 2005, and the Commission determines that any future allocation or auction is just, reasonable and not unduly discriminatory or preferential, provided, however, that if such a Transmission Organization never allocated financial transmission rights on its system that pertained to a period before January 1, 2005, with respect to any application by such Transmission Organization that would change its methodology the Commission shall exercise its authority in a manner consistent with the Act and that takes into account the policies expressed in subsections (b)(1), (b)(2) and (b)(3) as applied to firm transmission rights held by a load-serving entity as of January 1, 2005, to the extent the associated generation ownership or power purchase arrangements remain in effect.

(d) **CERTAIN TRANSMISSION RIGHTS.**—The Commission may exercise authority under this Act to make transmission rights not used to meet an obligation covered by subsection (b) available to other entities in a manner determined by the Commission to be just, reasonable, and not unduly discriminatory or preferential.

(e) **OBLIGATION TO BUILD.**—Nothing in this Act relieves a load-serving entity from any obligation under State or local law to build transmission or distribution facilities adequate to meet the service obligations of the load-serving entity.

(f) **CONTRACTS.**—Nothing in this section provides a basis for abrogating any contract or service agreement for firm transmission service or rights in effect as of the date of enactment of this section. If an ISO in the Western Interconnection had allocated financial transmission rights prior to the date of enactment of this section but had not done so with respect to one or more load-serving entities' firm transmission rights held under contracts to which the preceding sentence applies (or held by reason of ownership or future ownership of transmission facilities), such load-serving entities may not be required, without their consent, to convert such firm transmission rights to tradable or financial rights, except where the load-serving entity has voluntarily joined the ISO as a participating transmission owner (or its successor) in accordance with the ISO tariff.

(g) **WATER PUMPING FACILITIES.**—The Commission shall ensure that any entity described in section 201(f) that owns transmission facilities used predominately to support its own water pumping facilities shall have, with respect to the facilities, protections for transmission service comparable to those provided to load-serving entities pursuant to this section.

(h) **ERCOT.**—This section shall not apply within the area referred to in section 212(k)(2)(A).

(i) **JURISDICTION.**—This section does not authorize the Commission to take any action not otherwise within the jurisdiction of the Commission.

(j) **TVA AREA.**—(1) Subject to paragraphs (2) and (3), for purposes of subsection (b)(1)(B), a load-serving entity that is located within the service area of the Tennessee Valley Authority and that has a firm wholesale power supply contract with the Tennessee Valley Authority shall be considered to hold firm transmission rights for the transmission of the power provided.

(2) *Nothing in this subsection affects the requirements of section 212(j).*

(3) *The Commission shall not issue an order on the basis of this subsection that is contrary to the purposes of section 212(j).*

(h) **FERC RULEMAKING ON LONG-TERM TRANSMISSION RIGHTS IN ORGANIZED MARKETS.**—*Within one year after the date of enactment of this section and after notice and an opportunity for comment, the Commission shall by rule or order implement subsection (b)(4) in Transmission Organizations with organized electricity markets.*

(i) **EFFECT OF EXERCISING RIGHTS.**—*An entity that to the extent required to meet its service obligations exercises rights described in subsection (b) shall not be considered by such action as engaging in undue discrimination or preference under this Act.*

**SEC. 219. PROTECTION OF TRANSMISSION CONTRACTS IN THE PACIFIC NORTHWEST.**

(a) **DEFINITION OF ELECTRIC UTILITY OR PERSON.**—*In this section, the term “electric utility or person” means an electric utility or person that—*

(1) *as of the date of enactment of the Energy Policy Act of 2005 holds firm transmission rights pursuant to contract or by reason of ownership of transmission facilities; and*

(2) *is located—*

(A) *in the Pacific Northwest, as that region is defined in section 3 of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839a); or*

(B) *in that portion of a State included in the geographic area proposed for a regional transmission organization in Commission Docket Number RT01–35 on the date on which that docket was opened.*

(b) **PROTECTION OF TRANSMISSION CONTRACTS.**—*Nothing in this Act confers on the Commission the authority to require an electric utility or person to convert to tradable or financial rights—*

(1) *firm transmission rights described in subsection (a)(1); or*

(2) *firm transmission rights obtained by exercising contract or tariff rights associated with the firm transmission rights described in subsection (a)(1).*

**SEC. 220. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

(a) **RULEMAKING REQUIREMENT.**—*Not later than 1 year after the date of enactment of this section, the Commission shall establish, by rule, incentive-based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefiting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.*

(b) **CONTENTS.**—*The rule shall—*

(1) *promote reliable and economically efficient transmission and generation of electricity by promoting capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy in interstate commerce, regardless of the ownership of the facilities;*

(2) *provide a return on equity that attracts new investment in transmission facilities (including related transmission technologies);*

(3) encourage deployment of transmission technologies and other measures to increase the capacity and efficiency of existing transmission facilities and improve the operation of the facilities; and

(4) allow recovery of—

(A) all prudently incurred costs necessary to comply with mandatory reliability standards issued pursuant to section 215; and

(B) all prudently incurred costs related to transmission infrastructure development pursuant to section 216.

(c) **JUST AND REASONABLE RATES.**—All rates approved under the rules adopted pursuant to this section, including any revisions to the rules, are subject to the requirements of sections 205 and 206 that all rates, charges, terms, and conditions be just and reasonable and not unduly discriminatory or preferential.

**SEC. 221. MARKET TRANSPARENCY RULES.**

(a) **IN GENERAL.**—The Commission may issue such rules as the Commission considers to be appropriate to establish an electronic information system to provide the Commission and the public with access to such information as is necessary or appropriate to facilitate price transparency and participation in markets for the sale in interstate commerce of electric energy at wholesale.

(b) **INFORMATION TO BE MADE AVAILABLE.**—(1) The system under subsection (a) shall provide, on a timely basis, information about the availability and market price of wholesale electric energy and transmission services to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public.

(2) In determining the information to be made available under the system and the time at which to make such information available, the Commission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.

(c) **AUTHORITY TO OBTAIN INFORMATION.**—The Commission shall have authority to obtain information described in subsections (a) and (b) from any electric utility or transmitting utility (including any entity described in section 201(f)).

(d) **EXEMPTIONS.**—The rules of the Commission, if adopted, shall exempt from disclosure information that the Commission determines would, if disclosed—

(1) be detrimental to the operation of an effective market; or

(2) jeopardize system security.

(e) **COMMODITY FUTURES TRADING COMMISSION.**—(1) This section shall not affect the exclusive jurisdiction of the Commodity Futures Trading Commission with respect to accounts, agreements, contracts, or transactions in commodities under the Commodity Exchange Act (7 U.S.C. 1 et seq.).

(2) Any request for information to a designated contract market, registered derivatives transaction execution facility, board of trade, exchange, or market involving an account, agreement, contract, or transaction in a commodity (including natural gas, electricity and other energy commodities) within the exclusive jurisdiction of the Commodity Futures Trading Commission shall be directed to the

*Commodity Futures Trading Commission, which shall cooperate in responding to any information request by the Commission.*

(f) SAVINGS PROVISION.—*In exercising authority under this section, the Commission shall not—*

(1) *compete with, or displace from the market place, any price publisher (including any electronic price publisher); or*

(2) *regulate price publishers (including any electronic price publisher) or impose any requirements on the publication of information by price publishers (including any electronic price publisher).*

(g) ERCOT.—*This section shall not apply to a transaction for the purchase or sale of wholesale electric energy or transmission services within the area described in section 212(k)(2)(A).*

**SEC. 222. PROHIBITION ON FILING FALSE INFORMATION.**

*No entity (including an entity described in section 201(f)) shall willfully and knowingly report any information relating to the price of electricity sold at wholesale or the availability of transmission capacity, which information the person or any other entity knew to be false at the time of the reporting, to a Federal agency with intent to fraudulently affect the data being compiled by the Federal agency.*

**SEC. 223. PROHIBITION OF ENERGY MARKET MANIPULATION.**

*It shall be unlawful for any entity (including an entity described in section 201(f)), directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance (as those terms are used in section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b))), in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of electric ratepayers.*

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**PART III—LICENSEES AND PUBLIC UTILITIES;  
PROCEDURAL AND ADMINISTRATIVE PROVISIONS**

\* \* \* \* \*

**COMPLAINTS**

SEC. 306. Any person, *electric utility*, State, municipality, or State commission complaining of anything done or omitted to be done by any licensee, *transmitting utility*, or public utility in contravention of the provisions of this Act may apply to the Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such licensee, *transmitting utility*, or public utility, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission. If such licensee, *transmitting utility*, or public utility shall not satisfy the complaint within the time specified or there shall appear to be any reasonable ground for investigating such complaint, it shall be the duty of the Commission to investigate the

matters complained of in such manner and by such means as it shall find proper.

**INVESTIGATIONS BY COMMISSION; ATTENDANCE OF WITNESSES; DEPOSITIONS**

SEC. 307. (a) The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person, *electric utility, transmitting utility, or other entity* has violated or is about to violate any provision of this Act or any rule, regulation, or order thereunder, or to aid in the enforcement of the provisions of this Act or in prescribing rules or regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation concerning the matters to which this Act relates, *or in obtaining information about the sale of electric energy at wholesale in interstate commerce and the transmission of electric energy in interstate commerce*. The Commission may permit any person, *electric utility, transmitting utility, or other entity* to file with it a statement in writing under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation.

\* \* \* \* \*

**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 chapter 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 order of the Commission shall be brought by **[any person unless such person]** *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) of this section, 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 chapter.

\* \* \* \* \*

**ENFORCEMENT OF ACT, REGULATIONS AND ORDERS**

SEC. 314. \* \* \*

(c) \* \* \*

*(d) In any proceeding under paragraph (a), the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as the Court determines, any person who is engaged*

or has engaged in practices constituting a violation of Section 222 (and related rules or regulations) from

- (1) acting as an officer or director of an electric utility; or
- (2) engaging in the business of purchasing or selling—
  - (A) electric energy; or
  - (B) transmission services subject to the jurisdiction of the Commission.

**GENERAL FORFEITURE PROVISIONS; VENUE**

SEC. 315. \* \* \*

(b) \* \* \*

(c) This [subsection] section shall not apply in the case of any provision of section 211, 212, 213, or 214 or any rule or order issued under any such provision.

**GENERAL PENALTIES**

SEC. 316. (a) Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this Act required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished by a fine of not more than ~~[\$5,000]~~ \$1,000,000 or by imprisonment for not more than ~~[two years]~~ five years, or both.

(b) Any person who willfully and knowingly violates any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this Act, or any rule or regulation imposed by the Secretary of the Army under authority of Part I of this Act shall, in addition to any other penalties provided by law, be punished upon conviction thereof by a fine of not exceeding ~~[\$500]~~ \$25,000 for each and every day during which such offense occurs.

[(c) This subsection shall not apply in the case of any provision of section 211, 212, 213, or 214 or any rule or order issued under any such provision.]

**SEC. 316A. ENFORCEMENT OF CERTAIN PROVISIONS**

(a) VIOLATIONS.—It shall be unlawful for any person to violate any provision of ~~[section 211, 212, 213, or 214]~~ Part II or any rule or order issued under any such provision.

(b) CIVIL PENALTIES.—Any person who violates any provision of ~~[section 211, 212, 213, or 214]~~ Part II or any provision of any rule or order thereunder shall be subject to a civil penalty of not more than ~~[\$10,000]~~ \$1,000,000 for each day that such violation continues.

\* \* \* \* \*

**[CONFLICT OF JURISDICTION]**

[SEC. 318. If, with respect to the issue, sale, or guaranty of a security, or assumption of obligation or liability in respect of a security, the method of keeping accounts, the filing of reports, or the acquisition or disposition of any security, capital assets, facilities, or any other subject matter, any person is subject both to a require-

ment of the Public Utility Holding Company Act of 1935 or of a rule, regulation, or order thereunder and to a requirement of this Act or of a rule, regulation, or order thereunder, the requirement of the Public Utility Holding Company Act of 1935 shall apply to such person, and such person shall not be subject to the requirement of this Act, or of any rule, regulation, or order thereunder, with respect to the same subject matter, unless the Securities and Exchange Commission has exempted such person from such requirement of the Public Utility Holding Company Act of 1935, in which case the requirements of this Act shall apply to such person.】

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**MINERAL LEASING ACT—ACT OF FEBRUARY  
25, 1920, AS AMENDED (30 U.S.C. 181 ET SEQ.)**

**COAL**

SEC. 2. \* \* \*

(d)(1) \* \* \*

(2)(A) After the Secretary has approved the establishment of a logical mining unit, any mining plan approved for that unit must require such diligent development, operation, and production that the reserves of the entire unit will be mined within a period established by the Secretary which shall not be more than forty years.

(B) *The Secretary may establish a period of more than forty years if the Secretary determines that—*

*(i) the longer period will ensure the maximum economic recovery of a coal deposit; or*

*(ii) the longer period is in the interest of the orderly, efficient, or economic development of a coal resource.*

\* \* \* \* \*

SEC. 3. 【Any person,】 *(a)(1) Except as provided in paragraph (3), on a finding by the Secretary under paragraph (2), any person, association, or corporation holding a lease of coal lands or coal deposits under the provisions of this chapter may with the approval of the Secretary of the Interior, 【upon a finding by him that it would be in the interest of the United States, secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous or cornering to those embraced in such lease, but in no event shall the total area added by such modifications to an existing coal lease exceed one hundred sixty acres, or add acreage larger than that in the original lease.】 secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous or cornering to those embraced in the lease.*

*(2) A finding referred to in paragraph (1) is a finding by the Secretary that the modifications—(A) would be in the interest of the United States; (B) would not displace a competitive interest in the lands; and (C) would not include lands or deposits that can be developed as part of another potential or existing operation. (3) In no case shall the total area added by modifications to an existing coal lease under paragraph (1)—(A) exceed 320 acres; or (B) add acreage larger than that in the original lease. 【The Secretary】 (b) The Sec-*

retary shall prescribe terms and conditions which shall be consistent with this chapter and applicable to all of the acreage in such modified lease except that nothing in this section shall require the Secretary to apply the production or mining plan requirements of sections 202a(2) and 207(c) of this title. **【The minimum】** (c) *The minimum* royalty provisions of section 207(a) of this title shall not apply to any lands covered by this modified lease prior to a modification until the term of the original lease or extension thereof which became effective prior to the effective date of this Act has expired.

\* \* \* \* \*

SEC. 7. \* \* \*

(b) **【Each lease】** (1) *Each lease* shall be subject to the conditions of diligent development and continued operation of the mine or mines, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. **【The Secretary】** (2) *The Secretary* of the Interior, upon determining that the public interest will be served thereby, may suspend the condition of continued operation upon the payment of advance royalties. **【Such advance royalties】** (3) *Advance royalties described in paragraph (2)* shall be no less than the production royalty which would otherwise be paid and shall be computed on a fixed reserve to production ratio (determined by the Secretary). **【The aggregate number of years during the period of any lease for which advance royalties may be accepted in lieu of the condition of continued operation shall not exceed ten. The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advance royalties paid under such lease to the extent that such advance royalties have not been used to reduce production royalties for a prior year. No advance royalty paid during the initial twenty-year term of a lease shall be used to reduce a production royalty after the twentieth year of a lease.】** (4) *The aggregate number of years during the period of any lease for which advance royalties may be accepted in lieu of the condition of continued operation shall not exceed 20 years.* (5) *The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advance royalties paid under a lease described in paragraph (4) to the extent that the advance royalties have not been used to reduce production royalties for a prior year.* **【The Secretary】** (6) *The Secretary* may, upon six months' notification to the lessee cease to accept advance royalties in lieu of the requirement of continued operation. **【Nothing】** (7) *Nothing* in this subsection shall be construed to affect the requirement contained in the second sentence of subsection (a) of this section relating to commencement of production at the end of ten years.

(c) Prior to taking any action on a leasehold which might cause a significant disturbance of the environment, **【and not later than three years after a lease is issued,】** the lessee shall submit for the Secretary's approval an operation and reclamation plan. The Secretary shall approve or disapprove the plan or require that it be modified. Where the land involved is under the surface jurisdiction



of another Federal agency, that other agency must consent to the terms of such approval.

\* \* \* \* \*

SEC. 17. \* \* \*

(b)(1)(B) The national minimum acceptable bid shall be \$2 per acre for a period of 2 years from the date of enactment of the Federal Onshore Oil and Gas Leasing Reform Act of 1987. Thereafter, the Secretary may establish by regulation a higher national minimum acceptable bid for all leases based upon a finding that such action is necessary: (i) to enhance financial returns to the United States; and (ii) to promote more efficient management of oil and gas resources on Federal lands. Ninety days before the Secretary makes any change in the national minimum acceptable bid, the Secretary shall notify the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. **[The]** *Subject to paragraph (2)(B), the proposal or promulgation of any regulation to establish a national minimum acceptable bid shall not be considered a major Federal action subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969.*

(2)(A) If the lands to be leased are within a special tar sand area, **[they shall be]** *the lands may be* leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than five thousand one hundred and twenty acres, which shall be as nearly compact as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary. Royalty shall be 12½ per centum in amount of value of production removed or sold from the lease subject to section 17(k)(1)(c). The Secretary may lease such additional lands in special tar sand areas as may be required in support of any operations necessary for the recovery of tar sands.

(B) *For any area that contains any combination of tar sand and oil or gas (or both), the Secretary may issue under this Act, separately—*

- (i) *a lease for exploration for and extraction of tar sand; and*
- (ii) *a lease for exploration for and development of oil and gas.*

(C) *A lease described in subparagraph (B) shall have provisions addressing the appropriate accommodation of resources.*

(D) *A lease issued for tar sand development shall be issued using the same bidding process, annual rental, and posting period as a lease issued for oil and gas, except that the minimum acceptable bid required for a lease issued for tar sand shall be \$2 per acre.*

\* \* \* \* \*

SEC. 27. \* \* \*

(d)(1) No person, association, or corporation, except as otherwise provided in this Act, shall take, hold, own or control at one time, whether acquired directly from the Secretary under this Act or otherwise, oil or gas leases (including options for such leases or interests therein) on land held under the provisions of this Act exceeding in the aggregate two hundred forty-six thousand and eighty acres in any one State other than Alaska: Provided, however, That acreage held in special tar sand areas, *and acreage under any lease*

*any portion of which has been committed to a federally approved unit or cooperative plan or communitization agreement or for which royalty (including compensatory royalty or royalty in-kind) was paid in the preceding calendar year, shall not be chargeable against such State limitations. In the case of the State of Alaska, the limit shall be three hundred thousand acres in the northern leasing district and three hundred thousand acres in the southern leasing district, and the boundary between said two districts shall be the left limit of the Tanana River from the border between the United States and Canada to the confluence of the Tanana and Yukon Rivers, and the left limit of the Yukon River from said confluence to its principal southern mouth.*

**APPROPRIATIONS FOR THE DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1981—PUBLIC LAW 96-514, AS AMENDED**

An Act

Making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1981, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of the Interior and related agencies for the fiscal year ending September 30, 1981, and for other purposes, namely:*

**TITLE I—DEPARTMENT OF THE INTERIOR**

\* \* \* \* \*

**ENERGY AND MINERALS**

\* \* \* \* \*

[For necessary expenses of carrying out the provisions of section 104 of Public Law 94-258, and for conducting hereafter and with funds appropriated by this Act and by subsequent appropriations Acts, notwithstanding any other provision of law and pursuant to such rules and regulations as the Secretary may prescribe, an expeditious program of competitive leasing of oil and gas in the National Petroleum Reserve in Alaska: Provided, That (1) activities undertaken pursuant to this section shall include or provide for, \$107,001,000, to remain available until expended: Provided, that (1) activities undertaken pursuant to this Act shall include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the National Petroleum Reserve in Alaska (the Reserve); (2) the provisions of section 202 and section 603 of the Federal Lands Policy and Management Act of 1976 (90 Stat. 2743) shall not be appli-

cable to the Reserve; (3) the first lease sale shall be conducted within twenty months of the date of enactment of this Act: Provided, That the first lease sale shall be conducted only after publication of a final environmental impact statement if such is deemed necessary under the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4332); (4) the withdrawals established by section 102 of Public Law 94-258 are rescinded for the purposes of the oil and gas leasing program authorized herein; (5) bidding systems used in lease sales shall be based on bidding systems included in section 205(a)(1)(A) through (H) of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 629); (6) lease tracts may encompass identified geological structures; (7) the size of lease tracts may be up to sixty thousand acres, as determined by the Secretary; (8) each lease shall be issued for an initial period of ten years, and shall be extended for so long thereafter as oil or gas is produced from the lease in paying quantities, or as drilling or reworking operations, as approved by the Secretary, are conducted thereon; (9) for purposes of conservation of the natural resources of any oil or gas pool, field, or like area, or any part thereof, lessees thereof and their representatives are authorized to unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit agreement for such pool, field, or like area, or any part thereof (whether or not any other part of said oil or gas pool, field, or like area is already subject to any cooperative or unit plan of development or operation), whenever determined by the Secretary to be necessary or advisable in the public interest. Drilling, production, and well reworking operations performed in accordance with a unit agreement shall be deemed to be performed for the benefit of all leases that are subject in whole or in part to such unit agreement. When separate tracts cannot be independently developed and operated in conformity with an established well spacing or development program, any lease, or a portion thereof, may be pooled with other lands, whether or not owned by the United States, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the Secretary of the Interior to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each such lease committed thereto; (10) to encourage the greatest ultimate recovery of oil or gas or in the interest of conservation the Secretary is authorized to waive, suspend, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, including on any lease operated pursuant to a unit agreement, whenever in his judgment the leases cannot be successfully operated under the terms provided therein. The Secretary is authorized to direct or assent to the suspension of operations and production on any lease or unit. In the event the Secretary, in the interest of conservation, shall direct or assent to the suspension of operations and production on any lease or unit, any payment of acreage rental or minimum royalty prescribed by such lease or unit likewise shall be suspended during the period of suspension of operations and production, and the term of such lease shall be extended by adding any such suspension period thereto; and (11) all receipts from

sales, rentals, bonuses, and royalties on leases issued pursuant to this section shall be paid into the Treasury of the United States: Provided, That 50 percent thereof shall be paid by the Secretary of the Treasury semiannually, as soon thereafter as practicable after March 30 and September 30 each year, to the State of Alaska for: (A) planning; (B) construction, maintenance, and operation of essential public facilities; and (C) other necessary provisions of public service: Provided further, That in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this section.

【Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the National Petroleum Reserve in Alaska which do not interfere with operations under any contract maintained or granted previously. Any information acquired in such explorations shall be subject to the conditions of 43 U.S.C. 1352(a)(1)(A).】

【Any action seeking judicial review of the adequacy of any program or site-specific environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) concerning oil and gas leasing in the National Petroleum Reserve-Alaska shall be barred unless brought in the appropriate District Court within 60 days after notice of the availability of such statement is published in the Federal Register.】

【The detailed environmental studies and assessments that have been conducted on the exploration program and the comprehensive land-use studies carried out in response to sections 105(b) and (c) of Public Law 94-258 shall be deemed to have fulfilled the requirements of section 102(2)(c) of the National Environmental Policy Act (Public Law 91-190), with regard to the first two oil and gas lease sales in the National Petroleum Reserve-Alaska: Provided, That not more than a total of 2,000,000 acres may be leased in these two sales: Provided further, That any exploration or production undertaken pursuant to this section shall be in accordance with section 104(b) of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 304; 42 U.S.C. 6504).】

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**NATIONAL PETROLEUM RESERVE IN ALASKA—  
PUBLIC LAW 94-258 AS AMENDED THROUGH  
P.L. 108-68, JUNE 18, 2003**

AN ACT To authorize the Secretary of the Interior to establish on certain public lands of the United States national petroleum reserves the development of which needs to be regulated in a manner consistent with the total energy needs of the Nation, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act may be cited as the "Naval Petroleum Reserves Production Act of 1976".*

## TITLE I—NATIONAL PETROLEUM RESERVE IN ALASKA

\* \* \* \* \*

### ADMINISTRATION OF THE RESERVE

SEC. 104. [(a) Except as provided in subsection (e) of this section, production of petroleum from the reserve is prohibited and no development leading to production of petroleum from the reserve shall be undertaken until authorized by an Act of Congress.]

[(b)] (a) Any exploration within the Utukok River, the Teshekpuk Lake areas, and other areas designated by the Secretary of the Interior containing any significant subsistence, recreational, fish and wildlife, or historical or scenic value, shall be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the reserve.

[(c)] (b) The Secretary of the Navy shall continue the ongoing petroleum exploration program within the reserve until the date of the transfer of jurisdiction specified in section 103(a). Prior to the date of such transfer of jurisdiction the Secretary of the Navy shall—

(1) cooperate fully with the Secretary of the Interior providing him access to such facilities and such information as he may request to facilitate the transfer of jurisdiction;

(2) provide to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives copies of any reports, plans, or contracts pertaining to the reserve that are required to be submitted to the Committees on Armed Services of the Senate and the House of Representatives; and

(3) cooperate and consult with the Secretary of the Interior before executing any new contract or amendment to any existing contract pertaining to the reserve and allow him a reasonable opportunity to comment on such contract or amendment, as the case may be.

[(d)] (c) The Secretary of the Interior shall commence further petroleum exploration of the reserve as of the date of transfer of jurisdiction specified in section 103(a). In conducting this exploration effort, the Secretary of the Interior—

\* \* \* \* \*

### ANTITRUST PROVISIONS

SEC. 106. Unless otherwise provided by Act of Congress, whenever development leading to production of petroleum is authorized, the provisions of subsections (g), (h), and (i) of section 7430 of title 10, United States Code, shall be deemed applicable to the Secretary of the Interior with respect to rules and regulations, plans of development and amendments thereto, and contracts and operating agreements. All plans and proposals submitted to the Congress under this title or pursuant to legislation authorizing development leading to production shall contain a report by the Attorney Gen-

eral of the United States on the anticipated effects upon competition of such plans and proposals.

**SEC. 107. COMPETITIVE LEASING OF OIL AND GAS.**

(a) *IN GENERAL.*—The Secretary shall conduct an expeditious program of competitive leasing of oil and gas in the Reserve in accordance with this Act.

(b) *MITIGATION OF ADVERSE EFFECTS.*—

(1) *IN GENERAL.*—Activities undertaken pursuant to this Act shall include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to prevent to the extent practicable, and to mitigate, reasonably foreseeable and significantly adverse effects on the surface resources of the National Petroleum Reserve in Alaska.

(2) *CERTAIN RESOURCES AND FACILITIES.*—In carrying out the leasing program under this section, the Secretary shall minimize, to the extent practicable, the impact to surface resources and consolidate facilities.

(c) *LAND USE PLANNING; BLM WILDERNESS STUDY.*—The provisions of section 202 and section 603 of the Federal Lands Policy and Management Act of 1976 (90 Stat. 2743) shall not be applicable to the Reserve.

(d) *FIRST LEASE SALE.*—The first lease sale shall be conducted within twenty months of the date of enactment of this Act: Provided, That the first lease sale shall be conducted only after publication of a final environmental impact statement if such is deemed necessary under the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(e) *WITHDRAWALS.*—The withdrawals established by section 102 of Public Law 94–258 are rescinded for the purposes of the oil and gas leasing program authorized under this section.

(f) *BIDDING SYSTEMS.*—Bidding systems used in lease sales shall be based on bidding systems included in section 205(a)(1) (A) through (H) of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 629).

(g) *GEOLOGICAL STRUCTURES.*—Lease tracts may encompass identified geological structures.

(h) *SIZE OF LEASE TRACTS.*—The size of lease tracts may be up to sixty thousand acres, as determined by the Secretary.

(i) *TERMS.*—

(1) *IN GENERAL.*—Each lease shall be issued for an initial period of not more than 10 years, and shall be extended for so long thereafter as oil or gas is produced from the lease in paying quantities or drilling or reworking operations, as approved by the Secretary, are conducted on the leased land.

(2) *TERMINATION.*—No lease issued under this section covering lands capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same unless the lessee is allowed a reasonable time, which shall be not less than 60 days after notice by registered or certified mail, within which to place the lands in producing status or unless, after such status is established, production is discontinued on the leased premises without permission granted by the Secretary under the provisions of this Act.

(3) *RENEWAL OF LEASES WITHOUT DISCOVERIES.*—At the end of the primary term of a lease, the Secretary shall renew for one additional 10-year term a lease that does not meet the requirements of paragraph (1) if the lessee submits to the Secretary an application for renewal not later than 60 days before the expiration of the primary lease, pays the Secretary a renewal fee of \$100 per acre of leased land, and—

(A) the lessee provides evidence, and the Secretary agrees that, the lessee has diligently pursued exploration that warrants continuation with the intent of continued exploration or future potential development of the leased land; or

(B) all or part of the lease—

(i) is part of a unit agreement covering a lease described in subparagraph (A); and

(ii) has not been previously contracted out of the unit.

(4) *APPLICABILITY.*—This subsection applies to a lease that is in effect on or after the date of enactment of the Energy Policy Act of 2005.

(j) *UNIT AGREEMENTS.*—

(1) *IN GENERAL.*—For the purpose of conservation of the natural resources of all or part of any oil or gas pool, field, reservoir, or like area, lessees (including representatives) of the pool, field, reservoir, or like area may unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit agreement for all or part of the pool, field, reservoir, or like area (whether or not any other part of the oil or gas pool, field, reservoir, or like area is already subject to any cooperative or unit plan of development or operation), if the Secretary determines the action to be necessary or advisable in the public interest. In determining the public interest, the Secretary shall, among other things, examine the extent to which the unit agreement will minimize the impact to surface resources of the leases and will facilitate consolidation of facilities.

(2) *CONSULTATION.*—In making a determination under paragraph (1), the Secretary shall consult with the State of Alaska or a Regional Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)) with respect to the creation or expansion of units that include acreage in which the State of Alaska or the Regional Corporation has an interest in the mineral estate.

(3) *PRODUCTION ALLOCATION METHODOLOGY.*—

(A) The Secretary may use a production allocation methodology for each participating area within a unit that includes solely Federal land in the Reserve.

(B) The Secretary shall use a production allocation methodology for each participating area within a unit that includes Federal land in the Reserve and non-Federal land based on the characteristics of each specific oil or gas pool, field, reservoir, or like area to take into account reservoir heterogeneity and area variation in reservoir producibility across diverse leasehold interests. The implementation of the foregoing production allocation methodology shall be

controlled by agreement among the affected lessors and lessees.

(4) *BENEFIT OF OPERATIONS.*—Drilling, production, and well reworking operations performed in accordance with a unit agreement shall be deemed to be performed for the benefit of all leases that are subject in whole or in part to such unit agreement.

(5) *POOLING.*—If separate tracts cannot be independently developed and operated in conformity with an established well spacing or development program, any lease, or a portion thereof, may be pooled with other lands, whether or not owned by the United States, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the Secretary of the Interior (in consultation with the owners of the other land) to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each such lease committed to the agreement.

(k) *EXPLORATION INCENTIVES.*—

(1) *IN GENERAL.*—

(A) *WAIVER, SUSPENSION, OR REDUCTION.*—To encourage the greatest ultimate recovery of oil or gas or in the interest of conservation, the Secretary may waive, suspend, or reduce the rental fees or minimum royalty, or reduce the royalty on an entire leasehold (including on any lease operated pursuant to a unit agreement), whenever (after consultation with the State of Alaska and the North Slope Borough of Alaska and the concurrence of any Regional Corporation for leases that include land that was made available for acquisition by the Regional Corporation under the provisions of section 1431(o) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.)) in the judgment of the Secretary it is necessary to do so to promote development, or whenever in the judgment of the Secretary the leases cannot be successfully operated under the terms provided therein.

(B) *APPLICABILITY.*—This paragraph applies to a lease that is in effect on or after the date of enactment of the Energy Policy Act of 2005.

(2) *SUSPENSION OF OPERATIONS AND PRODUCTION.*—The Secretary may direct or assent to the suspension of operations and production on any lease or unit.

(3) *SUSPENSION OF PAYMENTS.*—If the Secretary, in the interest of conservation, shall direct or assent to the suspension of operations and production on any lease or unit, any payment of acreage rental or minimum royalty prescribed by such lease or unit likewise shall be suspended during the period of suspension of operations and production, and the term of such lease shall be extended by adding any such suspension period to the lease.

(l) *RECEIPTS.*—All receipts from sales, rentals, bonuses, and royalties on leases issued pursuant to this section shall be paid into the Treasury of the United States: Provided, That 50 percent thereof



shall be paid by the Secretary of the Treasury semiannually, as soon thereafter as practicable after March 30 and September 30 each year, to the State of Alaska for:

- (1) planning;
- (2) construction, maintenance, and operation of essential public facilities; and
- (3) other necessary provisions of public service: Provided further, That in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act.

(m) *EXPLORATIONS.*—Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the National Petroleum Reserve in Alaska which do not interfere with operations under any contract maintained or granted previously. Any information acquired in such explorations shall be subject to the conditions of 43 U.S.C. 1352(a)(1)(A).

(n) *ENVIRONMENTAL IMPACT STATEMENTS.*—

(1) *JUDICIAL REVIEW.*—Any action seeking judicial review of the adequacy of any program or site-specific environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) concerning oil and gas leasing in the National Petroleum Reserve-Alaska shall be barred unless brought in the appropriate District Court within 60 days after notice of the availability of such statement is published in the Federal Register.

(2) *INITIAL LEASE SALES.*—The detailed environmental studies and assessments that have been conducted on the exploration program and the comprehensive land-use studies carried out in response to sections 105 (b) and (c) of Public Law 94-258 shall be deemed to have fulfilled the requirements of section 102(2)(c) of the National Environmental Policy Act (Public Law 91-190), with regard to the first two oil and gas lease sales in the National Petroleum Reserve-Alaska: Provided, That not more than a total of 2,000,000 acres may be leased in these two sales: Provided further, That any exploration or production undertaken pursuant to this section shall be in accordance with section 104(b).

(o) *REGULATIONS.*—As soon as practicable after the date of enactment of the Energy Policy Act of 2005, the Secretary shall issue regulations to implement this section.

(p) *WAIVER OF ADMINISTRATION FOR CONVEYED LANDS.*—

(1) *IN GENERAL.*—Notwithstanding section 14(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(g)), the Secretary of the Interior shall waive administration of any oil and gas lease to the extent that the lease covers any land in the Reserve in which all of the subsurface estate is conveyed to the Arctic Slope Regional Corporation (referred to in this subsection as the “Corporation”).

(2) *PARTIAL CONVEYANCE.*—

(A) *IN GENERAL.*—In a case in which a conveyance of a subsurface estate described in paragraph (1) does not include all of the land covered by the oil and gas lease, the

*person that owns the subsurface estate in any particular portion of the land covered by the lease shall be entitled to all of the revenues reserved under the lease as to that portion, including, without limitation, all the royalty payable with respect to oil or gas produced from or allocated to that portion.*

*(B) SEGREGATION OF LEASE.—In a case described in subparagraph (A), the Secretary of the Interior shall—*

*(i) segregate the lease into 2 leases, 1 of which shall cover only the subsurface estate conveyed to the Corporation; and*

*(ii) waive administration of the lease that covers the subsurface estate conveyed to the Corporation.*

*(C) NO CHANGE IN LEASE OBLIGATIONS.—The segregation of the lease described in subparagraph (B)(i) has no effect on the obligations of the lessee under either of the resulting leases, including obligations relating to operations, production, or other circumstances (other than payment of rentals or royalties).*

*(3) AUTHORITY TO MANAGE FEDERALLY OWNED SURFACE ESTATE.—Nothing in this subsection limits the authority of the Secretary of the Interior to manage the federally-owned surface estate within the Reserve.*

#### **AUTHORIZATION FOR APPROPRIATIONS**

**[SEC. 107] SEC. 108.** (a) There are authorized to be appropriated to the Department of the Interior such sums as may be necessary to carry out the provisions of this title.

(b) If the Secretary of the Interior determines that there is an immediate and substantial increase in the need for municipal services and facilities in communities located on or near the reserve as a direct result of the exploration and study activities authorized by this title and that an unfair and excessive financial burden will be incurred by such communities as a result of the increased need for such services and facilities, then he is authorized to assist such communities in meeting the costs of providing increased municipal services and facilities. The Secretary of the Interior shall carry out the provisions of this section through existing Federal programs and he shall consult with the heads of the departments or agencies of the Federal Government concerned with the type of services and facilities for which financial assistance is being made available.

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### **NATURAL GAS ACT—ACT OF JUNE 21, 1938, CHAPTER 556, AS AMENDED (15 U.S.C. 717- 717W)**

\* \* \* \* \*

#### **EXPORTATION OR IMPORTATION OF NATURAL GAS**

SEC. 3. \* \* \*

(d) *Except as specifically provided in this part, 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) *No facilities located onshore or in State waters for the import of natural gas from a foreign country, or the export of natural gas to a foreign country, shall be sited, constructed, expanded, or operated, unless the Commission has authorized such acts or operations.*

(2) *The Commission shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of facilities located onshore or in State waters for the import of natural gas from a foreign country or the export of natural gas to a foreign country.*

(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 finds appropriate.*

(B) *The Commission shall not—*

(i) *deny an application solely on the basis that the applicant proposes to use the liquefied natural gas import facility 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 liquefied natural gas import facility 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 liquefied natural gas import facility;*  
*or*

(III) *a requirement to file with the Commission schedules or contracts related to the rates, charges, terms, or conditions of service of the liquefied natural gas import facility.*

(4) *An order issued for a liquefied natural gas import facility 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.*

#### **RATES AND CHARGES; SCHEDULES; SUSPENSION OF NEW RATES**

##### **SEC. 4. \* \* \***

(f)(1) *In exercising its authority under this Act or the Natural Gas Policy Act of 1978 (15 U.S.C. 3301 et seq.), the Commission may authorize a natural gas company (or any person that will be a natural gas company on completion of any proposed construction) to provide storage and storage-related services at market-based rates for new storage capacity placed in service after the date of enactment of the Energy Policy Act of 2005, notwithstanding the fact that the com-*

pany is unable to demonstrate that the company lacks market power, if the Commission determines that—

(A) market-based rates are in the public interest and necessary to encourage the construction of storage capacity in areas needing storage services; and

(B) customers are adequately protected.

(2) The Commission shall ensure that reasonable terms and conditions are in place to protect consumers.

(3) If the Commission authorizes a natural gas company to charge market-based rates under this subsection, the Commission shall review periodically (but not more frequently than triennially) whether the market-based rate is just, reasonable, and not unduly discriminatory or preferential.

SEC. 4A. It shall be unlawful for any entity, directly or indirectly, to use or employ, in connection with the purchase or sale of natural gas or the purchase or sale of transportation services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance (as those terms are used in section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) in contravention of such rules and regulations as the Commission may prescribe as necessary in the public interest or for the protection of natural gas ratepayers.

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**[HEARINGS; RULES OF PROCEDURE] PROCESS  
COORDINATION; HEARINGS; RULES OF PROCEDURE**

【SEC. 15. (a) 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.】

【(b) 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.】

SEC. 15. (a) In this section:

(1) The term “Federal authorization” 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.

(2) The term “Federal authorization” 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)(1) *With respect to an application for Federal authorization, the Commission shall, unless the Commission orders otherwise, be the lead agency for purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).*

(2) *As lead agency, the Commission, in consultation with affected agencies, shall prepare a single environmental review document, which shall be used as a basis for all decisions under Federal law on—*

(A) *an application for authorization under section 3; or*

(B) *a certificate of public convenience and necessity under section 7.*

(c)(1) *The Commission shall, in consultation with agencies responsible for Federal authorizations and with due consideration of recommendations by the agencies, establish a schedule for all Federal authorizations required to be completed before an application under section 3 or 7 may be approved.*

(2) *In establishing a schedule, the Commission shall comply with applicable schedules established by Federal law.*

(3) *All Federal and State agencies with jurisdiction over natural gas infrastructure shall seek to coordinate their proceedings within the timeframes established by the Commission with respect to an application for authorization under section 3 or a certificate of public convenience and necessity under section 7.*

(d)(1) *In a case in which an administrative agency or officer has failed to act by the deadline established by the Commission under this section for deciding whether to issue the authorization, the applicant or any State in which the facility would be located may file an appeal with the President, who shall, in consultation with the affected agency, take action on the pending application.*

(2) *Based on the overall record and in consultation with the affected agency, the President may—*

(A) *issue the necessary authorization with any appropriate conditions; or*

(B) *deny the application.*

(3) *Not later than 90 days after the filing of an appeal, the President shall issue a decision as to that appeal.*

(4) *In making a decision under this subsection, the President shall comply with applicable requirements of Federal law, including—*

(A) *the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)*

(B) *the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);*

(C) *the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.);*

(D) *the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);*

(E) *the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);*

(F) *the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); and*

(G) *the Clean Air Act (42 U.S.C. 7401 et seq.).*

(e) *Hearings under this act may be held before the Commission, any member or members thereof, or any representative of the Com-*

mission 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) 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.

\* \* \* \* \*

**ENFORCEMENT OF ACT; REGULATIONS AND ORDERS**

SEC. 20. \* \* \*

Section 20 of the Natural Gas Act (15 U.S.C. 717s) is amended by adding at the end the following:

(d) In any proceedings under subsection (a), the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as the court determines, any person who is engaged or has engaged in practices constituting a violation of section 4A (including related rules and regulations) from—

- (1) acting as an officer or director of a natural gas company;
- or
- (2) engaging in the business of—
  - (A) the purchasing or selling of natural gas; or
  - (B) the purchasing or selling of transmission services subject to the jurisdiction of the Commission.

**GENERAL PENALTIES**

SEC. 21. (a) Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this act required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished by a fine of not more than ~~[\$5,000]~~ \$1,000,000 or by imprisonment for not more than ~~[two years]~~ 5 years, or both.

(b) Any person who willfully and knowingly violates any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this act, shall, in addition to any other penalties provided by law, be punished upon conviction thereof by a fine of not exceeding ~~[\$500]~~ \$50,000 for each and every day during which such offense occurs.

**CIVIL PENALTY AUTHORITY**

SEC. 22. (a) Any person that violates this Act, or any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this Act, shall be subject to a civil pen-

alty of not more than \$1,000,000 per day per violation for as long as the violation continues.

(b) The penalty shall be assessed by the Commission after notice and opportunity for public hearing.

(c) In determining the amount of a proposed penalty, the Commission shall take into consideration the nature and seriousness of the violation and the efforts to remedy the violation.

### **NATURAL GAS MARKET TRANSPARENCY RULES**

SEC. 23. (a)(1) The Commission may issue such rules as the Commission considers to be appropriate to establish an electronic information system to provide the Commission and the public with access to such information as is necessary to facilitate price transparency and participation in markets for the sale or transportation of natural gas in interstate commerce.

(2) The system under paragraph (1) shall provide, on a timely basis, information about the availability and prices of natural gas sold at wholesale and in interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public.

(3) The Commission may—

(A) obtain information described in paragraph (2) from any market participant; and

(B) rely on an entity other than the Commission to receive and make public the information.

(b)(1) Rules described in subsection (a)(1), if adopted, shall exempt from disclosure information the Commission determines would, if disclosed, be detrimental to the operation of an effective market or jeopardize system security.

(2) In determining the information to be made available under this section and time to make the information available, the Commission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.

(c)(1) This section shall not affect the exclusive jurisdiction of the Commodity Futures Trading Commission with respect to accounts, agreements, contracts, or transactions in commodities under the Commodity Exchange Act (7 U.S.C. 1 et seq.).

(2) Any request for information to a designated contract market, registered derivatives transaction execution facility, board of trade, exchange, or market involving accounts, agreements, contracts, or transactions in commodities (including natural gas, electricity and other energy commodities) within the exclusive jurisdiction of the Commodity Futures Trading Commission shall be directed to the Commodity Futures Trading Commission, which shall cooperate in responding to any information request by the Commission.

(d) In carrying out this section, the Commission shall not—

(1) compete with, or displace from the market place, any price publisher (including any electronic price publisher);

(2) regulate price publishers (including any electronic price publisher); or

(3) impose any requirements on the publication of information by price publishers (including any electronic price publisher).

*(e)(1) The Commission shall not condition access to interstate pipeline transportation on the reporting requirements of this section.*

*(2) The Commission shall not require natural gas producers, processors, or users who have a de minimis market presence to comply with the reporting requirements of this section.*

*(f)(1) Except as provided in paragraph (2), no person shall be subject to any civil penalty under this section with respect to any violation occurring more than 3 years before the date on which the person is provided notice of the proposed penalty under section 22(b).*

*(2) Paragraph (1) shall not apply in any case in which the Commission finds that a seller that has entered into a contract for the transportation or sale of natural gas subject to the jurisdiction of the Commission has engaged in fraudulent market manipulation activities materially affecting the contract in violation of section 4A.*

#### **JURISDICTION OF OFFENSES; ENFORCEMENT OF LIABILITIES AND DUTIES**

SEC. [22] 24. The District Courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this act or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this act or any rule, regulation, or order thereunder. Any criminal proceeding shall be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this act or any rule, regulation, or order thereunder may be brought in any such district or in the district wherein the defendant is an inhabitant, and process in such cases may be served wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in [former] sections 128 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347). No costs shall be assessed against the Commission in any judicial proceeding by or against the Commission under this act.

#### **SEPARABILITY OF PROVISIONS**

SEC. [23] 25. If any provision of this act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. [24] 26. This act may be cited as the "Natural Gas Act."

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### **NATURAL GAS POLICY ACT OF 1978—PUBLIC LAW 95-621**

SEC. 504. ENFORCEMENT. \* \* \*

(b) CIVIL ENFORCEMENT.—\* \* \*

(6) CIVIL PENALTIES.



(A) IN GENERAL.—Any person who knowingly violates any provision of this Act, or any provision of any rule or order under this Act, shall be subject to—

(i) except as provided in clause (ii) a civil penalty, which the Commission may assess, of not more than **[\$5,000] \$1,000,000** for any one violation; and

(ii) a civil penalty, which the President may assess, of not more than **[\$25,000] \$1,000,000**, in the case of any violation of an order under section 302 or an order or supplemental order under section 303.

\* \* \* \* \*

(c) CRIMINAL PENALTIES.—

(1) VIOLATIONS OF ACT.—Except in the case of violations covered under paragraph (3), any person who knowingly and willfully violates any provision of this Act shall be subject to—

(A) a fine of not more than **[\$5,000] \$1,000,000**; or

(B) imprisonment for not more than **[two years] 5 years**;

or

(C) both such fine and such imprisonment.

(2) VIOLATION OF RULES OR ORDERS GENERALLY.—Except in the case of violations covered under paragraph (3), any person who knowingly and willfully violates any rule or order under this Act (other than an order of the Commission assessing a civil penalty under subsection (b)(4)(E)), shall be subject to a fine of not more than **[\$500] \$50,000** for each violation.

**COASTAL ZONE MANAGEMENT ACT OF 1972—  
PUBLIC LAW 92-583, APPROVED OCT. 27, 1972,  
86 STAT. 1280—AS AMENDED THROUGH PUB-  
LIC LAW 104-150, JUNE 3, 1996**

\* \* \* \* \*

**[SEC. 319. (a) NOTICE.—**The Secretary shall publish in the Federal Register a notice indicating when the decision record has been closed on any appeal to the Secretary taken from a consistency determination under section 307(c) or (d). No later than 90 days after the date of publication of this notice, the Secretary shall—

(1) issue a final decision in the appeal; or

(2) publish a notice in the Federal Register detailing why a decision cannot be issued within the 90-day period.

(b) DEADLINE.—In the case where the Secretary publishes a notice under subsection (a)(2), the Secretary shall issue a decision in any appeal filed under section 307 no later than 45 days after the date of the publication of the notice.

(c) APPLICATION.—This section applies to appeals initiated by the Secretary and appeals filed by an applicant.]

*SEC. 319. (a) NOTICE.—Not later than 30 days after the date of the filing of an appeal to the Secretary of a consistency determination under section 307, the Secretary shall publish an initial notice in the Federal Register.*

*(b) CLOSURE OF RECORD.—*

(1) *IN GENERAL.*—Not later than the end of the 270-day period beginning on the date of publication of an initial notice under subsection (a), except as provided in paragraph (3), the Secretary shall immediately close the decision record and receive no more filings on the appeal.

(2) *NOTICE.*—After closing the administrative record, the Secretary shall immediately publish a notice in the Federal Register that the administrative record has been closed.

(3) *EXCEPTION.*—

(A) *IN GENERAL.*—Subject to subparagraph (B), during the 270-day period described in paragraph (1), the Secretary may stay the closing of the decision record—

(i) for a specific period mutually agreed to in writing by the appellant and the State agency; or

(ii) as the Secretary determines necessary to receive, on an expedited basis—

(I) any supplemental information specifically requested by the Secretary to complete a consistency review under this Act; or

(II) any clarifying information submitted by a party to the proceeding related to information already existing in the sole record.

(B) *APPLICABILITY.*—The Secretary may only stay the 270-day period described in paragraph (1) for a period not to exceed 60 days.

(c) *DEADLINE FOR DECISION.*—

(1) *IN GENERAL.*—Not later than 90 days after the date of publication of a Federal Register notice stating when the decision record for an appeal has been closed, the Secretary shall issue a decision or publish a notice in the Federal Register explaining why a decision cannot be issued at that time.

(2) *SUBSEQUENT DECISION.*—Not later than 45 days after the date of publication of a Federal Register notice explaining why a decision cannot be issued within the 90-day period, the Secretary shall issue a decision.

**PUBLIC LAW 106-511 (114 Stat. 2376)**

\* \* \* \* \*

**TITLE VI—SOUTHEASTERN ALASKA INTERTIE SYSTEM CONSTRUCTION; NAVAJO ELECTRIFICATION DEMONSTRATION PROGRAM**

\* \* \* \* \*

**SEC. 602. NAVAJO ELECTRIFICATION DEMONSTRATION PROGRAM.**

(a) *ESTABLISHMENT.*—The Secretary of Energy shall establish [a 5-year program] 10-year to assist the Navajo Nation to meet its electricity needs. The purpose of the program shall be to provide electric power to the estimated 18,000 occupied structures on the Navajo Nation that lack electric power. The goal of the program shall be to ensure that every household on the Navajo Nation that

requests it has access to a reliable and affordable source of electricity by the year ~~2006.~~ 2011.

\* \* \* \* \*

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy to carry out this section \$15,000,000 for each of the fiscal years 2002 through ~~2006.~~ 2011.

**THE NATIVE AMERICAN HOUSING AND SELF-DETERMINATION ACT OF 1996—PUBLIC LAW 104-330, AS AMENDED (25 U.S.C. 4101 ET SEQ.)**

\* \* \* \* \*

**SEC. 202. ELIGIBLE AFFORDABLE HOUSING ACTIVITIES. \* \* \***

(1) \* \* \*

(2) DEVELOPMENT.—The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development of utilities and utility services, conversion, demolition, financing, administration and planning, *improvement to achieve greater energy efficiency* and other related activities.

**ATOMIC ENERGY ACT OF 1954—ACT OF AUGUST 1, 1946, CHAPTER 724, AS AMENDED BY THE ACT OF AUGUST 30, 1954, CHAPTER 1073, AS AMENDED (42 U.S.C. 2011 ET SEQ.)**

\* \* \* \* \*

**CHAPTER 11. INTERNATIONAL ACTIVITIES**

\* \* \* \* \*

**SEC. 129. CONDUCT RESULTING IN TERMINATION OF NUCLEAR EXPORTS.**

a. No nuclear materials and equipment or sensitive nuclear technology shall be exported to—

(1) any non-nuclear-weapon state that is found by the President to have, at any time after the effective date of this section, the effective date was March 10, 1978.

- (A) detonated a nuclear explosive device; or
- (B) terminated or abrogated IAEA safeguards; or
- (C) materially violated an IAEA safeguards agreement;

or

(D) engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such activities; or

(2) any nation or group of nations that is found by the President to have, at any time after the effective date of this section,

(A) materially violated an agreement for cooperation with the United States, or, with respect to material or equipment not supplied under an agreement for cooperation, materially violated the terms under which such material or equipment was supplied or the terms of any commitments obtained with respect thereto pursuant to section 402(a) of the Nuclear Non-Proliferation Act of 1978; or

(B) assisted, encouraged, or induced any non-nuclear-weapon state to engage in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such assistance, encouragement, or inducement; or

(C) entered into an agreement after the date of enactment of this section for the transfer of reprocessing equipment, materials, or technology to the sovereign control of a non-nuclear-weapon state except in connection with an international fuel cycle evaluation in which the United States is a participant or pursuant to a subsequent international agreement or understanding to which the United States subscribes;

unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security: Provided, That prior to the effective date of any such determination, the President's determination, together with a report containing the reasons for his determination, shall be submitted to the Congress and referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act), but any such determination shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the determination. Any such determination shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions.

*b.(1)(A) Notwithstanding any other provision of law, including section 121, and except as provided in paragraphs (2) and (3), no nuclear materials and equipment or sensitive nuclear technology, including items and assistance authorized by section 57 b. and regulated under part 810 of title 10, Code of Federal Regulations (or a successor regulation), and nuclear-related items on the Commerce Control List maintained under part 774 of title 15 of the Code of Federal Regulations (or a successor regulation), shall be exported or reexported, or transferred or retransferred, whether directly or indirectly, and no Federal agency shall issue any license, approval, or authorization for the export or reexport, or transfer, or retransfer, whether directly or indirectly, of the items or assistance described in this paragraph to any country the government of which has been*

identified by the Secretary of State as engaged in state sponsorship of terrorist activities.

(B) Countries described in subparagraph (A) specifically include any country the government of which has been determined by the Secretary of State to have repeatedly provided support for acts of international terrorism under—

(i) section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a));

(ii) section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)); or

(iii) section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)).

(2) This subsection does not apply to exports, reexports, transfers, or retransfers of radiation monitoring technologies, surveillance equipment, seals, cameras, tamper-indication devices, nuclear detectors, monitoring systems, or equipment necessary to safely store, transport, or remove hazardous materials, whether such items, services, or information are regulated by the Department of Energy, the Department of Commerce, or the Commission, except to the extent that the technologies, equipment, seals, cameras, devices, detectors, or systems are available for use in the design or construction of nuclear reactors or nuclear weapons.

(3) The President may waive the application of paragraph (1) to a country if the President determines and certifies to Congress that—

(A) the waiver will not result in any increased risk that the country receiving the waiver will acquire nuclear weapons, nuclear reactors, or any materials or components of nuclear weapons; and

(B)(i) the government of the country has not within the preceding 12-month period willfully aided or abetted the international proliferation of nuclear explosive devices to individuals or groups or willfully aided and abetted an individual or groups in acquiring unsafeguarded nuclear materials;

(ii) in the judgment of the President, the government of the country has provided adequate, verifiable assurances that the country will cease its support for acts of international terrorism;

(iii) the waiver of paragraph (1) is in the vital national security interest of the United States; or

(iv) the waiver of paragraph (1) is essential to prevent or respond to a serious radiological hazard in the country receiving the waiver that may or does threaten public health and safety.

\* \* \* \* \*

#### SEC. 134. FURTHER RESTRICTIONS ON EXPORTS.

[a. The Commission may issue a license for the export of highly enriched uranium to be used as a fuel or target in a nuclear research or test reactor only if, in addition to any other requirement of this Act, the Commission determines that—

[(1) there is no alternative nuclear reactor fuel or target enriched in the isotope 235 to a lesser percent than the proposed export, that can be used in that reactor;

[(2) the proposed recipient of that uranium has provided assurances that, whenever an alternative nuclear reactor fuel or

target can be used in that reactor, it will use that alternative in lieu of highly enriched uranium; and

[(3) the United States Government is actively developing an alternative nuclear reactor fuel or target that can be used in that reactor.]

a. *DEFINITIONS.—In this section—*

(1) *the term “alternative nuclear reactor fuel or target” means a nuclear reactor fuel or target which is enriched to less than 20 percent in the isotope U-235;*

(2) *the term “highly enriched uranium” means uranium enriched to 20 percent or more in the isotope U-235; and*

(3) *a fuel or target “can be used” in a nuclear research or test reactor if—*

(A) *the fuel or target has been qualified by the Reduced Enrichment Research and Test Reactor Program of the Department of Energy, and*

(B) *use of the fuel or target will permit the large majority of ongoing and planned experiments and isotope production to be conducted in the reactor without a large percentage increase in the total cost of operating the reactor.*

[b. As used in this section—

[(1) the term “alternative nuclear reactor fuel or target” means a nuclear reactor fuel or target which is enriched to less than 20 percent in the isotope U-235;

[(2) the term “highly enriched uranium” means uranium enriched to 20 percent or more in the isotope U-235; and

[(3) a fuel or target “can be used” in a nuclear research or test reactor if—

[(A) the fuel or target has been qualified by the Reduced Enrichment Research and Test Reactor Program of the Department of Energy, and

[(B) use of the fuel or target will permit the large majority of ongoing and planned experiments and isotope production to be conducted in the reactor without a large percentage increase in the total cost of operating the reactor.]

b. *RESTRICTIONS ON EXPORTS.—Except as provided in subsection c., the Commission; and may issue a license for the export of highly enriched uranium to be used as a fuel or target in a nuclear research or test reactor only if, in addition to any other requirement of this Act, the Commission determines that—*

(1) *there is no alternative nuclear reactor fuel or target enriched in the isotope 235 to a lesser percent than the proposed export, that can be used in that reactor;*

(2) *the proposed recipient of that uranium has provided assurances that, whenever an alternative nuclear reactor fuel or target can be used in that reactor, it will use that alternative in lieu of highly enriched uranium; and*

(3) *the United States Government is actively developing an alternative nuclear reactor fuel or target that can be used in that reactor.*

c. *MEDICAL ISOTOPE PRODUCTION.—*

(1) *DEFINITIONS.—In this subsection:*

(A) *MEDICAL ISOTOPE.—The term “medical isotope” includes Molybdenum 99, Iodine 131, Xenon 133, and other*

radioactive materials used to produce a radiopharmaceutical for diagnostic, therapeutic procedures or for research and development.

(B) *RADIOPHARMACEUTICAL.*—The term “radiopharmaceutical” means a radioactive isotope that—

(i) contains byproduct material combined with chemical or biological material; and

(ii) is designed to accumulate temporarily in a part of the body for—

(I) therapeutic purposes; or

(II) enabling the production of a useful image for use in a diagnosis of a medical condition.

(C) *RECIPIENT COUNTRY.*—The term “recipient country” means Canada, Belgium, France, Germany, and the Netherlands.

(2) *LICENSES.*—The Commission may issue a license authorizing the export (including shipment to and use at intermediate and ultimate consignees specified in the license) to a recipient country of highly enriched uranium for medical isotope production if, in addition to any other requirements of this Act (except subsection b.), the Commission determines that—

(A) a recipient country that supplies an assurance letter to the United States in connection with the consideration by the Commission of the export license application has informed the United States that any intermediate consignees and the ultimate consignee specified in the application are required to use the highly enriched uranium solely to produce medical isotopes; and

(B) the highly enriched uranium for medical isotope production will be irradiated only in a reactor in a recipient country that—

(i) uses an alternative nuclear reactor fuel; or

(ii) is the subject of an agreement with the United States to convert to an alternative nuclear reactor fuel when alternative nuclear reactor fuel can be used in the reactor.

(3) *REVIEW OF PHYSICAL PROTECTION REQUIREMENTS.*—

(A) *IN GENERAL.*—The Commission shall review the adequacy of physical protection requirements that, as of the date of an application under paragraph (2), are applicable to the transportation and storage of highly enriched uranium for medical isotope production or control of residual material after irradiation and extraction of medical isotopes.

(B) *IMPOSITION OF ADDITIONAL REQUIREMENTS.*—If the Commission determines that additional physical protection requirements are necessary (including a limit on the quantity of highly enriched uranium that may be contained in a single shipment), the Commission shall impose the requirements as license conditions or through other appropriate means.

(4) *FIRST REPORT TO CONGRESS.*—

(A) *NAS STUDY.*—The Secretary shall enter into an arrangement with the National Academy of Sciences under

which the National Academy of Sciences shall conduct a study to determine—

(i) the feasibility of procuring supplies of medical isotopes from commercial sources that do not use highly enriched uranium;

(ii) the current and projected demand and availability of medical isotopes in regular current domestic use;

(iii) the progress being made by the Department of Energy and other agencies and entities to eliminate all use of highly enriched uranium in reactor fuel, reactor targets, and medical isotope production facilities; and

(iv) the potential cost differential in medical isotope production in the reactors and target processing facilities if the products were derived from production systems that do not involve fuels and targets with highly enriched uranium.

(B) FEASIBILITY.—For the purpose of this subsection, the use of low enriched uranium to produce medical isotopes shall be determined to be feasible if—

(i) low enriched uranium targets have been developed and demonstrated for use in the reactors and target processing facilities that produce significant quantities of medical isotopes to serve United States needs for such isotopes;

(ii) sufficient quantities of medical isotopes are available from low enriched uranium targets and fuel to meet United States domestic needs; and

(iii) the average anticipated total cost increase from production of medical isotopes in the facilities without use of highly enriched uranium is less than 10 percent.

(C) REPORT BY THE SECRETARY.—Not later than 5 years after the date of enactment of the Energy Policy Act of 2005, the Secretary shall submit to Congress a report that—

(i) contains the findings of the National Academy of Sciences made in the study under subparagraph (A); and

(ii) discloses the existence of any commitments from commercial producers to provide, not later than the date that is 4 years after the date of submission of the report, domestic requirements for medical isotopes without use of highly enriched uranium consistent with the feasibility criteria described in subparagraph (B).

(5) SECOND REPORT TO CONGRESS.—If the National Academy of Sciences determines in the study under paragraph (4)(A) that the procurement of supplies of medical isotopes from commercial sources that do not use highly enriched uranium is feasible, but the Secretary is unable to report the existence of commitments under paragraph (4)(C)(ii), not later than the date that is 6 years after the date of enactment of the Energy Policy Act of 2005, the Secretary shall submit to Congress a report that describes options for developing domestic supplies of medical isotopes in quantities that are adequate to meet domestic demand



*without the use of highly enriched uranium consistent with the cost increase described in paragraph (4)(B)(iii).*

(6) *CERTIFICATION.—At such time as commercial facilities that do not use highly enriched uranium are capable of meeting domestic requirements for medical isotopes, within the cost increase described in paragraph (4)(B)(iii) and without impairing the reliable supply of medical isotopes for domestic use, the Secretary shall submit to Congress a certification to that effect.*

(7) *TERMINATION OF REVIEW.—After the Secretary submits a certification under paragraph (6), the Commission shall, by rule, terminate the review by the Commission of export license applications under this subsection.*

## CHAPTER 14. GENERAL AUTHORITY

\* \* \* \* \*

### SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.

\* \* \* \* \*

(b) **AMOUNT AND TYPE OF FINANCIAL PROTECTION FOR LICENSEES.—**(1) The amount of primary financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (A) the cost and terms of private insurance, (B) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (C) the nature and purpose of the licensed activity: *Provided*, That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of primary financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources (excluding the amount of private liability insurance available under the industry retrospective rating plan required in this subsection). Such primary financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. The Commission shall require licensees that are required to have and maintain primary financial protection equal to the maximum amount of liability insurance available from private sources to maintain, in addition to such primary financial protection, private liability insurance available under an industry retrospective rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident: *Provided*, That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such primary financial protection: *And provided further*: That the maximum amount of the standard deferred premium that may be

charged a licensee following any nuclear incident under such a plan shall not be more than [ \$63,000,000 ] \$95,800,000 (subject to adjustment for inflation under subsection t.), but not more than [ \$10,000,000 in any 1 year ] \$15,000,000 in any 1 year (subject to adjustment for inflation under subsection t.), for each facility for which such licensee is required to maintain the maximum amount of primary financial protection: *And provided further*, That the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs (excluding legal costs subject to subsection o. (1)(D), payment of which has not been authorized under such subsection) arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission.

\* \* \* \* \*

(5)(A) *For purposes of this section only, the Commission shall consider a combination of facilities described in subparagraph (B) to be a single facility having a rated capacity of 100,000 electrical kilowatts or more.*

(B) *A combination of facilities referred to in subparagraph (A) is 2 or more facilities located at a single site, each of which has a rated capacity of not less than 100,000 electrical kilowatts and not more than 300,000 electrical kilowatts, with a combined rated capacity of not more than 1,300,000 electrical kilowatts.*

(c) INDEMNIFICATION OF [LICENSES] LICENSEES BY NUCLEAR REGULATORY COMMISSION.—The Commission shall, with respect to licenses issued between August 30, 1954, and [December 31, 2003] *December 31, 2025*, for which it requires financial protection of less than \$560,000,000, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed \$500,000,000, excluding costs of investigating and settling claims and defending suits for damage: *Provided, however*, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed \$60,000,000. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and [December 31, 2003] *December 31, 2025*, the requirements of this subsection shall apply to any license issued for such facility subsequent to [December 31, 2003] *December 31, 2025*.

(d) INDEMNIFICATION OF CONTRACTORS BY DEPARTMENT OF ENERGY.—(1)(A) In addition to any other authority the Secretary of Energy (in this section referred to as the “Secretary”) may have, the Secretary shall, until [December 31, 2006] *December 31, 2025*, enter into agreements of indemnification under this subsection with any person who may conduct activities under a contract with the Department of Energy that involve the risk of public liability and that are not subject to financial protection requirements under

subsection b. or agreements of indemnification under subsection c. or k.

\* \* \* \* \*

[(2) In agreements of indemnification entered into under paragraph (1), the Secretary may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, to the full extent of the aggregate public liability of the persons indemnified for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.

[(3)(A) Notwithstanding paragraph (2), if the maximum amount of financial protection required of the contractor, shall at all times remain equal to or greater than the maximum amount of financial protection required of licensees under subsection b.

[(B) The amount of indemnity provided contractors under this subsection shall not, at any time, be reduced in the event that the maximum amount of financial protection required of licensees is reduced.

[(C) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person, shall be deemed to be amended, on the date of the enactment of the Price-Anderson Amendments Act of 1988, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection on such date.]

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

*(A) may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary determines to be appropriate to cover public liability arising out of or in connection with the contractual activity; and*

*(B) shall indemnify the persons indemnified against such liability above the amount of the financial protection required, in the amount of \$10,000,000,000 (subject to adjustment for inflation under subsection t.) in the aggregate, for all persons indemnified in connection with the contract and for each nuclear incident, including such legal expenses incurred by the contractor as are approved by the Secretary.*

*(3) All agreements of indemnification under which the Department of Energy (or predecessor agencies) may be required to indemnify any person under this section shall be deemed to be amended, on the date of enactment of the Price-Anderson Amendments Act of 2005, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection.*

\* \* \* \* \*

(5) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Secretary

under this subsection shall not exceed **[\$100,000,000]** *\$500,000,000*.

\* \* \* \* \*

(e) **LIMITATION ON AGGREGATE PUBLIC LIABILITY.**—(1) The aggregate public liability for a single nuclear incident of persons indemnified, including such legal costs as are authorized to be paid under subsection o. (1)(D), shall not exceed—

(A) in the case of facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the maximum amount of financial protection required of such facilities under subsection b. (plus any surcharge assessed under subsection o. (1)(E));

(B) in the case of contractors with whom the Secretary has entered into an agreement of indemnification under subsection d., **[the maximum amount of financial protection required under subsection b. or]** the amount of indemnity and financial protection that may be required under **[paragraph (3) of subsection d., whichever amount is more]** *paragraph (2) of subsection d.*; and

(C) in the case of all licensees of the Commission required to maintain financial protection under this section—

(i) **\$500,000,000**, together with the amount of financial protection required of the licensee; or

(ii) if the amount of financial protection required of the licensee exceeds **\$60,000,000**, **\$560,000,000** or the amount of financial protection required of the licensee, whichever amount is more.

\* \* \* \* \*

(4) With respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection d. is applicable, such aggregate public liability shall not exceed the amount of **[\$100,000,000]** *\$500,000,000*, together with the amount of financial protection required of the contractor.

\* \* \* \* \*

(k) **EXEMPTION FROM FINANCIAL PROTECTION REQUIREMENT FOR NONPROFIT EDUCATIONAL INSTITUTIONS.**—With respect to any license issued pursuant to section 53, 63, 81, 104 a., or 104 c. for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection a. With respect to licenses issued between August 30, 1954, and **[August 1, 2002]** *December 31, 2025*, for which the Commission grants such exemption:

(1) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in excess of **\$250,000** arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed **\$500,000,000**, including such legal costs of the licensee as are approved by the Commission;

(2) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity; and shall include damage to property of persons indemnified, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

(3) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make payments under the contract on account of activities of the licensee in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency.

Any licensee may waive an exemption to which it is entitled under this subsection. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and [August 1, 2002] *December 31, 2025*, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 2002.

\* \* \* \* \*

(p) REPORTS TO CONGRESS.—The Commission and the Secretary shall submit to the Congress by [August 1, 1998] *December 31, 2021*, detailed reports concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.

\* \* \* \* \*

(t) INFLATION ADJUSTMENT.—(1) The Commission shall adjust the amount of the maximum *total and annual* standard deferred premium under subsection b. (1) not less than once during each 5-year period following [the date of the enactment of the Price-Anderson Amendments Act of 1988] *August 20, 2003*, in accordance with the aggregate percentage change in the Consumer Price Index since—

(A) [such date of enactment] *August 20, 2003*, in the case of the first adjustment under this subsection; or

(B) the previous adjustment under this subsection.

(2) *The Secretary shall adjust the amount of indemnification provided under an agreement of indemnification under subsection d. not less than once during each 5-year period following July 1, 2003, in accordance with the aggregate percentage change in the Consumer Price Index since—*

(A) *that date, in the case of the first adjustment under this paragraph; or*

(B) *the previous adjustment under this paragraph.*

[(2)] (3) For purposes of this subsection, the term “Consumer Price Index” means the Consumer Price Index for all urban consumers published by the Secretary of Labor.

\* \* \* \* \*

**SEC. 234A. CIVIL MONETARY PENALTIES FOR VIOLATIONS OF DEPARTMENT OF ENERGY SAFETY REGULATIONS.**

\* \* \* \* \*

(b)(1) The Secretary shall have the power to compromise, modify or remit, with or without conditions, such civil penalties and to prescribe regulations as he may deem necessary to implement this section.

(2) In determining the amount of any civil penalty under this subsection, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. **【In implementing this section, the Secretary shall determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty under this section.】**

\* \* \* \* \*

**【(d) The provisions of this section shall not apply to:**

**【(1) The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;**

**【(2) The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;**

**【(3) American Telephone and Telegraph Company and its subsidiaries (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratories;**

**【(4) Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI National Laboratory;**

**【(5) Princeton University (and any subcontractors or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;**

**【(6) The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with the Brookhaven National Laboratory; and**

**【(7) Battelle Memorial Institute (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory.】**

*(d)(1) Notwithstanding subsection (a), in the case of any not-for-profit contractor, subcontractor, or supplier, the total amount of civil penalties paid under subsection a. may not exceed the total amount of fees paid within any one-year period (as determined by the Secretary) under the contract under which the violation occurs.*

*(2) For purposes of this section, the term "not-for-profit" means that no part of the net earnings of the contractor, subcontractor, or*

*supplier inures to the benefit of any natural person or for-profit artificial person.*

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**TITLE 23, UNITED STATES CODE—PUBLIC LAW  
109-13**

**HIGHWAYS**

\* \* \* \* \*

**CHAPTER 1. FEDERAL-AID HIGHWAYS**

\* \* \* \* \*

**Subchapter I—General Provisions**

\* \* \* \* \*

**§ 127. Vehicle weight limitations—Interstate System**

(a) IN GENERAL.—

(1) No funds shall be apportioned in any fiscal year under section 104(b)(1) of this title [23 USCS §104(b)(1)] to any State which does not permit the use of the National System of Interstate and Defense Highways [The Dwight D. Eisenhower System of Interstate and Defense Highways] within its boundaries by vehicles with a weight of twenty thousand pounds carried on any one axle, including enforcement tolerances, or with a tandem axle weight of thirty-four thousand pounds, including enforcement tolerances, or a gross weight of at least eighty thousand pounds for vehicle combinations of five axles or more.

(2) However, the maximum gross weight to be allowed by any State for vehicles using the National System of Interstate and Defense Highways [The Dwight D. Eisenhower System of Interstate and Defense Highways] shall be twenty thousand pounds carried on one axle, including enforcement tolerances, and a tandem axle weight of thirty-four thousand pounds, including enforcement tolerances and with an overall maximum gross weight, including enforcement tolerances, on a group of two or more consecutive axles produced by application of the following formula:

$$W = 500 \left( \frac{LN}{N-1} + 12N + 36 \right)$$

where W equals overall gross weight on any group of two or more consecutive axles to the nearest five hundred pounds, L equals distance in feet between the extreme of any group of two or more consecutive axles, and N equals number of axles in group under consideration, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem axles is (1) thirty-six feet or more, or (2)

in the case of a motor vehicle hauling any tank trailer, dump trailer, or ocean transport container before September 1, 1989, is 30 feet or more: *Provided*, That such overall gross weight may not exceed eighty thousand pounds, including all enforcement tolerances, except for vehicles using Interstate Route 29 between Sioux City, Iowa, and the border between Iowa and South Dakota or vehicles using Interstate Route 129 between Sioux City, Iowa, and the border between Iowa and Nebraska, and except for those vehicles and loads which cannot be easily dismantled or divided and which have been issued special permits in accordance with applicable State laws, or the corresponding maximum weights permitted for vehicles using the public highways of such State under laws or regulations established by appropriate State authority in effect on July 1, 1956, except in the case of the overall gross weight of any group of two or more consecutive axles on any vehicle (other than a vehicle comprised of a motor vehicle hauling any tank trailer, dump trailer, or ocean transport container on or after September 1, 1989), on the date of enactment of the Federal-Aid Highway Amendments of 1974 [enacted Jan. 4, 1975], whichever is the greater.

(3) Any amount which is withheld from apportionment to any State pursuant to the foregoing provisions shall lapse if not released and obligated within the availability period specified in section 118(b)(1) of this title.

(4) This section shall not be construed to deny apportionment to any State allowing the operation within such State of any vehicles or combinations thereof, other than vehicles or combinations subject to subsection (d) of this section, which the State determines could be lawfully operated within such State on July 1, 1956, except in the case of the overall gross weight of any group of two or more consecutive axles, on the date of enactment of the Federal-Aid Highway Amendments of 1974 [enacted Jan. 4, 1975].

(5) With respect to the State of Hawaii, laws or regulations in effect on February 1, 1960, shall be applicable for the purposes of this section in lieu of those in effect on July 1, 1956.

(6) With respect to the State of Colorado, vehicles designed to carry 2 or more precast concrete panels shall be considered a nondivisible load.

(7) With respect to the State of Michigan, laws or regulations in effect on May 1, 1982, shall be applicable for the purposes of this subsection.

(8) With respect to the State of Maryland, laws and regulations in effect on June 1, 1993, shall be applicable for the purposes of this subsection.

(9) The State of Louisiana may allow, by special permit, the operation of vehicles with a gross vehicle weight of up to 100,000 pounds for the hauling of sugarcane during the harvest season, not to exceed 100 days annually.

(10) With respect to Interstate Routes 89, 93, and 95 in the State of New Hampshire, State laws (including regulations) concerning vehicle weight limitations that were in effect on January 1, 1987, and are applicable to State highways other than the Interstate System, shall be applicable in lieu of the requirements of this subsection.



(11) With respect to that portion of the Maine Turnpike designated Interstate Route 95 and 495, and that portion of Interstate Route 95 from the southern terminus of the Maine Turnpike to the New Hampshire State line, laws (including regulations) of the State of Maine concerning vehicle weight limitations that were in effect on October 1, 1995, and are applicable to State highways other than the Interstate System, shall be applicable in lieu of the requirements of this subsection.

(12) *HEAVY DUTY VEHICLES*—

(A) *IN GENERAL.*—*Subject to subparagraphs (B) and (C), in order to promote reduction of fuel use and emissions because of engine idling, the maximum gross vehicle weight limit and the axle weight limit for any heavy-duty vehicle equipped with an idle reduction technology shall be increased by a quantity necessary to compensate for the additional weight of the idle reduction system.*

(B) *MAXIMUM WEIGHT INCREASE.*—*The weight increase under subparagraph (A) shall be not greater than 250 pounds.*

(C) *PROOF.*—*On request by a regulatory agency or law enforcement agency, the vehicle operator shall provide proof (through demonstration or certification) that—*

*(i) the idle reduction technology is fully functional at all times; and*

*(ii) the 250-pound gross weight increase is not used for any purpose other than the use of idle reduction technology described in subparagraph (A).*

\* \* \* \* \*

**DEPARTMENT OF ENERGY ORGANIZATION  
ACT—PUBLIC LAW 95-91, AS AMENDED (42  
U.S.C. 7101 ET SEQ.)**

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## TITLE II—ESTABLISHMENT OF THE DEPARTMENT

\* \* \* \* \*

### PRINCIPAL OFFICERS

SEC. 202. (a) There shall be in the Department a Deputy Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level II of the Executive Schedule under section 5313 of title 5. The Deputy Secretary shall act for and exercise the functions of the Secretary during the absence or disability of the Secretary or in the event the office of Secretary becomes vacant. The Secretary shall designate the order in which the Under Secretary and other officials shall act for and perform the functions of the Secretary during the absence or disability of both the Secretary and Deputy Secretary or in the event of vacancies in both of those offices.

【(b) There shall be in the Department an Under Secretary and a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe. The Under Secretary shall bear primary responsibility for energy conservation. The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, and the General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.】

*(b)(1) There shall be in the Department an Under Secretary for Energy and Science, who shall be appointed by the President, by and with the advice and consent of the Senate.*

*(2) The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code.*

*(3) The Under Secretary for Energy and Science shall be appointed from among persons who—*

*(A) have extensive background in scientific or engineering fields; and*

*(B) are well qualified to manage the civilian research and development programs of the Department.*

*(4) The Under Secretary for Energy and Science shall—*

*(A) serve as the Science and Technology Advisor to the Secretary;*

*(B) monitor the research and development programs of the Department in order to advise the Secretary with respect to any undesirable duplication or gaps in the programs;*

*(C) advise the Secretary with respect to the well-being and management of the multipurpose laboratories under the jurisdiction of the Department;*

*(D) advise the Secretary with respect to education and training activities required for effective short- and long-term basic and applied research activities of the Department;*

*(E) advise the Secretary with respect to grants and other forms of financial assistance required for effective short- and long-term basic and applied research activities of the Department;*

*(F) bear primary responsibility for energy conservation; and*

*(G) exercise authority and responsibility over Assistant Secretaries carrying out energy research and development and energy technology functions under sections 203 and 209, as well as other elements of the Department assigned by the Secretary.*

(c)(1) There shall be in the Department an Under Secretary for Nuclear Security, who shall be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary shall be compensated at the rate provided for at level III of the Executive Schedule under section 5314 of title 5.

(2) The Under Secretary for Nuclear Security shall be appointed from among persons who—

(A) have extensive background in national security, organizational management, and appropriate technical fields; and

(B) are well qualified to manage the nuclear weapons, non-proliferation, and materials disposition programs of the National Nuclear Security Administration in a manner that advances and protects the national security of the United States.

(3) The Under Secretary for Nuclear Security shall serve as the Administrator for Nuclear Security under section 2402 of title 50. In carrying out the functions of the Administrator, the Under Secretary shall be subject to the authority, direction, and control of the Secretary. Such authority, direction, and control may be delegated only to the Deputy Secretary of Energy, without redelegation.

*(d)(1) There shall be in the Department an Under Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe, consistent with this section.*

*(2) The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code.*

*(e)(1) There shall be in the Department a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe.*

*(2) The General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.*

\* \* \* \* \*

## ASSISTANT SECRETARIES

SEC. 203 (a) [There shall be in the Department six Assistant Secretaries] *Except as provided in section 209, there shall be in the Department seven Assistant Secretaries, each of whom shall be appointed by the President, by and with the advice and consent of the*

Senate; who shall be compensated at the rate provided for at level IV of the Executive Schedule under section 5315 of title 5; and who shall perform, in accordance with applicable law, such of the functions transferred or delegated to, or vested in, the Secretary as he shall prescribe in accordance with the provisions of this chapter. The functions which the Secretary shall assign to the Assistant Secretaries include, but are not limited to, the following:

\* \* \* \* \*

**ENERGY INFORMATION ADMINISTRATION**

SEC. 205. \* \* \*

(n) \* \* \*

*(m)(1) In order to improve the ability to evaluate the effectiveness of the renewable fuels mandate of the United States, the Administrator shall conduct and publish the results of a survey of renewable fuels demand in the motor vehicle fuels market in the United States monthly, and in a manner designed to protect the confidentiality of individual responses.*

*(2) In conducting the survey, the Administrator shall collect information both on a national and regional basis, including—*

*(A) information on—*

- (i) the quantity of renewable fuels produced;*
- (ii) the quantity of renewable fuels blended;*
- (iii) the quantity of renewable fuels imported; and*
- (iv) the quantity of renewable fuels demanded; and*

*(B) market price data.*

\* \* \* \* \*

**[OFFICE OF SCIENCE**

**[SEC. 209. (a) There shall be within the Department an Office of Science to be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.**

**[(b) It shall be the duty and responsibility of the Director—**

**[(1) to advise the Secretary with respect to the physical research program transferred to the Department from the Energy Research and Development Administration;**

**[(2) to monitor the Department's energy research and development programs in order to advise the Secretary with respect to any undesirable duplication or gaps in such programs;**

**[(3) to advise the Secretary with respect to the well-being and management of the multipurpose laboratories under the jurisdiction of the Department, excluding laboratories that constitute part of the nuclear weapons complex;**

**[(4) to advise the Secretary with respect to education and training activities required for effective short- and long-term basic and applied research activities of the Department;**

**[(5) to advise the Secretary with respect to grants and other forms of financial assistance required for effective short- and**

long-term basic and applied research activities of the Department; and

[(6) to carry out such additional duties assigned to the Office by the Secretary relating to basic and applied research, including but not limited to supervision or support of research activities carried out by any of the Assistant Secretaries designated by section 203 of this Act, as the Secretary considers advantageous.]

**OFFICE OF SCIENCE**

SEC. 209. (a) *There shall be within the Department an Office of Science, to be headed by an Assistant Secretary for Science, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.*

(b) *The Assistant Secretary for Science shall be in addition to the Assistant Secretaries provided for under section 203 of this Act.*

(c) *It shall be the duty and responsibility of the Assistant Secretary for Science to carry out the fundamental science and engineering research functions of the Department, including the responsibility for policy and management of such research, as well as other functions vested in the Secretary which he may assign to the Assistant Secretary.*

\* \* \* \* \*

**OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS**

SEC. 217. (a) *ESTABLISHMENT.—*

(1) *There is established within the Department an Office of Indian Energy Policy and Programs (referred to in this section as the “Office”).*

(2) *The Office shall be headed by a Director, to be appointed by the Secretary and compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5, United States Code.*

(b) *DUTIES OF DIRECTOR.—The Director, in accordance with Federal policies promoting Indian self-determination and the purposes of this Act, shall provide, direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs of the Department that—*

(1) *promote Indian tribal energy development, efficiency, and use;*

(2) *reduce or stabilize energy costs;*

(3) *enhance and strengthen Indian tribal energy and economic infrastructure relating to natural resource development and electrification; and*

(4) *bring electrical power and service to Indian land and the homes of tribal members that are—*

(A) *located on Indian land; or*

(B) *acquired, constructed, or improved (in whole or in part) with Federal funds.*

\* \* \* \* \*

## CONTRACTS

SEC. 646. \* \* \*

(f) \* \* \*

(g)(1) *In addition to other authorities granted to the Secretary under any other provision of law, the Secretary may enter into other transactions on such terms as the Secretary may consider appropriate in furtherance of research, development, or demonstration functions vested in the Secretary.*

(2) *The other transactions shall not be subject to section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908).*

(3)(A) *The Secretary shall ensure that—*

*(i) to the maximum extent the Secretary determines practicable, no transaction entered into under paragraph (1) provides for research, development, or demonstration that duplicates research, development, or demonstration being conducted under existing projects carried out by the Department;*

*(ii) to the extent the Secretary determines practicable, the funds provided by the Federal Government under a transaction authorized by paragraph (1) do not exceed the total amount provided by other parties to the transaction; and*

*(iii) to the extent the Secretary determines practicable, competitive, merit-based selection procedures shall be used when entering into transactions under paragraph (1).*

*(B) A transaction authorized by paragraph (1) may be used for a research, development, or demonstration project only if the Secretary determines the use of a standard contract, grant, or cooperative agreement for the project is not feasible or appropriate.*

(4)(A) *The Secretary shall protect from disclosure (including disclosure under section 552 of title 5, United States Code) for up to 5 years after the date the information is received by the Secretary—*

*(i) a proposal, proposal abstract, and supporting documents submitted to the Department in a competitive or noncompetitive process having the potential for resulting in an award to the party submitting the information entering into a transaction under paragraph (1); and*

*(ii) a business plan and technical information relating to a transaction authorized by paragraph (1) submitted to the Department as confidential business information.*

*(B) The Secretary may protect from disclosure, for up to 5 years after the information was developed, any information developed pursuant to a transaction under paragraph (1) which developed information is of a character that it would be protected from disclosure under section 552(b)(4) of title 5, United States Code, if obtained from a person other than a Federal agency.*

(5)(A) *Not later than 90 days after the date of enactment of this subsection, the Secretary shall prescribe guidelines for using other transactions authorized by paragraph (1).*

*(B) The guidelines shall be published in the Federal Register for public comment under rulemaking procedures of the Department.*

*(6) The authority of the Secretary under this subsection may be delegated only to an officer of the Department who is appointed by*

*the President by and with the advice and consent of the Senate and may not be delegated to any other person.*

**DEPARTMENT OF ENERGY SCIENCE  
EDUCATION ENHANCEMENT ACT**

**PART E OF TITLE XXXI OF PUBLIC LAW 101-510, AS  
AMENDED (42 U.S.C. 7381-7381E)**

\* \* \* \* \*

**SEC. 3164. SCIENCE EDUCATION PROGRAMS**

(a) **PROGRAMS.**—The Secretary is authorized to establish programs to enhance the quality of mathematics, science, and engineering education. Any such programs shall be operated at or through the support of Department research and development facilities, shall use the scientific resources of the Department, and shall be consistent with the overall Federal plan for education and human resources in science and technology developed by the Federal Coordinating Council for Science, Engineering, and Technology.

(b) **RELATIONSHIP TO OTHER DEPARTMENT ACTIVITIES.**—The programs described in subsection (a) shall supplement and be coordinated with current activities of the Department, but shall not supplant them.

(c) **PROGRAMS FOR STUDENTS FROM UNDER-REPRESENTED GROUPS.**—*In carrying out a program under subsection (a), the Secretary shall give priority to activities that are designed to encourage students from under-represented groups to pursue scientific and technical careers.*

**SEC. 3165. LABORATORY COOPERATIVE SCIENCE CENTERS AND OTHER AUTHORIZED EDUCATION ACTIVITIES**

\* \* \* \* \*

(13) Establish a prefreshman enrichment program in which middle-school students attend summer workshops on mathematics, science, and engineering conducted by universities on their campuses.

(14) *Support competitive events for students, under supervision of teachers, designed to encourage student interest and knowledge in science and mathematics.*

(15) *Support competitively-awarded science resource centers at National Laboratories to promote professional development of mathematics teachers and science teachers who teach in grades from kindergarten through grade 12.*

(16) *Support summer internships at National Laboratories for mathematics teachers and science teachers who teach in grades from kindergarten through grade 12.*

\* \* \* \* \*

**SEC. 3167. PARTNERSHIPS WITH HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, HISPANIC-SERVING INSTITUTIONS, AND TRIBAL COLLEGES.**

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

(1) *HISPANIC-SERVING INSTITUTION.*—The term “Hispanic-serving institution” has the meaning given the term in section 502(a) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)).

(2) *HISTORICALLY BLACK COLLEGE OR UNIVERSITY.*—The term “historically Black college or university” has the meaning given the term “part B institution” in section 322 of the Higher Education Act of 1965 (20 U.S.C. 1061).

(3) *NATIONAL LABORATORY.*—The term “National Laboratory” has the meaning given that term in section 902 of the Energy Policy Act of 2005.

(4) *SCIENCE FACILITY.*—The term “science facility” has the meaning given the term “single purpose research facility” in section 903(8) of the Energy Policy Act of 2005.

(5) *TRIBAL COLLEGE.*—The term “tribal college” has the meaning given the term “tribally controlled college or university” in section 2(a) of the Tribally Controlled College Assistance Act of 1978 (25 U.S.C. 1801 (a)).

(b) *EDUCATION PARTNERSHIP.*—The Secretary shall direct the Director of each National Laboratory, and may direct the head of any science facility, to increase the participation of historically Black colleges or universities, Hispanic-serving institutions, or tribal colleges in activities that increase the capacity of the historically Black colleges or universities, Hispanic-serving institutions, or tribal colleges to train personnel in science or engineering.

(c) *ACTIVITIES.*—An activity under subsection (b) may include—

- (1) collaborative research;
- (2) equipment transfer;
- (3) training activities conducted at a National Laboratory or science facility; and
- (4) mentoring activities conducted at a National Laboratory or science facility.

(d) *REPORT.*—Not later than 2 years after the date of enactment of this section, the Secretary shall submit to the Congress a report on the activities carried out under this section.

**SEC. [3167.] 3168. DEFINITIONS.**

In this part:

- (1) The term “Secretary” means the Secretary of Energy.
- (2) The term “Department” means the Department of Energy.
- (3) The term “Department research and development facilities” means all Department of Energy single-purpose and multipurpose National Laboratories and research and development facilities and programs, and any other facility or program operated by a contractor funded from the Office of Energy Research of the Department of Energy.
- (4) The term “local educational agency” has the meaning given that term by section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12)).

**SEC. [3168.] 3169. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Secretary for carrying out university research support and other science, mathematics, and engineering education programs authorized by this



subchapter and administered by the Office of Science of the Department of Energy, \$40,000,000 for fiscal year 1991; and \$40,000,000 for each of fiscal years 2004 through 2008.

—————

**SPARK M. MATSUNAGA HYDROGEN RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACT OF 1990—PUBLIC LAW 101-566, AS AMENDED (42 U.S.C. 12401 ET SEQ.)**

\* \* \* \* \*

**[SEC. 101. SHORT TITLE.**

This Act may be referred to as the “Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990”.

**[SEC. 102. FINDING, PURPOSES, AND DEFINITION.**

[(a) FINDING.—Congress finds that it is in the national interest to accelerate efforts to develop a domestic capability to economically produce hydrogen in quantities that will make a significant contribution toward reducing the Nation’s dependence on conventional fuels.

[(b) PURPOSES.—The purposes of this Act are—

[(1) to direct the Secretary of Energy to conduct a research, development, and demonstration program leading to the production, storage, transport, and use of hydrogen for industrial, residential, transportation, and utility applications;

[(2) to direct the Secretary to develop a technology assessment and information transfer program among the Federal agencies and aerospace, transportation, energy, and other entities; and

[(3) to develop renewable energy resources as a primary source of energy for the production of hydrogen.

[(c) DEFINITION.—As used in this Act, the term:

[(1) “critical technology” (or critical technical issue”) means a technology (or issue) that, in the opinion of the Secretary, requires understanding and development in order to take the next needed step in the development of hydrogen as an economic fuel or storage medium;

[(2) “Department” means the Department of Energy; and

[(3) “Secretary” means the Secretary of Energy.

**[SEC. 103. COMPREHENSIVE MANAGEMENT PLAN.**

[(a) PLAN.—The Secretary shall prepare a comprehensive 5-year program management plan for research and development activities, which shall be conducted over a period of no less than 5 years and shall be consistent with the provisions of sections 104 and 105. In the preparation of such plan, the Secretary shall consult with the Administrator of the National Aeronautics and Space Administration, the Secretary of Transportation, the Hydrogen Technical Advisory Panel established under section 108, and the heads of such other Federal agencies and such public and private organizations as he deems appropriate. The plan shall be structured to identify and address areas of research critical to the realization of a domes-

tic hydrogen production capability within the shortest time practicable.

[(b) CONTENTS OF PLAN.—Within 180 days after the date of the enactment of this Act, the Secretary shall transmit the comprehensive program management plan to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. Subsequent plans shall be incorporated in the management plan under this section. The plan shall include—

[(1) a prioritization of research areas critical to the economic use of hydrogen as a fuel and energy storage medium;

[(2) the program elements, management structure, and activities, including program responsibilities of individual agencies and individual institutional elements;

[(3) the program strategies including technical milestones to be achieved toward specific goals during each fiscal year for all major activities and projects;

[(4) the estimated costs of individual program items, including current as well as proposed funding levels for each of the 5 years of the plan for each of the participating agencies;

[(5) a description of the methodology of coordination and technology transfer; and

[(6) the proposed participation by industry and academia in the planning and implementation of the program.

[(c) DEMONSTRATION PLAN.—The Secretary shall, in consultation with the Secretary of Transportation, the Administrator of the National Aeronautics and Space Administration, and the Hydrogen Technical Advisory Panel established under section 108, also prepare a comprehensive large-scale hydrogen demonstration plan with respect to demonstrations carried out pursuant to section 105. Subsequent plans shall be incorporated in the management plan under this section. Such plan shall include—

[(1) a description of the necessary research and development activities that must be completed before initiation of a large-scale hydrogen production and storage demonstration program;

[(2) an assessment of the appropriateness of a large-scale demonstration immediately upon completion of the necessary research and development activities;

[(3) an implementation schedule with associated budget and program management resource requirements; and

[(4) a description of the role of the private sector in carrying out the demonstration program.

#### **[SEC. 104. RESEARCH AND DEVELOPMENT.**

[(a) PROGRAM.—The Secretary shall conduct a research and development program, consistent with the comprehensive 5-year program management plan under section 103, to ensure the development of a domestic hydrogen fuel production capability within the shortest time practicable consistent with market conditions.

[(b) RESEARCH.—(1) Particular attention shall be given to developing an understanding and resolution of all critical technical issues preventing the introduction of hydrogen into the marketplace.

[(2) The Secretary shall initiate research or accelerate existing research in critical technical issues that will contribute to the de-

velopment of more economic hydrogen production and use, including, but not limited to, critical technical issues with respect to production, liquefaction, transmission, distribution, storage, and use (including use of hydrogen in surface transportation).

[(c) RENEWABLE ENERGY PRIORITY.—The Secretary shall give priority to those production techniques that use renewable energy resources as their primary source of energy for hydrogen production.

[(d) NEW TECHNOLOGIES.—The Secretary shall, for the purpose of performing his responsibilities pursuant to this Act, solicit proposals for and evaluate any reasonable new or improved technology that could lead or contribute to the development of economic hydrogen production storage and utilization.

[(e) INFORMATION.—The Secretary shall conduct evaluations, arrange for tests and demonstrations, and disseminate to developers information, data, and materials necessary to support efforts undertaken pursuant to this section, consistent with section 106.

**[SEC. 105. DEMONSTRATIONS.**

[(a) REQUIREMENT.—The Secretary shall conduct demonstrations of critical technologies, preferably in self-contained locations, so that technical and non-technical parameters can be evaluated to best determine commercial applicability of the technology.

[(b) SMALL-SCALE DEMONSTRATIONS.—Concurrently with activities conducted pursuant to section 104, the Secretary shall conduct small-scale demonstrations of hydrogen technology at self-contained sites.

**[SEC. 106. TECHNOLOGY TRANSFER PROGRAM.**

[(a) PROGRAM.—The Secretary shall conduct a program designed to accelerate wider application of hydrogen production, storage, utilization, and other technologies available in near term as a result of aerospace experience as well as other research progress by transferring critical technologies to the private sector. The Secretary shall direct the program with the advice and assistance of the Hydrogen Technical Advisory Panel established under section 108. The objective in seeking this advice is to increase participation of private industry in the demonstration of near commercial applications through cooperative research and development arrangements, joint ventures or other appropriate arrangements involving the private sector.

[(b) INFORMATION.—The Secretary, in carrying out the program authorized by subsection (a), shall—

[(1) Undertake an inventory and assessment of hydrogen technologies and their commercial capability to economically produce, store, or utilize hydrogen in aerospace, transportation, electric utilities, petrochemical, chemical, merchant hydrogen, and other industrial sectors; and

[(2) develop a National Aeronautics Space Administration, Department of Energy, and industry information exchange program to improve technology transfer for—

[(A) application of aerospace experience by industry;

[(B) application of research progress by industry and aerospace;

[(C) application of commercial capability of industry by aerospace; and

[(D) expression of industrial needs to research organizations.

[The information exchange program may consist of workshops, publications, conferences, and a data base for the use by the public and private sectors.

**[SEC. 107. COORDINATION AND CONSULTATION.**

[(a) SECRETARY'S RESPONSIBILITY.—The Secretary shall have overall management responsibility for carrying out programs under this Act. In carrying out such programs, the Secretary, consistent with such overall management responsibility—

[(1) shall use the expertise of the National Aeronautics and Space Administration and the Department of Transportation; and

[(2) may use the expertise of any other Federal agency in accordance with subsection (b) in carrying out any activities under this title, to the extent that the Secretary determines that any such agency has capabilities which would allow such agency to contribute to the purpose of this Act.

[(b) ASSISTANCE.—The Secretary may, in accordance with subsection (a), obtain the assistance of any department, agency, or instrumentality of the Executive branch of the Federal Government upon written request, on a reimbursable basis or otherwise and with the consent of such department, agency, or instrumentality. Each such request shall identify the assistance the Secretary deems necessary to carry out any duty under this Act.

[(c) CONSULTATION.—The Secretary shall consult with the Administrator of the National Aeronautics and Space Administration, the Administrator of the Environmental Protection Agency, the Secretary of Transportation, and the Hydrogen Technical Advisory Panel established under section 108 in carrying out his authorities pursuant to this Act.

**[SEC. 108. TECHNICAL PANEL.**

[(a) ESTABLISHMENT.—There is hereby established the Hydrogen Technical Advisory Panel (the “technical panel”), to advise the Secretary on the programs under this Act.

[(b) MEMBERSHIP.—The technical panel shall be appointed by the Secretary and shall be comprised of such representatives from domestic industry, universities, professional societies, Government laboratories, financial, environmental, and other organizations as the Secretary deems appropriate based on his assessment of the technical and other qualifications of such representatives. Appointments to the technical panel shall be made within 90 days after the enactment of this Act. The technical panel shall have a chairman, who shall be elected by the members from among their number.

[(c) COOPERATION.—The heads of the departments, agencies, and instrumentalities of the Executive branch of the Federal Government shall cooperate with the technical panel in carrying out the requirements of this section and shall furnish to the technical panel such information as the technical panel deems necessary to carry out this section.

[(d) REVIEW.—The technical panel shall review and make any necessary recommendations to the Secretary on the following items—

[(1) the implementation and conduct of programs under this Act;

[(2) the economic, technological, and environmental consequences of the deployment of hydrogen production and use systems; and

[(3) comments on and recommendations for improvements in the comprehensive 5-year program management plan required under section 103.

[(e) SUPPORT.—The Secretary shall provide such staff, funds and other support as may be necessary to enable the technical panel to carry out the functions described in this section

**[SEC. 109. AUTHORIZATION OF APPROPRIATIONS.**

[There is hereby authorized to be appropriated to carry out the purposes of this Act (in addition to any amounts made available for such purposes to other Acts)—

[(1) \$3,000,000 for the fiscal year 1992;

[(2) \$7,000,000 for the fiscal year 1993; and

[(3) \$10,000,000 for the fiscal year 1994.]

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

(a) *SHORT TITLE.*—This Act may be cited as the “Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990”.

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

*Sec. 1. Short title; table of contents.*

*Sec. 2. Purposes.*

*Sec. 3. Definitions.*

**TITLE I—HYDROGEN AND FUEL CELLS**

*Sec. 101. Hydrogen and fuel cell technology research and development.*

*Sec. 102. Task Force.*

*Sec. 103. Technology transfer.*

*Sec. 104. Authorization of appropriations.*

**TITLE II—HYDROGEN AND FUEL CELL DEMONSTRATION**

*Sec. 201. Hydrogen Supply and Fuel Cell Demonstration Program.*

*Sec. 202. Authorization of appropriations.*

**TITLE III—REGULATORY MANAGEMENT**

*Sec. 301. Codes and standards.*

*Sec. 302. Disclosure.*

*Sec. 303. Authorization of appropriations.*

**TITLE IV—REPORTS**

*Sec. 401. Deployment of hydrogen technology.*

*Sec. 402. Authorization of appropriations.*

**TITLE V—TERMINATION OF AUTHORITY**

*Sec. 501. Termination of authority.*

**SEC. 2. PURPOSES.**

The purposes of this Act are—

(1) to enable and promote comprehensive development, demonstration, and commercialization of hydrogen and fuel cell technology in partnership with industry;

(2) to make critical public investments in building strong links to private industry, institutions of higher education, Na-

tional Laboratories, and research institutions to expand innovation and industrial growth;

(3) to build a mature hydrogen economy that creates fuel diversity in the massive transportation sector of the United States;

(4) to sharply decrease the dependency of the United States on imported oil, eliminate most emissions from the transportation sector, and greatly enhance our energy security; and

(5) to create, strengthen, and protect a sustainable national energy economy.

### **SEC. 3. DEFINITIONS.**

*In this Act:*

(1) **DEPARTMENT.**—The term “Department” means the Department of Energy.

(2) **FUEL CELL.**—The term “fuel cell” means a device that directly converts the chemical energy of a fuel, which is supplied from an external source, and an oxidant into electricity by electrochemical processes occurring at separate electrodes in the device.

(3) **HEAVY-DUTY VEHICLE.**—The term “heavy-duty vehicle” means a motor vehicle that—

(A) is rated at more than 8,500 pounds gross vehicle weight;

(B) has a curb weight of more than 6,000 pounds; or

(C) has a basic vehicle frontal area in excess of 45 square feet.

(4) **INFRASTRUCTURE.**—The term “infrastructure” means the equipment, systems, or facilities used to produce, distribute, deliver, or store hydrogen (except for onboard storage).

(5) **LIGHT-DUTY VEHICLE.**—The term “light-duty vehicle” means a motor vehicle that is rated at 8,500 or less pounds gross vehicle weight.

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

(7) **STATIONARY; PORTABLE.**—The terms “stationary” and “portable”, when used in reference to a fuel cell, include—

(A) continuous electric power; and

(B) backup electric power.

(8) **TASK FORCE.**—The term “Task Force” means the Hydrogen and Fuel Cell Technical Task Force established under section 102(a).

(9) **TECHNICAL ADVISORY COMMITTEE.**—The term “Technical Advisory Committee” means the independent Technical Advisory Committee of the Task Force selected under section 102(d).

## **TITLE I—HYDROGEN AND FUEL CELLS**

### **SEC. 101. HYDROGEN AND FUEL CELL TECHNOLOGY RESEARCH AND DEVELOPMENT.**

(a) **IN GENERAL.**—The Secretary, in consultation with other Federal agencies and the private sector, shall conduct a research and development program on technologies relating to the production, purification, distribution, storage, and use of hydrogen energy, fuel cells, and related infrastructure.

(b) *GOAL.*—The goal of the program shall be to demonstrate and commercialize the use of hydrogen for transportation (in light-duty vehicles and heavy-duty vehicles), utility, industrial, commercial and residential applications.

(c) *FOCUS.*—In carrying out activities under this section, the Secretary shall focus on factors that are common to the development of hydrogen infrastructure and the supply of vehicle and electric power for critical consumer and commercial applications, and that achieve continuous technical evolution and cost reduction, particularly for hydrogen production, the supply of hydrogen, storage of hydrogen, and end uses of hydrogen that—

(1) steadily increase production, distribution, and end use efficiency and reduce life-cycle emissions;

(2) resolve critical problems relating to catalysts, membranes, storage, lightweight materials, electronic controls, and other problems that emerge from research and development;

(3) enhance sources of renewable fuels and biofuels for hydrogen production; and

(4) enable widespread use of distributed electricity generation and storage.

(d) *PUBLIC EDUCATION AND RESEARCH.*—In carrying out this section, the Secretary shall support enhanced public education and research conducted at institutions of higher education in fundamental sciences, application design, and systems concepts (including education and research relating to materials, subsystems, manufacturability, maintenance, and safety) relating to hydrogen and fuel cells.

(e) *COST SHARING.*—The costs of carrying out projects and activities under this section shall be shared in accordance with section 1002 of the Energy Policy Act of 2005.

**SEC. 102. TASK FORCE.**

(a) *ESTABLISHMENT.*—The Secretary, in consultation with the Director of the Office of Science and Technology Policy, shall establish an interagency Task Force, to be known as the “Hydrogen and Fuel Cell Technical Task Force” to advise the Secretary in carrying out programs under this Act.

(b) *MEMBERSHIP.*—

(1) *IN GENERAL.*—Task Force shall be comprised of such representatives of the Office of Science and Technology Policy, the Environmental Protection Agency, the Department of Transportation, the Department of Defense, the National Aeronautics and Space Administration, and such other members, as the Secretary, in consultation with the Director of the Office of Science and Technology Policy, determines to be appropriate.

(2) *VOTING.*—A member of the Task Force that does not represent a Federal agency shall serve on the Task Force only in a nonvoting, advisory capacity.

(c) *DUTIES.*—The Task Force shall review and make any necessary recommendations to the Secretary on implementation and conduct of programs under this Act.

(d) *TECHNICAL ADVISORY COMMITTEE.*—

(1) *IN GENERAL.*—The Secretary shall select such number of members as the Secretary considers to be appropriate to form an independent, nonpolitical Technical Advisory Committee.

(2) *MEMBERSHIP.*—Each member of the Technical Advisory Committee shall have scientific, technical, or industrial expertise, as determined by the Secretary.

(3) *DUTIES.*—The Technical Advisory Committee shall provide technical advice and assistance to the Task Force and the Secretary.

**SEC. 103. TECHNOLOGY TRANSFER.**

In carrying out this Act, the Secretary shall carry out programs that—

(1) provide for the transfer of critical hydrogen and fuel cell technologies to the private sector;

(2) accelerate wider application of those technologies in the global market;

(3) foster the exchange of generic, nonproprietary information; and

(4) assess technical and commercial viability of technologies relating to the production, distribution, storage, and use of hydrogen energy and fuel cells.

**SEC. 104. AUTHORIZATION OF APPROPRIATIONS.**

(a) *HYDROGEN SUPPLY.*—There are authorized to be appropriated to carry out projects and activities relating to hydrogen production, storage, distribution and dispensing, transport, education and coordination, and technology transfer under this title—

(1) \$160,000,000 for fiscal year 2006;

(2) \$200,000,000 for fiscal year 2007;

(3) \$220,000,000 for fiscal year 2008;

(4) \$230,000,000 for fiscal year 2009;

(5) \$250,000,000 for fiscal year 2010; and

(6) such sums as are necessary for each of fiscal years 2011 through 2015.

(b) *FUEL CELL TECHNOLOGIES.*—There are authorized to be appropriated to carry out projects and activities relating to fuel cell technologies under this title—

(1) \$150,000,000 for fiscal year 2006;

(2) \$160,000,000 for fiscal year 2007;

(3) \$170,000,000 for fiscal year 2008;

(4) \$180,000,000 for fiscal year 2009;

(5) \$200,000,000 for fiscal year 2010; and

(6) such sums as are necessary for each of fiscal years 2011 through 2015.

## **TITLE II—HYDROGEN AND FUEL CELL DEMONSTRATION**

**SEC. 201. HYDROGEN SUPPLY AND FUEL CELL DEMONSTRATION PROGRAM.**

(a) *IN GENERAL.*—The Secretary, in consultation with the Task Force and the Technical Advisory Committee, shall carry out a program to demonstrate developmental hydrogen and fuel cell systems for mobile, portable, and stationary uses, using improved versions of the learning demonstrations program concept of the Department including demonstrations involving—

(1) light-duty vehicles;



- (2) *heavy-duty vehicles;*
  - (3) *fleet vehicles;*
  - (4) *specialty industrial and farm vehicles; and*
  - (5) *commercial and residential portable, continuous, and backup electric power generation.*
- (b) *OTHER DEMONSTRATION PROGRAMS.—To develop widespread hydrogen supply and use options, and assist evolution of technology, the Secretary shall—*
- (1) *carry out demonstrations of evolving hydrogen and fuel cell technologies in national parks, remote island areas, and on Indian tribal land, as selected by the Secretary;*
  - (2) *in accordance with any code or standards developed in a region, fund prototype, pilot fleet, and infrastructure regional hydrogen supply corridors along the interstate highway system in varied climates across the United States; and*
  - (3) *fund demonstration programs that explore the use of hydrogen blends, hybrid hydrogen, and hydrogen reformed from renewable agricultural fuels, including the use of hydrogen in hybrid electric, heavier duty, and advanced internal combustion-powered vehicles.*
- (c) *SYSTEM DEMONSTRATIONS.—*
- (1) *IN GENERAL.—As a component of the demonstration program under this section, the Secretary shall provide grants, on a cost share basis as appropriate, to eligible entities (as determined by the Secretary) for use in—*
    - (A) *devising system design concepts that provide for the use of advanced composite vehicles in programs under section 732 of the Energy Policy Act of 2005 that—*
      - (i) *have as a primary goal the reduction of drive energy requirements;*
      - (ii) *after 2010, add another research and development phase to the vehicle and infrastructure partnerships developed under the learning demonstrations program concept of the Department; and*
      - (iii) *are managed through an enhanced FreedomCAR program within the Department that encourages involvement in cost-shared projects by manufacturers and governments; and*
    - (B) *designing a local distributed energy system that—*
      - (i) *incorporates renewable hydrogen production, off-grid electricity production, and fleet applications in industrial or commercial service;*
      - (ii) *integrates energy or applications described in clause (i), such as stationary, portable, micro, and mobile fuel cells, into a high-density commercial or residential building complex or agricultural community; and*
      - (iii) *is managed in cooperation with industry, State, tribal, and local governments, agricultural organizations, and nonprofit generators and distributors of electricity.*
  - (2) *COST SHARING.—The costs of carrying out a project or activity under this subsection shall be shared in accordance with [section 1002 of the Energy Policy Act of 2005].*

(d) *IDENTIFICATION OF NEW RESEARCH AND DEVELOPMENT REQUIREMENTS.*—In carrying out the demonstrations under subsection (a), the Secretary, in consultation with the Task Force and the Technical Advisory Committee, shall—

(1) after 2008 for stationary and portable applications, and after 2010 for vehicles, identify new research and development requirements that refine technological concepts, planning, and applications; and

(2) during the second phase of the learning demonstrations under subsection (c)(1)(A)(ii) redesign subsequent research and development to incorporate those requirements.

**SEC. 202. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to carry out this title—

(1) \$185,000,000 for fiscal year 2006;

(2) \$200,000,000 for fiscal year 2007;

(3) \$250,000,000 for fiscal year 2008;

(4) \$300,000,000 for fiscal year 2009;

(5) \$375,000,000 for fiscal year 2010; and

(6) such sums as are necessary for each of fiscal years 2011 through 2015.

### **TITLE III—REGULATORY MANAGEMENT**

**SEC. 301. CODES AND STANDARDS.**

(a) *IN GENERAL.*—The Secretary, in cooperation with the Task Force, shall provide grants to, or offer to enter into contracts with such professional organizations, public service organizations, and government agencies as the Secretary determines appropriate to support timely and extensive development of safety codes and standards relating to fuel cell vehicles, hydrogen energy systems, and stationary, portable, and micro fuel cells.

(b) *EDUCATIONAL EFFORTS.*—The Secretary shall support educational efforts by organizations and agencies described in subsection (a) to share information, including information relating to best practices, among those organizations and agencies.

**SEC. 302. DISCLOSURE.**

Section 623 of the Energy Policy Act of 1992 (42 U.S.C. 13293) shall apply to any project carried out through a grant, cooperative agreement, or contract under this Act.

**SEC. 303. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to carry out this title—

(1) \$4,000,000 for fiscal year 2006;

(2) \$7,000,000 for fiscal year 2007;

(3) \$8,000,000 for fiscal year 2008;

(4) \$10,000,000 for fiscal year 2009;

(5) \$9,000,000 for fiscal year 2010; and

(6) such sums as are necessary for each of fiscal years 2011 and 2012.

## **TITLE IV—REPORTS**

### **SEC. 401. DEPLOYMENT OF HYDROGEN TECHNOLOGY.**

(a) *SECRETARY.*—Subject to subsection (c), not later than 2 years after the date of enactment of the Hydrogen and Fuel Cell Technology Act of 2005, and triennially thereafter, the Secretary shall submit to Congress a report describing—

(1) any activity carried out by the Department of Energy under this Act, including a research, development, demonstration, and commercial application program for hydrogen and fuel cell technology;

(2) measures the Secretary has taken during the preceding 3 years to support the transition of primary industry (or a related industry) to a fully commercialized hydrogen economy;

(3) any change made to a research, development, or deployment strategy of the Secretary relating to hydrogen and fuel cell technology to reflect the results of a learning demonstration under title II;

(4) progress, including progress in infrastructure, made toward achieving the goal of producing and deploying not less than—

(A) 100,000 hydrogen-fueled vehicles in the United States by 2010; and

(B) 2,500,000 hydrogen-fueled vehicles by 2020;

(5) progress made toward achieving the goal of supplying hydrogen at a sufficient number of fueling stations in the United States by 2010 can be achieved by integrating—

(A) hydrogen activities; and

(B) associated targets and timetables for the development of hydrogen technologies;

(6) any problem relating to the design, execution, or funding of a program under this Act;

(7) progress made toward and goals achieved in carrying out this Act and updates to the developmental roadmap, including the results of the reviews conducted by the National Academy of Sciences under subsection (b) for the fiscal years covered by the report; and

(8) any updates to strategic plans that are necessary to meet the goals described in paragraph (4).

(b) *NATIONAL ACADEMY OF SCIENCE.*—

(1) *IN GENERAL.*—The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct and submit to the Secretary, not later than September 30, 2007, and triennially thereafter—

(A) the results of a review of the projects and activities carried out under this Act;

(B) recommendations for any new authorities or resources needed to achieve strategic goals; and

(C) recommendations for approaches by which the Secretary could achieve a substantial decrease in the dependence on and consumption of natural gas and imported oil by the Federal Government, including by increasing the use of fuel cell vehicles, stationary and portable fuel cells, and hydrogen energy systems.

(2) *REAUTHORIZATION.*—*The Secretary shall use the results of reviews conducted under paragraph (1) in proposing to Congress any legislative changes relating to reauthorization of this Act.*

**SEC. 402. AUTHORIZATION OF APPROPRIATIONS.**

*There is authorized to be appropriated to carry out this title \$1,500,000 for each of fiscal years 2006 through 2010.*

**TITLE V—TERMINATION OF AUTHORITY**

**SEC. 501. TERMINATION OF AUTHORITY.**

*This Act and the authority provided by this Act terminate on September 30, 2015.*

**METHANE HYDRATE RESEARCH AND DEVELOPMENT ACT OF 2000—PUBLIC LAW 106-193  
(30 U.S.C. 1902 NOTE)**

\* \* \* \* \*

【SECTION 1. Short title.

This Act may be cited as the “Methane Hydrate Research and Development Act of 2000”.

SEC. 2. Definitions.

In this Act:

【(1) **CONTRACT.**—The term “contract” means a procurement contract within the meaning of section 6303 of title 31, United States Code.

【(2) **COOPERATIVE AGREEMENT.**—The term “cooperative agreement” means a cooperative agreement within the meaning of section 6305 of title 31, United States Code.

【(3) **DIRECTOR.**—The term “Director” means the Director of the National Science Foundation.

【(4) **GRANT.**—The term “grant” means a grant awarded under a grant agreement, within the meaning of section 6304 of title 31, United States Code.

【(5) **INDUSTRIAL ENTERPRISE.**—The term “industrial enterprise” means a private, nongovernmental enterprise that has an expertise or capability that relates to methane hydrate research and development.

【(6) **INSTITUTION OF HIGHER EDUCATION.**—The term “institution of higher education” means an institution of higher education, within the meaning of section 102(a) of the Higher Education Act of 1965 (20 U.S.C. 1002(a)).

【(7) **SECRETARY.**—The term “Secretary” means the Secretary of Energy, acting through the Assistant Secretary for Fossil Energy.

【(8) **SECRETARY OF COMMERCE.**—The term “Secretary of Commerce” means the Secretary of Commerce, acting through the Administrator of the National Oceanic and Atmospheric Administration.

【(9) **SECRETARY OF DEFENSE.**—The term “Secretary of Defense” means the Secretary of Defense, acting through the Secretary of the Navy.

[(10) SECRETARY OF THE INTERIOR.—The term “Secretary of the Interior” means the Secretary of the Interior, acting through the Director of the United States Geological Survey and the Director of the Minerals Management Service.

[SEC. 3. Methane hydrate research and development program.

[(a) IN GENERAL.—

[(1) COMMENCEMENT OF PROGRAM.—Not later than 180 days after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of Commerce, the Secretary of Defense, the Secretary of the Interior, and the Director, shall commence a program of methane hydrate research and development in accordance with this section.

[(2) DESIGNATIONS.—The Secretary, the Secretary of Commerce, the Secretary of Defense, the Secretary of the Interior, and the Director shall designate individuals to carry out this section.

[(3) COORDINATION.—The individual designated by the Secretary shall coordinate all activities within the Department of Energy relating to methane hydrate research and development.

[(4) MEETINGS.—The individuals designated under paragraph (2) shall meet not later than 270 days after the date of the enactment of this Act and not less frequently than every 120 days thereafter to—

[(A) review the progress of the program under paragraph (1); and

[(B) make recommendations on future activities to occur subsequent to the meeting.

[(b) GRANTS, CONTRACTS, COOPERATIVE AGREEMENTS, INTER-AGENCY FUNDS TRANSFER AGREEMENTS, AND FIELD WORK PROPOSALS.—

[(1) ASSISTANCE AND COORDINATION.—In carrying out the program of methane hydrate research and development authorized by this section, the Secretary may award grants or contracts to, or enter into cooperative agreements with, institutions of higher education and industrial enterprises to—

[(A) conduct basic and applied research to identify, explore, assess, and develop methane hydrate as a source of energy;

[(B) assist in developing technologies required for efficient and environmentally sound development of methane hydrate resources;

[(C) undertake research programs to provide safe means of transport and storage of methane produced from methane hydrates;

[(D) promote education and training in methane hydrate resource research and resource development;

[(E) conduct basic and applied research to assess and mitigate the environmental impacts of hydrate degassing (including both natural degassing and degassing associated with commercial development);

[(F) develop technologies to reduce the risks of drilling through methane hydrates; and

[(G) conduct exploratory drilling in support of the activities authorized by this paragraph.

[(2) COMPETITIVE MERIT-BASED REVIEW.—Funds made available under paragraph (1) shall be made available based on a competitive merit-based process.

[(c) CONSULTATION.—The Secretary shall establish an advisory panel consisting of experts from industrial enterprises, institutions of higher education, and Federal agencies to—

[(1) advise the Secretary on potential applications of methane hydrate;

[(2) assist in developing recommendations and priorities for the methane hydrate research and development program carried out under subsection (a)(1); and

[(3) not later than 2 years after the date of the enactment of this Act, and at such later dates as the panel considers advisable, submit to Congress a report on the anticipated impact on global climate change from—

[(A) methane hydrate formation;

[(B) methane hydrate degassing (including natural degassing and degassing associated with commercial development); and

[(C) the consumption of natural gas produced from methane hydrates.

Not more than 25 percent of the individuals serving on the advisory panel shall be Federal employees.

[(d) LIMITATIONS.—

[(1) ADMINISTRATIVE EXPENSES.—Not more than 5 percent of the amount made available to carry out this section for a fiscal year may be used by the Secretary for expenses associated with the administration of the program carried out under subsection (a)(1).

[(2) CONSTRUCTION COSTS.—None of the funds made available to carry out this section may be used for the construction of a new building or the acquisition, expansion, remodeling, or alteration of an existing building (including site grading and improvement and architect fees).

[(e) RESPONSIBILITIES OF THE SECRETARY.—In carrying out subsection (b)(1), the Secretary shall—

[(1) facilitate and develop partnerships among government, industrial enterprises, and institutions of higher education to research, identify, assess, and explore methane hydrate resources;

[(2) undertake programs to develop basic information necessary for promoting long-term interest in methane hydrate resources as an energy source;

[(3) ensure that the data and information developed through the program are accessible and widely disseminated as needed and appropriate;

[(4) promote cooperation among agencies that are developing technologies that may hold promise for methane hydrate resource development; and

[(5) report annually to Congress on accomplishments under this section.

[SEC. 4. [Omitted—This section amended 30 USCS § 1901.]

[SEC. 5. Authorization of appropriations.

There are authorized to be appropriated to the Secretary of Energy to carry out this Act—

- (1) \$5,000,000 for fiscal year 2001;
- (2) \$7,500,000 for fiscal year 2002;
- (3) \$11,000,000 for fiscal year 2003;
- (4) \$12,000,000 for fiscal year 2004; and
- (5) \$12,000,000 for fiscal year 2005.

Amounts authorized under this section shall remain available until expended.

**SEC. 6. Sunset.**

Section 3 of this Act shall cease to be effective after the end of fiscal year 2005.

**SEC. 7. National Research Council study.**

The Secretary shall enter into an agreement with the National Research Council for such council to conduct a study of the progress made under the methane hydrate research and development program implemented pursuant to this Act, and to make recommendations for future methane hydrate research and development needs. The Secretary shall transmit to the Congress, not later than September 30, 2004, a report containing the findings and recommendations of the National Research Council under this section.

**SEC. 8. Reports and studies.**

The Secretary of Energy shall provide to the Committee on Science of the House of Representatives copies of any report or study that the Department of Energy prepares at the direction of any committee of the Congress.]

**SECTION 1. SHORT TITLE.**

*This Act may be cited as the “Methane Hydrate Research and Development Act of 2000”.*

**SEC. 2. FINDINGS.**

*Congress finds that—*

(1) *in order to promote energy independence and meet the increasing demand for energy, the United States will require a diversified portfolio of substantially increased quantities of electricity, natural gas, and transportation fuels;*

(2) *according to the report submitted to Congress by the National Research Council entitled “Charting the Future of Methane Hydrate Research in the United States”, the total United States resources of gas hydrates have been estimated to be on the order of 200,000 trillion cubic feet;*

(3) *according to the report of the National Commission on Energy Policy entitled “Ending the Energy Stalemate—A Bipartisan Strategy to Meet America’s Energy Challenge”, and dated December 2004, the United States may be endowed with over 1/4 of the methane hydrate deposits in the world;*

(4) *according to the Energy Information Administration, a shortfall in natural gas supply from conventional and unconventional sources is expected to occur in or about 2020; and*

(5) *the National Academy of Science states that methane hydrate may have the potential to alleviate the projected shortfall in the natural gas supply.*

**SEC. 3. DEFINITIONS.**

*In this Act:*

(1) *CONTRACT.*—The term “contract” means a procurement contract within the meaning of section 6303 of title 31, United States Code.

(2) *COOPERATIVE AGREEMENT.*—The term “cooperative agreement” means a cooperative agreement within the meaning of section 6305 of title 31, United States Code.

(3) *DIRECTOR.*—The term “Director” means the Director of the National Science Foundation.

(4) *GRANT.*—The term “grant” means a grant awarded under a grant agreement (within the meaning of section 6304 of title 31, United States Code).

(5) *INDUSTRIAL ENTERPRISE.*—The term “industrial enterprise” means a private, nongovernmental enterprise that has an expertise or capability that relates to methane hydrate research and development.

(6) *INSTITUTION OF HIGHER EDUCATION.*—The term “institution of higher education” means an institution of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)).

(7) *SECRETARY.*—The term “Secretary” means the Secretary of Energy, acting through the Assistant Secretary for Fossil Energy.

(8) *SECRETARY OF COMMERCE.*—The term “Secretary of Commerce” means the Secretary of Commerce, acting through the Administrator of the National Oceanic and Atmospheric Administration.

(9) *SECRETARY OF DEFENSE.*—The term “Secretary of Defense” means the Secretary of Defense, acting through the Secretary of the Navy.

(10) *SECRETARY OF THE INTERIOR.*—The term “Secretary of the Interior” means the Secretary of the Interior, acting through the Director of the United States Geological Survey, the Director of the Bureau of Land Management, and the Director of the Minerals Management Service.

**SEC. 4. METHANE HYDRATE RESEARCH AND DEVELOPMENT PROGRAM.**

(a) *IN GENERAL.*—

(1) *COMMENCEMENT OF PROGRAM.*—Not later than 90 days after the date of enactment of the Energy Research, Development, Demonstration, and Commercial Application Act of 2005, the Secretary, in consultation with the Secretary of Commerce, the Secretary of Defense, the Secretary of the Interior, and the Director, shall commence a program of methane hydrate research and development in accordance with this section.

(2) *DESIGNATIONS.*—The Secretary, the Secretary of Commerce, the Secretary of Defense, the Secretary of the Interior, and the Director shall designate individuals to carry out this section.

(3) *COORDINATION.*—The individual designated by the Secretary shall coordinate all activities within the Department of Energy relating to methane hydrate research and development.

(4) *MEETINGS.*—The individuals designated under paragraph (2) shall meet not later than 180 days after the date of enactment of the Energy Research, Development, Demonstration, and



*Commercial Application Act of 2005 and not less frequently than every 180 days thereafter to—*

- (A) *review the progress of the program under paragraph (1); and*
  - (B) *coordinate interagency research and partnership efforts in carrying out the program.*
- (b) *GRANTS, CONTRACTS, COOPERATIVE AGREEMENTS, INTER-AGENCY FUNDS TRANSFER AGREEMENTS, AND FIELD WORK PROPOSALS.—*

(1) *ASSISTANCE AND COORDINATION.—In carrying out the program of methane hydrate research and development authorized by this section, the Secretary may award grants to, or enter into contracts or cooperative agreements with, institutions of higher education, oceanographic institutions, and industrial enterprises to—*

(A) *conduct basic and applied research to identify, explore, assess, and develop methane hydrate as a commercially viable source of energy;*

(B) *identify methane hydrate resources through remote sensing;*

(C) *acquire and reprocess seismic data suitable for characterizing methane hydrate accumulations;*

(D) *assist in developing technologies required for efficient and environmentally sound development of methane hydrate resources;*

(E) *promote education and training in methane hydrate resource research and resource development through fellowships or other means for graduate education and training;*

(F) *conduct basic and applied research to assess and mitigate the environmental impact of hydrate degassing (including both natural degassing and degassing associated with commercial development);*

(G) *develop technologies to reduce the risks of drilling through methane hydrates; and*

(H) *conduct exploratory drilling, well testing, and production testing operations on permafrost and non-permafrost gas hydrates in support of the activities authorized by this paragraph, including drilling of 1 or more full-scale production test wells.*

(2) *COMPETITIVE PEER REVIEW.—Funds made available under paragraph (1) shall be made available based on a competitive process using external scientific peer review of proposed research.*

(c) *METHANE HYDRATES ADVISORY PANEL.—*

(1) *IN GENERAL.—The Secretary shall establish an advisory panel (including the hiring of appropriate staff) consisting of representatives of industrial enterprises, institutions of higher education, oceanographic institutions, State agencies, and environmental organizations with knowledge and expertise in the natural gas hydrates field, to—*

(A) *assist in developing recommendations and broad programmatic priorities for the methane hydrate research and development program carried out under subsection (a)(1);*

(B) provide scientific oversight for the methane hydrates program, including assessing progress toward program goals, evaluating program balance, and providing recommendations to enhance the quality of the program over time; and

(C) not later than 2 years after the date of enactment of the Energy Research, Development, Demonstration, and Commercial Application Act of 2005, and at such later dates as the panel considers advisable, submit to Congress—

(i) an assessment of the methane hydrate research program; and

(ii) an assessment of the 5-year research plan of the Department of Energy.

(2) **CONFLICTS OF INTEREST.**—In appointing each member of the advisory panel established under paragraph (1), the Secretary shall ensure, to the maximum extent practicable, that the appointment of the member does not pose a conflict of interest with respect to the duties of the member under this Act.

(3) **MEETINGS.**—The advisory panel shall—

(A) hold the initial meeting of the advisory panel not later than 180 days after the date of establishment of the advisory panel; and

(B) meet biennially thereafter.

(4) **COORDINATION.**—The advisory panel shall coordinate activities of the advisory panel with program managers of the Department of Energy at appropriate national laboratories.

(d) **CONSTRUCTION COSTS.**—None of the funds made available to carry out this section may be used for the construction of a new building or the acquisition, expansion, remodeling, or alteration of an existing building (including site grading and improvement and architect fees).

(e) **RESPONSIBILITIES OF THE SECRETARY.**—In carrying out subsection (b)(1), the Secretary shall—

(1) facilitate and develop partnerships among government, industrial enterprises, and institutions of higher education to research, identify, assess, and explore methane hydrate resources;

(2) undertake programs to develop basic information necessary for promoting long-term interest in methane hydrate resources as an energy source;

(3) ensure that the data and information developed through the program are accessible and widely disseminated as needed and appropriate;

(4) promote cooperation among agencies that are developing technologies that may hold promise for methane hydrate resource development;

(5) report annually to Congress on the results of actions taken to carry out this Act; and

(6) ensure, to the maximum extent practicable, greater participation by the Department of Energy in international cooperative efforts.

**SEC. 5. NATIONAL RESEARCH COUNCIL STUDY.**

(a) *AGREEMENT FOR STUDY.*—The Secretary shall offer to enter into an agreement with the National Research Council under which the National Research Council shall—

(1) conduct a study of the progress made under the methane hydrate research and development program implemented under this Act; and

(2) make recommendations for future methane hydrate research and development needs.

(b) *REPORT.*—Not later than September 30, 2009, the Secretary shall submit to Congress a report containing the findings and recommendations of the National Research Council under this section.

**SEC. 6. REPORTS AND STUDIES FOR CONGRESS.**

The Secretary shall provide to the Committee on Science of the House of Representatives and the Committee on Energy and Natural Resources of the Senate copies of any report or study that the Department of Energy prepares at the direction of any committee of Congress relating to the methane hydrate research and development program implemented under this Act.

**SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Secretary to carry out this Act, to remain available until expended—

(1) \$15,000,000 for fiscal year 2006;

(2) \$20,000,000 for fiscal year 2007;

(3) \$30,000,000 for fiscal year 2008;

(4) \$50,000,000 for fiscal year 2009; and

(5) \$50,000,000 for fiscal year 2010.

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**HIGH-PERFORMANCE COMPUTING ACT OF  
1991—PUBLIC LAW 102-194, AS AMENDED (15  
U.S.C. 5501 ET SEQ.)**

**SEC. 203. DEPARTMENT OF ENERGY ACTIVITIES.**

(a) *GENERAL RESPONSIBILITIES.*—As part of the Program described in [subchapter] title I [of this chapter], the Secretary of Energy shall—

[(1) perform research and development on, and systems evaluations of, high-performance computing and communications systems;

[(2) conduct computational research with emphasis on energy applications;

[(3) support basic research, education, and human resources in computational science; and

[(4) provide for networking infrastructure support for energy-related mission activities.]

(1) *conduct and support basic and applied research in high-performance computing and networking to support fundamental research in science and engineering disciplines related to energy applications; and*

(2) *provide computing and networking infrastructure support, including—*

*(A) the provision of high-performance computing systems that are among the most advanced in the world in terms of performance in solving scientific and engineering problems; and*

*(B) support for advanced software and applications development for science and engineering disciplines related to energy applications.*

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**COAL RESEARCH AND DEVELOPMENT ACT OF  
1960—PUBLIC LAW 86-599 (30 U.S.C. 661 ET  
SEQ.)**

\* \* \* \* \*

**[Section 1. Definitions**

**[As used in this chapter (a) The term “Secretary” means the Secretary of the Interior. (b) The term “research” means scientific, technical, and economic research and the practical application of that research.]**

*Section 1. (a) This Act may be cited as the “Coal Research and Development Act of 1960”.*

*(b) In this Act:*

- (1) the term “research” means scientific, technical, and economic research and the practical application of that research.*
- (2) The term Secretary means the Secretary of Energy.*

**Section 2. Office of Coal Research; powers and duties**

The Secretary **[shall establish within the Department of the Interior an Office of Coal Research, and through such Office]** shall (1) develop through research, new and more efficient methods of mining, preparing, and utilizing coal; (2) contract for, sponsor, co-sponsor, and promote the coordination of, research with recognized interested groups, including but not limited to, coal trade associations, coal research associations, educational institutions, and agencies of States and political subdivisions of States; (3) establish technical advisory committees composed of recognized experts in various aspects of coal research to assist in the examination and evaluation of research progress and of all research proposals and contracts and to insure the avoidance of duplication of research; and (4) cooperate to the fullest extent possible with other departments, agencies, and independent establishments of the Federal Government and with State governments, and with all other interested agencies, governmental and nongovernmental.

**[Section 3. Advisory committees**

**[(a) Minutes of meetings. Any advisory committee appointed under the provisions of this chapter shall keep minutes of each meeting, which shall contain as a minimum (1) the name of each person attending such meeting, (2) a copy of the agenda, and (3) a record of all votes or polls taken during the meeting.**

**[(b) Availability of minutes or reports. A copy of any such minutes or of any report made by any such committee after final action**

has been taken thereon by the Secretary shall be available to the public upon request and payment of the cost of furnishing such copy.

[(c) Compensation; travel expenses. Members of any advisory committee appointed from private life under authority of this section shall each receive \$50 per diem when engaged in the actual performance of their duties as a member of such advisory committee. Such members shall also be entitled to travel expenses and per diem in lieu of subsistence at the rates authorized by section 5703 of title 5 for all persons employed intermittently as consultants or experts receiving compensation on a per diem basis.

(d) Exemption from conflict-of-interest statutes. Service by an individual as a member of such an advisory committee shall not subject him to the provisions of section 1914 of title 18, or, except with respect to a particular matter which directly involves the Office of Coal Research or in which the Office of Coal Research is directly interested, to the provisions of sections 281, 283, or 284 of title 18 or of section 190 of the Revised Statutes (5 U.S.C. 99).

**[Section 4. Director of Coal Research; appointment.**

**[The Secretary may appoint a Director of Coal Research without regard to the provisions of the civil service laws, or chapter 51 and subchapter III of chapter 53 of title 5.]**

\* \* \* \* \*

**Section [5] 3. Sites for conducting research; availability of personnel and facilities**

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**Section [6] 4. Public-availability requirement; national defense; patent agreements**

\* \* \* \* \*

**Section [8] 5. Authorization of appropriations**

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**[Section 7. Reports to President and Congress**

**[The Secretary shall submit to the President and the Congress, on or before February 15 of each year, beginning with the year 1961, a comprehensive report concerning activities under the authority of this chapter, including information on all research projects conducted, sponsored, or cosponsored under the authority of this chapter during the preceding year.]**

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**TITLE 35, UNITED STATES CODE—PUBLIC LAW  
96-517**

\* \* \* \* \*

**SEC. 210. Precedence of chapter.**

(a) This chapter shall take precedence over any other Act which would require a disposition of rights in subject inventions of small business firms or nonprofit organizations contractors in a manner

that is inconsistent with this chapter, including but not necessarily limited to the following:

\* \* \* \* \*

(8) section 6 of the **【Coal Research Development Act of 1960】**  
*Coal Research and Development Act* (30 U.S.C. 666; 74 Stat. 337);

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**FEDERAL NONNUCLEAR ENERGY RESEARCH  
AND DEVELOPMENT ACT OF 1974—PUBLIC  
LAW 93-577 (42 U.S.C. 5902 ET SEQ.)**

\* \* \* \* \*

SHORT TITLE AND DEFINITIONS

SECTION 1. (a) This Act may be cited as the “Federal Nonnuclear Energy Research and Development Act of 1974”.

(b) *In this Act—*

- (1) *the term “Department” means the Department of Energy; and*
- (2) *the term “Secretary” means the Secretary of Energy.*

STATEMENT OF FINDINGS

SEC. 2. The Congress hereby finds that—

(a) The Nation is suffering from a shortage of environmentally acceptable forms of energy.

(b) Compounding this energy shortage is our past and present failure to formulate a comprehensive and aggressive research and development program designed to make available to American consumers our large domestic energy reserves including fossil fuels, nuclear fuels, geothermal resources, solar energy, and other forms of energy. This failure is partially because the unconventional energy technologies have not been judged to be economically competitive with traditional energy technologies.

(c) The urgency of the Nation’s energy challenge will require commitments similar to those undertaken in the Manhattan and Apollo projects; it will require that the Nation undertake a research, development, and demonstration program in nonnuclear energy technologies with a total Federal investment which may reach or exceed \$20,000,000,000 over the next decade.

(d) In undertaking such program, full advantage must be taken of the existing technical and managerial expertise in the various energy fields within Federal agencies and particularly in the private sector.

(e) The Nation’s future energy needs can be met if a national commitment is made now to dedicate the necessary financial resources, to enlist our scientific and technological capabilities, and to accord the proper priority to developing new nonnuclear energy options to serve national needs, conserve vital resources, and protect the environment.

## STATEMENT OF POLICY

SEC. 3. (a) It is the policy of the Congress to develop on an urgent basis the technological capabilities to support the broadest range of energy policy options through conservation and use of domestic resources by socially and environmentally acceptable means.

(b)(1) The Congress declares the purpose of this Act to be to establish and vigorously conduct a comprehensive, national program of basic and applied research and development, including but not limited to demonstrations of practical applications, of all potentially beneficial energy sources and utilization technologies, within the **【Energy Research and Development Administration】** *Department*.

(2) In carrying out this program, the **【Administrator of the Energy Research and Development Administration (hereinafter in this Act referred to as the “Administrator”)]** Secretary shall be governed by the terms of this Act and other applicable provisions of law with respect to all nonnuclear aspects of the research, development, and demonstration program; and the policies and provisions of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), and other provisions of law shall continue to apply to the nuclear research, development, and demonstration program.

(3) In implementing and conducting the research, development, and demonstration programs pursuant to this Act, the **【Administrator】** Secretary shall incorporate programs in specific nonnuclear technologies previously enacted into law, including those established by the Solar Heating and Cooling *Demonstration Act* of 1974 (Public Law 93–409), the Geothermal Energy Research, Development, and Demonstration Act of 1974 (Public Law 93–410), and the Solar Energy Research, Development, and Demonstration Act of 1974 (Public Law 93–473).

DUTIES AND AUTHORITIES OF THE **【ADMINISTRATOR】** SECRETARY

SEC. 4. The **【Administrator】** Secretary shall—(a) review the current status of nonnuclear energy resources and current nonnuclear energy research and development activities, including research and development being conducted by Federal and non-Federal entities;

(b) formulate and carry out a comprehensive Federal nonnuclear energy research, development, and demonstration program which will expeditiously advance the policies established by this Act and other relevant legislation establishing programs in specific energy technologies;

(c) utilize the funds authorized pursuant to this Act to advance energy research and development by initiating and maintaining, through fund transfers, grants or contracts, energy research, development and demonstration programs or activities utilizing the facilities, capabilities, expertise, and experience of Federal agencies, national laboratories, universities, nonprofit organizations, industrial entities, and other non-Federal entities which are appropriate to each type of research, development, and demonstration activity;

(d) establish procedures for periodic consultation with representatives of science, industry, environmental organizations, consumers, and other groups who have special expertise in the areas of energy research, development, and technology; and

(e) initiate programs to design, construct, and operate energy facilities of sufficient size to demonstrate the technical and economic feasibility of utilizing various forms of nonnuclear energy.

GOVERNING PRINCIPLES

\* \* \* \* \*

SEC. 5. \* \* \*

(b) The Congress further directs that the execution of the comprehensive research, development, and demonstration program shall conform to the following principles:

(1) Research and development of nonnuclear energy sources shall be pursued in such a way as to facilitate the commercial availability of adequate supplies of energy to all regions of the United States.

(2) In determining the appropriateness of Federal involvement in any particular research and development undertaking, the [Administrator] *Secretary* shall give consideration to the extent to which the proposed undertaking satisfies criteria including, but not limited to, the following:

\* \* \* \* \*

COMPREHENSIVE PLANNING AND PROGRAMMING

\* \* \* \* \*

SEC. 6.

(b) \* \* \*

\* \* \* \* \*

(3) The [Administrator] *Secretary* shall assign program elements and activities in specific nonnuclear energy technologies to the short-term, middle-term, and long-term time intervals, and shall present full and complete justification for these assignments and the degree of emphasis for each. These program elements and activities shall include, but not be limited to, research, development, and demonstrations designed—

(A) to advance energy conservation technologies, including but not limited to—

(i) productive use of waste, including garbage, sewage, agricultural wastes, and industrial waste heat;

(ii) reuse and recycling of materials and consumer products;

(iii) improvements in automobile design for increased efficiency and lowered emissions, including investigation of the full range of alternatives to the internal combustion engine and systems of efficient public transportation; and

(iv) advanced urban and architectural design to promote efficient energy use in the residential and commercial sectors, improvements in home design and insulation technologies, small thermal storage units and increased efficiency in electrical appliances and lighting fixtures;

(B) to accelerate the commercial demonstration of technologies for producing low-sulfur fuels suitable for boiler use;

(C) to demonstrate improved methods for the generation, storage, and transmission of electrical energy through



- (i) advances in gas turbine technologies, combined power cycles, the use of low British thermal unit gas and, if practicable, magnetohydrodynamics;
  - (ii) storage systems to allow more efficient load following, including the use of inertial energy storage systems; and
  - (iii) improvement in cryogenic transmission methods;
- (D) to accelerate the commercial demonstration of technologies for producing substitutes for natural gas, including coal gasification: Provided, That the [Administrator] *Secretary* shall invite and consider proposals from potential participants based upon Federal assistance and participation in the form of a joint Federal-industry corporation, and recommendations pursuant to this clause shall be accompanied by a report on the viability of using this form of Federal assistance or participation;
- (E) to accelerate the commercial demonstration of technologies for producing syncrude and liquid petroleum products from coal: Provided, That the [Administrator] *Secretary* shall invite and consider proposals from potential participants based upon Federal assistance and participation through guaranteed prices or purchase of the products, and recommendations pursuant to this clause shall be accompanied by a report on the viability of using this form of Federal assistance or participation;
- (F) in accordance with the program authorized by the Geothermal Energy Research, Development, and Demonstration Act of 1974 (Public Law 93-410), to accelerate the commercial demonstration of geothermal energy technologies;
- (G) to demonstrate the production of syncrude from oil shale by all promising technologies including insitu technologies;
- (H) to demonstrate new and improved methods for the extraction of petroleum resources, including secondary and tertiary recovery of crude oil;
- (I) to demonstrate the economics and commercial viability of solar energy for residential and commercial energy supply applications in accordance with the program authorized by the Solar Heating and Cooling *Demonstration* Act of 1974 (Public Law 93-409);
- (J) to accelerate the commercial demonstration of environmental control systems for energy technologies developed pursuant to this Act;
- (K) to investigate the technical and economic feasibility of tidal power for supplying electrical energy;
- (L) to commercially demonstrate advanced solar energy technologies in accordance with the Solar *Energy* Research, Development, and Demonstration Act of 1974 (Public Law 93-473);
- (M) to determine the economics and commercial viability of the production of synthetic fuels such as hydrogen and methanol;
- (N) to commercially demonstrate the use of fuel cells for central station electric power generation;
- (O) to determine the economics and commercial viability of in situ coal gasification;

(P) to improve techniques for the management of existing energy systems by means of quality control; application of systems analysis, communications, and computer techniques; and public information with the objective of improving the reliability and efficiency of energy supplies and encourage the conservation of energy resources;

(Q) to improve methods for the prevention and cleanup of marine oil spills;

(R) to implement the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (42 U.S.C. 12001 et seq.); and

(S) to implement titles XX through XXIII of the Energy Policy Act of 1992.

(c) Based upon the comprehensive plan developed under subsection (a), the Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992, shall develop and transmit to the Congress, on or before September 1, 1978, a comprehensive environment and safety program to insure the full consideration and evaluation of all environmental, health, and safety impacts of each element, program, or initiative contained in the nuclear and nonnuclear energy research, development, and demonstration plans. Such program shall be updated and transmitted to the Congress annually as part of the report required under section 1.

#### FORMS OF FEDERAL ASSISTANCE

SEC. 7. (a) In carrying out the objectives of this Act, the [Administrator] Secretary may utilize various forms of Federal assistance and participation which may include but are not limited to—

(1) joint Federal-industry experimental, demonstration, or commercial corporations consistent with the provisions of subsection (b) of this section;

(2) contractual arrangements with non-Federal participants including corporations, consortia, universities, governmental entities and nonprofit institutions;

(3) contracts for the construction and operation of federally owned facilities;

(4) Federal purchases or guaranteed price of the products of demonstration plants or activities consistent with the provisions of subsection (c) [of the section];

(5) Federal loans to non-Federal entities conducting demonstrations of new technologies;

(6) incentives, including financial awards, to individual inventors, such incentives to be designed to encourage the participation of a large number of such inventors; and

(7) Federal loan guarantees and commitments thereof as provided in section 19.

(b) Joint Federal-industry corporations proposed for congressional authorization pursuant to this Act shall be subject to the provisions of section 9 of this Act and shall conform to the following guidelines except as otherwise authorized by Congress:

(1) Each such corporation may design, construct, operate, and maintain one or more experimental, demonstration, or commercial-size facilities, or other operations which will ascer-

tain the technical, environmental, and economic feasibility of a particular energy technology. In carrying out this function, the corporation shall be empowered, either directly or by contract, to utilize commercially available technologies, perform tests, or design, construct, and operate pilot plants, as may be necessary for the design of the full-scale facility.

(2) Each corporation shall have—

(A) a Board of nine directors consisting of individuals who are citizens of the United States, of whom one shall be elected annually by the Board to serve as Chairman. The Board shall be empowered to adopt and amend by-laws. Five members of the Board shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and four members of the Board shall be appointed by the President on the basis of recommendations received by him from any non-Federal entity or entities entering into contractual arrangements to participate in the corporation;

(B) a President and such other officers and employees as may be named and appointed by the Board (with the rates of compensation of all officers and employees being fixed by the Board); and

(C) the usual powers conferred upon corporations by the laws of the District of Columbia.

(3) An appropriate time interval, not to exceed 12 years, shall be established for the term of Federal participation in the corporation, at the expiration of which the Board of Directors shall take such action as may be necessary to dissolve the corporation or otherwise terminate Federal participation and financial interests. In carrying out such dissolution, the Board of Directors shall dispose of all physical facilities of the corporation in such manner and subject to such terms and conditions as the Board determines are in the public interest and consistent with existing law; and a share of the appraised value of the corporate asset proportional to the Federal participation in the corporation, including the proceeds from the disposition of such facilities, on the date of its dissolution, after satisfaction of all its legal obligations, shall be made available to the United States and deposited in the Treasury of the United States as miscellaneous receipts. All patent rights of the corporation shall, on such date of dissolution, be vested in the **[Administrator]** *Secretary*: Provided, That Federal participation may be terminated prior to the time established in the authorizing Act upon recommendation of the Board of Directors.

(4) Any commercially valuable product produced by demonstration facilities shall be disposed of in such manner and under such terms and conditions as the corporation shall prescribe. All revenues received by the corporation from the sale of such products shall be available to the corporation for use by it in defraying expenses incurred in connection with carrying out its functions to which this Act applies.

(5) The estimated Federal share of the construction, operation, and maintenance cost over the life of each corporation

shall be determined in order to facilitate a single congressional authorization of the full amount at the time of establishment of the corporation.

(6) The Federal share of the cost of each such corporation shall reflect:

- (A) the technical and economic risk of the venture,
- (B) the probability of any financial return to the non-Federal participants arising from the venture,
- (C) the financial capability of the potential non-Federal participants, and
- (D) such other factors as the **Administrator** *Secretary* may set forth in proposing the corporation: Provided, That in no instance shall the Federal share exceed 90 per centum of the cost.

(7) No such corporation shall be established unless previously authorized by specific legislation enacted by the Congress.

(c) Competitive systems of price supports proposed for congressional authorization pursuant to this Act shall conform to the following guidelines:

(1) The **Administrator** *Secretary* shall determine the types and capacities of the desired full-scale, commercial-size facility or other operation which would demonstrate the technical, environmental, and economic feasibility of a particular non-nuclear energy technology.

(2) The **Administrator** *Secretary* may award planning grants for the purpose of financing a study of the full cycle economic and environmental costs associated with the demonstration facility selected pursuant to paragraph (1) of this subsection. Such planning grants may be awarded to Federal and non-Federal entities including, but not limited to, industrial entities, universities, and nonprofit organizations. Such planning grants may also be used by the grantee to prepare a detailed and comprehensive bid to construct the demonstration facility.

(3) Following the completion of the studies pursuant to the planning grants awarded under paragraph (2) of this subsection regarding each such potential price supported demonstration facility for which the **Administrator** *Secretary* intends to request congressional authorization, he shall invite bids from all interested parties to determine the minimum amount of Federal price support needed to construct the demonstration facility. The **Administrator** *Secretary* may designate one or more competing entities, each to construct one commercial demonstration facility. Such designation shall be made on the basis of those entities'

- (A) commitment to construct the demonstration facility at the minimum level of Federal price supports,
- (B) detailed plan of environmental protection, and
- (C) proposed design and operation of the demonstration facility.

(4) The construction plans and actual construction of the demonstration facility, together with all related facilities, shall be monitored by the Environmental Protection Agency. If addi-

tional environmental requirements are imposed by the **【Administrator】 Secretary** after the designation of the successful bidders and if such additional environmental requirements result in additional costs, the **【Administrator】 Secretary** is authorized to renegotiate the support price to cover such additional costs.

(5) The estimated amount of the Federal price support for a demonstration facility's product over the life of such facility shall be determined by the **【Administrator】 Secretary** to facilitate a single congressional authorization of the full amount of such support at the time of the designation of the successful bidders.

(6) No price support program shall be implemented unless previously authorized by specific legislation enacted by the Congress.

(d) Nothing in this section shall preclude Federal participation in and support for, joint university-industry nonnuclear energy research efforts.

#### DEMONSTRATIONS

SEC. 8. (a) The **【Administrator】 Secretary** is authorized to—

(1) identify opportunities to accelerate the commercial applications of new energy technologies, and provide Federal assistance for or participation in demonstration projects (including pilot plants demonstrating technological advances and field demonstrations of new methods and procedures, and demonstrations of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of energy resources); and

(2) enter into cooperative agreements with non-Federal entities to demonstrate the technical feasibility and economic potential of energy technologies on a prototype or full-scale basis.

(b) In reviewing potential projects, the **【Administrator】 Secretary** shall consider criteria including but not limited to—

(1) the anticipated research, development, and application objectives to be achieved by the activities or facilities proposed;

(2) the economic, environmental, and societal significance which a successful demonstration may have for the national fuels and energy system;

(3) the relationship of the proposal to the criteria of priority set forth in section 5(b)(2);

(4) the availability of non-Federal participants to construct and operate the facilities or perform the activities associated with the proposal and to contribute to the financing of the proposal;

(5) the total estimated cost including the Federal investment and the probable time schedule;

(6) the proposed participants and the proposed financial contributions of the Federal Government and of the non-Federal participants; and

(7) the proposed cooperative arrangement, agreements among the participants, and form of management of the activities.

(c)(1) A financial award under this section may be made only to the extent of the Federal share of the estimated total design and construction costs, plus operation and maintenance costs.

(2) For the purposes of this Act the non-Federal share may be in any form, including, but not limited to, lands or interests therein needed for the project or personal property or services, the value of which shall be determined by the **[Administrator]** *Secretary*.

(d)(1) The Administrator *of the Energy Research and Development Administration* shall, within six months of enactment of this Act, promulgate regulations establishing procedures for submission of proposals to the Energy Research and Development Administration for the purposes of this Act. Such regulations shall establish a procedure for selection of proposals which—

(A) provides that projects will be carried out under such conditions and varying circumstances as will assist in solving energy extraction, transportation, conversion, conservation, and end-use problems of various areas and regions, under representative geological, geographic, and environmental conditions; and

(B) provides time schedules for submission of, and action on, proposal requests for the purposes of implementing the goals and objectives of this Act.

(2) Such regulations also shall specify the types and form of the information, data, and support documentation that are to be contained in proposals for each form of Federal assistance or participation set forth in subsection 7(a): Provided, That such proposals to the extent possible shall include, but not be limited to—

(A) specification of the technology;

(B) description of prior pilot plant operating experience with the technology;

(C) preliminary design of the demonstration plant;

(D) time tables containing proposed construction and operation plans;

(E) budget-type estimates of construction and operating costs;

(F) description and proof of title to land for proposed site, natural resources, electricity and water supply and logistical information related to access to raw materials to construct and operate the plant and to dispose of salable products produced from the plant;

(G) analysis of the environmental impact of the proposed plant and plans for disposal of wastes resulting from the operation of the plant;

(H) plans for commercial use of the technology if the demonstration is successful;

(I) plans for continued use of the plant if the demonstration is successful; and

(J) plans for dismantling of the plant if the demonstration is unsuccessful or otherwise abandoned.

(3) The **[Administrator]** *Secretary* shall from time to time review and, as appropriate, modify and repromulgate regulations issued pursuant to this section.

(e) If the estimate of the Federal investment with respect to construction costs of any demonstration project proposed to be estab-

lished under this section exceeds \$50,000,000, no amount may be appropriated for such project except as specifically authorized by legislation hereafter enacted by the Congress.

(f) If the total estimated amount of the Federal contribution to the construction cost of a demonstration project does not exceed \$50,000,000, the [Administrator] *Secretary* is authorized to proceed with the negotiation of agreements and implementation of the proposal subject to the availability of funds under the authorization of appropriations pursuant to section 16: Provided, That if such Federal contribution to the construction cost is estimated to exceed \$25,000,000 the [Administrator] *Secretary* shall provide a full and comprehensive report on the proposed demonstration project to the appropriate committees of the Congress and no funds may be expended for any agreement under the authority granted by this section prior to the expiration of sixty calendar days (not including any day on which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain) from the date on which the [Administrator's] *Secretary's* report on the proposed project is received by the Congress. Such reports shall contain an analysis of the extent to which the proposed demonstration satisfies the criteria specified in subsection (b) of this section.

#### PATENT POLICY

SEC. 9. (a) Whenever any invention is made or conceived in the course of or under any contract of the [Administration] *Department*, other than nuclear energy research, development, and demonstration pursuant to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) and the [Administrator] *Secretary* determines that—

(1) the person who made the invention was employed or assigned to perform research, development, or demonstration work and the invention is related to the work he was employed or assigned to perform, or that it was within the scope of his employment duties, whether or not it was made during working hours, or with a contribution by the Government of the use of Government facilities, equipment, materials, allocated funds, information proprietary to the Government, or services of Government employees during working hours; or

(2) the person who made the invention was not employed or assigned to perform research, development, or demonstration work, but the invention is nevertheless related to the contract or to the work or duties he was employed or assigned to perform, and was made during working hours, or with a contribution from the Government of the sort referred to in clause (1); title to such invention shall vest in the United States, and if patents on such invention are issued they shall be issued to the United States, unless in particular circumstances the [Administrator] *Secretary* waives all or any part of the rights of the United States to such invention in conformity with the provisions of this section.

(b) Each contract entered into by the [Administration] *Department* with any person shall contain effective provisions under which such person shall furnish promptly to the [Administration] *Department* a written report containing full and complete technical

information concerning any invention, discovery, improvement, or innovation which may be made in the course of or under such contract.

(c) Under such regulations in conformity with the provisions of this section as the **【Administrator】** *Secretary* shall prescribe, the **【Administrator】** *Secretary* may waive all or any part of the rights of the United States under this section with respect to any invention or class of inventions made or which may be made by any person or class of persons in the course of or under any contract of the **【Administration】** *Department* if he determines that the interests of the United States and the general public will best be served by such waiver. The **【Administration】** *Department* shall maintain a publicly available, periodically updated record of waiver determinations. In making such determinations, the **【Administrator】** *Secretary* shall have the following objectives:

(1) Making the benefits of the energy research, development, and demonstration program widely available to the public in the shortest practicable time.

(2) Promoting the commercial utilization of such inventions.

(3) Encouraging participation by private persons in the **【Administration's】** *Department's* energy research, development, and demonstration program.

(4) Fostering competition and preventing undue market concentration or the creation or maintenance of other situations inconsistent with the antitrust laws.

(d) In determining whether a waiver to the contractor at the time of contracting will best serve the interests of the United States and the general public, the **【Administrator】** *Secretary* shall specifically include as considerations—

(1) the extent to which the participation of the contractor will expedite the attainment of the purposes of the program;

(2) the extent to which a waiver of all or any part of such rights in any or all fields of technology is needed to secure the participation of the particular contractor;

(3) the extent to which the contractor's commercial position may expedite utilization of the research, development, and demonstration program results;

(4) the extent to which the Government has contributed to the field of technology to be funded under the contract;

(5) the purpose and nature of the contract, including the intended use of the results developed thereunder;

(6) the extent to which the contractor has made or will make substantial investment of financial resources or technology developed at the contractor's private expense which will directly benefit the work to be performed under the contract;

(7) the extent to which the field of technology to be funded under the contract has been developed at the contractor's private expense;

(8) the extent to which the Government intends to further develop to the point of commercial utilization the results of the contract effort;

(9) the extent to which the contract objectives are concerned with the public health, public safety, or public welfare;



(10) the likely effect of the waiver on competition and market concentration; and

(11) in the case of a nonprofit educational institution, the extent to which such institution has a technology transfer capability and program, approved by the **【Administrator】 Secretary** as being consistent with the applicable policies of this section.

(e) In determining whether a waiver to the contractor or inventor of rights to an identified invention will best serve the interests of the United States and the general public, the **【Administrator】 Secretary** shall specifically include as considerations paragraphs (4) through (11) of subsection (d) as applied to the invention and—

(1) the extent to which such waiver is a reasonable and necessary incentive to call forth private risk capital for the development and commercialization of the invention; and

(2) the extent to which the plans, intentions, and ability of the contractor or inventor will obtain expeditious commercialization of such invention.

(f) Whenever title to an invention is vested in the United States, there may be reserved to the contractor or inventor—

(1) a revocable or irrevocable nonexclusive, paid-up license for the practice of the invention throughout the world; and

(2) the rights to such invention in any foreign country where the United States has elected not to secure patent rights and the contractor elects to do so, subject to the rights set forth in paragraphs (2), (3), (6), and (7) of subsection (h): *Provided*, That when specifically requested by the **【Administration】 Department** and three years after issuance of such a patent, the contract shall submit the report specified in subsection (h)(1) of this section.

\* \* \* \* \*

(j) The **【Administrator】 Secretary** shall, in granting waivers or licenses, consider the small business status of the applicant.

(k) The **【Administrator】 Secretary** is authorized to take all suitable and necessary steps to protect any invention or discovery to which the United States holds title, and to require that contractors or persons who acquire rights to inventions under this section protect such inventions.

(l) The **【Administration】 Department** shall be considered a defense agency of the United States for the purpose of chapter 17 of title 35 of the United States Code. **【2】**

(m) As used in this section—

(1) the term “person” means any individual, partnership, corporation, association, institution, or other entity;

(2) the term “contract” means any contract, grant, agreement, understanding, or other arrangement, which includes research, development, or demonstration work, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder;

(3) the term “made”, when used in relation to any invention means the conception or first actual reduction to practice of such invention;

(4) the term “invention” means inventions or discoveries, whether patented or unpatented; and

(5) the term “contractor” means any person having a contract with or on behalf of the [Administration] *Department*.

(n) Within twelve months after the date of the enactment of this Act, the [Administrator] *Secretary* with the participation of the Attorney General, the Secretary of Commerce, and other officials as the President may designate, shall submit to the President and the appropriate congressional committees a report concerning the applicability of existing patent policies affecting the programs under this Act, along with his recommendations for amendments or additions to the statutory patent policy, including his recommendations on mandatory licensing, which he deems advisable for carrying out the purposes of this Act.

#### RELATIONSHIP TO ANTITRUST LAWS

SEC. 10. (a) Nothing in this Act shall be deemed to convey to any individual, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

(b) As used in this section, the term “antitrust law” means—

(1) the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies”, approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(2) the Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes”, approved October 15, 1914 (15 U.S.C. 12 et seq.) as amended;

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

(4) sections 73 and 74 of the Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes”, approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; and

(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

#### ACQUISITION OF ESSENTIAL MATERIALS

SEC. 12. (a) The President may, by rule or order, require the allocation of, or the performance under contracts or orders (other than contracts of employment) relating to, supplies of materials and equipment if he finds that—

(1) such supplies are scarce, critical, and essential to carry out the purposes of this Act; and (2) such supplies cannot reasonably be obtained without exercising the authority granted by this section.

[(b) The President shall transmit any rule or order proposed under subsection (a) of this section (bearing an identification number) to each House of Congress on the date on which it is proposed. If such proposed rule or order is transmitted to the Congress such proposed rule or order shall take effect at the end of the first period of thirty calendar days of continuous session of Congress after the date on which such proposed rule or order is transmitted to it unless, between the date of transmittal and the end of the thirty day

period, either House passes a resolution stating in substance that such House does not favor such a proposed rule or order.】

(b) *A rule or order under subsection (a) shall be deemed to be a major rule subject to the requirements and procedures in chapter 8 of title 5, United States Code.*

#### WATER RESOURCE EVALUATION

SEC. 13. (a) The Water Resources Council shall undertake assessments of water resource requirements and water supply availability for any nonnuclear energy technology and any probable combinations of technologies which are the subject of Federal research and development efforts authorized by this Act, and the commercial development of which could have significant impacts on water resources. In the preparation of its assessment, the Council shall—

(1) utilize to the maximum extent practicable data on water supply and demand available in the files of member agencies of the Council;

(2) collect and compile any additional data it deems necessary for complete and accurate assessments;

(3) give full consideration to the constraints upon availability imposed by treaty, compact, court decree, State water laws, and water rights granted pursuant to State and Federal law;

(4) assess the effects of development of such technology on water quality;

(5) include estimates of cost associated with production and management of the required water supply, and the cost of disposal of waste water generated by the proposed facility or process;

(6) assess the environmental, social, and economic impact of any change in use of currently utilized water resource that may be required by the proposed facility or process; and

(7) consult with the Council on Environmental Quality.

(b) For any proposed demonstration project which may involve a significant impact on water resources, the 【Administrator】 *Secretary* shall, as a precondition of Federal assistance to that project, request the Water Resources Council to prepare an assessment of water requirements and availability for such project. A report on the assessment shall be published in the Federal Register for public review thirty days prior to the expenditure of Federal funds on the demonstration.

(c) For any proposed Federal assistance for commercial application of energy technologies pursuant to this Act, the Water Resource Council shall, as a precondition of such Federal assistance, provide to the 【Administrator】 *Secretary* an assessment of the availability of adequate water resources for such commercial application and an evaluation of the environmental, social, and economic impacts of the dedication of water to such uses.

(d) Reports of assessments and evaluations prepared by the Council pursuant to subsections (a) and (c) shall be published in the Federal Register and at least ninety days shall be provided for public review and comment. Comments received shall accompany the reports when they are submitted to the 【Administrator】 *Secretary* and shall be available to the public.

(e) The Council shall include a broad survey and analysis of regional and national water resource availability for energy development in the biennial assessment required by section 102(a) of the Water Resources Planning Act (42 U.S.C. 1962a-1(a)).

(f) The **【Administrator】** *Secretary* shall, upon enactment of this subsection, be a member of the Council.

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#### APPROPRIATION AUTHORIZATION

SEC. 16. (a) There may be appropriated to the **【Administrator】** *Secretary* to carry out the purposes of this Act such sums as may be authorized in annual authorization Acts.

**【(b) Of the amounts appropriated pursuant to subsection (a) of this section—**

**【(1) \$500,000 annually shall be made available by fund transfer to the Council on Environmental Quality for the purposes authorized by section 11; and**

**【(2) not to exceed \$1,000,000 annually shall be made available by fund transfer to the Water Resources Council for the purposes authorized by section 13**】

**【(c) There also may be appropriated to the Administrator by separate Acts such amounts as are required for demonstration projects for which the total Federal contribution to construction costs exceeds \$50,000,000.】**

#### CENTRAL SOURCE OF NONNUCLEAR ENERGY INFORMATION

SEC. 17. The **【Administrator】** *Secretary* shall promptly establish, develop, acquire, and maintain a central source of information on all energy resources and technology in furtherance of the **【Administrator's】** research, development, and demonstration mission carried out directly or indirectly under this Act. When the **【Administrator】** *Secretary* determines that such information is needed to carry out the purposes of this Act, he may acquire proprietary and other information (a) by purchase through negotiation or by donation from any person, or

(b) from another Federal agency. The information maintained by the **【Administrator】** *Secretary* shall be made available to the public, subject to the provisions of section 552 of title 5, United States Code, and section 1905 of title 18, United States Code, and to other Government agencies in a manner that will facilitate its dissemination; Provided, That upon a showing satisfactory to the **【Administrator】** *Secretary* by any person that any information, or portion thereof, obtained under this section by the **【Administrator】** *Secretary* directly or indirectly from such person, would, if made public, divulge

(1) trade secrets or

(2) other proprietary information of such person, the **【Administrator】** *Secretary* shall not disclose such information and disclosure thereof shall be punishable under section 1905 **【or】** of title 18, United States Code: Provided further, That the **【Administrator】** *Secretary* shall, upon request, provide such information to

(A) any delegate of the [Administrator] *Secretary* for the purpose of carrying out this Act, and

(B) the Attorney General, the Secretary of Agriculture, the Secretary of the Interior, the Federal Trade Commission, [the Federal Energy Administration], the Environmental Protection Agency, [the Federal Power Commission], the *Federal Energy Regulatory Commission*, the [General Accounting Office], [Government Accountability Office], other Federal agencies, when necessary to carry out their duties and responsibilities under this and other statutes, but such agencies and agency heads shall not release such information to the public. This section is not authority to withhold information from Congress or any committee of Congress upon request of the chairman or *ranking minority member*.

#### [ENERGY INFORMATION

[SEC. 18. The Administrator is, upon request, authorized to obtain energy information under section 11(d) of the Energy Supply and Environmental Coordination Act of 1974, as amended (15 U.S.C. 796(d)).

#### [LOAN GUARANTEES FOR ALTERNATIVE FUEL DEMONSTRATION

##### FACILITIES

[SEC. 19. (a) It is the purpose of this section—

[(1) to assure adequate Federal support to foster a demonstration program to produce alternative fuels from coal, oil shale, biomass, and other domestic resources;

[(2) to authorize assistance, through loan guarantees under subsection (b) and (y) for construction and startup and related costs, to demonstration facilities for the conversion of domestic coal, oil shale, biomass, and other domestic resources into alternative fuels; and

[(3) to gather information about the technological, economic, environmental, and social costs, benefits, and impacts of such demonstration facilities.

[(b)(1) Except as provided in paragraph (5) of this subsection and subsection (y) of this section the Administrator is authorized, in accordance with such rules and regulations as he shall prescribe after consultation with the Secretary of the Treasury, to guarantee and to make commitments to guarantee, in such manner and subject to such conditions (not inconsistent with the provisions of this Act) as he deems appropriate, the payment of interest on, and the principal balance of, bonds, debentures, notes, and other obligations issued by, or on behalf of, any borrower for the purpose of financing the construction and startup costs of demonstration facilities for the conversion of domestic coal, oil shale, biomass, and other domestic resources into alternative fuels: Provided, That no loan guarantee for a full sized oil shale facility shall be provided under this section until after successful demonstration of a modular facility producing between six and ten thousand barrels per day, taking into account such considerations as water usage, environmental effects, waste disposal, labor conditions, health and safety, and the

socioeconomic impacts on local communities: Provided further, That no loan guarantee shall be available under this subsection for the manufacture of component parts for demonstration facilities eligible for assistance under this subsection.

[(2) An applicant for any financial assistance under this section shall provide information to the Administrator in such form and with such content as the Administrator deems necessary.

[(3) Prior to issuing any guarantee under this section the Administrator shall obtain the concurrence of the Secretary of the Treasury with respect to the timing, interest rate, and substantial terms and conditions of such guarantee. The Secretary of the Treasury shall insure to the maximum extent feasible that the timing, interest rate, and substantial terms and conditions of such guarantee will have the minimum possible impact on the capital markets of the United States, taking into account other Federal direct and indirect securities activities.

[(4) The full faith and credit of the United States is pledged to the payment of all guarantees issued under this section with respect to principal and interest.

[(5)(A) The Administrator is authorized, in the case of a facility for the conversion of oil shale to alternative fuels which is determined by the Administrator pursuant to the proviso in paragraph (1) of this subsection, to be constructed at a modular size, to enter into a cooperative agreement with the applicant in accordance with section 8 of this Act and the other provisions of this Act to share the estimated total design and construction costs, plus operation and maintenance costs, of such modular facility. The Federal share shall not exceed 75 per centum of such costs. All receipts for the sale of any products produced during the operation of the facility shall be used to offset the costs incurred in the operation and maintenance of the facility. The provisions of subsections (d), (e), (k), (m), (p), (s), (t), (u), (v), (w), and (x) shall apply to any such modular facility. The provisions of this section shall apply to any loan guarantee for such modular facility.

[(B) After successful demonstration of the modular facility, as determined by the Administrator, the facility is eligible for financial assistance under this section for purposes of expansion to a full sized facility and the applicant may purchase the Federal interest in the modular facility as represented by the Federal share thereof by means of (i) a cash payment to the United States, or (ii) a share of the product or sales resulting from such expanded operation, as determined by the Administrator. If expansion of such facility is determined not to be warranted by the Administrator, he may, at the option of the applicant, dispose of the modular facility to the applicant at not less than fair market value, as determined by the Administrator as of the date of the disposal, or otherwise dispose of it, in accordance with applicable provisions of law, and distribute the net proceeds thereof, after expenses of such disposal, to the applicant in proportion to the applicant's share of the costs of such facility.

[(6) To the extent possible, loan guarantees shall be issued on the basis of competitive bidding among guarantee applicants in a particular technology area.

[(c) The Administrator, with due regard for the need for competition, shall guarantee or make a commitment to guarantee any obligation under subsection (b) or (y) only if—

[(1) the Administrator is satisfied that the financial assistance applied for is necessary to encourage financial participation;

[(2) the amount guaranteed to any borrower at any time does not exceed—

[(A) an amount equal to 75 per centum of the project cost of the demonstration facility as estimated at the time the guarantee is issued, which cost shall not include amounts expended for facilities and equipment used in the extraction of a mineral other than coal or shale, and in the case of coal only to the extent that the Administrator determines that the coal is to be converted to alternative fuel; and

[(B) an amount equal to 60 per centum of that portion of the actual total project cost of any demonstration facility which exceeds the project cost of such facility as estimated at the time the loan guarantee is issued;

[(3) the Administrator has determined that there will be a continued reasonable assurance of full repayment;

[(4) the obligation is subject to the condition that it not be subordinated to any other financing;

[(5) the Administrator has determined, taking into consideration all reasonably available forms of assistance under this section and other Federal and State statutes, that the impacts resulting from the proposed demonstration facility have been fully evaluated by the borrower, the Administrator, and the Governor of the affected State, and that effective steps have been taken or will be taken in a timely manner to finance community planning and development costs resulting from such facility under this section, under other provisions of law, or by other means;

[(6) the maximum maturity of the obligation does not exceed twenty years, or 90 per centum of the projected useful economic life of the physical assets of the demonstration facility covered by the guarantee, whichever is less, as determined by the Administrator;

[(7) the Administrator has determined that, in the case of any demonstration or modular facility planned to be located on Indian lands, the appropriate Indian tribe, with the approval of the Secretary of the Interior, has given written consent to such location;

[(8) the obligation provides for the orderly and ratable retirement of the obligation and includes sinking fund provisions, installment payment provisions or other methods of payments and reserves as may be reasonably required by the Administrator. Prior to approving and repayment schedule the Administrator may consider the date on which operating revenues are anticipated to be generated by the project. To the maximum extent possible repayment or provision therefore shall be required to be made in equal payment payable at equal intervals; and

[(9) the obligation provides that the Administrator shall, after, a period of not less than ten years from issuance of the obligation, taking into consideration whether the Government's needs for information to be derived from the project have been substantially met and whether the project is capable of commercial operation, determine the feasibility and advisability of terminating the Federal participation in the project. In the event that such determination is positive, the Administrator shall notify the borrower and provide the borrower with not less than two nor more than three years in which to find alternative financing. At the expiration of the designated period of time, if the borrower has been unable to secure alternative financing, the Administrator is authorized to collect from the borrower an additional fee of 1 per centum per annum on the remaining obligation to which the Federal guarantee applies.

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[(e)(1) As soon as the Administrator knows the geographic location of a proposed facility for which a guarantee or a commitment to guarantee or cooperative agreement is sought under this section, he shall inform the Governor of the State, and officials of each political subdivision and Indian Tribe, as appropriate, in which the facility would be located or which would be impacted by such facility. The Administrator shall not guarantee or make a commitment to guarantee or enter into a cooperative agreement under subsection (b) or subsection (y) of this section, if the Governor of the State in which the proposed facility would be located recommends that such action not be taken, unless the Administrator finds that there is an overriding national interest in taking such action in order to achieve the purpose of this section. If the Administrator decides to guarantee or make a commitment to guarantee or enter into a cooperative agreement despite a Governor's recommendation not to take such action, the Administrator shall communicate, in writing, to the Governor reasons for not concurring with such recommendation. This Administrator's decision, pursuant to this subsection, shall be final unless determined upon judicial review initiated by the Governor to be unlawful by the reviewing court pursuant to 5 U.S.C. 706(2) (A) through (D). Such review shall take place in the United States court of appeals for the circuit in which the State involved is located, upon application made within ninety days from the date of such decision. The Administrator shall, by regulation, establish procedures for review of, and comment on, the proposed facility by States, local political subdivisions, and Indian tribes which may be impacted by such facility, and the general public.

(2) The Administrator shall review and approve the plans of the applicant for the construction and operation of any demonstration and related facilities constructed or to be constructed with assistance under this section. Such plans and the actual construction shall include such monitoring and other data-gathering costs associated with such facility as are required by the comprehensive plan and program under this section. The Administrator shall determine the estimated total cost of such demonstration facility, including, but not limited to, construction costs, startup costs, costs to political subdivisions and Indian tribe by such facility, and cost of any



water storage facilities needed in connection with such demonstration facility, and determine who shall pay such costs. Such determination shall not be binding upon the States, political subdivisions, or Indian tribes.

[(3) There is hereby established a panel to advise the Administrator on matters relating to the program authorized by this section, including, but not limited to, the impact of the demonstration facilities on communities and States and Indian tribes, the environmental and health and safety effects of such facilities, and the means, measures, and planning for preventing or mitigating such impacts, and other matters relating to the development of alternative fuels and other energy sources under this section. The panel shall include such Governors or their designees as shall be designated by the Chairman of the National Governors Conference. Representatives of Indian tribes, industry, environmental organizations, and the general public shall be appointed by the Administrator. The Chairman of the panel shall be selected by the Administrator. No person shall be appointed to the panel who has a financial interest in any applicant applying for assistance under this section. Members of the panel shall serve without compensation. The provisions of section 106(e) of the Energy Reorganization Act of 1974 (42 U.S.C. 5816(e)) shall apply to the panel.

[(f) Except in accordance with reasonable terms and conditions contained in the written contract of guarantee, no guarantee issued or commitment to guarantee made under this section shall be terminated, canceled, or otherwise revoked. Such a guarantee or commitment shall be conclusive evidence that the underlying obligation is in compliance with the provisions of this section and that such obligation has been approved and is legal as to principal, interest, and other terms. Subject to the conditions of the guarantee or commitment to guarantee, such a guarantee shall be incontestable in the hands of the holder of the guaranteed obligation, except as to fraud or material misrepresentation on the part of the holder.

[(g)(1) If there is a default by the borrower, as defined in regulations promulgated by the Administrator and in the guarantee contract, the holder of the obligation shall have the right to demand payment of the unpaid amount from the Administrator. Within such period as may be specified in the guarantee or related agreements, the Administrator shall pay to the holder of the obligation the unpaid interest on, and unpaid principal of, the guaranteed obligation as to which the borrower has defaulted, unless the Administrator finds that there was no default by the borrower in the payment of interest or principal or that such default has been remedied. Nothing in this section shall be construed to preclude any forbearance by the holder of the obligation for the benefit of the borrower which may be agreed upon by the parties to the guaranteed obligation and approved by the Administrator.

[(2) If the Administrator makes a payment under paragraph (1) of this subsection, the Administrator shall be subrogated to the rights of the recipient of such payment (and such subrogation shall be expressly set forth in the guarantee or related agreements), including the authority to complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to such guarantee or related agreements, or any other property of the borrower

(of a value equal to the amount of such payment) to the extent that the guarantee applies to amounts in excess of the estimated project cost under subsection (c)(2)(B), without regard to the provisions of the Federal Property and Administrative Services Act of 1949, as amended, except section 207 of that Act (40 U.S.C. 488), or any other law, or to permit the borrower pursuant to an agreement with the Administrator, to continue to pursue the purposes of the demonstration facility if the Administrator determines that this is in the public interest. The rights of the Administrator with respect to any property acquired pursuant to such guarantee or related agreements, shall be superior to the rights of any other person with respect to such property.

[(3) In the event of a default on any guarantee under this section, the Administrator shall notify the Attorney General, who shall take such action as may be appropriate to recover the amounts of any payments made under paragraph (1) including any payment of principal and interest under subsection (h) from such assets of the defaulting borrower as are associated with the demonstration facility, or from any other security included in the terms of the guarantee.

[(4) For purposes of this section, patents, including any inventions for which a waiver was made by the Administrator under section 9 of this Act, and technology resulting from the demonstration facility, shall be treated as project assets of such facility. The guarantee agreement shall include such detailed terms and conditions as the Administrator deems appropriate to protect the interests of the United States in the case of default and to have available all the patents and technology necessary for any person selected, including, but not limited to the Administrator, to complete and operate the defaulting project. Furthermore, the guarantee agreement shall contain a provision specifying that patents, technology, and other proprietary rights which are necessary for the completion or operation of the demonstration facility shall be available to the United States and its designees on equitable terms, including due considerations to the amount of the United States default payments. Inventions made or conceived in the course of or under such guarantee, title to which is vested in the United States under this Act, shall not be treated as project assets of such facility for disposal purposes under this subsection, unless the Administrator determines in writing that it is in the best interests of the United States to do so.

[(h) With respect to any obligation guaranteed under this section, the Administrator is authorized to enter into a contract to pay, and to pay, holders of the obligations, for and on behalf of the borrowers, from the fund established by this section, the principal and interest payments which become due and payable on the unpaid balance of such obligation if the Administrator finds that—

[(1) the borrower is unable to meet such payments and is not in default; it is in the public interest to permit the borrower to continue to pursue the purposes of such demonstration facility; and the probable net benefit to the Federal Government in paying such principal and interest will be greater than that which would result in the event of a default;

[(2) the amount of such payment which the Administrator is authorized to pay shall be no greater than the amount of principal and interest which the borrower is obligated to pay under the loan agreement; and

[(3) the borrower agrees to reimburse the Administrator for such payment on terms and conditions, including interest, which are satisfactory to the Administrator.

[(i) Regulations required by this section shall be issued within one hundred and eighty days after enactment of this section. All regulations under this section and any amendments thereto shall be issued in accordance with section 553 of title 5, of the United States Code.

[(j) The Administrator shall charge and collect fees for guarantees of obligations authorized by subsection (b)(1), in amounts which (1) are sufficient in the judgment of the Administrator to cover the applicable administrative costs, and (2) reflect the percentage of projects costs guaranteed. In no event shall the fee be less than 1 per centum per annum of the outstanding indebtedness covered by the guarantee. Nothing in this subsection shall be construed to apply to community planning and development assistance pursuant to subsection (k) of this section.

[(k)(1) In accordance with such rules and regulations as the Administrator in consultation with the Secretary of the Treasury shall prescribe, and subject to such terms and conditions as he deems appropriate, the Administrator is authorized, for the purpose of financing essential community development and planning which directly result from, or are necessitated by, one or more demonstration facilities assisted under this section to—

[(A) guarantee and make commitments to guarantee the payment of interest on, and the principal balance of obligations for such financing issued by eligible States, political subdivisions, or Indian tribes,

[(B) guarantee and make commitments to guarantee the payment of taxes imposed on such demonstration facilities by eligible non-Federal taxing authorities which taxes are earmarked by such authorities to support the payment of interest and principal on obligations for such financing, and

[(C) require that the applicant for assistance for a demonstration facility under this section advance sums of eligible States, political subdivisions, and Indian tribes to pay for the financing of such development and planning: Provided, That the State, political subdivision, or Indian tribe agrees to provide tax abatement credits over the life of the facilities for such payments by such applicant.

[(2) Prior to issuing any guarantee under this subsection, the Administrator shall obtain the concurrence of the Secretary of the Treasury with respect to the timing, interest rate, and substantial terms and conditions of such guarantee. The Secretary of the Treasury shall insure to the maximum extent feasible that the timing, interest rate, and substantial terms and conditions of such guarantee will have the minimum possible impact on the capital markets of the United States, taking into account other Federal direct and indirect securities activities.

[(3) In the event of any default by the borrower in the payment of taxes guaranteed by the Administrator under this subsection, the Administrator shall pay out of the fund established by this section such taxes at the time or times they may fall due, and shall have by reason of such payment a claim against the borrower for all sums paid plus interest.

[(4) If after consultation with the State, political subdivision, or Indian tribe, the Administrator finds that the financial assistance programs of paragraph (1) of this subsection will not result in sufficient funds to carry out the purposes of this subsection, then the Administrator may—

[(A) make direct loans to the eligible States, political subdivisions, or Indian tribes for such purposes: Provided, That such loans shall be made on such reasonable terms and conditions as the Administrator shall prescribe: Provided further, That the Administrator may waive repayment of all or part of a loan made under this paragraph, including interest, if the State or political subdivision or Indian tribe involved demonstrates to the satisfaction of the Administrator that due to a change in circumstances there will be net adverse impacts resulting from such demonstration facility that would probably cause such State, subdivision, or tribe to default on the loan; or

[(B) require that any community development and planning costs which are associated with, or result from, such demonstration facility and which are determined by the Administrator to be appropriate for such inclusion shall be included in the total costs of the demonstration facility.

[(5) The Administrator is further authorized to make grants to States, political subdivisions, or Indian tribes for studying and planning for the potential economic, environmental, and social consequences of demonstration facilities, and for establishing related management expertise.

[(6) At any time the Administrator may, with the concurrence of the Secretary of the Treasury, redeem, in whole or in part, out of the fund established by this section, the debt obligations guaranteed or the debt obligations for which tax payments are guaranteed under this subsection.

[(7) When one or more States, political subdivisions, or Indian tribes would be eligible for assistance under this subsection, but for the fact that construction and operation of the demonstration facilities occurs outside its jurisdiction, the Administrator is authorized to provide, to the greatest extent possible, arrangements for equitable sharing of such assistance.

[(8) Such amounts as may be necessary for direct loans and grants pursuant to this subsection shall be available as provided in annual authorization Acts.

[(9) The Administrator, if appropriate, shall provide assistance in the financing of up to 100 per centum of the costs of the required community development and planning pursuant to this subsection.

[(10) In carrying out the provisions of this subsection, the Administrator shall provide that title to any facility receiving financial assistance under this subsection shall vest in the applicable State, political subdivision, or Indian tribe, as appropriate, and in the case of default by the borrower on a loan guarantee such facil-

ity shall not be considered a project asset for the purposes of subsection (g) of this section.

[(1)(1) The Administrator is directed to submit a report to the Congress within one hundred and eighty days after the enactment of this section setting forth his recommendations on the best opportunities to implement a program of Federal financial assistance with the objective of demonstrating production and conservation of energy. Such report shall be updated and submitted to Congress at least annually and shall include specific comments and recommendations by the Secretary of the Treasury on the methods and procedures set forth in subparagraph (B)(viii) of this subsection, including their adequacy, and changes necessary to satisfy the objectives stated in this subsection. This report shall include—

[(A) a study of the purchase or commitment to purchase by the Federal Government, for the use by the United States, of all or a portion of the products of any alternative fuel facilities constructed pursuant to this program as a direct or an alternate form of Federal assistance, which assistance, if recommended, shall be carried out pursuant to section 7(a)(4) of this Act; and

[(B) a comprehensive plan and program to acquire information and evaluate the environmental, economic, social, and technological impacts of the demonstration program under this section. In preparing such a comprehensive plan and program, the Administrator shall consult with the Environmental Protection Agency, the Federal Energy Administration, the Department of Housing and Urban Development, the Department of the Interior, the Department of Agriculture, and the Department of the Treasury, and shall include therein, but not be limited to, the following:

[(i) information about potential demonstration facilities proposed in the program under this section;

[(ii) any significant adverse impacts which may result from any activity included in the program;

[(iii) the extent to which it is feasible to commercialize the technologies as they affect different regions of the Nation;

[(iv) proposed regulations required to carry out the purposes of this section;

[(v) a list of Federal agencies, governmental entities, and other persons that will be consulted or utilized to implement the program;

[(vi) the methods and procedures by which the information gathered under the program will be analyzed and disseminated;

[(vii) a plan for the study and monitoring of the health effects of such facilities on workers and other persons, including, but not limited to, any carcinogenic effect of alternative fuels; and

[(viii) the methods and procedures to insure that (I) the use of the Federal assistance for demonstration facilities is kept to the minimum level necessary for the information objectives of this section, (II) the impact of loan guarantees on the capital markets of the United States is minimized,

taking into account other Federal direct and indirect securities activities, and any economic sectors which may be negatively impacted as a result of the reduction of capital by the placement of guaranteed loans, and (III) the granting of Federal loan guarantees under this Act does not impede movement toward improvement in the climate for attracting private capital to develop alternative fuels without continued direct Federal incentives.

[(2) The Administrator shall annually submit a detailed report to the Congress concerning—

[(A) the actions taken or not taken by the Administrator under this section during the preceding fiscal year, and including, but not be limited to (i) a discussion of the status of each demonstration facility and related facilities financed under this section, including progress made in the development of such facilities, and the expected or actual production from each such facility, including byproduct production therefrom, and the distribution of such products and byproducts, (ii) a detailed statement of the financial conditions of each such demonstration facility, (iii) data concerning the environmental, community, and health and safety impacts of each such facility and the actions taken or planned to prevent or mitigate such impacts, (iv) the administrative and other costs incurred by the Administrator and other Federal agencies in carrying out this program, and (v) such other data as may be helpful in keeping Congress and the public fully and currently informed about the program authorized by this section; and

[(B) the activities of the fund referred to in subsection (n) of this section during the preceding fiscal year, including a statement of the amount and source of fees or other moneys, property, or assets deposited into the funds, all payments made, the notes or other obligations issued by the Administrator, and such other data as may be appropriate.

[(3) The annual reports required by this subsection shall be a part of the annual report required by section 15 of this Act, except that the matters required to be reported by this subsection shall be clearly set out and identified in such annual reports. Such reports and the one-hundred-and-eighty-day report required in paragraph (1) of this subsection shall be transmitted to the Speaker of the House of Representatives and the House Committee on Science, Space, and Technology and to the President of the Senate and the Committee on Energy and Natural Resources of the Senate.

[(m) Prior to issuing any guarantee or commitment to guarantee or cooperative agreement pursuant to subsection (b) or subsection (y) of this section the Administrator shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a full and complete report on the proposed demonstration facility and such guarantee, agreement, or contract. Such guarantee, commitment to guarantee, cooperative agreement, or contract shall not be finalized under the authority granted by this section prior to the expiration of ninety calendar days (not including any day on which either House of Congress is not in session because of an adjourn-

ment of more than three calendar days to a day certain) from the date on which such report is received by such committees: Provided, That, where the cost of a demonstration facility to be assisted with a guarantee or cooperative agreement pursuant to subsection (b) or subsection (y) of this section exceeds \$50,000,000 such guarantee or commitment to guarantee or cooperative agreement shall not be finalized unless (1) the making of such guarantee or commitment or agreement is specifically authorized by legislation hereafter enacted by the Congress or (2) both Houses pass a resolution stating in substance that the Congress favors the making of such guarantee or commitment or agreement.

[(n)(1) There is hereby created within the Treasury a separate fund (hereafter in this section called the "fund") which shall be available to the Administrator without fiscal year limitation as a revolving fund for the purpose of carrying out the program authorized by subsection (b)(1) and subsections (g), (h), (k), and (y) of this section.

[(2) There are hereby authorized to be appropriated to the fund for administrative expenses from time to time such amounts as may be necessary to carry out the purposes of the applicable provisions of this section, including, but not limited to, the payments of interest and principal and the payment of interest differentials and redemption of debt. All amounts received by the Administrator as interest payments or repayments of principal on loans which are guaranteed under this section, fees, and any other moneys, property, or assets derived by him from operations under this section shall be deposited in the fund.

[(3) All payments on obligations, appropriate expenses (including reimbursements to other Government accounts), and repayments pursuant to operations of the Administrator under this section shall be paid from the fund subject to appropriations. If at any time the Administrator determines that moneys in the fund exceed the present and reasonably foreseeable future requirements of the fund, such excess shall be transferred to the general fund of the Treasury.

[(4) If at any time the moneys available in the fund are insufficient to enable the Administrator to discharge his responsibilities as authorized by subsections (b)(1), (g), (h), and (y) of this section, the Administrator shall issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of such notes or obligations shall be made by the Administrator from appropriations or other moneys available under paragraph (2) of this subsection for loan guarantees authorized by subsection (b)(1) and subsections (g), (h), (k), and (y) of this section. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection.

[(5) The provisions of this subsection do not apply to direct loans or planning grants made under subsection (k) of this section.

[(o) For the purposes of this section, the term—

[(1) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, any territory or possession of the United States,

[(2) “United States” means the several States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa,

[(3) “borrower” or “applicant” shall include any individual, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company, or other non-Federal entity, and

[(4) “biomass” shall include, but is not limited to, animal and timber waste, municipal and industrial waste, sewage, sludge, and oceanic and terrestrial crops.

[(p)(1) An applicant seeking a guarantee or cooperative agreement under subsection (b) or subsection (y) of this section must be a citizen or national of the United States. A corporation, partnership, firm, or association shall not be deemed to be a citizen or national of the United States unless the Administrator determines that it satisfactorily meets all the requirements of section 802 of title 46, United States Code for determining such citizenship, except that the provisions in subsection (a) of such section 802 concerning (A) the citizenship of officers or directors of a corporation, and (B) the interest required to be owned in the case of a corporation, association, or partnership operating a vessel in the coastwise trade, shall not be applicable.

[(2) The Administrator, in consultation with the Secretary of State, may waive such requirements in the case of a corporation, partnership, firm, or association, controlling interest in which is owned by citizens of countries which are participants in the International Energy Agreement.

[(q) No part of the program authorized by this section shall be transferred to any other agency or authority, except pursuant to Act of Congress enacted after the date of enactment of this section.

[(r) Inventions made or conceived in the course of or under a guarantee authorized by this section shall be subject to the title and waiver requirements and conditions of section 9 of this Act.

[(s) Nothing in this section shall be construed as affecting the obligations of any person receiving financial assistance pursuant to this section to comply with Federal and State environmental, land use, water, and health and safety laws and regulations or to obtain applicable Federal and State permits, licenses, and certificates.

[(t) The information maintained by the Administrator under this section shall be made available to the public subject to the provision of section 552 of title 5, United States Code, and section 1905 of title 18, United States Code, and to other Government agencies in a manner that will facilitate its dissemination: Provided, That upon a showing satisfactory to the Administrator by any person that any information, or portion thereof obtained under this section by the Administrator directly or indirectly from such person would, if made public, divulge (1) trade secrets or (2) other proprietary in-



formation of such person, the Administrator shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18, United States Code: *Provided further*, That the Administrator shall, upon request, provide such information to—

[(A) any delegate of the Administrator for the purpose of carrying out this Act, and

[(B) the Attorney General, the Secretary of Agriculture, the Secretary of the Interior, the Federal Trade Commission, the Federal Energy Administration, the Environmental Protection Agency, the Federal Power Commission, the General Accounting Office, other Federal agencies, or heads of other Federal agencies, when necessary to carry out their duties and responsibilities under this and other statutes, but such agencies and agency heads shall not release such information to the public. This section is not authority to withhold information from Congress, or from any committee of Congress upon request of the Chairman. For the purposes of this subsection, the term “person” shall include the borrower.

[(u) Notwithstanding any other provision of this section, the authority provided in this section to make guarantees or commitments to guarantee or enter into cooperative agreements under subsection (b)(1) or subsection (y), to make guarantees or commitments to guarantees, or to make loans or grants, under subsection (k), to make contracts under subsection (h), and to use fees and receipts collected under subsections (b), (j), and (y) of this section, and the authorities provided under subsection (n) of this section shall be effective only to the extent provided, without fiscal year limitation, in appropriation Acts enacted after the date of enactment of this section.

[(v) No person in the United States shall on the grounds of race, color, religion, national origin, or sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with assistance made available under this section: *Provided*, That Indian tribes are exempt from the operation of this subsection: *Provided further*, That such exemption shall be limited to the planning and provision of public facilities which are located on reservations and which are provided for members of the affected Indian tribes as the primary beneficiaries.

[(w) In carrying out his functions under this section, the Administrator shall provide a realistic and adequate opportunity for small business concerns to participate in the program to the optimum extent feasible consistent with the size and nature of each project.

[(x)(1) recipients of financial assistance under this section shall keep such records and other pertinent documents, as the Administrator shall prescribe by regulation, including, but not limited to, records which fully disclose the disposition of the proceeds of such assistance, the cost of any facility, the total cost of the provision of public facilities for which assistance was used and such other records as the Administrator may require to facilitate an effective audit. The Administrator and the Comptroller General of the United States, or their duly authorized representative shall have

access, for the purpose of audit, to such records and other pertinent documents.

[(2) All laborers and mechanics employed by contractors or sub-contractors in the performance of construction work financed in whole or in part with assistance under this section shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5). The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276(c)).

[(y)(1) The Administrator is authorized in accordance with such rules and regulations as he shall prescribe after consultation with the Secretary of the Treasury, to guarantee and to make commitments to guarantee the payment of interest on, and the principal balance of, bonds, debentures, notes, and other obligations issued by or on behalf of any borrower for the purpose of (A) financing the construction and startup costs of demonstration facilities for the conversion of municipal or industrial waste, sewage sludge, or other municipal organic wastes into synthetic fuels, and (B) financing the construction and startup costs of demonstration facilities to generate desirable forms of energy (including synthetic fuels) from municipal or industrial waste, sewage sludge, or other municipal organic waste. With respect to a guarantee or a commitment to guarantee authorized by this subsection; the following subsections of this section shall not apply: (b)(1), (b)(5), (c)(2), (c)(5), (c)(6), (c)(7), (c)(8), (c)(9), (e)(3), (j), (k), and (q).

[(2) In the case where the Administrator seeks to guarantee or to make commitments to guarantee as provided by this subsection he is authorized to incur an outstanding indebtedness which at no time shall exceed \$300,000,000.

[(3) The Administrator shall apply the following provisions thereto:

[(A) With respect to any demonstration facility for the conversion of solid waste (as the term is defined in the Resource Conservation and Recovery Act (42 U.S.C. 6903)), the Administrator, prior to issuing any guarantee under this section, must be in receipt of a certification from the Administrator of the Environmental Protection Agency and any appropriate State or areawide solid waste management planning agency that the proposed application for a guarantee is consistent with any applicable suggested guidelines published pursuant to section 1008(a) of the Resource Conservation and Recovery Act, and any applicable State or regional solid waste management plan.

[(B) The amount guaranteed shall not exceed 75 per centum of the total cost of the commercial demonstration facility, as determined by the Administrator: Provided, That the amount guaranteed may not exceed 90 per centum of the total cost of the commercial demonstration facility during the period of construction and startup.

[(C) The maximum maturity of the obligation shall not exceed thirty years, or 90 per centum of the projected useful eco-

conomic life of the physical assets of the commercial demonstration facility covered by the guarantee, whichever is less, as determined by the Administrator.

【(D) The Administrator shall charge and collect fees for guarantees of obligations in amounts sufficient in the judgment of the Administrator to cover the applicable administrative costs and probable losses on guaranteed obligations, but in any event not to exceed 1 per centum per annum of the outstanding indebtedness covered by the guarantee.

【(E) No part of the program authorized by this section shall be transferred to any other agency or authority, except pursuant to Act of Congress enacted after the date of enactment of this section: Provided, That project agreements entered into pursuant to this section for any commercial demonstration facility for the conversion of bioconversion of solid waste (as that term is defined in the Resource Conservation and Recovery Act) shall be administered in accordance with the May 7, 1976, Interagency Agreement between the Environmental Protection Agency and the Energy Research and Development Administration on the Development of Energy From Solid Wastes, and provided specifically that in accordance with this agreement (i) for those energy-related projects of mutual interest, planning will be conducted jointly by the Environmental Protection Agency and the Energy Research and Development Administration, following which project responsibility will be assigned to one agency; (ii) energy-related projects for recovery of synthetic fuels or other forms of energy from solid waste shall be the responsibility of the Energy Research and Development Administration; and (iii) the Environmental Protection Agency shall retain responsibility for the environmental, economic, and institutional aspects of solid waste projects and for assurance that such projects are consistent with any applicable suggested guidelines pursuant to section 1008 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.), as amended, and any applicable State or regional solid waste management plan.

【(F) With respect to any obligation which is issued after the enactment of this section by, or in behalf of, any State, political subdivision, or Indian tribe and which is either guaranteed under, or supported by taxes levied by said issuer which are guaranteed under, this section, the interest paid on such obligation and received by the purchaser thereof (or the purchaser's successor in interest) shall be included in gross income for the purpose of chapter 1 of the Internal Revenue Code of 1954, as amended: *Provided*, That the Administrator shall pay to such issuer out of the fund established by this section such portion of the interest on such obligations, as determined by the Secretary of the Treasury to be appropriated after taking into account current market yields (i) on obligations of said issuer, if any, and (ii) on other obligations with similar terms and conditions the interest on which is not so included in gross income for purposes of chapter 1 of such Code, and in accordance with, such terms and conditions as the Secretary of the Treasury shall require.

【FINANCIAL SUPPORT PROGRAM FOR MUNICIPAL WASTE  
REPROCESSING DEMONSTRATION FACILITIES

【SEC. 20. (a) It is the purpose of this section—

    【(1) to assure adequate Federal support to foster a program to demonstrate municipal waste reprocessing for the production of fuel and energy intensive products; and

    【(2) to gather information about the technological, economic, environmental, and social costs, benefits, and impacts of such demonstration facilities.

    【(b)(1) The Administrator is authorized and directed, to the extent provided in appropriation Acts, to establish such a demonstration program by making grants, contracts, price supports, and cooperative agreements pursuant to this Act or any combination thereof for the establishment of municipal waste reprocessing demonstration facilities. For the purpose of this section municipal waste shall include but not be limited to municipal solid waste, sewage sludge, and other municipal organic wastes.

    【(2) The aggregate amount of funds available for grants, contracts, price supports, and cooperative agreements for municipal waste reprocessing demonstration facilities shall not exceed \$20,000,000 in the fiscal year ending September 30, 1978.

    【(3) For purposes of this section the term “municipal” shall include any city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

    【(4) Municipal waste reprocessing demonstration facilities established under this section shall be owned or operated (or both owned and operated) by the municipality and shall involve the recovery of energy or energy intensive products. Such facilities may be established by any public or private entity, by contract or otherwise, as may be determined by the local government which will own or operate (or both own and operate) such facilities and to which financial support is provided. The Federal share for any such facility to which this section applies shall not exceed 75 per centum of the cost of such facility, and not more than \$40,000,000 in Federal funds under this section may be used for the construction of any one facility.

    【(5) The Administrator shall promulgate such regulations as he deems necessary, pursuant to section 7(a)(4) and section 7(c) (1) and (6) of this Act, for purposes of establishing a price support program for revenue producing products of municipal waste reprocessing demonstration facilities.

    【(c)(1) The Administrator shall consult with the Environmental Protection Agency to assure that the provisions of section 8004 of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580) are applied in carrying out this section.

    【(2) Any energy-related research, development, or demonstration project for the conversion (including bioconversion) of municipal waste carried out by the Energy Research and Development Administration pursuant to this or any other Act shall be administered in accordance with the May 7, 1976, Interagency Agreement between the Environmental Protection Agency and the Energy Research and Development Administration on the development of energy from solid wastes; and specifically, in accordance with such

Agreement (A) for those energy-related projects of mutual interest, planning will be conducted jointly by the Environmental Protection Agency and the Energy Research and Development Administration, following which project responsibility will be assigned to one agency; (B) energy-related aspects of projects for recovery of fuels or energy intensive products from municipal waste as defined in this section shall be the responsibility of the Energy Research and Development Administration including energy-related economic and institutional aspects; and (C) the Environmental Protection Agency shall retain responsibility for the environmental and other economic and institutional aspects of solid waste projects and for assurance that such projects are consistent with any applicable suggested guidelines published pursuant to section 1008 of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580), and any applicable State or regional waste management plan.

[(d)(1) The Administrator shall establish such guidelines as he deems necessary for purposes of obtaining pertinent information from municipalities receiving funding under this section. These guidelines shall include but not be limited to methods of assessment and evaluation of projects authorized under this section. Such assessments and evaluations shall be presented by the Administrator to the House Committee on Science, Space, and Technology and the Senate Committee on Energy and Natural Resources upon the request of either such committee.

[(2) The Administrator shall annually submit a report to the Congress concerning the actions taken or not taken by the Administrator under this section during the preceding fiscal year, and including but not limited to:

[(A) a discussion of the status of each demonstration facility and related facilities financed under this section, including progress made in the development of such facilities, and the expected or actual production from each such facility including byproduct production therefrom, and the distribution of such products and byproducts,

[(B) a statement of the financial condition of each such demonstration facility,

[(C) data concerning the environmental, community, and health and safety impacts of each such facility and the actions taken or planned to prevent or mitigate such impacts,

[(D) the administrative and other costs incurred by the Administrator and other Federal agencies in carrying out this program, and (E) such other data as may be helpful in keeping Congress and the public fully and currently informed about the program authorized by this section.

[(3) The annual reports required by this subsection shall be a part of the annual report required by section 15 of this Act, except that the matters required to be reported by this subsection shall be clearly set out and identified in such annual reports. Such reports shall be transmitted to the Speaker of the House of Representatives and the House Committee on Science, Space, and Technology and to the President of the Senate and the Senate Committee on Energy and Natural Resources.

[(e) No part of the program authorized by this section shall be transferred to any other agency or authority, except pursuant to

Act of Congress enacted after the date of the enactment of this section.

[(f) Nothing in this section shall be construed as abrogating any obligations of any municipality receiving financial assistance pursuant to this section to comply with Federal and State environmental, land use, water, and health and safety laws and regulations or to obtain applicable Federal and State permits, licenses, and certificates.

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**STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980—PL 96-480 AS AMENDED (15 U.S.C. 3712)**

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**SEC. 20. PERSONNEL EXCHANGES.**

The Secretary, *the Secretary of Energy*, and *the Director of the National Science Foundation*, [and the National Science Foundation] jointly, shall establish a program to foster the exchange of scientific and technical personnel among academia, industry, and Federal laboratories. Such program shall include both (1) federally supported exchanges and (2) efforts to stimulate exchanges without Federal funding.

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**AGRICULTURAL RISK PROTECTION ACT OF 2000—PUBLIC LAW 106-224, AS AMENDED**

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**TITLE III—BIOMASS RESEARCH AND DEVELOPMENT ACT OF 2000**

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**[SEC. 311. 7 U.S.C. 7624 TERMINATION OF AUTHORITY.**

[The authority provided under this title shall terminate on September 30, 2007.]

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**PUBLIC UTILITY HOLDING COMPANY ACT OF 1935—ACT OF AUGUST 26, 1935, CHAPTER 687, AS AMENDED (15 U.S.C. 79-79Z-6)**

**[PUBLIC UTILITY HOLDING COMPANY ACT OF 1935**

**[AN ACT To provide for control and regulation of public-utility holding companies, and for other purposes**

*[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 “Public Utility Act of 1935.”*

## [TITLE I—CONTROL OF PUBLIC-UTILITY HOLDING COMPANIES

### 【NECESSITY FOR CONTROL OF HOLDING COMPANIES

【SECTION 1. (a) Public-utility holding companies and their subsidiary companies are affected with a national public interest in that, among other things, (1) their securities are widely marketed and distributed by means of the mails and instrumentalities of interstate commerce and are sold to a large number of investors in different States; (2) their service, sales, construction, and other contracts and arrangements are often made and performed by means of the mails and instrumentalities of interstate commerce; (3) their subsidiary public-utility companies often sell and transport gas and electric energy by the use of means and instrumentalities of interstate commerce; (4) their practices in respect of and control over subsidiary companies often materially affect the interstate commerce in which those companies engage; (5) their activities extending over many States are not susceptible of effective control by any State and make difficult, if not impossible, effective State regulation of public-utility companies.

【(b) Upon the basis of facts disclosed by the reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session), the reports of the Committee on Interstate and Foreign Commerce, House of Representatives, made pursuant to H. Res. 59 (Seventy-second Congress, first session) and H.J. Res. 572 (Seventy-second Congress, second session) and otherwise disclosed and ascertained, it is hereby declared that the national public interest, the interest of investors in the securities of holding companies and their subsidiary companies and affiliates, and the interest of consumers of electric energy and natural and manufactured gas, are or may be adversely affected—

【(1) when such investors cannot obtain the information necessary to appraise the financial position or earning power of the issuers, because of the absence of uniform standard accounts; when such securities are issued without the approval or consent of the States having jurisdiction over subsidiary public-utility companies; when such securities are issued upon the basis of fictitious or unsound asset values having no fair relation to the sums invested in or the earning capacity of the properties and upon the basis of paper profits from intercompany transactions, or in anticipation of excessive revenues from subsidiary public-utility companies; when such securities are issued by a subsidiary public-utility company under circumstances which subject such company to the burden of supporting an overcapitalized structure and tend to prevent voluntary rate reductions;

【(2) when subsidiary public-utility companies are subjected to excessive charges for services, construction work, equipment, and materials, or enter into transactions in which evils result from an absence of arm's-length bargaining or from restraint of free and independent competition; when service, management, construction, and other contracts involve the allocation of charges among subsidiary public-utility companies in dif-

ferent States so as to present problems of regulation which cannot be dealt with effectively by the States;

[(3) when control of subsidiary public-utility companies affects the accounting practices and rate, dividend, and other policies of such companies so as to complicate and obstruct State regulation of such companies, or when control of such companies is exerted through disproportionately small investment;

[(4) when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties; or

[(5) when in any other respect there is lack of economy of management and operation of public-utility companies or lack of efficiency and adequacy of service rendered by such companies, or lack of effective public regulation, or lack of economies in the raising of capital.

[(c) When abuses of the character above enumerated become persistent and widespread the holding company becomes an agency which, unless regulated, is injurious to investors, consumers, and the general public; and it is hereby declared to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce; and for the purpose of effectuating such policy to compel the simplification of public-utility holding-company systems and the elimination therefrom of properties detrimental to the proper functioning of such systems, and to provide as soon as practicable for the elimination of public-utility holding companies except as otherwise expressly provided in this title.

#### **DEFINITIONS**

[SEC. 2. (a) When used in this title, unless the context otherwise requires—

[(1) “Person” means an individual or company.

[(2) “Company” means a corporation, a partnership, an association, a joint-stock company, a business trust, or an organized group of persons, whether incorporated or not; or any receiver, trustee, or other liquidating agent of any of the foregoing in his capacity as such.

[(3) “Electric utility company” means any company which owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale, other than sale to tenants or employees of the company operating such facilities for their own use and not for resale. The Commission, upon application, shall by order declare a company operating any such facilities not to be an electric utility company if the Commission finds that (A) such company is primarily engaged in one or more businesses other than the business of an electric utility company, and by reason of the small amount of electric energy sold by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered an electric utility company



for the purposes of this title, or (B) such company is one operating within a single State, and substantially all of its outstanding securities are owned directly or indirectly by another company to which such operating company sells or furnishes electric energy which it generates; such other company uses and does not resell such electric energy, is engaged primarily in manufacturing (other than the manufacturing of electric energy or gas) and is not controlled by any other company; and by reason of the small amount of electric energy sold or furnished by such operating company to other persons it is not necessary in the public interest or for the protection of investors or consumers that it be considered an electric utility company for the purposes of this title. The filing of an application hereunder in good faith shall exempt such company (and the owner of the facilities operated by such company) from the application of this paragraph until the Commission has acted upon such application. As a condition to the entry of any such order, and as a part thereof, the Commission may require application to be made periodically for a renewal of such order, and may require the filing of such periodic or special reports regarding the business of the company as the Commission may find necessary or appropriate to insure that such company continues to be entitled to such exemption during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke such order whenever it finds that the conditions specified in clause (A) or (B) are not satisfied in the case of such company. Any action of the Commission under the preceding sentence shall be by order. Application under this paragraph may be made by the company in respect of which the order is to be issued or by the owner of the facilities operated by such company. Any order issued under this paragraph shall apply equally to such company and such owner. The Commission may by rules or regulations conditionally or unconditionally provide that any specified class or classes of companies which it determines to satisfy the conditions specified in clause (A) or (B), and the owners of the facilities operated by such companies, shall not be deemed electric utility companies within the meaning of this paragraph.

[(4) "Gas utility company" means any company which owns operates facilities used for the distribution at retail (other than distribution only in enclosed portable containers, or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power. The Commission, upon application, shall by order declare a company operating any such facilities not to be a gas utility company if the Commission finds that (A) such company is primarily engaged in one or more businesses other than the business of a gas utility company, and (B) by reason of the small amount of natural or manufactured gas distributed at retail by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered a gas utility company for the purposes of this title. The filing of an application hereunder in good faith shall exempt such company

(and the owner of the facilities operated by such company) from the application of this paragraph until the Commission has acted upon such application. As a condition to the entry of any such order, and as a part thereof, the Commission may require application to be made periodically for a renewal of such order, and may require the filing of such periodic or special reports regarding the business of the company as the Commission may find necessary or appropriate to insure that such company continues to be entitled to such exemption during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke such order whenever it finds that the conditions specified in clauses (A) and (B) are not satisfied in the case of such company. Any action of the Commission under the preceding sentence shall be by order. Application under this paragraph may be made by the company in respect of which the order is to be issued or by the owner of the facilities operated by such company. Any order issued under this paragraph shall apply equally to such company and such owner. The Commission may by rules or regulations conditionally or unconditionally provide that any specified class or classes of companies which it determines to satisfy the conditions specified in clauses (A) and (B), and the owners of the facilities operated by such companies, shall not be deemed gas utility companies within the meaning of this paragraph.

[(5) "Public-utility company" means an electric utility company or a gas utility company.

[(6) "Commission" means the Securities and Exchange Commission.

[(7) "Holding company" means—

[(A) any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public-utility company or of a company which is a holding company by virtue of this clause or clause (B), unless the Commission, as hereinafter provided, by order declares such company not to be a holding company; and

[(B) any person which the Commission determines, after notice and opportunity for hearing, directly or indirectly to exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon holding companies.

[The Commission, upon application, shall by order declare that a company is not a holding company under clause (A) if the Commission finds that the applicant (i) does not, either alone or pursuant to an arrangement or understanding with one or more other persons, directly or indirectly control a public-utility or holding company either through one or more intermediary persons or by any means or device whatsoever, (ii) is not an intermediary company

through which such control is exercised, and (iii) does not, directly or indirectly, exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon holding companies. The filing of an application hereunder in good faith by a company other than a registered holding company shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a holding company, until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application. As a condition to the entry of any order granting such application and as a part of any such order, the Commission may require the applicant to apply periodically for a renewal of such order and to do or refrain from doing such acts or things, in respect of exercise of voting rights, control over proxies, designation of officers and directors, existence of interlocking officers, directors and other relationships, and submission of periodic or special reports regarding affiliations or intercorporate relationships of the applicant, as the Commission may find necessary or appropriate to ensure that in the case of the applicant the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application of the company affected, shall revoke the order declaring such company not to be a holding company whenever in its judgment any condition specified in clause (i), (ii), or (iii) is not satisfied in the case of such company, or modify the terms of such order whenever in its judgment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. Any action of the Commission under the preceding sentence shall be by order.

[(8) "Subsidiary company" of a specified holding company means—

[(A) any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company (or by a company that is a subsidiary company of such holding company by virtue of this clause or clause (B)), unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company; and

[(B) any person the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, du-

ties, and liabilities imposed in this title upon subsidiary companies of holding companies.

【The Commission, upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through one or more intermediary persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies. The filing of an application hereunder in good faith shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a subsidiary company of such specified holding company until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application. As a condition to the entry of, and as a part of, any order granting such application, the Commission may require the applicant to apply periodically for a renewal of such order and to file such periodic or special reports regarding the affiliations or intercorporate relationships of the applicant as the Commission may find necessary or appropriate to enable it to determine whether in the case of the applicant the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke the order declaring such company not to be a subsidiary company whenever in its judgment any condition specified in clause (i), (ii), or (iii) is not satisfied in the case of such company, or modify the terms of such order whenever in its judgment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. Any action of the Commission under the preceding sentence shall be by order. Any application under this paragraph may be made by the holding company or the company in respect of which the order is to be entered, but as used in this paragraph the term applicant” means only the company in respect of which the order is to be entered.

【(9) “Holding-company system” means any holding company, together with all its subsidiary companies, and all mutual service companies (as defined in paragraph (13) of this subsection) of which such holding company or any subsidiary company thereof is a member company (as defined in paragraph (14) of this subsection).

[(10) “Associate company” of a company means any company in the same holding-company system with such company.

[(11) “Affiliate” of a specified company means—

[(A) any person that directly or indirectly owns, controls, or holds with power to vote, 5 per centum or more of the outstanding voting securities of such specified company;

[(B) any company 5 per centum or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by such specified company;

[(C) any individual who is an officer or director of such specified company, or of any company which is an affiliate thereof under clause (A) of this paragraph; and

[(D) any person or class of persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to such specified company that there is liable to be such an absence of arm’s length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon affiliates of a company.

[(12) “Registered holding company” means a person whose registration is in effect under section 5.

[(13) “Mutual service company” means a company approved mutual service company under section 13.

[(14) “Member company” means a company which is a member of an association or group of companies mutually served by a mutual service company.

[(15) “Director” means any director of a corporation or any individual who performs similar functions in respect of any company.

[(16) “Security” means any note, draft, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, receiver’s or trustee’s certificate, or, in general, any instrument commonly known as a “security”; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, assumption of liability on, or warrant or right to subscribe to or purchase, any of the foregoing.

[(17) “Voting security” means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company, or any security issued under or pursuant to any trust, agreement, or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such security are presently entitled to vote in the direction or management of the affairs of a company; and a specified per centum of the outstanding voting securities of a company means such amount of the outstanding voting securities of such company as entitles the holder or holders thereof to cast said specified per centum of the aggregate votes which

the holders of all the outstanding voting securities of such company are entitled to cast in the direction or management of the affairs of such company.

[(18) "Utility assets" means the facilities, in place, of any electric utility company or gas utility company for the production, transmission, transportation, or distribution of electric energy or natural or manufactured gas.

[(19) "Service contract" means any contract, agreement, or understanding whereby a person undertakes to sell or furnish, for a charge, any managerial, financial, legal, engineering, purchasing, marketing, auditing, statistical, advertising, publicity, tax research, or any other service, information, or data.

[(20) "Sales contract" means any contract, agreement, or understanding whereby a person undertakes to sell, lease, or furnish, for a charge, any goods, equipment, materials, supplies, appliances, or similar property. As used in this paragraph the term "property" does not include electric energy or natural or manufactured gas.

[(21) "Construction contract" means any contract, agreement, or understanding for the construction, extension, improvement, maintenance, or repair of the facilities or any part thereof of a company for a charge.

[(22) "Buy", "acquire", "acquisition", or "purchase" includes any purchase, acquisition by lease, exchange, merger, consolidation, or other acquisition.

[(23) "Sale" or "sell" includes any sale, disposition by lease, exchange or pledge, or other disposition.

[(24) "State" means any State of the United States or the District of Columbia.

[(25) "United States", when used in a geographical sense, means the States.

[(26) "State commission" means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State which under the law of such State has jurisdiction to regulate public utility companies.

[(27) "State securities commission" means any commission, board, agency, or officer, by whatever name designated, other than a State commission as defined in paragraph (26) of this subsection, which under the law of a State has jurisdiction to regulate, approve, or control the issue or sale of a security by a company.

[(28) "Interstate commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

[(29) "Integrated public-utility system" means—

[(A) As applied to electric utility companies, a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its oper-

ations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; and

[(B) As applied to gas utility companies, a system consisting of one or more gas utility companies which are so located and related that substantial economies may be effectuated by being operated as a single coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; *Provided*, That gas utility companies deriving natural gas from a common source of supply may be deemed to be included in a single area or region.

[(b) No person shall be deemed to be a holding company under clause (B) of paragraph (7) of subsection (a), or a subsidiary company under clause (B) of paragraph (8) of such subsection, or an affiliate under clause (D) of paragraph (11) of such subsection, unless the Commission, after appropriate notice and opportunity for hearing, has issued an order declaring such person to be a holding company, a subsidiary company, or an affiliate, or declaring a class of which such person is a member to be affiliates. Such an order shall not become effective for at least thirty days after the mailing of a copy thereof to the person thereby declared to be a holding company, subsidiary company, or affiliate; or, in the case of determination of affiliates by classes, until at least thirty days after appropriate publication thereof in such manner as the Commission shall determine. Whenever the Commission, on its own motion or upon application by the person declared to be a holding company, subsidiary company, or affiliate, finds that the circumstances which gave rise to the issuance of any such order no longer exist, the Commission shall by order revoke such order.

[(c) No provision in this title shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, 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, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

**[POWER TO MAKE PARTICULAR EXEMPTIONS REGARDING HOLDING COMPANIES, SUBSIDIARY COMPANIES, AND AFFILIATES**

[SEC. 3. (a) The Commission, by rules and regulations upon its own motion, or by order upon application, shall exempt any holding company, and every subsidiary company thereof as such, from any provision or provisions of this title, unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers, if—

[(1) such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material

part of its income, are predominantly intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized;

[(2) such holding company is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto;

[(3) such holding company is only incidentally a holding company, being primarily engaged or interested in one or more businesses other than the business of a public-utility company and (A) not deriving, directly or indirectly, any material part of its income from any one or more subsidiary companies, the principal business of which is that of a public-utility company, or (B) deriving a material part of its income from any one or more such subsidiary companies, if substantially all the outstanding securities of such companies are owned, directly or indirectly, by such holding company;

[(4) such holding company is temporarily a holding company solely by reason of the acquisition of securities for purposes of liquidation or distribution in connection with a bona fide debt previously contracted or in connection with a bona fide arrangement for the underwriting or distribution of securities; or

[(5) such holding company is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of public-utility company.

[(b) The Commission, by rules and regulations upon its own motion, or by order upon application, shall exempt any subsidiary company, as such, of a holding company from any provision or provisions of this title, the application of which to such subsidiary company the Commission finds is not necessary in the public interest or for the protection of investors, if such subsidiary company derives no material part of its income, directly or indirectly, from sources within the United States, and neither it nor any of its subsidiary companies is a public-utility company operating in the United States.

[(c) Within a reasonable time after the receipt of an application for exemption under subsection (a) or (b), the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of such application. The filing of an application in good faith under subsection (a) by a person other than a registered holding company shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a holding company until the Commission has acted upon such application. The filing of an application in good faith under subsection (b) shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a subsidiary company until the Commission has acted upon such application. Whenever the Commission, on its own motion, or upon application by the holding company or any subsidiary company thereof exempted by any order issued under subsection (a), or by the subsidiary company exempted by any order issued under subsection (b), finds that the circumstances which gave rise to the



issuance of such order no longer exist, the Commission shall by order revoke such order.

[(d) The Commission may, by rules and regulations, conditionally or unconditionally exempt any specified class or classes of persons from the obligations, duties, or liabilities imposed upon such persons as subsidiary companies or affiliates under any provision or provisions of this title, and may provide within the extent of any such exemption that such specified class or classes of persons shall not be deemed subsidiary companies or affiliates within the meaning of any such provision or provisions, if and to the extent that it deems the exemption necessary or appropriate in the public interest or for the protection of investors or consumers and not contrary to the purposes of this title.

***TRANSACTIONS BY UNREGISTERED HOLDING COMPANIES***

[SEC. 4. (a) After December 1, 1935, unless a holding company is registered under section 5, it shall be unlawful for such holding company, directly or indirectly—

[(1) to sell, transport, transmit, or distribute, or own or operate any utility assets for the transportation, transmission, or distribution of, natural or manufactured gas or electric energy in interstate commerce;

[(2) by use of the mails or any means or instrumentality of interstate commerce, to negotiate, enter into, or take any step in the performance of, any service, sales, or construction contract undertaking to perform services or construction work for, or sell goods to, any public-utility company or holding company;

[(3) to distribute or make any public offering for sale or exchange of any security of such holding company, any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company, by use of the mails or any means or instrumentality of interstate commerce, or to sell any such security having reason to believe that such security, by use of the mails or any means or instrumentality of interstate commerce, will be distributed or made the subject of a public offering;

[(4) by use of the mails or any means or instrumentality of interstate commerce, to acquire or negotiate for the acquisition of any security or utility assets of any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company;

[(5) to engage in any business in interstate commerce; or

[(6) to own, control, or hold with power to vote, any security of any subsidiary company thereof that does any of the acts enumerated in paragraphs (1) to (5), inclusive, of this subsection.

[(b) Every holding company which has outstanding any security any of which, by use of the mails or any means or instrumentality of interstate commerce, has been distributed or made the subject of a public offering subsequent to January 1, 1925, and any of which security is owned or held on October 1, 1935 (or, if such company is not a holding company on that date, on the date such company becomes a holding company) by persons not resident in the State in which such holding company is organized, shall register

under section 5 on or before December 1, 1935 or the thirtieth day after such company becomes a holding company, whichever date is later.

**REGISTRATION OF HOLDING COMPANIES**

【SEC. 5. (a) On or at any time after October 1, 1935, any holding company or any person purposing to become a holding company may register by filing with the Commission a notification of registration, in such form as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. A person shall be deemed to be registered upon receipt by the Commission of such notification of registration.

【(b) It shall be the duty of every registered holding company to file with the Commission, within such reasonable time after registration as the Commission shall fix by rules and regulations or order, a registration statement in such form as the Commission shall by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. Such registration statement shall include—

【(1) such copies of the charter or articles of incorporation, partnership, or agreement, with all amendments thereto, and the bylaws, trust indentures, mortgages, underwriting arrangements, voting-trust agreements, and similar documents, by whatever name known, of or relating to the registrant or any of its associate companies as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers;

【(2) such information in such form and in such detail relating to, and copies of such documents of or relating to, the registrant and its associate companies as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers in respect of—

【(A) the organization and financial structure of such companies and the nature of their business;

【(B) the terms, position, rights, and privileges of the different classes of their securities outstanding;

【(C) the terms and underwriting arrangements under which their securities, during not more than the five preceding years, have been offered to the public or otherwise disposed of and the relations of underwriters to, and their interest in, such companies;

【(D) the directors and officers of such companies, their remuneration, their interest in the securities of, their material contracts with, and their borrowings from, any of such companies;

【(E) bonus and profit-sharing arrangements;

【(F) material contracts, not made in the ordinary course of business, and service, sales, and construction contracts;

【(G) options in respect of securities;

【(H) balance sheets for not more than the five preceding fiscal years certified, if required by the rules and regula-

tions of the Commission, by an independent public accountant;

[(I) profit and loss statements for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission, by an independent public accountant;

[(3) such further information or documents regarding the registrant or its associate companies or the relations between them as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

[(c) The Commission by such rules and regulations or order as it deems necessary or appropriate in the public interest or for the protection of investors or consumers, may permit a registrant to file a preliminary registration statement without complying with the provisions of subsection (b); but every registrant shall file a complete registration statement with the Commission within such reasonable period of time as the Commission shall fix by rules and regulations or order, but not later than one year after the date of registration.

[(d) Whenever the Commission, upon application, finds that a registered holding company has ceased to be a holding company, it shall so declare by order and upon the taking effect of such order the registration of such company shall, upon such terms and conditions as the Commission finds and in such order prescribes as necessary for the protection of investors, cease to be in effect. The denial of any such application by the Commission shall be by order.

***ILAWFUL SECURITY TRANSACTIONS BY REGISTERED HOLDING AND SUBSIDIARY COMPANIES***

[SEC. 6. (a) Except in accordance with a declaration effective under section 7 and with the order under such section permitting such declaration to become effective, it shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly (1) to issue or sell any security of such company; or (2) to exercise any privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of an outstanding security of such company.

[(b) The provisions of subsection (a) shall not apply to the issue, renewal, or guaranty by a registered holding company or subsidiary company thereof of a note or draft (including the pledge of any security as collateral therefor) if such note or draft (1) is not part of a public offering, (2) matures or is renewed for not more than nine months, exclusive of days of grace, after the date of such issue, renewal, or guaranty thereof, and (3) aggregates (together with all other then outstanding notes and drafts of a maturity of nine months or less, exclusive of days of grace, as to which such company is primarily or secondarily liable) not more than 5 per centum of the principal amount and par value of the other securities of such company then outstanding, or such greater per centum thereof as the Commission upon application may by order authorize as necessary or appropriate in the public interest or for the protection of investors or consumers. In the case of securities having no principal amount or no par value, the value for the purposes of this

subsection shall be the fairmarket value as of the date of issue. The Commission by rules and regulations or order, subject to such terms and conditions as it deems appropriate in the public interest or for the protection of investors or consumers, shall exempt from the provisions of subsection (a) the issue or sale of any security by any subsidiary company of a registered holding company, if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company and have been expressly authorized by the State commission of the State in which such subsidiary company is organized and doing business, or if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company when such subsidiary company is not a holding company, a public-utility company, an investment company, or a fiscal or financing agency of a holding company, a public-utility company, or an investment company. The provisions of subsection (a) shall not apply to the issue, by a registered holding company or subsidiary company thereof, of a security issued pursuant to the terms of any security outstanding on January 1, 1935, giving the holder of such outstanding security the right to convert such outstanding security into another security of the same issuer or of another person, or giving the right to subscribe to another security of the same issuer or another issuer. Within ten days after any issue, sale, renewal, or guaranty exempted from the application of subsection (a) by or under authority of this subsection, such holding company or subsidiary company thereof shall file with the Commission a certificate of notification in such form and setting forth such of the information required in a declaration under section 7 as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

[(c) It shall be unlawful, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, for any registered holding company or any subsidiary company thereof, directly or indirectly—

[(1) to sell or offer for sale or to cause to be sold or offered for sale, from house to house, any security of such holding company; or

[(2) to cause any officer or employee of any subsidiary company of such holding company to sell or cause to be sold any security of such holding company.

[As used in this subsection the term “house” shall not include an office used for business purposes.

**[DECLARATIONS BY REGISTERED HOLDING AND SUBSIDIARY COMPANIES IN RESPECT OF SECURITY TRANSACTIONS**

[SEC. 7. (a) A registered holding company or subsidiary company thereof may file a declaration with the Commission, regarding any of the acts enumerated in subsection (a) of section 6, in such form as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. Such declaration shall include—

[(1) such of the information and documents which are required to be filed in order to register a security under section 7 of the Securities Act of 1933, as amended, as the Commission may by rules and regulations or order prescribe as necessary

or appropriate in the public interest or for the protection of investors or consumers; and

【(2) such additional information, in such form and detail, and such documents regarding the declarant or any associate company thereof, the particular security and compliance with such State laws as may apply to the act in question as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

【(b) A declaration filed under this section shall become effective within such reasonable period of time after the filing thereof as the Commission shall fix by rules and regulations or order, unless the Commission prior to the expiration of such period shall have issued an order to the declarant to show cause why such declaration should become effective. Within a reasonable time after an opportunity for hearing upon an order to show cause under this subsection, unless the declarant shall withdraw its declaration, the Commission shall enter an order either permitting such declaration to become effective as filed or amended, or refusing to permit such declaration to become effective. Amendments to a declaration may be made upon such terms and conditions as the Commission may prescribe.

【(c) The Commission shall not permit a declaration regarding the issue or sale of a security to become effective unless it finds that—

【(1) such security is (A) a common stock having a par value and being without preference as to dividends or distribution over, and having at least equal voting rights with, any outstanding security of the declarant; (B) a bond (i) secured by a first lien on physical property of the declarant, or (ii) secured by an obligation of a subsidiary company of the declarant secured by a first lien on physical property of such subsidiary company, or (iii) secured by any other assets of the type and character which the Commission by rules and regulations or order may prescribe as appropriate in the public interest or for the protection of investors; (C) a guaranty of, or assumption of liability on, a security of another company; or (D) a receiver's or trustee's certificate duly authorized by the appropriate court or courts; or

【(2) such security is to be issued or sold solely (A) for the purpose of refunding, extending, exchanging, or discharging an outstanding security of the declarant and/or a predecessor company thereof or for the purpose of effecting a merger, consolidation, or other reorganization; (B) for the purpose of financing the business of the declarant as a public-utility company; (C) for the purpose of financing the business of the declarant, when the declarant is neither a holding company nor a public-utility company; and/or (D) for necessary and urgent corporate purposes of the declarant where the requirements of the provisions of paragraph (1) would impose an unreasonable financial burden upon the declarant and are not necessary or appropriate in the public interest or for the protection of investors or consumers; or

【(3) such security is one the issuance of which was authorized by the company prior to January 1, 1935, and which the

Commission by rules and regulations or order authorizes as necessary or appropriate in the public interest or for the protection of investors or consumers.

[(d) If the requirements of subsections (c) and (g) are satisfied, the Commission shall permit a declaration regarding the issue or sale of a security to become effective unless the Commission finds that

[(1) the security is not reasonably adapted to the security structure of the declarant and other companies in the same holding-company system;

[(2) the security is not reasonably adapted to the earning power of the declarant;

[(3) financing by the issue and sale of the particular security is not necessary or appropriate to the economical and efficient operation of a business in which the applicant lawfully is engaged or has an interest;

[(4) the fees, commissions, or other remuneration, to whomsoever paid, directly or indirectly, in connection with the issue, sale or distribution of the security are not reasonable;

[(5) in the case of a security that is a guaranty of, or assumption of liability on, a security of another company, the circumstances are such as to constitute the making of such guaranty or the assumption of such liability an improper risk for the declarant; or

[(6) the terms and conditions of the issue or sale of the security are detrimental to the public interest or the interest of investors or consumers.

[(e) If the requirements of subsection (g) are satisfied, the Commission shall permit a declaration to become effective regarding the exercise of a privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of an outstanding security unless the Commission finds that such exercise of such privilege or right will result in an unfair or inequitable distribution of voting power among holders of the securities of the declarant or is otherwise detrimental to the public interest or the interest of investors or consumers.

[(f) Any order permitting a declaration to become effective may contain such terms and conditions as the Commission finds necessary to assure compliance with the conditions specified in this section.

[(g) If a State commission or State securities commission, having jurisdiction over any of the acts enumerated in subsection (a) of section 6, shall inform the Commission, upon request by the Commission for an opinion or otherwise, that State laws applicable to the act in question have not been complied with, the Commission shall not permit a declaration regarding the act in question to become effective until and unless the Commission is satisfied that such compliance has been effected.

**ACQUIRING INTEREST IN ELECTRIC AND GAS UTILITY COMPANIES SERVING SAME TERRITORY**

[SEC. 8. Whenever a State law prohibits, or requires approval or authorization of, the ownership or operation by a single company of the utility assets of an electric utility company and a gas utility company serving substantially the same territory, it shall be un-

lawful for a registered holding company, or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise—

【(1) to take any step, without the express approval of the State commission of such State, which results in its having a direct or indirect interest in an electric utility company and a gas utility company serving substantially the same territory; or

【(2) if it already has any such interest, to acquire, without the express approval of the State commission, any direct or indirect interest in an electric utility company or gas utility company serving substantially the same territory as that served by such companies in which it already has an interest.

**【ACQUISITION OF SECURITIES AND UTILITY ASSETS AND OTHER INTERESTS**

**【SEC. 9. (a)** Unless the acquisition has been approved by the Commission under section 10, it shall be unlawful—

【(1) for any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to acquire, directly or indirectly, any securities or utility assets or any other interest in any business; or

【(2) for any person, by use of the mails or any means or instrumentality of interstate commerce, to acquire, directly or indirectly, any security of any public-utility company, if such person is an affiliate, under clause (A) of paragraph (11) of subsection (a) of section 2, of such company and of any other public utility or holding company, or will by virtue of such acquisition become such an affiliate.

**【(b)** Subsection (a) shall not apply to—

【(1) the acquisition by a public-utility company of utility assets the acquisition of which has been expressly authorized by a State commission; or

【(2) the acquisition by a public-utility company of securities of a subsidiary public-utility company thereof, provided that both such public-utility companies and all other public-utility companies in the same holding-company system are organized in the same State, that the business of each such company in such system is substantially confined to such State, and that the acquisition of such securities has been expressly authorized by the State commission of such State.

**【(c)** Subsection (a) shall not apply to the acquisition by a registered holding company, or a subsidiary company thereof, of—

【(1) securities of, or securities the principal or interest of which is guaranteed by, the United States, a State, or political subdivision of a State, 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;

【(2) such other readily marketable securities, within the limitation of such amounts, as the Commission may by rules and regulations prescribe as appropriate for investment of current funds and as not detrimental to the public interest or the interest of investors or consumers; or

[(3) such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers.

**[APPROVAL OF ACQUISITION OF SECURITIES AND UTILITY ASSETS AND OTHER INTERESTS**

[SEC. 10. (a) A person may apply for approval of the acquisition of securities or utility assets, or of any other interest in any business, by filing an application in such form as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors and consumers. Such application shall include—

[(1) in the case of the acquisition of securities, such information and copies of such documents as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers in respect of—

[(A) the security to be acquired, the consideration to be paid therefor, and compliance with such State laws as may apply in respect of the issue, sale, or acquisition thereof,

[(B) the outstanding securities of the company whose security is to be acquired, the terms, position, rights, and privileges of each class and the options in respect of any such securities,

[(C) the names of all security holders of record (or otherwise known to the applicant) owning, holding, or controlling 1 per centum or more of any class of security of such company, the officers and directors of such company, and their remuneration, security holdings in, material contracts with, and borrowings from such company and the offices or directorships held, and securities owned, held, or controlled, by them in other companies,

[(D) the bonus, profit-sharing and voting-trust agreement, underwriting arrangements, trust indentures, mortgages, and similar documents, by whatever name known, of or relating to such company,

[(E) the material contracts, not made in the ordinary course of business, and the service, sales, and construction contracts of such company,

[(F) the securities owned, held, or controlled, directly or indirectly, by such company,

[(G) balance sheets and profit and loss statements of such company for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission by an independent public accountant,

[(H) any further information regarding such company and any associate company or affiliate thereof, or its relation with the applicant company, and

[(I) if the applicant be not a registered holding company, any of the information and documents which may be required under section 5 from a registered holding company;



[(2) in the case of the acquisition of utility assets, such information concerning such assets, the value thereof and consideration to be paid therefor, the owner or owners thereof and their relation to, agreements with, and interest in the securities of, the applicant or any associate company thereof as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers; and

[(3) in the case of the acquisition of any other interest in an business, such information concerning such business and the interest to be acquired, and the consideration to be paid, as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

[(b) If the requirements of subsection (f) are satisfied, the Commission shall approve the acquisition unless the Commission finds that—

[(1) such acquisition will tend towards interlocking relations or the concentration of control of public-utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors, or consumers;

[(2) in case of the acquisition of securities or utility assets, the consideration, including all fees, commissions, and other remuneration, to whomsoever paid, to be given, directly or indirectly, in connection with such acquisition is not reasonable or does not bear a fair relation to the sums invested in or the earning capacity of the utility assets to be acquired or the utility assets underlying the securities to be acquired; or

[(3) such acquisition will unduly complicate the capital structure of the holding-company system of the applicant or will be detrimental to the public interest or the interest of investors or consumers or the proper functioning of such holding-company system.

The Commission may condition its approval of the acquisition of securities of another company upon such a fair offer to purchase such of the other securities of the company whose security is to be acquired as the Commission may find necessary or appropriate in the public interest or for the protection of investors or consumers.

[(c) Notwithstanding the provisions of subsection (b), the Commission shall not approve—

[(1) an acquisition of securities or utility assets, or of any other interest, which is unlawful under the provisions of section 8 or is detrimental to the carrying out of the provisions of section 11; or

[(2) the acquisition of securities or utility assets of a public utility or holding company unless the Commission finds that such acquisition will serve the public interest by tending towards the economical and efficient development of an integrated public-utility system. This paragraph shall not apply to the acquisition of securities or utility assets of a public-utility company operating exclusively outside the United States.

[(d) Within such reasonable time after the filing of an application under this section as the Commission shall fix by rules and regulations or order, the Commission shall enter an order either

granting or, after notice and opportunity for hearing, denying approval of the acquisition unless the applicant shall withdraw its application. Amendments to an application may be made upon such terms and conditions as the Commission may prescribe.

[(e) The Commission, in any order approving the acquisition of securities or utility assets, may prescribe such terms and conditions in respect of such acquisition, including the price to be paid for such securities or utility assets, as the Commission may find necessary or appropriate in the public interest or for the protection of investors or consumers.

[(f) The Commission shall not approve any acquisition as to which an application is made under this section unless it appears to the satisfaction of the Commission that such State laws as may apply in respect of such acquisition have been complied with, except where the Commission finds that compliance with such State laws would be detrimental to the carrying out of the provisions of section 11.

#### **[SIMPLIFICATION OF HOLDING-COMPANY SYSTEMS**

[SEC. 11. (a) It shall be the duty of the Commission to examine the corporate structure of every registered holding company and subsidiary company thereof, the relationships among the companies in the holding-company system of every such company and the character of the interests thereof and the properties owned or controlled thereby to determine the extent to which the corporate structure of such holding-company system and the companies therein may be simplified, unnecessary complexities therein eliminated, voting power fairly and equitably distributed among the holders of securities thereof, and the properties and business thereof confined to those necessary or appropriate to the operations of an integrated public-utility system.

[(b) It shall be the duty of the Commission, as soon as practical after January 1, 1938:

[(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system: *Provided, however,* That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

[(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

[(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

[(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected)

as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

【The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems and retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.

【(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. Except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company which is not a holding company, or of any company whose principal business is that of a public-utility company.

【The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection shall be subject to judicial review as provided in section 24.

【(c) Any order under subsection (b) shall be complied with within one year from the date of such order; but the Commission shall, upon a showing (made before or after the entry of such order) that the applicant has been or will be unable in the exercise of due diligence to comply with such order within such time, extend such time for an additional period not exceeding one year if it finds such extension necessary or appropriate in the public interest or for the protection of investors or consumers.

【(d) The Commission may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce compliance with any order issued under subsection (b). In any such proceeding, the court as a court of equity may, to such extent as it deems necessary for purposes of enforcement of such order, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction, in any such proceeding, to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold

or administer under the direction of the court the assets so possessed. In any proceeding for the enforcement of an order of the Commission issued under subsection (b), the trustee with the approval of the court shall have power to dispose of any or all of such assets and, subject to such terms and conditions as the court may prescribe, may make such disposition in accordance with a fair and equitable reorganization plan which shall have been approved by the Commission after opportunity for hearing. Such reorganization plan may be proposed in the first instance by the Commission, or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization.

[(e) In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of section 11, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved, by the court and the Commission, the assets so possessed.

[(f) In any proceeding in a court of the United States, whether under this section or otherwise, in which a receiver or trustee is appointed for any registered holding company, or any subsidiary company thereof, the court may constitute and appoint the Commission as sole trustee or receiver, subject to the directions and orders of the court, whether or not a trustee or receiver shall theretofore have been appointed, and in any such proceeding the court shall not appoint any person other than the Commission trustee or receiver without notifying the Commission and giving it an opportunity to be heard before making any such appointment. In no proceeding under this section or otherwise shall the Commission be appointed as trustee or receiver without its express consent. In any

such proceeding a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court. Notwithstanding any other provision of law, any such reorganization plan may be proposed in the first instance by the Commission or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization. The Commission may, by such rules and regulations or order as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers, require that any or all fees, expenses, and remuneration, to whomsoever paid, in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary company thereof, in any such proceeding, shall be subject to approval by the Commission.

[(g) It shall be unlawful for any person to solicit or permit the use of his or its name to solicit, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, any proxy, consent, authorization, power of attorney, deposit, or dissent in respect of any reorganization plan of a registered holding company or any subsidiary company thereof under this section, or otherwise, or in respect of any plan under this section for the divestment of control, securities, or other assets, or for the dissolution of any registered holding company or any subsidiary company thereof, unless—

[(1) the plan has been proposed by the Commission, or the plan and such information regarding it and its sponsors as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers has been submitted to the Commission by a person having a bona fide interest (as defined by the rules and regulations of the Commission) in such reorganization;

[(2) each such solicitation is accompanied or preceded by a copy of a report on the plan which shall be made by the Commission after an opportunity for a hearing on the plan and other plans submitted to it, or by an abstract of such report made or approved by the Commission; and

[(3) each such solicitation is made not in contravention of such rules and regulations or orders as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers.

Nothing in this subsection or the rules and regulations thereunder shall prevent any person from appearing before the Commission or any court through an attorney or proxy.

**[INTERCOMPANY LOANS; DIVIDENDS; SECURITY TRANSACTIONS; SALE OF UTILITY ASSETS; PROXIES; OTHER TRANSACTIONS**

[SEC. 12. (a) It shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly, to borrow, or to receive any extension of credit or indemnity, from any public-

utility company in the same holding-company system or from any subsidiary company of such holding company, but it shall not be unlawful under this subsection to renew, or extend the time of, any loan, credit, or indemnity outstanding on the date of the enactment of this title.

[(b) It shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly, to lend or in any manner extend its credit to or indemnify any company in the same holding-company system in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

[(c) It shall be unlawful for any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to declare or pay any dividend on any security of such company or to acquire, retire, or redeem any security of such company, in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate to protect the financial integrity of companies in holding-company systems, to safeguard the working capital of public-utility companies, to prevent the payment of dividends out of capital or unearned surplus, or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

[(d) It shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to sell any security which it owns of any public-utility company, or any utility assets, in contravention of such rules and regulations or orders regarding the consideration to be received for such sale, maintenance of competitive conditions, fees and commissions, accounts, disclosure of interest, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

[(e) It shall be unlawful for any person to solicit or to permit the use of his or its name to solicit, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, any proxy, power of attorney, consent, or authorization regarding any security of a registered holding company or a subsidiary company thereof in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

[(f) It shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to negotiate, enter into, or take any step in the performance of any transaction not otherwise unlawful under this title, with any company in the same holding-company system or with any affiliate of a company

in such holding-company system in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, a disclosure of interest, duration of contracts, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules and regulations thereunder.

[(g) It shall be unlawful for any affiliate of any public-utility company, by use of the mails or any means or instrumentality of interstate commerce, or for any affiliate of any public-utility company engaged in interstate commerce, or of any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to negotiate, enter into, or take any step in the performance of any transaction not otherwise unlawful under this title, with any such company of which it is an affiliate, in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters as the Commission deems necessary or appropriate to prevent the circumvention of the provisions of this title.

[(h) It shall be unlawful for any registered holding company, or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly—

[(1) to make any contribution whatsoever in connection with the candidacy, nomination, election or appointment of any person for or to any office or position in the Government of the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing; or

[(2) to make any contribution to or in support of any political party or any committee or agency thereof.

[(The term “contribution” as used in this subsection includes any gift, subscription, loan, advance, or deposit of money or anything of value, and includes any contract, agreement, or promise, whether or not legally enforceable, to make a contribution.)

[(i) It shall be unlawful for any person employed or retained by any registered holding company, or any subsidiary company thereof, to present, advocate, or oppose any matter affecting any registered holding company or any subsidiary company thereof, before the Congress or any Member or committee thereof, or before the Commission or Federal Power Commission, or any member, officer, or employee of either such Commission, unless such person shall file with the Commission in such form and detail and at such time as the Commission shall by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers, a statement of the subject matter in respect of which such person is retained or employed, the nature and character of such retainer or employment, and the amount of compensation received or to be received by such person, directly or indirectly, in connection therewith. It shall be the duty of every such person so employed or retained to file with the Commission within ten days after the close of each calendar month during such

retainer or employment, in such form and detail as the Commission shall by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers, a statement of the expenses incurred and the compensation received by such person during such month in connection with such retainer or employment.

**[SERVICE, SALES, AND CONSTRUCTION CONTRACTS**

**[SEC. 13. (a)** After April 1, 1936, it shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract by which such company undertakes to perform services or construction work for, or sell goods to, any associate company thereof which is a public-utility or mutual service company. This provision shall not apply to such transactions, involving special or unusual circumstances or not in the ordinary course of business, as the Commission by rules and regulations or order may conditionally or unconditionally exempt as being necessary or appropriate in the public interest or for the protection of investors or consumers.

**[(b)** After April 1, 1936, it shall be unlawful for any subsidiary company of any registered holding company or for any mutual service company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract by which such company undertakes to perform services or construction work for, or sell goods to, any associate company thereof except in accordance with such terms and conditions and subject to such limitations and prohibitions as the Commission by rules and regulations or order shall prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers and to insure that such contracts are performed economically and efficiently for the benefit of such associate companies at cost, fairly and equitably allocated among such companies. This provision shall not apply to such transactions as the Commission by rules and regulations or order may conditionally or unconditionally exempt as being necessary or appropriate in the public interest or for the protection of investors or consumers, if such transactions (1) are with any associate company which does not derive, directly or indirectly, any material part of its income from sources within the United States and which is not a public-utility company operating within the United States, or (2) involve special or unusual circumstances or are not in the ordinary course of business.

**[(c)** The rules and regulations and orders of the Commission under this section may prescribe, among other things, such terms and conditions regarding the determination of costs and the allocation thereof among specified classes of companies and for specified classes of service, sales, and construction contracts, the duration of such contracts, the making and keeping of accounts and cost-accounting procedures, the filing of annual and other periodic and special reports, the maintenance of competitive conditions, the disclosure of interests, and similar matters, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.



[(d) The rules and regulations and orders of the Commission under this section shall prescribe, among other things, such terms and conditions regarding the manner in which application may be made for approval as a mutual service company and the granting and continuance of such approval, the nature and enforcement of agreements for the sharing of expenses and distributing of revenues among member companies, and matters relating to such agreements, the nature and types of businesses and transactions in which mutual service companies may engage, and the manner of engaging therein, and the relations and transactions with member companies and affiliates, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers. The Commission shall not approve, or continue the approval of, any company as a mutual service company unless the Commission finds such company is so organized as to ownership, costs, revenues, and the sharing thereof as reasonably to insure the efficient and economical performance of service, sales, or construction contracts by such company for member companies, at cost fairly and equitably allocated among such member companies, at a reasonable saving to member companies over the cost to such companies of comparable contracts performed by independent persons. The Commission, upon its own motion or at the request of a member company or a State commission, may, after notice and opportunity for hearing, by order require a reallocation or reapportionment of costs among member companies of a mutual service company if it finds the existing allocation inequitable and may require the elimination of a service or services to a member company which does not bear its fair proportion of costs or which, by reason of its size or other circumstances, does not require such service or services. The Commission, after notice and opportunity for hearing, by order shall revoke, suspend, or modify the approval given any mutual service company if it finds that such company has persistently violated any provision of this section or any rule, regulation, or order thereunder.

[(e) It shall be unlawful for any affiliate of any public-utility company engaged in interstate commerce, or of any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract, by which such affiliate undertakes to perform services or construction work for, or sell goods to, any such company of which it is an affiliate, in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters, as the Commission deems necessary or appropriate to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

[(f) It shall be unlawful for any person whose principal business is the performance of service, sales, or construction contracts for public-utility or holding companies, by use of the mails or any means or instrumentality of interstate commerce, to enter into or take any step in the performance of any service, sales, or construction contract with any public-utility company, or for any such person, by use of the mails or any means or instrumentality of inter-

state commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract with any public-utility company engaged in interstate commerce, or with any registered holding company or any subsidiary company of a registered holding company, in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

[(g) The Commission, in order to obtain information to serve as a basis for recommending further legislation, shall from time to time conduct investigations regarding the making, performance, and costs of service, sales, and construction contracts with holding companies and subsidiary companies thereof and with public-utility companies, the economies resulting therefrom, and the desirability thereof. The Commission shall report to Congress, from time to time, the results of such investigations, together with such recommendations for legislation as it deems advisable. On the basis of such investigations the Commission shall classify the different types of such contracts and the work done thereunder, and shall make recommendations from time to time regarding the standards and scope of such contracts in relation to public-utility companies of different kinds and sizes and the costs incurred thereunder and economies resulting therefrom. Such recommendations shall be made available to State commissions, public-utility companies, and to the public in such form and at such reasonable charge as the Commission may prescribe.

#### **[PERIODIC AND OTHER REPORTS**

[SEC. 14. Every registered holding company and every mutual service company shall file with the Commission such annual, quarterly, and other periodic and special reports, the answers to such specific questions and the minutes of such directors', stockholders', and other meetings, as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. Such reports, if required by the rules and regulations of the Commission, shall be certified by an independent public accountant, and shall be made and filed at such time and in such form and detail as the Commission shall prescribe. The Commission may require that there be included in reports filed with it such information and documents as it finds necessary or appropriate to keep reasonably current the information filed under section 5 or 13, and such further information concerning the financial condition, security structure, security holdings, assets, and cost thereof, wherever determinable, and affiliations of the reporting company and the associate companies, member companies, and affiliates thereof as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

#### **[ACCOUNTS AND RECORDS**

[SEC. 15. (a) Every registered holding company and every subsidiary company thereof shall make, keep, and preserve for such

periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this title or the rules, regulations, or orders thereunder.

[(b) Every affiliate of a registered holding company or of any subsidiary company thereof, or of any public-utility company engaged in interstate commerce or not so engaged, shall make, keep, and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records relating to any transaction of such affiliate which is subject to any provision of this title or any rule, regulation, or order thereunder, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this title or the rules, regulations, or orders thereunder.

[(c) Every mutual service company, and ever affiliate of a mutual service company as to any transaction of such affiliate which is subject to any provision of this title or any rule, regulation, or order thereunder, shall make, keep, and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this title or the rules, regulations, or orders thereunder.

[(d) Every person whose principal business is the performance of service, sales, or construction contracts for public-utility or holding companies shall make, keep, and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records, relating to any transaction by such person which is subject to any provision of this title or any rule, regulation, or order thereunder, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this title or the rules and regulations thereunder.

[(e) After the Commission has prescribed the form and manner of making and keeping accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records to be kept by any person hereunder, it shall be unlawful for any such person to keep any accounts, cost-accounting procedures, correspondence, memoranda, papers, books, or other records other than those prescribed or such as may be approved by the Commission, or to keep his or its accounts, cost-accounting procedures, correspondence, memoranda, papers, books, or other records in any manner other than that prescribed or approved by the Commission.

[(f) All accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records kept or required to be kept by persons subject to any provision of this section shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. The Commission, after notice and opportunity for hearing, may prescribe the account or accounts in which particular outlays,

receipts, and other transactions shall be entered, charged, or credited and the manner in which such entry, charge, or credit shall be made, and may require an entry to be modified or supplemented so as properly to show the cost of any asset or any other cost.

[(g) It shall be the duty of every registered holding company and of every subsidiary company thereof and of every affiliate of a company insofar as such affiliate is subject to any provision of this title or any rule, regulation, or order thereunder, to submit the accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records of such holding company, subsidiary company, or affiliate, as the case may be, to such examinations, in person or by duly appointed attorney, by the holder of any security of such holding company, subsidiary company, or affiliate, as the case may be, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

[(h) It shall be the duty of every mutual service company, and of every affiliate of a mutual service company, and of every person whose principal business is the performance of service, sales, or construction contracts for public-utility or holding companies, insofar as such affiliate or such person is subject to any provision of this title or any rule, regulation, or order thereunder, to submit the accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records of such mutual service company, affiliate, or person to such examinations, in person or by duly appointed attorney, by member companies of such mutual service company and by public-utility or holding companies for which such person performs service, sales, or construction contracts as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

[(i) The Commission, by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors or consumers may prescribe for persons subject to the provisions of subsection (a), (b), (c), or (d) of this section uniform methods for keeping accounts required under any provision of this section, including, among other things, the manner in which the cost of all assets, whenever determinable, shall be shown, the methods of classifying and segregating accounts, and the manner in which cost-accounting procedures shall be maintained.

#### **LIABILITY FOR MISLEADING STATEMENTS**

[SEC. 16. (a) Any person who shall make or cause to be made any statement in any application, report, registration statement, or document filed pursuant to any provision of this title, or any rule, regulation, or order thereunder, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact shall be liable in the same manner, to the same extent, and subject to the same limitations as provided in section 18 of the Securities Exchange Act of 1934 with respect to an application, report, or document filed pursuant to the Securities Exchange Act of 1934.

[(b) The rights and remedies provided by this title, except as provided in section 17(b), shall be in addition to any and all other rights and remedies that may exist under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, or oth-

erwise at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of.

**【OFFICERS, DIRECTORS, AND OTHER AFFILIATES**

**【SEC. 17. (a)** Every person who is an officer or director of a registered holding company shall file with the Commission in such form as the Commission shall prescribe (1) at the time of the registration of such holding company, or within ten days after such person becomes an officer or director, a statement of the securities of such registered holding company or any subsidiary company thereof of which he is, directly or indirectly, the beneficial owner, and (2) within ten days after the close of each calendar month thereafter, if there has been any change in such ownership during such month, a statement of such ownership as of the close of such calendar month and of the changes in such ownership that have occurred during such calendar month.

**【(b)** For the purpose of preventing the unfair use of information which may have been obtained by any such officer or director by reason of his relationship to such registered holding company or any subsidiary company thereof, any profit realized by any such officer or director from any purchase and sale, or any sale and purchase, of any security of such registered holding company or any subsidiary company thereof within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the holding company or subsidiary company in respect of the security of which such profit was realized, irrespective of any intention on the part of such officer or director in entering into such transaction to hold the security purchased or not to repurchase the security sold for a period of more than six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company entitled thereto or by the owner of any security of such company in the name and in the behalf of such company if such company shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not cover any transaction where such person was not an officer or director at the times of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Commission by rules and regulations may, as necessary or appropriate in the public interest or for the protection of investors or consumers, exempt as not comprehended within the purpose of this subsection. Nothing in this subsection shall be construed to give a remedy in the case of any transaction in respect of which a remedy is given under subsection (b) of section 16 of the Securities Exchange Act of 1934.

**【(c)** After one year from the date of the enactment of this title, no registered holding company or any subsidiary company thereof shall have, as an officer or director thereof, any executive officer, director, partner, appointee, or representative of any bank, trust company, investment banker, or banking association or firm, or any

executive officer, director, partner, appointee, or representative of any corporation a majority of whose stock, having the unrestricted right to vote for the election of directors, is owned by any bank, trust company, investment banker, or banking association or firm, except in such cases as rules and regulations prescribed by the Commission may permit as not adversely affecting the public interest or the interest of investors or consumers.

**INVESTIGATIONS; INJUNCTIONS, ENFORCEMENT OF TITLE, AND PROSECUTION OF OFFENSES**

【SEC. 18. (a) The Commission, in its discretion, may investigate any facts, conditions, practices, or matters which it may deem necessary or appropriate to determine whether any person has violated or is about to violate any provision of this title or any rule or regulation thereunder, or to aid in the enforcement of the provisions of this title, in the prescribing of rules and regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation concerning the matters to which this title relates. The Commission may require or permit any person to file with it a statement in writing, under oath or otherwise as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation. The Commission, in its discretion, may publish, or make available to State commissions, information concerning any such subject.

【(b) The Commission upon its own motion or at the request of a State commission may investigate, or obtain any information regarding the business, financial condition, or practices of any registered holding company or subsidiary company thereof or facts, conditions, practices, or matters affecting the relations between any such company and any other company or companies in the same holding-company system.

【(c) For the purpose of any investigation or any other proceeding under this title, any member of the Commission, or any officer thereof designated by it, is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in any State or in any Territory or other place subject to the jurisdiction of the United States at any designated place of hearing.

【(d) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may

be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who, without just cause, shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpoena of the Commission, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or both.

[(e) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this title, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper district court of the United States or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this title or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings under this title.

[(f) Upon application of the Commission, the district courts of the United States, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this title or any rule, regulation, or order of the Commission thereunder.

#### **[HEARINGS BY COMMISSION**

[SEC. 19. Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before the Commission, the Commission, in accordance with such rules and regulations as it may prescribe, shall admit as a party any interested State, State commission, State securities commission, municipality, or other political subdivision of a State, and may admit as a party any representative of interested consumers or security holders, or any other person whose participation in the proceedings may be in the public interest or for the protection of investors or consumers.

#### **[RULES, REGULATIONS, AND ORDERS**

[SEC. 20. (a) The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as it may deem necessary or appropriate to carry out the provisions of this title, including rules and regulations defining accounting, technical, and trade terms used in this title. Among other things, the Commission shall have authority, for the purpose of this title, to prescribe the form or forms in which information required in any statement, declaration, application, report, or other document filed with the Commission shall be set forth, the items or details to be shown in balance sheets, profit and loss statements, and surplus accounts, the manner in which the cost of

all assets, whenever determinable, shall be shown in regard to such statements, declarations, applications, reports, and other documents filed with the Commission, or accounts required to be kept by the rules, regulations, or orders of the Commission, and the methods to be followed in the keeping of accounts and cost-accounting procedures and the preparation of reports, in the segregation and allocation of costs, in the determination of liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the keeping or preparation, where the Commission deems it necessary or appropriate, of separate or consolidated balance sheets or profit and loss statements for any companies in the same holding-company system.

[(b) In the case of the accounts of any company whose methods of accounting are prescribed under the provisions of any law of the United States or of any State, the rules and regulations or orders of the Commission in respect of accounts shall not be inconsistent with the requirements imposed by such law or any rule or regulation thereunder; nor shall anything in this title relieve any public-utility company from the duty to keep the accounts, books, records, or memoranda which may be required to be kept by the law of any State in which it operates or by the State commission of any such State. But this provision shall not prevent the Commission from imposing such additional requirements regarding reports or accounts as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers.

[(c) The rules and regulations of the Commission shall be effective upon publication in the manner which the Commission shall prescribe. For the purpose of its rules, regulations, or orders the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. Orders of the Commission under this title shall be issued only after opportunity for hearing.

[(d) The Commission, by such rules and regulations or order as it deems necessary or appropriate in the public interest or for the protection of investors or consumers, may authorize the filing of any information or documents required to be filed with the Commission under this title, or under the Securities Act of 1933, as amended, or under the Securities Exchange Act of 1934, by incorporating by reference any information or documents theretofore or concurrently filed with the Commission under this title or either of such Acts. No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or order of the Commission, notwithstanding that such rule, regulation, or order may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

**[EFFECT ON EXISTING LAW**

[SEC. 21. Nothing in this title shall affect (1) the jurisdiction of the Commission under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934 over any person, security, or contract, or (2) the rights, obligations, duties, or liabilities of any person under such Acts; nor shall anything in this title affect the jurisdiction of any other commission, board, agency, or officer of the



United States or of any State or political subdivision of any State, over any person, security, or contract, insofar as such jurisdiction does not conflict with any provision of this title or any rule, regulation, or order thereunder.

**[INFORMATION FILED WITH THE COMMISSION]**

**[SEC. 22.** (a) When in the judgment of the Commission the disclosure of such information would be in the public interest or the interest of investors or consumers, the information contained in any statement, application, declaration, report, or other document filed with the Commission shall be available to the public, and copies thereof may be furnished to any person at such reasonable charge and under such reasonable limitations as the Commission may prescribe: *Provided, however,* That nothing in this title shall be construed to require, or to authorize the Commission to require, the revealing of trade secrets or processes in any application, declaration, report, or document filed with the Commission under this title.

**[(b)** Any person filing such application, declaration, report, or document may make written objection to the public disclosure of information contained therein, stating the grounds for such objection, and the Commission is authorized to hear objections in any such case where it finds it advisable.

**[(c)** It shall be unlawful for any member, officer, or employee of the Commission to disclose to any person other than a member, officer, or employee of the Commission, or to use for personal benefit, any information contained in any application, declaration, report, or document filed with the Commission which is not made available to the public pursuant to this section.

**[ANNUAL REPORTS OF COMMISSION]**

**[SEC. 23.** The Commission shall submit annually a report to the Congress covering the work of the Commission for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this title as it may find advisable.

**[COURT REVIEW OF ORDERS]**

**[SEC. 24.** (a) Any person or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the court of appeals of the United States within any circuit wherein such person resides or has his 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 entry of such order, 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 be forthwith transmitted by the clerk of the court to any member of the Commission, or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in 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 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 or

unless there were reasonable grounds for failure so to do. The findings of the Commissions as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown 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 proceeding 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 to the court may seem proper. The Commission may modify its findings as to the facts by reason of the 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 section 1254 of title 28, United States Code.

[(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

#### **JURISDICTION OF OFFENSES AND SUITS**

[SEC. 25. The District Courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this title or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28, United States Code. No costs shall be assessed for or against the Commission in any proceeding under this title brought by or against the Commission in any court.

#### **INVALIDITY OF CONTRACTS**

[SEC. 26. (a) Any condition, stipulation, or provision binding any person to waive compliance with any provision of this title or with any rule, regulation, or order thereunder shall be void.

[(b) Every contract made in violation of any provision of this title or of any rule, regulation, or order thereunder, and every contract heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this title, or any rule, regulation, or order thereunder, shall be void (1) as regards the rights of any

person who, in violation of any such provision, rule, regulation, or order, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule, regulation, or order.

[(c) Nothing in this title shall be construed (1) to affect the validity of any loan or extension of credit (or any extension or renewal thereof) made or of any lien created prior or subsequent to the enactment of this title, unless at the time of the making of such loan or extension of credit (or extension or renewal thereof) or the creating of such lien, the person making such loan or extension of credit (or extension or renewal thereof) or acquiring such lien shall have actual knowledge of facts by reason of which the making of such loan or extension of credit (or extension or renewal thereof) or the acquisition of such lien as a violation of the provisions of this title or any rule or regulation thereunder, or (2) to afford a defense to the collection of any debt or obligation or the enforcement of any lien by any person who shall have acquired such debt, obligation, or lien in good faith for value and without actual knowledge of the violation of any provision of this title or any rule or regulation thereunder affecting the legality of such debt, obligation, or lien.

**[LIABILITY OF CONTROLLING PERSONS; PREVENTING COMPLIANCE WITH TITLE**

[SEC. 27. (a) It shall be unlawful for any person, directly or indirectly, to cause to be done any act or thing through or by means of any other person which it would be unlawful for such person to do under the provisions of this title or any rule, regulation, or order thereunder.

[(b) It shall be unlawful for any person without just cause to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, record, or account required to be made, filed, or kept under any provision of this title or any rule, regulation, or order thereunder.

**[UNLAWFUL REPRESENTATIONS**

[SEC. 28. It shall be unlawful for any person in issuing, selling, offering for sale any security of a registered holding company or subsidiary company thereof, to represent or imply in any manner whatsoever that such security has been guaranteed, sponsored, or recommended for investment by the United States or any agency or officer thereof.

**[PENALTIES**

[SEC. 29. Any person who willfully violates any provision in this title or any rule, regulation, or order thereunder (other than an order of the Commission under subsection (b), (d), (e), or (f) of section 11), or any person who willfully makes any statement or entry in an application, report, document, account, or record filed or kept or required to be filed or kept under the provisions of this title or any rule, regulation, or order thereunder, knowing such statement or entry to be false or misleading in any material respect, or any person who willfully destroys (except after such time as may be prescribed under any rules or regulations under this title), muti-

lates, alters, or by any means, or device falsifies any account, correspondence, memorandum, book, paper, or other record kept or required to be kept under the provisions of this title or any rule, regulation, or order thereunder, shall upon conviction be fined not more than \$10,000 or imprisoned not more than five years, or both, except that in the case of a violation of a provision of subsection (a) or (b) of section 4 by a holding company which is not an individual, the fine imposed upon such holding company shall be a fine not exceeding \$200,000; but no person shall be convicted under this section for the violation of any rule, regulation, or order if he proves that he had no knowledge of such rule, regulation, or order.

**[STUDY OF PUBLIC-UTILITY AND INVESTMENT COMPANIES**

**[SEC. 30.** The Commission is authorized and directed to make studies and investigations of public-utility companies, the territories served or which can be served by public-utility companies, and the manner in which the same are or can be served, to determine the sizes, types, and locations of public-utility companies which do or can operate most economically and efficiently in the public interest, in the interest of investors and consumers, and in furtherance of a wider and more economical use of gas and electric energy; upon the basis of such investigations and studies the Commission shall make public from time to time its recommendations as to the type and size of geographically and economically integrated public-utility systems which, having regard for the nature and character of the locality served, can best promote and harmonize the interests of the public, the investor, and the consumer.

**[HIRING AND LEASING AUTHORITY OF THE COMMISSION**

**[SEC. 31.** The provisions of section 4(b) of the Securities Exchange Act of 1934 shall be applicable with respect to the power of the Commission—

**[(1)** to appoint and fix the compensation of such employees as may be necessary for carrying out its functions under this title, and

**[(2)** to lease and allocate such real property as may be necessary for carrying out its functions under this title.

**[SEC. 32. EXEMPT WHOLESALE GENERATORS.**

**[(a) DEFINITIONS.—**For purposes of this section—

**[(1) EXEMPT WHOLESALE GENERATOR.—**The term “exempt wholesale generator” means any person determined by the Federal Energy Regulatory Commission to be engaged directly, or indirectly through one or more affiliates as defined in section 2(a)(11)(B), and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale. No person shall be deemed to be an exempt wholesale generator under this section unless such person has applied to the Federal Energy Regulatory Commission for a determination under this paragraph. A person applying in good faith for such a determination shall be deemed an exempt wholesale generator under this section, with all of the exemptions provided by this section, until the Federal Energy Regulatory Commission makes such determination. The Federal Energy Regulatory Commission shall make such determination within 60 days of

its receipt of such application and shall notify the Commission whenever a determination is made under this paragraph that any person is an exempt wholesale generator. Not later than 12 months after the date of enactment of this section, the Federal Energy Regulatory Commission shall promulgate rules implementing the provisions of this paragraph. Applications for determination filed after the effective date of such rules shall be subject thereto.

[(2) ELIGIBLE FACILITY.—The term “eligible facility” means a facility, wherever located, which is either—

[(A) used for the generation of electric energy exclusively for sale at wholesale, or

[(B) used for the generation of electric energy and leased to one or more public utility companies; Provided, That any such lease shall be treated as a sale of electric energy at wholesale for purposes of sections 205 and 206 of the Federal Power Act.

Such term shall not include any facility for which consent is required under subsection (c) if such consent has not been obtained. Such term includes interconnecting transmission facilities necessary to effect a sale of electric energy at wholesale. For purposes of this paragraph, the term “facility” may include a portion of a facility subject to the limitations of subsection (d) and shall include a facility the construction of which has not been commenced or completed.

[(3) SALE OF ELECTRIC ENERGY AT WHOLESALE.—The term “sale of electric energy at wholesale” shall have the same meaning as provided in section 201(d) of the Federal Power Act (16 U.S.C. 824(d)).

[(4) RETAIL RATES AND CHARGES.—The term “retail rates and charges” means rates and charges for the sale of electric energy directly to consumers.

[(b) FOREIGN RETAIL SALES.—Notwithstanding paragraphs (1) and (2) of subsection (a), retail sales of electric energy produced by a facility located in a foreign country shall not prevent such facility from being an eligible facility, or prevent a person owning or operating, or both owning and operating, such facility from being an exempt wholesale generator if none of the electric energy generated by such facility is sold to consumers in the United States.

[(c) STATE CONSENT FOR EXISTING RATE-BASED FACILITIES.—If a rate or charge for, or in connection with, the construction of a facility, or for electric energy produced by a facility (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge) was in effect under the laws of any State as of the date of enactment of this section, in order for the facility to be considered an eligible facility, every State commission having jurisdiction over any such rate or charge must make a specific determination that allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law; *Provided*, That in the case of such a rate or charge which is a rate or charge of an affiliate of a registered holding company:

[(A) such determination with respect to the facility in question shall be required from every State commission having ju-

jurisdiction over the retail rates and charges of the affiliates of such registered holding company; and

[(B) the approval of the Commission under this Act shall not be required for the transfer of the facility to an exempt wholesale generator.

[(d) HYBRIDS.—(1) No exempt wholesale generator may own or operate a portion of any facility if any other portion of the facility is owned or operated by an electric utility company that is an affiliate or associate company of such exempt wholesale generator.

[(2) ELIGIBLE FACILITY.—Notwithstanding paragraph (1), an exempt wholesale generator may own or operate a portion of a facility identified in paragraph (1) if such portion has become an eligible facility as a result of the operation of subsection (c).

[(e) EXEMPTION OF EWGS.—An exempt wholesale generator shall not be considered an electric utility company under section 2(a)(3) of this Act and, whether or not a subsidiary company, an affiliate, or an associate company of a holding company, an exempt wholesale generator shall be exempt from all provisions of this Act.

[(f) OWNERSHIP OF EWGS BY EXEMPT HOLDING COMPANIES.—Notwithstanding any provision of this Act, a holding company that is exempt under section 3 of this Act shall be permitted, without condition or limitation under this Act, to acquire and maintain an interest in the business of one or more exempt wholesale generators.

[(g) OWNERSHIP OF EWGS BY REGISTERED HOLDING COMPANIES.—Notwithstanding any provision of this Act and the Commission's jurisdiction as provided under subsection (h) of this section, a registered holding company shall be permitted (without the need to apply for, or receive, approval from the Commission, and otherwise without condition under this Act) to acquire and hold the securities, or an interest in the business, of one or more exempt wholesale generators.

[(h) FINANCING AND OTHER RELATIONSHIPS BETWEEN EWGS AND REGISTERED HOLDING COMPANIES.—The issuance of securities by a registered holding company for purposes of financing the acquisition of an exempt wholesale generator, the guarantee of securities of an exempt wholesale generator by a registered holding company, the entering into service, sales or construction contracts, and the creation or maintenance of any other relationship in addition to that described in subsection (g) between an exempt wholesale generator and a registered holding company, its affiliates and associate companies, shall remain subject to the jurisdiction of the Commission under this Act: *Provided*, That

[(1) section 11 of this Act shall not prohibit the ownership of an interest in the business of one or more exempt wholesale generators by a registered holding company (regardless of where facilities owned or operated by such exempt wholesale generators are located), and such ownership by a registered holding company shall be deemed consistent with the operation of an integrated public utility system;

[(2) the ownership of an interest in the business of one or more exempt wholesale generators by a registered holding company (regardless of where facilities owned or operated by such exempt wholesale generators are located) shall be considered

as reasonably incidental, or economically necessary or appropriate, to the operations of an integrated public utility system;

[(3) in determining whether to approve (A) the issue or sale of a security by a registered holding company for purposes of financing the acquisition of an exempt wholesale generator, or (B) the guarantee of a security of an exempt wholesale generator by a registered holding company, the Commission shall not make a finding that such security is not reasonably adapted to the earning power of such company or to the security structure of such company and other companies in the same holding company system, or that the circumstances are such as to constitute the making of such guarantee an improper risk for such company, unless the Commission first finds that the issue or sale of such security, or the making of the guarantee, would have a substantial adverse impact on the financial integrity of the registered holding company system;

[(4) in determining whether to approve (A) the issue or sale of a security by a registered holding company for purposes other than the acquisition of an exempt wholesale generator, or (B) other transactions by such registered holding company or by its subsidiaries other than with respect to exempt wholesale generators, the Commission shall not consider the effect of the capitalization or earnings of any subsidiary which is an exempt wholesale generator upon the registered holding company system, unless the approval of the issue or sale or other transaction, together with the effect of such capitalization and earnings, would have a substantial adverse impact on the financial integrity of the registered holding company system;

[(5) the Commission shall make its decision under paragraph (3) to approve or disapprove the issue or sale of a security or the guarantee of a security within 120 days of the filing of a declaration concerning such issue, sale or guarantee; and

[(6) the Commission shall promulgate regulations with respect to the actions which would be considered, for purposes of this subsection, to have a substantial adverse impact on the financial integrity of the registered holding company system; such regulations shall ensure that the action has no adverse impact on any utility subsidiary or its customers, or on the ability of State commissions to protect such subsidiary or customers, and shall take into account the amount and type of capital invested in exempt wholesale generators, the ratio of such capital to the total capital invested in utility operations, the availability of books and records, and the financial and operating experience of the registered holding company and the exempt wholesale generator; the Commission shall promulgate such regulations within 6 months after the enactment of this section; after such 6-month period the Commission shall not approve any actions under paragraph (3), (4) or (5) except in accordance with such issued regulations.

[(i) APPLICATION OF ACT TO OTHER ELIGIBLE FACILITIES.—In the case of any person engaged directly and exclusively in the business of owning or operating (or both owning and operating) all or part of one or more eligible facilities, an advisory letter issued by the Commission staff under this Act after the date of enactment of this

section, or an order issued by the Commission under this Act after the date of enactment of this section, shall not be required for the purpose, or have the effect, of exempting such person from treatment as an electric utility company under section 2(a)(3) or exempting such person from any provision of this Act.

**[(j) OWNERSHIP OF EXEMPT WHOLESALE GENERATORS AND QUALIFYING FACILITIES.—**The ownership by a person of one or more exempt wholesale generators shall not result in such person being considered as being primarily engaged in the generation or sale of electric power within the meaning of sections 3(17)(C)(ii) and 3(18)(B)(ii) of the Federal Power Act (16 U.S.C. 796(17)(C)(ii) and 796(18)(B)(ii)).

**[(k) PROTECTION AGAINST ABUSIVE AFFILIATE TRANSACTIONS.—**

**[(1) PROHIBITION.—**After the date of enactment of this section, an electric utility company may not enter into a contract to purchase electric energy at wholesale from an exempt wholesale generator if the exempt wholesale generator is an affiliate or associate company of the electric utility company.

**[(2) STATE AUTHORITY TO EXEMPT FROM PROHIBITION.—**Notwithstanding paragraph (1), an electric utility company may enter into a contract to purchase electric energy at wholesale from an exempt wholesale generator that is an affiliate or associate company of the electric utility company—

**[(A) if every State commission having jurisdiction over the retail rates of such electric utility company makes each of the following specific determinations in advance of the electric utility company entering into such contract:**

**[(i) A determination that such commission has sufficient regulatory authority, resources and access to books and records of the electric utility company and any relevant associate, affiliate or subsidiary company to exercise its duties under this subparagraph.**

**[(ii) A determination that the transaction—**

**[(I) will benefit consumers,**

**[(II) does not violate any State law (including where applicable, least cost planning),**

**[(III) would not provide the exempt wholesale generator any unfair competitive advantage by virtue of its affiliation or association with the electric utility company, and**

**[(IV) is in the public interest; or**

**[(B) if such electric utility company is not subject to State commission retail rate regulation and the purchased electric energy:**

**[(i) would not be resold to any affiliate or associate company, or**

**[(ii) the purchased electric energy would be resold to an affiliate or associate company and every State commission having jurisdiction over the retail rates of such affiliate or associate company makes each of the determinations provided under subparagraph (A), including the determination concerning a State commission's duties.**



[(1) RECIPROCAL ARRANGEMENTS PROHIBITED.—Reciprocal arrangements among companies that are not affiliates or associate companies of each other that are entered into in order to avoid the provisions of this section are prohibited.]

**[SEC. 33. TREATMENT OF FOREIGN UTILITIES.]**

**[(a) EXEMPTIONS FOR FOREIGN UTILITY COMPANIES.—**

[(1) IN GENERAL.—A foreign utility company shall be exempt from all of the provisions of this Act, except as otherwise provided under this section, and shall not, for any purpose under this Act, be deemed to be a public utility company under section 2(a)(5), notwithstanding that the foreign utility company may be a subsidiary company, an affiliate, or an associate company of a holding company or of a public utility company.]

[(2) STATE COMMISSION CERTIFICATION.—Section 1(a)(1) shall not apply or be effective unless every State commission having jurisdiction over the retail electric or gas rates of a public utility company that is an associate company or an affiliate of a company otherwise exempted under section (a)(1) (other than a public utility company that is an associate company or an affiliate of a registered holding company) has certified to the Commission that it has the authority and resources to protect ratepayers subject to its jurisdiction and that it intends to exercise its authority. Such certification, upon the filing of a notice by such State commission, may be revised or withdrawn by the State commission prospectively as to any future acquisition. The requirement of State certification shall be deemed satisfied if the relevant State commission had, prior to the date of enactment of this section, on the basis of prescribed conditions of general applicability; determine that ratepayers of a public utility company are adequately insulated from the effects of diversification and the diversification would not impair the ability of the State commission to regulate effectively the operations of such company.]

[(3) DEFINITION.—For purposes of this section, the term “foreign utility company” means any company that—

[(A) owns or operates facilities that are not located in any State and that are used for the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, if such company—

[(i) derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, within the United States; and

[(ii) neither the company nor any of its subsidiary companies is a public utility company operating in the United States; and

[(B) provides notice to the Commission, in such form as the Commission may prescribe, that such company is a foreign utility company.]

[(b) OWNERSHIP OF FOREIGN UTILITY COMPANIES BY EXEMPT HOLDING COMPANIES.—Notwithstanding any provision of this Act except as provided under this section, a holding company that is

exempt under section 3 of the Act shall be permitted without condition or limitation under the Act to acquire and maintain an interest in the business of one or more foreign utility companies.

**[(c) REGISTERED HOLDING COMPANIES.—**

**[(1) OWNERSHIP OF FOREIGN UTILITY COMPANIES BY REGISTERED HOLDING COMPANIES.—**Notwithstanding any provision of this Act except as otherwise provided under this section, a registered holding company shall be permitted as of the date of enactment of this section (without the need to apply for, or receive approval from the Commission) to acquire and hold the securities or an interest in the business, of one or more foreign utility companies. The Commission shall promulgate rules or regulations regarding registered holding companies' acquisition of interests in foreign utility companies which shall provide for the protection of the customers of a public utility company which is an associate company of a foreign utility company and the maintenance of the financial integrity of the registered holding company system.

**[(2) ISSUANCE OF SECURITIES.—**The issuance of securities by a registered holding company for purposes of financing the acquisition of a foreign utility company, the guarantee of securities of a foreign utility company by a registered holding company, the entering into service, sales, or construction contracts, and the creation or maintenance of any other relationship between a foreign utility company and a registered holding company, its affiliates and associate companies, shall remain subject to the jurisdiction of the Commission under this Act (unless otherwise exempted under this Act, in the case of a transaction with an affiliate or associate company located outside of the United States). Any State commission with jurisdiction over the retail rates of a public utility company which is part of a registered holding company system may make such recommendations to the Commission regarding the registered holding company's relationship to a foreign utility company, and the Commission shall reasonably and fully consider such State recommendation.

**[(3) CONSTRUCTION.—**Any interest in the business of 1 or more foreign utility companies, or 1 or more companies organized exclusively to own, directly or indirectly, the securities or other interest in a foreign utility company, shall for all purposes of his Act, be considered to be—

**[(A)** consistent with the operation of a single integrated public utility system, within the meaning of section 11; and

**[(B)** reasonably incidental, or economically necessary or appropriate, to the operations of an integrated public utility system, within the meaning of section 11.

**[(d) EFFECT ON EXISTING LAW; NO STATE PREEMPTION.—**Nothing in this section shall—

**[(1)** preclude any person from qualifying for or maintaining any exemption otherwise provided for under this Act or the rules, regulations, or orders promulgated or issued under this Act; or

[(2) be deemed or construed to limit the authority of any State (including any State regulatory authority) with respect to—

[(A) any public utility company or holding company subject to such State's jurisdiction; or

[(B) any transaction between any foreign utility company (or any affiliate or associate company thereof) and any public utility company or holding company subject to such State's jurisdiction.

[(e) REPORTING REQUIREMENTS.—

[(1) FILING OF REPORTS.—A public utility company that is an associate company of a foreign utility company shall file with the Commission such reports (with respect to such foreign utility company) as the Commission may by rules, regulations, or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

[(2) NOTICE OF ACQUISITIONS.—Not later than 30 days after the consummation of the acquisition of an interest in a foreign utility company by an associate company of a public utility company that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates or by such public utility company, such associate company or such public utility company, shall provide notice of such acquisition to every State commission having jurisdiction over the retail electric or gas rates of such public utility company, in such form as may be prescribed by the State commission.

[(f) PROHIBITION ON ASSUMPTION OF LIABILITIES.—

[(1) IN GENERAL.—No public utility company that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates shall issue any security for the purpose of financing the acquisition, or for the purposes of financing the ownership or operation, of a foreign utility company, nor shall any such public utility company assume any obligation or liability as guarantor, endorser, surety, or otherwise in respect of any security of a foreign utility company.

[(2) EXCEPTION FOR HOLDING COMPANIES WHICH ARE PREDOMINANTLY PUBLIC UTILITY COMPANIES.—Subsection (f)(1) shall not apply if:

[(A) The public utility company that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates is a holding company and is not an affiliate under section 2(a)(11)(B) of another holding company or is not subject to regulation as a holding company and has no affiliate as defined in section 2(a)(11)(A) that is a public utility company subject to the jurisdiction of a State commission with respect to its retail electric or gas rates; and

[(B) each State commission having jurisdiction with respect to the retail electric and gas rates of such public utility company expressly permits such public utility to engage in a transaction otherwise prohibited under section 1

[(C) the transaction (aggregated with all other then outstanding transactions exempted under this subsection)

does not exceed 5 per centum of the then-outstanding total capitalization of the public utility.

[(g) PROHIBITION ON PLEDGING OR ENCUMBERING UTILITY ASSETS.—No public utility company that is subject to the jurisdiction of State commission with respect to its retail electric or gas rates shall pledge or encumber any utility assets or utility assets of any subsidiary thereof for the benefit of an associate foreign utility company.

**[SEC. 34. EXEMPT TELECOMMUNICATIONS COMPANIES.**

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

[(1) EXEMPT TELECOMMUNICATIONS COMPANY.—The term “exempt telecommunications company” means any person determined by the Federal Communications Commission to be engaged directly or indirectly, wherever located, through one or more affiliates (as defined in section 2(a)(11)(B)), and exclusively in the businesses of providing—

[(A) telecommunications services;

[(B) information services;

[(C) other services or products subject to the jurisdiction of the Federal Communications Commission; or

[(D) products or services that are related or incidental to the provision of a product or service described in subparagraph (A) (B), or (C).

No person shall be deemed to be an exempt telecommunications company under this section unless such person has applied to the Federal Communications Commission for a determination under this paragraph. A person applying in good faith for such a determination shall be deemed an exempt telecommunications company under this section, with all of the exemptions provided by this section, until the Federal Communications Commission makes such determination. The Federal Communications Commission shall make such determination within 60 days of its receipt of any such application filed after the enactment of this section and shall notify the Commission whenever a determination is made under this paragraph that any person is an exempt telecommunications company. Not later than 12 months after the date of enactment of this section, the Federal Communications Commission shall promulgate rules implementing the provisions of this paragraph which shall be applicable to applications filed under this paragraph after the effective date of such rules.

[(2) OTHER TERMS.—For purposes of this section, the terms “telecommunications services” and “information services” shall have the same meanings as provided in the Communications Act of 1934.

[(b) STATE CONSENT FOR SALE OF EXISTING RATE-BASED FACILITIES.—If a rate or charge for the sale of electric energy or natural gas (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge) for, or in connection with, assets of a public utility company that is an associate company or affiliate of a registered holding company was in effect under the laws of any State as of December 19, 1995, the public utility company owning such assets may not sell such assets to an exempt telecommunications company that is an associate company or affiliate unless State commissions having jurisdiction over such

public utility company approve such sale. Nothing in this subsection shall preempt the otherwise applicable authority of any State to approve or disapprove the sale of such assets. The approval of the Commission under this Act shall not be required for the sale of assets as provided in this subsection.

[(c) OWNERSHIP OF ETCS BY EXEMPT HOLDING COMPANIES.—Notwithstanding any provision of this Act, a holding company that is exempt under section 3 of this Act shall be permitted, without condition or limitation under this Act, to acquire and maintain an interest in the business of one or more exempt telecommunications companies.

[(d) OWNERSHIP OF ETCS BY REGISTERED HOLDING COMPANIES.—Notwithstanding any provision of this Act, a registered holding company shall be permitted (without the need to apply for, or receive, approval from the Commission, and otherwise without condition under this Act) to acquire and hold the securities, or an interest in the business, of one or more exempt telecommunications companies.

[(e) FINANCING AND OTHER RELATIONSHIPS BETWEEN ETCS AND REGISTERED HOLDING COMPANIES.—The relationship between an exempt telecommunications company and a registered holding company, its affiliates and associate companies, shall remain subject to the jurisdiction of the Commission under this Act: *Provided, That—*

[(1) section 11 of this Act shall not prohibit the ownership of an interest in the business of one or more exempt telecommunications companies by a registered holding company (regardless of activities engaged in or where facilities owned or operated by such exempt telecommunications companies are located), and such ownership by a registered holding company shall be deemed consistent with the operation of an integrated public utility system;

[(2) the ownership of an interest in the business of one or more exempt telecommunications companies by a registered holding company (regardless of activities engaged in or where facilities owned or operated by such exempt telecommunications companies are located) shall be considered as reasonably incidental, or economically necessary or appropriate, to the operations of an integrated public utility system;

[(3) the Commission shall have no jurisdiction under this Act over, and there shall be no restriction or approval required under this Act with respect to (A) the issue or sale of a security by a registered holding company for purposes of financing the acquisition of an exempt telecommunications company, or (B) the guarantee of a security of an exempt telecommunications company by a registered holding company; and

[(4) except for costs that should be fairly and equitably allocated among companies that are associate companies of a registered holding company, the Commission shall have no jurisdiction under this Act over the sales, service, and construction contracts between an exempt telecommunications company and a registered holding company, its affiliates and associate companies.

**[(f) REPORTING OBLIGATIONS CONCERNING INVESTMENTS AND ACTIVITIES OF REGISTERED PUBLIC-UTILITY HOLDING COMPANY SYSTEMS.—**

**[(1) OBLIGATIONS TO REPORT INFORMATION.—**Any registered holding company or subsidiary thereof that acquires or holds the securities, or an interest in the business, of an exempt telecommunications company shall file with the Commission such information as the Commission, by rule, may prescribe concern

**[(A) investments and activities by the registered holding company, or any subsidiary thereof, with respect to exempt telecommunications companies, and**

**[(B) any activities of an exempt telecommunications company within the holding company system, that are reasonably likely to have a material impact on the financial or operational condition of the holding company system.**

**[(2) AUTHORITY TO REQUIRE ADDITIONAL INFORMATION.—**If, based on reports provided to the Commission pursuant to paragraph (1) of this subsection or other available information, the Commission reasonably concludes that it has concerns regarding the financial or operational condition of any registered holding company or any subsidiary thereof (including an exempt telecommunications company), the Commission may require such registered holding company to make additional reports, and provide additional information.

**[(3) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—**Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under this subsection. Nothing in this subsection shall authorize the Commission to withhold the information from Congress, or prevent the Commission from complying with a request for information from any other Federal or State department or agency requesting the information for purposes within the scope of its jurisdiction. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

**[(g) ASSUMPTION OF LIABILITIES.—**Any public utility company that is an associate company, or an affiliate, of a registered holding company and that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates shall not issue any security for the purpose of financing the acquisition, ownership, or operation of an exempt telecommunications company. Any public utility company that is an associate company, or an affiliate, of a registered holding company and that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates shall not assume any obligation or liability as guarantor, endorser, surety, or otherwise by the public utility company in respect of an security of an exempt telecommunications company.

**[(h) PLEDGING OR MORTGAGING OF ASSETS.—**Any public utility company that is an associate company, or affiliate, of a registered holding company and that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates shall not pledge, mortgage, or otherwise use as collateral any assets of the

public utility company or assets of any subsidiary company thereof for be benefit of an exempt telecommunications company.

[(i) PROTECTION AGAINST ABUSIVE AFFILIATE TRANSACTIONS.—A public utility company may enter into a contract to purchase services or products described in subsection (a)(1) from an exempt telecommunications company that is an affiliate or associate company of the public utility company only if—

[(1) every State commission having jurisdiction over the retail rates of such public utility company approves such contract, or

[(2) such public utility company is not subject to State commission retail rate regulation and the purchased services or product—

[(A) would not be resold to any affiliate or associate company; or

[(B) would be resold to an affiliate or associate company and every State commission having jurisdiction over the retail rates of such affiliate or associate company makes the determination required by subparagraph (A).

The requirements of this subsection shall not apply in any case in which the State or the State commission concerned publishes a notice that the State or State commission waives its authority under this subsection.

[(j) NONPREEMPTION OF RATE AUTHORITY.—Nothing in this Act shall preclude the Federal Energy Regulatory Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public utility company may recover in rates the costs of products or services purchased from or sold to an associate company or affiliate that is an exempt telecommunications company, regardless of whether such costs are incurred through the direct or indirect purchase or sale of products or services from such associate company or affiliate.

[(k) RECIPROCAL ARRANGEMENTS PROHIBITED.—Reciprocal arrangements among companies that are not affiliates or associate companies of each other that are entered into in order to avoid the provisions of this section are prohibited.

[(l) 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) a public utility company subject to its regulatory authority under State law;

[(B) any exempt telecommunications company selling products or services to such public utility company or to an associate company of such public utility company; and

[(C) any associate company or affiliate of an exempt telecommunications company which sells products or services to a public 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 or gas service in connection with the activities of such exempt telecommunications company.

[(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.

[(m) INDEPENDENT AUDIT AUTHORITY FOR STATE COMMISSIONS.—

[(1) STATE MAY ORDER AUDIT.—Any State commission with jurisdiction over a public utility company that—

[(A) is an associate company of a registered holding company; and

[(B) transacts business, directly or indirectly, with a subsidiary company, an affiliate or an associate company that is an exempt telecommunications company, may order an independent audit to be performed, no more frequently than on an annual basis, of all matters deemed relevant by the selected auditor that reasonably relate to retail rates: *Provided*, That such matters relate, directly or indirectly, to transactions or transfers between the public utility company subject to its jurisdiction and such exempt telecommunications company.

[(2) SELECTION OF FIRM TO CONDUCT AUDIT.—(A) If a State commission orders an audit in accordance with paragraph (1), the public utility company and the State commission shall jointly select, within 60 days, a firm to perform the audit. The firm selected to perform the audit shall possess demonstrated qualifications relating to—

[(i) competency, including adequate technical training and professional proficiency in each discipline necessary to carry out the audit; and

[(ii) independence and objectivity, including that the firm be free from personal or external impairments to independence, and should assume an independent position with the State commission and auditee, making certain that the audit is based upon an impartial consideration of all pertinent facts and responsible opinions.

[(B) The public utility company and the exempt telecommunications company shall cooperate fully with all reasonable requests necessary to perform the audit and the public utility company shall bear all costs of having the audit performed.

[(3) AVAILABILITY OF AUDITOR'S REPORT.—The auditor's report shall be provided to the State commission not later than 6 months after the selection of the auditor, and provided to the public utility company not later than 60 days thereafter.

[(n) APPLICABILITY OF TELECOMMUNICATIONS REGULATION.—Nothing in this section shall affect the authority of the Federal Communications Commission under the Communications Act of 1934, or the authority of State commissions under State laws concerning the provision of telecommunications services, to regulate the activities of an exempt telecommunications company.



**[SEPARABILITY OF PROVISIONS**

[SEC. 35. If any provision of this title or the application of such provision to any person or circumstances shall be held invalid, the remainder of the title and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

**[SHORT TITLE**

[SEC. 36. This title may be cited as the Public Utility Holding Company Act of 1935". ]

**PUBLIC UTILITY REGULATORY POLICIES ACT  
OF 1978—PUBLIC LAW 95-617, AS AMENDED  
(16 U.S.C. 2601 ET SEQ.)**

\* \* \* \* \*

**SEC. 111. CONSIDERATION AND DETERMINATION RESPECTING CERTAIN RATEMAKING STANDARDS.**

\* \* \* \* \*

(d) ESTABLISHMENT.—The following Federal standards are hereby established:

\* \* \* \* \*

(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 the planned capacity obligations of a utility.*

(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.—(A) *In this paragraph, the term “interconnection service” means service to an electric consumer by which an on-site generating facility on the premises of the electric consumer is connected to the local distribution facilities.*

(B)(i) *Each electric utility shall make available, on request, interconnection service to any electric consumer that the electric utility serves.*

(ii) *Interconnection services shall be made available under clause (i) based on the standards developed by the Institute of Electrical and Electronics Engineers, entitled IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems (or successor standards).*

(C)(i) *Electric utilities shall establish agreements and procedures providing that the interconnection services made available under subparagraph (B) promote current best practices of interconnection for distributed generation, including practices stipulated in model codes adopted by associations of State regulatory agencies.*

(ii) *Any agreements and procedures established under clause (i) shall be just and reasonable and not unduly discriminatory or preferential.*

\* \* \* \* \*

(e) **ENERGY EFFICIENCY RESOURCE PROGRAMS.—**

(1) **DEFINITIONS.—***In this subsection:*

(A) **DEMAND BASELINE.—***The term “demand baseline” means the baseline determined by the Secretary for an appropriate period preceding the implementation of an energy efficiency resource program.*

(B) **ENERGY EFFICIENCY RESOURCE PROGRAMS.—***The term “energy efficiency resource program” means an energy efficiency or other demand reduction program that is designed to reduce annual electricity consumption or peak demand of consumers served by an electric utility by a percentage of the demand baseline of the utility that is equal to not less than 0.75 percent of the number of years during which the program is in effect.*

(2) **PUBLIC HEARINGS; DETERMINATIONS.—**

(A) *As soon as practicable after the date of enactment of this subsection, but not later than 3 years after that date, each State regulatory authority (with respect to each electric utility over which the State has ratemaking authority) and each nonregulated electric utility shall, after notice, conduct a public hearing on the benefits and feasibility of implementing an energy efficiency resource program.*

(B) *A State regulatory authority or nonregulated utility shall implement an energy efficiency resource program if, on the basis of a hearing under subparagraph (A), the State regulatory authority or nonregulated utility determines that the program would—*

- (i) *benefit end-use customers;*
- (ii) *be cost-effective based on total resource cost;*
- (iii) *serve the public welfare; and*
- (iv) *be feasible to implement.*

(3) **IMPLEMENTATION.—**

(A) **STATE REGULATORY AUTHORITIES.—***If a State regulatory authority makes a determination under paragraph (2)(B), the State regulatory authority shall—*

(i) require each electric utility over which the State has ratemaking authority to implement an energy efficiency resource program; and

(ii) allow such a utility to recover any expenditures incurred by the utility in implementing the energy efficiency resource program.

(B) *NONREGULATED ELECTRIC UTILITIES.*—If a nonregulated electric utility makes a determination under paragraph (2)(B), the utility shall implement an energy efficiency resource program.

(4) *UPDATING REGULATIONS.*—A State regulatory authority or nonregulated utility may update periodically a determination under paragraph (2)(B) to determine whether an energy efficiency resource program should be—

- (A) continued;
- (B) modified; or
- (C) terminated.

(5) *EXCEPTION.*—Paragraph (2) shall not apply to a State regulatory authority (or any nonregulated electric utility operating in the State) that demonstrates to the Secretary that an energy efficiency resource program is in effect in the State.

\* \* \* \* \*

**SEC. 112. OBLIGATIONS TO CONSIDER AND DETERMINE.**

\* \* \* \* \*

(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 date of enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which the State regulatory authority has ratemaking authority) and each nonregulated utility shall, with respect to the standard established by section 111(d)(15)—

- (i) commence the consideration under section 111(a); or
- (ii) set a hearing date for the consideration.

(B) Not later than 2 years after the date of enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which the State regulatory authority has ratemaking authority) and each nonregulated electric utility shall, with respect to the standard established by section 111(d)(15), complete the consideration and make the determination under section 111(a).

(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) 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 (15).

(d) PRIOR STATE ACTIONS.—Subsections (b) and (c) of this section shall not apply to the standards established by paragraphs (11) through (13) 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) or (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 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.*

\* \* \* \* \*

**SEC. 115. SPECIAL RULES FOR STANDARDS.**

\* \* \* \* \*

(b) **TIME-OF-DAY RATES.**—*In undertaking the consideration and making the determination required under section 111 with respect to the standard for time-of-day rates established by section 111(d)(3) and the standard for time-based metering and communications established by section 111(d)(14) a time-of-day rate charged by an electric utility for providing electric service to each class of electric consumers shall be determined to be cost-effective with respect to each such class if the long-run benefits of such rate to the electric utility and its electric consumers in the class concerned are likely to exceed the metering and communications costs and other costs associated with the use of such rates.*

\* \* \* \* \*

(i) **TIME-BASED METERING AND COMMUNICATIONS.**—*In making a determination with respect to the standard established by section 111(d)(14), the investigation requirement of section 111(d)(14)(F) shall be as follows: Each State regulatory authority shall conduct an investigation and issue a decision whether or not it is appropriate for electric utilities to provide and install time-based meters and communications devices for each of their customers which enable such customers to participate in time-based pricing rate schedules and other demand response programs.*

\* \* \* \* \*

**SEC. 124. PRIOR AND PENDING PROCEEDINGS.**

For purposes of subtitle A and B, and this subtitle, proceedings commenced by State regulatory authorities (with respect to electric utilities for which it has ratemaking authority) and nonregulated electric utilities before the date of the enactment of this Act and actions taken before such date in such proceedings shall be treated

as complying with the requirements of subtitles A and B, and this subtitle if such proceedings and actions, substantially conform to such requirements. For purposes of subtitles A and B, and this subtitle, any such proceeding or action commenced before the date of enactment of this Act, but not completed before such date, shall comply with the requirements of subtitles A and B, and this subtitle, to the maximum extent practicable, with respect to so much of such proceeding or action as takes place after such date, except as otherwise provided in section 121(c). *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) or (15) 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) or (15).*

\* \* \* \* \*

**SEC. 132. RESPONSIBILITIES OF SECRETARY OF ENERGY.**

(a) \* \* \*

- (1) load management techniques and the results of studies and experiments concerning load management techniques;
- (2) developments and innovations in electric utility rate making throughout the United States, including the results of studies and experiments in rate structure and rate reform;
- (3) methods for determining cost of service; **[and]**
- (4) any other data or information which the Secretary determines would assist such authorities and utilities in carrying out the provisions of this title~~].~~ *and*
- (5) *technologies, techniques, and rate-making methods related to advanced metering and communications and the use of these technologies, techniques and methods in demand response programs.*

\* \* \* \* \*

(d) **DEMAND RESPONSE.**—*The Secretary shall be responsible for—*

- (1) *educating consumers on the availability, advantages, and benefits of advanced metering and communications technologies, including the funding of demonstration or pilot projects;*
- (2) *working with States, utilities, other energy providers and advanced metering and communications experts to identify and address barriers to the adoption of demand response programs; and*
- (3) *not later than 180 days after the date of enactment of the Energy Policy Act of 2005, providing Congress with a report that identifies and quantifies the national benefits of demand response and makes a recommendation on achieving specific levels of such benefits by January 1, 2005.*

\* \* \* \* \*

**SEC. 210. COGENERATION AND SMALL, POWER PRODUCTION.**

\* \* \* \* \*

(n) \* \* \*

(m) **TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.**—

(1) **OBLIGATION TO PURCHASE.**—*After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that the qualifying cogeneration facility or qualifying small power production facility has nondiscriminatory access to—*

(A)(i) *independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and (ii) wholesale markets for long-term sales of capacity and electric energy; or*

(B)(i) *transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and (ii) competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful opportunity to sell exists, the Commission shall consider, among other factors, evidence of transactions within the relevant market; or*

(C) *wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in subparagraphs (A) and (B).*

(2) **REVISED PURCHASE AND SALE OBLIGATION FOR NEW FACILITIES.**—(A) *After the date of enactment of this subsection, no electric utility shall be required pursuant to this section to enter into a new contract or obligation to purchase from or sell electric energy to a facility that is not an existing qualifying cogeneration facility unless the facility meets the criteria for qualifying cogeneration facilities established by the Commission pursuant to the rulemaking required by subsection (n).*

(B) *For the purposes of this paragraph, the term “existing qualifying cogeneration facility” means a facility that—*

(i) *was a qualifying cogeneration facility on the date of enactment of subsection (m); or*

(ii) *had filed with the Commission a notice of self-certification, self recertification or an application for Commission certification under 18 C.F.R. 292.207 prior to the date on which the Commission issues the final rule required by subsection (n).*

(3) **COMMISSION REVIEW.**—*Any electric utility may file an application with the Commission for relief from the mandatory purchase obligation pursuant to this subsection on a service territory-wide basis. Such application shall set forth the factual basis upon which relief is requested and describe why the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) of this subsection have been met. After notice, including suf-*



sufficient notice to potentially affected qualifying cogeneration facilities and qualifying small power production facilities, and an opportunity for comment, the Commission shall make a final determination within 90 days of such application regarding whether the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) have been met.

(4) *REINSTATEMENT OF OBLIGATION TO PURCHASE.*—At any time after the Commission makes a finding under paragraph (3) relieving an electric utility of its obligation to purchase electric energy, a qualifying cogeneration facility, a qualifying small power production facility, a State agency, or any other affected person may apply to the Commission for an order reinstating the electric utility's obligation to purchase electric energy under this section. Such application shall set forth the factual basis upon which the application is based and describe why the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) of this subsection are no longer met. After notice, including sufficient notice to potentially affected utilities, and opportunity for comment, the Commission shall issue an order within 90 days of such application reinstating the electric utility's obligation to purchase electric energy under this section if the Commission finds that the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) which relieved the obligation to purchase, are no longer met.

(5) *OBLIGATION TO SELL.*—After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to sell electric energy to a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that—

(A) competing retail electric suppliers are willing and able to sell and deliver electric energy to the qualifying cogeneration facility or qualifying small power production facility; and

(B) the electric utility is not required by State law to sell electric energy in its service territory.

(6) *NO EFFECT ON EXISTING RIGHTS AND REMEDIES.*—Nothing in this subsection affects the rights or remedies of any party under any contract or obligation, in effect or pending approval before the appropriate State regulatory authority or non-regulated electric utility on the date of enactment of this subsection, to purchase electric energy or capacity from or to sell electric energy or capacity to a qualifying cogeneration facility or qualifying small power production facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

(7) *RECOVERY OF COSTS.*—(A) The Commission shall issue and enforce such regulations as are necessary to ensure that an electric utility that purchases electric energy or capacity from a qualifying cogeneration facility or qualifying small power production facility in accordance with any legally enforceable obligation entered into or imposed under this section recovers all prudently incurred costs associated with the purchase.

(B) A regulation under subparagraph (A) shall be enforceable in accordance with the provisions of law applicable to enforce-

ment of regulations under the Federal Power Act (16 U.S.C. 791a et seq.).

(n) RULEMAKING FOR NEW QUALIFYING FACILITIES.—(1)(A) Not later than 180 days after the date of enactment of this section, the Commission shall issue a rule revising the criteria in 18 C.F.R. 292.205 for new qualifying cogeneration facilities seeking to sell electric energy pursuant to section 210 of this Act to ensure—

(i) that the thermal energy output of a new qualifying cogeneration facility is used in a productive and beneficial manner;

(ii) the electrical, thermal, and chemical output of the cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as State laws applicable to sales of electric energy from a qualifying facility to its host facility; and

(iii) continuing progress in the development of efficient electric energy generating technology.

(B) The rule issued pursuant to section (n)(1)(A) shall be applicable only to facilities that seek to sell electric energy pursuant to section 210 of this Act. For all other purposes, except as specifically provided in section (m)(2)(A), qualifying facility status shall be determined in accordance with the rules and regulations of this Act.

(2) Notwithstanding rule revisions under paragraph (1), the Commission's criteria for qualifying cogeneration facilities in effect prior to the date on which the Commission issues the final rule required by paragraph (1) shall continue to apply to any cogeneration facility that—

(A) was a qualifying cogeneration facility on the date of enactment of subsection (m), or

(B) had filed with the Commission a notice of self-certification, self-recertification or an application for Commission certification under 18 C.F.R. 292.207 prior to the date on which the Commission issues the final rule required by paragraph (1).

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**TITLE III—RETAIL POLICIES FOR NATURAL GAS UTILITIES**

\* \* \* \* \*

**SEC. 303. Adoption of certain standards.**

\* \* \* \* \*

(e) ENERGY EFFICIENCY RESOURCE PROGRAMS.—

(1) DEFINITIONS.—In this subsection:

(A) DEMAND BASELINE.—The term “demand baseline” means the baseline determined by the Secretary for an appropriate period preceding the implementation of an energy efficiency resource program.

(B) ENERGY EFFICIENCY RESOURCE PROGRAMS.—The term “energy efficiency resource program” means an energy efficiency or other demand reduction program that is designed to reduce annual gas consumption or peak demand of consumers served by a gas utility by a percentage of the de-

mand baseline of the utility that is equal to not less than 0.75 percent of the number of years during which the program is in effect.

(2) PUBLIC HEARINGS; DETERMINATIONS.—

(A) As soon as practicable after the date of enactment of this subsection, but not later than 3 years after that date, each State regulatory authority (with respect to each gas utility over which the State has ratemaking authority) and each nonregulated gas utility shall, after notice, conduct a public hearing on the benefits and feasibility of implementing an energy efficiency resource program.

(B) A State regulatory authority or nonregulated utility shall implement an energy efficiency resource program if, on the basis of a hearing under subparagraph (A), the State regulatory authority or nonregulated utility determines that the program would—

- (i) benefit end-use customers;
- (ii) be cost-effective based on total resource cost;
- (iii) serve the public welfare; and
- (iv) be feasible to implement.

(3) IMPLEMENTATION.—

(A) STATE REGULATORY AUTHORITIES.—If a State regulatory authority makes a determination under paragraph (2)(B), the State regulatory authority shall—

- (i) require each gas utility over which the State has ratemaking authority to implement an energy efficiency resource program; and
- (ii) allow such a utility to recover any expenditures incurred by the utility in implementing the energy efficiency resource program.

(B) NONREGULATED GAS UTILITIES.—If a nonregulated gas utility makes a determination under paragraph (2)(B), the utility shall implement an energy efficiency resource program.

(4) UPDATING REGULATIONS.—A State regulatory authority or nonregulated utility may update periodically a determination under paragraph (2)(B) to determine whether an energy efficiency resource program should be—

- (A) continued;
- (B) modified; or
- (C) terminated.

(5) EXCEPTION.—Paragraph (2) shall not apply to a State regulatory authority (or any nonregulated gas utility operating in the State) that demonstrates to the Secretary that an energy efficiency resource program is in effect in the State.

\* \* \* \* \*