

110TH CONGRESS  
1ST SESSION

# S. 1599

To amend the National Energy Conservation Policy Act to provide for energy-related regulatory reform, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 12, 2007

Mr. HAGEL introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To amend the National Energy Conservation Policy Act to provide for energy-related regulatory reform, and for other purposes.

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

3 **SECTION 1. PROCESS COORDINATION AND RULES OF PRO-**  
4 **CEDURE.**

5 (a) DEFINITIONS.—In this section:

6 (1) ADMINISTRATOR.—The term “Adminis-  
7 trator” means the Administrator of the Environ-  
8 mental Protection Agency.

1           (2) CHAIRPERSON.—The term “Chairperson”  
2 means the Chairperson of the Nuclear Regulatory  
3 Commission.

4           (3) FEDERAL ENERGY AUTHORIZATION.—

5           (A) IN GENERAL.—The term “Federal en-  
6 ergy authorization” means any authorization  
7 required under Federal law (including regula-  
8 tions), regardless of whether the law is adminis-  
9 tered by a Federal or State administrative  
10 agency or official, with respect to the siting,  
11 construction, expansion, or operation of an en-  
12 ergy facility, including—

13           (i) a coal-fired electric generating  
14 plant;

15           (ii) a nuclear power electric gener-  
16 ating plant;

17           (iii) a natural gas-fired electric gener-  
18 ating plant;

19           (iv) a waste-to-energy facility;

20           (v) a geothermal electric generating  
21 facility;

22           (vi) a wind or solar electric generating  
23 facility;

24           (vii) a petroleum refinery;

25           (viii) a biorefinery;

- 1 (ix) a biogas conversion unit;  
2 (x) a shale-oil production site; or  
3 (xi) an oil or gas exploration and pro-  
4 duction lease.

5 (B) INCLUSIONS.—The term “Federal en-  
6 ergy authorization” includes any permit, special  
7 use authorization, certification, opinion, or  
8 other approval required under Federal law (in-  
9 cluding regulations) with respect to the siting,  
10 construction, expansion, or operation of an en-  
11 ergy facility referred to in subparagraph (A).

12 (b) DESIGNATION AS LEAD AGENCY.—

13 (1) IN GENERAL.—Except as provided in para-  
14 graph (2), the Environmental Protection Agency  
15 shall act as the lead agency for the purposes of co-  
16 ordinating all Federal energy authorizations and re-  
17 lated environmental reviews.

18 (2) EXCEPTION.—In the case of a nuclear  
19 power electric generating facility, the Nuclear Regu-  
20 latory Commission shall act as the lead agency for  
21 purposes of coordinating all Federal nuclear energy  
22 authorizations.

23 (3) OTHER AGENCIES.—Each Federal or State  
24 agency or official required to provide a Federal en-  
25 ergy authorization shall cooperate with the Adminis-

1 trator or the Chairperson, as applicable, including by  
2 complying with any applicable deadline relating to  
3 the Federal energy authorization established by the  
4 Administrator or Chairperson under subsection (c).

5 (c) SCHEDULE.—

6 (1) AUTHORITY OF ADMINISTRATOR.—The Ad-  
7 ministrator shall establish a schedule for all Federal  
8 energy authorizations as the Administrator deter-  
9 mines to be appropriate—

10 (A) to ensure expeditious completion of all  
11 proceedings relating to Federal energy author-  
12 izations; and

13 (B) to accommodate any applicable related  
14 schedules established by Federal law (including  
15 regulations).

16 (2) AUTHORITY OF CHAIRPERSON.—The Chair-  
17 person shall collaborate with the Administrator to  
18 establish an appropriate schedule for all environ-  
19 mental authorizations required with respect to facili-  
20 ties described in subsection (b)(2) that—

21 (A) takes into consideration the longer lead  
22 time required by the permitting process for nu-  
23 clear power electric generating facilities; and

24 (B) allows for simultaneous environmental  
25 and security reviews of potential sites to provide

1           for joint authorization of the sites by the Ad-  
2           ministrator and the Chairperson.

3           (3) FAILURE TO MEET SCHEDULE.—If a Fed-  
4           eral or State administrative agency or official fails  
5           to complete a proceeding for any approval required  
6           for a Federal energy authorization in accordance  
7           with the schedule established under paragraph (1) or  
8           (2), any affected applicant for the Federal energy  
9           authorization may seek judicial review of the failure  
10          under subsection (e).

11          (d) CONSOLIDATED RECORD.—

12           (1) IN GENERAL.—Except as provided in para-  
13          graph (2), the Administrator, in cooperation with  
14          Federal and State administrative agencies and offi-  
15          cials, shall maintain a complete consolidated record  
16          of all decisions made and all actions carried out by  
17          the Administrator or a Federal or State administra-  
18          tive agency or officer with respect to any Federal en-  
19          ergy authorization.

20           (2) EXCEPTION.—The Chairperson, in coopera-  
21          tion with the Administrator and other Federal and  
22          State administrative agencies and officials, shall  
23          maintain a complete consolidated record of all deci-  
24          sions made and all actions carried out by the Com-  
25          missioner or a Federal or State administrative agen-

1 cy or officer with respect to any Federal authoriza-  
2 tion of a nuclear power electric generating facility.

3 (3) TREATMENT.—

4 (A) IN GENERAL.—Except as provided in  
5 subparagraph (B), the records under para-  
6 graphs (1) and (2) shall serve as the record for  
7 a decision or action for purposes of judicial re-  
8 view of the decision or action under subsection  
9 (e).

10 (B) EXCEPTION.—If the United States  
11 Court of Appeals for the District of Columbia  
12 determines that a record under paragraph (1)  
13 or (2) contains insufficient information, the  
14 court may remand the proceeding to the Ad-  
15 ministrator for development of the record.

16 (e) JUDICIAL REVIEW.—

17 (1) IN GENERAL.—The United States Court of  
18 Appeals for the District of Columbia shall have  
19 original and exclusive jurisdiction over any civil ac-  
20 tion for the review of—

21 (A) an order or action by a Federal or  
22 State administrative agency or official relating  
23 to a Federal energy authorization; or

1 (B) an alleged failure to act by a Federal  
2 or State administrative agency or official with  
3 respect to a Federal energy authorization.

4 (2) REMAND.—

5 (A) IN GENERAL.—The court shall remand  
6 a proceeding to the applicable agency or official  
7 in any case in which the court determines under  
8 paragraph (1) that—

9 (i)(I) an order or action described in  
10 paragraph (1)(A) is inconsistent with the  
11 Federal law applicable to the Federal en-  
12 ergy authorization;

13 (II) a failure to act described in para-  
14 graph (1)(B) has occurred; or

15 (III) a Federal or State administra-  
16 tive agency or official failed to meet an ap-  
17 plicable deadline under subsection (c) with  
18 respect to a Federal energy authorization;  
19 and

20 (ii) the order, action, or failure to act  
21 would prevent the siting, construction, ex-  
22 pansion, or operation of an energy facility  
23 referred to in subsection (a)(2)(A).

24 (B) SCHEDULE.—On remand of an order,  
25 action, or failure to act under subparagraph

1 (A), the court shall establish a reasonable  
2 schedule and deadline for the agency or official  
3 to act with respect to the remand.

4 (3) ACTION BY LEAD AGENCY.—

5 (A) IN GENERAL.—Except as provided in  
6 subparagraph (B), for any civil action brought  
7 under this subsection, the Administrator shall  
8 promptly file with the court the consolidated  
9 record compiled by the Administrator pursuant  
10 to subsection (d)(1).

11 (B) EXCEPTION.—For any civil action  
12 brought under this subsection with respect to a  
13 nuclear power electric generating facility, the  
14 Chairperson shall promptly file with the court  
15 the consolidated record compiled by the Chair-  
16 person pursuant to subsection (d)(2).

17 (4) EXPEDITED CONSIDERATION.—The Court  
18 shall provide expedited consideration of any civil ac-  
19 tion brought under this subsection.

20 (5) ATTORNEY'S FEES.—

21 (A) IN GENERAL.—Except as provided in  
22 subparagraph (B), in any action challenging a  
23 Federal energy authorization that has been  
24 granted, reasonable attorney's fees and other



1 expenses of the litigation shall be awarded to  
2 the prevailing party.

3 (B) EXCEPTION.—Subparagraph (A) shall  
4 not apply to any action seeking a remedy for—

5 (i) denial of a Federal energy author-  
6 ization; or

7 (ii) failure to act on an application for  
8 a Federal energy authorization.

9 **SEC. 2. ENERGY SECURITY AND REGULATORY REFORM.**

10 (a) ENERGY-RELATED REGULATORY REFORM.—  
11 Title V of the National Energy Conservation Policy Act  
12 (42 U.S.C. 8241 et seq.) is amended by adding at the end  
13 the following:

14 **“PART 5—ENERGY-RELATED REGULATORY**  
15 **REFORM**

16 **“SEC. 571. DEFINITIONS.**

17 “In this part:

18 “(1) ADVISORY COMMITTEE.—The term ‘advi-  
19 sory committee’ means an advisory committee estab-  
20 lished under section 572(a).

21 “(2) APPLICABLE AGENCY.—The term ‘applica-  
22 ble agency’ means any Federal department or agen-  
23 cy that, during the 10-year period ending on the  
24 date on which an advisory committee is established,  
25 promulgated a major rule.

1           “(3) BENEFIT.—The term ‘benefit’, with re-  
2           spect to a rule, means any reasonably identifiable,  
3           significant, and favorable effect (whether quantifi-  
4           able or unquantifiable), including a social, health,  
5           safety, environmental, economic, energy, or distribu-  
6           tional effect, that is expected to result, directly or  
7           indirectly, from the implementation of, or compli-  
8           ance with, the rule.

9           “(4) COST.—The term ‘cost’, with respect to a  
10          rule, means any reasonably identifiable and signifi-  
11          cant adverse effect (whether quantifiable or  
12          unquantifiable), including a social, health, safety, en-  
13          vironmental, economic, energy, or distributional ef-  
14          fect, that is expected to result, directly or indirectly,  
15          from the implementation of, or compliance with, the  
16          rule.

17          “(5) ENERGY RULE.—The term ‘energy rule’  
18          means a major rule that has a direct impact on the  
19          production, distribution, or consumption of energy,  
20          as determined by the Secretary of Energy.

21          “(6) FLEXIBLE REGULATORY OPTION.—

22                 “(A) IN GENERAL.—The term ‘flexible reg-  
23                 ulatory option’ means an option at a point in  
24                 the regulatory process that provides flexibility

1 to any person subject to an applicable rule with  
2 respect to complying with the rule.

3 “(B) INCLUSION.—The term ‘flexible regu-  
4 latory option’ includes any option described in  
5 subparagraph (A) that uses—

6 “(i) a market-based mechanism;

7 “(ii) an outcome-oriented, perform-  
8 ance-based standard; or

9 “(iii) any other option that promotes  
10 flexibility, as determined by the head of  
11 the applicable agency.

12 “(7) MAJOR RULE.—The term ‘major rule’  
13 means a rule or group of closely related rules—

14 “(A) the reasonably quantifiable increased  
15 direct and indirect costs of which are likely to  
16 have a gross annual effect on the United States  
17 economy of at least \$100,000,000, or that has  
18 a significant impact on a sector of the economy,  
19 as determined by—

20 “(i) the head of the agency proposing  
21 the rule; or

22 “(ii) the President (or a designee); or

23 “(B) that is otherwise designated as a  
24 major rule by the head of the agency proposing  
25 the rule or the President (or a designee), based

1 on a determination that the rule is likely to re-  
2 sult in—

3 “(i) a substantial increase in costs  
4 for—

5 “(I) consumers;

6 “(II) an industrial sector;

7 “(III) nonprofit organizations;

8 “(IV) any Federal, State, or local  
9 governmental agency; or

10 “(V) a geographical region;

11 “(ii) a significant adverse effect on—

12 “(I) competition, employment, in-  
13 vestment, productivity, innovation,  
14 health, safety, or the environment; or

15 “(II) the ability of enterprises  
16 with principal places of business in  
17 the United States to compete in do-  
18 mestic or international markets;

19 “(iii) a serious inconsistency or inter-  
20 ference with an action carried out or  
21 planned to be carried out by another Fed-  
22 eral agency;

23 “(iv) the material alteration of the  
24 budgetary impact of—

1                   “(I) entitlements, grants, user  
2 fees, or loan programs; or

3                   “(II) the rights and obligations  
4 of recipients of such a program; or

5                   “(v) disproportionate costs to a class  
6 of regulated persons, including relatively  
7 severe economic consequences for that  
8 class.

9                   “(8) RULE.—

10                   “(A) IN GENERAL.—The term ‘rule’ has  
11 the meaning given the term in section 551 of  
12 title 5, United States Code.

13                   “(B) INCLUSION.—The term ‘rule’ includes  
14 any statement of general applicability that al-  
15 ters or creates a right or obligation of a person  
16 not employed by the applicable regulatory agen-  
17 cy.

18                   “(C) EXCLUSIONS.—The term ‘rule’ does  
19 not include—

20                   “(i) a rule of particular applicability  
21 that approves or prescribes—

22                   “(I) future rates, wages, prices,  
23 services, corporate or financial struc-  
24 tures, reorganizations, mergers, acqui-  
25 sitions, or accounting practices; or

1           “(II) any disclosure relating to  
2           an item described in subclause (I);

3           “(ii) a rule relating to monetary policy  
4           or to the safety or soundness of an institu-  
5           tion (including any affiliate, branch, agen-  
6           cy, commercial lending company, or rep-  
7           resentative office of the institution (within  
8           the meaning of the International Banking  
9           Act of 1956 (12 U.S.C. 1841 et seq.)) that  
10          is—

11                 “(I) a federally-insured deposi-  
12                 tory institution or any affiliate of such  
13                 an institution (as defined in section  
14                 2(k) of the Bank Holding Company  
15                 Act of 1956 (12 U.S.C. 1841(k));

16                 “(II) a credit union;

17                 “(III) a Federal home loan bank;

18                 “(IV) a government-sponsored  
19                 housing enterprise;

20                 “(V) a farm credit institution; or

21                 “(VI) a foreign bank that oper-  
22                 ates in the United States; or

23                 “(iii) a rule relating to—

24                         “(I) the payment system; or

25                         “(II) the protection of—

1                   “(aa) deposit insurance  
2 funds; or

3                   “(bb) the farm credit insur-  
4 ance fund.

5 **“SEC. 572. ADVISORY COMMITTEES FOR ENERGY RULES.**

6       “(a) ESTABLISHMENT.—Not later than 90 days after  
7 the date of enactment of this part, and every 5 years  
8 thereafter, the head of each applicable agency shall estab-  
9 lish an advisory committee to review all energy rules pro-  
10 mulgated by the applicable agency during the 10-calendar-  
11 year period ending on the date on which the advisory com-  
12 mittee is established.

13       “(b) MEMBERSHIP.—

14           “(1) IN GENERAL.—The head of an applicable  
15 agency shall appoint not more than 15 members to  
16 serve on an advisory committee.

17           “(2) REQUIREMENT.—In appointing members  
18 to serve on an advisory committee under paragraph  
19 (1), the head of the applicable agency shall ensure  
20 that the membership of the advisory committee re-  
21 flects a balanced cross-section of public and private  
22 parties affected by energy rules issued by the appli-  
23 cable agency, including—

24                   “(A) small businesses;

1           “(B) units of State and local government;  
2           and

3           “(C) public interest groups.

4           “(3) PROHIBITION ON FEDERAL GOVERNMENT  
5           EMPLOYMENT.—A member of an advisory committee  
6           appointed under paragraph (1) shall not be an em-  
7           ployee of the applicable agency for which the advi-  
8           sory committee is established.

9           “(c) TERM; VACANCIES.—

10           “(1) TERM.—A member shall be appointed for  
11           the life of an advisory committee.

12           “(2) VACANCIES.—A vacancy on an advisory  
13           committee—

14           “(A) shall not affect the powers of the ad-  
15           visory committee; and

16           “(B) shall be filled in the same manner as  
17           the original appointment was made.

18           “(d) CHAIRPERSON; PANELS.—The head of an appli-  
19           cable agency—

20           “(1) shall select a Chairperson from among the  
21           members of an advisory committee; and

22           “(2) may establish such panels as the head de-  
23           termines to be necessary to assist an advisory com-  
24           mittee in carrying out duties of the advisory com-  
25           mittee.



1 “(e) DUTIES.—

2 “(1) IN GENERAL.—An advisory committee  
3 shall review all energy rules promulgated by the ap-  
4 plicable agency for which the advisory committee is  
5 established during the 10-calendar-year period end-  
6 ing on the date on which the advisory committee is  
7 established, in accordance with section 573.

8 “(2) PUBLIC PARTICIPATION.—An advisory  
9 committee shall solicit public comment with respect  
10 to energy rules reviewed by the advisory committee  
11 through appropriate means, including—

12 “(A) hearings;

13 “(B) written comments;

14 “(C) public meetings; and

15 “(D) electronic mail.

16 “(f) TRAVEL EXPENSES.—A member of an advisory  
17 committee shall be allowed travel expenses, including per  
18 diem in lieu of subsistence, at rates authorized for an em-  
19 ployee of an agency under subchapter I of chapter 57 of  
20 title 5, United States Code, while away from the home  
21 or regular place of business of the member in the perform-  
22 ance of the duties of the advisory committee.

23 “(g) TERMINATION.—An advisory committee shall  
24 terminate on the date that is 5 years after the date on  
25 which the advisory committee is established.

1 **“SEC. 573. REVIEW OF ENERGY RULES.**

2 “(a) LIST.—

3 “(1) IN GENERAL.—An advisory committee  
4 shall develop a list describing each energy rule pro-  
5 mulgated during the preceding 10-year period by the  
6 applicable agency for which the advisory committee  
7 is established that, as determined by the advisory  
8 committee—

9 “(A) should be reviewed by the head of the  
10 applicable agency; and

11 “(B) reasonably could be subject to such a  
12 review during the 5-calendar-year period begin-  
13 ning on the date on which the energy rule is in-  
14 cluded on the list.

15 “(2) FACTORS FOR CONSIDERATION.—In devel-  
16 oping a list under paragraph (1), an advisory com-  
17 mittee shall take into consideration—

18 “(A) the cost of an energy rule with re-  
19 spect to energy production or energy efficiency  
20 of any individual or entity subject to the energy  
21 rule;

22 “(B) the extent to which an energy rule  
23 could be revised to substantially increase net  
24 benefits of the energy rule, including through  
25 flexible regulatory options;

1           “(C) the relative importance of an energy  
2 rule, as compared to other energy rules consid-  
3 ered for inclusion on the list; and

4           “(D) the discretion of the applicable agen-  
5 cy under an applicable authorizing law or regu-  
6 lation to modify or repeal the energy rule.

7           “(3) SUBMISSION.—Not later than 1 year after  
8 the date on which an advisory committee is estab-  
9 lished and annually thereafter, the advisory com-  
10 mittee shall submit to the head of the applicable  
11 agency for which the advisory committee is estab-  
12 lished the list developed under paragraph (1), with  
13 each energy rule represented on the list in descend-  
14 ing order of importance, in accordance with the pri-  
15 ority assigned to review of the energy rule by the ad-  
16 visory committee.

17           “(4) ACTION BY APPLICABLE AGENCY.—As  
18 soon as practicable after receipt of a list under para-  
19 graph (3), the head of an applicable agency shall—

20           “(A) publish the list in the Federal Reg-  
21 ister; and

22           “(B) submit to Congress a copy of the list.

23           “(b) SCHEDULES FOR REVIEW.—

24           “(1) PRELIMINARY SCHEDULE.—

1           “(A) IN GENERAL.—Not later than 60  
2 days after the date of receipt of a list under  
3 subsection (a)(3), the head of an applicable  
4 agency shall develop and publish in the Federal  
5 Register a preliminary schedule for review by  
6 the applicable agency of the energy rules in-  
7 cluded on the list, including an explanation for  
8 each modification of the list by the applicable  
9 agency.

10           “(B) NOTICE AND COMMENT.—The head  
11 of an applicable agency shall provide notice and  
12 an opportunity for public comment on a pre-  
13 liminary schedule for a period of not less than  
14 60 days after the date of publication of the pre-  
15 liminary schedule under subparagraph (A).

16           “(2) FINAL SCHEDULE.—

17           “(A) IN GENERAL.—Not later than 60  
18 days after the date of expiration of the applica-  
19 ble comment period under paragraph (1)(B),  
20 the head of the applicable agency shall develop  
21 and publish in the Federal Register a final  
22 schedule for review of the energy rules by the  
23 applicable agency.

24           “(B) CONTENTS.—

1           “(i) IN GENERAL.—A final schedule  
2           under subparagraph (A) shall include a  
3           deadline by which the applicable agency  
4           shall review each energy rule included on  
5           the list.

6           “(ii) REQUIREMENT.—A deadline de-  
7           scribed in clause (i) shall be not later than  
8           5 years after the date of publication of the  
9           final schedule.

10          “(3) REQUIREMENT.—In developing a prelimi-  
11          nary or final schedule under this subsection, the  
12          head of an applicable agency—

13                 “(A) shall defer, to the maximum extent  
14                 practicable, to the recommendations of the advi-  
15                 sory committee; but

16                 “(B) may modify the list of the advisory  
17                 committee, taking into consideration—

18                         “(i) the factors described in sub-  
19                         section (a)(2); and

20                         “(ii) any limitation on resources or  
21                         authority of the applicable agency.

22          “(c) REVIEW.—

23                 “(1) REQUIRED PUBLICATIONS.—For each en-  
24                 ergy rule included on the final schedule of an appli-  
25                 cable agency under subsection (b)(2), the head of

1 the applicable agency shall publish in the Federal  
2 Register—

3 “(A) not later than the date that is 2 years  
4 before the deadline applicable to the energy rule  
5 under the final schedule, a notice that solicits  
6 public comment regarding whether the energy  
7 rule should be continued in effect, modified, or  
8 repealed;

9 “(B) not later than the date that is 1 year  
10 before the deadline applicable to the energy rule  
11 under the final schedule, a notice that—

12 “(i) addresses public comments re-  
13 ceived as a result of the notice under sub-  
14 paragraph (A);

15 “(ii) contains a preliminary analysis  
16 by the applicable agency relating to the en-  
17 ergy rule;

18 “(iii) contains a preliminary deter-  
19 mination of the applicable agency regard-  
20 ing whether the energy rule should be con-  
21 tinued in effect, modified, or repealed; and

22 “(iv) solicits public comment on that  
23 preliminary determination; and

24 “(C) not later than the date that is 60  
25 days before the deadline applicable to the en-

1 energy rule under the final schedule, a final notice  
2 relating to the energy rule that—

3 “(i) addresses public comments re-  
4 ceived as a result of the notice under sub-  
5 paragraph (B);

6 “(ii) contains—

7 “(I) a determination of the appli-  
8 cable agency regarding whether to  
9 continue in effect, modify, or repeal  
10 the energy rule; and

11 “(II) an explanation of the deter-  
12 mination; and

13 “(iii) if the applicable agency deter-  
14 mines to modify or repeal the energy rule,  
15 a notice of proposed rulemaking under sec-  
16 tion 553 of title 5, United States Code, as  
17 applicable.

18 “(2) DETERMINATIONS.—

19 “(A) IN GENERAL.—Not later than the  
20 deadline applicable to an energy rule under the  
21 final schedule under subsection (b)(2), the head  
22 of the applicable agency shall make a deter-  
23 mination—

24 “(i) to continue the energy rule in ef-  
25 fect;

1 “(ii) to modify the energy rule; or

2 “(iii) to repeal the energy rule.

3 “(B) CONTINUING IN EFFECT.—A deter-  
4 mination by the head of an applicable agency  
5 under subparagraph (A)(i) to continue an en-  
6 ergy rule in effect—

7 “(i) shall be published in the Federal  
8 Register; and

9 “(ii) shall be considered to be a final  
10 agency action effective beginning on the  
11 date that is 60 days after the date of pub-  
12 lication of the determination.

13 “(C) MODIFICATION OR REPEAL.—On a  
14 determination by the head of an applicable  
15 agency to modify or repeal an energy rule under  
16 clause (ii) or (iii) of subparagraph (A), the ap-  
17 plicable agency shall complete final agency ac-  
18 tion with respect to the modification or repeal  
19 by not later than 2 years after the deadline ap-  
20 plicable to the energy rule under the final  
21 schedule under subsection (b)(2).

22 “(d) JUDICIAL REVIEW.—

23 “(1) IN GENERAL.—No preliminary or final  
24 schedule under this section shall be subject to judi-  
25 cial review.



1           “(2) DETERMINATION TO CONTINUE IN EF-  
2           FECT.—

3           “(A) DEFINITION OF REASONABLE ALTER-  
4           NATIVE.—

5           “(i) IN GENERAL.—In this paragraph,  
6           the term ‘reasonable alternative’, with re-  
7           spect to an option at a point in the regu-  
8           latory process, means an option that—

9                       “(I) would achieve the purpose of  
10                      the applicable rule; and

11                     “(II) the head of the applicable  
12                     Federal agency has the authority to  
13                     elect.

14           “(ii) INCLUSION.—The term ‘reason-  
15           able alternative’ includes a flexible regu-  
16           latory option.

17           “(B) ACTION BY COURT.—A court of com-  
18           petent jurisdiction may remand a determination  
19           to continue an energy rule in effect under sub-  
20           section (c)(2)(B) only on clear and convincing  
21           evidence that a reasonable alternative was avail-  
22           able to the energy rule.

23           “(3) FAILURE TO ACT.—A failure of the head  
24           of an applicable agency to carry out an action re-  
25           quired under this section shall be subject to judicial

1 review only as provided in section 706(1) of title 5,  
2 United States Code.

3 “(e) EFFECT OF SECTION.—

4 “(1) IN GENERAL.—Nothing in this section lim-  
5 its the discretion of an applicable agency, on making  
6 a determination described in clause (ii) or (iii) of  
7 subsection (c)(2)(A), to elect not to modify or repeal  
8 the applicable energy rule.

9 “(2) TREATMENT.—An election of an applicable  
10 agency described in paragraph (1) shall be consid-  
11 ered to be a final agency action for purposes of judi-  
12 cial review.

13 **“SEC. 574. PROSPECTIVE CONSIDERATION OF ENERGY**  
14 **RULES.**

15 “(a) DETERMINATION.—

16 “(1) IN GENERAL.—In promulgating any rule,  
17 the head of an applicable agency shall determine  
18 whether the rule is an energy rule.

19 “(2) TREATMENT.—The head of an applicable  
20 agency may determine under paragraph (1) that a  
21 set of related rules proposed to be promulgated by  
22 the applicable agency shall be considered to be an  
23 energy rule.

24 “(b) REGULATORY IMPACT ANALYSIS.—

1           “(1) IN GENERAL.—In promulgating an energy  
2 rule, the head of an applicable agency shall pre-  
3 pare—

4           “(A) by not later than the date that is 60  
5 days before the date of publication of notice of  
6 the proposed rulemaking, a preliminary regu-  
7 latory impact analysis relating to the energy  
8 rule; and

9           “(B) a final regulatory impact analysis re-  
10 lating to the energy rule, which shall be sub-  
11 mitted together with the final energy rule by  
12 not later than the date that is 30 days before  
13 the date of publication of the final energy rule.

14           “(2) CONTENTS.—A preliminary or final regu-  
15 lator impact analysis relating to an energy rule  
16 under paragraph (1) shall contain—

17           “(A) a description of the potential benefits  
18 of the energy rule, including a description of—

19           “(i) any beneficial effects that cannot  
20 be quantified in monetary terms; and

21           “(ii) an identification of individuals  
22 and entities likely to receive the benefits;

23           “(B) an explanation of the necessity, legal  
24 authority, and reasonableness of the energy rule

1 together with a description of the condition that  
2 the energy rule is intended to address;

3 “(C) a description of the potential costs of  
4 the energy rule, including a description of—

5 “(i) any costs that cannot be quan-  
6 tified in monetary terms; and

7 “(ii) an identification of the individ-  
8 uals and entities likely to bear the costs;

9 “(D)(i) an analysis of any alternative ap-  
10 proach, including market-based mechanisms,  
11 that could substantially achieve the regulatory  
12 goal of the energy rule at a lower cost; and

13 “(ii) an explanation of the reasons why the  
14 alternative approach was not adopted, together  
15 with a demonstration that the energy rule pro-  
16 vides the least-costly approach with respect to  
17 the regulatory goal;

18 “(E)(i) an analysis of the benefits and  
19 costs of the energy rule to the national energy  
20 supply and national energy security; and

21 “(ii) an explanation in any case in which  
22 the energy rule will cause undue harm to the  
23 energy stability of any region;

24 “(F) a statement that, as applicable—

1 “(i) the energy rule does not conflict  
2 with, or duplicate, any other rule; or

3 “(ii) describes the reasons why such a  
4 conflict or duplication exists; and

5 “(G) a statement that describes whether  
6 the energy rule will require—

7 “(i) any onsite inspection; or

8 “(ii) any individual or entity—

9 “(I) to maintain records that will  
10 be subject to inspection; or

11 “(II) to obtain any license, per-  
12 mit, or other certification, including a  
13 description of any associated fees or  
14 fines.

15 “(3) COMBINATION WITH FLEXIBILITY ANAL-  
16 YSIS.—An energy rule regulatory impact analysis  
17 under paragraph (1) may be prepared together with  
18 the regulatory flexibility analysis relating to the en-  
19 ergy rule under sections 603 and 604 of title 5,  
20 United States Code.

21 “(c) REVIEW OF REGULATORY IMPACT ANALYSES.—

22 “(1) IN GENERAL.—The head of an applicable  
23 agency shall review, and prepare comments regard-  
24 ing—

1           “(A) each notice of proposed rulemaking  
2 relating to an energy rule of the applicable  
3 agency;

4           “(B) each preliminary and final regulatory  
5 impact analysis relating to an energy rule of the  
6 applicable agency under this section; and

7           “(C) each final energy rule of the applica-  
8 ble agency.

9           “(2) CONSULTATION.—On receipt of a request  
10 of a head of an applicable agency, any officer or em-  
11 ployee of another applicable agency shall consult  
12 with the head regarding a review under paragraph  
13 (1).

14           “(3) REQUIREMENT.—The head of an applica-  
15 ble agency shall not promulgate an energy rule until  
16 the date on which the final regulatory impact anal-  
17 ysis relating to the energy rule is published in the  
18 Federal Register.

19           “(4) REVIEW OF OTHER APPLICABLE AGEN-  
20 CIES.—

21           “(A) IN GENERAL.—On receipt of a re-  
22 quest of a head of an applicable agency, an-  
23 other applicable agency—

24                   “(i) shall permit the head to review,  
25                   and prepare comments regarding—

1           “(I) a notice of proposed rule-  
2           making relating to an energy rule of  
3           the applicable agency; or

4           “(II) a preliminary or final regu-  
5           latory impact analysis relating to an  
6           energy rule of the applicable agency  
7           under this section; and

8           “(ii) shall not publish the notice of  
9           proposed rulemaking or preliminary or  
10          final regulatory impact analysis until the  
11          earlier of—

12           “(I) the date on which—

13           “(aa) the head completes the  
14           review; and

15           “(bb) the applicable agency  
16           submits to the head a response to  
17           any comments of the head and  
18           includes in the comments of the  
19           applicable agency the response, in  
20           accordance with subparagraph  
21           (B)(ii); and

22           “(II) the expiration of the dead-  
23           line described in subparagraph (B)(i).

24          “(B) DEADLINES.—

1                   “(i) REVIEW AND COMMENT BY  
2 HEAD.—A head of an applicable agency  
3 shall complete a review of a notice of pro-  
4 posed rulemaking or preliminary or final  
5 regulatory impact analysis of another ap-  
6 plicable agency under subparagraph (A) by  
7 not later than 90 days after the date on  
8 which the head submits a request for the  
9 review.

10                   “(ii) RESPONSE BY APPLICABLE  
11 AGENCY.—An applicable agency shall sub-  
12 mit to the head of another applicable agen-  
13 cy that conducted a review and submitted  
14 comments regarding an energy rule under  
15 subparagraph (A) a response to those com-  
16 ments by not later than 90 days after the  
17 date on which the comments are received.

18                   “(d) PLAIN LANGUAGE REQUIREMENT.—The head  
19 of an applicable agency shall ensure, to the maximum ex-  
20 tent practicable, that each energy rule and each regulatory  
21 impact analysis relating to an energy rule—

22                   “(1) is written in plain language; and

23                   “(2) provides adequate notice of the require-  
24 ments of the rule to affected individuals and entities.



1       “(e) NONAPPLICABILITY TO CERTAIN RULES AND  
2 AGENCIES.—

3               “(1) DEFINITION OF EMERGENCY SITUATION.—

4       In this subsection, the term ‘emergency situation’  
5 means a situation that—

6               “(A) is immediately impending and ex-  
7 traordinary in nature; or

8               “(B) demands attention due to a condition,  
9 circumstance, or practice that, if no action is  
10 taken, would be reasonably expected to cause—

11               “(i) death, serious illness, or severe  
12 injury to an individual; or

13               “(ii) substantial danger to private  
14 property or the environment.

15               “(2) NONAPPLICABILITY.—This section shall  
16 not apply to—

17               “(A) a major rule promulgated in response  
18 to an emergency situation, if a report describ-  
19 ing the major rule and the emergency situation  
20 is submitted to the head of each affected appli-  
21 cable agency as soon as practicable after pro-  
22 mulgation of the major rule;

23               “(B) a major rule proposed or promul-  
24 gated in connection with the implementation of

1 monetary policy or to ensure the safety and  
2 soundness of—

3 “(i) a federally-insured depository in-  
4 stitution or an affiliate of such an institu-  
5 tion;

6 “(ii) a credit union; or

7 “(iii) a government-sponsored housing  
8 enterprise regulated by the Office of Fed-  
9 eral Housing Enterprise Oversight;

10 “(C) an action by an applicable agency  
11 that the head of the applicable agency certifies  
12 is limited to interpreting, implementing, or ad-  
13 ministering the internal revenue laws of the  
14 United States, including any regulation pro-  
15 posed or issued in connection with ensuring the  
16 collection of taxes from a subsidiary of a for-  
17 eign company doing business in the United  
18 States; or

19 “(D) a major rule proposed or promul-  
20 gated pursuant to section 553 of title 5, United  
21 States Code, in connection with imposing a  
22 trade sanction against any country that engages  
23 in illegal trade activities against the United  
24 States that are injurious to United States tech-

1 nology, jobs, pensions, or general economic well-  
2 being.”.

3 (b) REPORT.—Not later than 2 years after the date  
4 of enactment of this Act, the Director of the Office of  
5 Management and Budget shall submit to Congress a re-  
6 port that contains an analysis of—

7 (1) rulemaking procedures of Federal depart-  
8 ments and agencies; and

9 (2) the impact of those procedures on—

10 (A) the public; and

11 (B) the regulatory process.

12 (c) EFFECTIVE DATE.—The amendments made by  
13 subsection (a) shall apply only to final rules of Federal  
14 departments and agencies the rulemaking process for  
15 which begins after the date of enactment of this Act.

16 (d) OTHER POLICIES AND GOALS.—

17 (1) DECLARATION OF POLICY.—Section 101 of  
18 the National Environmental Policy Act of 1969 (42  
19 U.S.C. 4331) is amended—

20 (A) by redesignating subsection (c) as sub-  
21 section (d); and

22 (B) by inserting after subsection (b) the  
23 following:

24 “(c) ENERGY SECURITY.—Congress recognizes that,  
25 because the production and consumption of energy has a

1 profound impact on the environment, and the availability  
2 of affordable energy resources is essential to continued na-  
3 tional security and economic security of the United States,  
4 it is the policy of the United States to ensure that—

5 “(1) each proposed Federal action should be  
6 analyzed with respect to the impact of the proposed  
7 Federal action on the energy security of the United  
8 States; and

9 “(2) an analysis under paragraph (1) should be  
10 taken into consideration in developing Federal plans,  
11 rules, programs, and actions.”.

12 (2) REPORTS.—Section 102(2)(C) of the Na-  
13 tional Environmental Policy Act of 1969 (42 U.S.C.  
14 4332(2)(C)) is amended—

15 (A) by redesignating clauses (iii) through  
16 (v) as clauses (iv) through (vi), respectively;  
17 and

18 (B) by inserting after clause (ii) the fol-  
19 lowing:

20 “(iii) the impact on the energy secu-  
21 rity of the United States in terms of the  
22 effects to the production, distribution, and  
23 consumption of energy of the proposal or  
24 Federal action;”.

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