

111TH CONGRESS
1ST SESSION

H. R. 2998

To create clean energy jobs, achieve energy independence, reduce global warming pollution and transition to a clean energy economy.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2009

Mr. WAXMAN (for himself and Mr. MARKEY of Massachusetts) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Foreign Affairs, Ways and Means, Financial Services, Education and Labor, Science and Technology, Transportation and Infrastructure, Natural Resources, Agriculture, Oversight and Government Reform, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To create clean energy jobs, achieve energy independence, reduce global warming pollution and transition to a clean energy economy.

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. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
 5 “American Clean Energy and Security Act of 2009”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. International participation.

TITLE I—CLEAN ENERGY

Subtitle A—Combined Efficiency and Renewable Electricity Standard

- Sec. 101. Combined efficiency and renewable electricity standard.
- Sec. 102. Clarifying State authority to adopt renewable energy incentives.

Subtitle B—Carbon Capture and Sequestration

- Sec. 111. National strategy.
- Sec. 112. Regulations for geologic sequestration sites.
- “Sec. 813. Geologic sequestration sites.
- Sec. 113. Studies and reports.
- Sec. 114. Carbon capture and sequestration demonstration and early deployment program.
- Sec. 115. Commercial deployment of carbon capture and sequestration technologies.
- “Sec. 786. Commercial deployment of carbon capture and sequestration technologies.
- Sec. 116. Performance standards for coal-fueled power plants.
- “Sec. 812. Performance standards for new coal-fired power plants.

Subtitle C—Clean Transportation

- Sec. 121. Electric vehicle infrastructure.
- Sec. 122. Large-scale vehicle electrification program.
- Sec. 123. Plug-in electric drive vehicle manufacturing.
- Sec. 124. Investment in clean vehicles.
- Sec. 125. Advanced technology vehicle manufacturing incentive loans.
- Sec. 126. Amendment to renewable fuels standard.
- Sec. 127. Open fuel standard.
- Sec. 128. Diesel emissions reduction.
- Sec. 129. Loan guarantees for projects to construct renewable fuel pipelines.

Subtitle D—State Energy and Environment Development Accounts

- Sec. 131. Establishment of SEED Accounts.
- Sec. 132. Support of State renewable energy and energy efficiency programs.

Sec. 133. Support of Indian renewable energy and energy efficiency programs.

Subtitle E—Smart Grid Advancement

Sec. 141. Definitions.

Sec. 142. Assessment of Smart Grid cost effectiveness in products.

Sec. 143. Inclusions of Smart Grid capability on appliance ENERGY GUIDE labels.

Sec. 144. Smart Grid peak demand reduction goals.

Sec. 145. Reauthorization of energy efficiency public information program to include Smart Grid information.

Sec. 146. Inclusion of Smart Grid features in appliance rebate program.

Subtitle F—Transmission Planning

Sec. 151. Transmission planning.

Sec. 152. Net metering for Federal agencies.

Sec. 153. Support for qualified advanced electric transmission manufacturing plants, qualified high efficiency transmission property, and qualified advanced electric transmission property.

Subtitle G—Technical Corrections to Energy Laws

Sec. 161. Technical corrections to Energy Independence and Security Act of 2007.

Sec. 162. Technical corrections to Energy Policy Act of 2005.

Subtitle H—Energy and Efficiency Centers and Research

Sec. 171. Energy Innovation Hubs.

Sec. 172. Advanced energy research.

Sec. 173. Building Assessment Centers.

Sec. 174. Centers for Energy and Environmental Knowledge and Outreach.

Subtitle I—Nuclear and Advanced Technologies

Sec. 181. Revisions to loan guarantee program authority.

Sec. 182. Purpose.

Sec. 183. Definitions.

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Sec. 185. Energy technology deployment goals.

Sec. 186. Clean energy deployment administration.

Sec. 187. Direct support.

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Sec. 189. Federal credit authority.

Sec. 190. General provisions.

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Subtitle J—Miscellaneous

Sec. 195. Increased hydroelectric generation at existing Federal facilities.

Sec. 196. Clean technology business competition grant program.

Sec. 197. National Bioenergy Partnership.

Sec. 198. Office of Consumer Advocacy.

TITLE II—ENERGY EFFICIENCY

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- Sec. 201. Greater energy efficiency in building codes.
- Sec. 202. Building retrofit program.
- Sec. 203. Energy efficient manufactured homes.
- Sec. 204. Building energy performance labeling program.
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Subtitle B—Lighting and Appliance Energy Efficiency Programs

- Sec. 211. Lighting efficiency standards.
- Sec. 212. Other appliance efficiency standards.
- Sec. 213. Appliance efficiency determinations and procedures.
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- Sec. 218. Certified stoves program.
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- Sec. 222. Greenhouse gas emissions reductions through transportation efficiency.

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- “Sec. 841. Greenhouse gas emissions reductions through transportation efficiency.
- Sec. 223. SmartWay transportation efficiency program.
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- Sec. 261. Public institutions.
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- Sec. 264. Low income community energy efficiency program.

Subtitle G—Miscellaneous

- Sec. 271. Energy efficient information and communications technologies.

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TITLE III—REDUCING GLOBAL WARMING POLLUTION

- Sec. 301. Short title.

Subtitle A—Reducing Global Warming Pollution

- Sec. 311. Reducing global warming pollution.

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- “Sec. 789. Climate change consumer refunds.
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Subtitle C—Additional Greenhouse Gas Standards

- Sec. 331. Greenhouse gas standards.

“TITLE VIII—ADDITIONAL GREENHOUSE GAS STANDARDS

- “Sec. 801. Definitions.

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- “Sec. 811. Standards of performance.

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- Sec. 355. Limitation on eligibility to purchase a credit default swap.
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TITLE IV—TRANSITIONING TO A CLEAN ENERGY ECONOMY

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- “Sec. 761. Purposes.
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Sec. 494. Distribution of allowances.
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1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act:

3 (1) ADMINISTRATOR.—The term “Adminis-
4 trator” means the Administrator of the Environ-
5 mental Protection Agency.

6 (2) STATE.—The term “State” has the mean-
7 ing given that term in section 302 of the Clean Air
8 Act.

9 **SEC. 3. INTERNATIONAL PARTICIPATION.**

10 The Administrator, in consultation with the Depart-
11 ment of State and the United States Trade Representa-
12 tive, shall annually prepare and certify a report to the
13 Congress regarding whether China and India have adopted
14 greenhouse gas emissions standards at least as strict as
15 those standards required under this Act. If the Adminis-
16 trator determines that China and India have not adopted
17 greenhouse gas emissions standards at least as stringent
18 as those set forth in this Act, the Administrator shall no-
19 tify each Member of Congress of his determination, and
20 shall release his determination to the media.

1 **TITLE I—CLEAN ENERGY**
2 **Subtitle A—Combined Efficiency**
3 **and Renewable Electricity**
4 **Standard**

5 **SEC. 101. COMBINED EFFICIENCY AND RENEWABLE ELEC-**
6 **TRICITY STANDARD.**

7 (a) IN GENERAL.—Title VI of the Public Utility Reg-
8 ulatory Policies Act of 1978 (16 U.S.C. 2601 and fol-
9 lowing) is amended by adding at the end the following:

10 **“SEC. 610. COMBINED EFFICIENCY AND RENEWABLE ELEC-**
11 **TRICITY STANDARD.**

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

13 “(1) CHP SAVINGS.—The term ‘CHP savings’
14 means—

15 “(A) CHP system savings from a combined
16 heat and power system that commences oper-
17 ation after the date of enactment of this sec-
18 tion; and

19 “(B) the increase in CHP system savings
20 from, at any time after the date of the enact-
21 ment of this section, upgrading, replacing, ex-
22 panding, or increasing the utilization of a com-
23 bined heat and power system that commenced
24 operation on or before the date of enactment of
25 this section.

1 “(2) CHP SYSTEM SAVINGS.—The term ‘CHP
2 system savings’ means the increment of electric out-
3 put of a combined heat and power system that is at-
4 tributable to the higher efficiency of the combined
5 system (as compared to the efficiency of separate
6 production of the electric and thermal outputs).

7 “(3) COMBINED HEAT AND POWER SYSTEM.—
8 The term ‘combined heat and power system’ means
9 a system that uses the same energy source both for
10 the generation of electrical or mechanical power and
11 the production of steam or another form of useful
12 thermal energy, provided that—

13 “(A) the system meets such requirements
14 relating to efficiency and other operating char-
15 acteristics as the Commission may promulgate
16 by regulation; and

17 “(B) the net sales of electricity by the fa-
18 cility to customers not consuming the thermal
19 output from that facility will not exceed 50 per-
20 cent of total annual electric generation by the
21 facility.

22 “(4) CUSTOMER FACILITY SAVINGS.—The term
23 ‘customer facility savings’ means a reduction in end-
24 use electricity consumption (including recycled en-
25 ergy savings) at a facility of an end-use consumer of

1 electricity served by a retail electric supplier, as
2 compared to—

3 “(A) in the case of a new facility, con-
4 sumption at a reference facility of average effi-
5 ciency;

6 “(B) in the case of an existing facility,
7 consumption at such facility during a base pe-
8 riod, except as provided in subparagraphs (C)
9 and (D);

10 “(C) in the case of new equipment that re-
11 places existing equipment with remaining useful
12 life, the projected consumption of the existing
13 equipment for the remaining useful life of such
14 equipment, and thereafter, consumption of new
15 equipment of average efficiency of the same
16 equipment type; and

17 “(D) in the case of new equipment that re-
18 places existing equipment at the end of the use-
19 ful life of the existing equipment, consumption
20 by new equipment of average efficiency of the
21 same equipment type.

22 “(5) DISTRIBUTED RENEWABLE GENERATION
23 FACILITY.—The term ‘distributed renewable genera-
24 tion facility’ means a facility that—

25 “(A) generates renewable electricity;

1 “(B) primarily serves 1 or more electricity
2 consumers at or near the facility site; and

3 “(C) is no greater than—

4 “(i) 2 megawatts in capacity; or

5 “(ii) 4 megawatts in capacity, in the
6 case of a facility that is placed in service
7 after the date of enactment of this section
8 and generates electricity from a renewable
9 energy resource other than by means of
10 combustion.

11 “(6) ELECTRICITY SAVINGS.—The term ‘elec-
12 tricity savings’ means reductions in electricity con-
13 sumption, relative to business-as-usual projections,
14 achieved through measures implemented after the
15 date of enactment of this section, limited to—

16 “(A) customer facility savings of elec-
17 tricity, adjusted to reflect any associated in-
18 crease in fuel consumption at the facility;

19 “(B) reductions in distribution system
20 losses of electricity achieved by a retail elec-
21 tricity distributor, as compared to losses attrib-
22 utable to new or replacement distribution sys-
23 tem equipment of average efficiency;

24 “(C) CHP savings; and

25 “(D) fuel cell savings.

1 “(7) FEDERAL LAND.—The term ‘Federal land’
2 means land owned by the United States, other than
3 land held in trust for an Indian or Indian tribe.

4 “(8) FEDERAL RENEWABLE ELECTRICITY
5 CREDIT.—The term ‘Federal renewable electricity
6 credit’ means a credit, representing one megawatt
7 hour of renewable electricity, issued pursuant to sub-
8 section (e).

9 “(9) FUEL CELL.—The term ‘fuel cell’ means a
10 device that directly converts the chemical energy of
11 a fuel and an oxidant into electricity by electro-
12 chemical processes occurring at separate electrodes
13 in the device.

14 “(10) FUEL CELL SAVINGS.—The term ‘fuel
15 cell savings’ means the electricity saved by a fuel cell
16 that is installed after the date of enactment of this
17 section, or by upgrading a fuel cell that commenced
18 operation on or before the date of enactment of this
19 section, as a result of the greater efficiency with
20 which the fuel cell transforms fuel into electricity as
21 compared with sources of electricity delivered
22 through the grid, provided that—

23 “(A) the fuel cell meets such requirements
24 relating to efficiency and other operating char-

1 acteristics as the Commission may promulgate
2 by regulation; and

3 “(B) the net sales of electricity from the
4 fuel cell to customers not consuming the ther-
5 mal output from the fuel cell, if any, do not ex-
6 ceed 50 percent of the total annual electricity
7 generation by the fuel cell.

8 “(11) HIGH CONSERVATION PRIORITY LAND.—
9 The term ‘high conservation priority land’ means
10 land that is not Federal land and is—

11 “(A) globally or State ranked as critically
12 imperiled or imperiled under a State Natural
13 Heritage Program; or

14 “(B) old-growth or late-successional forest,
15 as identified by the office of the relevant State
16 Forester or relevant State agency with regu-
17 latory jurisdiction over forestry activities.

18 “(12) OTHER QUALIFYING ENERGY RE-
19 SOURCE.—The term ‘other qualifying energy re-
20 source’ means any of the following:

21 “(A) Landfill gas.

22 “(B) Wastewater treatment gas.

23 “(C) Coal mine methane used to generate
24 electricity at or near the mine mouth.

25 “(D) Qualified waste-to-energy.

1 “(13) QUALIFIED HYDROPOWER.—The term
2 ‘qualified hydropower’ means—

3 “(A) energy produced from increased effi-
4 ciency achieved, or additions of capacity made,
5 on or after January 1, 1992, at a hydroelectric
6 facility that was placed in service before that
7 date and does not include additional energy
8 generated as a result of operational changes not
9 directly associated with efficiency improvements
10 or capacity additions; or

11 “(B) energy produced from generating ca-
12 pacity added to a dam on or after January 1,
13 1992, provided that the Commission certifies
14 that—

15 “(i) the dam was placed in service be-
16 fore the date of the enactment of this sec-
17 tion and was operated for flood control,
18 navigation, or water supply purposes and
19 was not producing hydroelectric power
20 prior to the addition of such capacity;

21 “(ii) the hydroelectric project installed
22 on the dam is licensed (or is exempt from
23 licensing) by the Commission and is in
24 compliance with the terms and conditions
25 of the license or exemption, and with other

1 applicable legal requirements for the pro-
2 tection of environmental quality, including
3 applicable fish passage requirements; and

4 “(iii) the hydroelectric project in-
5 stalled on the dam is operated so that the
6 water surface elevation at any given loca-
7 tion and time that would have occurred in
8 the absence of the hydroelectric project is
9 maintained, subject to any license or ex-
10 emption requirements that require changes
11 in water surface elevation for the purpose
12 of improving the environmental quality of
13 the affected waterway.

14 “(14) QUALIFIED WASTE-TO-ENERGY.—The
15 term ‘qualified waste-to-energy’ means energy from
16 the combustion of municipal solid waste or construc-
17 tion, demolition, or disaster debris, or from the gas-
18 ification or pyrolyzation of such waste or debris and
19 the combustion of the resulting gas at the same fa-
20 cility, provided that—

21 “(A) such term shall include only the en-
22 ergy derived from the non-fossil biogenic por-
23 tion of such waste or debris;

24 “(B) the Commission determines, with the
25 concurrence of the Administrator of the Envi-

1 ronmental Protection Agency, that the total
2 lifecycle greenhouse gas emissions attributable
3 to the generation of electricity from such waste
4 or debris are lower than those attributable to
5 the likely alternative method of disposing of
6 such waste or debris; and

7 “(C) the owner or operator of the facility
8 generating electricity from such energy provides
9 to the Commission, on an annual basis—

10 “(i) a certification that the facility is
11 in compliance with all applicable State,
12 tribal, and Federal environmental permits;

13 “(ii) in the case of a facility that com-
14 menced operation before the date of enact-
15 ment of this section, a certification that
16 the facility meets emissions standards pro-
17 mulgated under sections 112 or 129 of the
18 Clean Air Act (42 U.S.C. 7412 or 7429)
19 that apply as of the date of enactment of
20 this section to new facilities within the rel-
21 evant source category; and

22 “(iii) in the case of the combustion,
23 pyrolization, or gasification of municipal
24 solid waste, a certification that each local
25 government unit from which such waste

1 originates operates, participates in the op-
2 eration of, contracts for, or otherwise pro-
3 vides for, recycling services for its resi-
4 dents.

5 “(15) RECYCLED ENERGY SAVINGS.—The term
6 ‘recycled energy savings’ means a reduction in elec-
7 tricity consumption that results from a modification
8 of an industrial or commercial system that com-
9 menced operation before the date of enactment of
10 this section, in order to recapture electrical, mechan-
11 ical, or thermal energy that would otherwise be
12 wasted.

13 “(16) RENEWABLE BIOMASS.—The term ‘re-
14 newable biomass’ means any of the following:

15 “(A) Plant material, including waste mate-
16 rial, harvested or collected from actively man-
17 aged agricultural land that was in cultivation,
18 cleared, or fallow and nonforested on January
19 1, 2009.

20 “(B) Plant material, including waste mate-
21 rial, harvested or collected from pastureland
22 that was nonforested on January 1, 2009.

23 “(C) Nonhazardous vegetative matter de-
24 rived from waste, including separated yard
25 waste, landscape right-of-way trimmings, con-

1 struction and demolition debris or food waste
2 (but not municipal solid waste, recyclable waste
3 paper, painted, treated or pressurized wood, or
4 wood contaminated with plastic or metals).

5 “(D) Animal waste or animal byproducts,
6 including products of animal waste digesters.

7 “(E) Algae.

8 “(F) Trees, brush, slash, residues, or any
9 other vegetative matter removed from within
10 600 feet of any building, campground, or route
11 designated for evacuation by a public official
12 with responsibility for emergency preparedness,
13 or from within 300 feet of a paved road, electric
14 transmission line, utility tower, or water supply
15 line.

16 “(G) Residues from or byproducts of
17 milled logs.

18 “(H) Any of the following removed from
19 forested land that is not Federal and is not
20 high conservation priority land:

21 “(i) Trees, brush, slash, residues,
22 interplanted energy crops, or any other
23 vegetative matter removed from an actively
24 managed tree plantation established—

25 “(I) prior to January 1, 2009; or

1 “(II) on land that, as of January
2 1, 2009, was cultivated or fallow and
3 non-forested.

4 “(ii) Trees, logging residue, thinnings,
5 cull trees, pulpwood, and brush removed
6 from naturally-regenerated forests or other
7 non-plantation forests, including for the
8 purposes of hazardous fuel reduction or
9 preventative treatment for reducing or con-
10 taining insect or disease infestation.

11 “(iii) Logging residue, thinnings, cull
12 trees, pulpwood, brush and species that are
13 non-native and noxious, from stands that
14 were planted and managed after January
15 1, 2009, to restore or maintain native for-
16 est types.

17 “(iv) Dead or severely damaged trees
18 removed within 5 years of fire, blowdown,
19 or other natural disaster, and badly in-
20 fested trees.

21 “(I) Materials, pre-commercial thinnings,
22 or removed invasive species from National For-
23 est System land and public lands (as defined in
24 section 103 of the Federal Land Policy and
25 Management Act of 1976 (43 U.S.C. 1702)),

1 including those that are byproducts of preven-
2 tive treatments (such as trees, wood, brush,
3 thinnings, chips, and slash), that are removed
4 as part of a federally recognized timber sale, or
5 that are removed to reduce hazardous fuels, to
6 reduce or contain disease or insect infestation,
7 or to restore ecosystem health, and that are—

8 “(i) not from components of the Na-
9 tional Wilderness Preservation System,
10 Wilderness Study Areas, Inventoried
11 Roadless Areas, old growth or mature for-
12 est stands, components of the National
13 Landscape Conservation System, National
14 Monuments, National Conservation Areas,
15 Designated Primitive Areas, or Wild and
16 Scenic Rivers corridors;

17 “(ii) harvested in environmentally sus-
18 tainable quantities, as determined by the
19 appropriate Federal land manager; and

20 “(iii) harvested in accordance with
21 Federal and State law and applicable land
22 management plans.

23 “(17) RENEWABLE ELECTRICITY.—The term
24 ‘renewable electricity’ means electricity generated

1 (including by means of a fuel cell) from a renewable
2 energy resource or other qualifying energy resources.

3 “(18) RENEWABLE ENERGY RESOURCE.—The
4 term ‘renewable energy resource’ means each of the
5 following:

6 “(A) Wind energy.

7 “(B) Solar energy.

8 “(C) Geothermal energy.

9 “(D) Renewable biomass.

10 “(E) Biogas derived exclusively from re-
11 newable biomass.

12 “(F) Biofuels derived exclusively from re-
13 newable biomass.

14 “(G) Qualified hydropower.

15 “(H) Marine and hydrokinetic renewable
16 energy, as that term is defined in section 632
17 of the Energy Independence and Security Act
18 of 2007 (42 U.S.C. 17211).

19 “(19) RETAIL ELECTRIC SUPPLIER.—

20 “(A) IN GENERAL.—The term ‘retail elec-
21 tric supplier’ means, for any given year, an
22 electric utility that sold not less than 4,000,000
23 megawatt hours of electric energy to electric
24 consumers for purposes other than resale dur-
25 ing the preceding calendar year.

1 “(B) INCLUSIONS AND LIMITATIONS.—For
2 purposes of determining whether an electric
3 utility qualifies as a retail electric supplier
4 under subparagraph (A)—

5 “(i) the sales of any affiliate of an
6 electric utility to electric consumers, other
7 than sales to the affiliate’s lessees or ten-
8 ants, for purposes other than resale shall
9 be considered to be sales of such electric
10 utility; and

11 “(ii) sales by any electric utility to an
12 affiliate, lessee, or tenant of such electric
13 utility shall not be treated as sales to elec-
14 tric consumers.

15 “(C) AFFILIATE.—For purposes of this
16 paragraph, the term ‘affiliate’ when used in re-
17 lation to a person, means another person that
18 directly or indirectly owns or controls, is owned
19 or controlled by, or is under common ownership
20 or control with, such person, as determined
21 under regulations promulgated by the Commis-
22 sion.

23 “(20) RETAIL ELECTRIC SUPPLIER’S BASE
24 AMOUNT.—The term ‘retail electric supplier’s base
25 amount’ means the total amount of electric energy

1 sold by the retail electric supplier, expressed in
2 megawatt hours, to electric customers for purposes
3 other than resale during the relevant calendar year,
4 excluding—

5 “(A) electricity generated by a hydro-
6 electric facility that is not qualified hydropower;

7 “(B) electricity generated by a nuclear
8 generating unit placed in service after the date
9 of enactment of this section; and

10 “(C) the proportion of electricity generated
11 by a fossil-fueled generating unit that is equal
12 to the proportion of greenhouse gases produced
13 by such unit that are captured and geologically
14 sequestered.

15 “(21) RETIRE AND RETIREMENT.—The terms
16 ‘retire’ and ‘retirement’ with respect to a Federal re-
17 newable electricity credit, means to disqualify such
18 credit for any subsequent use under this section, re-
19 gardless of whether the use is a sale, transfer, ex-
20 change, or submission in satisfaction of a compliance
21 obligation.

22 “(22) THIRD-PARTY EFFICIENCY PROVIDER.—
23 The term ‘third-party efficiency provider’ means any
24 retailer, building owner, energy service company, fi-
25 nancial institution or other commercial, industrial or

1 nonprofit entity that is capable of providing elec-
2 tricity savings in accordance with the requirements
3 of this section.

4 “(23) TOTAL ANNUAL ELECTRICITY SAVINGS.—

5 The term ‘total annual electricity savings’ means
6 electricity savings during a specified calendar year
7 from measures implemented since the date of the en-
8 actment of this section, taking into account verified
9 measure lifetimes or verified annual savings attrition
10 rates, as determined in accordance with such regula-
11 tions as the Commission may promulgate and meas-
12 ured in megawatt hours.

13 “(b) ANNUAL COMPLIANCE OBLIGATION.—

14 “(1) IN GENERAL.—For each of calendar years
15 2012 through 2039, not later than March 31 of the
16 following calendar year, each retail electric supplier
17 shall submit to the Commission an amount of Fed-
18 eral renewable electricity credits and demonstrated
19 total annual electricity savings that, in the aggre-
20 gate, is equal to such retail electric supplier’s annual
21 combined target as set forth in subsection (d), ex-
22 cept as otherwise provided in subsection (g).

23 “(2) DEMONSTRATION OF SAVINGS.—For pur-
24 poses of this subsection, submission of demonstrated
25 total annual electricity savings means submission of

1 a report that demonstrates, in accordance with the
2 requirements of subsection (f), the total annual elec-
3 tricity savings achieved by the retail electric supplier
4 within the relevant compliance year.

5 “(3) RENEWABLE ELECTRICITY CREDITS POR-
6 TION.—Except as provided in paragraph (4), each
7 retail electric supplier must submit Federal renew-
8 able electricity credits equal to at least three quar-
9 ters of the retail electric supplier’s annual combined
10 target.

11 “(4) STATE PETITION.—

12 “(A) IN GENERAL.—Upon written request
13 from the Governor of any State (including, for
14 purposes of this paragraph, the Mayor of the
15 District of Columbia), the Commission shall in-
16 crease, to not more than two fifths, the propor-
17 tion of the annual combined targets of retail
18 electric suppliers located within such State that
19 may be met through submission of dem-
20 onstrated total annual electricity savings, pro-
21 vided that such increase shall be effective only
22 with regard to the portion of a retail electric
23 supplier’s annual combined target that is attrib-
24 utable to electricity sales within such State.

1 “(B) CONTENTS.—A Governor’s request
2 under this paragraph shall include an expla-
3 nation of the Governor’s rationale for deter-
4 mining, after consultation with the relevant
5 State regulatory authority and other retail elec-
6 tricity ratemaking authorities within the State,
7 to make such request. The request shall specify
8 the maximum proportion of annual combined
9 targets (not more than two fifths) that can be
10 met through demonstrated total annual elec-
11 tricity savings, and the period for which such
12 proportion shall be effective.

13 “(C) REVISION.—The Governor of any
14 State may, after consultation with the relevant
15 State regulatory authority and other retail elec-
16 tricity ratemaking authorities within the State,
17 submit a written request for revocation or revi-
18 sion of a previous request submitted under this
19 paragraph. The Commission shall grant such
20 request, provided that—

21 “(i) any revocation or revision shall
22 not apply to the combined annual target
23 for any year that is any earlier than 2 cal-
24 endar years after the calendar year in
25 which such request is submitted, so as to

1 provide retail electric suppliers with ade-
2 quate notice of such change; and

3 “(ii) any revision shall meet the re-
4 quirements of subparagraph (A).

5 “(c) ESTABLISHMENT OF PROGRAM.—Not later than
6 1 year after the date of enactment of this section, the
7 Commission shall promulgate regulations to implement
8 and enforce the requirements of this section. In promul-
9 gating such regulations, the Commission shall, to the ex-
10 tent practicable—

11 “(1) preserve the integrity, and incorporate best
12 practices, of existing State and tribal renewable elec-
13 tricity and energy efficiency programs;

14 “(2) rely upon existing and emerging State,
15 tribal, or regional tracking systems that issue and
16 track non-Federal renewable electricity credits; and

17 “(3) cooperate with the States and Indian
18 tribes to facilitate coordination between State, tribal,
19 and Federal renewable electricity and energy effi-
20 ciency programs and to minimize administrative bur-
21 dens and costs to retail electric suppliers.

22 “(d) ANNUAL COMPLIANCE REQUIREMENT.—

23 “(1) ANNUAL COMBINED TARGETS.—For each
24 of calendar years 2012 through 2039, a retail elec-

1 tronic supplier’s annual combined target shall be the
 2 product of—

3 “(A) the required annual percentage for
 4 such year, as set forth in paragraph (2); and

5 “(B) the retail electric supplier’s base
 6 amount for such year.

7 “(2) REQUIRED ANNUAL PERCENTAGE.—For
 8 each of calendar years 2012 through 2039, the re-
 9 quired annual percentage shall be as follows:

“Calendar year	Required annual percentage
2012	6.0
2013	6.0
2014	9.5
2015	9.5
2016	13.0
2017	13.0
2018	16.5
2019	16.5
2020	20.0
2021 through 2039	20.0

10 “(e) FEDERAL RENEWABLE ELECTRICITY CRED-
 11 ITS.—

12 “(1) IN GENERAL.—The regulations promul-
 13 gated under this section shall include provisions gov-
 14 erning the issuance, tracking, and verification of
 15 Federal renewable electricity credits. Except as pro-
 16 vided in paragraphs (2), (3), and (4) of this sub-
 17 section, the Commission shall issue to each gener-
 18 ator of renewable electricity, 1 Federal renewable
 19 electricity credit for each megawatt hour of renew-

1 able electricity generated by such generator after
2 December 31, 2011. The Commission shall assign a
3 unique serial number to each Federal renewable
4 electricity credit.

5 “(2) GENERATION FROM CERTAIN STATE RE-
6 NEWABLE ELECTRICITY PROGRAMS.—Where renew-
7 able electricity is generated with the support of pay-
8 ments from a retail electric supplier pursuant to a
9 State renewable electricity program (whether
10 through State alternative compliance payments or
11 through payments to a State renewable electricity
12 procurement fund or entity), the Commission shall
13 issue Federal renewable electricity credits to such re-
14 tail electric supplier for the proportion of the rel-
15 evant renewable electricity generation that is attrib-
16 utable to the retail electric supplier’s payments, as
17 determined pursuant to regulations issued by the
18 Commission. For any remaining portion of the rel-
19 evant renewable electricity generation, the Commis-
20 sion shall issue Federal renewable electricity credits
21 to the generator, as provided in paragraph (1), ex-
22 cept that in no event shall more than 1 Federal re-
23 newable electricity credit be issued for the same
24 megawatt hour of electricity. In determining how
25 Federal renewable electricity credits will be appor-

1 tioned among retail electric suppliers and generators
2 in such circumstances, the Commission shall con-
3 sider information and guidance furnished by the rel-
4 evant State or States.

5 “(3) CERTAIN POWER SALES CONTRACTS.—

6 When a generator has sold renewable electricity to
7 a retail electric supplier under a contract for power
8 from a facility placed in service before the date of
9 enactment of this section, and the contract does not
10 provide for the determination of ownership of the
11 Federal renewable electricity credits associated with
12 such generation, the Commission shall issue such
13 Federal renewable electricity credits to the retail
14 electric supplier for the duration of the contract.

15 “(4) CREDIT MULTIPLIER FOR DISTRIBUTED
16 RENEWABLE GENERATION.—

17 “(A) IN GENERAL.—Except as provided in
18 subparagraph (B), the Commission shall issue 3
19 Federal renewable electricity credits for each
20 megawatt hour of renewable electricity gen-
21 erated by a distributed renewable generation fa-
22 cility.

23 “(B) ADJUSTMENT.—Except as provided
24 in subparagraph (C), not later than January 1,
25 2014, and not less frequently than every 4

1 years thereafter, the Commission shall review
2 the effect of this paragraph and shall, as nec-
3 essary, reduce the number of Federal renewable
4 electricity credits per megawatt hour issued
5 under this paragraph for any given energy
6 source or technology, but not below 1, to ensure
7 that such number is no higher than the Com-
8 mission determines is necessary to make dis-
9 tributed renewable generation facilities using
10 such source or technology cost competitive with
11 other sources of renewable electricity genera-
12 tion.

13 “(C) FACILITIES PLACED IN SERVICE
14 AFTER ENACTMENT.—For any distributed re-
15 newable generation facility placed in service
16 after the date of enactment of this section, sub-
17 paragraph (B) shall not apply for the first 10
18 years after the date on which the facility is
19 placed in service. For each year during such 10-
20 year period, the Commission shall issue to the
21 facility the same number of Federal renewable
22 electricity credits per megawatt hour as are
23 issued to that facility in the year in which such
24 facility is placed in service. After such 10-year
25 period, the Commission shall issue Federal re-

1 newable electricity credits to the facility in ac-
2 cordance with the current multiplier as deter-
3 mined pursuant to subparagraph (B).

4 “(5) CREDITS BASED ON QUALIFIED HYDRO-
5 POWER.—For purposes of this subsection, the num-
6 ber of Federal renewable electricity credits issued for
7 qualified hydropower shall be calculated—

8 “(A) based solely on the increase in aver-
9 age annual generation directly resulting from
10 the efficiency improvements or capacity addi-
11 tions described in subsection (a)(13)(A); and

12 “(B) using the same water flow informa-
13 tion used to determine a historic average an-
14 nual generation baseline for the hydroelectric
15 facility, as certified by the Commission.

16 “(6) GENERATION FROM QUALIFIED WASTE-TO-
17 ENERGY.—In the case of electricity generated from
18 the combustion of any municipal solid waste or con-
19 struction, demolition, or disaster debris that is in-
20 cluded in the definition of renewable biomass, or
21 from the gasification or pyrolyzation of such waste or
22 debris and the combustion of the resulting gas at
23 the same facility, the Commission shall issue Federal
24 renewable electricity credits only for electricity gen-
25 erated from qualified waste-to-energy.

1 “(7) GENERATION FROM MIXED RENEWABLE
2 AND NONRENEWABLE RESOURCES.—If electricity is
3 generated using both a renewable energy resource or
4 other qualifying energy resource and an energy
5 source that is not a renewable energy resource or
6 other qualifying energy resource (as, for example, in
7 the case of co-firing of renewable biomass and fossil
8 fuel), the Commission shall issue Federal renewable
9 electricity credits based on the proportion of the
10 electricity that is attributable to the renewable en-
11 ergy resource or other qualifying energy resource.

12 “(8) PROHIBITION AGAINST DOUBLE-COUNT-
13 ING.—Except as provided in paragraph (4) of this
14 subsection, the Commission shall ensure that no
15 more than 1 Federal renewable electricity credit will
16 be issued for any megawatt hour of renewable elec-
17 tricity and that no Federal renewable electricity
18 credit will be used more than once for compliance
19 with this section.

20 “(9) TRADING.—The lawful holder of a Federal
21 renewable electricity credit may sell, exchange,
22 transfer, submit for compliance in accordance with
23 subsection (b), or submit such credit for retirement
24 by the Commission.

1 “(10) BANKING.—A Federal renewable elec-
2 tricity credit may be submitted in satisfaction of the
3 compliance obligation set forth in subsection (b) for
4 the compliance year in which the credit was issued
5 or for any of the 3 immediately subsequent compli-
6 ance years. The Commission shall retire any Federal
7 renewable electricity credit that has not been retired
8 by April 2 of the calendar year that is 3 years after
9 the calendar year in which the credit was issued.

10 “(11) RETIREMENT.—The Commission shall re-
11 tire a Federal renewable electricity credit imme-
12 diately upon submission by the lawful holder of such
13 credit, whether in satisfaction of a compliance obli-
14 gation under subsection (b) or on some other basis.

15 “(f) ELECTRICITY SAVINGS.—

16 “(1) STANDARDS FOR MEASUREMENT OF SAV-
17 INGS.—As part of the regulations promulgated
18 under this section, the Commission shall prescribe
19 standards and protocols for defining and measuring
20 electricity savings and total annual electricity sav-
21 ings that can be counted towards the compliance ob-
22 ligation set forth in subsection (b). Such protocols
23 and standards shall, at minimum—

1 “(A) specify the types of energy efficiency
2 and energy conservation measures that can be
3 counted;

4 “(B) require that energy consumption esti-
5 mates for customer facilities or portions of fa-
6 cilities in the applicable base and current years
7 be adjusted, as appropriate, to account for
8 changes in weather, level of production, and
9 building area;

10 “(C) account for the useful life of meas-
11 ures;

12 “(D) include deemed savings values for
13 specific, commonly used measures;

14 “(E) allow for savings from a program to
15 be estimated based on extrapolation from a rep-
16 resentative sample of participating customers;

17 “(F) include procedures for counting CHP
18 savings, recycled energy savings, and fuel cell
19 savings;

20 “(G) include procedures for documenting
21 measurable and verifiable electricity savings
22 achieved as a result of market transformation
23 efforts;

24 “(H) include procedures for counting elec-
25 tricity savings achieved by solar water heating

1 and solar light pipe technology that has the ca-
2 pability to provide measurable data on the
3 amount of megawatt-hours displaced;

4 “(I) avoid double-counting of savings used
5 for compliance with this section, including sav-
6 ings that are transferred pursuant to paragraph
7 (3);

8 “(J) ensure that, except as provided in
9 subparagraph (L), the retail electric supplier
10 claiming the savings played a significant role in
11 achieving the savings (including through the ac-
12 tivities of a designated agent of the supplier or
13 through the purchase of transferred savings);

14 “(K) include savings from programs ad-
15 ministered by a retail electric supplier (or a re-
16 tail electricity distributor that is not a retail
17 electric supplier) that are funded by State, Fed-
18 eral, or other sources;

19 “(L) in any State in which the State regu-
20 latory authority has designated 1 or more enti-
21 ties to administer electric ratepayer-funded effi-
22 ciency programs approved by such State regu-
23 latory authority, provide that electricity savings
24 achieved through such programs shall be dis-
25 tributed equitably among retail electric sup-

1 pliers in accordance with the direction of the
2 relevant State regulatory authority; and

3 “(M) exclude savings achieved as a result
4 of compliance with mandatory appliance and
5 equipment efficiency standards or building
6 codes.

7 “(2) STANDARDS FOR THIRD-PARTY
8 VERIFICATION OF SAVINGS.—The regulations pro-
9 mulgated under this section shall establish proce-
10 dures and standards requiring third-party
11 verification of all reported electricity savings, includ-
12 ing requirements for accreditation of third-party
13 verifiers to ensure that such verifiers are profes-
14 sionally qualified and have no conflicts of interest.

15 “(3) TRANSFERS OF SAVINGS.—

16 “(A) BILATERAL CONTRACTS FOR SAVINGS
17 TRANSFERS.—Subject to the limitations of this
18 paragraph, a retail electric supplier may use
19 electricity savings transferred, pursuant to a bi-
20 lateral contract, from another retail electric
21 supplier, an owner of an electric distribution fa-
22 cility that is not a retail electric supplier, a
23 State, or a third-party efficiency provider to
24 meet the applicable compliance obligation under
25 subsection (b).

1 “(B) REQUIREMENTS.—Electricity savings
2 transferred and used for compliance pursuant
3 to this paragraph shall be—

4 “(i) measured and verified in accord-
5 ance with the procedures specified under
6 this subsection;

7 “(ii) reported in accordance with
8 paragraph (4) of this subsection; and

9 “(iii) achieved within the same State
10 as is served by the retail electric supplier.

11 “(C) REGULATORY APPROVAL.—Nothing
12 in this paragraph shall limit or affect the au-
13 thority of a State regulatory authority to re-
14 quire a retail electric supplier that is regulated
15 by such authority to obtain such authority’s au-
16 thorization or approval of a contract for trans-
17 fer of savings under this paragraph.

18 “(4) REPORTING SAVINGS.—

19 “(A) REQUIREMENTS.—The regulations
20 promulgated under this section shall establish
21 requirements governing the submission of re-
22 ports to demonstrate, in accordance with the
23 protocols and standards for measurement and
24 third-party verification established under this
25 subsection, the total annual electricity savings

1 achieved by a retail electric supplier within the
2 relevant year.

3 “(B) REVIEW AND APPROVAL.—The Com-
4 mission shall review each report submitted to
5 the Commission by a retail electric supplier and
6 shall exclude any electricity savings that have
7 not been adequately demonstrated in accord-
8 ance with the requirements of this subsection.

9 “(5) STATE ADMINISTRATION.—

10 “(A) DELEGATION OF AUTHORITY.—Upon
11 receipt of an application from the Governor of
12 a State (including, for purposes of this sub-
13 section, the Mayor of the District of Columbia),
14 the Commission may delegate to the State the
15 authority to review and verify reported elec-
16 tricity savings for purposes of determining dem-
17 onstrated total annual electricity savings that
18 may be counted towards a retail electric sup-
19 plier’s compliance obligation under subsection
20 (b). The Commission shall make a substantive
21 determination approving or disapproving a
22 State application under this subparagraph,
23 after notice and comment, within 180 days of
24 receipt of a complete application.

1 “(B) ALTERNATIVE MEASUREMENT AND
2 VERIFICATION PROCEDURES AND STAND-
3 ARDS.—As part of an application submitted
4 under subparagraph (A), a State may request
5 to use alternative measurement and verification
6 procedures and standards to those specified in
7 paragraphs (1) and (2), provided the State
8 demonstrates that such alternative procedures
9 and standards provide a level of accuracy of
10 measurement and verification at least equiva-
11 lent to the Federal procedures and standards
12 promulgated under paragraphs (1) and (2).

13 “(C) REVIEW OF STATE IMPLEMENTA-
14 TION.—The Commission shall, not less fre-
15 quently than once every 4 years, review each
16 State’s implementation of delegated authority
17 under this paragraph to ensure conformance
18 with the requirements of this section. The Com-
19 mission may, at any time, revoke the delegation
20 of authority under this section upon a finding
21 that the State is not implementing its delegated
22 responsibilities in conformity with this para-
23 graph. As a condition of maintaining its dele-
24 gated authority under this paragraph, the Com-
25 mission may require a State to submit a revised

1 application under subparagraph (A) if the Com-
2 mission has—

3 “(i) promulgated new or substantially
4 revised measurement and verification pro-
5 cedures and standards under this sub-
6 section; or

7 “(ii) otherwise substantially revised
8 the program established under this section.

9 “(g) ALTERNATIVE COMPLIANCE PAYMENTS.—

10 “(1) IN GENERAL.—A retail electric supplier
11 may satisfy the requirements of subsection (b) in
12 whole or in part by submitting in accordance with
13 this subsection, in lieu of each Federal renewable
14 electricity credit or megawatt hour of demonstrated
15 total annual electricity savings that would otherwise
16 be due, a payment equal to \$25, adjusted for infla-
17 tion on January 1 of each year following calendar
18 year 2009, in accordance with such regulations as
19 the Commission may promulgate.

20 “(2) PAYMENT TO STATE FUNDS.—Except as
21 otherwise provided in this paragraph, payments
22 made under this subsection shall be made directly to
23 the State or States in which the retail electric sup-
24 plier is located, in proportion to the portion of the
25 retail electric supplier’s base amount that is sold

1 within each relevant State, provided that such pay-
2 ments are deposited directly into a fund in the State
3 treasury established for this purpose and that the
4 State uses such funds in accordance with para-
5 graphs (3) and (4). If the Commission determines at
6 any time that a State is in substantial noncompli-
7 ance with paragraph (3) or (4), the Commission
8 shall direct that any future alternative compliance
9 payments that would otherwise be paid to such State
10 under this subsection shall instead be paid to the
11 Commission and deposited in the United States
12 Treasury.

13 “(3) STATE USE OF FUNDS.—As a condition of
14 continued receipt of alternative compliance payments
15 pursuant to this subsection, a State shall use such
16 payments exclusively for the purposes of—

17 “(A) deploying technologies that generate
18 electricity from renewable energy resources; or

19 “(B) implementing cost-effective energy ef-
20 ficiency programs to achieve electricity savings.

21 “(4) REPORTING.—As a condition of continued
22 receipt of alternative compliance payments pursuant
23 to this subsection, a State shall, within 12 months
24 of receipt of any such payments and at 12-month in-
25 tervals thereafter until such payments are expended,

1 provide a report to the Commission, in accordance
2 with such regulations as the Commission may pre-
3 scribe, giving a full accounting of the use of such
4 payments, including a detailed description of the ac-
5 tivities funded thereby.

6 “(h) INFORMATION COLLECTION.—The Commission
7 may require any retail electric supplier, renewable elec-
8 tricity generator, or such other entities as the Commission
9 deems appropriate, to provide any information the Com-
10 mission determines appropriate to carry out this section.
11 Failure to submit such information or submission of false
12 or misleading information under this subsection shall be
13 a violation of this section.

14 “(i) ENFORCEMENT AND JUDICIAL REVIEW.—

15 “(1) FAILURE TO SUBMIT CREDITS OR DEM-
16 ONSTRATE SAVINGS.—If any person fails to comply
17 with the requirements of subsection (b) or (g), such
18 person shall be liable to pay to the Commission a
19 civil penalty equal to the product of—

20 “(A) double the alternative compliance
21 payment calculated under subsection (g)(1),
22 and

23 “(B) the aggregate quantity of Federal re-
24 newable electricity credits, total annual elec-
25 tricity savings, or equivalent alternative compli-

1 ance payments that the person failed to submit
2 in violation of the requirements of subsections
3 (b) and (g).

4 “(2) ENFORCEMENT.—The Commission shall
5 assess a civil penalty under paragraph (1) in accord-
6 ance with the procedures described in section 31(d)
7 of the Federal Power Act (16 U.S.C. 823b(d)).

8 “(3) VIOLATION OF REQUIREMENT OF REGULA-
9 TIONS OR ORDERS.—Any person who violates, or
10 fails or refuses to comply with, any requirement of
11 a regulation promulgated or order issued under this
12 section shall be subject to a civil penalty under sec-
13 tion 316A(b) of the Federal Power Act (16 U.S.C.
14 825o–1). Such penalty shall be assessed by the Com-
15 mission in the same manner as in the case of a vio-
16 lation referred to in section 316A(b) of such Act.

17 “(j) JUDICIAL REVIEW.—Any person aggrieved by a
18 final action taken by the Commission under this section,
19 other than the assessment of a civil penalty under sub-
20 section (i), may use the procedures for review described
21 in section 313 of the Federal Power Act (16 U.S.C. 825l).
22 For purposes of this paragraph, references to an order in
23 section 313 of such Act shall be deemed to refer also to
24 all other final actions of the Commission under this section

1 other than the assessment of a civil penalty under sub-
2 section (i).

3 “(k) SAVINGS PROVISIONS.—Nothing in this section
4 shall—

5 “(1) diminish or qualify any authority of a
6 State, a political subdivision of a State, or an Indian
7 tribe to—

8 “(A) adopt or enforce any law or regula-
9 tion respecting renewable electricity or energy
10 efficiency, including any law or regulation es-
11 tablishing requirements more stringent than
12 those established by this section, provided that
13 no such law or regulation may relieve any per-
14 son of any requirement otherwise applicable
15 under this section; or

16 “(B) regulate the acquisition and disposi-
17 tion of Federal renewable electricity credits by
18 retail electric suppliers within the jurisdiction of
19 such State, political subdivision, or Indian tribe,
20 including the authority to require such retail
21 electric supplier to acquire and submit to the
22 Secretary for retirement Federal renewable
23 electricity credits in excess of those submitted
24 under this section; or

1 “(2) affect the application of, or the responsi-
2 bility for compliance with, any other provision of law
3 or regulation, including environmental and licensing
4 requirements.

5 “(1) SUNSET.—This section expires on December 31,
6 2040.”.

7 (b) CONFORMING AMENDMENT.—The table of con-
8 tents set forth in section 1(b) of the Public Utility Regu-
9 latory Policies Act of 1978 (16 U.S.C. 2601 and following)
10 is amended by inserting after the item relating to section
11 609 the following:

 “Sec. 610. Combined efficiency and renewable electricity standard.”.

12 **SEC. 102. CLARIFYING STATE AUTHORITY TO ADOPT RE-**
13 **NEWABLE ENERGY INCENTIVES.**

14 Section 210 of the Public Utility Regulatory Policies
15 Act of 1978 is amended by adding at the end thereof:

16 “(o) CLARIFICATION OF STATE AUTHORITY TO
17 ADOPT RENEWABLE ENERGY INCENTIVES.—Notwith-
18 standing any other provision of this Act or the Federal
19 Power Act, a State legislature or regulatory authority may
20 set the rates for a sale of electric energy by a facility gen-
21 erating electric energy from renewable energy sources pur-
22 suant to a State-approved production incentive program
23 under which the facility voluntarily sells electric energy.
24 For purposes of this subsection, ‘State-approved produc-
25 tion incentive program’ means a requirement imposed pur-

1 suant to State law, or by a State regulatory authority act-
2 ing within its authority under State law, that an electric
3 utility purchase renewable energy (as defined in section
4 609 of this Act) at a specified rate.”.

5 **Subtitle B—Carbon Capture and** 6 **Sequestration**

7 **SEC. 111. NATIONAL STRATEGY.**

8 (a) IN GENERAL.—Not later than 1 year after the
9 date of enactment of this Act, the Administrator, in con-
10 sultation with the Secretary of Energy, the Secretary of
11 the Interior, and the heads of such other relevant Federal
12 agencies as the President may designate, shall submit to
13 Congress a report setting forth a unified and comprehen-
14 sive strategy to address the key legal, regulatory and other
15 barriers to the commercial-scale deployment of carbon
16 capture and sequestration.

17 (b) BARRIERS.— The report under this section
18 shall—

19 (1) identify those regulatory, legal, and other
20 gaps and barriers that could be addressed by a Fed-
21 eral agency using existing statutory authority, those,
22 if any, that require Federal legislation, and those
23 that would be best addressed at the State, tribal, or
24 regional level;

1 (2) identify regulatory implementation chal-
2 lenges, including those related to approval of State
3 and tribal programs and delegation of authority for
4 permitting; and

5 (3) recommend rulemakings, Federal legisla-
6 tion, or other actions that should be taken to further
7 evaluate and address such barriers.

8 **SEC. 112. REGULATIONS FOR GEOLOGIC SEQUESTRATION**
9 **SITES.**

10 (a) COORDINATED CERTIFICATION AND PERMITTING
11 PROCESS.—Title VIII of the Clean Air Act, as added by
12 section 331 of this Act, is amended by adding after section
13 812 (as added by section 116 of this Act) the following:

14 **“SEC. 813. GEOLOGIC SEQUESTRATION SITES.**

15 “(a) COORDINATED PROCESS.—The Administrator
16 shall establish a coordinated approach to certifying and
17 permitting geologic sequestration, taking into consider-
18 ation all relevant statutory authorities. In establishing
19 such approach, the Administrator shall—

20 “(1) take into account, and reduce redundancy
21 with, the requirements of section 1421 of the Safe
22 Drinking Water Act (42 U.S.C. 300h), as amended
23 by section 112(b) of the American Clean Energy and
24 Security Act of 2009, including the rulemaking for

1 geologic sequestration wells described at 73 Fed.
2 Reg. 43491-541 (July 25, 2008); and

3 “(2) to the extent practicable, reduce the bur-
4 den on certified entities and implementing authori-
5 ties.

6 “(b) REGULATIONS.—Not later than 2 years after
7 the date of enactment of this title, the Administrator shall
8 promulgate regulations to protect human health and the
9 environment by minimizing the risk of escape to the at-
10 mosphere of carbon dioxide injected for purposes of geo-
11 logic sequestration.

12 “(c) REQUIREMENTS.—The regulations under sub-
13 section (b) shall include—

14 “(1) a process to obtain certification for geo-
15 logic sequestration under this section; and

16 “(2) requirements for—

17 “(A) monitoring, record keeping, and re-
18 porting for emissions associated with injection
19 into, and escape from, geologic sequestration
20 sites, taking into account any requirements or
21 protocols developed under section 713;

22 “(B) public participation in the certifi-
23 cation process that maximizes transparency;

1 “(C) the sharing of data between States,
2 Indian tribes, and the Environmental Protec-
3 tion Agency; and

4 “(D) other elements or safeguards nec-
5 essary to achieve the purpose set forth in sub-
6 section (b).

7 “(d) REPORT.—Not later than 2 years after the pro-
8 mulgation of regulations under subsection (b), and at 3-
9 year intervals thereafter, the Administrator shall deliver
10 to the Committee on Energy and Commerce of the House
11 of Representatives and the Committee on Environment
12 and Public Works of the Senate a report on geologic se-
13 questration in the United States, and, to the extent rel-
14 evant, other countries in North America. Such report shall
15 include—

16 “(1) data regarding injection, emissions to the
17 atmosphere, if any, and performance of active and
18 closed geologic sequestration sites, including those
19 where enhanced hydrocarbon recovery operations
20 occur;

21 “(2) an evaluation of the performance of rel-
22 evant Federal environmental regulations and pro-
23 grams in ensuring environmentally protective geo-
24 logic sequestration practices;

1 “(3) recommendations on how such programs
2 and regulations should be improved or made more
3 effective; and

4 “(4) other relevant information.”.

5 (b) SAFE DRINKING WATER ACT STANDARDS.—Sec-
6 tion 1421 of the Safe Drinking Water Act (42 U.S.C.
7 300h) is amended by inserting after subsection (d) the fol-
8 lowing:

9 “(e) CARBON DIOXIDE GEOLOGIC SEQUESTRATION
10 WELLS.—

11 “(1) IN GENERAL.—Not later than 1 year after
12 the date of enactment of this subsection, the Admin-
13 istrator shall promulgate regulations under sub-
14 section (a) for carbon dioxide geologic sequestration
15 wells.

16 “(2) FINANCIAL RESPONSIBILITY.—The regula-
17 tions referred to in paragraph (1) shall include re-
18 quirements for maintaining evidence of financial re-
19 sponsibility, including financial responsibility for
20 emergency and remedial response, well plugging, site
21 closure, and post-injection site care. Financial re-
22 sponsibility may be established for carbon dioxide
23 geologic sequestration wells in accordance with regu-
24 lations promulgated by the Administrator by any
25 one, or any combination, of the following: insurance,

1 guarantee, trust, standby trust, surety bond, letter
2 of credit, qualification as a self-insurer, or any other
3 method satisfactory to the Administrator.”.

4 **SEC. 113. STUDIES AND REPORTS.**

5 (a) STUDY OF LEGAL FRAMEWORK FOR GEOLOGIC
6 SEQUESTRATION SITES.—

7 (1) ESTABLISHMENT OF TASK FORCE.—As
8 soon as practicable, but not later than 6 months
9 after the date of enactment of this Act, the Adminis-
10 trator shall establish a task force to be composed of
11 an equal number of subject matter experts, non-
12 governmental organizations with expertise in envi-
13 ronmental policy, academic experts with expertise in
14 environmental law, State and tribal officials with en-
15 vironmental expertise, representatives of State and
16 tribal Attorneys General, representatives from the
17 Environmental Protection Agency, the Department
18 of the Interior, the Department of Energy, the De-
19 partment of Transportation, and other relevant Fed-
20 eral agencies, and members of the private sector, to
21 conduct a study of—

22 (A) existing Federal environmental stat-
23 utes, State environmental statutes, and State
24 common law that apply to geologic sequestra-
25 tion sites for carbon dioxide, including the abil-

1 ity of such laws to serve as risk management
2 tools;

3 (B) the existing statutory framework, in-
4 cluding Federal and State laws, that apply to
5 harm and damage to the environment or public
6 health at closed sites where carbon dioxide in-
7 jection has been used for enhanced hydrocarbon
8 recovery;

9 (C) the statutory framework, environ-
10 mental health and safety considerations, imple-
11 mentation issues, and financial implications of
12 potential models for Federal, State, or private
13 sector assumption of liabilities and financial re-
14 sponsibilities with respect to closed geologic se-
15 questration sites;

16 (D) private sector mechanisms, including
17 insurance and bonding, that may be available to
18 manage environmental, health and safety risk
19 from closed geologic sequestration sites; and

20 (E) the subsurface mineral rights, water
21 rights, or property rights issues associated with
22 geologic sequestration of carbon dioxide, includ-
23 ing issues specific to Federal lands.

24 (2) REPORT.—Not later than 18 months after
25 the date of enactment of this Act, the task force es-

1 established under paragraph (1) shall submit to Con-
2 gress a report describing the results of the study
3 conducted under that paragraph including any con-
4 sensus recommendations of the task force.

5 (b) ENVIRONMENTAL STATUTES.—

6 (1) STUDY.—The Administrator shall conduct a
7 study examining how, and under what cir-
8 cumstances, the environmental statutes for which
9 the Environmental Protection Agency has responsi-
10 bility would apply to carbon dioxide injection and
11 geologic sequestration activities.

12 (2) REPORT.—Not later than 1 year after the
13 date of enactment of this Act, the Administrator
14 shall submit to Congress a report describing the re-
15 sults of the study conducted under paragraph (1).

16 **SEC. 114. CARBON CAPTURE AND SEQUESTRATION DEM-**
17 **ONSTRATION AND EARLY DEPLOYMENT PRO-**
18 **GRAM.**

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

20 (1) SECRETARY.—The term “Secretary” means
21 the Secretary of Energy.

22 (2) DISTRIBUTION UTILITY.—The term “dis-
23 tribution utility” means an entity that distributes
24 electricity directly to retail consumers under a legal,
25 regulatory, or contractual obligation to do so.

1 (3) ELECTRIC UTILITY.—The term “electric
2 utility” has the meaning provided by section 3(22)
3 of the Federal Power Act (16 U.S.C. 796(22)).

4 (4) FOSSIL FUEL-BASED ELECTRICITY.—The
5 term “fossil fuel-based electricity” means electricity
6 that is produced from the combustion of fossil fuels.

7 (5) FOSSIL FUEL.—The term “fossil fuel”
8 means coal, petroleum, natural gas or any derivative
9 of coal, petroleum, or natural gas.

10 (6) CORPORATION.—The term “Corporation”
11 means the Carbon Storage Research Corporation es-
12 tablished in accordance with this section.

13 (7) QUALIFIED INDUSTRY ORGANIZATION.—The
14 term “qualified industry organization” means the
15 Edison Electric Institute, the American Public
16 Power Association, the National Rural Electric Co-
17 operative Association, a successor organization of
18 such organizations, or a group of owners or opera-
19 tors of distribution utilities delivering fossil fuel-
20 based electricity who collectively represent at least
21 20 percent of the volume of fossil fuel-based elec-
22 tricity delivered by distribution utilities to consumers
23 in the United States.

24 (8) RETAIL CONSUMER.—The term “retail con-
25 sumer” means an end-user of electricity.

1 (b) CARBON STORAGE RESEARCH CORPORATION.—

2 (1) ESTABLISHMENT.—

3 (A) REFERENDUM.—Qualified industry or-
4 ganizations may conduct, at their own expense,
5 a referendum among the owners or operators of
6 distribution utilities delivering fossil fuel-based
7 electricity for the creation of a Carbon Storage
8 Research Corporation. Such referendum shall
9 be conducted by an independent auditing firm
10 agreed to by the qualified industry organiza-
11 tions. Voting rights in such referendum shall be
12 based on the quantity of fossil fuel-based elec-
13 tricity delivered to consumers in the previous
14 calendar year or other representative period as
15 determined by the Secretary pursuant to sub-
16 section (f). Upon approval of those persons rep-
17 resenting two-thirds of the total quantity of fos-
18 sil fuel-based electricity delivered to retail con-
19 sumers, the Corporation shall be established un-
20 less opposed by the State regulatory authorities
21 pursuant to subparagraph (B). All distribution
22 utilities voting in the referendum shall certify to
23 the independent auditing firm the quantity of
24 fossil fuel-based electricity represented by their
25 vote.

(B) STATE REGULATORY AUTHORITIES.—

1
2 Upon its own motion or the petition of a quali-
3 fied industry organization, each State regu-
4 latory authority shall consider its support or op-
5 position to the creation of the Corporation
6 under subparagraph (A). State regulatory au-
7 thorities may notify the independent auditing
8 firm referred to in subparagraph (A) of their
9 views on the creation of the Corporation within
10 180 days after the date of enactment of this
11 Act. If 40 percent or more of the State regu-
12 latory authorities submit to the independent au-
13 diting firm written notices of opposition, the
14 Corporation shall not be established notwith-
15 standing the approval of the qualified industry
16 organizations as provided in subparagraph (A).

(2) TERMINATION.—The Corporation shall be

18 authorized to collect assessments and conduct oper-
19 ations pursuant to this section for a 10-year period
20 from the date 6 months after the date of enactment
21 of this Act. After such 10-year period, the Corpora-
22 tion is no longer authorized to collect assessments
23 and shall be dissolved on the date 15 years after
24 such date of enactment, unless the period is ex-
25 tended by an Act of Congress.

1 (3) GOVERNANCE.—The Corporation shall oper-
2 ate as a division or affiliate of the Electric Power
3 Research Institute (referred to in this section as
4 “EPRI”) and be managed by a Board of not more
5 than 15 voting members responsible for its oper-
6 ations, including compliance with this section. EPRI,
7 in consultation with the Edison Electric Institute,
8 the American Public Power Association and the Na-
9 tional Rural Electric Cooperative Association shall
10 appoint the Board members under clauses (i), (ii),
11 and (iii) of subparagraph (A) from among can-
12 didates recommended by those organizations. At
13 least a majority of the Board members appointed by
14 EPRI shall be representatives of distribution utilities
15 subject to assessments under subsection (d).

16 (A) MEMBERS.—The Board shall include
17 at least one representative of each of the fol-
18 lowing:

- 19 (i) Investor-owned utilities.
20 (ii) Utilities owned by a State agency,
21 a municipality, and an Indian tribe.
22 (iii) Rural electric cooperatives.
23 (iv) Fossil fuel producers.
24 (v) Nonprofit environmental organiza-
25 tions.

1 (vi) Independent generators or whole-
2 sale power providers.

3 (vii) Consumer groups.

4 (B) NONVOTING MEMBERS.—The Board
5 shall also include as additional nonvoting Mem-
6 bers the Secretary of Energy or his designee
7 and 2 representatives of State regulatory au-
8 thorities as defined in section 3(17) of the Pub-
9 lic Utility Regulatory Policies Act of 1978 (16
10 U.S.C. 2602(17)), each designated by the Na-
11 tional Association of State Regulatory Utility
12 Commissioners from States that are not within
13 the same transmission interconnection.

14 (4) COMPENSATION.—Corporation Board mem-
15 bers shall receive no compensation for their services,
16 nor shall Corporation Board members be reimbursed
17 for expenses relating to their service.

18 (5) TERMS.—Corporation Board members shall
19 serve terms of 4 years and may serve not more than
20 2 full consecutive terms. Members filling unexpired
21 terms may serve not more than a total of 8 consecu-
22 tive years. Former members of the Corporation
23 Board may be reappointed to the Corporation Board
24 if they have not been members for a period of 2
25 years. Initial appointments to the Corporation Board

1 shall be for terms of 1, 2, 3, and 4 years, staggered
2 to provide for the selection of 3 members each year.

3 (6) STATUS OF CORPORATION.—The Corpora-
4 tion shall not be considered to be an agency, depart-
5 ment, or instrumentality of the United States, and
6 no officer or director or employee of the Corporation
7 shall be considered to be an officer or employee of
8 the United States Government, for purposes of title
9 5 or title 31 of the United States Code, or for any
10 other purpose, and no funds of the Corporation shall
11 be treated as public money for purposes of chapter
12 33 of title 31, United States Code, or for any other
13 purpose.

14 (c) FUNCTIONS AND ADMINISTRATION OF THE COR-
15 PORATION.—

16 (1) IN GENERAL.—The Corporation shall estab-
17 lish and administer a program to accelerate the com-
18 mercial availability of carbon dioxide capture and
19 storage technologies and methods, including tech-
20 nologies which capture and store, or capture and
21 convert, carbon dioxide. Under such program com-
22 petitively awarded grants, contracts, and financial
23 assistance shall be provided and entered into with el-
24 igible entities. Except as provided in paragraph (8),
25 the Corporation shall use all funds derived from as-

1 assessments under subsection (d) to issue grants and
2 contracts to eligible entities.

3 (2) PURPOSE.—The purposes of the grants,
4 contracts, and assistance under this subsection shall
5 be to support commercial-scale demonstrations of
6 carbon capture or storage technology projects capa-
7 ble of advancing the technologies to commercial
8 readiness. Such projects should encompass a range
9 of different coal and other fossil fuel varieties, be
10 geographically diverse, involve diverse storage media,
11 and employ capture or storage, or capture and con-
12 version, technologies potentially suitable either for
13 new or for retrofit applications. The Corporation
14 shall seek, to the extent feasible, to support at least
15 5 commercial-scale demonstration projects inte-
16 grating carbon capture and sequestration or conver-
17 sion technologies.

18 (3) ELIGIBLE ENTITIES.—Entities eligible for
19 grants, contracts or assistance under this subsection
20 may include distribution utilities, electric utilities
21 and other private entities, academic institutions, na-
22 tional laboratories, Federal research agencies, State
23 and tribal research agencies, nonprofit organizations,
24 or consortiums of 2 or more entities. Pilot-scale and
25 similar small-scale projects are not eligible for sup-

1 port by the Corporation. Owners or developers of
2 projects supported by the Corporation shall, where
3 appropriate, share in the costs of such projects.

4 (4) GRANTS FOR EARLY MOVERS.—Fifty per-
5 cent of the funds raised under this section shall be
6 provided in the form of grants to electric utilities
7 that had, prior to the award of any grant under this
8 section, committed resources to deploy a large scale
9 electricity generation unit with integrated carbon
10 capture and sequestration or conversion applied to a
11 substantial portion of the unit’s carbon dioxide emis-
12 sions. Grant funds shall be provided to defray costs
13 incurred by such electricity utilities for at least 5
14 such electricity generation units.

15 (5) ADMINISTRATION.—The members of the
16 Board of Directors of the Corporation shall elect a
17 Chairman and other officers as necessary, may es-
18 tablish committees and subcommittees of the Cor-
19 poration, and shall adopt rules and bylaws for the
20 conduct of business and the implementation of this
21 section. The Board shall appoint an Executive Di-
22 rector and professional support staff who may be
23 employees of the Electric Power Research Institute
24 (EPRI). After consultation with the Technical Advi-
25 sory Committee established under subsection (j), the

1 Secretary, and the Director of the National Energy
2 Technology Laboratory to obtain advice and rec-
3 ommendations on plans, programs, and project selec-
4 tion criteria, the Board shall establish priorities for
5 grants, contracts, and assistance; publish requests
6 for proposals for grants, contracts, and assistance;
7 and award grants, contracts, and assistance competi-
8 tively, on the basis of merit, after the establishment
9 of procedures that provide for scientific peer review
10 by the Technical Advisory Committee. The Board
11 shall give preference to applications that reflect the
12 best overall value and prospect for achieving the
13 purposes of the section, such as those which dem-
14 onstrate an integrated approach for capture and
15 storage or capture and conversion technologies. The
16 Board members shall not participate in making
17 grants or awards to entities with whom they are af-
18 filiated.

19 (6) USES OF GRANTS, CONTRACTS, AND ASSIST-
20 ANCE.—A grant, contract, or other assistance pro-
21 vided under this subsection may be used to purchase
22 carbon dioxide when needed to conduct tests of car-
23 bon dioxide storage sites, in the case of established
24 projects that are storing carbon dioxide emissions, or
25 for other purposes consistent with the purposes of

1 this section. The Corporation shall make publicly
2 available at no cost information learned as a result
3 of projects which it supports financially.

4 (7) INTELLECTUAL PROPERTY.—The Board
5 shall establish policies regarding the ownership of in-
6 tellectual property developed as a result of Corpora-
7 tion grants and other forms of technology support.
8 Such policies shall encourage individual ingenuity
9 and invention.

10 (8) ADMINISTRATIVE EXPENSES.—Up to 5 per-
11 cent of the funds collected in any fiscal year under
12 subsection (d) may be used for the administrative
13 expenses of operating the Corporation (not including
14 costs incurred in the determination and collection of
15 the assessments pursuant to subsection (d)).

16 (9) PROGRAMS AND BUDGET.—Before August 1
17 each year, the Corporation, after consulting with the
18 Technical Advisory Committee and the Secretary
19 and the Director of the Department's National En-
20 ergy Technology Laboratory and other interested
21 parties to obtain advice and recommendations, shall
22 publish for public review and comment its proposed
23 plans, programs, project selection criteria, and
24 projects to be funded by the Corporation for the
25 next calendar year. The Corporation shall also pub-

1 lish for public review and comment a budget plan for
2 the next calendar year, including the probable costs
3 of all programs, projects, and contracts and a rec-
4 ommended rate of assessment sufficient to cover
5 such costs. The Secretary may recommend programs
6 and activities the Secretary considers appropriate.
7 The Corporation shall include in the first publication
8 it issues under this paragraph a strategic plan or
9 roadmap for the achievement of the purposes of the
10 Corporation, as set forth in paragraph (2).

11 (10) RECORDS; AUDITS.—The Corporation shall
12 keep minutes, books, and records that clearly reflect
13 all of the acts and transactions of the Corporation
14 and make public such information. The books of the
15 Corporation shall be audited by a certified public ac-
16 countant at least once each fiscal year and at such
17 other times as the Corporation may designate. Cop-
18 ies of each audit shall be provided to the Congress,
19 all Corporation board members, all qualified indus-
20 try organizations, each State regulatory authority
21 and, upon request, to other members of the industry.
22 If the audit determines that the Corporation’s prac-
23 tices fail to meet generally accepted accounting prin-
24 ciples the assessment collection authority of the Cor-
25 poration under subsection (d) shall be suspended

1 until a certified public accountant renders a subse-
2 quent opinion that the failure has been corrected.
3 The Corporation shall make its books and records
4 available for review by the Secretary or the Comp-
5 troller General of the United States.

6 (11) PUBLIC ACCESS.—The Corporation
7 Board’s meetings shall be open to the public and
8 shall occur after at least 30 days advance public no-
9 tice. Meetings of the Board of Directors may be
10 closed to the public where the agenda of such meet-
11 ings includes only confidential matters pertaining to
12 project selection, the award of grants or contracts,
13 personnel matters, or the receipt of legal advice. The
14 minutes of all meetings of the Corporation shall be
15 made available to and readily accessible by the pub-
16 lic.

17 (12) ANNUAL REPORT.—Each year the Cor-
18 poration shall prepare and make publicly available a
19 report which includes an identification and descrip-
20 tion of all programs and projects undertaken by the
21 Corporation during the previous year. The report
22 shall also detail the allocation or planned allocation
23 of Corporation resources for each such program and
24 project. The Corporation shall provide its annual re-
25 port to the Congress, the Secretary, each State regu-

1 latory authority, and upon request to the public. The
 2 Secretary shall, not less than 60 days after receiving
 3 such report, provide to the President and Congress
 4 a report assessing the progress of the Corporation in
 5 meeting the objectives of this section.

6 (d) ASSESSMENTS.—

7 (1) AMOUNT.—(A) In all calendar years fol-
 8 lowing its establishment, the Corporation shall col-
 9 lect an assessment on distribution utilities for all
 10 fossil fuel-based electricity delivered directly to retail
 11 consumers (as determined under subsection (f)). The
 12 assessments shall reflect the relative carbon dioxide
 13 emission rates of different fossil fuel-based elec-
 14 tricity, and initially shall be not less than the fol-
 15 lowing amounts for coal, natural gas, and oil:

Fuel type	Rate of assessment per kilowatt hour
Coal	\$0.00043
Natural Gas	\$0.00022
Oil	\$0.00032.

16 (B) The Corporation is authorized to adjust the
 17 assessments on fossil fuel-based electricity to reflect
 18 changes in the expected quantities of such electricity
 19 from different fuel types, such that the assessments
 20 generate not less than \$1.0 billion and not more
 21 than \$1.1 billion annually. The Corporation is au-

1 thorized to supplement assessments through addi-
2 tional financial commitments.

3 (2) INVESTMENT OF FUNDS.—Pending dis-
4 bursement pursuant to a program, plan, or project,
5 the Corporation may invest funds collected through
6 assessments under this subsection, and any other
7 funds received by the Corporation, only in obliga-
8 tions of the United States or any agency thereof, in
9 general obligations of any State or any political sub-
10 division thereof, in any interest-bearing account or
11 certificate of deposit of a bank that is a member of
12 the Federal Reserve System, or in obligations fully
13 guaranteed as to principal and interest by the
14 United States.

15 (3) REVERSION OF UNUSED FUNDS.—If the
16 Corporation does not disburse, dedicate or assign 75
17 percent or more of the available proceeds of the as-
18 sessed fees in any calendar year 7 or more years fol-
19 lowing its establishment, due to an absence of quali-
20 fied projects or similar circumstances, it shall reim-
21 burse the remaining undedicated or unassigned bal-
22 ance of such fees, less administrative and other ex-
23 penses authorized by this section, to the distribution
24 utilities upon which such fees were assessed, in pro-
25 portion to their collected assessments.

1 (e) ERCOT.—

2 (1) ASSESSMENT, COLLECTION, AND REMIT-
3 TANCE.—(A) Notwithstanding any other provision of
4 this section, within ERCOT, the assessment pro-
5 vided for in subsection (d) shall be—

6 (i) levied directly on qualified scheduling
7 entities, or their successor entities;

8 (ii) charged consistent with other charges
9 imposed on qualified scheduling entities as a fee
10 on energy used by the load-serving entities; and

11 (iii) collected and remitted by ERCOT to
12 the Corporation in the amounts and in the
13 same manner as set forth in subsection (d).

14 (B) The assessment amounts referred to in sub-
15 paragraph (A) shall be—

16 (i) determined by the amount and types of
17 fossil fuel-based electricity delivered directly to
18 all retail customers in the prior calendar year
19 beginning with the year ending immediately
20 prior to the period described in subsection
21 (b)(2); and

22 (ii) take into account the number of renew-
23 able energy credits retired by the load-serving
24 entities represented by a qualified scheduling
25 entity within the prior calendar year.

1 (2) ADMINISTRATION EXPENSES.—Up to 1 per-
2 cent of the funds collected in any fiscal year by
3 ERCOT under the provisions of this subsection may
4 be used for the administrative expenses incurred in
5 the determination, collection and remittance of the
6 assessments to the Corporation.

7 (3) AUDIT.—ERCOT shall provide a copy of its
8 annual audit pertaining to the administration of the
9 provisions of this subsection to the Corporation.

10 (4) DEFINITIONS.—For the purposes of this
11 subsection:

12 (A) The term “ERCOT” means the Elec-
13 tric Reliability Council of Texas.

14 (B) The term “load-serving entities” has
15 the meaning adopted by ERCOT Protocols and
16 in effect on the date of enactment of this Act.

17 (C) The term “qualified scheduling enti-
18 ties” has the meaning adopted by ERCOT Pro-
19 tocols and in effect on the date of enactment of
20 this Act.

21 (D) The term “renewable energy credit”
22 has the meaning as promulgated and adopted
23 by the Public Utility Commission of Texas pur-
24 suant to section 39.904(b) of the Public Utility

1 Regulatory Act of 1999, and in effect on the
2 date of enactment of this Act.

3 (f) DETERMINATION OF FOSSIL FUEL-BASED ELEC-
4 TRICITY DELIVERIES.—

5 (1) FINDINGS.—The Congress finds that:

6 (A) The assessments under subsection (d)
7 are to be collected based on the amount of fossil
8 fuel-based electricity delivered by each distribu-
9 tion utility.

10 (B) Since many distribution utilities pur-
11 chase all or part of their retail consumer’s elec-
12 tricity needs from other entities, it may not be
13 practical to determine the precise fuel mix for
14 the power sold by each individual distribution
15 utility.

16 (C) It may be necessary to use average
17 data, often on a regional basis with reference to
18 Regional Transmission Organization (“RTO”)
19 or NERC regions, to make the determinations
20 necessary for making assessments.

21 (2) DOE PROPOSED RULE.—The Secretary,
22 acting in close consultation with the Energy Infor-
23 mation Administration, shall issue for notice and
24 comment a proposed rule to determine the level of
25 fossil fuel electricity delivered to retail customers by

1 each distribution utility in the United States during
2 the most recent calendar year or other period deter-
3 mined to be most appropriate. Such proposed rule
4 shall balance the need to be efficient, reasonably pre-
5 cise, and timely, taking into account the nature and
6 cost of data currently available and the nature of
7 markets and regulation in effect in various regions
8 of the country. Different methodologies may be ap-
9 plied in different regions if appropriate to obtain the
10 best balance of such factors.

11 (3) FINAL RULE.—Within 6 months after the
12 date of enactment of this Act, and after opportunity
13 for comment, the Secretary shall issue a final rule
14 under this subsection for determining the level and
15 type of fossil fuel-based electricity delivered to retail
16 customers by each distribution utility in the United
17 States during the appropriate period. In issuing
18 such rule, the Secretary may consider opportunities
19 and costs to develop new data sources in the future
20 and issue recommendations for the Energy Informa-
21 tion Administration or other entities to collect such
22 data. After notice and opportunity for comment the
23 Secretary may, by rule, subsequently update and
24 modify the methodology for making such determina-
25 tions.

1 (4) ANNUAL DETERMINATIONS.—Pursuant to
2 the final rule issued under paragraph (3), the Sec-
3 retary shall make annual determinations of the
4 amounts and types for each such utility and publish
5 such determinations in the Federal Register. Such
6 determinations shall be used to conduct the ref-
7 erendum under subsection (b) and by the Corpora-
8 tion in applying any assessment under this sub-
9 section.

10 (5) REHEARING AND JUDICIAL REVIEW.—The
11 owner or operator of any distribution utility that be-
12 lieves that the Secretary has misapplied the method-
13 ology in the final rule in determining the amount
14 and types of fossil fuel electricity delivered by such
15 distribution utility may seek rehearing of such deter-
16 mination within 30 days of publication of the deter-
17 mination in the Federal Register. The Secretary
18 shall decide such rehearing petitions within 30 days.
19 The Secretary's determinations following rehearing
20 shall be final and subject to judicial review in the
21 United States Court of Appeals for the District of
22 Columbia.

23 (g) COMPLIANCE WITH CORPORATION ASSESS-
24 MENTS.—The Corporation may bring an action in the ap-
25 propriate court of the United States to compel compliance

1 with an assessment levied by the Corporation under this
2 section. A successful action for compliance under this sub-
3 section may also require payment by the defendant of the
4 costs incurred by the Corporation in bringing such action.

5 (h) MIDCOURSE REVIEW.—Not later than 5 years
6 following establishment of the Corporation, the Comp-
7 troller General of the United States shall prepare an anal-
8 ysis, and report to Congress, assessing the Corporation’s
9 activities, including project selection and methods of dis-
10 bursement of assessed fees, impacts on the prospects for
11 commercialization of carbon capture and storage tech-
12 nologies, adequacy of funding, and administration of
13 funds. The report shall also make such recommendations
14 as may be appropriate in each of these areas. The Cor-
15 poration shall reimburse the Government Accountability
16 Office for the costs associated with performing this mid-
17 course review.

18 (i) RECOVERY OF COSTS.—

19 (1) IN GENERAL.—A distribution utility whose
20 transmission, delivery, or sales of electric energy are
21 subject to any form of rate regulation shall not be
22 denied the opportunity to recover the full amount of
23 the prudently incurred costs associated with com-
24 plying with this section, consistent with applicable
25 State or Federal law.

1 (2) RATEPAYER REBATES.—Regulatory authori-
2 ties that approve cost recovery pursuant to para-
3 graph (1) may order rebates to ratepayers to the ex-
4 tent that distribution utilities are reimbursed
5 undedicated or unassigned balances pursuant to sub-
6 section (d)(3).

7 (j) TECHNICAL ADVISORY COMMITTEE.—

8 (1) ESTABLISHMENT.—There is established an
9 advisory committee, to be known as the “Technical
10 Advisory Committee”.

11 (2) MEMBERSHIP.—The Technical Advisory
12 Committee shall be comprised of not less than 7
13 members appointed by the Board from among aca-
14 demic institutions, national laboratories, independent
15 research institutions, and other qualified institu-
16 tions. No member of the Committee shall be affili-
17 ated with EPRI or with any organization having
18 members serving on the Board. At least one member
19 of the Committee shall be appointed from among of-
20 ficers or employees of the Department of Energy
21 recommended to the Board by the Secretary of En-
22 ergy.

23 (3) CHAIRPERSON AND VICE CHAIRPERSON.—
24 The Board shall designate one member of the Tech-
25 nical Advisory Committee to serve as Chairperson of

1 the Committee and one to serve as Vice Chairperson
2 of the Committee.

3 (4) COMPENSATION.—The Board shall provide
4 compensation to members of the Technical Advisory
5 Committee for travel and other incidental expenses
6 and such other compensation as the Board deter-
7 mines to be necessary.

8 (5) PURPOSE.—The Technical Advisory Com-
9 mittee shall provide independent assessments and
10 technical evaluations, as well as make non-binding
11 recommendations to the Board, concerning Corpora-
12 tion activities, including but not limited to the fol-
13 lowing:

14 (A) Reviewing and evaluating the Corpora-
15 tion's plans and budgets described in subsection
16 (c)(9), as well as any other appropriate areas,
17 which could include approaches to prioritizing
18 technologies, appropriateness of engineering
19 techniques, monitoring and verification tech-
20 nologies for storage, geological site selection,
21 and cost control measures.

22 (B) Making annual non-binding rec-
23 ommendations to the Board concerning any of
24 the matters referred to in subparagraph (A), as
25 well as what types of investments, scientific re-

1 search, or engineering practices would best fur-
2 ther the goals of the Corporation.

3 (6) PUBLIC AVAILABILITY.—All reports, evalua-
4 tions, and other materials of the Technical Advisory
5 Committee shall be made available to the public by
6 the Board, without charge, at time of receipt by the
7 Board.

8 (k) LOBBYING RESTRICTIONS.—No funds collected
9 by the Corporation shall be used in any manner for influ-
10 encing legislation or elections, except that the Corporation
11 may recommend to the Secretary and the Congress
12 changes in this section or other statutes that would fur-
13 ther the purposes of this section.

14 (l) DAVIS-BACON COMPLIANCE.—The Corporation
15 shall ensure that entities receiving grants, contracts, or
16 other financial support from the Corporation for the
17 project activities authorized by this section are in compli-
18 ance with the Davis-Bacon Act (40 U.S.C. 276a–276a–
19 5).

20 **SEC. 115. COMMERCIAL DEPLOYMENT OF CARBON CAP-**
21 **TURE AND SEQUESTRATION TECHNOLOGIES.**

22 Part H of title VII of the Clean Air Act (as added
23 by section 321 of this Act) is amended by adding the fol-
24 lowing new section after section 785:

1 **“SEC. 786. COMMERCIAL DEPLOYMENT OF CARBON CAP-**
2 **TURE AND SEQUESTRATION TECHNOLOGIES.**

3 “(a) REGULATIONS.—Not later than 2 years after
4 the date of enactment of this title, the Administrator shall
5 promulgate regulations providing for the distribution of
6 emission allowances allocated pursuant to section 782(f),
7 pursuant to the requirements of this section, to support
8 the commercial deployment of carbon capture and seques-
9 tration technologies in both electric power generation and
10 industrial operations.

11 “(b) ELIGIBILITY CRITERIA.—For an owner or oper-
12 ator of a project to be eligible to receive emission allow-
13 ances under this section, the project must—

14 “(1) implement carbon capture and sequestra-
15 tion technology—

16 “(A) at an electric generating unit that—

17 “(i) has a nameplate capacity of 200
18 megawatts or more;

19 “(ii) in the case of a retrofit applica-
20 tion, applies the carbon capture and se-
21 questration technology to the flue gas from
22 at least 200 megawatts of the total name-
23 plate generating capacity of the unit, pro-
24 vided that clause (i) shall apply without ex-
25 ception;

1 “(iii) derives at least 50 percent of its
2 annual fuel input from coal, petroleum
3 coke, or any combination of these 2 fuels;
4 and

5 “(iv) upon implementation of capture
6 and sequestration technology, will achieve
7 an emission limit that is at least a 50 per-
8 cent reduction in emissions of the carbon
9 dioxide produced by—

10 “(I) the unit, measured on an
11 annual basis, determined in accord-
12 ance with section 812(b)(2); or

13 “(II) in the case of retrofit appli-
14 cations under clause (ii), the treated
15 portion of flue gas from the unit,
16 measured on an annual basis, deter-
17 mined in accordance with section
18 812(b)(2); or

19 “(B) at an industrial source that—

20 “(i) absent carbon capture and se-
21 questration, would emit greater than
22 50,000 tons per year of carbon dioxide;

23 “(ii) upon implementation, will
24 achieve an emission limit that is at least a
25 50 percent reduction in emissions of the

1 carbon dioxide produced by the emission
2 point, measured on an annual basis, deter-
3 mined in accordance with section
4 812(b)(2); and

5 “(iii) does not produce a liquid trans-
6 portation fuel from a solid fossil-based
7 feedstock;

8 “(2) geologically sequester carbon dioxide at a
9 site that meets all applicable permitting and certifi-
10 cation requirements for geologic sequestration, or,
11 pursuant to such requirements as the Administrator
12 may prescribe by regulation, convert captured car-
13 bon dioxide to a stable form that will safely and per-
14 manently sequester such carbon dioxide;

15 “(3) meet all other applicable State, tribal, and
16 Federal permitting requirements; and

17 “(4) be located in the United States.

18 “(c) PHASE I DISTRIBUTION TO ELECTRIC GENER-
19 ATING UNITS.—

20 “(1) APPLICATION.—This subsection shall
21 apply only to projects at the first 6 gigawatts of
22 electric generating units, measured in cumulative
23 generating capacity of such units, that receive allow-
24 ances under this section.

1 “(2) DISTRIBUTION.—The Administrator shall
2 distribute emission allowances allocated under sec-
3 tion 782(f) to the owner or operator of each eligible
4 project at an electric generating unit in a quantity
5 equal to the quotient obtained by dividing—

6 “(A) the product obtained by multi-
7 plying—

8 “(i) the number of metric tons of car-
9 bon dioxide emissions avoided through cap-
10 ture and sequestration of emissions by the
11 project, as determined pursuant to such
12 methodology as the Administrator shall
13 prescribe by regulation; and

14 “(ii) a bonus allowance value, pursu-
15 ant to paragraph (3); by

16 “(B) the average fair market value of an
17 emission allowance during the preceding year.

18 “(3) BONUS ALLOWANCE VALUES.—

19 “(A) For a generating unit achieving the
20 capture and sequestration of 85 percent or
21 more of the carbon dioxide that otherwise would
22 be emitted by such unit, the bonus allowance
23 value shall be \$90 per ton.

24 “(B) The Administrator shall by regulation
25 establish a bonus allowance value for each rate

1 of lower capture and sequestration achieved by
2 a generating unit, from a minimum of \$50 per
3 ton for a 50 percent rate and varying directly
4 with increasing rates of capture and sequestra-
5 tion up to \$90 per ton for an 85 percent rate.

6 “(C) For a generating unit that achieves
7 the capture and sequestration of at least 50
8 percent of the carbon dioxide that otherwise
9 would be emitted by such unit by not later than
10 January 1, 2017, the otherwise applicable
11 bonus allowance value under this paragraph
12 shall be increased by \$10, provided that the
13 owner of such unit notifies the Administrator
14 by not later than January 1, 2012, of its intent
15 to achieve such rate of capture and sequestra-
16 tion.

17 “(D) For a carbon capture and sequestra-
18 tion project sequestering in a geological forma-
19 tion for purposes of enhanced hydrocarbon re-
20 covery, the Administrator shall, by regulation,
21 reduce the applicable bonus allowance value
22 under this paragraph to reflect the lower net
23 cost of the project when compared to sequestra-
24 tion into geological formations solely for pur-
25 poses of sequestration.

1 “(E) The Administrator shall annually ad-
2 just for inflation the bonus allowance values es-
3 tablished under this paragraph.

4 “(d) PHASE II DISTRIBUTION TO ELECTRIC GENER-
5 ATING UNITS.—

6 “(1) APPLICATION.—This subsection shall
7 apply only to the distribution of emission allowances
8 for carbon capture and sequestration projects at
9 electric generating units after the capacity threshold
10 identified in subsection (c)(1) is reached.

11 “(2) REGULATIONS.—Not later than 2 years
12 prior to the date on which the capacity threshold
13 identified in subsection (c)(1) is projected to be
14 reached, the Administrator shall promulgate regula-
15 tions to govern the distribution of emission allow-
16 ances to the owners or operators of eligible projects
17 under this subsection.

18 “(3) REVERSE AUCTIONS.—

19 “(A) IN GENERAL.—Except as provided in
20 paragraph (4), the regulations promulgated
21 under paragraph (2) shall provide for the dis-
22 tribution of emission allowances to the owners
23 or operators of eligible projects under this sub-
24 section through reverse auctions, which shall be
25 held no less frequently than once each calendar

1 year. The Administrator may establish a sepa-
2 rate auction for each of no more than 5 dif-
3 ferent project categories, defined on the basis of
4 coal type, capture technology, geological forma-
5 tion type, new unit versus retrofit application,
6 such other factors as the Administrator may
7 prescribe, or any combination thereof. The Ad-
8 ministrator may establish appropriate minimum
9 rates of capture and sequestration in imple-
10 menting this paragraph.

11 “(B) AUCTION PROCESS.—At each reverse
12 auction—

13 “(i) the Administrator shall solicit
14 bids from eligible projects;

15 “(ii) eligible projects participating in
16 the auction shall submit a bid including
17 the desired level of carbon dioxide seques-
18 tration incentive per ton and the estimated
19 quantity of carbon dioxide that the project
20 will permanently sequester over 10 years;
21 and

22 “(iii) the Administrator shall select
23 bids, within each auction, for the seques-
24 tration amount submitted, beginning with
25 the eligible project submitting the bid for

1 the lowest level of sequestration incentive
2 on a per ton basis and meeting such other
3 requirements as the Administrator may
4 specify, until the amount of funds available
5 for the reverse auction is committed.

6 “(C) FORM OF DISTRIBUTION.—The Ad-
7 ministrator shall distribute emission allowances
8 to the owners or operators of eligible projects
9 selected through a reverse auction under this
10 paragraph pursuant to a formula equivalent to
11 that described in subsection (c)(2), except that
12 the bonus allowance value that is bid by the en-
13 tity shall be substituted for the bonus allowance
14 values set forth in subsection (c)(3).

15 “(4) ALTERNATIVE DISTRIBUTION METHOD.—

16 “(A) IN GENERAL.—If the Administrator
17 determines that reverse auctions would not pro-
18 vide for efficient and cost-effective commercial
19 deployment of carbon capture and sequestration
20 technologies, the Administrator may instead,
21 through regulations promulgated under para-
22 graph (2) or (5), prescribe a schedule for the
23 award of bonus allowances to the owners or op-
24 erators of eligible projects under this sub-

1 section, in accordance with the requirements of
2 this paragraph.

3 “(B) MULTIPLE TRANCHES.—The Admin-
4 istrator shall divide emission allowances avail-
5 able for distribution to the owners or operators
6 of eligible projects into a series of tranches,
7 each supporting the deployment of a specified
8 quantity of cumulative electric generating ca-
9 pacity utilizing carbon capture and sequestra-
10 tion technology, each of which shall not be
11 greater than 6 gigawatts.

12 “(C) METHOD OF DISTRIBUTION.—The
13 Administrator shall distribute emission allow-
14 ances within each tranche, on a first-come,
15 first-served basis—

16 “(i) based on the date of full-scale op-
17 eration of capture and sequestration tech-
18 nology; and

19 “(ii) pursuant to a formula, similar to
20 that set forth in subsection (c)(2) (except
21 that the Administrator shall prescribe
22 bonus allowance values different than those
23 set forth in subsection (c)(3)), establishing
24 the number of allowances to be distributed

1 per ton of carbon dioxide sequestered by
2 the project.

3 “(D) REQUIREMENTS.—For each tranche
4 established pursuant to subparagraph (B), the
5 Administrator shall establish a schedule for dis-
6 tributing emission allowances that—

7 “(i) is based on a sliding scale that
8 provides higher bonus allowance values for
9 projects achieving higher rates of capture
10 and sequestration;

11 “(ii) for each capture and sequestra-
12 tion rate, establishes a bonus allowance
13 value that is lower than that established
14 for such rate in the previous tranche (or,
15 in the case of the first tranche, than that
16 established for such rate under subsection
17 (c)(3)); and

18 “(iii) may establish different bonus al-
19 lowance levels for no more than 5 different
20 project categories, defined by coal type,
21 capture technology, geological formation
22 type, new unit versus retrofit application,
23 such other factors as the Administrator
24 may prescribe, or any combination thereof.

1 “(E) CRITERIA FOR ESTABLISHING BONUS
2 ALLOWANCE VALUES.—In setting bonus allow-
3 ance values under this paragraph, the Adminis-
4 trator shall seek to cover no more than the rea-
5 sonable incremental capital and operating costs
6 of a project that are attributable to implemen-
7 tation of carbon capture, transportation, and
8 sequestration technologies, taking into ac-
9 count—

10 “(i) the reduced cost of compliance
11 with section 722 of this Act;

12 “(ii) the reduced cost associated with
13 sequestering in a geological formation for
14 purposes of enhanced hydrocarbon recovery
15 when compared to sequestration into geo-
16 logical formations solely for purposes of se-
17 questration;

18 “(iii) the relevant factors defining the
19 project category; and

20 “(iv) such other factors as the Admin-
21 istrator determines are appropriate.

22 “(5) REVISION OF REGULATIONS.—The Admin-
23 istrator shall review, and as appropriate revise, the
24 applicable regulations under this subsection no less
25 frequently than every 8 years.

1 “(e) LIMITS FOR CERTAIN ELECTRIC GENERATING
2 UNITS.—

3 “(1) DEFINITIONS.—For purposes of this sub-
4 section, the terms ‘covered EGU’ and ‘initially per-
5 mitted’ shall have the meaning given those terms in
6 section 812 of this Act.

7 “(2) COVERED EGUS INITIALLY PERMITTED
8 FROM 2009 THROUGH 2014.—For a covered EGU
9 that is initially permitted on or after January 1,
10 2009, and before January 1, 2015, the Adminis-
11 trator shall reduce the quantity of emission allow-
12 ances that the owner or operator of such covered
13 EGU would otherwise be eligible to receive under
14 this section as follows:

15 “(A) In the case of a unit commencing op-
16 eration on or before January 1, 2019, if the
17 date in clause (ii)(I) is earlier than the date in
18 clause (ii)(II), by the product of—

19 “(i) 20 percent; and

20 “(ii) the number of years, if any, that
21 have elapsed between—

22 “(I) the earlier of January 1,
23 2020, or the date that is 5 years after
24 the commencement of operation of
25 such covered EGU; and

1 “(II) the first year that such cov-
2 ered EGU achieves (and thereafter
3 maintains) an emission limit that is at
4 least a 50 percent reduction in emis-
5 sions of the carbon dioxide produced
6 by the unit, measured on an annual
7 basis, as determined in accordance
8 with section 812(b)(2).

9 “(B) In the case of a unit commencing op-
10 eration after January 1, 2019, by the product
11 of—

12 “(i) 20 percent; and

13 “(ii) the number of years between—

14 “(I) the commencement of oper-
15 ation of such covered EGU; and

16 “(II) the first year that such cov-
17 ered EGU achieves (and thereafter
18 maintains) an emission limit that is at
19 least a 50 percent reduction in emis-
20 sions of the carbon dioxide produced
21 by the unit, measured on an annual
22 basis, as determined in accordance
23 with section 812(b)(2).

24 “(3) COVERED EGUS INITIALLY PERMITTED
25 FROM 2015 THROUGH 2019.—The owner or operator

1 of a covered EGU that is initially permitted on or
2 after January 1, 2015, and before January 1, 2020,
3 shall be ineligible to receive emission allowances pur-
4 suant to this section if such unit, upon commence-
5 ment of operations (and thereafter), does not achieve
6 and maintain an emission limit that is at least a 50
7 percent reduction in emissions of the carbon dioxide
8 produced by the unit, measured on an annual basis,
9 as determined in accordance with section 812(b)(2).

10 “(f) INDUSTRIAL SOURCES.—

11 “(1) ALLOWANCES.—The Administrator may
12 distribute not more than 15 percent of the allow-
13 ances allocated under section 782(f) for any vintage
14 year to the owners or operators of eligible industrial
15 sources to support the commercial-scale deployment
16 of carbon capture and sequestration technologies at
17 such sources.

18 “(2) DISTRIBUTION.—The Administrator shall,
19 by regulation, prescribe requirements for the dis-
20 tribution of emission allowances to the owners or op-
21 erators of industrial sources under this subsection,
22 based on a bonus allowance formula that awards al-
23 lowances to qualifying projects on the basis of tons
24 of carbon dioxide captured and permanently seques-

1 tered. The Administrator may provide for the dis-
2 tribution of emission allowances pursuant to—

3 “(A) a reverse auction method, similar to
4 that described under subsection (d)(3), includ-
5 ing the use of separate auctions for different
6 project categories; or

7 “(B) an incentive schedule, similar to that
8 described under subsection (d)(4), which shall
9 ensure that incentives are set so as to satisfy
10 the requirement described in subsection
11 (d)(4)(E).

12 “(3) REVISION OF REGULATIONS.—The Admin-
13 istrator shall review, and as appropriate revise, the
14 applicable regulations under this subsection no less
15 frequently than every 8 years.

16 “(g) LIMITATIONS.—Allowances may be distributed
17 under this section only for tons of carbon dioxide emis-
18 sions that have already been captured and sequestered. A
19 qualifying project may receive annual emission allowances
20 under this section only for the first 10 years of operation.
21 No greater than 72 gigawatts of total cumulative gener-
22 ating capacity (including industrial applications, measured
23 by such equivalent metric as the Administrator may des-
24 ignate) may receive emission allowances under this sec-
25 tion. Upon reaching the limit described in the preceding

1 sentence, any emission allowances that are allocated for
2 carbon capture and sequestration deployment under sec-
3 tion 782(f) and are not yet obligated under this section
4 shall be treated as allowances not designated for distribu-
5 tion for purposes of section 782(r).

6 “(h) EXHAUSTION OF ACCOUNT AND ANNUAL ROLL-
7 OVER OF SURPLUS ALLOWANCES.—

8 “(1) In distributing emission allowances under
9 this section, the Administrator shall ensure that
10 qualifying projects receiving allowances receive dis-
11 tributions for 10 years.

12 “(2) If the Administrator determines that the
13 emission allowances allocated under section 782(f)
14 with a vintage year that matches the year of dis-
15 tribution will be exhausted once the estimated full
16 10-year distributions will be provided to current eli-
17 gible participants, the Administrator shall provide to
18 new eligible projects allowances from vintage years
19 after the year of the distribution.

20 “(i) RETROFIT APPLICATIONS.—(1) In calculating
21 bonus allowance values for retrofit applications eligible
22 under subsection (b)(1)(A)(ii) and (iv)(II), the Adminis-
23 trator shall apply the required capture rates with respect
24 to the treated portion of flue gas from the unit.

1 “(2) No additional projects shall be eligible for allow-
2 ances under subsection (b)(1)(A)(ii) and (iv)(II) as of such
3 time as the Administrator reports, pursuant to section
4 812(d), that carbon capture and sequestration retrofit
5 projects at electric generating units that are eligible for
6 allowances under this section have been applied, in the ag-
7 gregate, to the flue gas generated by 1 gigawatt of total
8 cumulative generating capacity.

9 “(j) DAVIS-BACON COMPLIANCE.—All laborers and
10 mechanics employed on projects funded directly by or as-
11 sisted in whole or in part by this section through the use
12 of emission allowances shall be paid wages at rates not
13 less than those prevailing on projects of a character simi-
14 lar in the locality as determined by the Secretary of Labor
15 in accordance with subchapter IV, chapter 31, part A of
16 subtitle II of title 40, United States Code. With respect
17 to the labor standards specified in this subsection, the Sec-
18 retary of Labor shall have the authority and functions set
19 forth in Reorganization Plan Numbered 14 of 1950 (64
20 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40,
21 United States Code.”.

1 **SEC. 116. PERFORMANCE STANDARDS FOR COAL-FUELED**
2 **POWER PLANTS.**

3 (a) IN GENERAL.—Title VIII of the Clean Air Act
4 (as added by section 331 of this Act) is amended by add-
5 ing the following new section after section 811:

6 **“SEC. 812. PERFORMANCE STANDARDS FOR NEW COAL-**
7 **FIRED POWER PLANTS.**

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

9 “(1) COVERED EGU.—The term ‘covered EGU’
10 means a utility unit that is required to have a per-
11 mit under section 503(a) and is authorized under
12 state or federal law to derive at least 30 percent of
13 its annual heat input from coal, petroleum coke, or
14 any combination of these fuels.

15 “(2) INITIALLY PERMITTED.—The term ‘ini-
16 tially permitted’ means that the owner or operator
17 has received a Clean Air Act preconstruction ap-
18 proval or permit, for the covered EGU as a new (not
19 a modified) source, but administrative review or ap-
20 peal of such approval or permit has not been ex-
21 hausted. A subsequent modification of any such ap-
22 proval or permits, ongoing administrative or court
23 review, appeals, or challenges, or the existence or
24 tolling of any time to pursue further review, appeals,
25 or challenges shall not affect the date on which a

1 covered EGU is considered to be initially permitted
2 under this paragraph.

3 “(b) STANDARDS.—(1) A covered EGU that is ini-
4 tially permitted on or after January 1, 2020, shall achieve
5 an emission limit that is a 65 percent reduction in emis-
6 sions of the carbon dioxide produced by the unit, as
7 measured on an annual basis, or meet such more stringent
8 standard as the Administrator may establish pursuant to
9 subsection (c).

10 “(2) A covered EGU that is initially permitted after
11 January 1, 2009, and before January 1, 2020, shall, by
12 the applicable compliance date established under this
13 paragraph, achieve an emission limit that is a 50 percent
14 reduction in emissions of the carbon dioxide produced by
15 the unit, as measured on an annual basis. Compliance
16 with the requirement set forth in this paragraph shall be
17 required by the earliest of the following:

18 “(A) Four years after the date the Adminis-
19 trator has published pursuant to subsection (d) a re-
20 port that there are in commercial operation in the
21 United States electric generating units or other sta-
22 tionary sources equipped with carbon capture and
23 sequestration technology that, in the aggregate—

24 “(i) have a total of at least 4 gigawatts of
25 nameplate generating capacity of which—

1 “(I) at least 3 gigawatts must be elec-
2 tric generating units; and

3 “(II) up to 1 gigawatt may be indus-
4 trial applications, for which capture and
5 sequestration of 3 million tons of carbon
6 dioxide per year on an aggregate
7 annualized basis shall be considered equiv-
8 alent to 1 gigawatt;

9 “(ii) include at least 2 electric generating
10 units, each with a nameplate generating capac-
11 ity of 250 megawatts or greater, that capture,
12 inject, and sequester carbon dioxide into geo-
13 logic formations other than oil and gas fields;
14 and

15 “(iii) are capturing and sequestering in the
16 aggregate at least 12 million tons of carbon di-
17 oxide per year, calculated on an aggregate
18 annualized basis.

19 “(B) January 1, 2025.

20 “(3) If the deadline for compliance with paragraph
21 (2) is January 1, 2025, the Administrator may extend the
22 deadline for compliance by a covered EGU by up to 18
23 months if the Administrator makes a determination, based
24 on a showing by the owner or operator of the unit, that
25 it will be technically infeasible for the unit to meet the

1 standard by the deadline. The owner or operator must
2 submit a request for such an extension by no later than
3 January 1, 2022, and the Administrator shall provide for
4 public notice and comment on the extension request.

5 “(c) REVIEW AND REVISION OF STANDARDS.—Not
6 later than 2025 and at 5-year intervals thereafter, the Ad-
7 ministrator shall review the standards for new covered
8 EGUs under this section and shall, by rule, reduce the
9 maximum carbon dioxide emission rate for new covered
10 EGUs to a rate which reflects the degree of emission limi-
11 tation achievable through the application of the best sys-
12 tem of emission reduction which (taking into account the
13 cost of achieving such reduction and any nonair quality
14 health and environmental impact and energy require-
15 ments) the Administrator determines has been adequately
16 demonstrated.

17 “(d) REPORTS.—Not later than the date 18 months
18 after the date of enactment of this title and semiannually
19 thereafter, the Administrator shall publish a report on the
20 nameplate capacity of units (determined pursuant to sub-
21 section (b)(2)(A)) in commercial operation in the United
22 States equipped with carbon capture and sequestration
23 technology, including the information described in sub-
24 section (b)(2)(A) (including the cumulative generating ca-
25 pacity to which carbon capture and sequestration retrofit

1 projects meeting the criteria described in section
2 786(b)(1)(A)(ii) and (b)(1)(A)(iv)(II) has been applied
3 and the quantities of carbon dioxide captured and seques-
4 tered by such projects).

5 “(e) REGULATIONS.—Not later than 2 years after the
6 date of enactment of this title, the Administrator shall
7 promulgate regulations to carry out the requirements of
8 this section.”.

9 **Subtitle C—Clean Transportation**

10 **SEC. 121. ELECTRIC VEHICLE INFRASTRUCTURE.**

11 (a) AMENDMENT OF PURPA.—Section 111(d) of the
12 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
13 2621(d)) is amended by adding at the end the following:

14 “(20) PLUG-IN ELECTRIC DRIVE VEHICLE IN-
15 FRASTRUCTURE.—

16 “(A) UTILITY PLAN FOR INFRASTRUC-
17 TURE.—Each electric utility shall develop a
18 plan to support the use of plug-in electric drive
19 vehicles, including heavy-duty hybrid electric ve-
20 hicles. The plan may provide for deployment of
21 electrical charging stations in public or private
22 locations, including street parking, parking ga-
23 rages, parking lots, homes, gas stations, and
24 highway rest stops. Any such plan may also in-
25 clude—

1 “(i) battery exchange, fast charging
2 infrastructure and other services;

3 “(ii) triggers for infrastructure de-
4 ployment based upon market penetration
5 of plug-in electric drive vehicles; and

6 “(iii) such other elements as the State
7 determines necessary to support plug-in
8 electric drive vehicles.

9 Each plan under this paragraph shall provide
10 for the deployment of the charging infrastruc-
11 ture or other infrastructure necessary to ade-
12 quately support the use of plug-in electric drive
13 vehicles.

14 “(B) SUPPORT REQUIREMENTS.—Each
15 State regulatory authority (in the case of each
16 electric utility for which it has ratemaking au-
17 thority) and each utility (in the case of a non-
18 regulated utility) shall—

19 “(i) require that charging infrastruc-
20 ture deployed is interoperable with prod-
21 ucts of all auto manufacturers to the ex-
22 tent possible; and

23 “(ii) consider adopting minimum re-
24 quirements for deployment of electrical
25 charging infrastructure and other appro-

1 appropriate requirements necessary to support
2 the use of plug-in electric drive vehicles.

3 “(C) COST RECOVERY.—Each State regu-
4 latory authority (in the case of each electric
5 utility for which it has ratemaking authority)
6 and each utility (in the case of a nonregulated
7 utility) shall consider whether, and to what ex-
8 tent, to allow cost recovery for plans and imple-
9 mentation of plans.

10 “(D) SMART GRID INTEGRATION.—The
11 State regulatory authority (in the case of each
12 electric utility for which it has ratemaking au-
13 thority) and each utility (in the case of a non-
14 regulated utility) shall, in accordance with regu-
15 lations issued by the Federal Energy Regu-
16 latory Commission pursuant to section 1305(d)
17 of the Energy Independence and Security Act
18 of 2007—

19 “(i) establish any appropriate proto-
20 cols and standards for integrating plug-in
21 electric drive vehicles into an electrical dis-
22 tribution system, including Smart Grid
23 systems and devices as described in title
24 XIII of the Energy Independence and Se-
25 curity Act of 2007;

1 “(ii) include, to the extent feasible,
2 the ability for each plug-in electric drive
3 vehicle to be identified individually and to
4 be associated with its owner’s electric util-
5 ity account, regardless of the location that
6 the vehicle is plugged in, for purposes of
7 appropriate billing for any electricity re-
8 quired to charge the vehicle’s batteries as
9 well as any crediting for electricity pro-
10 vided to the electric utility from the vehi-
11 cle’s batteries; and

12 “(iii) review the determination made
13 in response to section 1252 of the Energy
14 Policy Act of 2005 in light of this section,
15 including whether time-of-use pricing
16 should be employed to enable the use of
17 plug-in electric drive vehicles to contribute
18 to meeting peak-load and ancillary service
19 power needs.”.

20 (b) COMPLIANCE.—

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

1 “(7)(A) Not later than 3 years after the date of en-
2 actment of this paragraph, each State regulatory authority
3 (with respect to each electric utility for which it has rate-
4 making authority) and each nonregulated utility shall
5 commence the consideration referred to in section 111, or
6 set a hearing date for consideration, with respect to the
7 standard established by paragraph (20) of section 111(d).

8 “(B) Not later than 4 years after the date of enact-
9 ment of the this paragraph, each State regulatory author-
10 ity (with respect to each electric utility for which it has
11 ratemaking authority), and each nonregulated electric util-
12 ity, shall complete the consideration, and shall make the
13 determination, referred to in section 111 with respect to
14 the standard established by paragraph (20) of section
15 111(d).”.

16 (2) FAILURE TO COMPLY.—Section 112(c) of
17 the Public Utility Regulatory Policies Act of 1978
18 (16 U.S.C. 2622(c)) is amended by adding the fol-
19 lowing at the end: “In the case of the standards es-
20 tablished by paragraph (20) of section 111(d), the
21 reference contained in this subsection to the date of
22 enactment of this Act shall be deemed to be a ref-
23 erence to the date of enactment of such paragraph.”.

24 (3) PRIOR STATE ACTIONS.—Section 112(d) of
25 the Public Utility Regulatory Policies Act of 1978

1 (16 U.S.C. 2622(d)) is amended by striking “(19)”
2 and inserting “(20)” before “of section 111(d)”.

3 **SEC. 122. LARGE-SCALE VEHICLE ELECTRIFICATION PRO-**
4 **GRAM.**

5 (a) DEPLOYMENT PROGRAM.—The Secretary of En-
6 ergy shall establish a program to deploy and integrate
7 plug-in electric drive vehicles into the electricity grid in
8 multiple regions. In carrying out the program, the Sec-
9 retary may provide financial assistance described under
10 subsection (d), consistent with the goals under subsection
11 (b). The Secretary shall select regions based upon applica-
12 tions for assistance received pursuant to subsection (c).

13 (b) GOALS.—The goals of the program established
14 pursuant to subsection (a) shall be—

15 (1) to demonstrate the viability of a vehicle-
16 based transportation system that is not overly de-
17 pendent on petroleum as a fuel and contributes to
18 lower carbon emissions than a system based on con-
19 ventional vehicles;

20 (2) to facilitate the integration of advanced ve-
21 hicle technologies into electricity distribution areas
22 to improve system performance and reliability;

23 (3) to demonstrate the potential benefits of co-
24 ordinated investments in vehicle electrification on
25 personal mobility and a regional grid;

1 (4) to demonstrate protocols and standards that
2 facilitate vehicle integration into the grid; and

3 (5) to investigate differences in each region and
4 regulatory environment regarding best practices in
5 implementing vehicle electrification.

6 (c) APPLICATIONS.—Any State, Indian tribe, or local
7 government (or group of State, Indian tribe, or local gov-
8 ernments) may apply to the Secretary of Energy for finan-
9 cial assistance in furthering the regional deployment and
10 integration into the electricity grid of plug-in electric drive
11 vehicles. Such applications may be jointly sponsored by
12 electric utilities, automobile manufacturers, technology
13 providers, car sharing companies or organizations, or
14 other persons or entities.

15 (d) USE OF FUNDS.—Pursuant to applications re-
16 ceived under subsection (c), the Secretary may make fi-
17 nancial assistance available to any applicant or joint spon-
18 sor of the application to be used for any of the following:

19 (1) Assisting persons located in the regional de-
20 ployment area, including fleet owners, in the pur-
21 chase of new plug-in electric drive vehicles by offset-
22 ting in whole or in part the incremental cost of such
23 vehicles above the cost of comparable conventionally
24 fueled vehicles.

1 (2) Supporting the use of plug-in electric drive
2 vehicles by funding projects for the deployment of
3 any of the following:

4 (A) Electrical charging infrastructure for
5 plug-in electric drive vehicles, including battery
6 exchange, fast charging infrastructure, and
7 other services, in public or private locations, in-
8 cluding street parking, parking garages, park-
9 ing lots, homes, gas stations, and highway rest
10 stops.

11 (B) Smart Grid equipment and infrastruc-
12 ture, as described in title XIII of the Energy
13 Independence and Security Act of 2007, to fa-
14 cilitate the charging and integration of plug-in
15 electric drive vehicles.

16 (3) Such other projects as the Secretary deter-
17 mines appropriate to support the large-scale deploy-
18 ment of plug-in electric drive vehicles in regional de-
19 ployment areas.

20 (e) PROGRAM REQUIREMENTS.—The Secretary, in
21 consultation with the Administrator and the Secretary of
22 Transportation, shall determine design elements and re-
23 quirements of the program established pursuant to sub-
24 section (a), including—

1 facturers to facilitate the manufacture of plug-in electric
2 drive vehicles, as defined in section 131(a)(5) of the En-
3 ergy Independence and Security Act of 2007, that are de-
4 veloped and produced in the United States.

5 (b) FINANCIAL ASSISTANCE.—The Secretary of En-
6 ergy may provide financial assistance to an automobile
7 manufacturer under the program established pursuant to
8 subsection (a) for—

9 (1) the reconstruction or retooling of facilities
10 for the manufacture of plug-in electric drive vehicles
11 that are developed and produced in the United
12 States; and

13 (2) if appropriate, the purchase of vehicle bat-
14 teries to be used in the manufacture of vehicles
15 manufactured pursuant to paragraph (1).

16 (c) COORDINATION WITH REGIONAL DEPLOY-
17 MENT.—The Secretary may provide financial assistance
18 under subsection (b) in conjunction with the award of fi-
19 nancial assistance under the large scale vehicle electrifica-
20 tion program established pursuant to section 122 of this
21 Act.

22 (d) PROGRAM REQUIREMENTS.—The Secretary shall
23 determine design elements and requirements of the pro-
24 gram established pursuant to subsection (a), including—

1 (1) the type of financial mechanism with which
2 to provide financial assistance;

3 (2) criteria, in addition to the criteria described
4 under subsection (e), for evaluating applications for
5 financial assistance; and

6 (3) reporting requirements for automobile man-
7 ufacturers that receive financial assistance under
8 this section.

9 (e) CRITERIA.—In selecting recipients of financial as-
10 sistance from among applicant automobile manufacturers,
11 the Secretary shall give preference to proposals that—

12 (1) are most likely to be successful; and

13 (2) are located in local markets that have the
14 greatest need for the facility.

15 (f) REPORTS.—The Secretary shall annually submit
16 to Congress a report on the program established pursuant
17 to this section.

18 (g) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated such sums as are nec-
20 essary to carry out this section.

21 **SEC. 124. INVESTMENT IN CLEAN VEHICLES.**

22 (a) DEFINITIONS.—In this section:

23 (1) ADVANCED TECHNOLOGY VEHICLES AND
24 QUALIFYING COMPONENTS.—The terms “advanced
25 technology vehicles” and “qualifying components”

1 shall have the definition of such terms in section 136
2 of the Energy Independence and Security Act of
3 2007, except that for purposes of this section, the
4 average base year as described in such section
5 136(a)(1)(C) shall be the following:

6 (A) In each of the years 2012 through
7 2016, model year 2009.

8 (B) In 2017, the Administrator shall, not-
9 withstanding such section 136(a)(1)(C), deter-
10 mine an appropriate baseline based on techno-
11 logical and economic feasibility.

12 (2) PLUG-IN ELECTRIC DRIVE VEHICLE.—The
13 term “plug-in electric drive vehicle” shall have the
14 definition of such term in section 131 of the Energy
15 Independence and Security Act of 2007.

16 (b) DISTRIBUTION OF ALLOWANCES.—The Adminis-
17 trator shall, in accordance with this section, distribute
18 emission allowances allocated pursuant to section 782(i)
19 of the Clean Air Act not later than September 30 of 2012
20 and each calendar year thereafter through 2025.

21 (c) PLUG-IN ELECTRIC DRIVE VEHICLE MANUFAC-
22 TURING AND DEPLOYMENT.—

23 (1) IN GENERAL.—The Administrator shall, at
24 the direction of the Secretary of Energy, provide
25 emission allowances allocated pursuant to section

1 782(i) to applicants, joint sponsors and automobile
2 manufacturers pursuant to sections 122 and 123 of
3 this Act.

4 (2) ANNUAL AMOUNT.—In each of the years
5 2012 through 2017, one-quarter of the portion of
6 the emission allowances allocated pursuant to section
7 782(i) of the Clean Air Act shall be available to
8 carry out paragraph (1) such that—

9 (A) one-eighth of the portion shall be avail-
10 able to carry out section 122; and,

11 (B) one-eighth of the portion shall be
12 available to carry out section 123.

13 (3) PREFERENCE.—In directing the provision
14 of emission allowances under this subsection to carry
15 out section 122, the Secretary shall give preference
16 to applications under section 122(e) that are jointly
17 sponsored by one or more automobile manufacturers.

18 (4) MULTI-YEAR COMMITMENTS.—The Admin-
19 istrator shall commit to providing emission allow-
20 ances to an applicant, joint sponsor, or automobile
21 manufacturer for up to five consecutive years if—

22 (A) an application under section 122 or
23 123 of this Act requests a multi-year commit-
24 ment;

1 (B) such application meets the criteria for
2 support established by the Secretary of Energy
3 under sections 122 or 123 of this Act;

4 (C) the Administrator confirms to the Sec-
5 retary that emission allowances will be available
6 for a multi-year commitment;

7 (D) the Secretary of Energy determines
8 that a multi-year commitment for such applica-
9 tion will advance the goals of section 122 or
10 123; and

11 (E) the Secretary of Energy directs the
12 Administrator to make a multi-year commit-
13 ment.

14 (5) INSUFFICIENT APPLICATIONS.—If, in any
15 year, emission allowances available under paragraph
16 (2) cannot be provided because of insufficient num-
17 bers of submitted applications that meet the criteria
18 for support established by the Secretary of Energy
19 under sections 122 or 123 of this Act, the remaining
20 emission allowances shall be distributed according to
21 subsection (d).

22 (d) ADVANCED TECHNOLOGY VEHICLES.—

23 (1) IN GENERAL.—The Administrator shall, at
24 the direction of the Secretary of Energy, provide any
25 emission allowances allocated pursuant to section

1 782(i) of the Clean Air Act that are not provided
2 under subsection (c) to automobile manufacturers
3 and component suppliers to pay not more than 30
4 percent of the cost of—

5 (A) reequipping, expanding, or establishing
6 a manufacturing facility in the United States to
7 produce—

8 (i) qualifying advanced technology ve-
9 hicles; or

10 (ii) qualifying components; and

11 (B) engineering integration performed in
12 the United States of qualifying vehicles and
13 qualifying components.

14 (2) PREFERENCE.—In directing the provision
15 of emission allowances under this subsection during
16 the years 2012 through 2017, the Secretary shall
17 give preference to applications for projects that save
18 the maximum number of gallons of fuel.

19 **SEC. 125. ADVANCED TECHNOLOGY VEHICLE MANUFAC-**
20 **TURING INCENTIVE LOANS.**

21 Section 136(d)(1) of the Energy Independence and
22 Security Act of 2007 (42 U.S.C. 17013(d)(1)) is amended
23 by striking “\$25,000,000,000” and inserting
24 “\$50,000,000,000”.

1 **SEC. 126. AMENDMENT TO RENEWABLE FUELS STANDARD.**

2 (a) DEFINITION OF RENEWABLE BIOMASS.—Section
3 211(o)(1)(I) of the Clean Air Act (42 U.S.C. 7545(o)) is
4 amended to read as follows:

5 “(I) RENEWABLE BIOMASS.—The term ‘re-
6 newable biomass’ means any of the following:

7 “(i) Plant material, including waste
8 material, harvested or collected from ac-
9 tively managed agricultural land that was
10 in cultivation, cleared, or fallow and non-
11 forested on January 1, 2009.

12 “(ii) Plant material, including waste
13 material, harvested or collected from
14 pastureland that was nonforested on Janu-
15 ary 1, 2009.

16 “(iii) Nonhazardous vegetative matter
17 derived from waste, including separated
18 yard waste, landscape right-of-way trim-
19 mings, construction and demolition debris
20 or food waste (but not recyclable waste
21 paper, painted, treated or pressurized
22 wood, or wood contaminated with plastic or
23 metals).

24 “(iv) Animal waste or animal byprod-
25 ucts, including products of animal waste
26 digesters.

1 “(v) Algae.

2 “(vi) Trees, brush, slash, residues, or
3 any other vegetative matter removed from
4 within 600 feet of any building, camp-
5 ground, or route designated for evacuation
6 by a public official with responsibility for
7 emergency preparedness, or from within
8 300 feet of a paved road, electric trans-
9 mission line, utility tower, or water supply
10 line.

11 “(vii) Residues from or byproducts of
12 milled logs.

13 “(viii) Any of the following removed
14 from forested land that is not Federal and
15 is not high conservation priority land:

16 “(I) Trees, brush, slash, residues,
17 interplanted energy crops, or any
18 other vegetative matter removed from
19 an actively managed tree plantation
20 established—

21 “(aa) prior to January 1,
22 2009; or

23 “(bb) on land that, as of
24 January 1, 2009, was cultivated
25 or fallow and non-forested.

1 “(II) Trees, logging residue,
2 thinnings, cull trees, pulpwood, and
3 brush removed from naturally-regen-
4 erated forests or other non-plantation
5 forests, including for the purposes of
6 hazardous fuel reduction or preventa-
7 tive treatment for reducing or con-
8 taining insect or disease infestation.

9 “(III) Logging residue,
10 thinnings, cull trees, pulpwood, brush
11 and species that are non-native and
12 noxious, from stands that were plant-
13 ed and managed after January 1,
14 2009, to restore or maintain native
15 forest types.

16 “(IV) Dead or severely damaged
17 trees removed within 5 years of fire,
18 blowdown, or other natural disaster,
19 and badly infested trees.

20 “(ix) Materials, pre-commercial
21 thinnings, or removed invasive species from
22 National Forest System land and public
23 lands (as defined in section 103 of the
24 Federal Land Policy and Management Act
25 of 1976 (43 U.S.C. 1702)), including those

1 that are byproducts of preventive treat-
2 ments (such as trees, wood, brush,
3 thinnings, chips, and slash), that are re-
4 moved as part of a federally recognized
5 timber sale, or that are removed to reduce
6 hazardous fuels, to reduce or contain dis-
7 ease or insect infestation, or to restore eco-
8 system health, and that are—

9 “(I) not from components of the
10 National Wilderness Preservation Sys-
11 tem, Wilderness Study Areas, Inven-
12 toried Roadless Areas, old growth or
13 mature forest stands, components of
14 the National Landscape Conservation
15 System, National Monuments, Na-
16 tional Conservation Areas, Designated
17 Primitive Areas, or Wild and Scenic
18 Rivers corridors;

19 “(II) harvested in environ-
20 mentally sustainable quantities, as de-
21 termined by the appropriate Federal
22 land manager; and

23 “(III) harvested in accordance
24 with Federal and State law and appli-
25 cable land management plans.”.

1 (b) DEFINITION OF HIGH CONSERVATION PRIORITY
2 LAND.—Section 211(o)(1) of the Clean Air Act (42
3 U.S.C. 7545(o)) is amended by inserting the following at
4 the end thereof:

5 “(M) HIGH CONSERVATION PRIORITY
6 LAND.—The term ‘high conservation priority
7 land’ means land that is not Federal land and
8 is—

9 “(i) globally or State ranked as criti-
10 cally imperiled or imperiled under a State
11 Natural Heritage Program; or

12 “(ii) old-growth or late-successional
13 forest, as identified by the office of the
14 State Forester or relevant State agency
15 with regulatory jurisdiction over forestry
16 activities.”.

17 **SEC. 127. OPEN FUEL STANDARD.**

18 (a) FINDINGS.—The Congress finds that—

19 (1) the status of oil as a strategic commodity,
20 which derives from its domination of the transpor-
21 tation sector, presents a clear and present danger to
22 the United States;

23 (2) in a prior era, when salt was a strategic
24 commodity, salt mines conferred national power and
25 wars were fought over the control of such mines;

1 (3) technology, in the form of electricity and re-
2 frigeration, decisively ended salt's monopoly of meat
3 preservation and greatly reduced its strategic impor-
4 tance;

5 (4) fuel competition and consumer choice would
6 similarly serve to end oil's monopoly in the transpor-
7 tation sector and strip oil of its strategic status;

8 (5) the current closed fuel market has allowed
9 a cartel of petroleum exporting countries to inflate
10 fuel prices, effectively imposing a harmful tax on the
11 economy of the United States;

12 (6) much of the inflated petroleum revenues the
13 oil cartel earns at the expense of the people of the
14 United States are used for purposes antithetical to
15 the interests of the United States and its allies;

16 (7) alcohol fuels, including ethanol and meth-
17 anol, could potentially provide significant supplies of
18 additional fuels that could be produced in the United
19 States and in many other countries in the Western
20 Hemisphere that are friendly to the United States;

21 (8) alcohol fuels can only play a major role in
22 securing the energy independence of the United
23 States if a substantial portion of vehicles in the
24 United States are capable of operating on such fuels;

1 (9) it is not in the best interest of United
2 States consumers or the United States Government
3 to be constrained to depend solely upon petroleum
4 resources for vehicle fuels if alcohol fuels are poten-
5 tially available;

6 (10) existing technology, in the form of flexible
7 fuel vehicles, allows internal combustion engine cars
8 and trucks to be produced at little or no additional
9 cost, which are capable of operating on conventional
10 gasoline, alcohol fuels, or any combination of such
11 fuels, as availability or cost advantage dictates, pro-
12 viding a platform on which fuels can compete;

13 (11) the necessary distribution system for such
14 alcohol fuels will not be developed in the United
15 States until a substantial fraction of the vehicles in
16 the United States are capable of operating on such
17 fuels;

18 (12) the establishment of such a vehicle fleet
19 and distribution system would provide a large mar-
20 ket that would mobilize private resources to substan-
21 tially advance the technology and expand the pro-
22 duction of alcohol fuels in the United States and
23 abroad;

24 (13) the United States has an urgent national
25 security interest to develop alcohol fuels technology,

1 production, and distribution systems as rapidly as
2 possible;

3 (14) new cars sold in the United States that
4 are equipped with an internal combustion engine
5 should allow for fuel competition by being flexible
6 fuel vehicles, and new diesel cars should be capable
7 of operating on biodiesel; and

8 (15) such an open fuel standard would help to
9 protect the United States economy from high and
10 volatile oil prices and from the threats caused by
11 global instability, terrorism, and natural disaster.

12 (b) OPEN FUEL STANDARD FOR TRANSPOR-
13 TATION.—(1) Chapter 329 of title 49, United States Code,
14 is amended by adding at the end the following:

15 **“§ 32920. Open fuel standard for transportation**

16 “(a) DEFINITIONS.—In this section:

17 “(1) E85.—The term ‘E85’ means a fuel mix-
18 ture containing 85 percent ethanol and 15 percent
19 gasoline by volume.

20 “(2) FLEXIBLE FUEL AUTOMOBILE.—The term
21 ‘flexible fuel automobile’ means an automobile that
22 has been warranted by its manufacturer to operate
23 on gasoline, E85, and M85.

24 “(3) FUEL CHOICE-ENABLING AUTOMOBILE.—
25 The term ‘fuel choice-enabling automobile’ means—

1 “(A) a flexible fuel automobile; or

2 “(B) an automobile that has been war-
3 ranted by its manufacturer to operate on bio-
4 diesel.

5 “(4) LIGHT-DUTY AUTOMOBILE.—The term
6 ‘light-duty automobile’ means—

7 “(A) a passenger automobile; or

8 “(B) a non-passenger automobile.

9 “(5) LIGHT-DUTY AUTOMOBILE MANUFAC-
10 Turer’s ANNUAL COVERED INVENTORY.—The term
11 ‘light-duty automobile manufacturer’s annual cov-
12 ered inventory’ means the number of light-duty
13 automobiles powered by an internal combustion en-
14 gine that a manufacturer, during a given calendar
15 year, manufactures in the United States or imports
16 from outside of the United States for sale in the
17 United States.

18 “(6) M85.—The term ‘M85’ means a fuel mix-
19 ture containing 85 percent methanol and 15 percent
20 gasoline by volume.

21 “(b) OPEN FUEL STANDARD FOR TRANSPOR-
22 TATION.—

23 “(1) IN GENERAL.—The Secretary may promul-
24 gate regulations to require each light-duty auto-
25 mobile manufacturer’s annual covered inventory to

1 be comprised of a minimum percentage of fuel-choice
2 enabling automobiles, with sufficient lead time, if
3 the Secretary, in coordination with the Secretary of
4 Energy and the Administrator of the Environmental
5 Protection Agency, determines such requirement is a
6 cost-effective way to achieve the Nation's energy
7 independence and environmental objectives. The
8 cost-effective determination shall consider the future
9 availability of both alternative fuel supply and infra-
10 structure to deliver the alternative fuel to the fuel-
11 choice enabling vehicles.

12 “(2) TEMPORARY EXEMPTION FROM REQUIRE-
13 MENTS.—

14 “(A) APPLICATION.—A manufacturer may
15 request an exemption from the requirement de-
16 scribed in paragraph (1) by submitting an ap-
17 plication to the Secretary, at such time, in such
18 manner, and containing such information as the
19 Secretary may require by regulation. Each such
20 application shall specify the models, lines, and
21 types of automobiles affected.

22 “(B) EVALUATION.—After evaluating an
23 application received from a manufacturer, the
24 Secretary may at any time, under such terms
25 and conditions, and to such extent as the Sec-

1 retary considers appropriate, temporarily ex-
2 empt, or renew the exemption of, a light-duty
3 automobile from the requirement described in
4 paragraph (1) if the Secretary determines that
5 unavoidable events not under the control of the
6 manufacturer prevent the manufacturer of such
7 automobile from meeting its required produc-
8 tion volume of fuel choice-enabling automobiles,
9 including—

10 “(i) a disruption in the supply of any
11 component required for compliance with
12 the regulations;

13 “(ii) a disruption in the use and in-
14 stallation by the manufacturer of such
15 component; or

16 “(iii) application to plug-in electric
17 drive vehicles causing such vehicles to fail
18 to meet State air quality requirements.

19 “(C) CONSOLIDATION.—The Secretary
20 may consolidate applications received from mul-
21 tiple manufacturers under subparagraph (A) if
22 they are of a similar nature.

23 “(D) CONDITIONS.—Any exemption grant-
24 ed under subparagraph (B) shall be conditioned
25 upon the manufacturer’s commitment to recall

1 the exempted automobiles for installation of the
2 omitted components within a reasonable time
3 proposed by the manufacturer and approved by
4 the Secretary after such components become
5 available in sufficient quantities to satisfy both
6 anticipated production and recall volume re-
7 quirements.

8 “(E) NOTICE.—The Secretary shall pub-
9 lish in the Federal Register—

10 “(i) notice of each application received
11 from a manufacturer;

12 “(ii) notice of each decision to grant
13 or deny a temporary exemption; and

14 “(iii) the reasons for granting or de-
15 nying such exemptions.”.

16 (2) The table of contents in chapter 329 of such title
17 is amended adding at the end the following:

“32920. Open fuel standard for transportation.”.

18 **SEC. 128. DIESEL EMISSIONS REDUCTION.**

19 Subtitle G of title VII of the Energy Policy Act of
20 2005 (42 U.S.C. 16131 et seq.) is amended—

21 (1) in the matter preceding clause (i) in section
22 791(3)(B), by inserting “in any State” after “non-
23 profit organization or institution”;

24 (2) in section 791(9), by striking “The term
25 ‘State’ includes the District of Columbia.” and in-

1 sserting “The term ‘State’ includes the District of
2 Columbia, American Samoa, Guam, the Common-
3 wealth of the Northern Mariana Islands, Puerto
4 Rico, and the Virgin Islands.”; and

5 (3) in section 793(c)—

6 (A) in paragraph (2)(A), by striking “51
7 States” and inserting “56 States”;

8 (B) in paragraph (2)(A), by striking “1.96
9 percent” and inserting “1.785 percent”;

10 (C) in paragraph (2)(B), by striking “51
11 States” and inserting “56 States”; and

12 (D) in paragraph (2)(B), by amending
13 clause (ii) to read as follows:

14 “(ii) the amount of funds remaining
15 after each State described in paragraph (1)
16 receives the 1.785-percent allocation under
17 this paragraph.”.

18 **SEC. 129. LOAN GUARANTEES FOR PROJECTS TO CON-**
19 **STRUCT RENEWABLE FUEL PIPELINES.**

20 (a) **DEFINITIONS.**—Section 1701 of the Energy Pol-
21 icy Act of 2005 (42 U.S.C. 16511) is amended by adding
22 at the end the following:

23 “(6) **RENEWABLE FUEL.**—The term ‘renewable
24 fuel’ has the meaning given the term in section
25 211(o)(1) of the Clean Air Act (42 U.S.C.

1 7545(o)(1)), except that the term shall include all
2 ethanol and biodiesel.

3 “(7) RENEWABLE FUEL PIPELINE.—The term
4 ‘renewable fuel pipeline’ means a common carrier
5 pipeline for transporting renewable fuel.”.

6 (b) RENEWABLE FUEL PIPELINE ELIGIBILITY.—
7 Section 1703(b) the Energy Policy Act of 2005 (42 U.S.C.
8 16513) is amended by adding at the end the following:

9 “(11) Renewable fuel pipelines.”.

10 **Subtitle D—State Energy and Envi-** 11 **ronment Development Accounts**

12 **SEC. 131. ESTABLISHMENT OF SEED ACCOUNTS.**

13 (a) DEFINITIONS.—In this section:

14 (1) SEED ACCOUNT.—The term “SEED Ac-
15 count” means a State Energy and Environment De-
16 velopment Account established pursuant to this sec-
17 tion.

18 (2) STATE ENERGY OFFICE.—The term “State
19 Energy Office” means a State entity eligible for
20 grants under part D of title III of the Energy Policy
21 and Conservation Act (42 U.S.C. 6321 et seq.).

22 (b) ESTABLISHMENT OF PROGRAM.—The Adminis-
23 trator shall establish a program under which a State,
24 through its State Energy Office or other State agency des-

1 igned by the State, may operate a State Energy and En-
2 vironment Development Account.

3 (c) PURPOSE.—The purpose of each SEED Account
4 is to serve as a common State-level repository for man-
5 aging and accounting for emission allowances provided to
6 States designated for renewable energy and energy effi-
7 ciency purposes.

8 (d) REGULATIONS.—Not later than one year after the
9 date of enactment of this Act, the Administrator shall pro-
10 mulgate regulations to carry out this section, including
11 regulations—

12 (1) to ensure that each State operates its
13 SEED Account and any subaccounts thereof effi-
14 ciently and in accordance with this Act and applica-
15 ble State and Federal laws;

16 (2) to prevent waste, fraud, and abuse;

17 (3) to indicate the emission allowances that
18 may be deposited in a State’s SEED Account pend-
19 ing distribution or use;

20 (4) to indicate the programs and objectives au-
21 thorized by Federal law for which emission allow-
22 ances in a SEED Account may be distributed or
23 used;

1 (5) to identify the forms of financial assistance
2 and incentives that States may provide through dis-
3 tribution or use of SEED Accounts; and

4 (6) to prescribe the form and content of reports
5 that the States are required to submit under this
6 section on the use of SEED Accounts.

7 (e) OPERATION.—

8 (1) DEPOSITS.—

9 (A) IN GENERAL.—In the allowance track-
10 ing system established pursuant to section
11 724(d) of the Clean Air Act, the Administrator
12 shall establish a SEED Account for each State
13 and place in it the allowances allocated pursu-
14 ant to section 782(g) of the Clean Air Act to
15 be distributed to States pursuant to sections
16 132 and 201 of this Act.

17 (B) FINANCIAL ACCOUNT.—A State may
18 create a financial account associated with its
19 SEED Account to deposit, retain, and manage
20 any proceeds of any sale of any allowance pro-
21 vided pursuant to this Act pending expenditure
22 or disbursement of those proceeds for purposes
23 permitted under this section. The funds in such
24 an account shall not be commingled with other
25 funds not derived from the sale of allowances

1 provided to the State; however, loans made by
2 the State from such funds pursuant to para-
3 graph (2)(C)(i) may be repaid into such a fi-
4 nancial account, including any interest charged.

5 (2) WITHDRAWALS.—

6 (A) IN GENERAL.—All allowances distrib-
7 uted pursuant to sections 132 and 201, includ-
8 ing the proceeds of any sale of such allowances,
9 shall support renewable energy and energy effi-
10 ciency programs authorized or approved by the
11 Federal Government.

12 (B) DEDICATED ALLOWANCES.—Allow-
13 ances distributed pursuant to sections 132 and
14 201 that are required by law to be used for spe-
15 cific purposes for a specified period shall be
16 used according to those requirements during
17 that period.

18 (C) UNDEDICATED ALLOWANCES.—To the
19 extent that allowances distributed pursuant to
20 sections 132 and 201 are not required by law
21 to be used for specific purposes for a specified
22 period as described in subparagraph (B), such
23 allowances or the proceeds of their sale may be
24 used for any of the following purposes:

1 (i) LOANS.—Loans of allowances, or
2 the proceeds from the sale of allowances,
3 may be provided, interest on commercial
4 loans may be subsidized at an interest rate
5 as low as zero, and other credit support
6 may be provided to support programs au-
7 thorized to use SEED Account allowance
8 value or any other renewable energy or en-
9 ergy efficiency purpose authorized or ap-
10 proved by the Federal Government.

11 (ii) GRANTS.—Grants of allowances or
12 the proceeds of their sale may be provided
13 to support programs authorized to use
14 SEED Account allowance value or any
15 other renewable energy or energy efficiency
16 purpose authorized or approved by the
17 Federal Government.

18 (iii) OTHER FORMS OF SUPPORT.—Al-
19 lowances or the proceeds of the sale of al-
20 lowances may be provided for other forms
21 of support for programs authorized to use
22 SEED Account allowance value or any
23 other renewable energy or energy efficiency
24 purpose authorized or approved by the
25 Federal Government.

1 (iv) ADMINISTRATIVE COSTS.—Except
2 to the extent provided in Federal law au-
3 thorizing or allocating allowances deposited
4 in a SEED Account, not more than 5 per-
5 cent of the allowance value in a SEED Ac-
6 count in any year may be used to cover ad-
7 ministrative expenses of the SEED Ac-
8 count.

9 (D) SUBACCOUNTS.—A State may request
10 that the Administrator establish accounts for
11 local governments that request such sub-
12 accounts to hold allowances distributed to local
13 governments for renewable energy or energy ef-
14 ficiency programs authorized or approved by
15 the Federal Government.

16 (E) INTENDED USE PLANS.—

17 (i) IN GENERAL.—After providing for
18 public review and comment, each State ad-
19 ministering a SEED Account shall annu-
20 ally prepare a plan that identifies the in-
21 tended uses of the allowances or proceeds
22 from the sale of allowances in its SEED
23 Account.

24 (ii) CONTENTS.—An intended use
25 plan shall include—

1 (I) a list of the projects or pro-
2 grams for which withdrawals from the
3 SEED Account are intended in the
4 next fiscal year that begins after the
5 date of the plan, including a descrip-
6 tion of each project;

7 (II) the relationship of each of
8 the projects or programs to an identi-
9 fied Federal purpose authorized by
10 this Act, or any other Federal statute;

11 (III) the expected terms of use of
12 allowance value to provide assistance;

13 (IV) the criteria and methods es-
14 tablished for the distribution of allow-
15 ances or allowance value;

16 (V) a description of the equiva-
17 lent financial value and status of the
18 SEED Account; and

19 (VI) a statement of the mid-term
20 and long-term goals of the State for
21 use of its SEED Account.

22 (3) ACCOUNTABILITY AND TRANSPARENCY.—

23 (A) CONTROLS AND PROCEDURES.—Any
24 State that has a SEED Account shall establish
25 fiscal controls and recordkeeping and account-

1 ing procedures for the SEED Account sufficient
2 to ensure proper accounting during appropriate
3 accounting periods for distributions into the
4 SEED Account, transfers from the SEED Ac-
5 count, and SEED Account balances, including
6 any related financial accounts. Such controls
7 and procedures shall conform to generally ac-
8 cepted government accounting principles. Any
9 State that has a SEED Account shall retain
10 records for a period of at least 5 years.

11 (B) AUDITS.—Any State that has a SEED
12 Account shall have an annual audit conducted
13 of the SEED Account by an independent public
14 accountant in accordance with generally accept-
15 ed auditing standards, and shall transmit the
16 results of that audit to the Administrator.

17 (C) STATE REPORT.—Each State admin-
18 istering a SEED Account shall make publicly
19 available and submit to the Administrator a re-
20 port every 2 years on its activities related to its
21 SEED Account.

22 (D) PUBLIC INFORMATION.—Any—

23 (i) controls and procedures established
24 under subparagraph (A); and

1 (ii) information obtained through au-
2 dits conducted under subparagraph (B),
3 except to the extent that it would be pro-
4 tected from disclosure, if it were informa-
5 tion held by the Federal Government,
6 under section 552(b) of title 5, United
7 States Code,

8 shall be made publicly available.

9 (E) OTHER PROTECTIONS.—The Adminis-
10 trator shall require such additional procedures
11 and protections as are necessary to ensure that
12 any State that has a SEED Account will oper-
13 ate the SEED Account in an accountable and
14 transparent manner.

15 (f) REQUIREMENTS FOR ELIGIBILITY.—A State’s eli-
16 gibility to receive allowances in its SEED Account shall
17 depend on that State’s compliance with the requirements
18 of this Act (and the amendments made by this Act).

19 (g) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated to the Administrator
21 such sums as may be necessary for SEED Account oper-
22 ations.

23 **SEC. 132. SUPPORT OF STATE RENEWABLE ENERGY AND**
24 **ENERGY EFFICIENCY PROGRAMS.**

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

1 (1) ALLOWANCE.—The term “allowance”
2 means an emission allowance established under sec-
3 tion 721 of the Clean Air Act (as added by section
4 311 of this Act).

5 (2) COST-EFFECTIVE.—The term “cost-effec-
6 tive”, with respect to an energy efficiency program,
7 means that the program meets the Total Resource
8 Cost Test, which requires that the net present value
9 of economic benefits over the life of the program or
10 measure, including avoided supply and delivery costs
11 and deferred or avoided investments, is greater than
12 the net present value of the economic costs over the
13 life of the program, including program costs and in-
14 cremental costs borne by the energy consumer.

15 (3) RENEWABLE ENERGY RESOURCE.—The
16 term “renewable energy resource” shall have the
17 meaning given that term in section 610 of the Public
18 Utility Regulatory Policies Act of 1978 (as added by
19 section 101 of this Act).

20 (4) VINTAGE YEAR.—The term “vintage year”
21 shall the meaning given that term in section 700 of
22 the Clean Air Act (as added by section 311 of this
23 Act).

24 (b) DISTRIBUTION AMONG STATES.—Not later than
25 September 30 of each calendar year from 2011 through

1 2049, the Administrator shall, in accordance with this sec-
2 tion, distribute allowances allocated pursuant to section
3 782(g)(1) of the Clean Air Act (as added by section 311
4 of this Act) for the following vintage year. The Adminis-
5 trator shall distribute 0.5 percent of such allowances pur-
6 suant to section 133 of this Act. The Administrator shall
7 distribute the remaining allowances to States for renew-
8 able energy and energy efficiency programs to be deposited
9 in and administered through the State Energy and Envi-
10 ronment Development (SEED) Accounts established pur-
11 suant to section 131. The Administrator shall distribute
12 allowances among the States under this section each year
13 in accordance with the following formula:

14 (1) One third of the allowances shall be divided
15 equally among the States.

16 (2) One third of the allowances shall be distrib-
17 uted ratably among the States based on the popu-
18 lation of each State, as contained in the most recent
19 reliable census data available from the Bureau of the
20 Census, Department of Commerce, for all States at
21 the time the Administrator calculates the formula
22 for distribution.

23 (3) One third of the allowances for shall be dis-
24 tributed ratably among the States on the basis of
25 the energy consumption of each State as contained

1 in the most recent State Energy Data Report avail-
2 able from the Energy Information Administration
3 (or such alternative reliable source as the Adminis-
4 trator may designate).

5 (c) USES.—The allowances distributed to each State
6 pursuant to this section shall be used exclusively in accord-
7 ance with the following requirements:

8 (1) Not less than 12.5 percent shall be distrib-
9 uted by the State to units of local government within
10 such State to be used exclusively to support the en-
11 ergy efficiency and renewable energy purposes listed
12 in paragraphs (2) and (3).

13 (2) Not less than 20 percent shall be used ex-
14 clusively for the following energy efficiency purposes,
15 provided that not less than 1 percent shall be used
16 for the purpose described in subparagraph (D) and
17 not less than 5 percent shall be used for the purpose
18 described in subparagraph (E):

19 (A) Implementation and enforcement of
20 building codes adopted in compliance with sec-
21 tion 201.

22 (B) Implementation of the energy efficient
23 manufactured homes program established pur-
24 suant to section 203.

1 (C) Implementation of the building energy
2 performance labeling program established pur-
3 suant to section 204.

4 (D) Low-income community energy effi-
5 ciency programs that are consistent with the
6 grant program established under section 264 of
7 this Act.

8 (E) Implementation of the Retrofit for En-
9 ergy and Environmental Performance (REEP)
10 program established pursuant to section 202.

11 (3) Not less than 20 percent shall be used ex-
12 clusively for capital grants, tax credits, production
13 incentives, loans, loan guarantees, forgivable loans,
14 and interest rate buy-downs for—

15 (A) re-equipping, expanding, or estab-
16 lishing a manufacturing facility that receives
17 certification from the Secretary of Energy pur-
18 suant to section 1302 of the American Recovery
19 and Reinvestment Act of 2009 for the produc-
20 tion of—

21 (i) property designed to be used to
22 produce energy from renewable energy
23 sources; and

24 (ii) electricity storage systems;

1 (B) deployment of technologies to generate
2 electricity from renewable energy sources; and

3 (C) deployment of facilities or equipment,
4 such as solar panels, to generate electricity or
5 thermal energy from renewable energy re-
6 sources in and on buildings in an urban envi-
7 ronment.

8 (4) The remaining 47.5 percent shall be used
9 exclusively for any of the following purposes:

10 (A) Energy efficiency purposes described
11 in paragraph (2).

12 (B) Renewable energy purposes described
13 in paragraph (3)(B) and (C).

14 (C) Cost-effective energy efficiency pro-
15 grams for end-use consumers of electricity, nat-
16 ural gas, home heating oil, or propane, includ-
17 ing, where appropriate, programs or mecha-
18 nisms administered by local governments and
19 entities other than the State.

20 (D) Enabling the development of a Smart
21 Grid (as described in section 1301 of the En-
22 ergy Independence and Security Act of 2007
23 (42 U.S.C. 17381)) for State, local government,
24 and other public buildings and facilities, includ-
25 ing integration of renewable energy resources

1 and distributed generation, demand response,
2 demand side management, and systems anal-
3 ysis.

4 (E) Providing the non-Federal share of
5 support for surface transportation capital
6 projects under—

7 (i) sections 5307, 5308, 5309, 5310,
8 5311 and 5319 of title 49, United States
9 Code; and

10 (ii) sections 142, 146, and 149 of title
11 23, United States Code,

12 provided that not more than 10 percent of al-
13 lowances distributed to each State pursuant to
14 this section shall be used for such purpose.

15 (5) For any allowances used for the purpose de-
16 scribed in paragraph (4)(C), the State shall—

17 (A) prioritize expansion of existing energy
18 efficiency programs approved and overseen by
19 the State or the appropriate State regulatory
20 authority; and

21 (B) demonstrate that such allowances have
22 been used to supplement, and not to supplant,
23 existing and otherwise available State, local,
24 and ratepayer funding for such purpose.

1 (d) REPORTING.—Each State receiving allowances
2 under this section shall include in its biennial reports re-
3 quired under section 131, in accordance with such require-
4 ments as the Administrator may prescribe

5 (1) a list of entities receiving allowances or al-
6 lowance value under this section, including entities
7 receiving such allowances or allowance value from
8 units of local government pursuant to subsection
9 (c)(1);

10 (2) the amount and nature of allowances or al-
11 lowance value received by each such recipient;

12 (3) the specific purposes for which such allow-
13 ances or allowance value was conveyed to each such
14 recipient;

15 (4) documentation of the amount of energy sav-
16 ings, emission reductions, renewable energy deploy-
17 ment, and new or retooled manufacturing capacity
18 resulting from the use of such allowances or allow-
19 ance value; and

20 (5) for any energy efficiency program supported
21 under subsection (c)(4)(C)—

22 (A) an assessment demonstrating the cost-
23 effectiveness of such program; and

1 (B) a demonstration that the requirements
2 set forth in subsection (c)(5) have been satis-
3 fied.

4 (e) ENFORCEMENT.—If the Administrator deter-
5 mines that a State is not in compliance with this section,
6 the Administrator may withhold up to twice the number
7 of allowances that the State failed to use in accordance
8 with the requirements of this section, that such State
9 would otherwise be eligible to receive under this section
10 in later years. Allowances withheld pursuant to this sub-
11 section shall be distributed among the remaining States
12 in accordance with the requirements of subsection (b).

13 **SEC. 133. SUPPORT OF INDIAN RENEWABLE ENERGY AND**
14 **ENERGY EFFICIENCY PROGRAMS.**

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

16 (1) ALLOWANCE; COST-EFFECTIVE; RENEW-
17 ABLE ENERGY RESOURCE.—The terms “allowance”,
18 “cost-effective”, and “renewable energy resource”
19 have the meaning given those terms in section 132
20 of this Act.

21 (2) INDIAN TRIBE.—The term “Indian tribe”
22 has the meaning given the term in section 4 of the
23 Indian Self-Determination and Education Assistance
24 Act (25. U.S.C. 450b).

1 (3) SECRETARY.—The term “Secretary” means
2 the Secretary of Energy.

3 (b) ESTABLISHMENT.—Not later than 18 months
4 after the date of enactment of this Act, the Secretary
5 shall, in consultation with the Administrator and the Sec-
6 retary of the Interior, promulgate regulations establishing
7 a program to distribute allowances to Indian tribes on a
8 competitive basis for the following purposes:

9 (1) ENERGY EFFICIENCY.—Cost-effective en-
10 ergy efficiency programs for end-use consumers of
11 electricity, natural gas, home heating oil, or propane.

12 (2) RENEWABLE ENERGY.—Deployment of
13 technologies to generate electricity from renewable
14 energy resources.

15 (c) REQUIREMENTS.—The regulations promulgated
16 pursuant to subsection (b) shall prescribe design elements
17 and requirements of the program established under this
18 section, including—

19 (1) objective criteria for evaluating proposals
20 submitted by Indian tribes, and for selecting projects
21 and programs to receive support, under this section;

22 (2) reporting requirements for Indian tribes
23 that receive allowances under this section; and

24 (3) other appropriate elements and require-
25 ments.

1 (d) DISTRIBUTION.—The Administrator shall, at the
2 direction of the Secretary, distribute to Indian tribes al-
3 lowances that are set aside, pursuant to section 132, for
4 use under this section.

5 **Subtitle E—Smart Grid**
6 **Advancement**

7 **SEC. 141. DEFINITIONS.**

8 For purposes of this subtitle:

9 (1) The term “applicable baseline” means the
10 average of the highest three annual peak demands a
11 load-serving entity has experienced during the 5
12 years immediately prior to the date of enactment of
13 this Act.

14 (2) The term “Commission” means Federal En-
15 ergy Regulatory Commission.

16 (3) The term “load-serving entity” means an
17 entity that provides electricity directly to retail con-
18 sumers with the responsibility to assure power qual-
19 ity and reliability, including such entities that are
20 investor-owned, publicly owned, owned by rural elec-
21 tric cooperatives, or other entities.

22 (4) The term “peak demand” means the high-
23 est point of electricity demand, net of any distrib-
24 uted electricity generation or storage from sources
25 on the load-serving entity’s customers’ premises,

1 during any hour on the system of a load serving en-
2 tity during a calendar year, expressed in Megawatts
3 (MW), or more than one such high point as a func-
4 tion of seasonal demand changes.

5 (5) The term “peak demand reduction” means
6 the reduction in annual peak demand as compared
7 to a previous baseline year or period, expressed in
8 Megawatts (MW), whether accomplished by—

9 (A) diminishing the end-use requirements
10 for electricity;

11 (B) use of locally stored energy or gen-
12 erated electricity to meet those requirements
13 from distributed resources on the load-serving
14 entity’s customers’ premises and without use of
15 high-voltage transmission; or

16 (C) energy savings from efficient operation
17 of the distribution grid resulting from the use
18 of a Smart Grid.

19 (6) The term “peak demand reduction plan”
20 means a plan developed by or for a load-serving enti-
21 ty that it will implement to meet its peak demand
22 reduction goals.

23 (7) The term “peak period” means the time pe-
24 riod on the system of a load-serving entity relative
25 to peak demand that may warrant special measures

1 or electricity resources to maintain system reliability
2 while meeting peak demand.

3 (8) The term “Secretary” means the Secretary
4 of Energy.

5 (9) The term “Smart Grid” has the meaning
6 provided by section 1301 of the Energy Independ-
7 ence and Security Act of 2007 (15 U.S.C. 17381).

8 **SEC. 142. ASSESSMENT OF SMART GRID COST EFFECTIVE-**
9 **NESS IN PRODUCTS.**

10 (a) ASSESSMENT.—Within one year after the date of
11 enactment of this Act, the Secretary and the Adminis-
12 trator shall each assess the potential for cost-effective in-
13 tegration of Smart Grid technologies and capabilities in
14 all products that are reviewed by the Department of En-
15 ergy and the Environmental Protection Agency, respec-
16 tively, for potential designation as Energy Star products.

17 (b) ANALYSIS.—(1) Within 2 years after the date of
18 enactment of this Act, the Secretary and the Adminis-
19 trator shall each prepare an analysis of the potential en-
20 ergy savings, greenhouse gas emission reductions, and
21 electricity cost savings that could accrue for each of the
22 products identified by the assessment in subsection (a) in
23 the following optimal circumstances:

1 (A) The products possessed Smart Grid capa-
2 bility and interoperability that is tested and proven
3 reliable.

4 (B) The products were utilized in an electricity
5 utility service area which had Smart Grid capability
6 and offered customers rate or program incentives to
7 use the products.

8 (C) The utility's rates reflected national average
9 costs, including average peak and valley seasonal
10 and daily electricity costs.

11 (D) Consumers using such products took full
12 advantage of such capability.

13 (E) The utility avoided incremental investments
14 and rate increases related to such savings.

15 (2) The analysis under paragraph (1) shall be consid-
16 ered the "best case" Smart Grid analysis. On the basis
17 of such an analysis for each product, the Secretary and
18 the Administrator shall determine whether the installation
19 of Smart Grid capability for such a product would be cost
20 effective. For purposes of this paragraph, the term "cost
21 effective" means that the cumulative savings from using
22 the product under the best case Smart Grid circumstances
23 for a period of one-half of the product's expected useful
24 life will be greater than the incremental cost of the Smart
25 Grid features included in the product.

1 (3) To the extent that including Smart Grid capa-
2 bility in any products analyzed under paragraph (2) is
3 found to be cost effective in the best case, the Secretary
4 and the Administrator shall, not later than 3 years after
5 the date of enactment of this Act take each of the fol-
6 lowing actions:

7 (A) Inform the manufacturer of such product of
8 such finding of cost effectiveness.

9 (B) Assess the potential contributions the devel-
10 opment and use of products with Smart Grid tech-
11 nologies bring to reducing peak demand and pro-
12 moting grid stability.

13 (C) Assess the potential national energy savings
14 and electricity cost savings that could be realized if
15 Smart Grid potential were installed in the relevant
16 products reviewed by the Energy Star program.

17 (D) Assess and identify options for providing
18 consumers information on products with Smart Grid
19 capabilities, including the necessary conditions for
20 cost-effective savings.

21 (E) Submit a report to Congress summarizing
22 the results of the assessment for each class of prod-
23 ucts, and presenting the potential energy and green-
24 house gas savings that could result if Smart Grid

1 capability were installed and utilized on such prod-
2 ucts.

3 **SEC. 143. INCLUSIONS OF SMART GRID CAPABILITY ON AP-**
4 **PLIANCE ENERGY GUIDE LABELS.**

5 Section 324(a)(2) of the Energy Policy and Conserva-
6 tion Act (42 U.S.C. 6294(a)(2)) is amended by adding the
7 following at the end:

8 “(J)(i) Not later than 1 year after the date
9 of enactment of this subparagraph, the Federal
10 Trade Commission shall initiate a rulemaking
11 to consider making a special note in a promi-
12 nent manner on any ENERGY GUIDE label
13 for any product actually including Smart Grid
14 capability that—

15 “(I) Smart Grid capability is a fea-
16 ture of that product;

17 “(II) the use and value of that feature
18 depended on the Smart Grid capability of
19 the utility system in which the product was
20 installed and the active utilization of that
21 feature by the customer; and

22 “(III) on a utility system with Smart
23 Grid capability, the use of the product’s
24 Smart Grid capability could reduce the
25 customer’s cost of the product’s annual op-

1 eration by an estimated dollar amount
2 range representing the result of incre-
3 mental energy and electricity cost savings
4 that would result from the customer taking
5 full advantage of such Smart Grid capa-
6 bility.

7 “(ii) Not later than 3 years after the date
8 of enactment of this subparagraph, the Com-
9 mission shall complete the rulemaking initiated
10 under clause (i).”.

11 **SEC. 144. SMART GRID PEAK DEMAND REDUCTION GOALS.**

12 (a) GOALS.—Not later than one year after the date
13 of enactment of this section, each load-serving entity, or,
14 at the option of the State, each State with respect to load-
15 serving entities that the State regulates, shall determine
16 and publish peak demand reduction goals for any load-
17 serving entities that have an applicable baseline in excess
18 of 250 megawatts.

19 (b) BASELINES.—(1) The Commission, in consulta-
20 tion with the Secretary and the Administrator, shall de-
21 velop and publish, after an opportunity for public com-
22 ment, but not later than 180 days after enactment of this
23 section, a methodology to provide for adjustments or nor-
24 malization to a load-serving entity’s applicable baseline
25 over time to reflect changes in the number of customers

1 served, weather conditions, general economic conditions,
2 and any other appropriate factors external to peak de-
3 mand management, as determined by the Commission.

4 (2) The Commission shall support load-serving enti-
5 ties (including any load-serving entities with an applicable
6 baseline of less than 250 megawatts that volunteer to par-
7 ticipate in achieving the purposes of this section) in deter-
8 mining their applicable baselines, and in developing their
9 peak demand reduction goals.

10 (3) The Secretary, in consultation with the Commis-
11 sion, the Administrator, and the North American Electric
12 Reliability Corporation, shall develop a system and rules
13 for measurement and verification of demand reductions.

14 (c) PEAK DEMAND REDUCTION GOALS.—(1) Peak
15 demand reduction goals may be established for an indi-
16 vidual load-serving entity, or, at the determination of a
17 State, tribal, or regional entity, by that State, tribal, or
18 regional entity for a larger region that shares a common
19 system peak demand and for which peak demand reduc-
20 tion measures would offer regional benefit.

21 (2) A State or regional entity establishing peak de-
22 mand reduction goals shall cooperate, as necessary and
23 appropriate, with the Commission, the Secretary, State
24 regulatory commissions, State energy offices, the North

1 American Electric Reliability Corporation, and other rel-
2 evant authorities.

3 (3) In determining the applicable peak demand reduc-
4 tion goals—

5 (A) States and other jurisdictional entities may
6 utilize the results of the 2009 National Demand Re-
7 sponse Potential Assessment, as authorized by sec-
8 tion 571 of the National Energy Conservation Policy
9 Act (42 U.S.C. 8279); and

10 (B) the relative economics of peak demand re-
11 duction and generation required to meet peak de-
12 mand shall be evaluated in a neutral and objective
13 manner.

14 (4) The applicable peak demand reduction goals shall
15 provide that—

16 (A) load-serving entities will reduce or mitigate
17 peak demand by a minimum percentage amount
18 from the applicable baseline to a lower peak demand
19 during calendar year 2012;

20 (B) load-serving entities will reduce or mitigate
21 peak demand by a minimum percentage greater
22 amount from the applicable baseline to a lower peak
23 demand during calendar year 2015; and

24 (C) the minimum percentage reductions estab-
25 lished as peak demand reduction goals shall be the

1 maximum reductions that are realistically achievable
2 with an aggressive effort to deploy Smart Grid and
3 peak demand reduction technologies and methods,
4 including but not limited to those listed in sub-
5 section (d).

6 (d) PLAN.—Each load-serving entity shall prepare a
7 peak demand reduction plan that demonstrates its ability
8 to meet each applicable goal by any or a combination of
9 the following options:

10 (1) Direct reduction in megawatts of peak de-
11 mand through—

12 (A) energy efficiency measures (including
13 efficient transmission wire technologies which
14 significantly reduce line loss compared to tradi-
15 tional wire technology) with reliable and contin-
16 ued application during peak demand periods; or

17 (B) use of a Smart Grid.

18 (2) Demonstration that an amount of
19 megawatts equal to a stated portion of the applicable
20 goal is contractually committed to be available for
21 peak reduction through one or more of the following:

22 (A) Megawatts enrolled in demand re-
23 sponse programs.

24 (B) Megawatts subject to the ability of a
25 load-serving entity to call on demand response

1 programs, smart appliances, smart electricity or
2 energy storage devices, distributed generation
3 resources on the entity's customers' premises,
4 or other measures directly capable of actively,
5 controllably, reliably, and dynamically reducing
6 peak demand ("dynamic peak management con-
7 trol").

8 (C) Megawatts available from distributed
9 dynamic electricity or energy storage under
10 agreement with the owner of that storage.

11 (D) Megawatts committed from
12 dispatchable distributed generation dem-
13 onstrated to be reliable under peak period con-
14 ditions and in compliance with air quality regu-
15 lations.

16 (E) Megawatts available from smart appli-
17 ances and equipment with Smart Grid capa-
18 bility available for direct control by the utility
19 through agreement with the customer owning
20 the appliances or equipment or with a third
21 party pursuant to such agreements.

22 (F) Megawatts from a demonstrated and
23 assured minimum of distributed solar electric
24 generation capacity in instances where peak pe-
25 riod and peak demand conditions are directly

1 related to solar radiation and accompanying
2 heat.

3 (3) If any of the methods listed in subpara-
4 graph (C), (D), or (E) of paragraph (2) are relied
5 upon to meet its peak demand reduction goals, the
6 load-serving entity must demonstrate this capability
7 by operating a test during the applicable calendar
8 year.

9 (4) Nothing in this section shall require the
10 publication in peak demand reduction goals or in
11 any peak demand reduction plan of any information
12 that is confidential for competitive or other reasons
13 or that identifies individual customers.

14 (e) EXISTING AUTHORITY AND REQUIREMENTS.—
15 Nothing in this section diminishes or supersedes any au-
16 thority of a State or political subdivision of a State to
17 adopt or enforce any law or regulation respecting peak de-
18 mand management, demand response, distributed energy
19 storage, use of distributed generation, or the regulation
20 of load-serving entities. The Commission, in consultation
21 with States and Indian tribes having such peak manage-
22 ment, demand response and distributed energy storage
23 programs, shall to the maximum extent practicable, facili-
24 tate coordination between the Federal program and such
25 State and tribal programs.

1 (f) RELIEF.—The Commission may, for good cause,
2 grant relief to load-serving entities from the requirements
3 of this section.

4 (g) OTHER LAWS.—Except as provided in sub-
5 sections (e) and (f), no law or regulation shall relieve any
6 person of any requirement otherwise applicable under this
7 section.

8 (h) COMPLIANCE.—(1) The Commission shall within
9 one year after the date of enactment of this Act establish
10 a public website where the Commission will provide infor-
11 mation and data demonstrating compliance by States, In-
12 dian tribes regional entities, and load-serving entities with
13 this section, including the success of load-serving entities
14 in meeting applicable peak demand reduction goals.

15 (2) The Commission shall, by April 1 of each year
16 beginning in 2012, provide a report to Congress on com-
17 pliance with this section and success in meeting applicable
18 peak demand reduction goals and, as appropriate, shall
19 make recommendations as to how to increase peak de-
20 mand reduction efforts.

21 (3) The Commission shall note in each such report
22 any State, political subdivision of a State, or load-serving
23 entity that has failed to comply with this section, or is
24 not a part of any region or group of load-serving entities
25 serving a region that has complied with this section.

1 (4) The Commission shall have and exercise the au-
2 thority to take reasonable steps to modify the process of
3 establishing peak demand reduction goals and to accept
4 adjustments to them as appropriate when sought by load-
5 serving entities.

6 (i) ASSISTANCE AND FUNDING.—

7 (1) ASSISTANCE TO STATES AND TRIBES.—Any
8 costs incurred by States for activities undertaken
9 pursuant to this section shall be supported by the
10 use of emission allowances allocated to the States'
11 SEED Accounts or to the tribes pursuant to section
12 132 of this Act. To the extent that a State provides
13 allowances to local governments within the State to
14 implement this program, that shall be deemed a dis-
15 tribution of such allowances to units of local govern-
16 ment pursuant to subsection (c)(1) of that section.

17 (2) FUNDING.—There are authorized to be ap-
18 propriated such sums as may be necessary to the
19 Commission, the Secretary, and the Administrator to
20 carry out the provisions of this section.

21 **SEC. 145. REAUTHORIZATION OF ENERGY EFFICIENCY PUB-**
22 **LIC INFORMATION PROGRAM TO INCLUDE**
23 **SMART GRID INFORMATION.**

24 (a) IN GENERAL.—Section 134 of the Energy Policy
25 Act of 2005 (42 U.S.C. 15832) is amended as follows:

1 (1) By amending the section heading to read as
2 follows: “**ENERGY EFFICIENCY AND SMART GRID**
3 **PUBLIC INFORMATION INITIATIVE**”.

4 (2) In paragraph (1) of subsection (a) by strik-
5 ing “reduce energy consumption during the 4-year
6 period beginning on the date of enactment of this
7 Act” and inserting “increase energy efficiency and
8 to adopt Smart Grid technology and practices”.

9 (3) In paragraph (2) of subsection (a) by strik-
10 ing “benefits to consumers of reducing” and insert-
11 ing “economic and environmental benefits to con-
12 sumers and the United States of optimizing”.

13 (4) In subsection (a) by inserting at the begin-
14 ning of paragraph (3) “the effect of energy effi-
15 ciency and Smart Grid capability in reducing energy
16 and electricity prices throughout the economy, to-
17 gether with”.

18 (5) In subsection (a)(4) by redesignating sub-
19 paragraph (D) as (E), by striking “and” at the end
20 of subparagraph (C), and by inserting after subpara-
21 graph (C) the following:

22 “(D) purchasing and utilizing equipment
23 that includes Smart Grid features and capa-
24 bility; and”.

1 (6) In subsection (c), by striking “Not later
2 than July 1, 2009,” and inserting, “For each year
3 when appropriations pursuant to the authorization
4 in this section exceed \$10,000,000,”.

5 (7) In subsection (d) by striking “2010” and
6 inserting “2020”.

7 (8) In subsection (e) by striking “2010” and in-
8 serting “2020”.

9 (b) TABLE OF CONTENTS.—The item relating to sec-
10 tion 134 in the table of contents for the Energy Policy
11 Act of 2005 (42 U.S.C. 15801 and following) is amended
12 to read as follows:

“Sec. 134. Energy efficiency and Smart Grid public information initiative.”.

13 **SEC. 146. INCLUSION OF SMART GRID FEATURES IN APPLI-**
14 **ANCE REBATE PROGRAM.**

15 (a) AMENDMENTS.—Section 124 of the Energy Pol-
16 icy Act of 2005 (42 U.S.C. 15821) is amended as follows:

17 (1) By amending the section heading to read as
18 follows: “**ENERGY EFFICIENT AND SMART AP-**
19 **PLIANCE REBATE PROGRAM.**”.

20 (2) By redesignating paragraphs (4) and (5) of
21 subsection (a) as paragraphs (5) and (6), respec-
22 tively, and inserting after paragraph (3) the fol-
23 lowing:

24 “(4) SMART APPLIANCE.—The term ‘smart ap-
25 pliance’ means a product that the Administrator of

1 the Environmental Protection Agency or the Sec-
2 retary of Energy has determined qualifies for such
3 a designation in the Energy Star program pursuant
4 to section 142 of the American Clean Energy and
5 Security Act of 2009, or that the Secretary or the
6 Administrator has separately determined includes
7 the relevant Smart Grid capabilities listed in section
8 1301 of the Energy Independence and Security Act
9 of 2007 (15 U.S.C. 17381).”.

10 (3) In subsection (b)(1) by inserting “and
11 smart” after “efficient” and by inserting after
12 “products” the first place it appears “, including
13 products designated as being smart appliances”.

14 (4) In subsection (b)(3), by inserting “the ad-
15 ministration of” after “carry out”.

16 (5) In subsection (d), by inserting “the admin-
17 istration of” after “carrying out” and by inserting
18 “, and up to 100 percent of the value of the rebates
19 provided pursuant to this section” before the period
20 at the end.

21 (6) In subsection (e)(3), by inserting “, with
22 separate consideration as applicable if the product is
23 also a smart appliance,” after “Energy Star prod-
24 uct” the first place it appears and by inserting “or
25 smart appliance” before the period at the end.

1 (7) In subsection (f), by striking
2 “\$50,000,000” through the period at the end and
3 inserting “\$100,000,000 for each fiscal year from
4 2010 through 2015.”.

5 (b) TABLE OF CONTENTS.—The item relating to sec-
6 tion 124 in the table of contents for the Energy Policy
7 Act of 2005 (42 U.S.C. 15801 and following) is amended
8 to read as follows:

 “Sec. 124. Energy efficient and smart appliance rebate program.”.

9 **Subtitle F—Transmission Planning**

10 **SEC. 151. TRANSMISSION PLANNING.**

11 Part II of the Federal Power Act (16 U.S.C. 824 et
12 seq.) is amended by adding after section 216 the following
13 new section:

14 **“SEC. 216A. TRANSMISSION PLANNING.**

15 “(a) FEDERAL POLICY.—

16 “(1) OBJECTIVES.—It is the policy of the
17 United States that regional electric grid planning
18 should facilitate the deployment of renewable and
19 other zero-carbon energy sources for generating elec-
20 tricity to reduce greenhouse gas emissions while en-
21 suring reliability, reducing congestion, ensuring
22 cyber-security, and providing for cost-effective elec-
23 tricity services throughout the United States.

24 “(2) OPTIONS.—In addition to the policy under
25 paragraph (1), it is the policy of the United States

1 that regional electric grid planning to meet these ob-
2 jectives should take into account all significant de-
3 mand-side and supply-side options, including energy
4 efficiency, distributed generation, renewable energy
5 and zero-carbon electricity generation technologies,
6 smart-grid technologies and practices, demand re-
7 sponse, electricity storage, voltage regulation tech-
8 nologies, high capacity conductors with at least 25
9 percent greater efficiency than traditional ACSR
10 (aluminum stranded conductors steel reinforced)
11 conductors, superconductor technologies, under-
12 ground transmission technologies, and new conven-
13 tional electric transmission capacity and corridors.

14 “(b) PLANNING.—

15 “(1) PLANNING PRINCIPLES.—Not later than 1
16 year after the date of enactment of this section, the
17 Commission shall adopt, after notice and oppor-
18 tunity for comment, national electricity grid plan-
19 ning principles derived from the Federal policy es-
20 tablished under subsection (a) to be applied in ongo-
21 ing and future transmission planning that may im-
22 plicate interstate transmission of electricity.

23 “(2) REGIONAL PLANNING ENTITIES.—Not
24 later than 3 months after the date of adoption by
25 the Commission of national electricity grid planning

1 principles pursuant to paragraph (1), entities that
2 conduct or may conduct transmission planning pur-
3 suant to State, tribal, or Federal law or regulation,
4 including States, Indian tribes, entities designated
5 by States and Indian tribes, Federal Power Mar-
6 keting Administrations, public utility transmission
7 providers, operators and owners, regional organiza-
8 tions, and electric utilities, and that are willing to
9 incorporate the national electricity grid planning
10 principles adopted by the Commission in their elec-
11 tric grid planning, shall identify themselves and the
12 regions for which they propose to develop plans to
13 the Commission.

14 “(3) COORDINATION OF REGIONAL PLANNING
15 ENTITIES.—The Commission shall encourage re-
16 gional planning entities described under paragraph
17 (2) to cooperate and coordinate across regions and
18 to harmonize regional electric grid planning with
19 planning in adjacent or overlapping jurisdictions to
20 the maximum extent feasible. The Commission shall
21 work with States, Indian tribes, Federal Power Mar-
22 keting Administrations, public utilities transmission
23 providers, load-serving entities, transmission opera-
24 tors, Regional Transmission Organizations, Inde-
25 pendent System Operators, and other organizations

1 to resolve any conflict or competition among pro-
2 posed planning entities in order to build consensus
3 and promote the Federal policy established under
4 subsection (a). The Commission shall seek to ensure
5 that planning that is consistent with the national
6 electricity grid planning principles adopted pursuant
7 to paragraph (1) is conducted in all regions of the
8 United States and the territories.

9 “(4) RELATION TO EXISTING PLANNING POL-
10 ICY.—In implementing the Federal policy established
11 under subsection (a), the Commission shall—

12 “(A) incorporate any ongoing planning ef-
13 forts undertaken pursuant to section 217;

14 “(B) consult with and invite the participa-
15 tion of the Secretary of Energy in relationship
16 to the Secretary’s duties pursuant to section
17 216; and

18 “(C) coordinate with the Secretaries of the
19 Interior and Agriculture and with Indian tribes
20 in carrying out the Secretaries’ or tribal govern-
21 ments’ existing responsibilities for the planning
22 or siting of transmission facilities on Federal or
23 tribal lands.

24 “(5) ASSISTANCE.—

1 “(A) IN GENERAL.—The Commission shall
2 provide support to and participate in the re-
3 gional grid planning processes conducted by re-
4 gional planning entities. The Commission may
5 provide planning resources and assistance as re-
6 quired or as requested by regional planning en-
7 tities, including system data, cost information,
8 system analysis, technical expertise, modeling
9 support, dispute resolution services, and other
10 assistance to regional planning entities, as ap-
11 propriate.

12 “(B) AUTHORIZATION.—There are author-
13 ized to be appropriated such sums as may be
14 necessary to carry out this paragraph.

15 “(6) CONFLICT RESOLUTION.—In the event
16 that regional grid plans conflict, the Commission
17 shall assist the regional planning entities in resolving
18 such conflicts in order to achieve the objectives of
19 the Federal policy established under subsection (a).

20 “(7) SUBMISSION OF PLANS.—The Commission
21 shall require regional planning entities to submit ini-
22 tial regional electric grid plans to the Commission
23 not later than 18 months after the date the Commis-
24 sion promulgates national electricity grid planning
25 principles pursuant to paragraph (1) and to update

1 such plans not less than every 3 years thereafter.
2 Regional electric grid plans should, in general, be
3 developed from sub-regional requirements and plans,
4 including planning input reflecting individual utility
5 service areas. Regional plans may then in turn be
6 combined into larger regional plans, up to inter-
7 connection-wide and national plans, as appropriate
8 and necessary as determined by the Commission.
9 The Commission shall review such plans for consist-
10 ency with the national grid planning principles and
11 may return a plan to one or more planning entities
12 for further consideration, along with the Commis-
13 sion's own recommendations for resolution of any
14 conflict or for improvement. To the extent prac-
15 ticable, all plans submitted to the Commission shall
16 be public documents and available on the Commis-
17 sion's website.

18 “(8) MULTI-REGIONAL MEETINGS.—As regional
19 grid plans are submitted to the Commission, the
20 Commission may convene multi-regional meetings to
21 discuss regional grid plan consistency and integra-
22 tion, including requirements for multi-regional
23 projects, and to resolve any conflicts that emerge
24 from such multi-regional projects. The Commission

1 shall provide its recommendations for eliminating
2 any inter-regional conflicts.

3 “(9) REPORT TO CONGRESS.—Not later than 3
4 years after the date of enactment of this section, the
5 Commission shall provide a report to Congress con-
6 taining the results of the initial regional grid plan-
7 ning process, including summaries of the adopted re-
8 gional plans. The Commission shall provide an elec-
9 tronic version of its report on its website with links
10 to all regional and sub-regional plans taken into ac-
11 count. The Commission shall note and provide its
12 recommended resolution for any conflicts not re-
13 solved during the planning process. The Commission
14 shall make any recommendations to Congress on the
15 appropriate Federal role or support required to ad-
16 dress the needs of the electric grid, including rec-
17 ommendations for addressing any needs that are be-
18 yond the reach of existing State, tribal, and Federal
19 authority.”.

20 **SEC. 152. NET METERING FOR FEDERAL AGENCIES.**

21 (a) STANDARD.—Subsection (b) of section 113 of the
22 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
23 2623) is amended by adding the following new paragraph
24 at the end thereof:

1 “(6) NET METERING FOR FEDERAL AGEN-
2 CIES.—Each electric utility shall offer to arrange
3 (either directly or through a third party) to make
4 interconnection and net metering available to Fed-
5 eral Government agencies, offices, or facilities in ac-
6 cordance with the requirements of section 115(j).
7 The standard under this paragraph shall apply only
8 to electric utilities that sold over 4,000,000 mega-
9 watt hours of electricity in the preceding year to the
10 ultimate consumers thereof. In the case of a stand-
11 ard under this paragraph, a period of 1 year after
12 the date of the enactment of this section shall be
13 substituted for the 2-year period referred to in other
14 provisions of this section.”.

15 (b) SPECIAL RULES.—Section 115 of the Public Util-
16 ity Regulatory Policies Act of 1978 (16 U.S.C. 2625) is
17 amended by adding the following new subsection at the
18 end thereof:

19 “(j) NET METERING FOR FEDERAL AGENCIES.—(1)
20 The standard under paragraph (6) of section 113(b) shall
21 require that rates and charges and contract terms and
22 conditions for the sale of electric energy to the Federal
23 Government or agency shall be the same as the rates and
24 charges and contract terms and conditions that would be

1 applicable if the agency did not own or operate a qualified
2 generation unit and use a net metering system.

3 “(2)(A) The standard under paragraph (6) of section
4 113(b) shall require that each electric utility shall arrange
5 to provide to the Government office or agency that quali-
6 fies for net metering an electrical energy meter capable
7 of net metering and measuring, to the maximum extent
8 practicable, the flow of electricity to or from the customer,
9 using a single meter and single register, the cost of which
10 shall be recovered from the customer.

11 “(B) In a case in which it is not practicable to provide
12 a meter under subparagraph (A), the utility (either di-
13 rectly or through a third party) shall, at the expense of
14 the utility install 1 or more of those electric energy meters.

15 “(3)(A) The standard under paragraph (6) of section
16 113(b) shall require that each electric utility shall cal-
17 culate the electric energy consumption for the Government
18 office or agency using a net metering system that meets
19 the requirements of this subsection and paragraph (6) of
20 section 113(b) and shall measure the net electricity pro-
21 duced or consumed during the billing period using the me-
22 tering installed in accordance with this paragraph.

23 “(B) If the electricity supplied by the retail electric
24 supplier exceeds the electricity generated by the Govern-
25 ment office or agency during the billing period, the Gov-

1 ernment office or agency shall be billed for the net electric
2 energy supplied by the retail electric supplier in accord-
3 ance with normal billing practices.

4 “(C) If electric energy generated by the Government
5 office or agency exceeds the electric energy supplied by
6 the retail electric supplier during the billing period, the
7 Government office or agency shall be billed for the appro-
8 priate customer charges for that billing period and cred-
9 ited for the excess electric energy generated during the
10 billing period, with the credit appearing as a kilowatt-hour
11 credit on the bill for the following billing period.

12 “(D) Any kilowatt-hour credits provided to the Gov-
13 ernment office or agency as provided in this subsection
14 shall be applied to the Government office or agency elec-
15 tric energy consumption on the following billing period bill
16 (except for a billing period that ends in the next calendar
17 year). At the beginning of each calendar year, any unused
18 kilowatt-hour credits remaining from the preceding year
19 will carry over to the new year.

20 “(4) The standard under paragraph (6) of section
21 113(b) shall require that each electric utility shall offer
22 a meter and retail billing arrangement that has time-dif-
23 ferentiated rates. The kilowatt-hour credit shall be based
24 on the ratio representing the difference in retail rates for
25 each time-of-use rate, or the credits shall be reflected on

1 the bill of the Government office or agency as a monetary
2 credit reflecting retail rates at the time of generation of
3 the electric energy by the customer-generator.

4 “(5) The standard under paragraph (6) of section
5 113(b) shall require that the qualified generation unit,
6 interconnection standards, and net metering system used
7 by the Government office or agency shall meet all applica-
8 ble safety and performance and reliability standards estab-
9 lished by the National Electrical Code, the Institute of
10 Electrical and Electronics Engineers, Underwriters Lab-
11 oratories, and the American National Standards Institute.

12 “(6) The standard under paragraph (6) of section
13 113(b) shall require that electric utilities shall not make
14 additional charges, including standby charges, for equip-
15 ment or services for safety or performance that are in ad-
16 dition to those necessary to meet the other standards and
17 requirements of this subsection and paragraph (6) of sec-
18 tion 113(b).

19 “(7) For purposes of this subsection and paragraph
20 (6) of section 113(b):

21 “(A) The term ‘Government’ means any office,
22 facility, or agency of the Federal Government.

23 “(B) The term ‘customer-generator’ means the
24 owner or operator of a electricity generation unit.

1 “(C) The term ‘electric generation unit’ means
2 any renewable electric generation unit that is owned,
3 operated, or sited on a Federal Government facility.

4 “(D) The term ‘net metering’ means the pro-
5 cess of—

6 “(i) measuring the difference between the
7 electricity supplied to a customer-generator and
8 the electricity generated by the customer-gener-
9 ator that is delivered to a utility at the same
10 point of interconnection during an applicable
11 billing period; and

12 “(ii) providing an energy credit to the cus-
13 tomer-generator in the form of a kilowatt-hour
14 credit for each kilowatt-hour of electricity pro-
15 duced by the customer-generator from an elec-
16 tric generation unit.”.

17 (c) SAVINGS PROVISION.—If this section or a portion
18 of this section is determined to be invalid or unenforceable,
19 that shall not affect the validity or enforceability of any
20 other provision of this Act.

1 **SEC. 153. SUPPORT FOR QUALIFIED ADVANCED ELECTRIC**
2 **TRANSMISSION MANUFACTURING PLANTS,**
3 **QUALIFIED HIGH EFFICIENCY TRANSMISSION**
4 **PROPERTY, AND QUALIFIED ADVANCED**
5 **ELECTRIC TRANSMISSION PROPERTY.**

6 (a) LOAN GUARANTEES PRIOR TO SEPTEMBER 30,
7 2011.—Section 1705(a) of the Energy Policy Act of 2005
8 (42 U.S.C. 16515(a)), as added by section 406 of the
9 American Recovery and Reinvestment Act of 2009 (Public
10 Law 109-58; 119 Stat. 594) is amended by adding the
11 following new paragraph at the end thereof:

12 “(5) The development, construction, acquisition,
13 retrofitting, or engineering integration of a qualified
14 advanced electric transmission manufacturing plant
15 or the construction of a qualified high efficiency
16 transmission property or a qualified advanced elec-
17 tric transmission property (whether by construction
18 of new facilities or the modification of existing facili-
19 ties). For purposes of this paragraph:

20 “(A) The term ‘qualified advanced electric
21 transmission property’ means any high voltage
22 electric transmission cable, related substation,
23 converter station, or other integrated facility
24 that—

25 “(i) utilizes advanced ultra low resist-
26 ance superconductive material or other ad-

1 vanced technology that has been deter-
2 mined by the Secretary of Energy as—

3 “(I) reasonably likely to become
4 commercially viable within 10 years
5 after the date of enactment of this
6 paragraph;

7 “(II) capable of reliably transmit-
8 ting at least 5 gigawatts of high-volt-
9 age electric energy for distances
10 greater than 300 miles with energy
11 losses not exceeding 3 percent of the
12 total power transported; and

13 “(III) not creating an electro-
14 magnetic field;

15 “(ii) has been determined by an ap-
16 propriate energy regulatory body, upon ap-
17 plication, to be in the public interest and
18 thereby eligible for inclusion in regulated
19 rates; and

20 “(iii) can be located safely and eco-
21 nomically in a permanent underground
22 right of way not to exceed 25 feet in width.

23 The term ‘qualified advanced electric trans-
24 mission property’ shall not include any property
25 placed in service after December 31, 2016.

1 “(B)(i) The term ‘qualified high efficiency
2 transmission property’ means any high voltage
3 overhead electric transmission line, related sub-
4 station, or other integrated facility that—

5 “(I) utilizes advanced conductor core
6 technology that—

7 “(aa) has been determined by the
8 Secretary of Energy as reasonably
9 likely to become commercially viable
10 within 10 years after the date of en-
11 actment of this paragraph;

12 “(bb) is suitable for use on trans-
13 mission lines up to 765kV; and

14 “(cc) exhibits power losses at
15 least 30 percent lower than that of
16 transmission lines using conventional
17 ‘ACSR’ conductors;

18 “(II) has been determined by an ap-
19 propriate energy regulatory body, upon ap-
20 plication, to be in the public interest and
21 thereby eligible for inclusion in regulated
22 rates; and

23 “(III) can be located safely and eco-
24 nomically in a right of way not to exceed

1 that used by conventional ‘ACSR’ conduc-
2 tors; and

3 “(ii) The term ‘qualified high efficiency
4 transmission property’ shall not include any
5 property placed in service after December 31,
6 2016.

7 “(C) The term ‘qualified advanced electric
8 transmission manufacturing plant’ means any
9 industrial facility located in the United States
10 which can be equipped, re-equipped, expanded,
11 or established to produce in whole or in part
12 qualified advanced electric transmission prop-
13 erty.”.

14 (b) ADDITIONAL LOAN GUARANTEE AUTHORITY.—
15 Section 1703 of the Energy Policy Act of 2005 (42 U.S.C.
16 16513) is amended by adding the following new paragraph
17 at the end of subsection (b):

18 “(12) The development, construction, acquisi-
19 tion, retrofitting, or engineering integration of a
20 qualified advanced electric transmission manufac-
21 turing plant or the construction of a qualified ad-
22 vanced electric transmission property (whether by
23 construction of new facilities or the modification of
24 existing facilities). For purposes of this paragraph,
25 the terms ‘qualified advanced electric transmission

1 property’ and ‘qualified advanced electric trans-
2 mission manufacturing plant’ have the meanings
3 provided by section 1705(a)(5).”.

4 (c) GRANTS.—The Secretary of Energy is authorized
5 to provide grants for up to 50 percent of costs incurred
6 in connection with the development, construction, acquisi-
7 tion of components for, or engineering of a qualified ad-
8 vanced electric transmission property defined in paragraph
9 (5) of section 1705(a) of the Energy Policy Act of 2005
10 (42 U.S.C. 16515(a)). Such grants may only be made to
11 the first project which qualifies under that paragraph.
12 There are authorized to be appropriated for purposes of
13 this subsection not more than \$100,000,000 for fiscal year
14 2010. The United States shall take no equity or other
15 ownership interest in the qualified advanced electric trans-
16 mission manufacturing plant or qualified advanced electric
17 transmission property for which funding is provided under
18 this subsection.

19 **Subtitle G—Technical Corrections**
20 **to Energy Laws**

21 **SEC. 161. TECHNICAL CORRECTIONS TO ENERGY INDE-**
22 **PENDENCE AND SECURITY ACT OF 2007.**

23 (a) TITLE III—ENERGY SAVINGS THROUGH IM-
24 PROVED STANDARDS FOR APPLIANCE AND LIGHTING.—
25 (1) Section 325(u) of the Energy Policy and Conservation

1 Act (42 U.S.C. 6295(u)) (as amended by section 301(c)
2 of the Energy Independence and Security Act of 2007
3 (121 Stat. 1550)) is amended—

4 (A) by redesignating paragraph (7) as
5 paragraph (4); and

6 (B) in paragraph (4) (as so redesignated),
7 by striking “supplies is” and inserting “supply
8 is”.

9 (2) Section 302 of the Energy Independence and Se-
10 curity Act of 2007 (121 Stat. 1551)) is amended—

11 (A) in subsection (a), by striking “end of the
12 paragraph” and inserting “end of subparagraph
13 (A)”; and

14 (B) in subsection (b), by striking “6313(a)”
15 and inserting “6314(a)”.

16 (3) Section 343(a)(1) of the Energy Policy and Con-
17 servation Act (42 U.S.C. 6313(a)(1)) (as amended by sec-
18 tion 302(b) of the Energy Independence and Security Act
19 of 2007 (121 Stat. 1551)) is amended—

20 (A) by striking “TEST PROCEDURES” and all
21 that follows through “At least once” and inserting
22 “TEST PROCEDURES.—At least once”; and

23 (B) by redesignating clauses (i) and (ii) as sub-
24 paragraphs (A) and (B), respectively (and by moving

1 the margins of such subparagraphs 2 ems to the
2 left).

3 (4) Section 342(a)(6) of the Energy Policy and Con-
4 servation Act (42 U.S.C. 6313(a)(6)) (as amended by sec-
5 tion 305(b)(2) of the Energy Independence and Security
6 Act of 2007 (121 Stat. 1554)) is amended—

7 (A) in subparagraph (B)—

8 (i) by striking “If the Secretary” and in-
9 serting the following:

10 “(i) IN GENERAL.—If the Secretary”;

11 (ii) by striking “clause (ii)(II)” and insert-
12 ing “subparagraph (A)(ii)(II)”;

13 (iii) by striking “clause (i)” and inserting
14 “subparagraph (A)(i)”;

15 (iv) by adding at the end the following:

16 “(ii) FACTORS.—In determining
17 whether a standard is economically justi-
18 fied for the purposes of subparagraph
19 (A)(ii)(II), the Secretary shall, after receiv-
20 ing views and comments furnished with re-
21 spect to the proposed standard, determine
22 whether the benefits of the standard ex-
23 ceed the burden of the proposed standard
24 by, to the maximum extent practicable,
25 considering—

1 “(I) the economic impact of the
2 standard on the manufacturers and
3 on the consumers of the products sub-
4 ject to the standard;

5 “(II) the savings in operating
6 costs throughout the estimated aver-
7 age life of the product in the type (or
8 class) compared to any increase in the
9 price of, or in the initial charges for,
10 or maintenance expenses of, the prod-
11 ucts that are likely to result from the
12 imposition of the standard;

13 “(III) the total projected quan-
14 tity of energy savings likely to result
15 directly from the imposition of the
16 standard;

17 “(IV) any lessening of the utility
18 or the performance of the products
19 likely to result from the imposition of
20 the standard;

21 “(V) the impact of any lessening
22 of competition, as determined in writ-
23 ing by the Attorney General, that is
24 likely to result from the imposition of
25 the standard;

1 “(VI) the need for national en-
2 ergy conservation; and

3 “(VII) other factors the Sec-
4 retary considers relevant.

5 “(iii) ADMINISTRATION.—

6 “(I) ENERGY USE AND EFFI-
7 CIENCY.—The Secretary may not pre-
8 scribe any amended standard under
9 this paragraph that increases the
10 maximum allowable energy use, or de-
11 creases the minimum required energy
12 efficiency, of a covered product.

13 “(II) UNAVAILABILITY.—

14 “(aa) IN GENERAL.—The
15 Secretary may not prescribe an
16 amended standard under this
17 subparagraph if the Secretary
18 finds (and publishes the finding)
19 that interested persons have es-
20 tablished by a preponderance of
21 the evidence that a standard is
22 likely to result in the unavail-
23 ability in the United States in
24 any product type (or class) of
25 performance characteristics (in-

1 including reliability, features, sizes,
2 capacities, and volumes) that are
3 substantially the same as those
4 generally available in the United
5 States at the time of the finding
6 of the Secretary.

7 “(bb) OTHER TYPES OR
8 CLASSES.—The failure of some
9 types (or classes) to meet the cri-
10 terion established under this sub-
11 clause shall not affect the deter-
12 mination of the Secretary on
13 whether to prescribe a standard
14 for the other types or classes.”;
15 and

16 (B) in subparagraph (C)(iv), by striking “An
17 amendment prescribed under this subsection” and
18 inserting “Notwithstanding subparagraph (D), an
19 amendment prescribed under this subparagraph”.

20 (5) Section 342(a)(6)(B)(iii) of the Energy Policy
21 and Conservation Act (as added by section 306(e) of the
22 Energy Independence and Security Act of 2007) is trans-
23 ferred and redesignated as clause (vi) of section
24 342(a)(6)(C) of the Energy Policy and Conservation Act

1 (as amended by section 305(b)(2) of the Energy Independ-
2 ence and Security Act of 2007).

3 (6) Section 340 of the Energy Policy and Conserva-
4 tion Act (42 U.S.C. 6311) (as amended by sections
5 312(a)(2) and 314(a) of the Energy Independence and Se-
6 curity Act of 2007 (121 Stat. 1564, 1569)) is amended
7 by redesignating paragraphs (22) and (23) (as added by
8 section 314(a) of that Act) as paragraphs (23) and (24),
9 respectively.

10 (7) Section 345 of the Energy Policy and Conserva-
11 tion Act (42 U.S.C. 6316) (as amended by section 312(e)
12 of the Energy Independence and Security Act of 2007
13 (121 Stat. 1567)) is amended—

14 (A) by striking “subparagraphs (B) through
15 (G)” each place it appears and inserting “subpara-
16 graphs (B), (C), (D), (I), (J), and (K)”;

17 (B) by striking “part A” each place it appears
18 and inserting “part B”; and

19 (C) in subsection (h)(3), by striking “section
20 342(f)(3)” and inserting “section 342(f)(4)”.

21 (8) Section 340(13) of the Energy Policy and Con-
22 servation Act (42 U.S.C. 6311(13)) (as amended by sec-
23 tion 313(a) of the Energy Independence and Security Act
24 of 2007 (121 Stat. 1568)) is amended—

1 (A) by striking subparagraphs (A) and (B) and
2 inserting the following:

3 “(A) IN GENERAL.—The term ‘electric
4 motor’ means any motor that is—

5 “(i) a general purpose T-frame, sin-
6 gle-speed, foot-mounting, polyphase squir-
7 rel-cage induction motor of the National
8 Electrical Manufacturers Association, De-
9 sign A and B, continuous rated, operating
10 on 230/460 volts and constant 60 Hertz
11 line power as defined in NEMA Standards
12 Publication MG1-1987; or

13 “(ii) a motor incorporating the design
14 elements described in clause (i), but is con-
15 figured to incorporate one or more of the
16 following variations—

17 “(I) U-frame motor;

18 “(II) NEMA Design C motor;

19 “(III) close-coupled pump motor;

20 “(IV) footless motor;

21 “(V) vertical solid shaft normal
22 thrust motor (as tested in a horizontal
23 configuration);

24 “(VI) 8-pole motor; or

1 “(VII) poly-phase motor with a
2 voltage rating of not more than 600
3 volts (other than 230 volts or 460
4 volts, or both, or can be operated on
5 230 volts or 460 volts, or both).”; and

6 (B) by redesignating subparagraphs (C)
7 through (I) as subparagraphs (B) through (H), re-
8 spectively.

9 (9)(A) Section 342(b) of the Energy Policy and Con-
10 servation Act (42 U.S.C. 6313(b)) is amended—

11 (i) in paragraph (1), by striking “paragraph (2)” and
12 inserting “paragraph (3)”;

13 (ii) by redesignating paragraphs (2) and (3) as para-
14 graphs (3) and (4);

15 (iii) by inserting after paragraph (1) the following:

16 “(2) STANDARDS EFFECTIVE BEGINNING DE-
17 CEMBER 19, 2010.—

18 “(A) IN GENERAL.—Except for definite
19 purpose motors, special purpose motors, and
20 those motors exempted by the Secretary under
21 paragraph (3) and except as provided for in
22 subparagraphs (B), (C), and (D), each electric
23 motor manufactured with power ratings from 1
24 to 200 horsepower (alone or as a component of
25 another piece of equipment) on or after Decem-

1 ber 19, 2010, shall have a nominal full load ef-
2 ficiency of not less than the nominal full load
3 efficiency described in NEMA MG-1 (2006)
4 Table 12-12.

5 “(B) FIRE PUMP ELECTRIC MOTORS.—Ex-
6 cept for those motors exempted by the Sec-
7 retary under paragraph (3), each fire pump
8 electric motor manufactured with power ratings
9 from 1 to 200 horsepower (alone or as a compo-
10 nent of another piece of equipment) on or after
11 December 19, 2010, shall have a nominal full
12 load efficiency that is not less than the nominal
13 full load efficiency described in NEMA MG-1
14 (2006) Table 12-11.

15 “(C) NEMA DESIGN B ELECTRIC MO-
16 TORS.—Except for those motors exempted by
17 the Secretary under paragraph (3), each
18 NEMA Design B electric motor with power rat-
19 ings of more than 200 horsepower, but not
20 greater than 500 horsepower, manufactured
21 (alone or as a component of another piece of
22 equipment) on or after December 19, 2010,
23 shall have a nominal full load efficiency of not
24 less than the nominal full load efficiency de-
25 scribed in NEMA MG-1 (2006) Table 12-11.

1 “(D) MOTORS INCORPORATING CERTAIN
2 DESIGN ELEMENTS.—Except for those motors
3 exempted by the Secretary under paragraph
4 (3), each electric motor described in section
5 340(13)(A)(ii) manufactured with power rat-
6 ings from 1 to 200 horsepower (alone or as a
7 component of another piece of equipment) on or
8 after December 19, 2010, shall have a nominal
9 full load efficiency of not less than the nominal
10 full load efficiency described in NEMA MG-1
11 (2006) Table 12-11.”; and

12 (iv) in paragraph (3) (as redesignated by clause (ii)),
13 by striking “paragraph (1)” each place it appears in sub-
14 paragraphs (A) and (D) and inserting “paragraphs (1)
15 and (2)”.

16 (B) Section 313 of the Energy Independence and Se-
17 curity Act of 2007 (121 Stat. 1568) is repealed.

18 (C) The amendments made by—

19 (i) subparagraph (A) shall take effect on De-
20 cember 19, 2010; and

21 (ii) subparagraph (B) shall take effect on De-
22 cember 19, 2007.

23 (10) Section 321(30)(D)(i)(III) of the Energy Policy
24 and Conservation Act (42 U.S.C. 6291(30)(D)(i)(III)) (as
25 amended by section 321(a)(1)(A) of the Energy Independ-

1 ence and Security Act of 2007 (121 Stat. 1574)) is
2 amended by inserting before the semicolon the following:
3 “or, in the case of a modified spectrum lamp, not less than
4 232 lumens and not more than 1,950 lumens”.

5 (11) Section 321(30)(T) of the Energy Policy and
6 Conservation Act (42 U.S.C. 6291(30)(T) (as amended by
7 section 321(a)(1)(B) of the Energy Independence and Se-
8 curity Act of 2007 (121 Stat. 1574)) is amended—

9 (A) in clause (i)—

10 (i) by striking the comma after “household
11 appliance” and inserting “and”; and

12 (ii) by striking “and is sold at retail,”; and

13 (B) in clause (ii), by inserting “when sold at re-
14 tail,” before “is designated”.

15 (12) Section 325 of the Energy Policy and Conserva-
16 tion Act (42 U.S.C. 6295) (as amended by sections
17 321(a)(3)(A) and 322(b) of the Energy Independence and
18 Security Act of 2007 (121 Stat. 1577, 1588)) is amended
19 by striking subsection (i) and inserting the following:

20 “(i) GENERAL SERVICE FLUORESCENT LAMPS, GEN-
21 ERAL SERVICE INCANDESCENT LAMPS, INTERMEDIATE
22 BASE INCANDESCENT LAMPS, CANDELABRA BASE INCAN-
23 DESCENT LAMPS, AND INCANDESCENT REFLECTOR
24 LAMPS.—

25 “(1) ENERGY EFFICIENCY STANDARDS.—

1 “(A) IN GENERAL.—Each of the following
 2 general service fluorescent lamps, general serv-
 3 ice incandescent lamps, intermediate base in-
 4 candescent lamps, candelabra base incandescent
 5 lamps, and incandescent reflector lamps manu-
 6 factured after the effective date specified in the
 7 tables listed in this subparagraph shall meet or
 8 exceed the following lamp efficacy, new max-
 9 imum wattage, and CRI standards:

“FLUORESCENT LAMPS

Lamp Type	Nominal Lamp Wattage	Minimum CRI	Minimum Average Lamp Efficacy (LPW)	Effective Date (Period of Months)
4-foot medium bi-pin	>35 W	69	75.0	36
.....	≤35 W	45	75.0	36
2-foot U-shaped	>35 W	69	68.0	36
.....	≤35 W	45	64.0	36
8-foot slimline	65 W	69	80.0	18
.....	≤65 W	45	80.0	18
8-foot high output	>100 W	69	80.0	18
.....	≤100 W	45	80.0	18

“INCANDESCENT REFLECTOR LAMPS

Nominal Lamp Wattage	Minimum Average Lamp Efficacy (LPW)	Effective Date (Period of Months)
40–50	10.5	36
51–66	11.0	36
67–85	12.5	36
86–115	14.0	36
116–155	14.5	36
156–205	15.0	36

“GENERAL SERVICE INCANDESCENT LAMPS

Rated Lumen Ranges	Maximum Rated Wattage	Minimum Rated Life-time	Effective Date
1490–2600	72	1,000 hrs	1/1/2012
1050–1489	53	1,000 hrs	1/1/2013
750–1049	43	1,000 hrs	1/1/2014
310–749	29	1,000 hrs	1/1/2014

“MODIFIED SPECTRUM GENERAL SERVICE INCANDESCENT LAMPS

Rated Lumen Ranges	Maximum Rated Wattage	Minimum Rated Life-time	Effective Date
1118–1950	72	1,000 hrs	1/1/2012
788–1117	53	1,000 hrs	1/1/2013
563–787	43	1,000 hrs	1/1/2014
232–562	29	1,000 hrs	1/1/2014

1 “(B) APPLICATION.—

2 “(i) APPLICATION CRITERIA.—This
3 subparagraph applies to each lamp that—

4 “(I) is intended for a general
5 service or general illumination applica-
6 tion (whether incandescent or not);

7 “(II) has a medium screw base
8 or any other screw base not defined in
9 ANSI C81.61–2006;

10 “(III) is capable of being oper-
11 ated at a voltage at least partially
12 within the range of 110 to 130 volts;
13 and

14 “(IV) is manufactured or im-
15 ported after December 31, 2011.

16 “(ii) REQUIREMENT.—For purposes
17 of this paragraph, each lamp described in
18 clause (i) shall have a color rendering
19 index that is greater than or equal to—

1 “(I) 80 for nonmodified spectrum
2 lamps; or

3 “(II) 75 for modified spectrum
4 lamps.

5 “(C) CANDELABRA INCANDESCENT LAMPS
6 AND INTERMEDIATE BASE INCANDESCENT
7 LAMPS.—

8 “(i) CANDELABRA BASE INCANDES-
9 CENT LAMPS.—Effective beginning Janu-
10 ary 1, 2012, a candelabra base incandes-
11 cent lamp shall not exceed 60 rated watts.

12 “(ii) INTERMEDIATE BASE INCANDES-
13 CENT LAMPS.—Effective beginning Janu-
14 ary 1, 2012, an intermediate base incan-
15 descent lamp shall not exceed 40 rated
16 watts.

17 “(D) EXEMPTIONS.—

18 “(i) STATUTORY EXEMPTIONS.—The
19 standards specified in subparagraph (A)
20 shall not apply to the following types of in-
21 candescent reflector lamps:

22 “(I) Lamps rated at 50 watts or
23 less that are ER30, BR30, BR40, or
24 ER40 lamps.

1 “(II) Lamps rated at 65 watts
2 that are BR30, BR40, or ER40
3 lamps.

4 “(III) R20 incandescent reflector
5 lamps rated 45 watts or less.

6 “(ii) ADMINISTRATIVE EXEMP-
7 TIONS.—

8 “(I) PETITION.—Any person may
9 petition the Secretary for an exemp-
10 tion for a type of general service lamp
11 from the requirements of this sub-
12 section.

13 “(II) CRITERIA.—The Secretary
14 may grant an exemption under sub-
15 clause (I) only to the extent that the
16 Secretary finds, after a hearing and
17 opportunity for public comment, that
18 it is not technically feasible to serve a
19 specialized lighting application (such
20 as a military, medical, public safety,
21 or certified historic lighting applica-
22 tion) using a lamp that meets the re-
23 quirements of this subsection.

24 “(III) ADDITIONAL CRITERION.—
25 To grant an exemption for a product

1 under this clause, the Secretary shall
2 include, as an additional criterion,
3 that the exempted product is unlikely
4 to be used in a general service lighting
5 application.

6 “(E) EXTENSION OF COVERAGE.—

7 “(i) PETITION.—Any person may peti-
8 tion the Secretary to establish standards
9 for lamp shapes or bases that are excluded
10 from the definition of general service
11 lamps.

12 “(ii) INCREASED SALES OF EXEMPT-
13 ED LAMPS.—The petition shall include evi-
14 dence that the availability or sales of ex-
15 empted incandescent lamps have increased
16 significantly since the date on which the
17 standards on general service incandescent
18 lamps were established.

19 “(iii) CRITERIA.—The Secretary shall
20 grant a petition under clause (i) if the Sec-
21 retary finds that—

22 “(I) the petition presents evi-
23 dence that demonstrates that commer-
24 cial availability or sales of exempted
25 incandescent lamp types have in-

1 creased significantly since the stand-
2 ards on general service lamps were es-
3 tablished and likely are being widely
4 used in general lighting applications;
5 and

6 “(II) significant energy savings
7 could be achieved by covering exempt-
8 ed products, as determined by the
9 Secretary based in part on sales data
10 provided to the Secretary from manu-
11 facturers and importers.

12 “(iv) NO PRESUMPTION.—The grant
13 of a petition under this subparagraph shall
14 create no presumption with respect to the
15 determination of the Secretary with respect
16 to any criteria under a rulemaking con-
17 ducted under this section.

18 “(v) EXPEDITED PROCEEDING.—If
19 the Secretary grants a petition for a lamp
20 shape or base under this subparagraph,
21 the Secretary shall—

22 “(I) conduct a rulemaking to de-
23 termine standards for the exempted
24 lamp shape or base; and

1 “(II) complete the rulemaking
2 not later than 18 months after the
3 date on which notice is provided
4 granting the petition.

5 “(F) EFFECTIVE DATES.—

6 “(i) IN GENERAL.—In this paragraph,
7 except as otherwise provided in a table
8 contained in subparagraph (A) or in clause
9 (ii), the term ‘effective date’ means the last
10 day of the month specified in the table
11 that follows October 24, 1992.

12 “(ii) SPECIAL EFFECTIVE DATES.—

13 “(I) ER, BR, AND BPAR
14 LAMPS.—The standards specified in
15 subparagraph (A) shall apply with re-
16 spect to ER incandescent reflector
17 lamps, BR incandescent reflector
18 lamps, BPAR incandescent reflector
19 lamps, and similar bulb shapes on and
20 after January 1, 2008, or the date
21 that is 180 days after the date of en-
22 actment of the Energy Independence
23 and Security Act of 2007.

24 “(II) LAMPS BETWEEN 2.25–2.75
25 INCHES IN DIAMETER.—The stand-

1 ards specified in subparagraph (A)
2 shall apply with respect to incandes-
3 cent reflector lamps with a diameter
4 of more than 2.25 inches, but not
5 more than 2.75 inches, on and after
6 the later of January 1, 2008, or the
7 date that is 180 days after the date of
8 enactment of the Energy Independ-
9 ence and Security Act of 2007.

10 “(2) COMPLIANCE WITH EXISTING LAW.—Not-
11 withstanding section 332(a)(5) and section 332(b),
12 it shall not be unlawful for a manufacturer to sell
13 a lamp that is in compliance with the law at the
14 time the lamp was manufactured.

15 “(3) RULEMAKING BEFORE OCTOBER 24,
16 1995.—

17 “(A) IN GENERAL.—Not later than 36
18 months after October 24, 1992, the Secretary
19 shall initiate a rulemaking procedure and shall
20 publish a final rule not later than the end of
21 the 54-month period beginning on October 24,
22 1992, to determine whether the standards es-
23 tablished under paragraph (1) should be
24 amended.

1 “(B) ADMINISTRATION.—The rule shall
2 contain the amendment, if any, and provide
3 that the amendment shall apply to products
4 manufactured on or after the 36-month period
5 beginning on the date on which the final rule is
6 published.

7 “(4) RULEMAKING BEFORE OCTOBER 24,
8 2000.—

9 “(A) IN GENERAL.—Not later than 8 years
10 after October 24, 1992, the Secretary shall ini-
11 tiate a rulemaking procedure and shall publish
12 a final rule not later than 9 years and 6 months
13 after October 24, 1992, to determine whether
14 the standards in effect for fluorescent lamps
15 and incandescent lamps should be amended.

16 “(B) ADMINISTRATION.—The rule shall
17 contain the amendment, if any, and provide
18 that the amendment shall apply to products
19 manufactured on or after the 36-month period
20 beginning on the date on which the final rule is
21 published.

22 “(5) RULEMAKING FOR ADDITIONAL GENERAL
23 SERVICE FLUORESCENT LAMPS.—

24 “(A) IN GENERAL.—Not later than the
25 end of the 24-month period beginning on the

1 date labeling requirements under section
2 324(a)(2)(C) become effective, the Secretary
3 shall—

4 “(i) initiate a rulemaking procedure to
5 determine whether the standards in effect
6 for fluorescent lamps and incandescent
7 lamps should be amended so that the
8 standards would be applicable to additional
9 general service fluorescent lamps; and

10 “(ii) publish, not later than 18
11 months after initiating the rulemaking, a
12 final rule including the amended stand-
13 ards, if any.

14 “(B) ADMINISTRATION.—The rule shall
15 provide that the amendment shall apply to
16 products manufactured after a date which is 36
17 months after the date on which the rule is pub-
18 lished.

19 “(6) STANDARDS FOR GENERAL SERVICE
20 LAMPS.—

21 “(A) RULEMAKING BEFORE JANUARY 1,
22 2014.—

23 “(i) IN GENERAL.—Not later than
24 January 1, 2014, the Secretary shall ini-

1 tiate a rulemaking procedure to determine
2 whether—

3 “(I) standards in effect for gen-
4 eral service lamps should be amended;
5 and

6 “(II) the exclusions for certain
7 incandescent lamps should be main-
8 tained or discontinued based, in part,
9 on excluded lamp sales collected by
10 the Secretary from manufacturers.

11 “(ii) SCOPE.—The rulemaking—

12 “(I) shall not be limited to incan-
13 descent lamp technologies; and

14 “(II) shall include consideration
15 of a minimum standard of 45 lumens
16 per watt for general service lamps.

17 “(iii) AMENDED STANDARDS.—If the
18 Secretary determines that the standards in
19 effect for general service lamps should be
20 amended, the Secretary shall publish a
21 final rule not later than January 1, 2017,
22 with an effective date that is not earlier
23 than 3 years after the date on which the
24 final rule is published.

1 “(iv) PHASED-IN EFFECTIVE
2 DATES.—The Secretary shall consider
3 phased-in effective dates under this sub-
4 paragraph after considering—

5 “(I) the impact of any amend-
6 ment on manufacturers, retiring and
7 repurposing existing equipment,
8 stranded investments, labor contracts,
9 workers, and raw materials; and

10 “(II) the time needed to work
11 with retailers and lighting designers
12 to revise sales and marketing strate-
13 gies.

14 “(v) BACKSTOP REQUIREMENT.—If
15 the Secretary fails to complete a rule-
16 making in accordance with clauses (i)
17 through (iv) or if the final rule does not
18 produce savings that are greater than or
19 equal to the savings from a minimum effi-
20 cacy standard of 45 lumens per watt, effec-
21 tive beginning January 1, 2020, the Sec-
22 retary shall prohibit the manufacture of
23 any general service lamp that does not
24 meet a minimum efficacy standard of 45
25 lumens per watt.

1 “(vi) STATE PREEMPTION.—Neither
2 section 327(c) nor any other provision of
3 law shall preclude California or Nevada
4 from adopting, effective beginning on or
5 after January 1, 2018—

6 “(I) a final rule adopted by the
7 Secretary in accordance with clauses
8 (i) through (iv);

9 “(II) if a final rule described in
10 subclause (I) has not been adopted,
11 the backstop requirement under
12 clause (v); or

13 “(III) in the case of California, if
14 a final rule described in subclause (I)
15 has not been adopted, any California
16 regulations relating to these covered
17 products adopted pursuant to State
18 statute in effect as of the date of en-
19 actment of the Energy Independence
20 and Security Act of 2007.

21 “(B) RULEMAKING BEFORE JANUARY 1,
22 2020.—

23 “(i) IN GENERAL.—Not later than
24 January 1, 2020, the Secretary shall ini-

1 tiate a rulemaking procedure to determine
2 whether—

3 “(I) standards in effect for gen-
4 eral service lamps should be amended;
5 and

6 “(II) the exclusions for certain
7 incandescent lamps should be main-
8 tained or discontinued based, in part,
9 on excluded lamp sales data collected
10 by the Secretary from manufacturers.

11 “(ii) SCOPE.—The rulemaking shall
12 not be limited to incandescent lamp tech-
13 nologies.

14 “(iii) AMENDED STANDARDS.—If the
15 Secretary determines that the standards in
16 effect for general service lamps should be
17 amended, the Secretary shall publish a
18 final rule not later than January 1, 2022,
19 with an effective date that is not earlier
20 than 3 years after the date on which the
21 final rule is published.

22 “(iv) PHASED-IN EFFECTIVE
23 DATES.—The Secretary shall consider
24 phased-in effective dates under this sub-
25 paragraph after considering—

1 “(I) the impact of any amend-
2 ment on manufacturers, retiring and
3 repurposing existing equipment,
4 stranded investments, labor contracts,
5 workers, and raw materials; and

6 “(II) the time needed to work
7 with retailers and lighting designers
8 to revise sales and marketing strate-
9 gies.

10 “(7) FEDERAL ACTIONS.—

11 “(A) COMMENTS OF SECRETARY.—

12 “(i) IN GENERAL.—With respect to
13 any lamp to which standards are applicable
14 under this subsection or any lamp specified
15 in section 346, the Secretary shall inform
16 any Federal entity proposing actions that
17 would adversely impact the energy con-
18 sumption or energy efficiency of the lamp
19 of the energy conservation consequences of
20 the action.

21 “(ii) CONSIDERATION.—The Federal
22 entity shall carefully consider the com-
23 ments of the Secretary.

24 “(B) AMENDMENT OF STANDARDS.—Not-
25 withstanding section 325(n)(1), the Secretary

1 shall not be prohibited from amending any
2 standard, by rule, to permit increased energy
3 use or to decrease the minimum required en-
4 ergy efficiency of any lamp to which standards
5 are applicable under this subsection if the ac-
6 tion is warranted as a result of other Federal
7 action (including restrictions on materials or
8 processes) that would have the effect of either
9 increasing the energy use or decreasing the en-
10 ergy efficiency of the product.

11 “(8) COMPLIANCE.—

12 “(A) IN GENERAL.—Not later than the
13 date on which standards established pursuant
14 to this subsection become effective, or, with re-
15 spect to high-intensity discharge lamps covered
16 under section 346, the effective date of stand-
17 ards established pursuant to that section, each
18 manufacturer of a product to which the stand-
19 ards are applicable shall file with the Secretary
20 a laboratory report certifying compliance with
21 the applicable standard for each lamp type.

22 “(B) CONTENTS.—The report shall include
23 the lumen output and wattage consumption for
24 each lamp type as an average of measurements
25 taken over the preceding 12-month period.

1 “(C) OTHER LAMP TYPES.—With respect
2 to lamp types that are not manufactured during
3 the 12-month period preceding the date on
4 which the standards become effective, the re-
5 port shall—

6 “(i) be filed with the Secretary not
7 later than the date that is 12 months after
8 the date on which manufacturing is com-
9 menced; and

10 “(ii) include the lumen output and
11 wattage consumption for each such lamp
12 type as an average of measurements taken
13 during the 12-month period.”.

14 (13) Section 325(l)(4)(A) of the Energy Policy and
15 Conservation Act (42 U.S.C. 6295(l)(4)(A)) (as amended
16 by section 321(a)(3)(B) of the Energy Independence and
17 Security Act of 2007 (121 Stat. 1581)) is amended by
18 striking “only”.

19 (14) Section 327(b)(1)(B) of the Energy Policy and
20 Conservation Act (42 U.S.C. 6297(b)(1)(B)) (as amended
21 by section 321(d)(3) of the Energy Independence and Se-
22 curity Act of 2007 (121 Stat. 1585)) is amended—

23 (A) in clause (i), by inserting “and” after the
24 semicolon at the end;

1 (B) in clause (ii), by striking “; and” and in-
2 serting a period; and

3 (C) by striking clause (iii).

4 (15) Section 321(e) of the Energy Independence and
5 Security Act of 2007 (121 Stat. 1586) is amended—

6 (A) in the matter preceding paragraph (1), by
7 striking “is amended” and inserting “(as amended
8 by section 306(b)) is amended”; and

9 (B) by striking paragraphs (1) and (2) and in-
10 serting the following:

11 “(1) in paragraph (5), by striking ‘or’ after the
12 semicolon at the end;

13 “(2) in paragraph (6), by striking the period at
14 the end and inserting ‘; or’; and”.

15 (16) Section 332(a) of the Energy Policy and Con-
16 servation Act (42 U.S.C. 6302(a)) (as amended by section
17 321(e) of the Energy Independence and Security Act of
18 2007 (121 Stat. 1586)) is amended by redesignating the
19 second paragraph (6) as paragraph (7).

20 (17) Section 321(30)(C)(ii) of the Energy Policy and
21 Conservation Act (42 U.S.C. 6291(30)(C)(ii)) (as amend-
22 ed by section 322(a)(1)(B) of the Energy Independence
23 and Security Act of 2007 (121 Stat. 1587)) is amended
24 by inserting a period after “40 watts or higher”.

1 (18) Section 322(b) of the Energy Independence and
2 Security Act of 2007 (121 Stat. 1588) is amended by
3 striking “6995(i)” and inserting “6295(i)”.

4 (19) Section 327(e) of the Energy Policy and Con-
5 servation Act (42 U.S.C. 6297(e)) (as amended by sec-
6 tions 324(f) of the Energy Independence and Security Act
7 of 2007 (121 Stat. 1594)) is amended—

8 (A) in paragraph (6), by striking “or” after the
9 semicolon at the end;

10 (B) in paragraph (8)(B), by striking “and”
11 after the semicolon at the end;

12 (C) in paragraph (9)—

13 (i) by striking “except that—” and all that
14 follows through “if the Secretary fails to issue”
15 and inserting “except that if the Secretary fails
16 to issue”;

17 (ii) by redesignating clauses (i) and (ii) as
18 subparagraphs (A) and (B), respectively (and
19 by moving the margins of such subparagraphs
20 2 ems to the left); and

21 (iii) by striking the period at the end and
22 inserting a semicolon; and

23 (D) by adding at the end the following:

1 “(10) is a regulation for general service lamps
2 that conforms with Federal standards and effective
3 dates;

4 “(11) is an energy efficiency standard for gen-
5 eral service lamps enacted into law by the State of
6 Nevada prior to December 19, 2007, if the State has
7 not adopted the Federal standards and effective
8 dates pursuant to subsection (b)(1)(B)(ii); or”.

9 (20) Section 325(b) of the Energy Independence and
10 Security Act of 2007 (121 Stat. 1596)) is amended by
11 striking “6924(c)” and inserting “6294(c)”.

12 (b) TITLE IV—ENERGY SAVINGS IN BUILDINGS AND
13 INDUSTRY.—(1) Section 401 of the Energy Independence
14 and Security Act of 2007 (42 U.S.C. 17061) is amend-
15 ed—

16 (A) in paragraph (2), by striking “484” and in-
17 serting “494”; and

18 (B) in paragraph (13), by striking “Agency”
19 and inserting “Administration”.

20 (2) Section 422 of the Energy Conservation and Pro-
21 duction Act (42 U.S.C. 6872) (as amended by section
22 411(a) of the Energy Independence and Security Act of
23 2007 (121 Stat. 1600)) is amended by striking 1 of the
24 2 periods at the end of paragraph (5).

1 (3) Section 305(a)(3)(D)(i) of the Energy Conserva-
2 tion and Production Act (42 U.S.C. 6834(a)(3)(D)(i)) (as
3 amended by section 433(a) of the Energy Independence
4 and Security Act of 2007 (121 Stat. 1612)) is amended—

5 (A) in subclause (I)—

6 (i) by striking “in fiscal year 2003 (as
7 measured by Commercial Buildings Energy
8 Consumption Survey or Residential Energy
9 Consumption Survey data from the Energy In-
10 formation Agency” and inserting “as measured
11 by the calendar year 2003 Commercial Build-
12 ings Energy Consumption Survey or the cal-
13 endar year 2005 Residential Energy Consump-
14 tion Survey data from the Energy Information
15 Administration”; and

16 (ii) in the table at the end, by striking
17 **“Fiscal Year”** and inserting **“Calendar**
18 **Year”**; and

19 (B) in subclause (II)—

20 (i) by striking “(II) Upon petition” and in-
21 serting the following:

22 “(II) DOWNWARD ADJUSTMENT
23 OF NUMERIC REQUIREMENT.—

24 “(aa) IN GENERAL.—On pe-
25 tition”; and

1 (ii) by striking the last sentence and in-
2 serting the following:

3 “(bb) EXCEPTIONS TO RE-
4 QUIREMENT FOR CONCURRENCE
5 OF SECRETARY.—

6 “(AA) IN GENERAL.—
7 The requirement to petition
8 and obtain the concurrence
9 of the Secretary under this
10 subclause shall not apply to
11 any Federal building with
12 respect to which the Admin-
13 istrator of General Services
14 is required to transmit a
15 prospectus to Congress
16 under section 3307 of title
17 40, United States Code, or
18 to any other Federal build-
19 ing designed, constructed, or
20 renovated by the Adminis-
21 trator if the Administrator
22 certifies, in writing, that
23 meeting the applicable nu-
24 meric requirement under
25 subclause (I) with respect to

1 the Federal building would
2 be technically impracticable
3 in light of the specific func-
4 tional needs for the building.

5 “(BB) ADJUSTMENT.—
6 In the case of a building de-
7 scribed in subitem (AA), the
8 Administrator may adjust
9 the applicable numeric re-
10 quirement of subclause (I)
11 downward with respect to
12 the building.”.

13 (4) Section 436(c)(3) of the Energy Independence
14 and Security Act of 2007 (42 U.S.C. 17092(c)(3)) is
15 amended by striking “474” and inserting “494”.

16 (5) Section 440 of the Energy Independence and Se-
17 curity Act of 2007 (42 U.S.C. 17096) is amended by strik-
18 ing “and 482”.

19 (6) Section 373(c) of the Energy Policy and Con-
20 servation Act (42 U.S.C. 6343(c)) (as amended by section
21 451(a) of the Energy Independence and Security Act of
22 2007 (121 Stat. 1628)) is amended by striking “Adminis-
23 trator” and inserting “Secretary”.

24 (c) DATE OF ENACTMENT.—Section 1302 of the En-
25 ergy Independence and Security Act of 2007 (42 U.S.C.

1 17382) is amended in the first sentence by striking “en-
2 actment” and inserting “the date of enactment of this
3 Act”.

4 (d) REFERENCE.—Section 1306(c)(3) of the Energy
5 Independence and Security Act of 2007 (42 U.S.C.
6 17386(c)(3)) is amended by striking “section 1307 (para-
7 graph (17) of section 111(d) of the Public Utility Regu-
8 latory Policies Act of 1978)” and inserting “paragraph
9 (19) of section 111(d) of the Public Utility Regulatory
10 Policies Act of 1978 (16 U.S.C. 2621(d))”.

11 (e) EFFECTIVE DATE.—This section and the amend-
12 ments made by this section take effect as if included in
13 the Energy Independence and Security Act of 2007 (Pub-
14 lic Law 110–140; 121 Stat. 1492).

15 **SEC. 162. TECHNICAL CORRECTIONS TO ENERGY POLICY**

16 **ACT OF 2005.**

17 (a) TITLE I—ENERGY EFFICIENCY.—Section
18 325(g)(8)(C)(ii) of the Energy Policy and Conservation
19 Act (42 U.S.C. 6295(g)(8)(C)(ii)) (as added by section
20 135(e)(2)(B) of the Energy Policy Act of 2005) is amend-
21 ed by striking “20°F” and inserting “–20°F”.

22 (b) EFFECTIVE DATE.—This section and the amend-
23 ments made by this section take effect as if included in
24 the Energy Policy Act of 2005 (Public Law 109–58; 119
25 Stat. 594).

1 **Subtitle H—Energy and Efficiency**
2 **Centers and Research**

3 **SEC. 171. ENERGY INNOVATION HUBS.**

4 (a) PURPOSE.—The Secretary shall carry out a pro-
5 gram to establish Energy Innovation Hubs to enhance the
6 Nation’s economic, environmental, and energy security by
7 promoting commercial application of clean, indigenous en-
8 ergy alternatives to oil and other fossil fuels, reducing
9 greenhouse gas emissions, and ensuring that the United
10 States maintains a technological lead in the development
11 and commercial application of state-of-the-art energy tech-
12 nologies. To achieve these purposes the program shall—

13 (1) leverage the expertise and resources of the
14 university and private research communities, indus-
15 try, venture capital, national laboratories, and other
16 participants in energy innovation to support cross-
17 disciplinary research and development in areas not
18 being served by the private sector in order to develop
19 and transfer innovative clean energy technologies
20 into the marketplace;

21 (2) expand the knowledge base and human cap-
22 ital necessary to transition to a low-carbon economy;
23 and

24 (3) promote regional economic development by
25 cultivating clusters of clean energy technology firms,

1 private research organizations, suppliers, and other
2 complementary groups and businesses.

3 (b) DEFINITIONS.—For purposes of this section:

4 (1) ALLOWANCE.—The term “allowance”
5 means an emission allowance established under sec-
6 tion 721 of the Clean Air Act (as added by section
7 311 of this Act).

8 (2) CLEAN ENERGY TECHNOLOGY.—The term
9 “clean energy technology” means a technology
10 that—

11 (A) produces energy from solar, wind, geo-
12 thermal, biomass, tidal, wave, ocean, and other
13 renewable energy resources (as such term is de-
14 fined in section 610 of the Public Utility Regu-
15 latory Policies Act of 1978);

16 (B) more efficiently transmits, distributes,
17 or stores energy;

18 (C) enhances energy efficiency for build-
19 ings and industry, including combined heat and
20 power;

21 (D) enables the development of a Smart
22 Grid (as described in section 1301 of the En-
23 ergy Independence and Security Act of 2007
24 (42 U.S.C. 17381)), including integration of re-
25 newable energy resources and distributed gen-

1 eration, demand response, demand side man-
2 agement, and systems analysis;

3 (E) produces an advanced or sustainable
4 material with energy or energy efficiency appli-
5 cations;

6 (F) enhances water security through im-
7 proved water management, conservation, dis-
8 tribution, and end use applications; or

9 (G) improves energy efficiency for trans-
10 portation, including electric vehicles.

11 (3) CLUSTER.—The term “cluster” means a
12 concentration of firms directly involved in the re-
13 search, development, finance, and commercialization
14 of clean energy technologies whose geographic prox-
15 imity facilitates utilization and sharing of skilled
16 human resources, infrastructure, research facilities,
17 educational and training institutions, venture cap-
18 ital, and input suppliers.

19 (4) HUB.—The term “Hub” means an Energy
20 Innovation Hub established in accordance with this
21 section.

22 (5) PROJECT.—The term “project” means an
23 activity with respect to which a Hub provides sup-
24 port under subsection (e).

1 (6) QUALIFYING ENTITY.—The term “quali-
2 fying entity” means each of the following:

3 (A) A research university.

4 (B) A State or Federal institution with a
5 focus on the advancement of clean energy tech-
6 nologies.

7 (C) A nongovernmental organization with
8 research or commercialization expertise in clean
9 energy technology development.

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

12 (8) TECHNOLOGY DEVELOPMENT FOCUS.—The
13 term “technology development focus” means the
14 unique technology development areas in which a
15 Hub will specialize, and may include solar electricity,
16 fuels from solar energy, batteries and energy stor-
17 age, electricity grid systems and devices, energy effi-
18 cient building systems and design, advanced mate-
19 rials, modeling and simulation, and other clean en-
20 ergy technology development areas designated by the
21 Secretary.

22 (9) TRANSLATIONAL RESEARCH.—The term
23 “translational research” means coordination of basic
24 or applied research with technical and commercial
25 applications to enable promising discoveries or inven-

1 tions to attract investment sufficient for market pen-
2 etration and diffusion.

3 (10) VINTAGE YEAR.—The term “vintage year”
4 has the meaning given that term in section 700 of
5 the Clean Air Act (as added by section 312 of this
6 Act).

7 (c) ROLE OF THE SECRETARY.—The Secretary
8 shall—

9 (1) have ultimate responsibility for, and over-
10 sight of, all aspects of the program under this sec-
11 tion;

12 (2) provide for the distribution of allowances al-
13 located under section 782(h)(1) of the Clean Air Act
14 (as added by section 321 of this Act) to support the
15 establishment of 8 Hubs, each with a unique des-
16 ignated technology development focus, pursuant to
17 this section;

18 (3) coordinate the innovation activities of Hubs
19 with those occurring through other Department of
20 Energy entities, including the National Laboratories,
21 the Advanced Research Projects Agency—Energy,
22 and Energy Frontier Research Collaborations, and
23 within industry, including by annually—

1 (A) issuing guidance regarding national
2 energy research and development priorities and
3 strategic objectives; and

4 (B) convening a conference of staff of the
5 Department of Energy and representatives from
6 such other entities to share research results,
7 program plans, and opportunities for collabora-
8 tion.

9 (d) ENTITIES ELIGIBLE FOR SUPPORT.—A consor-
10 tium shall be eligible to receive allowances to support the
11 establishment of a Hub under this section if—

12 (1) it is composed of—

13 (A) 2 research universities with a com-
14 bined annual research budget of \$500,000,000;
15 and

16 (B) 1 or more additional qualifying enti-
17 ties;

18 (2) its members have established a binding
19 agreement that documents—

20 (A) the structure of the partnership agree-
21 ment;

22 (B) a governance and management struc-
23 ture to enable cost-effective implementation of
24 the program;

1 (C) an intellectual property management
2 policy;

3 (D) a conflicts of interest policy consistent
4 with subsection (e)(4);

5 (E) an accounting structure that meets the
6 requirements of the Department of Energy and
7 can be audited under subsection (f)(5); and

8 (F) that it has an Advisory Board con-
9 sistent with subsection (e)(3);

10 (3) it receives financial contributions from
11 States, consortium participants, or other non-Fed-
12 eral sources, to be used to support project awards
13 pursuant to subsection (e);

14 (4) it is part of an existing cluster or dem-
15 onstrates high potential to develop a new cluster;
16 and

17 (5) it operates as a nonprofit organization.

18 (e) ENERGY INNOVATION HUBS.—

19 (1) ROLE.—Hubs receiving allowances under
20 this section shall support translational research ac-
21 tivities leading to commercial application of clean en-
22 ergy technologies, in accordance with the purposes of
23 this section, through issuance of awards to projects
24 managed by qualifying entities and other entities

1 meeting the Hub's project criteria, including na-
2 tional laboratories. Each such Hub shall—

3 (A) develop and publish for public review
4 and comment proposed plans, programs, project
5 selection criteria, and terms for individual
6 project awards under this subsection;

7 (B) submit an annual report to the Sec-
8 retary summarizing the Hub's activities, organi-
9 zational expenditures, and Board members,
10 which shall include a certification of compliance
11 with conflict of interest policies and a descrip-
12 tion of each project in the research portfolio;

13 (C) establish policies—

14 (i) regarding intellectual property de-
15 veloped as a result of Hub awards and
16 other forms of technology support that en-
17 courage individual ingenuity and invention
18 while speeding technology transfer and fa-
19 cilitating the establishment of rapid com-
20 mercialization pathways;

21 (ii) to prevent resources provided to
22 the Hub from being used to displace pri-
23 vate sector investment otherwise likely to
24 occur, including investment from private

1 sector entities that are members of the
2 consortium;

3 (iii) to facilitate the participation of
4 private investment firms or other private
5 entities that invest in clean energy tech-
6 nologies to perform due diligence on award
7 proposals, to participate in the award re-
8 view process, and to provide guidance to
9 projects supported by the Hub; and

10 (iv) to facilitate the participation of
11 entrepreneurs with a demonstrated history
12 of developing and commercializing clean
13 energy technologies;

14 (D) oversee project solicitations, review
15 proposed projects, and select projects for
16 awards; and

17 (E) monitor project implementation.

18 (2) DISTRIBUTION OF AWARDS BY HUBS.—A
19 Hub shall distribute awards under this subsection to
20 support clean energy technology projects conducting
21 translational research and related activities, provided
22 that at least 50 percent of such support shall be pro-
23 vided to projects related to the Hub's technology de-
24 velopment focus.

25 (3) ADVISORY BOARDS.—

1 (A) IN GENERAL.—Each Hub shall estab-
2 lish an Advisory Board, the members of which
3 shall have extensive and relevant scientific,
4 technical, industry, financial, or research man-
5 agement expertise. The Advisory Board shall
6 review the Hub’s proposed plans, programs,
7 project selection criteria, and projects and shall
8 ensure that projects selected for awards meet
9 the conflict of interest policies of the Hub. Ad-
10 visory Board members other than those rep-
11 resenting consortium members shall serve for
12 no more than 3 years. All Advisory Board mem-
13 bers shall comply with the Hub’s conflict of in-
14 terest policies and procedures.

15 (B) MEMBERS.—Each Advisory Board
16 shall consist of—

17 (i) 5 members selected by the consor-
18 tium’s research universities;

19 (ii) 2 members selected by the consor-
20 tium’s other qualifying entities;

21 (iii) 2 members selected at large by
22 other Advisory Board members to rep-
23 resent the entrepreneur and venture cap-
24 ital communities; and

1 (iv) 1 member appointed by the Sec-
2 retary.

3 (D) COMPENSATION.—Members of an Ad-
4 visory Board may receive reimbursement for
5 travel expenses and a reasonable stipend.

6 (4) CONFLICT OF INTEREST.—

7 (A) PROCEDURES.—Hubs shall establish
8 procedures to ensure that any employee or con-
9 sortia designee for Hub activities who serves in
10 a decisionmaking capacity shall—

11 (i) disclose any financial interests in,
12 or financial relationships with, applicants
13 for or recipients of awards under this sub-
14 section, including those of his or her
15 spouse or minor child, unless such relation-
16 ships or interests would be considered to
17 be remote or inconsequential; and

18 (ii) recuse himself or herself from any
19 funding decision for projects in which he
20 or she has a personal financial interest.

21 (B) DISQUALIFICATION AND REVOCA-
22 TION.—The Secretary may disqualify an appli-
23 cation or revoke allowances distributed to the
24 Hub or awards provided under this subsection,
25 if cognizant officials of the Hub fail to comply

1 with procedures required under subparagraph
2 (A).

3 (f) DISTRIBUTION OF ALLOWANCES TO ENERGY IN-
4 NOVATION HUBS.—

5 (1) DISTRIBUTION OF ALLOWANCES.—Not later
6 than September 30 of 2011 and each calendar year
7 thereafter through 2049, the Secretary shall, in ac-
8 cordance with the requirements of this section, dis-
9 tribute to eligible consortia allowances allocated for
10 the following vintage year under section 782(h)(1) of
11 the Clean Air Act (as added by section 321 of this
12 Act). Not less than 10 percent and not more than
13 30 percent of the allowances available for distribu-
14 tion in any given year shall be distributed to support
15 any individual Hub under this section.

16 (2) SELECTION AND SCHEDULE.—Allowances to
17 support the establishment of a Hub shall be distrib-
18 uted to eligible consortia (as defined in subsection
19 (d)) selected through a competitive process. Not
20 later than 120 days after the date of enactment of
21 this Act, the Secretary shall solicit proposals from
22 eligible consortia to establish Hubs, which shall be
23 submitted not later than 180 days after the date of
24 enactment of this Act. The Secretary shall select the
25 program consortia not later than 270 days after the

1 date of enactment of this Act. For at least 3 awards
2 to consortia under this section, the Secretary shall
3 give special consideration to applications in which 1
4 or more of the institutions under subsection
5 (d)(1)(A) are 1890 Land Grant Institutions (as de-
6 fined in section 2 of the Agricultural Research, Ex-
7 tension, and Education Reform Act of 1998 (7
8 U.S.C. 7061)), Predominantly Black Institutions (as
9 defined in section 318 of the Higher Education Act
10 of 1965 (20 U.S.C. 1059e)), Tribal Colleges or Uni-
11 versities (as defined in section 316(b) of the Higher
12 Education Act of 1965 (20 U.S.C. 1059c(b)), or
13 Hispanic Serving Institutions (as defined in section
14 318 of the Higher Education Act of 1965 (20
15 U.S.C. 1059e)).

16 (3) AMOUNT AND TERM OF AWARDS.—For each
17 Hub selected to receive an award under this sub-
18 section, the Secretary shall define a quantity of al-
19 lowances that shall be distributed to such Hub each
20 year for an initial period not to exceed 5 years. The
21 Secretary may extend the term of such award by up
22 to 5 additional years, and a Hub may compete to re-
23 ceive an increase in the quantity of allowances per
24 year that it shall receive during any such extension.
25 A Hub shall be eligible to compete for a new award

1 after the expiration of the term of any award, in-
2 cluding any extension of such term, under this sub-
3 section.

4 (4) USE OF ALLOWANCES.—Allowances distrib-
5 uted under this section shall be used exclusively to
6 support project awards pursuant to subsection (e)(1)
7 and (2), provided that a Hub may use not more
8 than 10 percent of the value of such allowances for
9 its administrative expenses related to making such
10 awards. Allowances distributed under this section
11 shall not be used for construction of new buildings
12 or facilities for Hubs, and construction of new build-
13 ings or facilities shall not be considered as part of
14 the non-Federal share of a cost sharing agreement
15 under this section.

16 (5) AUDIT.—Each Hub shall conduct, in ac-
17 cordance with such requirements as the Secretary
18 may prescribe, an annual audit to determine the ex-
19 tent to which allowances distributed to the Hub
20 under this subsection, and awards under subsection
21 (e), have been utilized in a manner consistent with
22 this section. The auditor shall transmit a report of
23 the results of the audit to the Secretary and to the
24 Government Accountability Office. The Secretary
25 shall include such report in an annual report to Con-

1 gress, along with a plan to remedy any deficiencies
2 cited in the report. The Government Accountability
3 Office may review such audits as appropriate and
4 shall have full access to the books, records, and per-
5 sonnel of the Hub to ensure that allowances distrib-
6 uted to the Hub under this subsection, and awards
7 made under subsection (e), have been utilized in a
8 manner consistent with this section.

9 (6) REVOCATION OF ALLOWANCES.—The Sec-
10 retary shall have authority to review awards made
11 under this subsection and to revoke such awards if
12 the Secretary determines that a Hub has used the
13 award in a manner not consistent with the require-
14 ments of this section.

15 **SEC. 172. ADVANCED ENERGY RESEARCH.**

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

17 (1) ALLOWANCE.—The term “allowance”
18 means an emission allowance established under sec-
19 tion 721 of the Clean Air Act (as added by section
20 311 of this Act).

21 (2) DIRECTOR.—The term “Director” means
22 Director of the Advanced Research Projects Agency-
23 Energy.

24 (b) IN GENERAL.—Not later than September 30 of
25 2011 and each calendar year thereafter through 2049, the

1 Director shall distribute allowances allocated for the fol-
2 lowing vintage year under section 782(h)(2) of the Clean
3 Air Act (as added by section 321 of this Act). Such allow-
4 ances shall be distributed on a competitive basis to institu-
5 tions of higher education, companies, research founda-
6 tions, trade and industry research collaborations, or con-
7 sortia of such entities, or other appropriate research and
8 development entities to achieve the goals of the Advanced
9 Research Projects Agency-Energy (as described in section
10 5012(c) of the America COMPETES Act) through tar-
11 geted acceleration of—

12 (1) novel early-stage energy research with pos-
13 sible technology applications;

14 (2) development of techniques, processes, and
15 technologies, and related testing and evaluation;

16 (3) development of manufacturing processes for
17 technologies; and

18 (4) demonstration and coordination with non-
19 governmental entities for commercial applications of
20 technologies and research applications.

21 (c) RESPONSIBILITIES.—The Director shall be re-
22 sponsible for assessing the success of programs and termi-
23 nating programs carried out under this section that are
24 not achieving the goals of the programs, consistent with
25 5012(e)(2) and (4) of the America COMPETES Act. The

1 Director shall designate program managers whose respon-
2 sibilities are consistent with 5012(f)(1)(B) of the America
3 COMPETES Act. The Director’s reporting and coordina-
4 tion requirements established through 5012(g) and (h) of
5 the America COMPETES Act shall apply to activities
6 funded through this section.

7 (d) SUPPLEMENT NOT SUPPLANT.—Assistance pro-
8 vided under this section shall be used to supplement, and
9 not to supplant, any other Federal resources available to
10 carry out activities described in this section.

11 **SEC. 173. BUILDING ASSESSMENT CENTERS.**

12 (a) IN GENERAL.—The Secretary of Energy (in this
13 section referred to as the “Secretary”) shall provide fund-
14 ing to institutions of higher education for Building Assess-
15 ment Centers to—

16 (1) identify opportunities for optimizing energy
17 efficiency and environmental performance in existing
18 buildings;

19 (2) promote high-efficiency building construc-
20 tion techniques and materials options;

21 (3) promote applications of emerging concepts
22 and technologies in commercial and institutional
23 buildings;

1 (4) train engineers, architects, building sci-
2 entists, and building technicians in energy-efficient
3 design and operation;

4 (5) assist local community colleges, trade
5 schools, registered apprenticeship programs and
6 other accredited training programs in training build-
7 ing technicians;

8 (6) promote research and development for the
9 use of alternative energy sources to supply heat and
10 power, for buildings, particularly energy-intensive
11 buildings; and

12 (7) coordinate with and assist State-accredited
13 technical training centers and community colleges,
14 while ensuring appropriate services to all regions of
15 the United States.

16 (b) COORDINATION WITH REGIONAL CENTERS FOR
17 ENERGY AND ENVIRONMENTAL KNOWLEDGE AND OUT-
18 REACH.—A Building Assessment Center may serve as a
19 Center for Energy and Environmental Knowledge and
20 Outreach established pursuant to section 174.

21 (c) COORDINATION AND DUPLICATION.—The Sec-
22 retary shall coordinate efforts under this section with
23 other programs of the Department of Energy and other
24 Federal agencies to avoid duplication of effort.

1 (d) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Secretary to carry
3 out this section \$50,000,000 for fiscal year 2010 and each
4 fiscal year thereafter.

5 **SEC. 174. CENTERS FOR ENERGY AND ENVIRONMENTAL**
6 **KNOWLEDGE AND OUTREACH.**

7 (a) REGIONAL CENTERS FOR ENERGY AND ENVI-
8 RONMENTAL KNOWLEDGE AND OUTREACH.—

9 (1) ESTABLISHMENT.—The Secretary shall es-
10 tablish not more than 10 regional Centers for En-
11 ergy and Environmental Knowledge and Outreach at
12 institutions of higher education to coordinate with
13 and advise industrial research and assessment cen-
14 ters, Building Assessment Centers, and Clean En-
15 ergy Application Centers located in the region of
16 such Center for Energy and Environmental Knowl-
17 edge and Outreach.

18 (2) TECHNICAL ASSISTANCE PROGRAMS.—Each
19 Center for Energy and Environmental Knowledge
20 and Outreach shall consist of at least one, new or
21 existing, high performing, of the following:

22 (A) An industrial research and assessment
23 center.

24 (B) A Clean Energy Application Center.

25 (C) A Building Assessment Center.

1 (3) SELECTION CRITERIA.—The Secretary shall
2 select Centers for Energy and Environmental
3 Knowledge and Outreach through a competitive
4 process, based on the following:

5 (A) Identification of the highest per-
6 forming industrial research and assessment cen-
7 ters, Clean Energy Application Centers, and
8 Building Assessment Centers.

9 (B) The degree to which an institution of
10 higher education maintains credibility among
11 regional private sector organizations such as
12 trade associations, engineering associations, and
13 environmental organizations.

14 (C) The degree to which an institution of
15 higher education is providing or has provided
16 technical assistance, academic leadership, and
17 market leadership in the energy arena in a
18 manner that is consistent with the areas of
19 focus of industrial research and assessment cen-
20 ters, Clean Energy Application Centers, and
21 Building Assessment Centers.

22 (D) The presence of an additional indus-
23 trial research and assessment center, Clean En-
24 ergy Application Center, or Building Assess-

1 ment Center at the institution of higher edu-
2 cation.

3 (4) GEOGRAPHIC DIVERSITY.—In selecting Cen-
4 ters for Energy and Environmental Knowledge and
5 Outreach under this subsection, the Secretary shall
6 ensure such Centers are distributed geographically
7 in a relatively uniform manner to ensure all regions
8 of the Nation are represented.

9 (5) REGIONAL LEADERSHIP.—Each Center for
10 Energy and Environmental Knowledge and Outreach
11 shall, to the extent possible, provide leadership to all
12 other industrial research and assessment centers,
13 Clean Energy Application Centers, and Building As-
14 sessment Centers located in the Center’s geographic
15 region, as determined by the Secretary. Such leader-
16 ship shall include—

17 (A) developing regional goals specific to
18 the purview of the industrial research and as-
19 sessment centers, Clean Energy Application
20 Centers, and Building Assessment Centers pro-
21 grams;

22 (B) developing regionally specific technical
23 resources; and

24 (C) outreach to interested parties in the
25 region to inform them of the information, re-

1 sources, and services available through the asso-
2 ciated industrial research and assessment cen-
3 ters, Clean Energy Application Centers, and
4 Building Assessment Centers.

5 (6) FURTHER COORDINATION.—To increase the
6 value and capabilities of the regionally associated in-
7 dustrial research and assessment centers, Clean En-
8 ergy Application Centers, and Building Assessment
9 Centers programs, Centers for Energy and Environ-
10 mental Knowledge and Outreach shall—

11 (A) coordinate with Manufacturing Exten-
12 sion Partnership Centers of the National Insti-
13 tute of Science and Technology;

14 (B) coordinate with the relevant programs
15 in the Department of Energy, including the
16 Building Technology Program and Industrial
17 Technologies Program;

18 (C) increase partnerships with the Na-
19 tional Laboratories of the Department of En-
20 ergy to leverage the expertise and technologies
21 of the National Laboratories to achieve the
22 goals of the industrial research and assessment
23 centers, Clean Energy Application Centers, and
24 Building Assessment Centers;

1 (D) work with relevant municipal, county,
2 and State economic development entities to le-
3 verage relevant financial incentives for capital
4 investment and other policy tools for the protec-
5 tion and growth of local business and industry;

6 (E) partner with local professional and pri-
7 vate trade associations and business develop-
8 ment interests to leverage existing knowledge of
9 local business challenges and opportunities;

10 (F) work with energy utilities and other
11 administrators of publicly funded energy pro-
12 grams to leverage existing energy efficiency and
13 clean energy programs;

14 (G) identify opportunities for reducing
15 greenhouse gas emissions; and

16 (H) promote sustainable business practices
17 for those served by the industrial research and
18 assessment centers, Clean Energy Application
19 Centers, and Building Assessment Centers.

20 (7) WORKFORCE TRAINING.—

21 (A) IN GENERAL.—The Secretary shall re-
22 quire each Center for Energy and Environ-
23 mental Knowledge and Outreach to establish or
24 maintain an internship program for the region
25 of such Center, designed to encourage students

1 who perform energy assessments to continue
2 working with a particular company, building, or
3 facility to help implement the recommendations
4 contained in any such assessment provided to
5 such company, building, or facility. Each Center
6 for Energy and Environmental Knowledge and
7 Outreach shall act as internship coordinator to
8 help match students to available opportunities.

9 (B) FEDERAL SHARE.—The Federal share
10 of the cost of carrying out internship programs
11 described under subparagraph (A) shall be 50
12 percent.

13 (C) FUNDING.—Subject to the availability
14 of appropriations, of the funds made available
15 to carry out this subsection, the Secretary shall
16 use to carry out this paragraph not less than
17 \$5,000,000 for fiscal year 2010 and each fiscal
18 year thereafter.

19 (8) SMALL BUSINESS LOANS.—The Adminis-
20 trator of the Small Business Administration shall, to
21 the maximum practicable, expedite consideration of
22 applications from eligible small business concerns for
23 loans under the Small Business Act (15 U.S.C. 631
24 et seq.) for loans to implement recommendations of
25 any industrial research and assessment center, Clean

1 Energy Application Center, or Building Assessment
2 Center.

3 (9) DEFINITIONS.—In this subsection:

4 (A) INDUSTRIAL RESEARCH AND ASSESS-
5 MENT CENTER.—The term “industrial research
6 and assessment center” means a center estab-
7 lished or maintained pursuant to section 452(e)
8 of the Energy Independence and Security Act
9 of 2007 (42 U.S.C. 17111(e)).

10 (B) CLEAN ENERGY APPLICATION CEN-
11 TER.—The term “Clean Energy Application
12 Center” means a center redesignated and de-
13 scribed section under section 375 of the Energy
14 Policy and Conservation Act (42 U.S.C. 6345).

15 (C) BUILDING ASSESSMENT CENTER.—The
16 term “Building Assessment Center” means an
17 institution of higher education-based center es-
18 tablished pursuant to section 173.

19 (D) SECRETARY.—The term “Secretary”
20 means the Secretary of Energy.

21 (10) FUNDING.—There are authorized to be ap-
22 propriated to the Secretary to carry out this sub-
23 section \$10,000,000 for fiscal year 2010 and each
24 fiscal year thereafter. Subject to the availability of
25 appropriations, of the funds made available to carry

1 out this subsection, the Secretary shall provide to
2 each Center for Energy and Environmental Knowl-
3 edge and Outreach not less than \$500,000 for fiscal
4 year 2010 and each fiscal year thereafter.

5 (b) INTEGRATION OF OTHER TECHNICAL ASSIST-
6 ANCE PROGRAMS.—

7 (1) CLEAN ENERGY APPLICATION CENTERS.—
8 Section 375 of the Energy Policy and Conservation
9 Act (42 U.S.C. 6345) is amended—

10 (A) by redesignating subsection (f) as sub-
11 section (g); and

12 (B) by adding after subsection (e) the fol-
13 lowing new subsection:

14 “(f) COORDINATION WITH CENTERS FOR ENERGY
15 AND ENVIRONMENTAL KNOWLEDGE AND OUTREACH.—A
16 Clean Energy Application Center may serve as a Center
17 for Energy and Environmental Knowledge and Outreach
18 established pursuant to section 174 of the American Clean
19 Energy and Security Act of 2009.”.

20 (2) INDUSTRIAL RESEARCH AND ASSESSMENT
21 CENTERS.—Section 452(e) of the Energy Independ-
22 ence and Security Act of 2007 (42 U.S.C. 17111(e))
23 is amended—

1 (A) by striking “The Secretary” and all
2 that follows through “shall be—” and inserting
3 the following:

4 “(1) IN GENERAL.—The Secretary shall provide
5 funding to institution of higher education-based in-
6 dustrial research and assessment centers, whose pur-
7 poses shall be—”;

8 (B) by redesignating paragraphs (1)
9 through (5) as subparagraphs (A) through (E),
10 respectively (and by moving the margins of such
11 subparagraphs 2 ems to the right); and

12 (C) by adding at the end the following new
13 paragraph:

14 “(2) COORDINATION WITH CENTERS FOR EN-
15 ERGY AND ENVIRONMENTAL KNOWLEDGE AND OUT-
16 REACH.—An industrial research and assessment cen-
17 ter may serve as a Center for Energy and Environ-
18 mental Knowledge and Outreach established pursu-
19 ant to section 174 of the American Clean Energy
20 and Security Act of 2009.”.

21 (c) ADDITIONAL FUNDING FOR CLEAN ENERGY AP-
22 PPLICATION CENTERS.—Subsection (g) of section 375 of
23 the Energy Policy and Conservation Act (42 U.S.C.
24 6345(f)), as redesignated by subsection (b)(1) of this sec-
25 tion, is amended by striking “\$10,000,000 for each of fis-

1 cal years 2008 through 2012” and inserting “\$30,000,000
2 for fiscal year 2010 and each fiscal year thereafter”.

3 **Subtitle I—Nuclear and Advanced**
4 **Technologies**

5 **SEC. 181. REVISIONS TO LOAN GUARANTEE PROGRAM AU-**
6 **THORITY.**

7 (a) DEFINITION OF CONDITIONAL COMMITMENT.—
8 Section 1701 of the Energy Policy Act of 2005 (42 U.S.C.
9 16511), as amended by section 130(a) of this Act, is
10 amended by adding after paragraph (7) the following:

11 “(8) CONDITIONAL COMMITMENT.—The term
12 ‘conditional commitment’ means a final term sheet
13 negotiated between the Secretary and a project
14 sponsor or sponsors, which term sheet shall be bind-
15 ing on both parties and become a final loan guar-
16 antee agreement if all conditions precedent estab-
17 lished in the term sheet, which shall include the ac-
18 quisition of all necessary permits and licenses, are
19 satisfied.”.

20 (b) SPECIFIC APPROPRIATION OR CONTRIBUTION.—
21 Section 1702 of the Energy Policy Act of 2005 (42 U.S.C.
22 16512) is amended by striking subsection (b) and insert-
23 ing the following:

24 “(b) SPECIFIC APPROPRIATION OR CONTRIBU-
25 TION.—

1 “(1) IN GENERAL.—No guarantee shall be
2 made unless—

3 “(A) an appropriation for the cost has
4 been made;

5 “(B) the Secretary has received from the
6 borrower a payment in full for the cost of the
7 obligation and deposited the payment into the
8 Treasury; or

9 “(C) a combination of appropriations or
10 payments from the borrower has been made
11 sufficient to cover the cost of the obligation.

12 “(2) LIMITATION.—The source of payments re-
13 ceived from a borrower under paragraph (1)(B) shall
14 not be a loan or other debt obligation that is made
15 or guaranteed by the Federal Government.”.

16 (c) FEES.—Section 1702(h) of the Energy Policy Act
17 of 2005 (42 U.S.C. 16512(h)) is amended by striking
18 paragraph (2) and inserting the following:

19 “(2) AVAILABILITY.—Fees collected under this
20 subsection shall—

21 “(A) be deposited by the Secretary into a
22 special fund in the Treasury to be known as the
23 ‘Incentives For Innovative Technologies Fund’;
24 and

1 “(B) remain available to the Secretary for
2 expenditure, without further appropriation or
3 fiscal year limitation, for administrative ex-
4 penses incurred in carrying out this title.”.

5 (d) WAGE RATE REQUIREMENTS.—Section 1702 of
6 the Energy Policy Act of 2005 (42 U.S.C. 16512) is
7 amended by adding at the end the following new sub-
8 section:

9 “(k) WAGE RATE REQUIREMENTS.—No loan guar-
10 antee shall be made under this title unless the borrower
11 has provided to the Secretary reasonable assurances that
12 all laborers and mechanics employed by contractors and
13 subcontractors in the performance of construction work fi-
14 nanced in whole or in part by the guaranteed loan will
15 be paid wages at rates not less than those prevailing on
16 projects of a character similar to the contract work in the
17 civil subdivision of the State in which the contract work
18 is to be performed as determined by the Secretary of
19 Labor in accordance with subchapter IV of chapter 31 of
20 part A of subtitle II of title 40, United States Code. With
21 respect to the labor standards specified in this subsection,
22 the Secretary of Labor shall have the authority and func-
23 tions set forth in Reorganization Plan Numbered 14 of
24 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145
25 of title 40, United States Code.”.

1 (e) SUBROGATION.—Section 1702(g)(2) of the En-
2 ergy Policy Act of 2005 (42 U.S.C. 16512(g)(2)) is
3 amended by striking subparagraphs (B) and (C) and in-
4 serting the following:

5 “(B) SUPERIORITY OF RIGHTS.—Except as
6 provided in subparagraph (C), the rights of the
7 Secretary, with respect to any property ac-
8 quired pursuant to a guarantee or related
9 agreements, shall be superior to the rights of
10 any other person with respect to the property.

11 “(C) TERMS AND CONDITIONS.—A guar-
12 antee agreement shall include such detailed
13 terms and conditions as the Secretary deter-
14 mines appropriate to—

15 “(i) protect the financial interests of
16 the United States in the case of default;

17 “(ii) have available all the patents and
18 technology necessary for any person se-
19 lected, including the Secretary, to complete
20 and operate the project;

21 “(iii) provide for sharing the proceeds
22 received from the sale of project assets
23 with other creditors or control the disposi-
24 tion of project assets if necessary to pro-

1 tect the financial interests of the United
2 States in the case of default; and

3 “(iv) provide such lien priority in
4 project assets as necessary to protect the
5 financial interests of the United States in
6 the case of a default.”.

7 **SEC. 182. PURPOSE.**

8 The purpose of sections 183 through 189 of this sub-
9 title is to promote the domestic development and deploy-
10 ment of clean energy technologies required for the 21st
11 century through the establishment of a self-sustaining
12 Clean Energy Deployment Administration that will pro-
13 vide for an attractive investment environment through
14 partnership with and support of the private capital market
15 in order to promote access to affordable financing for ac-
16 celerated and widespread deployment of—

17 (1) clean energy technologies;

18 (2) advanced or enabling energy infrastructure
19 technologies;

20 (3) energy efficiency technologies in residential,
21 commercial, and industrial applications, including
22 end-use efficiency in buildings; and

23 (4) manufacturing technologies for any of the
24 technologies or applications described in this section.

1 **SEC. 183. DEFINITIONS.**

2 In this subtitle:

3 (1) ADMINISTRATION.—The term “Administra-
4 tion” means the Clean Energy Deployment Adminis-
5 tration established by section 186.

6 (2) ADVISORY COUNCIL.—The term “Advisory
7 Council” means the Energy Technology Advisory
8 Council of the Administration.

9 (3) BREAKTHROUGH TECHNOLOGY.—The term
10 “breakthrough technology” means a clean energy
11 technology that—

12 (A) presents a significant opportunity to
13 advance the goals developed under section 185,
14 as assessed under the methodology established
15 by the Advisory Council; but

16 (B) has generally not been considered a
17 commercially ready technology as a result of
18 high perceived technology risk or other similar
19 factors.

20 (4) CLEAN ENERGY TECHNOLOGY.—The term
21 “clean energy technology” means a technology re-
22 lated to the production, use, transmission, storage,
23 control, or conservation of energy—

24 (A) that will contribute to a stabilization of
25 atmospheric greenhouse gas concentrations

1 thorough reduction, avoidance, or sequestration
2 of energy-related emissions and—

3 (i) reduce the need for additional en-
4 ergy supplies by using existing energy sup-
5 plies with greater efficiency or by transmit-
6 ting, distributing, or transporting energy
7 with greater effectiveness through the in-
8 frastructure of the United States; or

9 (ii) diversify the sources of energy
10 supply of the United States to strengthen
11 energy security and to increase supplies
12 with a favorable balance of environmental
13 effects if the entire technology system is
14 considered; and

15 (B) for which, as determined by the Ad-
16 ministrator, insufficient commercial lending is
17 available at affordable rates to allow for wide-
18 spread deployment.

19 (5) COST.—The term “cost” has the meaning
20 given the term in section 502 of the Federal Credit
21 Reform Act of 1990 (2 U.S.C. 661a).

22 (6) DIRECT LOAN.—The term “direct loan” has
23 the meaning given the term in section 502 of the
24 Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

1 (7) FUND.—The term “Fund” means the Clean
2 Energy Investment Fund established by section
3 184(a).

4 (8) GREEN BONDS.—The term “Green Bonds”
5 means bonds issued pursuant to section 184.

6 (8) LOAN GUARANTEE.—The term “loan guar-
7 antee” has the meaning given the term in section
8 502 of the Federal Credit Reform Act of 1990 (2
9 U.S.C. 661a).

10 (9) NATIONAL LABORATORY.—The term “Na-
11 tional Laboratory” has the meaning given the term
12 in section 2 of the Energy Policy Act of 2005 (42
13 U.S.C. 15801).

14 (10) SECRETARY.—The term “Secretary”
15 means the Secretary of Energy.

16 (11) STATE.—The term “State” means—

17 (A) a State;

18 (B) the District of Columbia;

19 (C) the Commonwealth of Puerto Rico;

20 and

21 (D) any other territory or possession of the
22 United States.

23 (12) TECHNOLOGY RISK.—The term “tech-
24 nology risk” means the risks during construction or
25 operation associated with the design, development,

1 and deployment of clean energy technologies (includ-
2 ing the cost, schedule, performance, reliability and
3 maintenance, and accounting for the perceived risk),
4 from the perspective of commercial lenders, that
5 may be increased as a result of the absence of ade-
6 quate historical construction, operating, or perform-
7 ance data from commercial applications of the tech-
8 nology.

9 **SEC. 184. CLEAN ENERGY INVESTMENT FUND.**

10 (a) ESTABLISHMENT.—There is established in the
11 Treasury of the United States a revolving fund, to be
12 known as the “Clean Energy Investment Fund”, con-
13 sisting of—

14 (1) such amounts as are deposited in the Fund
15 under this subtitle; and

16 (2) such sums as may be appropriated to sup-
17 plement the Fund.

18 (b) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated to the Fund such sums
20 as are necessary to carry out this subtitle.

21 (c) EXPENDITURES FROM FUND.—

22 (1) IN GENERAL.—Amounts in the Fund shall
23 be available to the Administrator of the Administra-
24 tion for obligation without fiscal year limitation, to
25 remain available until expended.

1 (2) ADMINISTRATIVE EXPENSES.—

2 (A) FEES.—Fees collected for administra-
3 tive expenses shall be available without limita-
4 tion to cover applicable expenses.

5 (B) FUND.—To the extent that adminis-
6 trative expenses are not reimbursed through
7 fees, an amount not to exceed 1.5 percent of
8 the amounts in the Fund as of the beginning of
9 each fiscal year shall be available to pay the ad-
10 ministrative expenses for the fiscal year nec-
11 essary to carry out this subtitle.

12 (d) TRANSFERS OF AMOUNTS.—

13 (1) IN GENERAL.—The amounts required to be
14 transferred to the Fund under this section shall be
15 transferred at least monthly from the general fund
16 of the Treasury to the Fund on the basis of esti-
17 mates made by the Secretary of the Treasury.

18 (2) ADJUSTMENTS.—Proper adjustment shall
19 be made in amounts subsequently transferred to the
20 extent prior estimates were in excess of or less than
21 the amounts required to be transferred.

22 (3) CASH FLOWS.—Cash flows associated with
23 costs of the Fund described in section 502(5)(B) of
24 the Federal Credit Reform Act of 1990 (2 U.S.C.

1 661a(5)(B)) shall be transferred to appropriate
2 credit accounts.

3 (e) GREEN BONDS.—

4 (1) INITIAL CAPITALIZATION.—The Secretary
5 of the Treasury shall issue Green Bonds in the
6 amount of \$7,500,000,000 on the credit of the
7 United States to acquire capital stock of the Admin-
8 istration. Stock certificates evidencing ownership in
9 the Administration shall be issued by the Adminis-
10 tration to the Secretary of the Treasury, to the ex-
11 tent of payments made for the capital stock of the
12 Administration.

13 (2) DENOMINATIONS AND MATURITY.—Green
14 Bonds shall be in such forms and denominations,
15 and shall mature within such periods, as determined
16 by the Secretary of the Treasury.

17 (3) INTEREST.—Green Bonds shall bear inter-
18 est at a rate not less than the current average yield
19 on outstanding market obligations of the United
20 States of comparable maturity during the month
21 preceding the issuance of the obligation as deter-
22 mined by the Secretary of the Treasury.

23 (4) LAWFUL INVESTMENTS.—Green Bonds
24 shall be lawful investments, and may be accepted as
25 security for all fiduciary, trust, and public funds, the

1 investment or deposit of which shall be under the
2 authority or control of the United States or any offi-
3 cer or officers thereof.

4 **SEC. 185. ENERGY TECHNOLOGY DEPLOYMENT GOALS.**

5 (a) GOALS.—Not later than 1 year after the date of
6 enactment of this Act, the Secretary, after consultation
7 with the Advisory Council, shall develop and publish for
8 review and comment in the Federal Register recommended
9 near-, medium-, and long-term goals (including numerical
10 performance targets at appropriate intervals to measure
11 progress toward those goals) for the deployment of clean
12 energy technologies through the credit support programs
13 established by section 187 to promote—

14 (1) sufficient electric generating capacity using
15 clean energy technologies to meet the energy needs
16 of the United States;

17 (2) clean energy technologies in vehicles and
18 fuels that will substantially reduce the reliance of
19 the United States on foreign sources of energy and
20 insulate consumers from the volatility of world en-
21 ergy markets;

22 (3) a domestic commercialization and manufac-
23 turing capacity that will establish the United States
24 as a world leader in clean energy technologies across
25 multiple sectors;

1 (4) installation of sufficient infrastructure to
2 allow for the cost-effective deployment of clean en-
3 ergy technologies appropriate to each region of the
4 United States;

5 (5) the transformation of the building stock of
6 the United States to zero net energy consumption;

7 (6) the recovery, use, and prevention of waste
8 energy;

9 (7) domestic manufacturing of clean energy
10 technologies on a scale that is sufficient to achieve
11 price parity with conventional energy sources;

12 (8) domestic production of commodities and
13 materials (such as steel, chemicals, polymers, and
14 cement) using clean energy technologies so that the
15 United States will become a world leader in environ-
16 mentally sustainable production of the commodities
17 and materials;

18 (9) a robust, efficient, and interactive electricity
19 transmission grid that will allow for the incorpora-
20 tion of clean energy technologies, distributed genera-
21 tion, and demand-response in each regional electric
22 grid;

23 (10) sufficient availability of financial products
24 to allow owners and users of residential, retail, com-
25 mercial, and industrial buildings to make energy ef-

1 efficiency and distributed generation technology in-
2 vestments with reasonable payback periods; and

3 (11) such other goals as the Secretary, in con-
4 sultation with the Advisory Council, determines to be
5 consistent with the purpose stated in section 182.

6 (b) REVISIONS.—The Secretary shall revise the goals
7 established under subsection (a), from time to time as ap-
8 propriate, to account for advances in technology and
9 changes in energy policy.

10 **SEC. 186. CLEAN ENERGY DEPLOYMENT ADMINISTRATION.**

11 (a) ESTABLISHMENT.—

12 (1) ESTABLISHMENT OF CORPORATION.—There
13 is established a corporation to be known as the
14 Clean Energy Deployment Administration that shall
15 be wholly owned by the United States.

16 (2) INDEPENDENT CORPORATION.—The Admin-
17 istration shall be an independent corporation. Nei-
18 ther the Administration nor any of its functions,
19 powers, or duties shall be transferred to or consoli-
20 dated with any other department, agency, or cor-
21 poration of the Government unless the Congress pro-
22 vides otherwise.

23 (3) CHARTER.—The Administration shall be
24 chartered for 20 years from the date of enactment
25 of this section.

1 (4) STATUS.—

2 (A) INSPECTOR GENERAL.—Section 12 of
3 the Inspector General Act of 1978 (5 U.S.C.
4 App.) is amended—

5 (i) in paragraph (1), by inserting “the
6 Administrator of the Clean Energy Deploy-
7 ment Administration;” after “Export-Im-
8 port Bank;”; and

9 (ii) in paragraph (2), by inserting
10 “the Clean Energy Deployment Adminis-
11 tration,” after “Export-Import Bank,”.

12 (3) OFFICES.—

13 (A) PRINCIPAL OFFICE.—The Administra-
14 tion shall—

15 (i) maintain the principal office of the
16 Administration in the national capital re-
17 gion; and

18 (ii) for purposes of venue in civil ac-
19 tions, be considered to be a resident of the
20 District of Columbia.

21 (B) OTHER OFFICES.—The Administration
22 may establish other offices in such other places
23 as the Administration considers necessary or
24 appropriate for the conduct of the business of
25 the Administration.

1 (b) ADMINISTRATOR.—

2 (1) IN GENERAL.—The Administrator of the
3 Administration shall be—

4 (A) appointed by the President, with the
5 advice and consent of the Senate, for a 5-year
6 term; and

7 (B) compensated at the prevailing rate for
8 compensation for similar positions in industry.

9 (2) DUTIES.—The Administrator of the Admin-
10 istration shall—

11 (A) serve as the Chief Executive Officer of
12 the Administration and Chairman of the Board;

13 (B) ensure that—

14 (i) the Administration operates in a
15 safe and sound manner, including mainte-
16 nance of adequate capital and internal con-
17 trols (consistent with section 404 of the
18 Sarbanes-Oxley Act of 2002 (15 U.S.C.
19 7262));

20 (ii) the operations and activities of the
21 Administration foster liquid, efficient, com-
22 petitive, and resilient energy and energy ef-
23 ficiency finance markets;

24 (iii) the Administration carries out the
25 purpose stated in section 182 only through

1 activities that are authorized under and
2 consistent with sections 182 through 189;
3 and

4 (iv) the activities of the Administra-
5 tion and the manner in which the Adminis-
6 tration is operated are consistent with the
7 public interest;

8 (C) develop policies and procedures for the
9 Administration that will—

10 (i) promote a self-sustaining portfolio
11 of investments that will maximize the value
12 of investments to effectively promote clean
13 energy technologies;

14 (ii) promote transparency and open-
15 ness in Administration operations;

16 (iii) afford the Administration with
17 sufficient flexibility to meet the purpose
18 stated in section 182; and

19 (iv) provide for the efficient proc-
20 essing of applications; and

21 (D) with the concurrence of the Board, set
22 expected loss reserves for the support provided
23 by the Administration consistent with section
24 187(c).

25 (c) BOARD OF DIRECTORS.—

1 (1) IN GENERAL.—The Board of Directors of
2 the Administration shall consist of—

3 (A) the Secretary or the designee of the
4 Secretary, who shall serve as an ex-officio mem-
5 ber of the Board of Directors;

6 (B) the Secretary of the Treasury or the
7 designee of the Secretary, who shall serve as an
8 ex-officio member of the Board of Directors;

9 (C) the Secretary of the Interior or the
10 designee of the Secretary, who shall serve as an
11 ex-officio member of the Board of Directors;

12 (D) the Secretary of Agriculture or the
13 designee of the Secretary, who shall serve as an
14 ex officio member of the Board of Directors;

15 (E) the Administrator of the Administra-
16 tion, who shall serve as the Chairman of the
17 Board of Directors; and

18 (F) 4 additional members who shall—

19 (i) be appointed by the President,
20 with the advice and consent of the Senate,
21 for staggered 5-year terms; and

22 (ii) have experience in banking, finan-
23 cial services, technology assessment, energy
24 regulation, or risk management, including
25 individuals with substantial experience in

1 the development of energy projects, the
2 electricity generation sector, the transpor-
3 tation sector, the manufacturing sector,
4 and the energy efficiency sector.

5 (2) DUTIES.—The Board of Directors shall—

6 (A) oversee the operations of the Adminis-
7 tration and ensure industry best practices are
8 followed in all financial transactions involving
9 the Administration;

10 (B) consult with the Administrator of the
11 Administration on the general policies and pro-
12 cedures of the Administration to ensure the in-
13 terests of the taxpayers are protected;

14 (C) ensure the portfolio of investments are
15 consistent with purpose stated in section 182
16 and with the long-term financial stability of the
17 Administration;

18 (D) ensure that the operations and activi-
19 ties of the Administration are consistent with
20 the development of a robust private sector that
21 can provide commercial loans or financing prod-
22 ucts; and

23 (E) not serve on a full-time basis, except
24 that the Board of Directors shall meet at least
25 quarterly to review, as appropriate, applications

1 for credit support and set policies and proce-
2 dures as necessary.

3 (3) REMOVAL.—An appointed member of the
4 Board of Directors may be removed from office by
5 the President for good cause.

6 (4) VACANCIES.—An appointed seat on the
7 Board of Directors that becomes vacant shall be
8 filled by appointment by the President, but only for
9 the unexpired portion of the term of the vacating
10 member.

11 (5) COMPENSATION OF MEMBERS.—An ap-
12 pointed member of the Board of Directors shall be
13 compensated at the prevailing rate for compensation
14 for similar positions in industry.

15 (d) ENERGY TECHNOLOGY ADVISORY COUNCIL.—

16 (1) IN GENERAL.—The Administration shall
17 have an Energy Technology Advisory Council con-
18 sisting of 8 members selected by the Board of Direc-
19 tors of the Administration.

20 (2) QUALIFICATIONS.—The members of the Ad-
21 visory Council shall—

22 (A) have clean energy project development,
23 clean energy finance, commercial, and/or rel-
24 evant scientific expertise; and

25 (B) include representatives of—

- 1 (i) the academic community;
- 2 (ii) the private research community;
- 3 (iii) National Laboratories;
- 4 (iv) the technology or project develop-
- 5 ment community; and
- 6 (v) the commercial energy financing
- 7 and operations sector.

8 (3) DUTIES.—The Advisory Council shall—

9 (A) develop and publish for comment in
10 the Federal Register a methodology for assess-
11 ment of clean energy technologies that will
12 allow the Administration to evaluate projects
13 based on the progress likely to be achieved per-
14 dollar invested in maximizing the attributes of
15 the definition of clean energy technology, taking
16 into account the extent to which support for a
17 clean energy technology is likely to accrue sub-
18 sequent benefits that are attributable to a com-
19 mercial scale deployment taking place earlier
20 than that which otherwise would have occurred
21 without the support; and

22 (B) advise on the technological approaches
23 that should be supported by the Administration
24 to meet the technology deployment goals estab-
25 lished by the Secretary pursuant to section 185.

1 (4) TERM.—

2 (A) IN GENERAL.—Members of the Advi-
3 sory Council shall have 5-year staggered terms,
4 as determined by the Administrator of the Ad-
5 ministration.

6 (B) REAPPOINTMENT.—A member of the
7 Advisory Council may be reappointed.

8 (5) COMPENSATION.—A member of the Advi-
9 sory Council, who is not otherwise compensated as
10 a Federal employee, shall be compensated at a rate
11 equal to the daily equivalent of the annual rate of
12 basic pay prescribed for level IV of the Executive
13 Schedule under section 5315 of title 5, United
14 States Code, for each day (including travel time)
15 during which the member is engaged in the perform-
16 ance of the duties of the Advisory Council.

17 (e) STAFF.—

18 (1) IN GENERAL.—The Administrator of the
19 Administration, in consultation with the Board of
20 Directors, may—

21 (A) appoint and terminate such officers,
22 attorneys, employees, and agents as are nec-
23 essary to carry out this subtitle; and

1 (B) vest those personnel with such powers
2 and duties as the Administrator of the Adminis-
3 tration may determine.

4 (f) CONFLICTS OF INTEREST.—No director, officer,
5 attorney, agent, or employee of the Administration shall
6 in any manner, directly or indirectly, participate in the
7 deliberation upon, or the determination of, any question
8 affecting such individual's personal interests, or the inter-
9 ests of any corporation, partnership, or association in
10 which such individual is directly or indirectly personally
11 interested.

12 (g) SUNSET.—

13 (1) EXPIRATION OF CHARTER.—The Adminis-
14 tration shall continue to exercise its functions until
15 all obligations and commitments of the Administra-
16 tion are discharged, even after its charter has ex-
17 pired.

18 (2) PRIOR OBLIGATIONS.—No provisions of this
19 subsection shall be construed as preventing the Ad-
20 ministration from—

21 (A) undertaking obligations prior to the
22 date of the expiration of its charter which ma-
23 ture subsequent to such date;

24 (B) assuming, prior to the date of the ex-
25 piration of its charter, liability as guarantor,

1 endorser, or acceptor of obligations which ma-
2 ture subsequent to such date; or

3 (C) continuing as a corporation and exer-
4 cising any of its functions subsequent to the
5 date of the expiration of its charter for pur-
6 poses of orderly liquidation, including the ad-
7 ministration of its assets and the collection of
8 any obligations held by the Administration.

9 **SEC. 187. DIRECT SUPPORT.**

10 (a) IN GENERAL.—The Administration may issue di-
11 rect loans, letters of credit, and loan guarantees to deploy
12 clean energy technologies if the Administrator of the Ad-
13 ministration has determined that deployment of the tech-
14 nologies would benefit or be accelerated by the support.

15 (b) ELIGIBILITY CRITERIA.—In carrying out this sec-
16 tion and awarding credit support to projects, the Adminis-
17 trator of the Administration shall account for—

18 (1) how the technology rates based on an eval-
19 uation methodology established by the Advisory
20 Council;

21 (2) how the project fits with the goals estab-
22 lished under section 185; and

23 (3) the potential for the applicant to success-
24 fully complete the project.

25 (c) RISK.—

1 (1) EXPECTED LOAN LOSS RESERVE.—The Ad-
2 ministrator of the Administration shall establish an
3 expected loan loss reserve to account for estimated
4 losses attributable to activities under this section
5 that is consistent with the purposes of—

6 (A) developing breakthrough technologies
7 to the point at which technology risk is largely
8 mitigated;

9 (B) achieving widespread deployment and
10 advancing the commercial viability of clean en-
11 ergy technologies; and

12 (C) advancing the goals established under
13 section 185.

14 (2) INITIAL EXPECTED LOAN LOSS RESERVE.—
15 Until such time as the Administrator of the Admin-
16 istration determines sufficient data exist to establish
17 an expected loan loss reserve that is appropriate, the
18 Administrator of the Administration shall consider
19 establishing an initial rate of 10 percent for the
20 portfolio of investments under this subtitle.

21 (3) PORTFOLIO INVESTMENT APPROACH.—The
22 Administration shall—

23 (A) use a portfolio investment approach to
24 mitigate risk and diversify investments across
25 technologies and ensure that no particular tech-

1 nology is provided more than 30 percent of the
2 financial support available;

3 (B) to the maximum extent practicable and
4 consistent with long-term self-sufficiency, weigh
5 the portfolio of investments in projects to ad-
6 vance the goals established under section 185;

7 (C) consistent with the expected loan loss
8 reserve established under this subsection, the
9 purpose stated in section 182, and section
10 186(b)(2)(B), provide the maximum practicable
11 percentage of support to promote breakthrough
12 technologies; and

13 (D) give the highest priority to investments
14 that promote technologies that will achieve the
15 maximum greenhouse gas emission reductions
16 within a reasonable period of time per dollar in-
17 vested and the earliest reductions in greenhouse
18 gas emissions.

19 (4) LOSS RATE REVIEW.—

20 (A) IN GENERAL.—The Board of Directors
21 shall review on an annual basis the loss rates
22 of the portfolio to determine the adequacy of
23 the reserves.

24 (B) REPORT.—Not later than 90 days
25 after the date of the initiation of the review, the

1 Administrator of the Administration shall sub-
2 mit to the Committee on Energy and Natural
3 Resources and the Committee on Finance of the
4 Senate, and the Committee on Energy and
5 Commerce and the Committee on Ways and
6 Means of the House of Representatives a report
7 describing the results of the review and any rec-
8 ommended policy changes.

9 (5) FEDERAL COST SHARE.—Direct loans, let-
10 ters of credit and loan guarantees by the Adminis-
11 tration shall not exceed an amount equal to 80 per-
12 cent of the project cost of the facility that is the
13 subject of the loan, letter of credit or loan guar-
14 antee, as estimated at the time at which the loan,
15 letter of credit or loan guarantee is issued.

16 (d) APPLICATION REVIEW.—

17 (1) IN GENERAL.—To the maximum extent
18 practicable and consistent with sound business prac-
19 tices, the Administration shall seek to consolidate re-
20 views of applications for credit support under this
21 subtitle such that final decisions on applications can
22 generally be issued not later than 180 days after the
23 date of submission of a completed application.

1 (2) ENVIRONMENTAL REVIEW.—In carrying out
2 this subtitle, the Administration shall, to the maximum extent practicable—
3

4 (A) avoid duplicating efforts that have already been undertaken by other agencies (including State agencies acting under Federal programs); and
5
6

7
8 (B) with the advice of the Council on Environmental Quality and any other applicable agencies, use the administrative records of similar reviews conducted throughout the executive branch to develop the most expeditious review process practicable.
9
10
11
12
13

14 (e) WAGE RATE REQUIREMENTS.—

15 (1) IN GENERAL.—No credit support shall be
16 issued under this section unless the borrower has
17 provided to the Administrator of the Administration
18 reasonable assurances that all laborers and mechanics employed by contractors and subcontractors in
19 the performance of construction work financed in
20 whole or in part by the Administration will be paid
21 wages at rates not less than those prevailing on
22 projects of a character similar to the contract work
23 in the civil subdivision of the State in which the contract work is to be performed as determined by the
24
25

1 Secretary of Labor in accordance with subchapter
2 IV of chapter 31 of part A of subtitle II of title 40,
3 United States Code.

4 (2) LABOR STANDARDS.—With respect to the
5 labor standards specified in this subsection, the Sec-
6 retary of Labor shall have the authority and func-
7 tions set forth in Reorganization Plan Numbered 14
8 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section
9 3145 of title 40, United States Code.

10 (f) LIMITATIONS.—(1) The Administration shall not
11 provide direct support as defined under this section or in-
12 direct support as defined under section 188 to an indi-
13 vidual clean energy technology project that obtained a loan
14 guarantee under title XVII of the Energy Policy Act of
15 2005.

16 (2) No direct or indirect support provided by the Ad-
17 ministration may be used to pay any part of the cost of
18 an obligation or a loan guarantee under Title XVII of the
19 Energy Policy Act of 2005.

20 **SEC. 188. INDIRECT SUPPORT.**

21 (a) IN GENERAL.—For the purpose of enhancing the
22 availability of private financing for clean energy tech-
23 nology deployment, the Administration may—

24 (1) provide credit support to portfolios of tax-
25 able debt obligations originated by state, local, and

1 private sector entities that enable owners and users
2 of buildings and industrial facilities to—

3 (A) significantly increase the energy effi-
4 ciency of such buildings or facilities; or

5 (B) install systems that individually gen-
6 erate electricity from renewable energy re-
7 sources and have a capacity of no more than 2
8 megawatts;

9 (2) facilitate financing transactions in tax eq-
10 uity markets and long-term purchasing of clean en-
11 ergy by state, local, and non-governmental not-for-
12 profit entities, to the degree and extent that the Ad-
13 ministration determines such financing activity is
14 appropriate and consistent with carrying out the
15 purposes described in Section 182 of this Act; and

16 (3) provide credit support to portfolios of tax-
17 able debt obligations originated by state, local, and
18 private sector entities that enable the deployment of
19 energy storage applications for electric drive vehi-
20 cles, stationary applications, and electricity trans-
21 mission and distribution.

22 (b) DEFINITIONS.—For purposes of the section:

23 (1) CREDIT SUPPORT.—The term “credit sup-
24 port” means—

1 (A) direct loans, letters of credit, loan
2 guarantees, and insurance products; and

3 (B) the purchase or commitment to pur-
4 chase, or the sale or commitment to sell, debt
5 instruments (including subordinated securities).

6 (2) RENEWABLE ENERGY RESOURCE.—The
7 term “renewable energy resource” shall have the
8 meaning given that term in section 610 of the Public
9 Utility Regulatory Policies Act of 1978 (as added by
10 section 101 of this Act).

11 (c) TRANSPARENCY.—The Administration shall seek
12 to foster through its credit support activities—

13 (1) the development and consistent application
14 of standard contractual terms, transparent under-
15 writing standards and consistent measurement and
16 verification protocols, as applicable; and

17 (2) the creation of performance data that pro-
18 motes effective underwriting and risk management
19 to support lending markets and stimulate the devel-
20 opment of private investment markets.

21 (d) EXEMPT SECURITIES.—All securities insured or
22 guaranteed by the Administration shall, to the same ex-
23 tent as securities that are direct obligations of or obliga-
24 tions guaranteed as to the principal or interest by the
25 United States, be considered to be exempt securities with-

1 in the meaning of the laws administered by the Securities
2 and Exchange Commission.

3 **SEC. 189. FEDERAL CREDIT AUTHORITY.**

4 (a) PAYMENTS OF LIABILITIES.—

5 (1) IN GENERAL.—Any payment made to dis-
6 charge liabilities arising from agreements under this
7 subtitle shall be paid exclusively out of the Fund or
8 the associated credit account, as appropriate.

9 (2) SECURITY.—Subject to paragraph (1), the
10 full faith and credit of the United States is pledged
11 to the payment of all obligations entered into by the
12 Administration pursuant to this subtitle.

13 (b) FEES.—

14 (1) IN GENERAL.—Consistent with achieving
15 the purpose stated in section 182, the Administrator
16 of the Administration shall charge fees or collect
17 compensation generally in accordance with commer-
18 cial rates.

19 (2) AVAILABILITY OF FEES.—All fees collected
20 by the Administration may be retained by the Ad-
21 ministration and placed in the Fund and may re-
22 main available to the Administration, without fur-
23 ther appropriation or fiscal year limitation, for use
24 in carrying out the purpose stated in section 182.

1 (3) BREAKTHROUGH TECHNOLOGIES.—The Ad-
2 ministration shall charge the minimum amount in
3 fees or compensation practicable for breakthrough
4 technologies, consistent with the long-term viability
5 of the Administration, unless the Administration
6 first determines that a higher charge will not impede
7 the development of the technology.

8 (4) ALTERNATIVE FEE ARRANGEMENTS.—The
9 Administration may use such alternative arrange-
10 ments (such as profit participation, contingent fees,
11 and other valuable contingent interests) as the Ad-
12 ministration considers appropriate to compensate the
13 Administration for the expenses of the Administra-
14 tion and the risk inherent in the support of the Ad-
15 ministration.

16 (c) COST TRANSFER AUTHORITY.—Amounts col-
17 lected by the Administration for the cost of a loan or loan
18 guarantee shall be transferred by the Administration to
19 the respective credit accounts.

20 **SEC. 190. GENERAL PROVISIONS.**

21 (a) IMMUNITY FROM IMPAIRMENT, LIMITATION, OR
22 RESTRICTION.—

23 (1) IN GENERAL.—All rights and remedies of
24 the Administration (including any rights and rem-
25 edies of the Administration on, under, or with re-

1 spect to any mortgage or any obligation secured by
2 a mortgage) shall be immune from impairment, limi-
3 tation, or restriction by or under—

4 (A) any law (other than a law enacted by
5 Congress expressly in limitation of this para-
6 graph) that becomes effective after the acquisi-
7 tion by the Administration of the subject or
8 property on, under, or with respect to which the
9 right or remedy arises or exists or would so
10 arise or exist in the absence of the law; or

11 (B) any administrative or other action that
12 becomes effective after the acquisition.

13 (2) STATE LAW.—The Administrator of the Ad-
14 ministration may conduct the business of the Ad-
15 ministration without regard to any qualification or
16 law of any State relating to incorporation.

17 (b) USE OF OTHER AGENCIES.—With the consent of
18 a department, establishment, or instrumentality (including
19 any field office), the Administration may—

20 (1) use and act through any department, estab-
21 lishment, or instrumentality; and

22 (2) use, and pay compensation for, information,
23 services, facilities, and personnel of the department,
24 establishment, or instrumentality.

25 (c) FINANCIAL MATTERS.—

1 (1) INVESTMENTS.—Funds of the Administra-
2 tion may be invested in such investments as the
3 Board of Directors may prescribe. Earnings from
4 such funds, other than fees collected under section
5 189, may be spent by the Administration only to
6 such extent or in such amounts as are provided in
7 advance by appropriation Acts.

8 (2) FISCAL AGENTS.—Any Federal Reserve
9 bank or any bank as to which at the time of the des-
10 ignation of the bank by the Administrator of the Ad-
11 ministration there is outstanding a designation by
12 the Secretary of the Treasury as a general or other
13 depository of public money, may be designated by
14 the Administrator of the Administration as a deposi-
15 tary or custodian or as a fiscal or other agent of the
16 Administration.

17 (d) PERIODIC REPORTS.—Not later than 1 year after
18 commencement of operation of the Administration and at
19 least biannually thereafter, the Administrator of the Ad-
20 ministration shall submit to the Committee on Energy and
21 Natural Resources and the Committee on Finance of the
22 Senate and the Committee on Energy and Commerce and
23 the Committee on Ways and Means of the House of Rep-
24 resentatives a report that includes a description of—

1 (1) the technologies supported by activities of
2 the Administration and how the activities advance
3 the purpose stated in section 182; and

4 (2) the performance of the Administration on
5 meeting the goals established under section 185.

6 (g) AUDITS BY THE COMPTROLLER GENERAL.—

7 (1) IN GENERAL.—The programs, activities, re-
8 ceipts, expenditures, and financial transactions of
9 the Administration shall be subject to audit by the
10 Comptroller General of the United States under
11 such rules and regulations as may be prescribed by
12 the Comptroller General.

13 (2) ACCESS.—The representatives of the Gov-
14 ernment Accountability Office shall—

15 (A) have access to the personnel and to all
16 books, accounts, documents, records (including
17 electronic records), reports, files, and all other
18 papers, automated data, things, or property be-
19 longing to, under the control of, or in use by
20 the Administration, or any agent, representa-
21 tive, attorney, advisor, or consultant retained by
22 the Administration, and necessary to facilitate
23 the audit;

1 (B) be afforded full facilities for verifying
2 transactions with the balances or securities held
3 by depositories, fiscal agents, and custodians;

4 (C) be authorized to obtain and duplicate
5 any such books, accounts, documents, records,
6 working papers, automated data and files, or
7 other information relevant to the audit without
8 cost to the Comptroller General; and

9 (D) have the right of access of the Comp-
10 troller General to such information pursuant to
11 section 716(e) of title 31, United States Code.

12 (3) ASSISTANCE AND COST.—

13 (A) IN GENERAL.—For the purpose of con-
14 ducting an audit under this subsection, the
15 Comptroller General may, in the discretion of
16 the Comptroller General, employ by contract,
17 without regard to section 3709 of the Revised
18 Statutes (41 U.S.C. 5), professional services of
19 firms and organizations of certified public ac-
20 countants for temporary periods or for special
21 purposes.

22 (B) REIMBURSEMENT.—

23 (i) IN GENERAL.—On the request of
24 the Comptroller General, the Administra-
25 tion shall reimburse the Government Ac-

1 countability Office for the full cost of any
2 audit conducted by the Comptroller Gen-
3 eral under this subsection.

4 (ii) CREDITING.—Such reimburse-
5 ments shall—

6 (I) be credited to the appropria-
7 tion account entitled “Salaries and
8 Expenses, Government Accountability
9 Office” at the time at which the pay-
10 ment is received; and

11 (II) remain available until ex-
12 pended.

13 (h) ANNUAL INDEPENDENT AUDITS.—

14 (1) IN GENERAL.—The Administrator of the
15 Administration shall—

16 (A) have an annual independent audit
17 made of the financial statements of the Admin-
18 istration by an independent public accountant
19 in accordance with generally accepted auditing
20 standards; and

21 (B) submit to the Secretary and to the
22 Committee on Energy and Natural Resources
23 and the Committee on Finance of the Senate
24 and the Committee on Energy and Commerce

1 and the Committee on Ways and Means of the
2 House the results of the audit.

3 (2) CONTENT.—In conducting an audit under
4 this subsection, the independent public accountant
5 shall determine and report on whether the financial
6 statements of the Administration—

7 (A) are presented fairly in accordance with
8 generally accepted accounting principles; and

9 (B) comply with any disclosure require-
10 ments imposed under this subtitle.

11 (i) FINANCIAL REPORTS.—

12 (1) IN GENERAL.—The Administrator of the
13 Administration shall submit to the Secretary and to
14 the Committee on Energy and Natural Resources
15 and the Committee on Finance of the Senate and
16 the Committee on Energy and Commerce and the
17 Committee on Ways and Means of the House annual
18 and quarterly reports of the financial condition and
19 operations of the Administration, which shall be in
20 such form, contain such information, and be sub-
21 mitted on such dates as the Secretary shall require.

22 (2) CONTENTS OF ANNUAL REPORTS.—Each
23 annual report shall include—

1 (A) financial statements prepared in ac-
2 cordance with generally accepted accounting
3 principles;

4 (B) any supplemental information or alter-
5 native presentation that the Secretary may re-
6 quire; and

7 (C) an assessment (as of the end of the
8 most recent fiscal year of the Administration),
9 signed by the chief executive officer and chief
10 accounting or financial officer of the Adminis-
11 tration, of—

12 (i) the effectiveness of the internal
13 control structure and procedures of the
14 Administration; and

15 (ii) the compliance of the Administra-
16 tion with applicable safety and soundness
17 laws.

18 (3) SPECIAL REPORTS.—The Secretary may re-
19 quire the Administrator of the Administration to
20 submit other reports on the condition (including fi-
21 nancial condition), management, activities, or oper-
22 ations of the Administration, as the Secretary con-
23 siders appropriate.

24 (4) ACCURACY.—Each report of financial condi-
25 tion shall contain a declaration by the Administrator

1 of the Administration or any other officer designated
2 by the Board of Directors of the Administration to
3 make the declaration, that the report is true and
4 correct to the best of the knowledge and belief of the
5 officer.

6 (5) AVAILABILITY OF REPORTS.—Reports re-
7 quired under this section shall be published and
8 made publicly available as soon as is practicable
9 after receipt by the Secretary.

10 (j) SPENDING SAFEGUARDS AND REPORTING.—

11 (1) IN GENERAL.—The Administrator—

12 (A) shall require any entity receiving fi-
13 nancing support from the Administration to re-
14 port quarterly, in a format specified by the Ad-
15 ministrator, on such entity's use of such sup-
16 port and its progress fulfilling the objectives for
17 which such support was granted, and the Ad-
18 ministrator shall make these reports available
19 to the public;

20 (B) may establish additional reporting and
21 information requirements for any recipient of fi-
22 nancing support from the Administration;

23 (C) shall establish appropriate mechanisms
24 to ensure appropriate use and compliance with

1 all terms of any financing support from the Ad-
2 ministration;

3 (D) shall create and maintain a fully
4 searchable database, accessible on the Internet
5 (or successor protocol) at no cost to the public,
6 that contains at least—

7 (i) a list of each entity that has ap-
8 plied for financing support;

9 (ii) a description of each application;

10 (iii) the status of each such applica-
11 tion;

12 (iv) the name of each entity receiving
13 financing support;

14 (v) the purpose for which such entity
15 is receiving such financing support;

16 (vi) each quarterly report submitted
17 by the entity pursuant to this section; and

18 (vii) such other information sufficient
19 to allow the public to understand and mon-
20 itor the financial support provided by the
21 Administration;

22 (E) shall make all financing transactions
23 available for public inspection, including formal
24 annual reviews by both a private auditor and
25 the Comptroller General; and

1 (F) shall at all times be available to receive
2 public comment in writing on the activities of
3 the Administration.

4 (2) PROTECTION OF CONFIDENTIAL BUSINESS
5 INFORMATION.—To the extent necessary and appro-
6 priate, the Administrator may redact any informa-
7 tion regarding applicants and borrowers to protect
8 confidential business information.

9 **SEC. 191. CONFORMING AMENDMENTS.**

10 (a) TAX EXEMPT STATUS.—Subsection (l) of section
11 501 of the Internal Revenue Code of 1986 is amended by
12 adding at the end the following:

13 “(4) The Clean Energy Deployment Adminis-
14 tration established under section 9801 of title 31,
15 United States Code.”.

16 (b) WHOLLY OWNED GOVERNMENT CORPORA-
17 TION.—Paragraph (3) of section 9101 of title 31, United
18 States Code, is amended by adding at the end the fol-
19 lowing:

20 “(S) the Clean Energy Deployment Adminis-
21 tration.”.

1 **Subtitle J—Miscellaneous**

2 **SEC. 195. INCREASED HYDROELECTRIC GENERATION AT** 3 **EXISTING FEDERAL FACILITIES.**

4 (a) **IN GENERAL.**—The Secretary of the Interior, the
5 Secretary of Energy, and the Secretary of the Army shall
6 jointly update the study of the potential for increasing
7 electric power production capability at federally owned or
8 operated water regulation, storage, and conveyance facili-
9 ties required in section 1834 of the Energy Policy Act of
10 2005.

11 (b) **CONTENT.**—The update under this section shall
12 include identification and description in detail of each fa-
13 cility that is capable, with or without modification, of pro-
14 ducing additional hydroelectric power, including esti-
15 mation of the existing potential for the facility to generate
16 hydroelectric power.

17 (c) **REPORT.**—The Secretaries shall submit to the
18 Committees on Energy and Commerce, Natural Re-
19 sources, and Transportation and Infrastructure of the
20 House of Representatives and the Committee on Energy
21 and Natural Resources of the Senate a report on the find-
22 ings, conclusions, and recommendations of the update of
23 the study under this section by not later than 12 months
24 after the date of enactment of this Act. The report shall
25 include each of the following:

1 (1) The identifications, descriptions, and esti-
2 mations referred to in subsection (b).

3 (2) A description of activities currently con-
4 ducted or considered, or that could be considered, to
5 produce additional hydroelectric power from each
6 identified facility.

7 (3) A summary of prior actions taken by the
8 Secretaries to produce additional hydroelectric power
9 from each identified facility.

10 (4) The costs to install, upgrade, or modify
11 equipment or take other actions to produce addi-
12 tional hydroelectric power from each identified facil-
13 ity, and the level of Federal power customer involve-
14 ment in the determination of such costs.

15 (5) The benefits that would be achieved by such
16 installation, upgrade, modification, or other action,
17 including quantified estimates of any additional en-
18 ergy or capacity from each facility identified under
19 subsection (b).

20 (6) A description of actions that are planned,
21 underway, or might reasonably be considered to in-
22 crease hydroelectric power production by replacing
23 turbine runners, by performing generator upgrades
24 or rewinds, or by construction of pumped storage fa-
25 cilities.

1 (7) The impact of increased hydroelectric power
2 production on irrigation, water supply, fish, wildlife,
3 Indian tribes, river health, water quality, navigation,
4 recreation, fishing, and flood control.

5 (8) Any additional recommendations to increase
6 hydroelectric power production from, and reduce
7 costs and improve efficiency at, federally owned or
8 operated water regulation, storage, and conveyance
9 facilities.

10 **SEC. 196. CLEAN TECHNOLOGY BUSINESS COMPETITION**

11 **GRANT PROGRAM.**

12 (a) IN GENERAL.—The Secretary of Energy is au-
13 thorized to provide grants to organizations to conduct
14 business competitions that provide incentives, training,
15 and mentorship to entrepreneurs and early stage start-up
16 companies throughout the United States to meet high pri-
17 ority economic, environmental, and energy security goals
18 in areas to include energy efficiency, renewable energy, air
19 quality, water quality and conservation, transportation,
20 smart grid, green building, and waste management. Such
21 competitions shall have the purpose of accelerating the de-
22 velopment and deployment of clean technology businesses
23 and green jobs; stimulating green economic development;
24 providing business training and mentoring to early stage
25 clean technology companies; and strengthening the com-

1 petitivity of United States clean technology industry in
2 world trade markets. Priority shall be given to business
3 competitions that are private sector led, encourage re-
4 gional and interregional cooperation, and can demonstrate
5 market-driven practices and show the creation of cost-ef-
6 fective green jobs through an annual publication of com-
7 petition activities and directory of companies.

8 (b) ELIGIBILITY.—An organization eligible for a
9 grant under subsection (a) is—

10 (1) any organization described in section
11 501(c)(3) of the Internal Revenue Code of 1986 and
12 exempt from tax under section 501(a) of such Code;
13 and

14 (2) any sponsored entity of an organization de-
15 scribed in paragraph (1) that is operated as a non-
16 profit entity.

17 (c) PRIORITY.—In making grants under this section,
18 the Secretary shall give priority to those organizations
19 that can demonstrate broad funding support from private
20 and other non-Federal funding sources to leverage Federal
21 investment.

22 (d) AUTHORIZATION OF APPROPRIATIONS.—For the
23 purpose of carrying out this section, there are authorized
24 to be appropriated \$20,000,000.

1 **SEC. 197. NATIONAL BIOENERGY PARTNERSHIP.**

2 (a) IN GENERAL.—The Secretary of Energy shall es-
3 tablish a National Bioenergy Partnership to provide co-
4 ordination among programs of State governments, the
5 Federal Government, and the private sector that support
6 the institutional and physical infrastructure necessary to
7 promote the deployment of sustainable biomass fuels and
8 bioenergy technologies for the United States.

9 (b) PROGRAM.—The National Bioenergy Partnership
10 shall consist of five regions, to be administered by the
11 CONEG Policy Research Center, the Council of Great
12 Lakes Governors, the Southern States Energy Board, the
13 Western Governors Association, and the Pacific Regional
14 Biomass Energy Partnership led by the Washington State
15 University Energy Program.

16 (c) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated for each of fiscal years
18 2010 through 2014 to carry out this section—

19 (1) \$5,000,000, to be allocated among the 5 re-
20 gions described in subsection (b) on the basis of the
21 number of States in each region, for distribution
22 among the member States of that region based on
23 procedures developed by the member States of the
24 region; and

25 (2) \$2,500,000, to be allocated equally among
26 the 5 regions described in subsection (b) for region-

1 wide activities, including technical assistance and re-
2 gional studies and coordination.

3 **SEC. 198. OFFICE OF CONSUMER ADVOCACY.**

4 Section 319 of the Federal Power Act is amended to
5 read as follows:

6 **“SEC. 319. OFFICE OF CONSUMER ADVOCACY.**

7 “(a) OFFICE.—

8 “(1) ESTABLISHMENT.—There is established
9 within the Commission an Office of Consumer Advoca-
10 cy to serve as an advocate for the public interest.
11 The Office of Administrative Litigation within the
12 Commission shall be incorporated into the Office of
13 Consumer Advocacy.

14 “(2) DIRECTOR.—The Office shall be headed by
15 a Director to be appointed by the President by and
16 with the advice and consent of the Senate from
17 among individuals who are licensed attorneys admit-
18 ted to the Bar of any State or of the District of Co-
19 lumbia and who have experience in public utility pro-
20 ceedings.

21 “(3) DUTIES.—The Office may—

22 “(A) represent the interests of energy cus-
23 tomers—

24 “(i) on matters before the Commission
25 concerning rates or service of public utili-

1 ties and natural gas companies under the
2 jurisdiction of the Commission;

3 “(ii) as amicus curiae, in the review in
4 the courts of the United States of rulings
5 by the Commission in such matters; and

6 “(iii) as amicus, in hearings and pro-
7 ceedings in other Federal regulatory agen-
8 cies and commissions related to such mat-
9 ters;

10 “(B) monitor and review energy customer
11 complaints and grievances on matters con-
12 cerning rates or service of public utilities and
13 natural gas companies under the jurisdiction of
14 the Commission;

15 “(C) investigate independently, or within
16 the context of formal proceedings, the services
17 provided by, the rates charged by, and the valu-
18 ation of the properties of, public utilities and
19 natural gas companies under the jurisdiction of
20 the Commission;

21 “(D) develop means, such as public dis-
22 semination of information, consultative services,
23 and technical assistance, to ensure, to the max-
24 imum extent practicable, that the interests of
25 energy consumers are adequately represented in

1 the course of any hearing or proceeding de-
2 scribed in subparagraph (A);

3 “(E) collect data concerning rates or serv-
4 ice of public utilities and natural gas companies
5 under the jurisdiction of the Commission; and

6 “(F) prepare and issue reports and rec-
7 ommendations.

8 “(4) COMPENSATION AND POWERS.—The Di-
9 rector shall be compensated at Level IV of the Exec-
10 utive Schedule. The Director may—

11 “(A) employ not more than 25 full-time
12 professional employees at appropriate levels in
13 the GS Scale and such additional support per-
14 sonnel as required; and

15 “(B) procure temporary and intermittent
16 services as needed.

17 “(5) INFORMATION FROM OTHER FEDERAL
18 AGENCIES.—The Director may request, from any de-
19 partment, agency, or instrumentality of the United
20 States such information as he deems necessary to
21 carry out his functions under this section. Upon
22 such request, the head of the department, agency, or
23 instrumentality concerned shall, to the extent prac-
24 ticable and authorized by law, provide such informa-
25 tion to the Office.

1 “(b) CONSUMER ADVOCACY ADVISORY COM-
2 MITTEE.—

3 “(1) ESTABLISHMENT.—The Director shall es-
4 tablish an advisory committee to be known as Con-
5 sumer Advocacy Advisory Committee (in this section
6 referred to as the ‘Advisory Committee’) to review
7 rates, services, and disputes and to make rec-
8 ommendations to the Director.

9 “(2) COMPOSITION.—The Director shall ap-
10 point 5 members to the Advisory Committee includ-
11 ing—

12 “(A) 2 individuals representing State util-
13 ity consumer advocates; and

14 “(B) 1 individual, from a nongovernmental
15 organization representing consumers.

16 “(3) MEETINGS.—The Advisory Committee
17 shall meet at such frequency as may be required to
18 carry out its duties.

19 “(4) REPORTS.—The Director shall provide for
20 the publication of recommendations of the Advisory
21 Committee on the public website established for the
22 Office.

23 “(5) DURATION.—Notwithstanding any other
24 provision of law, the Advisory Committee shall con-

1 tinue in operation during the period for which the
2 Office exists.

3 “(c) DEFINITIONS.—

4 “(1) ENERGY CUSTOMER.—The term ‘energy
5 customer’ means a residential customer or a small
6 commercial customer that receives products or serv-
7 ices directly or indirectly from a public utility or
8 natural gas company under the jurisdiction of the
9 Commission.

10 “(2) NATURAL GAS COMPANY.—The term ‘nat-
11 ural gas company’ has the meaning given the term
12 in section 2 of the Natural Gas Act (15 U.S.C.
13 717a), as modified by section 601(a) of the Natural
14 Gas Policy Act of 1978 (15 U.S.C. 3431(a)).

15 “(3) OFFICE.—The term ‘Office’ means the Of-
16 fice of Consumer Advocacy established under this
17 section.

18 “(4) PUBLIC UTILITY.—The term ‘public util-
19 ity’ has the meaning given the term in section
20 201(e) of this Act.

21 “(5) SMALL COMMERCIAL CUSTOMER.—The
22 term ‘small commercial customer’ means a commer-
23 cial customer that has a peak demand of not more
24 than 1,000 kilowatts per hour.

1 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as necessary
3 to carry out this section.

4 “(e) SAVINGS CLAUSE.—Nothing in this section af-
5 fects the rights or obligations of any State utility con-
6 sumer advocate.”.

7 **TITLE II—ENERGY EFFICIENCY**
8 **Subtitle A—Building Energy**
9 **Efficiency Programs**

10 **SEC. 201. GREATER ENERGY EFFICIENCY IN BUILDING**
11 **CODES.**

12 Section 304 of the Energy Conservation and Produc-
13 tion Act (42 U.S.C. 6833) is amended to read as follows:

14 **“SEC. 304. GREATER ENERGY EFFICIENCY IN BUILDING**
15 **CODES.**

16 “(a) ENERGY EFFICIENCY TARGETS.—

17 “(1) IN GENERAL.—Except as provided in para-
18 graph (2) or (3), the national building code energy
19 efficiency target for the national average percentage
20 improvement of a building’s energy performance
21 when built to a code meeting the target shall be—

22 “(A) effective on the date of enactment of
23 the American Clean Energy and Security Act of
24 2009, 30 percent reduction in energy use rel-

1 ative to a comparable building constructed in
2 compliance with the baseline code;

3 “(B) effective January 1, 2014, for resi-
4 dential buildings, and January 1, 2015, for
5 commercial buildings, 50 percent reduction in
6 energy use relative to the baseline code; and

7 “(C) effective January 1, 2017, for resi-
8 dential buildings, and January 1, 2018, for
9 commercial buildings, and every 3 years there-
10 after, respectively, through January 1, 2029,
11 and January 1, 2030, 5 percent additional re-
12 duction in energy use relative to the baseline
13 code.

14 “(2) CONSENSUS-BASED CODES.—If on any ef-
15 fective date specified in paragraph (1)(A), (B), or
16 (C) a successor code to the baseline codes provides
17 for greater reduction in energy use than is required
18 under paragraph (1), the overall percentage reduc-
19 tion in energy use provided by that successor code
20 shall be the national building code energy efficiency
21 target.

22 “(3) TARGETS ESTABLISHED BY SECRETARY.—
23 The Secretary may by rule establish a national
24 building code energy efficiency target for residential
25 or commercial buildings achieving greater reductions

1 in energy use than the targets prescribed in para-
2 graph (1) or (2) if the Secretary determines that
3 such greater reductions in energy use can be
4 achieved with a code that is life cycle cost-justified
5 and technically feasible. The Secretary may by rule
6 establish a national building code energy efficiency
7 target for residential or commercial buildings achiev-
8 ing a reduction in energy use that is greater than
9 zero but less than the targets prescribed in para-
10 graph (1) or (2) if the Secretary determines that
11 such lesser target is the maximum reduction in en-
12 ergy use that can be achieved through a code that
13 is life cycle cost-justified and technically feasible.

14 “(4) ADDITIONAL REDUCTIONS IN ENERGY
15 USE.—Effective on January 1, 2033, and once every
16 3 years thereafter, the Secretary shall determine,
17 after notice and opportunity for comment, whether
18 further energy efficiency building code improvements
19 for residential or commercial buildings, respectively,
20 are life cycle cost-justified and technically feasible,
21 and shall establish updated national building code
22 energy efficiency targets that meet such criteria.

23 “(5) ZERO-NET-ENERGY BUILDINGS.—In set-
24 ting targets under this subsection, the Secretary
25 shall consider ways to support the deployment of

1 distributed renewable energy technology, and shall
2 seek to achieve the goal of zero-net-energy commer-
3 cial buildings established in section 422 of the En-
4 ergy Independence and Security Act of 2007 (42
5 U.S.C. 17082).

6 “(6) BASELINE CODE.—For purposes of this
7 section, the term ‘baseline code’ means—

8 “(A) for residential buildings, the 2006
9 International Energy Conservation Code
10 (IECC) published by the International Code
11 Council (ICC); and

12 “(B) for commercial buildings, the code
13 published in ASHRAE Standard 90.1-2004.

14 “(7) CONSULTATION.—In establishing the tar-
15 gets required by this section, the Secretary shall
16 consult with the Director of the National Institute of
17 Standards and Technology.

18 “(b) NATIONAL ENERGY EFFICIENCY BUILDING
19 CODES.—

20 “(1) REQUIREMENT.—

21 “(A) IN GENERAL.—There shall be estab-
22 lished national energy efficiency building codes
23 under this subsection, for residential and com-
24 mercial buildings, sufficient to meet each of the
25 national building code energy efficiency targets

1 established under subsection (a), not later than
2 the date that is one year after the deadline for
3 establishment of each such target, except that
4 the national energy efficiency building code es-
5 tablished to meet the target described in sub-
6 section (a)(1)(A) shall be established by not
7 later than 15 months after the effective date of
8 that target.

9 “(B) EXISTING CODE.—If the Secretary
10 finds prior to the date provided in subpara-
11 graph (A) for establishing a national code for
12 any target that one or more energy efficiency
13 building codes published by a recognized devel-
14 oper of national energy codes and standards
15 meet or exceed the established target, the Sec-
16 retary shall select the code that meets the tar-
17 get with the highest efficiency in the most cost-
18 effective manner, and such code shall be the na-
19 tional energy efficiency building code.

20 “(C) REQUIREMENT TO ESTABLISH
21 CODE.—If the Secretary does not make a find-
22 ing under subparagraph (B), the national en-
23 ergy efficiency building code shall be established
24 by rule by the Secretary under paragraph (2).

25 “(2) ESTABLISHMENT BY SECRETARY.—

1 “(A) PROCEDURE.—In order to establish a
2 national energy efficiency building code as re-
3 quired under paragraph (1)(C), the Secretary
4 shall—

5 “(i) not later than six months prior to
6 the effective date for each target, review
7 existing and proposed codes published or
8 under review by recognized developers of
9 national energy codes and standards;

10 “(ii) determine the percentage of en-
11 ergy efficiency improvements that are or
12 would be achieved in such published or
13 proposed code versions relative to the tar-
14 get;

15 “(iii) propose improvements to such
16 published or proposed code versions suffi-
17 cient to meet or exceed the target; and

18 “(iv) unless a finding is made under
19 paragraph (1)(B) with respect to a code
20 published by a recognized developer of na-
21 tional energy codes and standards, adopt a
22 code that meets or exceeds the relevant na-
23 tional building code energy efficiency tar-
24 get by not later than one year after the ef-
25 fective date of each such target, and by not

1 later than 15 months after the target is es-
2 tablished under subsection (a)(1)(A).

3 “(B) CALCULATIONS.—Each national en-
4 ergy efficiency building code established by the
5 Secretary under this paragraph shall be set at
6 the maximum level the Secretary determines is
7 life cycle cost-justified and technically feasible,
8 in accordance with the following:

9 “(i) SAVINGS CALCULATIONS.—Cal-
10 culations of energy savings shall take into
11 account the typical lifetimes of different
12 products, measures, and system configura-
13 tions.

14 “(ii) COST-EFFECTIVENESS CALCULA-
15 TIONS.—Calculations of life cycle cost-ef-
16 fectiveness shall be based on life cycle cost
17 methods and procedures under section 544
18 of the National Energy Conservation Pol-
19 icy Act (42 U.S.C. 8254), but shall incor-
20 porate to the extent feasible externalities
21 such as impacts on climate change and on
22 peak energy demand that are not already
23 incorporated in assumed energy costs.

1 “(C) CONSIDERATIONS.—In developing a
2 national energy efficiency building code under
3 this paragraph, the Secretary shall consider—

4 “(i) for residential national energy ef-
5 ficiency building codes—

6 “(I) residential building stand-
7 ards published or proposed by
8 ASHRAE;

9 “(II) building codes published or
10 proposed by the International Code
11 Council (ICC);

12 “(III) data from the Residential
13 Energy Services Network (RESNET)
14 on compliance measures utilized by
15 consumers to qualify for the residen-
16 tial energy efficiency tax credits estab-
17 lished under the Energy Policy Act of
18 2005;

19 “(IV) data and information from
20 the Department of Energy’s Building
21 America Program;

22 “(V) data and information from
23 the Energy Star New Homes pro-
24 gram;

1 “(VI) data and information from
2 the New Building Institute and simi-
3 lar organizations; and

4 “(VII) standards for practices
5 and materials to achieve cool roofs in
6 residential buildings, taking into con-
7 sideration reduced air conditioning en-
8 ergy use as a function of cool roofs,
9 the potential reduction in global
10 warming from increased solar reflec-
11 tance from buildings, and cool roofs
12 criteria in State and local building
13 codes and in national and local vol-
14 untary programs, without reduction of
15 otherwise applicable ceiling insulation
16 standards; and

17 “(ii) for commercial national energy
18 efficiency building codes—

19 “(I) commercial building stand-
20 ards proposed by ASHRAE;

21 “(II) building codes proposed by
22 the International Code Council (ICC);

23 “(III) the Core Performance Cri-
24 teria published by the New Buildings
25 Institute;

1 “(IV) data and information de-
2 veloped by the Director of the Com-
3 mercial High-Performance Green
4 Building Office of the Department of
5 Energy and any public-private part-
6 nerships established under that Office;

7 “(V) data and information from
8 the Energy Star for Buildings pro-
9 gram;

10 “(VI) data and information from
11 the New Building Institute,
12 RESNET, and similar organizations;
13 and

14 “(VII) standards for practices
15 and materials to achieve cool roofs in
16 commercial buildings, taking into con-
17 sideration reduced air conditioning en-
18 ergy use as a function of cool roofs,
19 the potential reduction in global
20 warming from increased solar reflec-
21 tance from buildings, and cool roofs
22 criteria in State and local building
23 codes and in national and local vol-
24 untary programs, without reduction of

1 otherwise applicable ceiling insulation
2 standards.

3 “(D) CONSULTATION.—In establishing any
4 national energy efficiency building code re-
5 quired by this section, the Secretary shall con-
6 sult with the Director of the National Institute
7 of Standards and Technology.

8 “(3) CONSENSUS STANDARD ASSISTANCE.—(A)
9 To support the development of consensus standards
10 that may provide the basis for national energy effi-
11 ciency building codes, minimize duplication of effort,
12 encourage progress through consensus, and facilitate
13 the development of greater building efficiency, the
14 Secretary shall provide assistance to recognized de-
15 velopers of national energy codes and standards to
16 develop, and where the relevant code has been adopt-
17 ed as the national code, disseminate consensus based
18 energy efficiency building codes as provided in this
19 paragraph.

20 “(B) Upon a finding by the Secretary that a
21 code developed by such a developer meets a target
22 established under subsection (a), the Secretary
23 shall—

1 “(i) send notice of the Secretary’s finding
2 to all duly authorized or appointed State, tribal,
3 and local code agencies; and

4 “(ii) provide sufficient support to such a
5 developer to make the code available on the
6 Internet, or to accomplish distribution of such
7 code to all such State, tribal, and local code
8 agencies at no cost to the State, tribal, and
9 local code agencies.

10 “(C) The Secretary may contract with such a
11 developer and with other organizations with exper-
12 tise on codes to provide training for State, tribal,
13 and local code officials and building inspectors in the
14 implementation and enforcement of such code.

15 “(D) The Secretary may provide grants and
16 other support to such a developer to—

17 “(i) develop appropriate refinements to
18 such code; and

19 “(ii) support analysis of options for im-
20 provements in the code to meet the next sched-
21 uled target.

22 “(4) CODE DEVELOPED BY SECRETARY.—If the
23 Secretary establishes a national energy efficiency
24 building code under paragraph (2), the Secretary
25 shall—

1 “(A) to the extent that such code is based
2 on a prior code developed by a recognized devel-
3 oper of national energy codes and standards,
4 negotiate and provide appropriate compensation
5 to such developer for the use of the code mate-
6 rials that remain in the code established by the
7 Secretary; and

8 “(B) disseminate the national energy effi-
9 ciency building codes to State, tribal, and local
10 code officials, and support training and provide
11 guidance and technical assistance to such offi-
12 cials as appropriate.

13 “(c) STATE ADOPTION OF ENERGY EFFICIENCY
14 BUILDING CODES.—

15 “(1) REQUIREMENT.—Not later than 1 year
16 after a national energy efficiency building code for
17 residential or commercial buildings is established or
18 revised under subsection (b), each State—

19 “(A) shall—

20 “(i) review and update the provisions
21 of its building code regarding energy effi-
22 ciency to meet or exceed the target met in
23 the new national energy efficiency building
24 code, to achieve equivalent or greater en-
25 ergy savings;

1 “(ii) document, where local govern-
2 ments establish building codes, that local
3 governments representing not less than 80
4 percent of the State’s urban population
5 have adopted the new national code, or
6 have adopted local codes that meet or ex-
7 ceed the target met in the new national
8 code to achieve equivalent or greater en-
9 ergy savings; or

10 “(iii) adopt the new national code;

11 and

12 “(B) shall provide a certification to the
13 Secretary demonstrating that energy efficiency
14 building code provisions that apply pursuant to
15 subparagraph (A) in that State meet or exceed
16 the target met by the new national code, to
17 achieve equivalent or greater energy savings.

18 “(2) CONFIRMATION.—

19 “(A) REQUIREMENT.—Not later than 90
20 days after a State certification is provided
21 under paragraph (1)(B), the Secretary shall de-
22 termine whether the State’s energy efficiency
23 building code provisions meet the requirements
24 of this subsection.

1 “(B) ACCEPTANCE BY SECRETARY.—If the
2 Secretary determines under subparagraph (A)
3 that the State’s energy efficiency building code
4 or codes meet the requirements of this sub-
5 section, the Secretary shall accept the certifi-
6 cation.

7 “(C) DEFICIENCY NOTICE.—If the Sec-
8 retary determines under subparagraph (A) that
9 the State’s building code or codes do not meet
10 the requirements of this subsection, the Sec-
11 retary shall identify the deficiency in meeting
12 the national building code energy efficiency tar-
13 get, and, to the extent possible, indicate areas
14 where further improvement in the State’s code
15 provisions would allow the deficiency to be
16 eliminated.

17 “(D) REVISION OF CODE AND RECERTIFI-
18 CATION.—A State may revise its code or codes
19 and submit a recertification under paragraph
20 (1)(B) to the Secretary at any time.

21 “(3) COMPLIANT CODE.—For the purposes of
22 meeting the target described in subsection (a)(1)(A)
23 for residential buildings, a State that adopts the
24 code represented in California’s Title 24-2009 by the
25 date 27 months after the date of enactment of the

1 American Clean Energy and Security Act of 2009
2 shall be considered to have met the requirements of
3 this subsection for the applicable period.

4 “(d) APPLICATION OF NATIONAL CODE TO STATE
5 AND LOCAL JURISDICTIONS.—

6 “(1) IN GENERAL.—Upon the expiration of 18
7 months after a national energy efficiency building
8 code is established under subsection (b), in any ju-
9 risdiction where the State has not had a certification
10 relating to that code accepted by the Secretary
11 under subsection (c)(2)(B), and the local govern-
12 ment has not had a certification relating to that
13 code accepted by the Secretary under subsection
14 (e)(5), the national energy efficiency building code
15 shall become the applicable energy efficiency build-
16 ing code for such jurisdiction.

17 “(2) CONFLICTS.—In the event of a conflict be-
18 tween a provision of the national energy efficiency
19 building code and a provision of other applicable en-
20 ergy codes, the national energy efficiency building
21 code shall apply. If there is a conflict between a pro-
22 vision of the national energy efficiency building code
23 and a provision of any applicable fire code, life safe-
24 ty code, egress code, or accessibility code, the Sec-
25 retary shall take appropriate actions to resolve such

1 conflict in a manner that does not compromise the
2 objectives of such codes.

3 “(3) STATE LEGISLATIVE ADOPTION.—In a
4 State in which the relevant building energy code is
5 adopted legislatively, the deadline in paragraph (1)
6 shall not be earlier than 1 year after the first day
7 that the legislature meets following establishment of
8 a national energy efficiency building code.

9 “(4) NOTICE OF INTENT TO ENFORCE.—A
10 State or locality that enforces building codes may as-
11 sume responsibility for enforcing the national energy
12 efficiency building code by notifying the Secretary to
13 that effect not later than three months after the
14 date established under paragraph (1).

15 “(5) VIOLATIONS.—Violations of this section
16 shall be defined as follows:

17 “(A) If the building is subject to the re-
18 quirements of a State energy efficiency building
19 code with respect to which a certification has
20 been accepted by the Secretary under sub-
21 section (c)(2)(B) or a local energy efficiency
22 building code with respect to which a certifi-
23 cation has been accepted by the Secretary pur-
24 suant to subsection (e)(5), or the requirements
25 of the national energy efficiency building code

1 in a State where the State or locality has noti-
2 fied the Secretary of its intent to enforce the
3 provisions of the national energy efficiency
4 building code, a violation shall be determined
5 pursuant to the relevant provisions of State or
6 local law.

7 “(B) If the building is subject to the re-
8 quirements of a national energy efficiency build-
9 ing code made applicable under paragraph (1)
10 of this subsection, except as provided in sub-
11 paragraph (A), a violation shall be defined by
12 the Secretary pursuant to subsection (g).

13 “(e) STATE ENFORCEMENT OF ENERGY EFFICIENCY
14 BUILDING CODES.—

15 “(1) IN GENERAL.—Each State, or where appli-
16 cable under State law each local government, shall
17 implement and enforce applicable State or local
18 codes with respect to which a certification was ac-
19 cepted by the Secretary under subsection (c)(2)(B)
20 or paragraph (5) of this subsection, or the national
21 energy efficiency building codes, as provided in this
22 subsection.

23 “(2) STATE CERTIFICATION.—Not later than 2
24 years after the date of a certification under sub-
25 section (c)(1) or the application of a national energy

1 efficiency building code under subsection (d)(1),
2 each State shall certify that it has—

3 “(A) achieved compliance with—

4 “(i) State codes, or, as provided under
5 State law, local codes, with respect to
6 which a certification was accepted by the
7 Secretary under subsection (c)(2)(B); or

8 “(ii) the national energy efficiency
9 building code, as applicable; or

10 “(B) for any certification submitted within
11 7 years after the date of enactment of the
12 American Clean Energy and Security Act of
13 2009, made significant progress toward achiev-
14 ing such compliance.

15 “(3) ACHIEVING COMPLIANCE.—A State shall
16 be considered to achieve compliance with a code de-
17 scribed in paragraph (2)(A) if at least 90 percent of
18 new and substantially renovated building space in
19 that State in the preceding year upon inspection
20 meets the requirements of the code. A certification
21 under paragraph (2) shall include documentation of
22 the rate of compliance based on—

23 “(A) independent inspections of a random
24 sample of the new and substantially renovated

1 buildings covered by the code in the preceding
2 year; or

3 “(B) an alternative method that yields an
4 accurate measure of compliance as determined
5 by the Secretary.

6 “(4) SIGNIFICANT PROGRESS.—A State shall be
7 considered to have made significant progress toward
8 achieving compliance with a code described in para-
9 graph (2)(A) if—

10 “(A) the State has developed a plan, in-
11 cluding for hiring enforcement staff, providing
12 training, providing manuals and checklists, and
13 instituting enforcement programs, designed to
14 achieve full compliance within 5 years after the
15 date of the adoption of the code;

16 “(B) the State is taking significant, timely,
17 and measurable action to implement that plan;

18 “(C) the State has not reduced its expendi-
19 tures for code enforcement; and

20 “(D) at least 50 percent of new and sub-
21 stantially renovated building space in the State
22 in the preceding year upon inspection meets the
23 requirements of the code.

24 “(5) SECRETARY’S DETERMINATION.—Not later
25 than 90 days after a State certification under para-

1 graph (2), the Secretary shall determine whether the
2 State has demonstrated that it has complied with
3 the requirements of this subsection, including accu-
4 rate measurement of compliance, or that it has made
5 significant progress toward compliance. If such de-
6 termination is positive, the Secretary shall accept
7 the certification. If the determination is negative,
8 the Secretary shall identify the areas of deficiency.

9 “(6) OUT OF COMPLIANCE.—

10 “(A) IN GENERAL.—Any State for which
11 the Secretary has not accepted a certification
12 under paragraph (5) by the dates specified in
13 paragraph (2) is out of compliance with this
14 section.

15 “(B) LOCAL COMPLIANCE.—In any State
16 that is out of compliance with this section as
17 provided in subparagraph (A), a local govern-
18 ment may be in compliance with this section by
19 meeting all certification requirements of this
20 subsection.

21 “(C) NONCOMPLIANCE.—Any State that is
22 not in compliance with this section, as provided
23 in subparagraph (A), shall, until the State re-
24 gains such compliance, be ineligible to receive—

1 “(i) emission allowances pursuant to
2 subsection (h)(1);

3 “(ii) Federal funding in excess of that
4 State’s share (calculated according to the
5 allocation formula in section 363 of the
6 Energy Policy and Conservation Act (42
7 U.S.C. 6323)) of \$125,000,000 each year;
8 and

9 “(iii) for—

10 “(I) the first year for which the
11 State is out of compliance, 25 percent
12 of any additional funding or other
13 items of monetary value otherwise
14 provided under the American Clean
15 Energy and Security Act of 2009;

16 “(II) the second year for which
17 the State is out of compliance, 50 per-
18 cent of any additional funding or
19 other items of monetary value other-
20 wise provided under the American
21 Clean Energy and Security Act of
22 2009;

23 “(III) the third year for which
24 the State is out of compliance, 75 per-
25 cent of any additional funding or

1 other items of monetary value other-
2 wise provided under the American
3 Clean Energy and Security Act of
4 2009; and

5 “(IV) the fourth and subsequent
6 years for which the State is out of
7 compliance, 100 percent of any addi-
8 tional funding or other items of mone-
9 tary value otherwise provided under
10 the American Clean Energy and Secu-
11 rity Act of 2009.

12 “(f) FEDERAL ENFORCEMENT AND TRAINING.—
13 Where a State fails and local governments in that State
14 also fail to enforce the applicable State or national energy
15 efficiency building codes, the Secretary shall enforce such
16 codes, as follows:

17 “(1) The Secretary shall establish, by rule,
18 within 2 years after the date of enactment of the
19 American Clean Energy and Security Act of 2009,
20 an energy efficiency building code enforcement capa-
21 bility.

22 “(2) Such enforcement capability shall be de-
23 signed to achieve 90 percent compliance with such
24 code in any State within 1 year after the date of the

1 Secretary's determination that such State is out of
2 compliance with this section.

3 “(3) The Secretary may set and collect reason-
4 able inspection fees to cover the costs of inspections
5 required for such enforcement. Revenue from fees
6 collected shall be available to the Secretary to carry
7 out the requirements of this section upon appropria-
8 tion.

9 “(4) In any jurisdiction to which this subsection
10 applies, the Secretary shall coordinate enforcement
11 of the national energy efficiency building code with
12 State and local code enforcement of other building
13 codes.

14 “(5) In any jurisdiction to which this subsection
15 applies, the Secretary shall enhance compliance by
16 conducting training and education of builders and
17 other professionals in the jurisdiction concerning the
18 national energy efficiency building code.

19 “(6) The Secretary shall coordinate with profes-
20 sional organizations representing code officials, ar-
21 chitects, engineers, builders, and other experts to de-
22 velop training curricula concerning the national en-
23 ergy efficiency building code.

1 “(7) If the Secretary enforces such codes under
2 this subsection, the Secretary may, as appropriate,
3 redefine violations of such codes.

4 “(g) ENFORCEMENT PROCEDURES.—The Secretary
5 shall propose and, not later than three years after the date
6 of enactment of the American Clean Energy and Security
7 Act of 2009, shall define by rule violations of the energy
8 efficiency building codes to be enforced by the Secretary
9 pursuant to this section, and the penalties that shall apply
10 to violators, in any jurisdiction in which the national en-
11 ergy efficiency building code has been made applicable
12 under subsection (d)(1). To the extent that the Secretary
13 determines that the authority to adopt and impose such
14 violations and penalties by rule requires further statutory
15 authority, the Secretary shall report such determination
16 to Congress as soon as such determination is made, but
17 not later than one year after the enactment of the Amer-
18 ican Clean Energy and Security Act of 2009.

19 “(h) FEDERAL SUPPORT.—

20 “(1) ALLOWANCE ALLOCATION FOR STATE
21 COMPLIANCE.—For each vintage year from 2012
22 through 2050, the Administrator shall distribute al-
23 lowances allocated pursuant to section 782(g)(2) of
24 the Clean Air Act to the SEED Account for each

1 State. Such allowances shall be distributed according
2 to a formula established by the Secretary as follows:

3 “(A) One-fifth in an equal amount to each
4 of the 50 States and United States territories.

5 “(B) Two-fifths as a function of the rel-
6 ative energy use in all buildings in each State
7 in the most recent year for which data is avail-
8 able.

9 “(C) Two-fifths based on the number of
10 building construction starts recorded in each
11 State, the number of new building permits ap-
12 plied for in each State, or other relevant avail-
13 able data indicating building activity in each
14 State, in the judgment of the Secretary, for the
15 year prior to the year of the distribution.

16 “(2) ALLOWANCE ALLOCATION TO LOCAL GOV-
17 ERNMENTS.—In the instance that the Secretary cer-
18 tifies that one or more local governments are in com-
19 pliance with this section pursuant to subsection
20 (e)(6)(B), the Administrator shall provide to each
21 such local government the portion of the emission al-
22 lowances that would have been provided to that
23 State as a function of the population of that locality
24 as a proportion of the population of that State as a
25 whole.

1 “(3) UNALLOCATED ALLOWANCES.—To the ex-
2 tent that allowances are not provided to State or
3 local governments for lack of certification in any
4 year, those allowances shall be added to the amount
5 provided to those States and local governments that
6 are certified as eligible in that year.

7 “(4) USE OF ALLOWANCES.—Each State or
8 each local government shall use such emission allow-
9 ances as it receives pursuant to this section exclu-
10 sively for the purposes of this section, including cov-
11 ering a reasonable portion of the costs of the devel-
12 opment, adoption, implementation, and enforcement
13 of a State or local energy efficiency building code
14 that meets the national building code energy effi-
15 ciency targets, or the national energy efficiency
16 building code. In a State where local governments
17 provide substantially all building code enforcement,
18 a minimum of 50 percent of the allowance value re-
19 ceived pursuant to this section shall be distributed to
20 local governments as a function of the relative popu-
21 lations of such localities. In a State where local and
22 State governments share building code enforcement
23 duties, the State and local shares of allowance value
24 required for enforcement shall be allocated in pro-
25 portion to the number of building inspections per-

1 formed by each level of government, and the share
2 for local governments shall be distributed as a func-
3 tion of the relative populations of such localities.
4 States shall further ensure that the allowance value
5 made available pursuant to section 782 of the Clean
6 Air Act and section 132 of the American Clean En-
7 ergy and Security Act of 2009 is provided to the ap-
8 plicable State or local governmental entities as nec-
9 essary to adopt and implement energy efficiency
10 building codes, provide training for inspectors, en-
11 sure compliance, and provide such other functions as
12 necessary. Actions taken by local authorities pursu-
13 ant to this section shall constitute an acceptable use
14 of funds authorized pursuant to the Energy Effi-
15 ciency and Conservation Block Grant program under
16 section 544 of the Energy Independence and Secu-
17 rity Act of 2007 (42 U.S.C. 17154).

18 “(i) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated to the Secretary of En-
20 ergy \$25,000,000, and such additional sums as may be
21 necessary to provide enforcement of a national energy effi-
22 ciency building code, for each of fiscal years 2010 through
23 2020, and such sums thereafter as may be necessary to
24 support the purposes of this section.

1 “(j) ANNUAL REPORTS BY SECRETARY.—The Sec-
2 retary shall annually submit to Congress, and publish in
3 the Federal Register, a report on—

4 “(1) the status of national energy efficiency
5 building codes;

6 “(2) the status of energy efficiency building
7 code adoption and compliance in the States;

8 “(3) the implementation of this section;

9 “(4) the status of Federal enforcement of build-
10 ing codes, including coordination with State and
11 local enforcement, and the extent and resolution of
12 any conflicts between the national energy efficiency
13 building code and other residential and commercial
14 building codes in force in the same jurisdictions; and

15 “(5) impacts of past action under this section,
16 and potential impacts of further action, on lifetime
17 energy use by buildings, including resulting energy
18 and cost savings.”.

19 **SEC. 202. BUILDING RETROFIT PROGRAM.**

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

21 (1) ASSISTED HOUSING.—The term “assisted
22 housing” means those properties receiving project-
23 based assistance pursuant to section 202 of the
24 Housing Act of 1959 (12 U.S.C. 1701q), section
25 811 of the Cranston-Gonzalez National Affordable

1 Housing Act (42 U.S.C. 8013), section 8 of the
2 United States Housing Act of 1937 (42 U.S.C.
3 1437f), or similar programs.

4 (2) NONRESIDENTIAL BUILDING.—The term
5 “nonresidential building” means a building with a
6 primary use or purpose other than residential hous-
7 ing, including any building used for commercial of-
8 fices, schools, academic and other public and private
9 institutions, nonprofit organizations including faith-
10 based organizations, hospitals, hotels, and other non-
11 residential purposes. Such buildings shall include
12 mixed-use properties used for both residential and
13 nonresidential purposes in which more than half of
14 building floor space is nonresidential.

15 (3) PERFORMANCE-BASED BUILDING RETROFIT
16 PROGRAM.—The term “performance-based building
17 retrofit program” means a program that determines
18 building energy efficiency success based on actual
19 measured savings after a retrofit is complete, as evi-
20 denced by energy invoices or evaluation protocols.

21 (4) PRESCRIPTIVE BUILDING RETROFIT PRO-
22 GRAM.—The term “prescriptive building retrofit pro-
23 gram” means a program that projects building ret-
24 rofit energy efficiency success based on the known

1 effectiveness of measures prescribed to be included
2 in a retrofit.

3 (5) PUBLIC HOUSING.—The term “public hous-
4 ing” means properties receiving assistance under
5 section 9 of the United States Housing Act of 1937
6 (42 U.S.C. 1437g).

7 (6) RECOMMISSIONING;
8 RETROCOMMISSIONING.—The terms “recommis-
9 sioning” and “retrocommissioning” have the mean-
10 ing given those terms in section 543(f)(1) of the Na-
11 tional Energy Conservation Policy Act (42 U.S.C.
12 8253(f)(1)).

13 (7) RESIDENTIAL BUILDING.—The term “resi-
14 dential building” means a building whose primary
15 use is residential. Such buildings shall include sin-
16 gle-family homes (both attached and detached),
17 owner-occupied units in larger buildings with their
18 own dedicated space-conditioning systems, apart-
19 ment buildings, multi-unit condominium buildings,
20 public housing, assisted housing, and buildings used
21 for both residential and nonresidential purposes in
22 which more than half of building floor space is resi-
23 dential.

24 (8) STATE ENERGY PROGRAM.—The term
25 “State Energy Program” means the program under

1 part D of title III of the Energy Policy and Con-
2 servation Act (42 U.S.C. 6321 et seq.).

3 (b) ESTABLISHMENT.—The Administrator shall de-
4 velop and implement, in consultation with the Secretary
5 of Energy, standards for a national energy and environ-
6 mental building retrofit policy for single-family and multi-
7 family residences. The Administrator shall develop and
8 implement, in consultation with the Secretary of Energy
9 and the Director of Commercial High-Performance Green
10 Buildings, standards for a national energy and environ-
11 mental building retrofit policy for nonresidential buildings.
12 The programs to implement the residential and nonresi-
13 dential policies based on the standards developed under
14 this section shall together be known as the Retrofit for
15 Energy and Environmental Performance (REEP) pro-
16 gram.

17 (c) PURPOSE.—The purpose of the REEP program
18 is to facilitate the retrofitting of existing buildings across
19 the United States to achieve maximum cost-effective en-
20 ergy efficiency improvements and significant improve-
21 ments in water use and other environmental attributes.

22 (d) FEDERAL ADMINISTRATION.—

23 (1) EXISTING PROGRAMS.—In creating and op-
24 erating the REEP program—

1 (A) the Administrator shall make appro-
2 priate use of existing programs, including the
3 Energy Star program and in particular the En-
4 vironmental Protection Agency Energy Star for
5 Buildings program; and

6 (B) the Secretary of Energy shall make
7 appropriate use of existing programs, including
8 delegating authority to the Director of Commer-
9 cial High-Performance Green Buildings ap-
10 pointed under section 421 of the Energy Inde-
11 pendence and Security Act of 2007 (42 U.S.C.
12 17081), who shall designate and provide fund-
13 ing to support a high-performance green build-
14 ing partnership consortium pursuant to sub-
15 section (f) of such section to support efforts
16 under this section.

17 (2) CONSULTATION AND COORDINATION.—The
18 Administrator and the Secretary of Energy shall
19 consult with and coordinate with the Secretary of
20 Housing and Urban Development in carrying out the
21 REEP program with regard to retrofitting of public
22 housing and assisted housing. As a result of such
23 consultation, the Administrator shall establish stand-
24 ards to ensure that retrofits of public housing and
25 assisted housing funded pursuant to this section are

1 cost-effective, including opportunities to address the
2 potential co-performance of repair and replacement
3 needs that may be supported with other forms of
4 Federal assistance.

5 (3) ASSISTANCE.—The Administrator and the
6 Secretary of Energy shall provide consultation and
7 assistance to State and local agencies for the estab-
8 lishment of revolving loan funds, loan guarantees, or
9 other forms of financial assistance under this sec-
10 tion.

11 (e) STATE AND LOCAL ADMINISTRATION.—

12 (1) DESIGNATION AND DELEGATION.—A State
13 may designate one or more agencies or entities, in-
14 cluding those regulated by the State, to carry out
15 the purposes of this section, but shall designate one
16 entity or individual as the principal point of contact
17 for the Administrator regarding the REEP Pro-
18 gram. The designated State agency, agencies, or en-
19 tities may delegate performance of appropriate ele-
20 ments of the REEP program, upon their request
21 and subject to State law, to counties, municipalities,
22 appropriate public agencies, and other divisions of
23 local government, as well as to entities regulated by
24 the State. In making any such designation or delega-
25 tion, a State shall give priority to entities that ad-

1 minister existing comprehensive retrofit programs,
2 including those under the supervision of State utility
3 regulators. States shall maintain responsibility for
4 meeting the standards and requirements of the
5 REEP program. In any State that elects not to ad-
6 minister the REEP program, a unit of local govern-
7 ment may propose to do so within its jurisdiction,
8 and if the Administrator finds that such local gov-
9 ernment is capable of administering the program,
10 the Administrator may provide allowances to that
11 local government, prorated according to the popu-
12 lation of the local jurisdiction relative to the popu-
13 lation of the State, for purposes of the REEP pro-
14 gram.

15 (2) EMPLOYMENT.—States and local govern-
16 ment entities may administer a REEP program in
17 a manner that authorizes public or regulated inves-
18 tor-owned utilities, building auditors and inspectors,
19 contractors, nonprofit organizations, for-profit com-
20 panies, and other entities to perform audits and ret-
21 rofit services under this section. A State may pro-
22 vide incentives for retrofits without direct participa-
23 tion by the State or its agents, so long as the result-
24 ing savings are measured and verified. A State or
25 local administrator of a REEP program shall seek

1 to ensure that sufficient qualified entities are avail-
2 able to support retrofit activities so that building
3 owners have a competitive choice among qualified
4 auditors, raters, contractors, and providers of serv-
5 ices related to retrofits. Nothing in this section is in-
6 tended to deny the right of a building owner to
7 choose the specific providers of retrofit services to
8 engage for a retrofit project in that owner's building.

9 (3) EQUAL INCENTIVES FOR EQUAL IMPROVE-
10 MENT.—In general, the States should strive to offer
11 the same levels of incentives for retrofits that meet
12 the same efficiency improvement goals, regardless of
13 whether the State, its agency or entity, or the build-
14 ing owner has conducted the retrofit achieving the
15 improvement, provided the improvement is measured
16 and verified.

17 (f) ELEMENTS OF REEP PROGRAM.—The Adminis-
18 trator, in consultation with the Secretary of Energy, shall
19 establish goals, guidelines, practices, and standards for ac-
20 complishing the purpose stated in subsection (e), and shall
21 annually review and, as appropriate, revise such goals,
22 guidelines, practices, and standards. The program under
23 this section shall include the following:

24 (1) Residential Energy Services Network
25 (RESNET) or Building Performance Institute

1 (BPI) analyst certification of residential building en-
2 ergy and environment auditors, inspectors, and rat-
3 ers, or an equivalent certification system as deter-
4 mined by the Administrator.

5 (2) BPI certification or licensing by States of
6 residential building energy and environmental ret-
7 rofit contractors, or an equivalent certification or li-
8 censing system as determined by the Administrator.

9 (3) Provision of BPI, RESNET, or other ap-
10 propriate information on equipment and procedures,
11 as determined by the Administrator, that contractors
12 can use to test the energy and environmental effi-
13 ciency of buildings effectively (such as infrared pho-
14 tography and pressurized testing, and tests for water
15 use and indoor air quality).

16 (4) Provision of clear and effective materials to
17 describe the testing and retrofit processes for typical
18 buildings.

19 (5) Guidelines for offering and managing pre-
20 scriptive building retrofit programs and perform-
21 ance-based building retrofit programs for residential
22 and nonresidential buildings.

23 (6) Guidelines for applying recommissioning
24 and retrocommissioning principles to improve a
25 building's operations and maintenance procedures.

1 (7) A requirement that building retrofits con-
2 ducted pursuant to a REEP program utilize, espe-
3 cially in all air-conditioned buildings, roofing mate-
4 rials with high solar energy reflectance, unless inap-
5 propriate due to green roof management, solar en-
6 ergy production, or for other reasons identified by
7 the Administrator, in order to reduce energy con-
8 sumption within the building, increase the albedo of
9 the building's roof, and decrease the heat island ef-
10 fect in the area of the building, without reduction of
11 otherwise applicable ceiling insulation standards.

12 (8) Determination of energy savings in a per-
13 formance-based building retrofit program through—

14 (A) for residential buildings, comparison of
15 before and after retrofit scores on the Home
16 Energy Rating System (HERS) Index, where
17 the final score is produced by an objective third
18 party;

19 (B) for nonresidential buildings, Environ-
20 mental Protection Agency Portfolio Manager
21 benchmarks; or

22 (C) for either residential or nonresidential
23 buildings, use of an Administrator-approved
24 simulation program by a contractor with the
25 appropriate certification, subject to appropriate

1 software standards and verification of at least
2 15 percent of all work done, or such other per-
3 centage as the Administrator may determine.

4 (9) Guidelines for utilizing the Energy Star
5 Portfolio Manager, the Home Energy Rating System
6 (HERS) rating system, Home Performance with En-
7 ergy Star program approvals, and any other tools
8 associated with the retrofit program.

9 (10) Requirements and guidelines for post-ret-
10 rofit inspection and confirmation of work and energy
11 savings.

12 (11) Detailed descriptions of funding options
13 for the benefit of State and local governments, along
14 with model forms, accounting aids, agreements, and
15 guides to best practices.

16 (12) Guidance on opportunities for—

17 (A) rating or certifying retrofitted build-
18 ings as Energy Star buildings, or as green
19 buildings under a recognized green building rat-
20 ing system;

21 (B) assigning Home Energy Rating Sys-
22 tem (HERS) or similar ratings; and

23 (C) completing any applicable building per-
24 formance labels.

1 (13) Sample materials for publicizing the pro-
2 gram to building owners, including public service an-
3 nouncements and advertisements.

4 (14) Processes for tracking the numbers and lo-
5 cations of buildings retrofitted under the REEP pro-
6 gram, with information on projected and actual sav-
7 ings of energy and its value over time.

8 (g) REQUIREMENTS.—As a condition of receiving al-
9 lowances for the REEP program pursuant to this Act, a
10 State or qualifying local government shall—

11 (1) adopt the standards for training, certifi-
12 cation of contractors, certification of buildings, and
13 post-retrofit inspection as developed by the Adminis-
14 trator for residential and nonresidential buildings,
15 respectively, except as necessary to match local con-
16 ditions, needs, efficiency opportunities, or other local
17 factors, or to accord with State laws or regulations,
18 and then only after the Administrator approves such
19 a variance; and

20 (2) establish fiscal controls and accounting pro-
21 cedures (which conform to generally accepted gov-
22 ernment accounting principles) sufficient to ensure
23 proper accounting during appropriate accounting pe-
24 riods for payments received and disbursements, and
25 for fund balances.

1 The Administrator shall conduct or require each State to
2 have such independent financial audits of REEP-related
3 funding as the Administrator considers necessary or ap-
4 propriate to carry out the purposes of this section.

5 (h) OPTIONS TO SUPPORT REEP PROGRAM.—The
6 emission allowances provided pursuant to this Act to the
7 States SEED Accounts shall support the implementation
8 through State REEP programs of alternate means of cre-
9 ating incentives for, or reducing financial barriers to, im-
10 proved energy and environmental performance in build-
11 ings, consistent with this section, including—

12 (1) implementing prescriptive building retrofit
13 programs and performance-based building retrofit
14 programs;

15 (2) providing credit enhancement, interest rate
16 subsidies, loan guarantees, or other credit support;

17 (3) providing initial capital for public revolving
18 fund financing of retrofits, with repayments by bene-
19 ficiary building owners over time through their tax
20 payments, calibrated to create net positive cash flow
21 to the building owner;

22 (4) providing funds to support utility-operated
23 retrofit programs with repayments over time
24 through utility rates, calibrated to create net positive
25 cash flow to the building owner, and transferable

1 from one building owner to the next with the build-
2 ing's utility services;

3 (5) providing funds to local government pro-
4 grams to provide REEP services and financial as-
5 sistance; and

6 (6) other means proposed by State and local
7 agencies, subject to the approval of the Adminis-
8 trator.

9 (i) SUPPORT FOR PROGRAM.—

10 (1) USE OF ALLOWANCES.—Direct Federal sup-
11 port for the REEP program is provided through the
12 emission allowances allocated to the States' SEED
13 Accounts pursuant to section 132 of this Act. To the
14 extent that a State provides allowances to local gov-
15 ernments within the State to implement elements of
16 the REEP Program, that shall be deemed a dis-
17 tribution of such allowances to units of local govern-
18 ment pursuant to subsection (c)(1) of that section.

19 (2) INITIAL AWARD LIMITS.—Except as pro-
20 vided in paragraph (3), State and local REEP pro-
21 grams may make per-building direct expenditures
22 for retrofit improvements, or their equivalent in indi-
23 rect or other forms of financial support, from funds
24 derived from the sale of allowances received directly

1 from the Administrator in amounts not to exceed the
2 following amounts per unit:

3 (A) RESIDENTIAL BUILDING PROGRAM.—

4 (i) AWARDS.—For residential build-
5 ings—

6 (I) support for a free or low-cost
7 detailed building energy audit that
8 prescribes measures sufficient to
9 achieve at least a 20 percent reduc-
10 tion in energy use, by providing an in-
11 centive equal to the documented cost
12 of such audit, but not more than
13 \$200, in addition to any earned by
14 achieving a 20 percent or greater effi-
15 ciency improvement;

16 (II) a total of \$1,000 for a com-
17 bination of measures, prescribed in an
18 audit conducted under subclause (I),
19 designed to reduce energy consump-
20 tion by more than 10 percent, and
21 \$2,000 for a combination of measures
22 prescribed in such an audit, designed
23 to reduce energy consumption by more
24 than 20 percent;

1 (III) \$3,000 for demonstrated
2 savings of 20 percent, pursuant to a
3 performance-based building retrofit
4 program; and

5 (IV) \$1,000 for each additional 5
6 percentage points of energy savings
7 achieved beyond savings for which
8 funding is provided under subclause
9 (II) or (III).

10 Funding shall not be provided under
11 clauses (II) and (III) for the same energy
12 savings.

13 (ii) MAXIMUM PERCENTAGE.—Awards
14 under clause (i) shall not exceed 50 per-
15 cent of retrofit costs for each building. For
16 buildings with multiple residential units,
17 awards under clause (i) shall not be great-
18 er than 50 percent of the total cost of ret-
19 rofitting the building, prorated among indi-
20 vidual residential units on the basis of rel-
21 ative costs of the retrofit. In the case of
22 public housing and assisted housing, the
23 50 percent contribution matching the con-
24 tribution from REEP program funds may

1 come from any other source, including
2 other Federal funds.

3 (iii) ADDITIONAL AWARDS.—Addi-
4 tional awards may be provided for pur-
5 poses of increasing energy efficiency, for
6 buildings achieving at least 20 percent en-
7 ergy savings using funding provided under
8 clause (i), in the form of grants of not
9 more than \$600 for measures projected or
10 measured (using an appropriate method
11 approved by the Administrator) to achieve
12 at least 35 percent potable water savings
13 through equipment or systems with an es-
14 timated service life of not less than seven
15 years, and not more than an additional
16 \$20 may be provided for each additional
17 one percent of such savings, up to a max-
18 imum total grant of \$1,200.

19 (B) NONRESIDENTIAL BUILDING PRO-
20 GRAM.—

21 (i) AWARDS.—For nonresidential
22 buildings—

23 (I) support for a free or low-cost
24 detailed building energy audit that
25 prescribes, as part of a energy-reduc-

1 ing measures sufficient to achieve at
2 least a 20 percent reduction in energy
3 use, by providing an incentive equal to
4 the documented cost of such audit,
5 but not more than \$500, in addition
6 to any award earned by achieving a
7 20 percent or greater efficiency im-
8 provement;

9 (II) \$0.15 per square foot of ret-
10 rofit area for demonstrated energy use
11 reductions from 20 percent to 30 per-
12 cent;

13 (III) \$0.75 per square foot for
14 demonstrated energy use reductions
15 from 30 percent to 40 percent;

16 (IV) \$1.60 per square foot for
17 demonstrated energy use reductions
18 from 40 percent to 50 percent; and

19 (V) \$2.50 per square foot for
20 demonstrated energy use reductions
21 exceeding 50 percent.

22 (ii) MAXIMUM PERCENTAGE.—

23 Amounts provided under subclauses (II)
24 through (V) of clause (i) combined shall
25 not exceed 50 percent of the total retrofit

1 cost of a building. In nonresidential build-
2 ings with multiple units, such awards shall
3 be prorated among individual units on the
4 basis of relative costs of the retrofit.

5 (iii) ADDITIONAL AWARDS.—Addi-
6 tional awards may be provided, for build-
7 ings achieving at least 20 percent energy
8 savings using funding provided under
9 clause (i), as follows:

10 (I) WATER.—For purposes of in-
11 creasing energy efficiency, grants may
12 be made for whole building potable
13 water use reduction (using an appro-
14 priate method approved by the Ad-
15 ministrator) for up to 50 percent of
16 the total retrofit cost, including
17 amounts up to—

18 (aa) \$24.00 per thousand
19 gallons per year of potable water
20 savings of 40 percent or more;

21 (bb) \$27.00 per thousand
22 gallons per year of potable water
23 savings of 50 percent or more;
24 and

1 (cc) \$30.00 per thousand
2 gallons per year of potable water
3 savings of 60 percent or more.

4 (II) ENVIRONMENTAL IMPROVE-
5 MENTS.—Additional awards of up to
6 \$1,000 may be granted for the inclu-
7 sion of other environmental attributes
8 that the Administrator, in consulta-
9 tion with the Secretary, identifies as
10 contributing to energy efficiency. Such
11 attributes may include, but are not
12 limited to waste diversion and the use
13 of environmentally preferable mate-
14 rials (including salvaged, renewable,
15 or recycled materials, and materials
16 with no or low-VOC content). The Ad-
17 ministrator may recommend that
18 States develop such standards as are
19 necessary to account for local or re-
20 gional conditions that may affect the
21 feasibility or availability of identified
22 resources and attributes.

23 (iv) INDOOR AIR QUALITY MINIMUM.—
24 Nonresidential buildings receiving incen-
25 tives under this section must satisfy at a

1 minimum the most recent version of
2 ASHRAE Standard 62.1 for ventilation, or
3 the equivalent as determined by the Ad-
4 ministrator. A State may issue a waiver
5 from this requirement to a building project
6 on a showing that such compliance is in-
7 feasible due to the physical constraints of
8 the building's existing ventilation system,
9 or such other limitations as may be speci-
10 fied by the Administrator.

11 (C) HISTORIC BUILDINGS.—Notwith-
12 standing subparagraphs (A) and (B), a building
13 in or eligible for the National Register of His-
14 toric Places shall be eligible for awards under
15 this paragraph in amounts up to 120 percent of
16 the amounts set forth in subparagraphs (A) and
17 (B).

18 (D) SUPPLEMENTAL SUPPORT.—State and
19 local governments may supplement the per-
20 building expenditures under this paragraph
21 with funding from other sources.

22 (3) ADJUSTMENT.—The Administrator may ad-
23 just the specific dollar limits funded by the sale of
24 allowances pursuant to paragraph (2) in years sub-
25 sequent to the second year after the date of enact-

1 ment of this Act, and every 2 years thereafter, as
2 the Administrator determines necessary to achieve
3 optimum cost-effectiveness and to maximize incen-
4 tives to achieve energy efficiency within the total
5 building award amounts provided in that paragraph,
6 and shall publish and hold constant such revised lim-
7 its for at least 2 years. The Administrator, in con-
8 sultation with the Secretary of Housing and Urban
9 Development, may establish different dollar limits
10 for public housing and assisted housing than for
11 other residential buildings.

12 (j) REPORT TO CONGRESS.—The Administrator shall
13 conduct an annual assessment of the achievements of the
14 REEP program in each State, shall prepare an annual re-
15 port of such achievements and any recommendations for
16 program modifications, and shall provide such report to
17 Congress at the end of each fiscal year during which fund-
18 ing or other resources were made available to the States
19 for the REEP Program.

20 (k) OTHER SOURCES OF FEDERAL SUPPORT.—

21 (1) ADDITIONAL STATE ENERGY PROGRAM
22 FUNDS.—Any Federal funding provided to a State
23 Energy Program that is not required to be expended
24 for a different federally designated purpose may be
25 used to support a REEP program.

1 (2) PROGRAM ADMINISTRATION.—State Energy
2 Offices or designated State agencies may expend up
3 to 10 percent of available allowance value provided
4 under this section for program administration.

5 (3) AUTHORIZATION OF APPROPRIATIONS.—
6 There are authorized to be appropriated for the pur-
7 poses of this section, for each of fiscal years 2010,
8 2011, 2012, and 2013—

9 (A) \$50,000,000 to the Administrator for
10 program administration costs; and

11 (B) \$20,000,000 to the Secretary of En-
12 ergy for program administration costs.

13 **SEC. 203. ENERGY EFFICIENT MANUFACTURED HOMES.**

14 (a) DEFINITIONS.—In this section:

15 (1) MANUFACTURED HOME.—The term “manu-
16 factured home” has the meaning given such term in
17 section 603 of the National Manufactured Housing
18 Construction and Safety Standards Act of 1974 (42
19 U.S.C. 5402).

20 (2) ENERGY STAR QUALIFIED MANUFACTURED
21 HOME.—The term “Energy Star qualified manufac-
22 tured home” means a manufactured home that has
23 been designed, produced, and installed in accordance
24 with Energy Star’s guidelines by an Energy Star
25 certified plant.

1 (b) PURPOSE.—The purpose of this section is to as-
2 sist low-income households residing in manufactured
3 homes constructed prior to 1976 to save energy and en-
4 ergy expenditures by providing support toward the pur-
5 chase of new Energy Star qualified manufactured homes.

6 (c) STATE IMPLEMENTATION OF PROGRAM.—

7 (1) MANUFACTURED HOME REPLACEMENT PRO-
8 GRAM.—Any State may provide to the owner of a
9 manufactured home constructed prior to 1976 a re-
10 bate to use toward the purchase of a new Energy
11 Star qualified manufactured home pursuant to this
12 section.

13 (2) USE OF ALLOWANCES.—Direct Federal sup-
14 port for the program established in this section is
15 provided through the emission allowances allocated
16 to the States' SEED Accounts pursuant to section
17 132 of this Act. To the extent that a State provides
18 allowances to local governments within the State to
19 implement this program, that shall be deemed a dis-
20 tribution of such allowances to units of local govern-
21 ment pursuant to subsection (c)(1) of that section.

22 (3) REBATES.—

23 (A) PRIMARY RESIDENCE REQUIRE-
24 MENT.—A rebate described under paragraph

25 (1) may only be made to an owner of a manu-

1 factured home constructed prior to 1976 that is
2 used on a year-round basis as a primary resi-
3 dence.

4 (B) DISMANTLING AND REPLACEMENT.—A
5 rebate described under paragraph (1) may be
6 made only if the manufactured home con-
7 structed prior to 1976 will be—

8 (i) rendered unusable for human habi-
9 tation (including appropriate recycling);
10 and

11 (ii) replaced, in the same general loca-
12 tion, as determined by the applicable State
13 agency, with an Energy Star qualified
14 manufactured home.

15 (C) SINGLE REBATE.—A rebate described
16 under paragraph (1) may not be provided to
17 any owner of a manufactured home constructed
18 prior to 1976 that was or is a member of a
19 household for which any other member of the
20 household was provided a rebate pursuant to
21 this section.

22 (D) ELIGIBLE HOUSEHOLDS.—To be eligi-
23 ble to receive a rebate described under para-
24 graph (1), an owner of a manufactured home
25 constructed prior to 1976 shall demonstrate to

1 the applicable State agency that the total in-
2 come of all members the owner's household does
3 not exceed 200 percent of the Federal poverty
4 level for income in the applicable area.

5 (E) ADVANCE AVAILABILITY.—A rebate
6 may be provided under this section in a manner
7 to facilitate the purchase of a new Energy Star
8 qualified manufactured home.

9 (4) REBATE LIMITATION.—Rebates provided by
10 States under this section shall not exceed \$7,500 per
11 manufactured home from any value derived from the
12 use of emission allowances provided to the State
13 pursuant to section 132.

14 (5) USE OF STATE FUNDS.—A State providing
15 rebates under this section may supplement the
16 amount of such rebates under paragraph (4) by any
17 additional amount is from State funds and other
18 sources, including private donations or grants from
19 charitable organizations.

20 (6) COORDINATION WITH SIMILAR PRO-
21 GRAMS.—

22 (A) STATE PROGRAMS.—A State con-
23 ducting an existing program that has the pur-
24 pose of replacing manufactured homes con-
25 structed prior to 1976 with Energy Star quali-

1 fied manufactured homes, may use allowance
2 value provided under section 782 of the Clean
3 Air Act to support such a program, provided
4 such funding does not exceed the rebate limita-
5 tion amount under paragraph (4).

6 (B) FEDERAL PROGRAMS.—The Secretary
7 of Energy shall coordinate with and seek to
8 achieve the purpose of this section through
9 similar Federal programs including—

10 (i) the Weatherization Assistance Pro-
11 gram under part A of title IV of the En-
12 ergy Conservation and Production Act (42
13 U.S.C. 6861 et seq.); and

14 (ii) the program under part D of title
15 III of the Energy Policy and Conservation
16 Act (42 U.S.C. 6321 et seq.).

17 (C) COORDINATION WITH OTHER STATE
18 AGENCIES.—A State agency using allowance
19 value to administer the program under this sec-
20 tion may coordinate its efforts, and share funds
21 for administration, with other State agencies in-
22 volved in low-income housing programs.

23 (7) ADMINISTRATIVE EXPENSES.—A State
24 using allowance value under this section may expend

1 not more than 10 percent of such value for adminis-
2 trative expenses related to this program.

3 **SEC. 204. BUILDING ENERGY PERFORMANCE LABELING**
4 **PROGRAM.**

5 (a) ESTABLISHMENT.—

6 (1) PURPOSE.—The Administrator shall estab-
7 lish a building energy performance labeling program
8 with broad applicability to the residential and com-
9 mercial markets to enable and encourage knowledge
10 about building energy performance by owners and
11 occupants and to inform efforts to reduce energy
12 consumption nationwide.

13 (2) COMPONENTS.—In developing such pro-
14 gram, the Administrator shall—

15 (A) consider existing programs, such as
16 Environmental Protection Agency's Energy
17 Star program, the Home Energy Rating System
18 (HERS) Index, and programs at the Depart-
19 ment of Energy;

20 (B) support the development of model per-
21 formance labels for residential and commercial
22 buildings; and

23 (C) utilize incentives and other means to
24 spur use of energy performance labeling of pub-
25 lic and private sector buildings nationwide.

1 (b) DATA ASSESSMENT FOR BUILDING ENERGY PER-
2 FORMANCE.—

3 (1) INITIAL REPORT.—Not later than 90 days
4 after the date of enactment of this Act, the Adminis-
5 trator shall provide to Congress, as well as to the
6 Secretary of Energy and the Office of Management
7 and Budget, a report identifying—

8 (A) all principal building types for which
9 statistically significant energy performance data
10 exists to serve as the basis of measurement pro-
11 tocols and labeling requirements for achieved
12 building energy performance; and

13 (B) those building types for which addi-
14 tional data are required to enable the develop-
15 ment of such protocols and requirements.

16 (2) ADDITIONAL REPORTS.—Additional updated
17 reports shall be provided under this subsection as
18 often as The Administrator considers practicable,
19 but not less than every 2 years.

20 (c) BUILDING DATA ACQUISITION.—

21 (1) RESOURCE REQUIREMENTS.—For all prin-
22 cipal building types identified under subsection (b),
23 the Secretary of Energy, not later than 90 days
24 after a report by the Administrator under subsection
25 (b), shall provide to Congress, the Administrator,

1 and the Office of Management and Budget a state-
2 ment of additional resources needed, if any, to fully
3 develop the relevant data, as well as the anticipated
4 timeline for data development.

5 (2) CONSULTATION.—The Secretary of Energy
6 shall consult with the Administrator concerning the
7 Administrator’s ability to use data series for these
8 additional building types to support the achieved
9 performance component in the labeling program.

10 (3) IMPROVEMENTS TO BUILDING ENERGY CON-
11 SUMPTION DATABASES.—

12 (A) COMMERCIAL DATABASE.—The Sec-
13 retary of Energy shall support improvements to
14 the Commercial Buildings Energy Consumption
15 Survey (CBECS) as authorized by section
16 205(k) of the Department of Energy Organiza-
17 tion Act (42 U.S.C. 7135(k))—

18 (i) to enable complete and robust data
19 for the actual energy performance of prin-
20 cipal building types currently covered by
21 survey;

22 (ii) to cover additional building types
23 as identified by the Administrator under
24 subsection (b)(1)(B), to enable the develop-
25 ment of achieved performance measure-

1 ment protocols are developed for at least
2 90 percent of all major commercial build-
3 ing types within 5 years after the date of
4 enactment of this Act; and

5 (iii) to include third-party audits of
6 random data samplings to ensure the qual-
7 ity and accuracy of survey information.

8 (B) RESIDENTIAL DATABASES.—The Ad-
9 ministrators, in consultation with the Energy In-
10 formation Administration and the Secretary of
11 Energy, shall support improvements to the Res-
12 idential Energy Consumption Survey (RECS)
13 as authorized by section 205(k) of the Depart-
14 ment of Energy Organization Act (42 U.S.C.
15 7135(k)), or such other residential energy per-
16 formance databases as the Administrator con-
17 siders appropriate, to aid the development of
18 achieved performance measurement protocols
19 for residential building energy use for at least
20 90 percent of the residential market within 5
21 years after the date of enactment of this Act.

22 (C) CONSULTATION.—The Secretary of
23 Energy and the Administrator shall consult
24 with public, private, and nonprofit sector rep-
25 resentatives from the building industry and real

1 estate industry to assist in the evaluation and
2 improvement of building energy performance
3 databases and labeling programs.

4 (d) IDENTIFICATION OF MEASUREMENT PROTOCOLS
5 FOR ACHIEVED PERFORMANCE.—

6 (1) PROPOSED PROTOCOLS AND REQUIRE-
7 MENTS.—At the earliest practicable date, but not
8 later than 1 year after identifying a building type
9 under subsection (b)(1)(A), the Administrator shall
10 propose a measurement protocol for that building
11 type and a requirement detailing how to use that
12 protocol in completing applicable commercial or resi-
13 dential performance labels created pursuant to this
14 section.

15 (2) FINAL RULE.—After providing for notice
16 and comment, the Administrator shall publish a
17 final rule containing a measurement protocol and
18 the corresponding requirements for applying that
19 protocol. Such a rule—

20 (A) shall define the minimum period for
21 measurement of energy use by buildings of that
22 type and other details for determining achieved
23 performance, to include leased buildings or
24 parts thereof;

1 (B) shall identify necessary data collection
2 and record retention requirements; and

3 (C) may specify transition rules and ex-
4 emptions for classes of buildings within the
5 building type.

6 (e) PROCEDURES FOR EVALUATING DESIGNED PER-
7 FORMANCE.—The Administrator shall develop protocols
8 for evaluating the designed performance of individual
9 building types. The Administrator may conduct such feasi-
10 bility studies and demonstration projects as are necessary
11 to evaluate the sufficiency of proposed protocols for de-
12 signed performance.

13 (f) CREATION OF BUILDING ENERGY PERFORMANCE
14 LABELING PROGRAM.—

15 (1) MODEL LABEL.—Not later than 1 year
16 after the date of enactment of this Act, the Adminis-
17 trator shall propose a model building energy label
18 that provides a format—

19 (A) to display achieved performance and
20 designed performance data;

21 (B) that may be tailored for residential
22 and commercial buildings, and for single-occu-
23 pancy and multitenanted buildings; and

1 (C) to display other appropriate elements
2 identified during the development of measure-
3 ment protocols under subsections (d) and (e).

4 (2) INCLUSIONS.—Nothing in this section shall
5 require the inclusion on such a label of designed per-
6 formance data where impracticable or not cost effec-
7 tive, or to preclude the display of both achieved per-
8 formance and designed performance data for a par-
9 ticular building where both such measures are avail-
10 able, practicable, and cost effective.

11 (3) EXISTING PROGRAMS.—In developing the
12 model label, the Administrator shall consider exist-
13 ing programs, including—

14 (A) the Environmental Protection Agency’s
15 Energy Star Portfolio Manager program and
16 the California HERS II Program Custom Ap-
17 proach for the achieved performance component
18 of the label;

19 (B) the Home Energy Rating System
20 (HERS) Index system for the designed per-
21 formance component of the label; and

22 (C) other Federal and State programs, in-
23 cluding the Department of Energy’s related
24 programs on building technologies and those of
25 the Federal Energy Management Program.

1 (4) FINAL RULE.—After providing for notice
2 and comment, the Administrator shall publish a
3 final rule containing the label applicable to covered
4 building types.

5 (g) DEMONSTRATION PROJECTS FOR LABELING
6 PROGRAM.—

7 (1) IN GENERAL.—The Administrator shall con-
8 duct building energy performance labeling dem-
9 onstration projects for different building types—

10 (A) to ensure the sufficiency of the current
11 Commercial Buildings Energy Consumption
12 Survey and other data to serve as the basis for
13 new measurement protocols for the achieved
14 performance component of the building energy
15 performance labeling program;

16 (B) to inform the development of measure-
17 ment protocols for building types not currently
18 covered by the Commercial Buildings Energy
19 Consumption Survey; and

20 (C) to identify any additional information
21 that needs to be developed to ensure effective
22 use of the model label.

23 (2) PARTICIPATION.—Such demonstration
24 projects shall include participation of—

1 (A) buildings from diverse geographical
2 and climate regions;

3 (B) buildings in both urban and rural
4 areas;

5 (C) single-family residential buildings;

6 (D) multihousing residential buildings with
7 more than 50 units, including at least one
8 project that provides affordable housing to indi-
9 viduals of diverse incomes;

10 (E) single-occupant commercial buildings
11 larger than 30,000 square feet;

12 (F) multitenanted commercial buildings
13 larger than 50,000 square feet; and

14 (G) buildings from both the public and pri-
15 vate sectors.

16 (3) PRIORITY.—Priority in the selection of dem-
17 onstration projects shall be given to projects that fa-
18 cilitate large-scale implementation of the labeling
19 program for samples of buildings across neighbor-
20 hoods, geographic regions, cities, or States.

21 (4) FINDINGS.—The Administrator shall report
22 any findings from demonstration projects under this
23 subsection, including an identification of any areas
24 of needed data improvement, to the Department of

1 Energy's Energy Information Administration and
2 Building Technologies Program.

3 (5) COORDINATION.—The Administrator and
4 the Secretary of Energy shall coordinate demonstra-
5 tion projects undertaken pursuant to this subsection
6 with those undertaken as part of the Zero-Net-En-
7 ergy Commercial Buildings Initiative adopted under
8 section 422 of the Energy Independence and Secu-
9 rity Act of 2007 (42 U.S.C. 17082).

10 (h) IMPLEMENTATION OF LABELING PROGRAM.—

11 (1) IN GENERAL.—The Administrator, in con-
12 sultation with the Secretary of Energy, shall work
13 with all State Energy Offices established pursuant
14 to part D of title III of the Energy Policy and Con-
15 servation Act (42 U.S.C. 6321 et seq.) or other
16 State authorities as necessary for the purpose of im-
17 plementing the labeling program established under
18 this section for commercial and residential buildings.

19 (2) OUTREACH TO LOCAL AUTHORITIES.—The
20 Administrator shall, acting in consultation and co-
21 ordination with the respective States, encourage use
22 of the labeling program by counties and other local-
23 ities to broaden access to information about building
24 energy use, for example, through disclosure of build-
25 ing label contents in tax, title, and other records

1 those localities maintain. For this purpose, the Ad-
2 ministrator shall develop an electronic version of the
3 label and information that can be readily trans-
4 mitted and read in widely-available computer pro-
5 grams but is protected from unauthorized manipula-
6 tion.

7 (3) MEANS OF IMPLEMENTATION.—In adopting
8 the model labeling program established under this
9 section, a State shall seek to ensure that labeled in-
10 formation be made accessible to the public in a man-
11 ner so that owners, lenders, tenants, occupants, or
12 other relevant parties can utilize it. Such accessi-
13 bility may be accomplished through—

14 (A) preparation, and public disclosure of
15 the label through filing with tax and title
16 records at the time of—

17 (i) a building audit conducted with
18 support from Federal or State funds;

19 (ii) a building energy-efficiency ret-
20 rofit conducted in response to such an
21 audit;

22 (iii) a final inspection of major ren-
23 ovations or additions made to a building in
24 accordance with a building permit issued
25 by a local government entity;

1 (iv) a sale that is recorded for title
2 and tax purposes consistent with para-
3 graph (8);

4 (v) a new lien recorded on the prop-
5 erty for more than a set percentage of the
6 assessed value of the property, if that lien
7 reflects public financial assistance for en-
8 ergy-related improvements to that building;
9 or

10 (vi) a change in ownership or oper-
11 ation of the building for purposes of utility
12 billing; or

13 (B) other appropriate means.

14 (4) STATE IMPLEMENTATION OF PROGRAM.—

15 (A) ELIGIBILITY.—A State may become el-
16 igible to utilize allowance value to implement
17 this program by—

18 (i) adopting by statute or regulation a
19 requirement that buildings be assessed and
20 labeled, consistent with the labeling re-
21 quirements of the program established
22 under this section; or

23 (ii) adopting a plan to implement a
24 model labeling program consistent with
25 this section within one year of enactment

1 of this Act, including the establishment of
2 that program within 3 years after the date
3 of enactment of this Act, and dem-
4 onstrating continuous progress under that
5 plan.

6 (B) USE OF ALLOWANCES.—Direct Fed-
7 eral support for the program established in this
8 section is provided through the emission allow-
9 ances allocated to the States' SEED Accounts
10 pursuant to section 132 of this Act. To the ex-
11 tent that a State provides allowances to local
12 governments within the State to implement this
13 program, that shall be deemed a distribution of
14 such allowances to units of local government
15 pursuant to subsection (c)(1) of that section.

16 (5) GUIDANCE.—The Administrator may create
17 or identify model programs and resources to provide
18 guidance to offer to States and localities for creating
19 labeling programs consistent with the model pro-
20 gram established under this section.

21 (6) PROGRESS REPORT.—The Administrator, in
22 consultation with the Secretary of Energy, shall pro-
23 vide a progress report to Congress not later than 3
24 years after the date of enactment of this Act that—

1 (A) evaluates the effectiveness of efforts to
2 advance use of the model labeling program by
3 States and localities;

4 (B) recommends any legislative changes
5 necessary to broaden the use of the model label-
6 ing program; and

7 (C) identifies any changes to broaden the
8 use of the model labeling program that the Ad-
9 ministrator has made or intends to make that
10 do not require additional legislative authority.

11 (7) STATE INFORMATION.—The Administrator
12 may require States to report to the Administrator
13 information that the Administrator requires to pro-
14 vide the report required under paragraph (6).

15 (8) PREVENTION OF DISRUPTION OF SALES
16 TRANSACTIONS.—No State shall implement a new
17 labeling program pursuant to this section in a man-
18 ner that requires the labeling of a building to occur
19 after a contract has been executed for the sale of
20 that building and before the sales transaction is
21 completed.

22 (i) IMPLEMENTATION OF LABELING PROGRAM IN
23 FEDERAL BUILDINGS.—

24 (1) USE OF LABELING PROGRAM.—The Sec-
25 retary of Energy and the Administrator shall use the

1 labeling program established under this section to
2 evaluate energy performance in the facilities of the
3 Department of Energy and the Environmental Pro-
4 tection Agency, respectively, to the extent prac-
5 ticable, and shall encourage and support implemen-
6 tation efforts in other Federal agencies.

7 (2) ANNUAL PROGRESS REPORT.—The Sec-
8 retary of Energy and Administrator shall provide an
9 annual progress report to Congress and the Office of
10 Management and Budget detailing efforts to imple-
11 ment this subsection, as well as any best practices
12 or needed resources identified as a result of such ef-
13 forts.

14 (j) PUBLIC OUTREACH.—The Secretary of Energy
15 and the Administrator, in consultation with nonprofit and
16 industry stakeholders with specialized expertise, and in
17 conjunction with other energy efficiency public awareness
18 efforts, shall establish a business and consumer education
19 program to increase awareness about the importance of
20 building energy efficiency and to facilitate widespread use
21 of the labeling program established under this section.

22 (k) DEFINITIONS.—In this section:

23 (1) BUILDING TYPE.—The term “building
24 type” means a grouping of buildings as identified by
25 their principal building activities, or as grouped by

1 their use, including office buildings, laboratories, li-
2 braries, data centers, retail establishments, hotels,
3 warehouses, and educational buildings.

4 (2) MEASUREMENT PROTOCOL.—The term
5 “measurement protocol” means the methodology,
6 prescribed by the Administrator, for defining a
7 benchmark for building energy performance for a
8 specific building type and for measuring that per-
9 formance against the benchmark.

10 (3) ACHIEVED PERFORMANCE.—The term
11 “achieved performance” means the actual energy
12 consumption of a building as compared to a baseline
13 building of the same type and size, determined by
14 actual consumption data normalized for appropriate
15 variables.

16 (4) DESIGNED PERFORMANCE.—The term “de-
17 signed performance” means the energy consumption
18 performance a building would achieve if operated
19 consistent with its design intent for building energy
20 use, utilizing a standardized set of operational condi-
21 tions informed by data collected or confirmed during
22 an energy audit.

23 (1) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated—

1 (1) to the Administrator \$50,000,000 for imple-
2 mentation of this section for each fiscal year from
3 2010 through 2020; and

4 (2) to the Secretary of Energy \$20,000,000 for
5 implementation of this section for fiscal year 2010
6 and \$10,000,000 for fiscal years 2011 through
7 2020.

8 **SEC. 205. TREE PLANTING PROGRAMS.**

9 (a) FINDINGS.—The Congress finds that—

10 (1) the utility sector is the largest single source
11 of greenhouse gas emissions in the United States
12 today, producing approximately one-third of the
13 country’s emissions;

14 (2) heating and cooling homes accounts for
15 nearly 60 percent of residential electricity usage in
16 the United States;

17 (3) shade trees planted in strategic locations
18 can reduce residential cooling costs by as much as
19 30 percent;

20 (4) shade trees have significant clean-air bene-
21 fits associated with them;

22 (5) every 100 healthy large trees removes about
23 300 pounds of air pollution (including particulate
24 matter and ozone) and about 15 tons of carbon diox-
25 ide from the air each year;

1 (6) tree cover on private property and on newly-
2 developed land has declined since the 1970s, even
3 while emissions from transportation and industry
4 have been rising; and

5 (7) in over a dozen test cities across the United
6 States, increasing urban tree cover has generated
7 between two and five dollars in savings for every dol-
8 lar invested in such tree planting.

9 (b) DEFINITIONS.—As used in this section:

10 (1) The term “Secretary” refers to the Sec-
11 retary of Energy.

12 (2) The term “retail power provider” means
13 any entity authorized under applicable State or Fed-
14 eral law to generate, distribute, or provide retail
15 electricity, natural gas, or fuel oil service.

16 (3) The term “tree-planting organization”
17 means any nonprofit or not-for-profit group which
18 exists, in whole or in part, to—

19 (A) expand urban and residential tree
20 cover;

21 (B) distribute trees for planting;

22 (C) increase awareness of the environ-
23 mental and energy-related benefits of trees;

24 (D) educate the public about proper tree
25 planting, care, and maintenance strategies; or

1 (E) carry out any combination of the fore-
2 going activities.

3 (4) The term “tree-siting guidelines” means a
4 comprehensive list of science-based measurements
5 outlining the species and minimum distance required
6 between trees planted pursuant to this section, in
7 addition to the minimum required distance to be
8 maintained between such trees and—

9 (A) building foundations;

10 (B) air conditioning units;

11 (C) driveways and walkways;

12 (D) property fences;

13 (E) preexisting utility infrastructure;

14 (F) septic systems;

15 (G) swimming pools; and

16 (H) other infrastructure as deemed appro-
17 priate.

18 (5) The terms “small office”, “small office
19 buildings”, and “small office settings” means non-
20 residential buildings or structures zoned for business
21 purposes that are 20,000 square feet or less in total
22 area.

23 (c) PURPOSES.—The purpose of this section is to es-
24 tablish a grant program to assist retail power providers
25 with the establishment and operation of targeted tree-

1 planting programs in residential and small office settings,
2 for the following purposes:

3 (1) Reducing the peak-load demand for elec-
4 tricity from residences and small office buildings
5 during the summer months through direct shading
6 of buildings provided by strategically planted trees.

7 (2) Reducing wintertime demand for energy
8 from residences and small office buildings by block-
9 ing cold winds from reaching such structures, which
10 lowers interior temperatures and drives heating de-
11 mand.

12 (3) Protecting public health by removing harm-
13 ful pollution from the air.

14 (4) Utilizing the natural photosynthetic and
15 transpiration process of trees to lower ambient tem-
16 peratures and absorb carbon dioxide, thus mitigating
17 the effects of climate change.

18 (5) Lowering electric bills for residential and
19 small office ratepayers by limiting electricity con-
20 sumption without reducing benefits.

21 (6) Relieving financial and demand pressure on
22 retail power providers that stems from large peak-
23 load energy demand.

1 (7) Protecting water quality and public health
2 by reducing stormwater runoff and keeping harmful
3 pollutants from entering waterways.

4 (8) Ensuring that trees are planted in locations
5 that limit the amount of public money needed to
6 maintain public and electric infrastructure.

7 (d) GENERAL AUTHORITY.—

8 (1) ASSISTANCE.—The Secretary is authorized
9 to provide financial, technical, and related assistance
10 to retail power providers to assist with the establish-
11 ment of new, or continued operation of existing, tar-
12 geted tree-planting programs for residences and
13 small office buildings.

14 (2) PUBLIC RECOGNITION INITIATIVE.—In car-
15 rying out the authority provided under this section,
16 the Secretary shall also create a national public rec-
17 ognition initiative to encourage participation in tree-
18 planting programs by retail power providers.

19 (3) ELIGIBILITY.—Only those programs which
20 utilize targeted, strategic tree-siting guidelines to
21 plant trees in relation to building location, sunlight,
22 and prevailing wind direction shall be eligible for as-
23 sistance under this section.

1 (4) REQUIREMENTS.—In order to qualify for
2 assistance under this section, a tree-planting pro-
3 gram shall meet each of the following requirements:

4 (A) The program shall provide free or dis-
5 counted shade-providing or wind-reducing trees
6 to residential and small office consumers inter-
7 ested in lowering their home energy costs.

8 (B) The program shall optimize the elec-
9 tricity-consumption reduction benefit of each
10 tree by planting in strategic locations around a
11 given residence or small office.

12 (C) The program shall either—

13 (i) provide maximum amounts of
14 shade during summer intervals when resi-
15 dences and small offices are exposed to the
16 most sun intensity; or

17 (ii) provide maximum amounts of
18 wind protection during fall and winter in-
19 tervals when residences and small offices
20 are exposed to the most wind intensity.

21 (D) The program shall use the best avail-
22 able science to create tree siting guidelines
23 which dictate where the optimum tree species
24 are best planted in locations that achieve max-
25 imum reductions in consumer energy demand

1 while causing the least disruption to public in-
2 frastructure, considering overhead and under-
3 ground facilities.

4 (E) The program shall receive certification
5 from the Secretary that it is designed to achieve
6 the goals set forth in subparagraphs (A)
7 through (D). In designating criteria for such
8 certification, the Secretary shall collaborate
9 with the United States Forest Service's Urban
10 and Community Forestry Program to ensure
11 that certification requirements are consistent
12 with such above goals.

13 (5) NEW PROGRAM FUNDING SHARE.—The Sec-
14 retary shall ensure that no less than 30 percent of
15 the funds made available under this section are dis-
16 tributed to retail power providers which—

17 (A) have not previously established or op-
18 erated qualified tree-planting programs; or

19 (B) are operating qualified tree-planting
20 programs which were established no more than
21 three years prior to the date of enactment of
22 this section.

23 (e) AGREEMENTS BETWEEN ELECTRICITY PRO-
24 VIDERS AND TREE-PLANTING ORGANIZATIONS.—

1 (1) GRANT AUTHORIZATION.—In providing as-
2 sistance under this section, the Secretary is author-
3 ized to award grants only to retail power providers
4 that have entered into binding legal agreements with
5 nonprofit tree-planting organizations.

6 (2) CONDITIONS OF AGREEMENT.—Those
7 agreements between retail power providers and tree-
8 planting organizations shall set forth conditions
9 under which nonprofit tree-planting organizations
10 shall provide targeted tree-planting programs which
11 may require these organizations to—

12 (A) participate in local technical advisory
13 committees responsible for drafting general
14 tree-siting guidelines and choosing the most ef-
15 fective species of trees to plant in given loca-
16 tions;

17 (B) coordinate volunteer recruitment to as-
18 sist with the physical act of planting trees in
19 residential locations;

20 (C) undertake public awareness campaigns
21 to educate local residents about the benefits,
22 cost savings, and availability of free shade
23 trees;

1 (D) establish education and information
2 campaigns to encourage recipients to maintain
3 their shade trees over the long term;

4 (E) serve as the point of contact for exist-
5 ing and potential residential participants who
6 have questions or concerns regarding the tree-
7 planting program;

8 (F) require tree recipients to sign agree-
9 ments committing to voluntary stewardship and
10 care of provided trees;

11 (G) monitor and report on the survival,
12 growth, overall health, and estimated energy
13 savings of provided trees up until the end of
14 their establishment period which shall be no
15 less than five years; and

16 (H) ensure that trees planted near existing
17 power lines will not interfere with energized
18 electricity distribution lines when mature, and
19 that no new trees will be planted under or adja-
20 cent to high-voltage electric transmission lines
21 without prior consultation with the applicable
22 retail power provider receiving assistance under
23 this section.

24 (3) LACK OF NONPROFIT ORGANIZATION.—If
25 qualified nonprofit or not-for-profit tree planting or-

1 organizations do not exist or operate within areas
2 served by retail power providers applying for assist-
3 ance under this section, the requirements of this sec-
4 tion shall apply to binding legal agreements entered
5 into by such retail power providers and one of the
6 following entities:

7 (A) Local municipal governments with ju-
8 risdiction over the urban or suburban forest.

9 (B) The State Forester for the State in
10 which the tree planting program will operate.

11 (C) The United States Forest Service's
12 Urban and Community Forestry representative
13 for the State in which the tree-planting pro-
14 gram will operate.

15 (D) A landscaping services company that
16 is—

17 (i) identified in consultation with a
18 national or State nonprofit or not-for-prof-
19 it tree-planting organization;

20 (ii) licensed to operate in the State in
21 which the tree-planting program will oper-
22 ate; and

23 (iii) a business as defined by the
24 United States Census Bureau's 2007

1 North American Industry Classification
2 System Code 561730.

3 (f) TECHNICAL ADVISORY COMMITTEES.—

4 (1) DESCRIPTION.—In order to qualify for as-
5 sistance under this section, the retail power provider
6 shall establish and consult with a local technical ad-
7 visory committee which shall provide advice and con-
8 sultation to the program, and may—

9 (A) design and adopt an approved plant
10 list that emphasizes the use of hardy,
11 noninvasive tree species and, where geographi-
12 cally appropriate, the use of native, or site-
13 adapted, or low water-use shade trees;

14 (B) design and adopt planting, installation,
15 and maintenance specifications and create a
16 process for inspection and quality control;

17 (C) ensure that tree recipients are edu-
18 cated to care for and maintain their trees over
19 the long term;

20 (D) help the public become more engaged
21 and educated in the planting and care of shade
22 trees;

23 (E) prioritize which sites receive trees, giv-
24 ing preference to locations with the most poten-
25 tial for energy conservation and secondary pref-

1 erence to areas where the average annual in-
2 come is below the regional median; and

3 (F) assist with monitoring and collection of
4 data on tree health, tree survival, and energy
5 conservation benefits generated under this sec-
6 tion.

7 (2) COMPENSATION.—Individuals serving on
8 local technical advisory committees shall not receive
9 compensation for their service.

10 (3) COMPOSITION.—Local technical advisory
11 committees shall be composed of representatives
12 from public, private, and nongovernmental agencies
13 with expertise in demand-side energy efficiency man-
14 agement, urban forestry, or arboriculture, and shall
15 be composed of the following:

16 (A) Up to 4 persons, but no less than one
17 person, representing the retail power provider
18 receiving assistance under this section.

19 (B) Up to 4 persons, but no less than one
20 person, representing the local tree-planting or-
21 ganization which will partner with the retail
22 power provider to carry out this section.

23 (C) Up to 3 persons representing local
24 nonprofit conservation or environmental organi-
25 zations. Preference shall be given to those enti-

1 ties which are organized under section
2 501(c)(3) of the Internal Revenue Code of
3 1986, and which have demonstrated expertise
4 engaging the public in energy conservation, en-
5 ergy efficiency, or green building practices or a
6 combination thereof, such that no single organi-
7 zation is represented by more than one indi-
8 vidual under this paragraph.

9 (D) Up to 2 persons representing a local
10 affordable housing agency, affordable housing
11 builder, or community development corporation.

12 (E) Up to 3, but no less than one, persons
13 representing local city or county government for
14 each municipality where a shade tree-planting
15 program will take place; at least one of these
16 representatives shall be the city or county for-
17 ester, city or county arborist, or functional
18 equivalent.

19 (F) Up to one person representing the
20 local government agency responsible for man-
21 agement of roads, sewers, and infrastructure,
22 including but not limited to public works de-
23 partments, transportation agencies, or equiva-
24 lents.

1 (G) Up to 3 persons representing the nurs-
2 ery and landscaping industry.

3 (H) Up to 3 persons representing the re-
4 search community or academia with expertise in
5 natural resources or energy management issues.

6 (4) CHAIRPERSON.—Each local technical advi-
7 sory committee shall elect a chairperson to preside
8 over Committee meetings, act as a liaison to govern-
9 mental and other outside entities, and direct the
10 general operation of the committee; only committee
11 representatives from paragraph (3)(A) or paragraph
12 (3)(B) of this subsection shall be eligible to act as
13 local technical advisory committee chairpersons.

14 (5) CREDENTIALS.—At least one of the mem-
15 bers of each local technical advisory committee shall
16 be certified with one or more of the following creden-
17 tials: International Society of Arboriculture; Cer-
18 tified Arborist, ISA; Certified Arborist Municipal
19 Specialist, ISA; Certified Arborist Utility Specialist,
20 ISA; Board Certified Master Arborist; or Registered
21 Landscape Architect recommended by the American
22 Society of Landscape Architects.

23 (g) COST-SHARE PROGRAM.—

24 (1) FEDERAL SHARE.—The Federal share of
25 support for projects funded under this section shall

1 not exceed 50 percent of the cost of such project and
2 shall be provided on a matching basis.

3 (2) NON-FEDERAL SHARE.—The non-Federal
4 share of such costs may be paid or contributed by
5 any governmental or nongovernmental entity other
6 than from funds derived directly or indirectly from
7 an agency or instrumentality of the United States.

8 (h) RULEMAKING.—

9 (1) RULEMAKING PERIOD.—The Secretary shall
10 be authorized to solicit comments and initiate a rule-
11 making period that shall last no more than 6
12 months after the date of enactment of this section.

13 (2) COMPETITIVE GRANT RULE.—At the conclu-
14 sion of the rulemaking period under paragraph (1),
15 the Secretary shall promulgate a rule governing a
16 public, competitive grants process through which re-
17 tail power providers may apply for Federal support
18 under this section.

19 (i) NONDUPLICITY.—Nothing in this section shall be
20 construed to supersede, duplicate, cancel, or negate the
21 programs or authorities provided under section 9 of the
22 Cooperative Forestry Assistance Act of 1978 (92 Stat.
23 369; Public Law 95–313; 16 U.S.C. 2105).

1 (j) AUTHORIZATION OF APPROPRIATIONS.—There
2 are hereby authorized to be appropriated such sums as
3 may be necessary for the implementation of this section.

4 **SEC. 206. ENERGY EFFICIENCY FOR DATA CENTER BUILD-**
5 **INGS.**

6 Section 453(c)(1) of the Energy Independence and
7 Security Act of 2007 (42 U.S.C. 17112(c)(1)) is amended
8 by inserting “but not later than 2 years after the date
9 of enactment of this Act” after “described in subsection
10 (b)”.

11 **Subtitle B—Lighting and Appliance**
12 **Energy Efficiency Programs**

13 **SEC. 211. LIGHTING EFFICIENCY STANDARDS.**

14 (a) OUTDOOR LIGHTING.—

15 (1) DEFINITIONS.—

16 (A) Section 340(1) of the Energy Policy
17 and Conservation Act (42 U.S.C. 6311(1)) is
18 amended by striking subparagraph (L) and in-
19 serting the following:

20 “(L) Outdoor luminaires.

21 “(M) Outdoor high light output lamps.

22 “(N) Any other type of industrial equip-
23 ment which the Secretary classifies as covered
24 equipment under section 341(b).”.

1 (B) Section 340 of the Energy Policy and
2 Conservation Act (42 U.S.C. 6311) is amended
3 as adding at the end the following:

4 “(25) The term ‘luminaire’ means a complete
5 lighting unit consisting of one or more light sources
6 and ballast(s), together with parts designed to dis-
7 tribute the light, to position and protect such lamps,
8 and to connect such light sources to the power sup-
9 ply.

10 “(26) The term ‘outdoor luminaire’ means a lu-
11 minaire that is listed as suitable for wet locations
12 pursuant to Underwriters Laboratories Inc. stand-
13 ard UL 1598 and is labeled as ‘Suitable for Wet Lo-
14 cations’ consistent with section 410.4(A) of the Na-
15 tional Electrical Code 2005, or is designed for road-
16 way illumination and meets the requirements of Ad-
17 dendum A for IESNA TM-15-07: Backlight,
18 Uplight, and Glare (BUG) Ratings, except for—

19 “(A) luminaires designed for outdoor video
20 display images that cannot be used in general
21 lighting applications;

22 “(B) portable luminaires designed for use
23 at construction sites;

1 “(C) luminaires designed for continuous
2 immersion in swimming pools and other water
3 features;

4 “(D) seasonal luminaires incorporating
5 solely individual lamps rated at 10 watts or
6 less;

7 “(E) luminaires designed to be used in
8 emergency conditions that incorporate a means
9 of charging a battery and a device to switch the
10 power supply to emergency lighting loads auto-
11 matically upon failure of the normal power sup-
12 ply;

13 “(F) components used for repair of in-
14 stalled luminaries and that meet the require-
15 ments of section 342(h);

16 “(G) a luminaire utilizing an electrode-less
17 fluorescent lamp as the light source;

18 “(H) decorative gas lighting systems;

19 “(I) luminaires designed explicitly for
20 lighting for theatrical purposes, including per-
21 formance, stage, film production, and video pro-
22 duction;

23 “(J) luminaires designed as theme ele-
24 ments in theme/amusement parks and that can-

1 not be used in most general lighting applica-
2 tions;

3 “(K) luminaires designed explicitly for ve-
4 hicular roadway tunnels designed to comply
5 with ANSI/IESNA RP-22-05;

6 “(L) luminaires designed explicitly for haz-
7 ardous locations meeting UL Standard 844;

8 “(M) searchlights;

9 “(N) luminaires that are designed to be re-
10 cessed into a building, and that cannot be used
11 in most general lighting applications;

12 “(O) a luminaire rated only for residential
13 applications utilizing a light source or sources
14 regulated under the amendments made by sec-
15 tion 321 of the Energy Independence and Secu-
16 rity Act of 2007 and with a light output no
17 greater than 2,600 lumens;

18 “(P) a residential pole-mounted luminaire
19 that is not rated for commercial use utilizing a
20 light source or sources meeting the efficiency
21 requirements of section 231 of the Energy
22 Independence and Security Act of 2007 and
23 mounted on a post or pole not taller than 10.5
24 feet above ground and with a light output not
25 greater than 2,600 lumens;

1 “(Q) a residential fixture with E12 (Can-
2 delabra) bases that is rated for not more than
3 300 watts total; or

4 “(R) a residential fixture with medium
5 screw bases that is rated for not more than 145
6 watts.

7 “(27) The term ‘outdoor high light outputlamp’
8 means a lamp that—

9 “(A) has a rated lumen output not less
10 than 2601 lumens;

11 “(B) is capable of being operated at a volt-
12 age not less than 110 volts and not greater
13 than 300 volts, or driven at a constant current
14 of 6.6 amperes;

15 “(C) is not a Parabolic Aluminized Reflec-
16 tor lamp; and

17 “(D) is not a J-type double-ended (T-3)
18 halogen quartz lamp, utilizing R-7S bases, that
19 is manufactured before January 1, 2015.

20 “(28) The term ‘outdoor lighting control’ means
21 a device incorporated in a luminaire that receives a
22 signal, from either a sensor (such as an occupancy
23 sensor, motion sensor, or daylight sensor) or an
24 input signal (including analog or digital signals com-
25 municated through wired or wireless technology),

1 and can adjust the light level according to the sig-
2 nal.”.

3 (2) STANDARDS.— Section 342 of the Energy
4 Policy and Conservation Act (42 U.S.C. 6313) is
5 amended by adding at the end the following:

6 “(g) OUTDOOR LUMINAIRES.—

7 “(1) Each outdoor luminaire manufactured on
8 or after January 1, 2011, shall—

9 “(A) have an initial luminaire efficacy of
10 at least 50 lumens per watt; and

11 “(B) be designed to use a light source with
12 a lumen maintenance, calculated as mean rated
13 lumens divided by initial lumens, of at least 0.6.

14 “(2) Each outdoor luminaire manufactured on
15 or after January 1, 2013, shall—

16 “(A) have an initial luminaire efficacy of
17 at least 70 lumens per watt; and

18 “(B) be designed to use a light source with
19 a lumen maintenance, calculated as mean rated
20 lumens divided by initial lumens, of at least 0.6.

21 “(3) Each outdoor luminaire manufactured on
22 or after January 1, 2015, shall—

23 “(A) have an initial luminaire efficacy of
24 at least 80 lumens per watt; and

1 “(B) be designed to use a light source with
2 a lumen maintenance, calculated as mean rated
3 lumens divided by initial lumens, of at least
4 0.65.

5 “(4) In addition to the requirements of para-
6 graphs (1) through (3), each outdoor luminaire man-
7 ufactured on or after January 1, 2011, shall have
8 the capability of producing at least two different
9 light levels, including 100 percent and 60 percent of
10 full lamp output as tested with the maximum rated
11 lamp per UL1598 or the manufacturer’s maximum
12 specified for the luminaire under test.

13 “(5)(A) Not later than January 1, 2017, the
14 Secretary shall issue a final rule amending the appli-
15 cable standards established in paragraphs (3) and
16 (4) if technologically feasible and economically justi-
17 fied.

18 “(B) A final rule issued under subparagraph
19 (A) shall establish efficiency standards at the max-
20 imum level that is technically feasible and economi-
21 cally justified, as provided in subsections (o) and (p)
22 of section 325. The Secretary may also, in such rule-
23 making, amend or discontinue the product exclusions
24 listed in section 340(26)(A) through (P), or amend
25 the lumen maintenance requirements in paragraph

1 (3) if the Secretary determines that such amend-
2 ments are consistent with the purposes of this Act.

3 “(C) If the Secretary issues a final rule under
4 subparagraph (A) establishing amended standards,
5 the final rule shall provide that the amended stand-
6 ards apply to products manufactured on or after
7 January 1, 2020, or one year after the date on
8 which the final amended standard is published,
9 whichever is later.

10 “(h) OUTDOOR HIGH LIGHT OUTPUT LAMPS.—Each
11 outdoor high light output lamp manufactured on or after
12 January 1, 2012, shall have a lighting efficiency of at least
13 45 lumens per watt.”.

14 (3) TEST PROCEDURES.— Section 343(a) of the
15 Energy Policy and Conservation Act (42 U.S.C.
16 6314(a)) is amended by adding at the end the fol-
17 lowing:

18 “(10) OUTDOOR LIGHTING.—

19 “(A) With respect to outdoor luminaires
20 and outdoor high light output lamps, the test
21 procedures shall be based upon the test proce-
22 dures specified in illuminating engineering soci-
23 ety procedures LM-79 as of March 1, 2009,
24 and LM-31, and/or other appropriate consensus
25 test procedures developed by the Illuminating

1 Engineering Society or other appropriate con-
2 sensus standards bodies.

3 “(B) If illuminating engineering society
4 procedure LM—79 is amended, the Secretary
5 shall amend the test procedures established in
6 subparagraph (A) as necessary to be consistent
7 with the amended LM—79 test procedure, unless
8 the Secretary determines, by rule, published in
9 the Federal Register and supported by clear
10 and convincing evidence, that to do so would
11 not meet the requirements for test procedures
12 under paragraph (2).

13 “(C) The Secretary may revise the test
14 procedures for outdoor luminaires or outdoor
15 high light output lamps by rule consistent with
16 paragraph (2), and may incorporate as appro-
17 priate consensus test procedures developed by
18 the Illuminating Engineering Society or other
19 appropriate consensus standards bodies.”.

20 (4) PREEMPTION.— Section 345 of the Energy
21 Policy and Conservation Act (42 U.S.C. 6316) is
22 amended by adding at the end the following:

23 “(i)(1) Except as provided in paragraph (2), section
24 327 shall apply to outdoor luminaires to the same extent

1 and in the same manner as the section applies under part
2 B.

3 “(2) Any State standard that is adopted on or before
4 January 1, 2015, pursuant to a statutory requirement to
5 adopt efficiency standards for reducing outdoor lighting
6 energy use enacted prior to January 31, 2008, shall not
7 be preempted.”.

8 (5) ENERGY EFFICIENCY STANDARDS FOR CER-
9 TAIN LUMINAIRES.—Not later than 1 year after the
10 date of enactment of this Act, the Secretary of En-
11 ergy shall, in consultation with the National Elec-
12 trical Manufacturers Association, collect data for
13 United States sales of luminaires described in sec-
14 tion 340(26)(H) and (M) of the Energy Policy and
15 Conservation Act, to determine the historical growth
16 rate. If the Secretary finds that the growth in mar-
17 ket share of such luminaires exceeds twice the year
18 to year rate of the average of the previous three
19 years, then the Secretary shall within 12 months ini-
20 tiate a rulemaking to determine if such exclusion
21 should be eliminated, if substitute products exist
22 that perform more efficiently and fulfill the perform-
23 ance functions of these luminaires.

24 (b) PORTABLE LIGHTING.—

25 (1) PORTABLE LIGHT FIXTURES.—

1 (A) DEFINITIONS.—Section 321 of the En-
2 ergy Policy and Conservation Act (42 U.S.C.
3 6291) is amended by adding at the end the fol-
4 lowing:

5 “(67) ART WORK LIGHT FIXTURE.—The term
6 ‘art work light fixture’ means a light fixture de-
7 signed only to be mounted directly to an art work
8 and for the purpose of illuminating that art work.

9 “(68) LED LIGHT ENGINE.—The term ‘LED
10 light engine’ or ‘LED light engine with integral heat
11 sink’ means a subsystem of an LED light fixture
12 that—

13 “(A) includes 1 or more LED components,
14 including—

15 “(i) an LED driver power source with
16 electrical and mechanical interfaces; and

17 “(ii) an integral heat sink to provide
18 thermal dissipation; and

19 “(B) may be designed to accept additional
20 components that provide aesthetic, optical, and
21 environmental control.

22 “(69) LED LIGHT FIXTURE.—The term ‘LED
23 light fixture’ means a complete lighting unit con-
24 sisting of—

1 “(A) an LED light source with 1 or more
2 LED lamps or LED light engines; and

3 “(B) parts—

4 “(i) to distribute the light;

5 “(ii) to position and protect the light
6 source; and

7 “(iii) to connect the light source to
8 electrical power.

9 “(70) LIGHT FIXTURE.—The term ‘light fix-
10 ture’ means a product designed to provide light that
11 includes—

12 “(A) at least 1 lamp socket; and

13 “(B) parts—

14 “(i) to distribute the light;

15 “(ii) position and protect 1 or more
16 lamps; and

17 “(iii) to connect 1 or more lamps to a
18 power supply.

19 “(71) PORTABLE LIGHT FIXTURE.—

20 “(A) IN GENERAL.—The term ‘portable
21 light fixture’ means a light fixture that has a
22 flexible cord and an attachment plug for con-
23 nection to a nominal 120-volt circuit that—

24 “(i) allows the user to relocate the
25 product without any rewiring; and

1 “(ii) typically can be controlled with a
2 switch located on the product or the power
3 cord of the product.

4 “(B) EXCLUSIONS.—The term ‘portable
5 light fixture’ does not include—

6 “(i) direct plug-in night lights, sun or
7 heat lamps, medical or dental lights, port-
8 able electric hand lamps, signs or commer-
9 cial advertising displays, photographic
10 lamps, germicidal lamps, or light fixtures
11 for marine use or for use in hazardous lo-
12 cations (as those terms are defined in
13 ANSI/NFPA 70 of the National Electrical
14 Code); or

15 “(ii) decorative lighting strings, deco-
16 rative lighting outfits, or electric candles or
17 candelabra without lamp shades that are
18 covered by Underwriter Laboratories (UL)
19 standard 588, ‘Seasonal and Holiday Deco-
20 rative Products’.”.

21 (B) COVERAGE.—

22 (i) IN GENERAL.—Section 322(a) of
23 the Energy Policy and Conservation Act
24 (42 U.S.C. 6292(a)) is amended—

1 (I) by redesignating paragraph
2 (20) as paragraph (24); and

3 (II) by inserting after paragraph
4 (19) the following:

5 “(20) Portable light fixtures.”.

6 (ii) CONFORMING AMENDMENTS.—

7 Section 325(l) of the Energy Policy and
8 Conservation Act (42 U.S.C. 6295(l)) is
9 amended by striking “paragraph (19)”
10 each place it appears in paragraphs (1)
11 and (2) and inserting “paragraph (24)”.

12 (C) TEST PROCEDURES.—Section 323(b)
13 of the Energy Policy and Conservation Act (42
14 U.S.C. 6293(b)) is amended by adding at the
15 end the following:

16 “(19) LED FIXTURES AND LED LIGHT EN-
17 GINES.—Test procedures for LED fixtures and LED
18 light engines shall be based on Illuminating Engi-
19 neering Society of North America (IESNA) test pro-
20 cedure LM-79, Approved Method for Electrical and
21 Photometric Testing of Solid-State Lighting Devices,
22 and IESNA-approved test procedure for testing
23 LED light engines.”.

1 (D) STANDARDS.—Section 325 of the En-
2 ergy Policy and Conservation Act (42 U.S.C.
3 6295) is amended—

4 (i) by redesignating subsection (ii) as
5 subsection (oo);

6 (ii) in subsection (oo)(2), as redesign-
7 nated in clause (i) of this subparagraph, by
8 striking “(hh)” each place it appears and
9 inserting “(mm)”; and

10 (iii) by inserting after subsection (hh)
11 the following:

12 “(ii) PORTABLE LIGHT FIXTURES.—

13 “(1) IN GENERAL.—Subject to paragraphs (2)
14 and (3), portable light fixtures manufactured on or
15 after January 1, 2012, shall meet 1 or more of the
16 following requirements:

17 “(A) Be a fluorescent light fixture that
18 meets the requirements of the Energy Star Pro-
19 gram for Residential Light Fixtures, Version
20 4.2.

21 “(B) Be equipped with only 1 or more
22 GU-24 line-voltage sockets, not be rated for
23 use with incandescent lamps of any type (as de-
24 fined in ANSI standards), and meet the re-

1 requirements of version 4.2 of the Energy Star
2 program for residential light fixtures.

3 “(C) Be an LED light fixture or a light
4 fixture with an LED light engine and comply
5 with the following minimum requirements:

6 “(i) Minimum light output: 200
7 lumens (initial).

8 “(ii) Minimum LED light engine effi-
9 cacy: 40 lumens/watt installed in fixtures
10 that meet the minimum light fixture effi-
11 cacy of 29 lumens/watt or, alternatively, a
12 minimum LED light engine efficacy of 60
13 lumens/watt for fixtures that do not meet
14 the minimum light fixture efficacy of 29
15 lumens/watt.

16 “(iii) All portable fixtures shall have a
17 minimum LED light fixture efficacy of 29
18 lumens/watt and a minimum LED light
19 engine efficacy of 60 lumens/watt by Janu-
20 ary 1, 2016.

21 “(iv) Color Correlated Temperature
22 (CCT): 2700K through 4000K.

23 “(v) Minimum Color Rendering Index
24 (CRI): 75.

1 “(vi) Power factor equal to or greater
2 than 0.70.

3 “(vii) Portable luminaries that have
4 internal power supplies shall have zero
5 standby power when the luminaire is
6 turned off.

7 “(viii) LED light sources shall deliver
8 at least 70 percent of initial lumens for at
9 least 25,000 hours.

10 “(D)(i) Be equipped with an ANSI-des-
11 ignated E12, E17, or E26 screw-based socket
12 and be prepackaged and sold together with 1
13 screw-based compact fluorescent lamp or screw-
14 based LED lamp for each screw-based socket
15 on the portable light fixture.

16 “(ii) The compact fluorescent or LED
17 lamps prepackaged with the light fixture shall
18 be fully compatible with any light fixture con-
19 trols incorporated into the light fixture (for ex-
20 ample, light fixtures with dimmers shall be
21 packed with dimmable lamps).

22 “(iii) Compact fluorescent lamps pre-
23 packaged with light fixtures shall meet the re-
24 quirements of the Energy Star Program for
25 CFLs Version 4.0.

1 “(iv) Screw-based LED lamps shall comply
2 with the minimum requirements described in
3 subparagraph (C).

4 “(E) Be equipped with 1 or more single-
5 ended, non-screw based halogen lamp sockets
6 (line or low voltage), a dimmer control or high-
7 low control, and be rated for a maximum of 100
8 watts.

9 “(2) REVIEW.—

10 “(A) REVIEW.—The Secretary shall review
11 the criteria and standards established under
12 paragraph (1) to determine if revised standards
13 are technologically feasible and economically
14 justified.

15 “(B) COMPONENTS.—The review shall in-
16 clude consideration of—

17 “(i) whether a separate compliance
18 procedure is still needed for halogen fix-
19 tures described in subparagraph (E) and,
20 if necessary, what an appropriate standard
21 for halogen fixtures shall be;

22 “(ii) whether the specific technical cri-
23 teria described in subparagraphs (A), (C),
24 and (D)(iii) should be modified; and

1 “(iii) which fixtures should be exempt-
2 ed from the light fixture efficacy standard
3 as of January 1, 2016, because the fix-
4 tures are primarily decorative in nature (as
5 defined by the Secretary) and, even if ex-
6 empted, are likely to be sold in limited
7 quantities.

8 “(C) TIMING.—

9 “(i) DETERMINATION.—Not later
10 than January 1, 2014, the Secretary shall
11 publish amended standards, or a deter-
12 mination that no amended standards are
13 justified, under this subsection.

14 “(ii) STANDARDS.—Any standards
15 under this paragraph shall take effect on
16 January 1, 2016.

17 “(3) ART WORK LIGHT FIXTURES.—Art work
18 light fixtures manufactured on or after January 1,
19 2012, shall—

20 “(A) comply with paragraph (1); or

21 “(B)(i) contain only ANSI-designated E12
22 screw-based line-voltage sockets;

23 “(ii) have not more than 3 sockets;

24 “(iii) be controlled with an integral high/
25 low switch;

1 “(iv) be rated for not more than 25 watts
2 if fitted with 1 socket; and

3 “(v) be rated for not more than 15 watts
4 per socket if fitted with 2 or 3 sockets.

5 “(4) EXCEPTION FROM PREEMPTION.—Not-
6 withstanding section 327, Federal preemption shall
7 not apply to a regulation concerning portable light
8 fixtures adopted by the California Energy Commis-
9 sion on or before January 1, 2014.”.

10 (2) GU–24 BASE LAMPS.—

11 (A) DEFINITIONS.—Section 321 of the En-
12 ergy Policy and Conservation Act (42 U.S.C.
13 6291) (as amended by paragraph (1)(A)) is
14 amended by adding at the end the following:

15 “(72) GU–24.—The term ‘GU–24’ means the
16 designation of a lamp socket, based on a coding sys-
17 tem by the International Electrotechnical Commis-
18 sion, under which—

19 “(A) ‘G’ indicates a holder and socket type
20 with 2 or more projecting contacts, such as pins
21 or posts;

22 “(B) ‘U’ distinguishes between lamp and
23 holder designs of similar type that are not
24 interchangeable due to electrical or mechanical
25 requirements; and

1 “(C) 24 indicates the distance in millime-
2 ters between the electrical contact posts.

3 “(73) GU-24 ADAPTOR.—

4 “(A) IN GENERAL.—The term ‘GU-24
5 Adaptor’ means a 1-piece device, pig-tail, wiring
6 harness, or other such socket or base attach-
7 ment that—

8 “(i) connects to a GU-24 socket on 1
9 end and provides a different type of socket
10 or connection on the other end; and

11 “(ii) does not alter the voltage.

12 “(B) EXCLUSION.—The term ‘GU-24
13 Adaptor’ does not include a fluorescent ballast
14 with a GU-24 base.

15 “(74) GU-24 BASE LAMP.—‘GU-24 base lamp’
16 means a light bulb designed to fit in a GU-24 sock-
17 et.”.

18 (B) STANDARDS.—Section 325 of the En-
19 ergy Policy and Conservation Act (42 U.S.C.
20 6295) (as amended by paragraph (1)(D)) is
21 amended by inserting after subsection (ii) the
22 following:

23 “(jj) GU-24 BASE LAMPS.—

24 “(1) IN GENERAL.—A GU-24 base lamp shall
25 not be an incandescent lamp as defined by ANSI.

1 “(2) GU-24 ADAPTORS.—GU-24 adaptors shall
2 not adapt a GU-24 socket to any other line voltage
3 socket.”.

4 (3) STANDARDS FOR CERTAIN INCANDESCENT
5 REFLECTOR LAMPS.—Section 325(i) of the Energy
6 Policy and Conservation Act (42 U.S.C. 6295(i)), as
7 amended by section 161(a)(12) of this Act, is
8 amended by adding at the end the following:

9 “(9) CERTAIN INCANDESCENT REFLECTOR
10 LAMPS.—(A) No later than 12 months after enact-
11 ment of this paragraph, the Secretary shall publish
12 a final rule establishing standards for incandescent
13 reflector lamp types described in paragraph (1)(D).
14 Such standards shall be effective on July 1, 2013.

15 “(B) Any rulemaking for incandescent reflector
16 lamps completed after enactment of this section
17 shall consider standards for all incandescent reflec-
18 tor lamps, inclusive of those specified in paragraph
19 (1)(C).

20 “(10) REFLECTOR LAMPS.—No later than Jan-
21 uary 1, 2015, the Secretary shall publish a final rule
22 establishing and amending standards for reflector
23 lamps, including incandescent reflector lamps. Such
24 standards shall be effective no sooner than three
25 years after publication of the final rule. Such rule-

1 making shall consider incandescent and non-
2 incandescent technologies. Such rulemaking shall
3 consider a new metric other than lumens-per-watt
4 based on the photometric distribution of light from
5 such lamps.”.

6 **SEC. 212. OTHER APPLIANCE EFFICIENCY STANDARDS.**

7 (a) STANDARDS FOR WATER DISPENSERS, HOT
8 FOOD HOLDING CABINETS, AND PORTABLE ELECTRIC
9 SPAS.—

10 (1) DEFINITIONS.—Section 321 of the Energy
11 Policy and Conservation Act (42 U.S.C. 6291), as
12 amended by section 211 of this Act, is further
13 amended by adding at the end the following:

14 “(75) The term ‘water dispenser’ means a fac-
15 tory-made assembly that mechanically cools and
16 heats potable water and that dispenses the cooled or
17 heated water by integral or remote means.

18 “(76) The term ‘bottle-type water dispenser’
19 means a drinking water dispenser designed for dis-
20 pensing both hot and cold water that uses a remov-
21 able bottle or container as the source of potable
22 water.

23 “(77) The term ‘commercial hot food holding
24 cabinet’ means a heated, fully-enclosed compartment
25 with one or more solid or glass doors that is de-

1 signed to maintain the temperature of hot food that
2 has been cooked in a separate appliance. Such term
3 does not include heated glass merchandizing cabi-
4 nets, drawer warmers, commercial hot food holding
5 cabinets with interior volumes of less than 8 cubic
6 feet, or cook-and-hold appliances.

7 “(78) The term ‘portable electric spa’ means a
8 factory-built electric spa or hot tub, supplied with
9 equipment for heating and circulating water.”.

10 (2) COVERAGE.—Section 322(a) of the Energy
11 Policy and Conservation Act (42 U.S.C. 6292(a)), as
12 amended by section 211(b)(1)(B) of this Act, is fur-
13 ther amended by inserting after paragraph (20) the
14 following new paragraphs:

15 “(21) Bottle type water dispensers.

16 “(22) Commercial hot food holding cabinets.

17 “(23) Portable electric spas.”.

18 (3) TEST PROCEDURES.—Section 323(b) of the
19 Energy Policy and Conservation Act (42 U.S.C.
20 6293(b)), as amended by section 211(b)(1)(C) of
21 this Act, is further amended by adding at the end
22 the following:

23 “(20) BOTTLE TYPE WATER DISPENSERS.—
24 Test procedures for bottle type water dispensers
25 shall be based on ‘Energy Star Program Require-

1 ments for Bottled Water Coolers version 1.1’ pub-
2 lished by the Environmental Protection Agency.
3 Units with an integral, automatic timer shall not be
4 tested using section 4D, ‘Timer Usage,’ of the test
5 criteria.

6 “(21) COMMERCIAL HOT FOOD HOLDING CABI-
7 NETS.—Test procedures for commercial hot food
8 holding cabinets shall be based on the test proce-
9 dures described in ANSI/ASTM F2140–01 (Test for
10 idle energy rate-dry test). Interior volume shall be
11 based on the method shown in the Environmental
12 Protection Agency’s ‘Energy Star Program Require-
13 ments for Commercial Hot Food Holding Cabinets’
14 as in effect on August 15, 2003.

15 “(22) PORTABLE ELECTRIC SPAS.—Test proce-
16 dures for portable electric spas shall be based on the
17 test method for portable electric spas contained in
18 section 1604, title 20, California Code of Regula-
19 tions as amended on December 3, 2008. When the
20 American National Standards Institute publishes a
21 test procedure for portable electric spas, the Sec-
22 retary shall revise the Department of Energy’s pro-
23 cedure.”.

24 (4) STANDARDS.—Section 325 of the Energy
25 Policy and Conservation Act (42 U.S.C. 6295), as

1 amended by section 211 of this Act, is further
2 amended by adding after subsection (jj) the fol-
3 lowing:

4 “(kk) BOTTLE TYPE WATER DISPENSERS.—Effec-
5 tive January 1, 2012, bottle-type water dispensers de-
6 signed for dispensing both hot and cold water shall not
7 have standby energy consumption greater than 1.2 kilo-
8 watt-hours per day.

9 “(ll) COMMERCIAL HOT FOOD HOLDING CABI-
10 NETS.—Effective January 1, 2012, commercial hot food
11 holding cabinets with interior volumes of 8 cubic feet or
12 greater shall have a maximum idle energy rate of 40 watts
13 per cubic foot of interior volume.

14 “(mm) PORTABLE ELECTRIC SPAS.—Effective Janu-
15 ary 1, 2012, portable electric spas shall not have a normal-
16 ized standby power greater than $5(V^{2/3})$ Watts where
17 V =the fill volume in gallons.

18 “(nn) REVISIONS.—The Secretary of Energy shall
19 consider revisions to the standards in subsections (kk),
20 (ll), and (mm) in accordance with subsection (o) and pub-
21 lish a final rule no later than January 1, 2013 establishing
22 such revised standards, or make a finding that no revi-
23 sions are technically feasible and economically justified.
24 Any such revised standards shall take effect January 1,
25 2016.”.

1 (b) COMMERCIAL FURNACE EFFICIENCY STAND-
2 ARDS.—Section 342(a) of the Energy Policy and Con-
3 servation Act (42 U.S.C. 6312(a)) is amended by inserting
4 after paragraph (10) the following new paragraph:

5 “(11) WARM AIR FURNACES.—Each warm air
6 furnace with an input rating of 225,000 Btu per
7 hour or more and manufactured after January 1,
8 2011, shall meet the following standard levels:

9 “(A) GAS-FIRED UNITS.—

10 “(i) Minimum thermal efficiency of 80
11 percent.

12 “(ii) Include an interrupted or inter-
13 mittent ignition device.

14 “(iii) Have jacket losses not exceeding
15 0.75 percent of the input rating.

16 “(iv) Have either power venting or a
17 flue damper.

18 “(B) OIL-FIRED UNITS.—

19 “(i) Minimum thermal efficiency of 81
20 percent.

21 “(ii) Have jacket losses not exceeding
22 0.75 percent of the input rating.

23 “(iii) Have either power venting or a
24 flue damper.”.

1 **SEC. 213. APPLIANCE EFFICIENCY DETERMINATIONS AND**
2 **PROCEDURES.**

3 (a) DEFINITION OF ENERGY CONSERVATION STAND-
4 ARD.—Section 321(6) of the Energy Policy and Conserva-
5 tion Act (42 U.S.C. 6291(6)) is amended to read as fol-
6 lows:

7 “(6) ENERGY CONSERVATION STANDARD.—

8 “(A) IN GENERAL.—The term ‘energy con-
9 servation standard’ means 1 or more perform-
10 ance standards that—

11 “(i) for covered products (excluding
12 clothes washers, dishwashers, showerheads,
13 faucets, water closets, and urinals), pre-
14 scribe a minimum level of energy efficiency
15 or a maximum quantity of energy use, de-
16 termined in accordance with test proce-
17 dures prescribed under section 323;

18 “(ii) for showerheads, faucets, water
19 closets, and urinals, prescribe a minimum
20 level of water efficiency or a maximum
21 quantity of water use, determined in ac-
22 cordance with test procedures prescribed
23 under section 323; and

24 “(iii) for clothes washers and dish-
25 washers—

1 “(I) prescribe a minimum level of
2 energy efficiency or a maximum quan-
3 tity of energy use, determined in ac-
4 cordance with test procedures pre-
5 scribed under section 323; and

6 “(II) may include a minimum
7 level of water efficiency or a maximum
8 quantity of water use, determined in
9 accordance with those test procedures.

10 “(B) INCLUSIONS.—The term ‘energy con-
11 servation standard’ includes—

12 “(i) 1 or more design requirements, if
13 the requirements were established—

14 “(I) on or before the date of en-
15 actment of this subclause;

16 “(II) as part of a direct final rule
17 under section 325(p)(4); or

18 “(III) as part of a final rule pub-
19 lished on or after January 1, 2012,
20 and

21 “(ii) any other requirements that the
22 Secretary may prescribe under section
23 325(r).

24 “(C) EXCLUSION.—The term ‘energy con-
25 servation standard’ does not include a perform-

1 ance standard for a component of a finished
2 covered product, unless regulation of the com-
3 ponent is specifically authorized or established
4 pursuant to this title.”.

5 (b) ADOPTING CONSENSUS TEST PROCEDURES AND
6 TEST PROCEDURES IN USE ELSEWHERE.—Section
7 323(b) of the Energy Policy and Conservation Act (42
8 U.S.C. 6293(b)), as amended by sections 211 and 212 of
9 this Act, is further amended by adding the following new
10 paragraph after paragraph (22):

11 “(23) CONSENSUS AND ALTERNATE TEST PRO-
12 CEDURES.—

13 “(A) RECEIPT OF JOINT RECOMMENDA-
14 TION OR ALTERNATE TESTING PROCEDURE.—

15 On receipt of—

16 “(i) a statement that is submitted
17 jointly by interested persons that are fairly
18 representative of relevant points of view
19 (including representatives of manufactur-
20 ers of covered products, States, and effi-
21 ciency advocates), as determined by the
22 Secretary, and contains recommendations
23 with respect to the testing procedure for a
24 covered product; or

1 “(ii) a submission of a testing proce-
2 dure currently in use for a covered product
3 by a State, nation, or group of nations—

4 “(I) if the Secretary determines
5 that the recommended testing proce-
6 dure contained in the statement or
7 submission is in accordance with sub-
8 section (b)(3), the Secretary may
9 issue a final rule that establishes an
10 energy or water conservation testing
11 procedure that is published simulta-
12 neously with a notice of proposed rule-
13 making that proposes a new or
14 amended energy or water conservation
15 testing procedure that is identical to
16 the testing procedure established in
17 the final rule to establish the rec-
18 ommended testing procedure (referred
19 to in this paragraph as a ‘direct final
20 rule’); or

21 “(II) if the Secretary determines
22 that a direct final rule cannot be
23 issued based on the statement or sub-
24 mission, the Secretary shall publish a
25 notice of the determination, together

1 with an explanation of the reasons for
2 the determination.

3 “(B) PUBLIC COMMENT.—The Secretary
4 shall solicit public comment for a period of at
5 least 110 days with respect to each direct final
6 rule issued by the Secretary under subpara-
7 graph (A)(ii)(I).

8 “(C) WITHDRAWAL OF DIRECT FINAL
9 RULES.—

10 “(i) IN GENERAL.—Not later than
11 120 days after the date on which a direct
12 final rule issued under subparagraph
13 (A)(ii)(I) is published in the Federal Reg-
14 ister, the Secretary shall withdraw the di-
15 rect final rule if—

16 “(I) the Secretary receives 1 or
17 more adverse public comments relat-
18 ing to the direct final rule under sub-
19 paragraph (B) or any alternative joint
20 recommendation; and

21 “(II) based on the rulemaking
22 record relating to the direct final rule,
23 the Secretary determines that such
24 adverse public comments or alter-
25 native joint recommendation may pro-

1 vide a reasonable basis for with-
2 drawing the direct final rule under
3 paragraph (3) or any other applicable
4 law.

5 “(ii) ACTION ON WITHDRAWAL.—On
6 withdrawal of a direct final rule under
7 clause (i), the Secretary shall—

8 “(I) proceed with the notice of
9 proposed rulemaking published simul-
10 taneously with the direct final rule as
11 described in subparagraph (A)(ii)(I);
12 and

13 “(II) publish in the Federal Reg-
14 ister the reasons why the direct final
15 rule was withdrawn.

16 “(iii) TREATMENT OF WITHDRAWN DI-
17 RECT FINAL RULES.—A direct final rule
18 that is withdrawn under clause (i) shall
19 not be considered to be a final rule for
20 purposes of subsection (b).

21 “(D) EFFECT OF PARAGRAPH.—Nothing
22 in this paragraph authorizes the Secretary to
23 issue a direct final rule based solely on receipt
24 of more than 1 statement containing rec-

1 ommended test procedures relating to the direct
2 final rule.”.

3 (c) UPDATING TELEVISION TEST METHODS.—Sec-
4 tion 323(b) of the Energy Policy and Conservation Act
5 (42 U.S.C. 6293(b)), as amended by sections 211 and 212
6 of this Act, and subsection (b) of this section, is further
7 amended by adding at the end the following new para-
8 graph:

9 “(24) TELEVISIONS.—(A) On the date of enact-
10 ment of this paragraph, Appendix H to Subpart B
11 of Part 430 of the United States Code of Federal
12 Regulations, ‘Uniform Test Method for Measuring
13 the Energy Consumption of Television Sets’, is re-
14 pealed.

15 “(B) No later than 12 months after the date of
16 enactment of this paragraph the Secretary shall pub-
17 lish in the Federal Register a final rule prescribing
18 a new test method for televisions.”.

19 (d) CRITERIA FOR PRESCRIBING NEW OR AMENDED
20 STANDARDS.—(1) Section 325(o)(2)(B)(i) of the Energy
21 Policy and Conservation Act (42 U.S.C. 6295(o)(2)(B)(i))
22 is amended as follows:

23 (A) By striking “and” at the end of subclause
24 (VI).

1 (B) By redesignating subclause (VII) as sub-
2 clause (XI).

3 (C) By inserting the following new subclauses
4 after subclause (VI):

5 “(VII) the estimated value of the carbon dioxide
6 and other emission reductions that will be achieved
7 by virtue of the higher energy efficiency of the cov-
8 ered products resulting from the imposition of the
9 standard;

10 “(VIII) the estimated impact of standards for a
11 particular product on average consumer energy
12 prices;

13 “(IX) the increased energy efficiency that may
14 be attributable to the installation of Smart Grid
15 technologies or capabilities in the covered products,
16 if applicable in the determination of the Secretary;

17 “(X) the availability in the United States or in
18 other nations of examples or prototypes of covered
19 products that achieve significantly higher efficiency
20 standards for energy or for water; and”.

21 (2) Section 325(o)(2)(B)(iii) of such Act is amended
22 as follows:

23 (A) By striking “three” and inserting “5”.

24 (B) By inserting after the first sentence the fol-
25 lowing “For products with an average expected use-

1 ful life of less than 5 years, such rebuttable pre-
2 sumption shall be determined utilizing 75 percent of
3 the product’s average expected useful life as a multi-
4 plier instead of 5.”.

5 (C) By striking the last sentence and inserting
6 the following: “Such a presumption may be rebutted
7 only if the Secretary finds, based on clear, con-
8 vincing, and reliable evidence, that—

9 “(I) such standard level would cause serious
10 and unavoidable hardship to the average consumer
11 of the product, or to manufacturers supplying a sig-
12 nificant portion of the market for the product, that
13 substantially outweighs the standard level’s benefits;

14 “(II) the standard and implementing regula-
15 tions cannot be designed to avoid or mitigate the
16 hardship identified under subclause (I), through the
17 adoption of regional standards consistent with para-
18 graph (6) of this subsection, or other reasonable
19 means consistent with this part;

20 “(III) the same or substantially similar hard-
21 ship would not occur under a standard adopted in
22 the absence of the presumption, but that otherwise
23 meets the requirements of this section; and

24 “(IV) the hardship cannot be avoided or miti-
25 gated pursuant the procedures specified in section

1 504 of the Department of Energy Organization Act
2 (42 U.S.C. 7194).

3 A determination by the Secretary that the criteria trig-
4 gering such presumption are not met, or that the criterion
5 for rebutting the presumption are met shall not be taken
6 into consideration in the Secretary's determination of
7 whether a standard is economically justified.”.

8 (e) OBTAINING APPLIANCE INFORMATION FROM
9 MANUFACTURERS.—Section 326(d) of the Energy Policy
10 and Conservation Act (42 U.S.C. 6295(d)) is amended to
11 read as follows:

12 “(d) INFORMATION REQUIREMENTS.—(1) For pur-
13 poses of carrying out this part, the Secretary shall publish
14 proposed regulations not later than one year after the date
15 of enactment of the American Clean Energy and Security
16 Act of 2009, and after receiving public comment, final reg-
17 ulations not later than 18 months from such date of enact-
18 ment under this part or other provision of law adminis-
19 tered by the Secretary, which shall require each manufac-
20 turer of a covered product to submit information or re-
21 ports to the Secretary on an annual basis in a form adopt-
22 ed by the Secretary. Such reports shall include informa-
23 tion or data with respect to—

24 “(A) the manufacturers' compliance with all re-
25 quirements applicable pursuant to this part;

1 “(B) the economic impact of any proposed en-
2 ergy conservation standard;

3 “(C) the manufacturers’ annual shipments of
4 each class or category of covered products, orga-
5 nized, to the maximum extent practicable, by—

6 “(i) energy efficiency, energy use, and, if
7 applicable, water use;

8 “(ii) the presence or absence of such effi-
9 ciency related or energy consuming operational
10 characteristics or components as the Secretary
11 determines are relevant for the purposes of car-
12 rying out this part; and

13 “(iii) the State or regional location of sale,
14 for covered products for which the Secretary
15 may adopt regional standards; and

16 “(D) such other categories of information as
17 the Secretary deems relevant to carry out this part,
18 including such other information as may be nec-
19 essary to establish and revise test procedures, label-
20 ing rules, and energy conservation standards and to
21 insure compliance with the requirements of this
22 part.

23 “(2) In adopting regulations under this subsection,
24 the Secretary shall consider existing public sources of in-

1 formation, including nationally recognized certification
2 programs of trade associations.

3 “(3) The Secretary shall exercise authority under this
4 section in a manner designed to minimize unnecessary
5 burdens on manufacturers of covered products.

6 “(4) To the extent that they do not conflict with the
7 duties of the Secretary in carrying out this part, the provi-
8 sions of section 11(d) of the Energy Supply and Environ-
9 mental Coordination Act of 1974 (15 U.S.C. 796(d)) shall
10 apply with respect to information obtained under this sub-
11 section to the same extent and in the same manner as
12 they apply with respect to other energy information ob-
13 tained under such section.”.

14 (f) STATE WAIVER.—Section 327(c) of the Energy
15 Policy and Conservation Act (42 U.S.C. 6297(c)), as
16 amended by section 161(a)(19) of this Act, is further
17 amended by adding at the end the following:

18 “(12) is a regulation concerning standards for
19 hot food holding cabinets, drinking water dispensers
20 and portable electric spas adopted by the California
21 Energy Commission on or before January 1, 2013.”.

22 (g) WAIVER OF FEDERAL PREEMPTION.—Paragraph
23 (1) of section 327(d) of the Energy Policy and Conserva-
24 tion Act (42 U.S.C. 6297(d)) is amended as follows:

1 (1) In subparagraph (A) by striking “State reg-
2 ulation” each place it appears and inserting “State
3 statute or regulation”.

4 (2) In subparagraph (B) by adding at the end
5 the following new sentence: “In making such a find-
6 ing, the Secretary may not reject a petition for fail-
7 ure of the petitioning State or river basin commis-
8 sion to produce confidential information maintained
9 by any manufacturer or distributor, or group or as-
10 sociation of manufacturers or distributors, and
11 which the petitioning party does not have the legal
12 right to obtain.”.

13 (3) In clause (ii) of subparagraph (C) by strik-
14 ing “costs” each place it appears and inserting “es-
15 timated costs”.

16 (4) In subparagraph (C) by striking “within the
17 context of the State’s energy plan and forecast,
18 and,”.

19 (h) INCLUSION OF CARBON OUTPUT ON APPLIANCE
20 “ENERGYGUIDE” LABELS.—(1) Section 324(a)(2) of the
21 Energy Policy and Conservation Act (42 U.S.C.
22 6294(a)(2)) is amended by adding the following at the
23 end:

24 “(I)(i) Not later than 90 days after the date of enact-
25 ment of this subparagraph, the Commission shall initiate

1 a rulemaking to implement the additional labeling require-
2 ments specified in subsection (e)(1)(C) of this section with
3 an effective date for the revised labeling requirement not
4 later than 12 months from issuance of the final rule.

5 “(ii) Not later than 24 months after the date of en-
6 actment of this subparagraph, the Commission shall com-
7 plete the rulemaking initiated under clause (i).

8 “(iii) Not later than 90 days after issuance of the
9 final rule as provided in this subparagraph, the Secretary
10 shall issue calculation methods required to effectuate the
11 labeling requirements specified in subsection (e)(1)(C) of
12 this section.”.

13 (2) Section 324(c)(1) of the Energy Policy and Con-
14 servation Act (42 U.S.C. 6294(c)(1)) is amended—

15 (A) by striking “and” at the end of subpara-
16 graph (A);

17 (B) by striking the period at the end of sub-
18 paragraph (B) and inserting a semicolon; and

19 (C) by adding at the end the following new sub-
20 paragraphs:

21 “(C) for products or groups of products pro-
22 viding a comparable function (including the group of
23 products comprising the heating function of heat
24 pumps and furnaces) among covered products listed
25 in paragraphs (3), (4), (5), (8), (9), (10), and (11)

1 of section 322(a) of this part, and others designated
2 by the Secretary, the estimated total annual atmos-
3 pheric carbon dioxide emissions (or their equivalent
4 in other greenhouse gases) associated with, or
5 caused by, the product, calculated utilizing—

6 “(i) national average energy use for the
7 product including energy consumed at the point
8 of end use based on test procedures developed
9 under section 323 of this part;

10 “(ii) national average energy consumed or
11 lost in the production, generation, transpor-
12 tation, storage, and distribution of energy to
13 the point of end use; and

14 “(iii) any direct emissions of greenhouse
15 gases from the product during normal use;

16 “(D) in determining the national average
17 energy consumption and total annual atmos-
18 pheric carbon dioxide emissions, the Secretary
19 shall utilize Federal Government sources, in-
20 cluding the Energy Information Administration
21 Annual Energy Review, the Environmental Pro-
22 tection Agency eGRID data base, Environ-
23 mental Protection Agency AP-42 Emission
24 Factors as amended, and other sources deter-
25 mined to be appropriate by the Secretary; and

1 “(E) information presenting, for each
2 product (or group of products providing the
3 comparable function) identified in section
4 (c)(1)(C) of this section, the estimated annual
5 carbon dioxide emissions calculated within the
6 range of emissions calculated for all models of
7 the product or group according to its function,
8 including those models consuming fuels and
9 those models not consuming fuels.”.

10 (i) PERMITTING STATES TO SEEK INJUNCTIVE EN-
11 FORCEMENT.—(1) Section 334 of the Energy Policy and
12 Conservation Act (42 U.S.C. 6304) is amended to read
13 as follows:

14 **“SEC. 334. JURISDICTION AND VENUE.**

15 “(a) JURISDICTION.—The United States district
16 courts shall have jurisdiction to restrain—

17 “(1) any violation of section 332; and

18 “(2) any person from distributing in commerce
19 any covered product which does not comply with an
20 applicable rule under section 324 or 325.

21 “(b) AUTHORITY.—Any action referred to in sub-
22 section (a) shall be brought by the Commission or by the
23 attorney general of a State in the name of the State, ex-
24 cept that—

1 “(1) any such action to restrain any violation of
2 section 332(a)(3) which relates to requirements pre-
3 scribed by the Secretary or any violation of section
4 332(a)(4) which relates to request of the Secretary
5 under section 326(b)(2) shall be brought by the Sec-
6 retary; and

7 “(2) any violation of section 332(a)(5) or
8 332(a)(7) shall be brought by the Secretary or by
9 the attorney general of a State in the name of the
10 State.

11 “(c) VENUE AND SERVICE OF PROCESS.—Any such
12 action may be brought in the United States district court
13 for a district wherein any act, omission, or transaction
14 constituting the violation occurred, or in such court of the
15 district wherein the defendant is found or transacts busi-
16 ness. In any action under this section, process may be
17 served on a defendant in any other district in which the
18 defendant resides or may be found.”.

19 (2) The item relating to section 334 in the table of
20 contents for such Act is amended to read as follows:
 “Sec. 334. Jurisdiction and venue.”.

21 (j) TREATMENT OF APPLIANCES WITHIN BUILDING
22 CODES.—(1) Section 327(f)(3) of the Energy Policy and
23 Conservation Act (42 U.S.C. 6297(f)(3)) is amended by
24 striking subparagraphs (B) through (G) and inserting the
25 following:

1 “(B) The code meets at least one of the fol-
2 lowing requirements:

3 “(i) The code does not require that the
4 covered product have an energy efficiency ex-
5 ceeding—

6 “(I) the applicable energy conserva-
7 tion standard established in or prescribed
8 under section 325;

9 “(II) the level required by a regula-
10 tion of that State for which the Secretary
11 has issued a rule granting a waiver under
12 subsection (d) of this section; or

13 “(III) the required level established in
14 the International Energy Conservation
15 Code or in a standard of the American So-
16 ciety of Heating, Refrigerating and Air-
17 Conditioning Engineers, or by the Sec-
18 retary pursuant to section 304 of the En-
19 ergy Conservation and Production Act.

20 “(ii) If the code uses one or more baseline
21 building designs against which all submitted
22 building designs are to be evaluated and such
23 baseline building designs contain a covered
24 product subject to an energy conservation
25 standard established in or prescribed under sec-

1 tion 325, the baseline building designs are
2 based on an efficiency level for such covered
3 product which meets but does not exceed one of
4 the levels specified in clause (i).

5 “(iii) If the code sets forth one or more op-
6 tional combinations of items which meet the en-
7 ergy consumption or conservation objective, in
8 at least one combination that the State has
9 found to be reasonably achievable using com-
10 mercially available technologies the efficiency of
11 the covered product meets but does not exceed
12 one of the levels specified in clause (i).

13 “(C) The credit to the energy consumption or
14 conservation objective allowed by the code for install-
15 ing covered products having energy efficiencies ex-
16 ceeding one of the levels specified in subparagraph
17 (B)(i) is on a one-for-one equivalent energy use or
18 equivalent energy cost basis, taking into account the
19 typical lifetime of the product.

20 “(D) The energy consumption or conservation
21 objective is specified in terms of an estimated total
22 consumption of energy (which may be calculated
23 from energy loss- or gain-based codes) utilizing an
24 equivalent amount of energy (which may be specified

1 in units of energy or its equivalent cost) and equivalent
2 lifetimes.

3 “(E) The estimated energy use of any covered
4 product permitted or required in the code, or used
5 in calculating the objective, is determined using the
6 applicable test procedures prescribed under section
7 323, except that the State may permit the estimated
8 energy use calculation to be adjusted to reflect the
9 conditions of the areas where the code is being ap-
10 plied if such adjustment is based on the use of the
11 applicable test procedures prescribed under section
12 323 or other technically accurate documented proce-
13 dure.”.

14 (2) Section 327(f)(4)(B) of the Energy Policy
15 and Conservation Act (42 U.S.C. 6297(f)(4)(B)) is
16 amended to read as follows:

17 “(B) If a building code requires the installation of
18 covered products with efficiencies exceeding the levels and
19 requirements specified in paragraph (3)(B), such require-
20 ment of the building code shall not be applicable unless
21 the Secretary has granted a waiver for such requirement
22 under subsection (d) of this section.”.

1 **SEC. 214. BEST-IN-CLASS APPLIANCES DEPLOYMENT PRO-**
2 **GRAM.**

3 (a) IN GENERAL.—Not later than 1 year after the
4 date of enactment of this Act, the Secretary of Energy,
5 in consultation with the Administrator, shall establish a
6 program to be known as the “Best-in-Class Appliances
7 Deployment Program” to—

8 (1) provide bonus payments to retailers or dis-
9 tributors under subsection (c) for sales of best-in-
10 class high-efficiency household appliance models,
11 high-efficiency installed building equipment, and
12 high-efficiency consumer electronics, with the goal of
13 reducing life-cycle costs for consumers, encouraging
14 innovation, and maximizing energy savings and pub-
15 lic benefit;

16 (2) provide bounties under subsection (d) to re-
17 tailers and manufacturers for the replacement, re-
18 tirement, and recycling of old, inefficient, and envi-
19 ronmentally harmful products; and

20 (3) provide premium awards under subsection
21 (e) to manufacturers for developing and producing
22 new Superefficient Best-in-Class Products.

23 (b) DESIGNATION OF BEST-IN-CLASS PRODUCT
24 MODELS.—

25 (1) IN GENERAL.—The Secretary of Energy
26 shall designate product models of appliances, equip-

1 ment, or electronics as Best-in-Class Product mod-
2 els. The Secretary shall publicly announce the Best-
3 in-Class Product models designated under this sub-
4 section. The Secretary shall define product classes
5 broadly and, except as provided in paragraph (2),
6 shall designate as Best-in-Class Product models no
7 more than the most efficient 10 percent of the com-
8 mercially available product models in a class that
9 demonstrate, as a group, a distinctly greater energy
10 efficiency than the average energy efficiency of that
11 class of appliances, equipment, or electronics. In des-
12 ignating models, the Secretary shall—

13 (A) identify commercially available models
14 in the relevant class of products;

15 (B) identify the subgroup of those models
16 that share the distinctly higher energy-effi-
17 ciency characteristics that warrant designation
18 as best-in-class; and

19 (C) add other models in that class to the
20 list of Best-in-Class Product models as they
21 demonstrate their ability to meet the higher-ef-
22 ficiency characteristics on which the designation
23 was made.

24 (2) PERCENTAGE EXCEPTION.—If there are
25 fewer than 10 product models in a class of products,

1 the Secretary may designate one or more of such
2 models as Best-in-Class Products.

3 (3) REVIEW OF BEST-IN-CLASS STANDARDS.—

4 The Secretary shall review annually the product-spe-
5 cific criteria for designating, and the product models
6 that qualify as, Best-in-Class Products and, after
7 notice and a 30-day comment period, make upwards
8 adjustments in the efficiency criteria as necessary to
9 maintain an appropriate ratio of such product mod-
10 els to the total number of product models in the
11 product class.

12 (4) SMART GRID ENERGY EFFICIENCY SAV-
13 INGS.—The Secretary shall include energy efficiency
14 savings achieved by a commercially available product
15 having smart grid capability in determining the effi-
16 ciency level of a product for purposes of a Best-In-
17 Class Product designation pursuant to this sub-
18 section. In measuring energy efficiency savings
19 achieved by smart grid capability, the Secretary
20 shall use a metric that—

21 (A) is based on the time-differentiated
22 value and amount of energy consumption;

23 (B) accounts for the capability of the prod-
24 uct to respond to a smart grid in which the
25 physical capability of the product to save or

1 delay energy because of a smart grid feature is
2 weighted by the likelihood that the feature will
3 be used;

4 (C) is based on the value of a unit of elec-
5 tric or gas consumption as a function of time
6 of day and season; and

7 (D) includes a test method by which the
8 manufacturer shall determine the energy effi-
9 ciency of smart grid capable products.

10 (c) BONUSES FOR SALES OF BEST-IN-CLASS PROD-
11 UCTS.—

12 (1) IN GENERAL.—The Secretary of Energy
13 shall make bonus payments to retailers or, as pro-
14 vided in paragraph (5)(B), distributors for the sale
15 of Best-in-Class Products.

16 (2) BONUS PROGRAM.—The Secretary shall—

17 (A) publicly announce the availability and
18 amount of the bonus to be paid for each sale
19 of a Best-in-Class Product of a model des-
20 ignated under subsection (b); and

21 (B) make bonus payments in at least that
22 amount for each Best-in-Class Product of that
23 model sold during the 3-year period beginning
24 on the date the model is designated under sub-
25 section (b).

1 (3) UPGRADE OF BEST-IN-CLASS PRODUCT ELI-
2 GIBILITY.—In conducting a review under subsection
3 (b)(3), the Secretary shall—

4 (A) consider designating as a Best-in-Class
5 Product model a Superefficient Best-in-Class
6 Product model that has been designated pursu-
7 ant to subsection (e);

8 (B) announce any change in the bonus
9 payment as necessary to increase the market
10 share of Best-in-Class Product models;

11 (C) list models that will be eligible for bo-
12 nuses in the new amount; and

13 (D) continue paying bonus payments at
14 the original level, for the sale of any models
15 that previously qualified as Best-in-Class Prod-
16 ucts but do not qualify at the new level, for the
17 remainder of the 3-year period announced with
18 the original designation.

19 (4) SIZE OF INDIVIDUAL BONUS PAYMENTS.—

20 (A) The size of each bonus payment under this sub-
21 section shall be the product of—

22 (i) an amount determined by the Sec-
23 retary; and

1 (ii) the difference in energy consumption
2 between the Best-in-Class Product and the av-
3 erage product in the product class.

4 (B) The Secretary shall determine the amount
5 under subparagraph (A)(i) for each product type, in
6 consultation with State and utility efficiency pro-
7 gram administrators as well as the Administrator,
8 based on estimates of the amount of bonus payment
9 that would provide significant incentive to increase
10 the market share of Best-in-Class Products.

11 (5) ELIGIBLE BONUS RECIPIENT.—(A) The
12 Secretary shall ensure that not more than 1 bonus
13 payment is provided under this subsection for each
14 Best-in-Class Product.

15 (B) The Secretary may make distributors eligi-
16 ble to receive bonus payments under this subsection
17 for sales that are not to the final end-user, to the
18 extent that the Secretary determines that for a par-
19 ticular product category distributors are well situ-
20 ated to increase sales of Best-in-Class Products.

21 (d) BOUNTIES FOR REPLACEMENT, RETIREMENT,
22 AND RECYCLING OF EXISTING LOW-EFFICIENCY PROD-
23 UCTS.—

24 (1) IN GENERAL.—The Secretary of Energy
25 shall make bounty payments to—

1 (A) retailers for the replacement, retire-
2 ment, and recycling of older operating low-effi-
3 ciency products that might otherwise continue
4 in operation; and

5 (B) manufacturers of Superefficient Best-
6 in-Class Products for the retirement and recy-
7 cling of older operating low-efficiency products
8 that perform the same function and which
9 might otherwise continue in operation.

10 (2) BOUNTIES.—Bounties shall be payable—

11 (A) to a retailer upon documentation that
12 the sale of a Best-in-Class Product was accom-
13 panied by the replacement, retirement, and re-
14 cycling of—

15 (i) an inefficient but still-functioning
16 product; or

17 (ii) a nonfunctioning product con-
18 taining a refrigerant, by the consumer to
19 whom the Best-in-Class Product was sold;
20 and

21 (B) to a manufacturer upon documentation
22 of the retirement and recycling of—

23 (i) an inefficient but still-functioning
24 product from a consumer to whom a

1 Superefficient Best-in-Class Product was
2 delivered; or

3 (ii) a nonfunctioning product con-
4 taining a refrigerant from a consumer to
5 whom a Superefficient Best-in-Class Prod-
6 uct was delivered.

7 (3) AMOUNT.—

8 (A) FUNCTIONING PRODUCTS.—The boun-
9 ty payment payable under this subsection for a
10 product described in paragraphs (2)(A)(i) and
11 (2)(B)(i) shall be based on the difference be-
12 tween the estimated energy use of the product
13 replaced and the energy use of an average new
14 product in the product class, over the estimated
15 remaining lifetime of the product that was re-
16 placed.

17 (B) NONFUNCTIONING PRODUCTS CON-
18 TAINING REFRIGERANTS.—The bounty payment
19 payable under this subsection for a product de-
20 scribed in paragraphs (2)(A)(ii) and (2)(B)(ii)
21 shall be in the amount that the Secretary of
22 Energy, in consultation with the Administrator,
23 determines is sufficient to promote the recycling
24 of such products, up to the amount of bounty

1 for a comparable product described in para-
2 graphs (2)(A) and (2)(B).

3 (4) RETIREMENT.—The Secretary shall ensure
4 that no product for which a bounty is paid under
5 this subsection is returned to active service, but that
6 it is instead destroyed, and recycled to the extent
7 feasible.

8 (5) RECYCLING APPLIANCES CONTAINING RE-
9 FRIGERANTS.—Exclusively for the purpose of imple-
10 menting the bounty payment program for products
11 containing a refrigerant under this section, the Ad-
12 ministrator shall establish standards for environ-
13 mentally responsible methods of recycling and dis-
14 posal of refrigerant-containing appliances that, at a
15 minimum, meet the requirements set by the Respon-
16 sible Appliance Disposal (RAD) Program for refriger-
17 erant disposal. The Secretary shall ensure that such
18 standards are met before a bounty payment is made
19 under this subsection for a product containing a re-
20 frigerant. Nothing in this section shall be interpreted
21 to alter the requirements of section 608 of the Clean
22 Air Act or to relieve any person from complying with
23 those requirements.

1 (e) PREMIUM AWARDS FOR DEVELOPMENT AND
2 PRODUCTION OF SUPEREFFICIENT BEST-IN-CLASS PROD-
3 UCTS.—

4 (1) IN GENERAL.—(A) The Secretary of Energy
5 shall provide premium awards to manufacturers for
6 the development and production of Superefficient
7 Best-in-Class Products. The Secretary shall set and
8 periodically revise standards for eligibility of prod-
9 ucts for designation as a Superefficient Best-in-
10 Class Product.

11 (B) The Secretary may establish a standard for
12 a Superefficient Best-in-Class Product even if no
13 product meeting that standard exists, if the Sec-
14 retary has reasonable grounds to conclude that a
15 mass-producible product could be made to meet that
16 standard.

17 (C) The Secretary may also establish a Super-
18 efficient Best-in-Class Product standard that is met
19 by one or more existing Best-in-Class Product mod-
20 els, if those product models have distinct energy effi-
21 ciency attributes and performance characteristics
22 that make them significantly better than other prod-
23 uct models qualifying as best-in-class. The Secretary
24 may not designate as Superefficient Best-in-Class
25 Products under this subparagraph models that rep-

1 resent more than 10 percent of the currently quali-
2 fying Best-in-Class Product models. This subpara-
3 graph shall not apply to products designated pursu-
4 ant to paragraph (4)(A).

5 (D) In making its finding on the efficiency level
6 a product can achieve for purposes of a Supereffi-
7 cient Best-In-Class Product designation pursuant to
8 this paragraph, the Secretary shall include energy
9 efficiency savings that would be achieved by a prod-
10 uct as a result of smart grid capability when a prod-
11 uct having such capability can be produced and sold
12 commercially to mass market consumers. In meas-
13 uring energy efficiency savings achieved by smart
14 grid capability, the Secretary shall use a metric
15 that—

16 (i) is based on the time-differentiated value
17 and amount of energy consumption;

18 (ii) accounts for the capability of the prod-
19 uct to respond to a smart grid in which the
20 physical capability of the product to save or
21 delay energy because of a smart grid feature is
22 weighted by the likelihood that the feature will
23 be used;

1 (iii) is based on the value of a unit of elec-
2 tric or gas consumption as a function of time
3 of day and season; and

4 (iv) includes a test method by which the
5 manufacturer shall determine the energy effi-
6 ciency of smart grid capable products.

7 (2) PREMIUM AWARDS.—(A) The premium
8 award payment provided to a manufacturer under
9 this subsection shall be in addition to any bonus
10 payments made under subsection (c).

11 (B) The amount of the premium award paid
12 per unit of Superefficient Best-in-Class Products
13 sold to retailers or distributors shall, except as pro-
14 vided by subparagraph (F), be the product of—

15 (i) an amount determined by the Sec-
16 retary; and

17 (ii) the difference in energy consumption
18 between the Superefficient Best-in-Class Prod-
19 uct and the average product in the product
20 class.

21 (C) The Secretary shall determine the amount
22 under subparagraph (B)(i) for each product type, in
23 consultation with State and utility efficiency pro-
24 gram administrators as well as the Administrator,
25 based on consideration of the present value to the

1 Nation of the energy (and water or other resources
2 or inputs) saved over the useful life of the product.
3 The Secretary may also take into consideration the
4 methods used to increase sales of qualifying prod-
5 ucts in determining such amount.

6 (D) The Secretary may adjust the value de-
7 scribed in subparagraph (C) upward or downward as
8 appropriate, including based on the effect of the pre-
9 mium awards on the sales of products in different
10 classes that may be affected by the program under
11 this subsection.

12 (E) Premium award payments shall be applied
13 to sales of any Superefficient Best-in-Class Product
14 for the first 3 years after designation as a Supereffi-
15 cient Best-in-Class Product.

16 (F) For years 2011 through 2013, the Sec-
17 retary shall make bonus payments to manufacturers
18 of the products designated in paragraph (4)(A) for
19 each product produced in the following amounts:

20 (i) \$75 for each dishwasher.

21 (ii) \$250 for each clothes washer.

22 (iii) \$200 for each refrigerator or refrig-
23 erator-freezer.

24 (iv) \$250 for each clothes dryer.

25 (v) \$200 for each cooking product.

1 (vi) \$300 for each water heater.

2 (3) COORDINATION OF INCENTIVES.—No prod-
3 uct for which Federal tax credit is received under
4 section 45M of the Internal Revenue Code of 1986
5 shall be eligible to receive premium award payments
6 pursuant to this subsection.

7 (4) DESIGNATIONS.—

8 (A) INITIAL DESIGNATIONS.—Notwith-
9 standing any other provisions of this section,
10 the products the Secretary shall designate as a
11 Superefficient Best-In-Class Product include,
12 but are not limited to, the following products
13 manufactured in 2011 through 2013:

14 (i) A dishwasher, clothes washer, re-
15 frigerator, or refrigerator-freezer that
16 meets the highest efficiency performance
17 standards in its product category as pro-
18 vided in Section 305(b) of the Emergency
19 Economic Stabilization Act of 2008 and
20 has the smart grid capability specified in
21 paragraph (5).

22 (ii) A water heater that meets an effi-
23 ciency standard that is the same or equiva-
24 lent to the standard provided in Section
25 1333 of the Energy Policy Act of 2005

1 and has the smart grid capability specified
2 in paragraph (5).

3 (iii) A clothes dryer or cooking prod-
4 uct that the Secretary determines meets
5 the standards specified in subsection (j)(3),
6 which the Secretary shall promulgate no
7 later than one year after the date of enact-
8 ment, and has the smart grid capability
9 specified in paragraph (5).

10 (B) EXTENSION OF INITIAL DESIGNA-
11 TIONS.—

12 (i) GENERAL.—The Secretary shall in
13 2013 extend the Superefficient Best-In-
14 Class Product designation of each product
15 specified in subparagraph (A)(i) through
16 (iii) through 2017, provided that for each
17 product designation extended—

18 (I) the extension will result in
19 significant energy efficiency savings;

20 (II) the product meets the Super-
21 efficient Best-In-Class Product cri-
22 teria specified in paragraph (1);

23 (III) the eligibility standards of
24 the product include the smart grid ca-

1 pability specified in paragraph (5);
2 and

3 (IV) the Secretary makes appro-
4 priate revisions to the eligibility stand-
5 ards of the product as provided by
6 paragraph (1).

7 (ii) AWARDS.—If a Superefficient
8 Best-In-Class Product designation for a
9 product is extended pursuant to this sub-
10 paragraph, the premium award for the
11 product shall be determined in accordance
12 with paragraph (2).

13 (5) SMART GRID CAPABILITY.—

14 (A) Until the Secretary promulgates cri-
15 teria under subparagraph (B), the term “smart
16 grid capability” means capability of receiving
17 and interpreting time-of-use pricing and peak-
18 load-shed signals from a utility and—

19 (i) in the case of a cooking product,
20 reducing a minimum of 20 percent during
21 peak demand as measured by the tested
22 average wattage over the course of a typ-
23 ical operating cycle of the product; or

24 (ii) in the case of a clothes washer, a
25 refrigerator, a dishwasher, a dryer and a

1 water heater, reducing a minimum of 50
2 percent during peak demand as measured
3 by the tested average wattage over the
4 course of a typical operating cycle of the
5 product, provided that the typical oper-
6 ating cycle of a refrigerator and a water
7 heater shall be a 24-hour period.

8 (B) After completion of the analysis re-
9 quired under section 142(b) of this Act, the
10 Secretary shall expeditiously promulgate, after
11 notice and a 30-day public comment period, cri-
12 teria for what constitutes “smart grid capa-
13 bility.”

14 (f) REPORTING.—The Secretary of Energy shall re-
15 quire, as a condition of receiving a bonus, bounty, or pre-
16 mium award under this section, that a report containing
17 the following documentation be provided:

18 (1) For retailers and distributors, the number
19 of units sold within each product type, and model-
20 specific wholesale purchase prices and retail sale
21 prices, on a monthly basis.

22 (2) For manufacturers, model-specific energy
23 efficiency and consumption data.

24 (3) For manufacturers, on an immediate basis,
25 information concerning any product design or func-

1 tion changes that affect the energy consumption of
2 the unit.

3 (4) The methods used to increase the sales of
4 qualifying products.

5 (g) MONITORING AND VERIFICATION PROTOCOLS.—
6 The Secretary of Energy shall establish monitoring and
7 verification protocols for energy consumption tests for
8 each product model and for sales of energy-efficient mod-
9 els. The Secretary shall estimate actual savings of energy
10 from the use of Smart Grid capability in appliances for
11 which premium award payments are made pursuant to
12 subsection (e) as a function of utility and consumer readi-
13 ness to utilize such capability.

14 (h) DISCLOSURE.—The Secretary of Energy may re-
15 quire that manufacturers, retailers and distributors dis-
16 close publicly and to consumers their participation in the
17 program under this section.

18 (i) COST-EFFECTIVENESS REQUIREMENT.—

19 (1) REQUIREMENT.—The Secretary of Energy
20 shall make cost-effectiveness a top priority in design-
21 ing the program under, and administering, this sec-
22 tion, except that the cost-effectiveness of providing
23 premium awards to manufacturers under subsection
24 (e), in aggregate, may be lower by this measure than

1 that of the bonuses and bounties to retailers and
2 distributors under subsections (c) and (d).

3 (2) DEFINITIONS.—In this subsection:

4 (A) COST-EFFECTIVENESS.—The term
5 “cost-effectiveness” means a measure of aggre-
6 gate savings in the cost of energy over the life-
7 time of a product in relation to the cost to the
8 Secretary of the bonuses, bounties, and pre-
9 mium awards provided under this section for a
10 product.

11 (B) SAVINGS.—The term “savings” means
12 the cumulative megawatt-hours of electricity or
13 million British thermal units of other fuels
14 saved by a product during the projected useful
15 life of the product, in comparison to projected
16 energy consumption of the average product in
17 the same class, taking into consideration the
18 impact of any documented measures to replace,
19 retire, and recycle low-efficiency products at the
20 time of purchase of highly-efficient substitutes.

21 (j) DEFINITIONS.—In this section—

22 (1) the term “distributor” mean an individual,
23 organization, or company that sells products in mul-
24 tiple lots and not directly to end-users;

1 (2) the term “retailer” means an individual, or-
2 organization, or company that sells products directly
3 to end-users;

4 (3) the term “manufacturer” means an indi-
5 vidual, organization, or company that transforms
6 raw materials into mass-producible finished goods;
7 and

8 (4) the term “Superefficient Best-in-Class
9 Product” means a product that—

10 (A) can be mass produced; and

11 (B) achieves the highest level of efficiency
12 that the Secretary of Energy finds can, given
13 the current state of technology, be produced
14 and sold commercially to mass-market con-
15 sumers.

16 (k) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated \$600,000,000 for each
18 of the fiscal years 2011 through 2013 to the Secretary
19 of Energy for purposes of this section, and such sums as
20 may be necessary for subsequent fiscal years. Of funds
21 appropriated, not more than 10 percent for any fiscal year
22 may be expended on program administration, and not less
23 than 40 percent of any funds appropriated during fiscal
24 years 2011 through 2013 shall be for purposes of sub-
25 section (e).

1 **SEC. 215. WATERSENSE.**

2 (a) IN GENERAL.—There is established within the
3 Environmental Protection Agency a WaterSense program
4 to identify and promote water efficient products, buildings
5 and landscapes, and services in order—

6 (1) to reduce water use;

7 (2) to reduce the strain on water, wastewater,
8 and stormwater infrastructure;

9 (3) to conserve energy used to pump, heat,
10 transport, and treat water; and

11 (4) to preserve water resources for future gen-
12 erations,

13 through voluntary labeling of, or other forms of commu-
14 nications about, products, buildings and landscapes, and
15 services that meet the highest water efficiency and per-
16 formance standards.

17 (b) DUTIES.—The Administrator shall—

18 (1) promote WaterSense labeled products,
19 buildings and landscapes, and services in the market
20 place as the preferred technologies and services
21 for—

22 (A) reducing water use; and

23 (B) ensuring product and service perform-
24 ance;

1 (2) work to enhance public awareness of the
2 WaterSense label through public outreach, edu-
3 cation, and other means;

4 (3) establish and maintain performance stand-
5 ards so that products, buildings and landscapes, and
6 services labeled with the WaterSense label perform
7 as well or better than their less efficient counter-
8 parts;

9 (4) publicize the need for proper installation
10 and maintenance of WaterSense products by a li-
11 censed, and where certification guidelines exist,
12 WaterSense-certified professional to ensure optimal
13 performance;

14 (5) preserve the integrity of the WaterSense
15 label;

16 (6) regularly review and, when appropriate, up-
17 date WaterSense criteria for categories of products,
18 buildings and landscapes, and services, at least once
19 every four years;

20 (7) to the extent practical, regularly estimate
21 and make available to the public the production and
22 relative market shares of WaterSense labeled prod-
23 ucts, buildings and landscapes, and services, at least
24 annually;

1 (8) to the extent practical, regularly estimate
2 and make available to the public the water and en-
3 ergy savings attributable to the use of WaterSense
4 labeled products, buildings and landscapes, and serv-
5 ices, at least annually;

6 (9) solicit comments from interested parties and
7 the public prior to establishing or revising a
8 WaterSense category, specification, installation cri-
9 terion, or other criterion (or prior to effective dates
10 for any such category, specification, installation cri-
11 terion, or other criterion);

12 (10) provide reasonable notice to interested par-
13 ties and the public of any changes (including effec-
14 tive dates), on the adoption of a new or revised cat-
15 egory, specification, installation criterion, or other
16 criterion, along with—

17 (A) an explanation of changes; and

18 (B) as appropriate, responses to comments
19 submitted by interested parties;

20 (11) provide appropriate lead time (as deter-
21 mined by the Administrator) prior to the applicable
22 effective date for a new or significant revision to a
23 category, specification, installation criterion, or other
24 criterion, taking into account the timing require-
25 ments of the manufacturing, marketing, training,

1 and distribution process for the specific product,
2 building and landscape, or service category ad-
3 dressed; and

4 (12) identify and, where appropriate, implement
5 other voluntary approaches in commercial, institu-
6 tional, residential, municipal, and industrial sectors
7 to encourage reuse and recycling technologies, im-
8 prove water efficiency, or lower water use while
9 meeting, where applicable, the performance stand-
10 ards established under paragraph (3).

11 (c) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated \$7,500,000 for fiscal
13 year 2010, \$10,000,000 for fiscal year 2011, \$20,000,000
14 for fiscal year 2012, and \$50,000,000 for fiscal year 2013
15 and each year thereafter, adjusted for inflation, to carry
16 out this section.

17 **SEC. 216. FEDERAL PROCUREMENT OF WATER EFFICIENT**
18 **PRODUCTS.**

19 (a) DEFINITIONS.—In this section:

20 (1) AGENCY.—The term “agency” has the
21 meaning given that term in section 7902(a) of title
22 5, United States Code.

23 (2) WATERSENSE PRODUCT OR SERVICE.—The
24 term “WaterSense product or service” means a

1 product or service that is rated for water efficiency
2 under the WaterSense program.

3 (3) WATERSENSE PROGRAM.—The term
4 “WaterSense program” means the program estab-
5 lished by section 215 of this Act.

6 (4) FEMP DESIGNATED PRODUCT.—The term
7 “FEMP designated product” means a product that
8 is designated under the Federal Energy Manage-
9 ment Program of the Department of Energy as
10 being among the highest 25 percent of equivalent
11 products for efficiency.

12 (5) PRODUCT AND SERVICE.—The terms “prod-
13 uct” and “service” do not include any water con-
14 suming product or service designed or procured for
15 combat or combat-related missions. The terms also
16 exclude products or services already covered by the
17 Federal procurement regulations established under
18 section 553 of the National Energy Conservation
19 Policy Act (42 U.S.C. 8259b).

20 (b) PROCUREMENT OF WATER EFFICIENT PROD-
21 UCTS.—

22 (1) REQUIREMENT.—To meet the requirements
23 of an agency for a water consuming product or serv-
24 ice, the head of the agency shall, except as provided
25 in paragraph (2), procure—

1 (A) a WaterSense product or service; or

2 (B) a FEMP designated product.

3 A WaterSense plumbing product should preferably,
4 when possible, be installed by a licensed and, when
5 WaterSense certification guidelines exist,
6 WaterSense-certified plumber or mechanical con-
7 tractor, and a WaterSense irrigation system should
8 preferably, when possible, be installed, maintained,
9 and audited by a WaterSense-certified irrigation
10 professional to ensure optimal performance.

11 (2) EXCEPTIONS.—The head of an agency is
12 not required to procure a WaterSense product or
13 service or FEMP designated product under para-
14 graph (1) if the head of the agency finds in writing
15 that—

16 (A) a WaterSense product or service or
17 FEMP designated product is not cost-effective
18 over the life of the product, taking energy and
19 water cost savings into account; or

20 (B) no WaterSense product or service or
21 FEMP designated product is reasonably avail-
22 able that meets the functional requirements of
23 the agency.

24 (3) PROCUREMENT PLANNING.—The head of an
25 agency shall incorporate into the specifications for

1 all procurements involving water consuming products
2 and systems, including guide specifications, project
3 specifications, and construction, renovation, and
4 services contracts that include provision of water
5 consuming products and systems, and into the fac-
6 tors for the evaluation of offers received for the pro-
7 curement, criteria used for rating WaterSense prod-
8 ucts and services and FEMP designated products.
9 The head of an agency shall consider, to the max-
10 imum extent practicable, additional measures for re-
11 ducing agency water consumption, including water
12 reuse technologies, leak detection and repair, and
13 use of waterless products that perform similar func-
14 tions to existing water-consuming products.

15 (c) REGULATIONS.—Not later than 180 days after
16 the date of enactment of this Act, the Secretary of Energy,
17 working in coordination with the Administrator, shall
18 issue guidelines to carry out this section.

19 **SEC. 217. WATER EFFICIENT PRODUCT REBATE PROGRAMS.**

20 (a) DEFINITIONS.—In this section:

21 (1) ELIGIBLE STATE.—The term “eligible
22 State” means a State that meets the requirements
23 of subsection (b).

24 (2) RESIDENTIAL WATER EFFICIENT PRODUCT
25 OR SERVICE.—The term “residential water efficient

1 product or service” means a product or service for
2 a residence or its landscape that is rated for water
3 efficiency and performance—

4 (A) by the WaterSense program, where a
5 WaterSense specification does not exist; or

6 (B) by a State program and approved by
7 the Administrator.

8 Categories of water efficient products and services
9 may include faucets, irrigation technologies and
10 services, point-of-use water treatment devices, reuse
11 and recycling technologies, toilets, and showerheads.

12 (3) STATE PROGRAM.—The term “State pro-
13 gram” means a State program for administering re-
14 bates or vouchers for consumer purchase of water ef-
15 ficient products and services as described in sub-
16 section (b)(1).

17 (4) WATERSENSE PROGRAM.—The term
18 “WaterSense program” means the program estab-
19 lished by section 215 of this Act.

20 (b) ELIGIBLE STATES.—A State shall be eligible to
21 receive an allocation under subsection (c) if the State—

22 (1) establishes (or has established) a State pro-
23 gram to provide rebates or vouchers to residential
24 consumers for the purchase of residential water effi-

1 cient products or services to replace used products
2 of the same type;

3 (2) submits an application for the allocation at
4 such time, in such form, and containing such infor-
5 mation as the Administrator may require; and

6 (3) provides assurances satisfactory to the Ad-
7 ministrator that the State will use the allocation to
8 supplement, but not supplant, funds made available
9 to carry out the State program.

10 (c) AMOUNT OF ALLOCATIONS.—

11 (1) IN GENERAL.—Subject to paragraph (2),
12 for each fiscal year, the Administrator shall allocate
13 to each eligible State to carry out subsection (d) an
14 amount equal to the product obtained by multiplying
15 the amount made available under subsection (g) for
16 the fiscal year by the ratio that the population of the
17 State in the most recent calendar year for which
18 data are available bears to the total population of all
19 eligible States in that calendar year.

20 (2) MINIMUM ALLOCATIONS.—For each fiscal
21 year, the amounts allocated under this subsection
22 shall be adjusted proportionately so that no eligible
23 State is allocated a sum that is less than an amount
24 determined by the Administrator.

1 (d) USE OF ALLOCATED FUNDS.—Funds allocated to
2 a State under subsection (c) may be used to pay up to
3 50 percent of the cost of establishing and carrying out
4 a State program.

5 (e) FIXTURE RECYCLING.—States are encouraged to
6 promote or implement fixture recycling programs to man-
7 age the disposal of older fixtures replaced due to the re-
8 bate program under this section.

9 (f) ISSUANCE OF REBATES.—Rebates or vouchers
10 may be provided to residential consumers that meet the
11 requirements of the State program. The State may issue
12 all rebates or vouchers directly to residential consumers
13 or, with approval of the Administrator, delegate some or
14 all rebate and voucher administration to other organiza-
15 tions including, but not limited to, local governments, mu-
16 nicipal water authorities, and water utilities. The amount
17 of a rebate or voucher shall be determined by the State,
18 taking into consideration—

19 (1) the amount of the allocation to the State
20 under subsection (c);

21 (2) the amount of any Federal or State tax in-
22 centive available for the purchase of the residential
23 water efficient product or service;

1 (3) the amount necessary to change consumer
2 behavior to purchase water efficient products and
3 services; and

4 (4) the consumer expenditures for onsite prepa-
5 ration, assembly, and original installation of the
6 product.

7 (g) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated to the Administrator to
9 carry out this section \$50,000,000 for each of the fiscal
10 years 2010 and 2011, \$75,000,000 for fiscal year 2012,
11 \$100,000,000 for fiscal year 2013, and \$150,000,000 for
12 fiscal year 2014 and each year thereafter, adjusted for in-
13 flation.

14 **SEC. 218. CERTIFIED STOVES PROGRAM.**

15 (a) DEFINITIONS.—In this section:

16 (1) AGENCY.—The term “Agency” means the
17 Environmental Protection Agency.

18 (2) WOOD STOVE OR PELLET STOVE.—The
19 term “wood stove or pellet stove” means a wood
20 stove, pellet stove, or fireplace insert that uses wood
21 or pellets for fuel.

22 (3) CERTIFIED STOVE.—The term “certified
23 stove” means a wood stove or pellet stove that meets
24 the standards of performance for new residential
25 wood heaters under subpart AAA of part 60 of sub-

1 chapter C of chapter I of title 40, Code of Federal
2 Regulations (or successor regulations), as certified
3 by the Administrator. Pellet stoves and fireplace in-
4 serts using pellets for fuel that are exempt from
5 testing by the Administrator but meet the same
6 standards of performance as wood stoves are consid-
7 ered certified for the purposes of this section.

8 (4) ELIGIBLE ENTITY.—The term “eligible enti-
9 ty” means—

10 (A) a State, a local government, or a feder-
11 ally recognized Indian tribe;

12 (B) Alaskan Native villages or regional or
13 village corporations (as defined in, or estab-
14 lished under, the Alaskan Native Claims Settle-
15 ment Act (43 U.S.C. 1601 et seq.)); and

16 (C) a nonprofit organization or institution
17 that—

18 (i) represents or provides pollution re-
19 duction or educational services relating to
20 wood smoke minimization to persons, orga-
21 nizations, or communities; or

22 (ii) has, as its principal purpose, the
23 promotion of air quality or energy effi-
24 ciency.

1 (b) ESTABLISHMENT.—The Administrator shall es-
2 tablish and carry out a program to assist in the replace-
3 ment of wood stoves or pellet stoves that do not meet the
4 standards of performance referred to in subsection (a)(4)
5 by—

6 (1) requiring that each wood stove or pellet
7 stove sold in the United States on and after the date
8 of enactment of this Act meet the standards of per-
9 formance referred to in subsection (a)(4);

10 (2) requiring that no wood stove or pellet stove
11 replaced under this program is sold or returned to
12 active service, but that it is instead destroyed and
13 recycled to the maximum extent feasible;

14 (3) providing funds to an eligible entity to re-
15 place a wood stove or pellet stove that does not meet
16 the standards of performance in subsection (a)(4)
17 with a certified stove, including funds to pay for—

18 (A) installation of a replacement certified
19 stove; and

20 (B) necessary replacement of or repairs to
21 ventilation, flues, chimneys, or other relevant
22 items necessary for safe installation of a re-
23 placement certified stove;

24 (4) in addition to any funds that may be appro-
25 priated for the program under this subsection, using

1 existing Federal, State, and local programs and in-
2 centives, to the greatest extent practicable;

3 (5) prioritizing the replacement of wood stoves
4 or pellet stoves manufactured before July 1, 1990;
5 and

6 (6) carrying out such other activities as the Ad-
7 ministrator determines appropriate to facilitate the
8 replacement of wood stoves or pellet stoves that do
9 not meet the standards of performance referred to in
10 subsection (a)(3).

11 (c) REGULATIONS.—The Administrator may promul-
12 gate such regulations as are necessary to carry out the
13 program established under subsection (b).

14 (d) FUNDING.—

15 (1) AUTHORIZATION OF APPROPRIATIONS.—
16 There are authorized to be appropriated to carry out
17 the program under this section \$20,000,000 for the
18 period of fiscal years 2010 through 2014.

19 (2) DESIGNATED USE.—Of amounts appro-
20 priated pursuant to this subsection—

21 (A) 25 percent shall be designated for use
22 to carry out the program under this section on
23 lands held in trust for the benefit of a federally
24 recognized Indian tribe;

1 (B) 3 percent shall be designated for use
2 to carry out the program under this section in
3 Alaskan Native villages or regional or village
4 corporations (as defined in, or established
5 under, the Alaskan Native Claims Settlement
6 Act (43 U.S.C. 1601 et seq.)); and

7 (C) 72 percent shall be designated for use
8 to carry out the program under this section na-
9 tionwide.

10 (3) REGULATORY PROGRAMS.—

11 (A) IN GENERAL.—No grant or loan pro-
12 vided under this section shall be used to fund
13 the costs of emissions reductions that are man-
14 dated under Federal, State, or local law.

15 (B) MANDATED.—For purposes of sub-
16 paragraph (A), voluntary or elective emission
17 reduction measures shall not be considered
18 “mandated”, regardless of whether the reduc-
19 tions are included in the implementation plan of
20 a State.

21 (e) EPA AUTHORITY TO ACCEPT WOOD STOVE OR
22 PELLET STOVE REPLACEMENT SUPPLEMENTAL ENVI-
23 RONMENTAL PROJECTS.—

24 (1) IN GENERAL.—The Administrator may ac-
25 cept (notwithstanding sections 3302 and 1301 of

1 title 31, United States Code) wood stove or pellet
2 stove replacement Supplemental Environmental
3 Projects if such projects, as part of a settlement of
4 any alleged violation of environmental law—

5 (A) protect human health or the environ-
6 ment;

7 (B) are related to the underlying alleged
8 violation;

9 (C) do not constitute activities that the de-
10 fendant would otherwise be legally required to
11 perform; and

12 (D) do not provide funds for the staff of
13 the Agency or for contractors to carry out the
14 Agency's internal operations.

15 (2) CERTIFICATION.—In any settlement agree-
16 ment regarding an alleged violation of environmental
17 law in which a defendant agrees to perform a wood
18 stove or pellet stove replacement Supplemental Envi-
19 ronmental Project, the Administrator shall require
20 the defendant to include in the settlement docu-
21 ments a certification under penalty of law that the
22 defendant would have agreed to perform a com-
23 parably valued, alternative project other than a wood
24 stove or pellet stove replacement Supplemental Envi-
25 ronmental Project if the Administrator were pre-

1 cluded by law from accepting a wood stove or pellet
2 stove replacement Supplemental Environmental
3 Project. A failure by the Administrator to include
4 this language in such a settlement agreement shall
5 not create a cause of action against the United
6 States under the Clean Air Act or any other law or
7 create a basis for overturning a settlement agree-
8 ment entered into by the United States.

9 **SEC. 219. ENERGY STAR STANDARDS.**

10 (a) ENERGY STAR.—Section 324A(c) of the Energy
11 Policy and Conservation Act is amended—

12 (1) in paragraph (6)(B), by striking “and”
13 after the semicolon at the end;

14 (2) in paragraph (7), by striking the period at
15 the end and inserting a semicolon; and

16 (3) by adding at the end the following:

17 “(8) not later than 18 months after the date of
18 enactment of this paragraph, establish and imple-
19 ment a rating system for products identified as En-
20 ergy Star products pursuant to this section to pro-
21 vide consumers with the most helpful information on
22 the relative energy efficiency of those products, un-
23 less the Administrator and the Secretary commu-
24 nicate to Congress that establishing such a system

1 would diminish the value of the Energy Star brand
2 to consumers;

3 “(9)(A) review the Energy Star product criteria
4 for the 10 product models in each product category
5 with the greatest energy consumption at least once
6 every 3 years; and

7 “(B) based on the review, update and publish
8 the Energy Star product criteria for each such cat-
9 egory, as necessary; and

10 “(10) require periodic verification of compliance
11 with the Energy Star product criteria by products
12 identified as Energy Star products pursuant to this
13 section, including—

14 “(A) purchase and testing of products
15 from the market; or

16 “(B) other appropriate testing and compli-
17 ance approaches.”.

18 (b) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated to carry out the amend-
20 ments made by this section \$5,000,000 for fiscal year
21 2010 and for each fiscal year thereafter.

1 **Subtitle C—Transportation**
2 **Efficiency**

3 **SEC. 221. EMISSIONS STANDARDS.**

4 Title VIII of the Clean Air Act, as added by section
5 331 of this Act, is amended by inserting after part A the
6 following new part:

7 **“PART B—MOBILE SOURCES**

8 **“SEC. 821. GREENHOUSE GAS EMISSION STANDARDS FOR**
9 **MOBILE SOURCES.**

10 “(a) NEW MOTOR VEHICLES AND NEW MOTOR VE-
11 HICLE ENGINES.—(1) Pursuant to section 202(a)(1), by
12 December 31, 2010, the Administrator shall promulgate
13 standards applicable to emissions of greenhouse gases
14 from new heavy-duty motor vehicles or new heavy-duty
15 motor vehicle engines, excluding such motor vehicles cov-
16 ered by the Tier II standards (as established by the Ad-
17 ministrator as of the date of the enactment of this sec-
18 tion). The Administrator may revise these standards from
19 time to time.

20 “(2) Regulations issued under section 202(a)(1) ap-
21 plicable to emissions of greenhouse gases from new heavy-
22 duty motor vehicles or new heavy-duty motor vehicle en-
23 gines, excluding such motor vehicles covered by the Tier
24 II standards (as established by the Administrator as of
25 the date of the enactment of this section), shall contain

1 standards that reflect the greatest degree of emissions re-
2 duction achievable through the application of technology
3 which the Administrator determines will be available for
4 the model year to which such standards apply, giving ap-
5 propriate consideration to cost, energy, and safety factors
6 associated with the application of such technology. Any
7 such regulations shall take effect after such period as the
8 Administrator finds necessary to permit the development
9 and application of the requisite technology, and, at a min-
10 imum, shall apply for a period no less than 3 model years
11 beginning no earlier than the model year commencing 4
12 years after such regulations are promulgated.

13 “(3) Regulations issued under section 202(a)(1) ap-
14 plicable to emissions of greenhouse gases from new heavy-
15 duty motor vehicles or new heavy-duty motor vehicle en-
16 gines, excluding such motor vehicles covered by the Tier
17 II standards (as established by the Administrator as of
18 the date of the enactment of this section), shall supersede
19 and satisfy any and all of the rulemaking and compliance
20 requirements of section 32902(k) of title 49, United
21 States Code.

22 “(4) Other than as specifically set forth in paragraph
23 (3) of this subsection, nothing in this section shall affect
24 or otherwise increase or diminish the authority of the Sec-
25 retary of Transportation to adopt regulations to improve

1 the overall fuel efficiency of the commercial goods move-
2 ment system.

3 “(b) NONROAD VEHICLES AND ENGINES.—(1) Pur-
4 suant to section 213(a)(4) and (5), the Administrator
5 shall identify those classes or categories of new nonroad
6 vehicles or engines, or combinations of such classes or cat-
7 egories, that, in the judgment of the Administrator, both
8 contribute significantly to the total emissions of green-
9 house gases from nonroad engines and vehicles, and pro-
10 vide the greatest potential for significant and cost-effective
11 reductions in emissions of greenhouse gases. The Adminis-
12 trator shall promulgate standards applicable to emissions
13 of greenhouse gases from these new nonroad engines or
14 vehicles by December 31, 2012. The Administrator shall
15 also promulgate standards applicable to emissions of
16 greenhouse gases for such other classes and categories of
17 new nonroad vehicles and engines as the Administrator de-
18 termines appropriate and in the timeframe the Adminis-
19 trator determines appropriate. The Administrator shall
20 base such determination, among other factors, on the rel-
21 ative contribution of greenhouse gas emissions, and the
22 costs for achieving reductions, from such classes or cat-
23 egories of new nonroad engines and vehicles. The Adminis-
24 trator may revise these standards from time to time.

1 “(2) Standards under section 213(a)(4) and (5) ap-
2 plicable to emissions of greenhouse gases from those class-
3 es or categories of new nonroad engines or vehicles identi-
4 fied in the first sentence of paragraph (1) of this sub-
5 section, shall achieve the greatest degree of emissions re-
6 duction achievable based on the application of technology
7 which the Administrator determines will be available at
8 the time such standards take effect, taking into consider-
9 ation cost, energy, and safety factors associated with the
10 application of such technology. Any such regulations shall
11 take effect at the earliest possible date after such period
12 as the Administrator finds necessary to permit the devel-
13 opment and application of the requisite technology, giving
14 appropriate consideration to the cost of compliance within
15 such period, the applicable compliance dates for other
16 standards, and other appropriate factors, including the pe-
17 riod of time appropriate for the transfer of applicable tech-
18 nology from other applications, including motor vehicles,
19 and the period of time in which previously promulgated
20 regulations have been in effect.

21 “(3) For purposes of this section and standards
22 under section 213(a)(4) or (5) applicable to emissions of
23 greenhouse gases, the term ‘nonroad engines and vehicles’
24 shall include non-internal combustion engines and the ve-
25 hicles these engines power (such as electric engines and

1 electric vehicles), for those non-internal combustion en-
2 gines and vehicles which would be in the same category
3 and have the same uses as nonroad engines and vehicles
4 that are powered by internal combustion engines.

5 “(c) AVERAGING, BANKING, AND TRADING OF EMIS-
6 SIONS CREDITS.—In establishing standards applicable to
7 emissions of greenhouse gases pursuant to this section and
8 sections 202(a), 213(a)(4) and (5), and 231(a), the Ad-
9 ministrator may establish provisions for averaging, bank-
10 ing, and trading of greenhouse gas emissions credits with-
11 in or across classes or categories of motor vehicles and
12 motor vehicle engines, nonroad vehicles and engines (in-
13 cluding marine vessels), and aircraft and aircraft engines,
14 to the extent the Administrator determines appropriate
15 and considering the factors appropriate in setting stand-
16 ards under those sections. Such provisions may include
17 reasonable and appropriate provisions concerning genera-
18 tion, banking, trading, duration, and use of credits.

19 “(d) REPORTS.—The Administrator shall, from time
20 to time, submit a report to Congress that projects the
21 amount of greenhouse gas emissions from the transpor-
22 tation sector, including transportation fuels, for the years
23 2030 and 2050, based on the standards adopted under
24 this section.

1 “(e) GREENHOUSE GASES.—Notwithstanding the
2 provisions of section 711, hydrofluorocarbons shall be con-
3 sidered a greenhouse gas for purposes of this section.”.

4 **SEC. 222. GREENHOUSE GAS EMISSIONS REDUCTIONS**
5 **THROUGH TRANSPORTATION EFFICIENCY.**

6 (a) ENVIRONMENTAL PROTECTION AGENCY.—Title
7 VIII of the Clean Air Act, as added by section 331 of this
8 Act, is further amended by inserting after part C the fol-
9 lowing new part:

10 **“PART D—TRANSPORTATION EMISSIONS**
11 **“SEC. 841. GREENHOUSE GAS EMISSIONS REDUCTIONS**
12 **THROUGH TRANSPORTATION EFFICIENCY.**

13 “(a) IN GENERAL.—The Administrator, in consulta-
14 tion with the Secretary of Transportation, shall promul-
15 gate, and update from time to time, regulations to estab-
16 lish national transportation-related greenhouse gas emis-
17 sions reduction goals, standardized models and methodolo-
18 gies for use in developing surface transportation-related
19 greenhouse gas emissions reduction targets pursuant to
20 sections 134 and 135 of title 23 of the United States Code
21 and methods for collection of data on transportation-re-
22 lated greenhouse gas emissions. Such goals shall be com-
23 mensurate with the emissions reductions goals established
24 under the American Clean Energy and Security Act of
25 2009. In establishing such goals, models, and methodolo-

1 gies, the Administrator shall consult with States and met-
2 ropolitan planning organizations and may utilize existing
3 models and methodologies.

4 “(b) TIMING.—The Administrator shall—

5 “(1) publish proposed regulations under sub-
6 section (a) not later than 12 months after the date
7 of enactment of this section; and

8 “(2) promulgate final regulations under sub-
9 section (a) not later than 18 months after the date
10 of enactment of this section.

11 “(c) ASSESSMENT.—At least every 6 years after pro-
12 mulgating final regulations under subsection (a), the Ad-
13 ministrator, jointly with the Secretary of Transportation,
14 shall assess current and projected progress in reducing na-
15 tional transportation-related greenhouse gas emissions.
16 The assessment shall examine the contributions to emis-
17 sions reductions attributable to improvements in vehicle
18 efficiency, greenhouse gas performance of transportation
19 fuels, increased efficiency in utilizing transportation sys-
20 tems and the effects of local and State planning.”.

21 (b) METROPOLITAN PLANNING ORGANIZATIONS.—
22 Section 134 of title 23 of the United States Code is
23 amended as follows:

24 (1) In subsection (a)(1)—

1 (A) by striking “minimizing” and inserting
2 “reducing”; and

3 (B) by inserting “, reliance on oil, impacts
4 on the environment, transportation-related
5 greenhouse gas emissions” after “consump-
6 tion”.

7 (2) In subsection (h)(1)(E)—

8 (A) by inserting “sustainability and liv-
9 ability, reduce surface transportation-related
10 greenhouse gas emissions and reliance on oil,
11 adapt to the effects of climate change,” after
12 “energy conservation”;

13 (B) by inserting “and public health” after
14 “quality of life”; and

15 (C) by inserting “, including housing and
16 land use patterns” after “development pat-
17 terns”.

18 (3) In subsection (i)(4)(A) by inserting “air
19 quality, public health, housing, transportation,”
20 after “conservation,”.

21 (4) In subsection (k) by inserting at the end the
22 following new paragraph:

23 “(6) EMISSIONS REDUCTION PROCESS.—

24 “(A) IN GENERAL.—Within a metropolitan
25 planning area serving a transportation manage-

1 ment area, the transportation planning process
2 under this section shall address transportation-
3 related greenhouse gas emissions by including
4 emission reduction targets and strategies.

5 “(B) ESTABLISHMENT OF EMISSIONS RE-
6 DUCTION TARGETS AND STRATEGIES.—

7 “(i) IN GENERAL.—Not later than one
8 year after the promulgation of the final
9 regulations required under section 841 of
10 the Clean Air Act, each metropolitan plan-
11 ning organization shall develop surface
12 transportation-related greenhouse gas
13 emission reduction targets, as well as
14 strategies to meet such targets, as part of
15 the transportation planning process under
16 this section. If more than one metropolitan
17 planning organization has been designated
18 within a metropolitan planning area serv-
19 ing a transportation management area,
20 each such metropolitan planning organiza-
21 tion shall work cooperatively with other
22 such organization to develop the surface
23 transportation-related greenhouse gas
24 emission reduction targets required under
25 this subparagraph.

1 “(ii) MINIMUM REQUIREMENTS.—

2 Each metropolitan planning organization
3 that develops targets and strategies re-
4 quired under clause (i) shall demonstrate
5 progress in stabilizing and reducing trans-
6 portation-related greenhouse gas emissions
7 in each metropolitan planning area serving
8 a surface transportation management area.
9 The targets and strategies shall, at a min-
10 imum—

11 “(I) be based on the models and
12 methodologies established in the final
13 regulations required under section
14 841 of the Clean Air Act;

15 “(II) address sources of surface
16 transportation-related greenhouse gas
17 emissions and contribute to achieve-
18 ment of the national transportation-
19 related greenhouse gas emissions re-
20 duction goals;

21 “(III) include efforts to increase
22 public transportation ridership; and

23 “(IV) include efforts to increase
24 walking, bicycling, and other forms of
25 nonmotorized transportation.

1 “(C) PUBLIC NOTICE.—Each metropolitan
2 planning organization shall make its emission
3 reduction targets and strategies, and an anal-
4 ysis of the anticipated effects thereof, available
5 to the public through its Web site.

6 “(D) ENFORCEMENT.—If the Secretary
7 finds that a metropolitan planning organization
8 has failed to develop, submit or publish its
9 emission reduction targets and strategies, the
10 Secretary shall not certify that the require-
11 ments of this section are met with respect to
12 the metropolitan planning process of such orga-
13 nization.”.

14 (c) STATES.—Section 135 of title 23 of the United
15 States Code is amended as follows:

16 (1) In subsection (d)(1)(E)—

17 (A) by inserting “sustainability and liv-
18 ability, reduce surface transportation-related
19 greenhouse gas emissions and reliance on oil,
20 adapt to the effects of climate change,” after
21 “energy conservation”;

22 (B) by inserting “and public health” after
23 “quality of life”; and

1 (C) by inserting “, including housing and
2 land use patterns” after “development pat-
3 terns”.

4 (2) In subsection (f)(2)(D)(i) by inserting “air
5 quality, public health, housing, transportation,”
6 after “conservation,”.

7 (3) In subsection (f) by inserting at the end the
8 following new paragraph:

9 “(9) EMISSIONS REDUCTION PROCESS.—

10 “(A) IN GENERAL.—Within a State, the
11 transportation planning process under this sec-
12 tion shall address transportation-related green-
13 house gas emissions by including emission re-
14 duction targets and strategies.

15 “(B) ESTABLISHMENT OF EMISSIONS RE-
16 Duction TARGETS AND STRATEGIES.—

17 “(i) IN GENERAL.—Not later than one
18 year after the promulgation of the final
19 regulations required under section 841 of
20 the Clean Air Act, each State shall develop
21 surface transportation-related greenhouse
22 gas emission reduction targets, as well as
23 strategies to meet such targets, as part of
24 the transportation planning process under
25 this section.

1 “(ii) MINIMUM REQUIREMENTS.—

2 Each State that develops targets and strat-
3 egies required under clause (i) shall dem-
4 onstrate progress in stabilizing and reduc-
5 ing transportation-related greenhouse gas
6 emissions in such State. The targets and
7 strategies shall, at a minimum,

8 “(I) be based on the models and
9 methodologies established in the final
10 regulations required under section
11 841 of the Clean Air Act;

12 “(II) address sources of surface
13 transportation-related greenhouse gas
14 emissions and contribute to achieve-
15 ment of the national transportation-
16 related greenhouse gas emissions re-
17 duction goals;

18 “(III) include efforts to increase
19 public transportation ridership; and

20 “(IV) include efforts to increase
21 walking, bicycling, and other forms of
22 nonmotorized transportation.

23 “(D) PUBLIC NOTICE.—Each State shall
24 make its emission reduction targets and strate-
25 gies, and an analysis of the anticipated effects

1 **“SEC. 822. SMARTWAY TRANSPORTATION EFFICIENCY PRO-**
2 **GRAM.**

3 “(a) IN GENERAL.—There is established within the
4 Environmental Protection Agency a SmartWay Transport
5 Program to quantify, demonstrate, and promote the bene-
6 fits of technologies, products, fuels, and operational strate-
7 gies that reduce petroleum consumption, air pollution, and
8 greenhouse gas emissions from the mobile source sector.

9 “(b) GENERAL DUTIES.—Under the program estab-
10 lished under this section, the Administrator shall carry out
11 each of the following:

12 “(1) Development of measurement protocols to
13 evaluate the energy consumption and greenhouse gas
14 impacts from technologies and strategies in the mo-
15 bile source sector, including those for passenger
16 transport and goods movement.

17 “(2) Development of qualifying thresholds for
18 certifying, verifying, or designating energy-efficient,
19 low-greenhouse gas SmartWay technologies and
20 strategies for each mode of passenger transportation
21 and goods movement.

22 “(3) Development of partnership and recogni-
23 tion programs to promote best practices and drive
24 demand for energy-efficient, low-greenhouse gas
25 transportation performance.

1 “(4) Promotion of the availability of, and en-
2 couragement of the adoption of, SmartWay certified
3 or verified technologies and strategies, and publica-
4 tion of the availability of financial incentives, such
5 as assistance from loan programs and other Federal
6 and State incentives.

7 “(c) SMARTWAY TRANSPORT FREIGHT PARTNER-
8 SHIP.—The Administrator shall establish a SmartWay
9 Transport Freight Partnership program with shippers and
10 carriers of goods to promote energy-efficient, low-green-
11 house gas transportation. In carrying out such partner-
12 ship, the Administrator shall undertake each of the fol-
13 lowing:

14 “(1) Certification of the energy and greenhouse
15 gas performance of participating freight carriers, in-
16 cluding those operating rail, trucking, marine, and
17 other goods movement operations.

18 “(2) Publication of a comprehensive energy and
19 greenhouse gas performance index of freight modes
20 (including rail, trucking, marine, and other modes of
21 transporting goods) and individual freight companies
22 so that shippers can choose to deliver their goods
23 more efficiently.

24 “(3) Development of tools for—

1 “(A) carriers to calculate their energy and
2 greenhouse gas performance; and

3 “(B) shippers to calculate the energy and
4 greenhouse gas impacts of moving their prod-
5 ucts and to evaluate the relative impacts from
6 transporting their goods by different modes and
7 corporate carriers.

8 “(4) Provision of recognition opportunities for
9 participating shipper and carrier companies dem-
10 onstrating advanced practices and achieving superior
11 levels of greenhouse gas performance.

12 “(d) IMPROVING FREIGHT GREENHOUSE GAS PER-
13 FORMANCE DATABASES.—The Administrator shall, in co-
14 ordination with other appropriate agencies, define and col-
15 lect data on the physical and operational characteristics
16 of the Nation’s truck population, with special emphasis on
17 data related to energy efficiency and greenhouse gas per-
18 formance to inform the performance index published
19 under subsection (c)(2) of this section, and other means
20 of goods transport as necessary, at least every 5 years.

21 “(e) ESTABLISHMENT OF FINANCING PROGRAM.—
22 The Administrator shall establish a SmartWay Financing
23 Program to competitively award funding to eligible entities
24 identified by the Administrator in accordance with the
25 program requirements in subsection (g).

1 “(f) PURPOSE.—Under the SmartWay Financing
2 Program, eligible entities shall—

3 “(1) use funds awarded by the Administrator to
4 provide flexible loan and lease terms that increase
5 approval rates or lower the costs of loans and leases
6 in accordance with guidance developed by the Ad-
7 ministrator; and

8 “(2) make such loans and leases available to
9 public and private entities for the purpose of adopt-
10 ing low-greenhouse gas technologies or strategies for
11 the mobile source sector that are designated by the
12 Administrator.

13 “(g) PROGRAM REQUIREMENTS.—The Administrator
14 shall determine program design elements and require-
15 ments, including—

16 “(1) the type of financial mechanism with
17 which to award funding, in the form of grants or
18 contracts;

19 “(2) the designation of eligible entities to re-
20 ceive funding, including State, tribal, and local gov-
21 ernments, regional organizations comprised of gov-
22 ernmental units, nonprofit organizations, or for-prof-
23 it companies;

24 “(3) criteria for evaluating applications from el-
25 igible entities, including anticipated—

1 “(A) cost-effectiveness of loan or lease pro-
2 gram on a metric-ton-of-greenhouse gas-saved-
3 per-dollar basis;

4 “(B) ability to promote the loan or lease
5 program and associated technologies and strate-
6 gies to the target audience; and

7 “(4) reporting requirements for entities that re-
8 ceive awards, including—

9 “(A) actual cost-effectiveness and green-
10 house gas savings from the loan or lease pro-
11 gram based on a methodology designated by the
12 Administrator;

13 “(B) the total number of applications and
14 number of approved applications; and

15 “(C) terms granted to loan and lease re-
16 cipients compared to prevailing market prac-
17 tices.

18 “(h) AUTHORIZATION OF APPROPRIATIONS.—Such
19 sums as necessary are authorized to be appropriated to
20 the Administrator to carry out this section.”.

21 **SEC. 224. STATE VEHICLE FLEETS.**

22 Section 507(o) of the Energy Policy Act of 1992 (42
23 U.S.C. 13257) is amended by adding the following new
24 paragraph at the end thereof:

1 “(3) The Secretary shall revise the rules under this
2 subsection with respect to the types of alternative fueled
3 vehicles required for compliance with this subsection to en-
4 sure those rules are consistent with any guidance issued
5 pursuant to section 303 of this Act.”.

6 **Subtitle D—Industrial Energy**
7 **Efficiency Programs**

8 **SEC. 241. INDUSTRIAL PLANT ENERGY EFFICIENCY STAND-**
9 **ARDS.**

10 The Secretary of Energy shall continue to support
11 the development of the American National Standards In-
12 stitute (ANSI) voluntary industrial plant energy efficiency
13 certification program, pending International Standards
14 Organization (ISO) consensus standard 50001, and other
15 related ANSI/ISO standards. In addition, the Department
16 shall undertake complementary activities through the De-
17 partment of Energy’s Industry Technologies Program that
18 support the voluntary implementation of such standards
19 by manufacturing firms. There are authorized to be appro-
20 priated to the Secretary such sums as are necessary to
21 carry out these activities. The Secretary shall report to
22 Congress on the status of standards development and
23 plans for further standards development pursuant to this
24 section by not later than 18 months after the date of en-

1 actment of this Act, and shall prepare a second such re-
2 port 18 months thereafter.

3 **SEC. 242. ELECTRIC AND THERMAL WASTE ENERGY RECOV-**
4 **ERY AWARD PROGRAM.**

5 (a) **ELECTRIC AND THERMAL WASTE ENERGY RE-**
6 **COVERY AWARDS.**—The Secretary of Energy shall estab-
7 lish a program to make monetary awards to the owners
8 and operators of new and existing electric energy genera-
9 tion facilities or thermal energy production facilities using
10 fossil or nuclear fuel, to encourage them to use innovative
11 means of recovering any thermal energy that is a poten-
12 tially useful byproduct of electric power generation or
13 other processes to—

- 14 (1) generate additional electric energy; or
15 (2) make sales of thermal energy not used for
16 electric generation, in the form of steam, hot water,
17 chilled water, or desiccant regeneration, or for other
18 commercially valid purposes.

19 (b) **AMOUNT OF AWARDS.**—

20 (1) **ELIGIBILITY.**—Awards shall be made under
21 subsection (a) only for the use of innovative means
22 that achieve net energy efficiency at the facility con-
23 cerned significantly greater than the current stand-
24 ard technology in use at similar facilities.

1 (2) AMOUNT.—The amount of an award made
2 under subsection (a) shall equal an amount up to
3 the value of 25 percent of the energy projected to be
4 recovered or generated during the first 5 years of
5 operation of the facility using the innovative energy
6 recovery method, or such lesser amount that the
7 Secretary determines to be the minimum amount
8 that can cost-effectively stimulate such innovation.

9 (3) LIMITATION.—No person may receive an
10 award under this section if a grant under the waste
11 energy incentive grant program under section 373 of
12 the Energy Policy and Conservation Act (42 U.S.C.
13 6343) is made for the same energy savings resulting
14 from the same innovative method.

15 (c) REGULATORY STATUS.—The Secretary of Energy
16 shall—

17 (1) assist State regulatory commissions to iden-
18 tify and make changes in State regulatory programs
19 for electric utilities to provide appropriate regulatory
20 status for thermal energy byproduct businesses of
21 regulated electric utilities to encourage those utilities
22 to enter businesses making the sales referred to in
23 subsection (a)(2); and

1 (3) Federal Government research on motor end
2 use and efficiency opportunities is more than a dec-
3 ade old; and

4 (4) the Census Bureau has discontinued collec-
5 tion of data on motor and generator importation,
6 manufacture, shipment, and sales.

7 (b) DEFINITIONS.—In this section:

8 (1) DEPARTMENT.—The term “Department”
9 means the Department of Energy.

10 (2) INTERESTED PARTIES.—The term “inter-
11 ested parties” includes—

12 (A) trade associations;

13 (B) motor manufacturers;

14 (C) motor end users;

15 (D) electric utilities; and

16 (E) individuals and entities that conduct
17 energy efficiency programs.

18 (3) SECRETARY.—The term “Secretary” means
19 the Secretary of Energy, in consultation with inter-
20 ested parties.

21 (c) ASSESSMENT.—The Secretary shall conduct an
22 assessment of electric motors and the electric motor mar-
23 ket in the United States that shall—

1 (1) include important subsectors of the indus-
2 trial and commercial electric motor market (as de-
3 termined by the Secretary), including—

4 (A) the stock of motors and motor-driven
5 equipment;

6 (B) efficiency categories of the motor pop-
7 ulation; and

8 (C) motor systems that use drives, servos,
9 and other control technologies;

10 (2) characterize and estimate the opportunities
11 for improvement in the energy efficiency of motor
12 systems by market segment, including opportunities
13 for—

14 (A) expanded use of drives, servos, and
15 other control technologies;

16 (B) expanded use of process control,
17 pumps, compressors, fans or blowers, and mate-
18 rial handling components; and

19 (C) substitution of existing motor designs
20 with existing and future advanced motor de-
21 signs, including electronically commutated per-
22 manent magnet, interior permanent magnet,
23 and switched reluctance motors; and

24 (3) develop an updated profile of motor system
25 purchase and maintenance practices, including sur-

1 veying the number of companies that have motor
2 purchase and repair specifications, by company size,
3 number of employees, and sales.

4 (d) RECOMMENDATIONS; UPDATE.—Based on the as-
5 sessment conducted under subsection (c), the Secretary
6 shall—

7 (1) develop—

8 (A) recommendations to update the de-
9 tailed motor profile on a periodic basis;

10 (B) methods to estimate the energy sav-
11 ings and market penetration that is attributable
12 to the Save Energy Now Program of the De-
13 partment; and

14 (C) recommendations for the Director of
15 the Census Bureau on market surveys that
16 should be undertaken in support of the motor
17 system activities of the Department; and

18 (2) prepare an update to the Motor Master+
19 program of the Department.

20 (e) PROGRAM.—Based on the assessment, rec-
21 ommendations, and update required under subsections (c)
22 and (d), the Secretary shall establish a proactive, national
23 program targeted at motor end-users and delivered in co-
24 operation with interested parties to increase awareness
25 of—

1 (1) the energy and cost-saving opportunities in
2 commercial and industrial facilities using higher effi-
3 ciency electric motors;

4 (2) improvements in motor system procurement
5 and management procedures in the selection of high-
6 er efficiency electric motors and motor-system com-
7 ponents, including drives, controls, and driven equip-
8 ment; and

9 (3) criteria for making decisions for new, re-
10 placement, or repair motor and motor system com-
11 ponents.

12 **SEC. 245. MOTOR EFFICIENCY REBATE PROGRAM.**

13 (a) IN GENERAL.—Part C of title III of the Energy
14 Policy and Conservation Act (42 U.S.C. 6311 et seq.) is
15 amended by adding at the end the following:

16 **“SEC. 347. MOTOR EFFICIENCY REBATE PROGRAM.**

17 “(a) ESTABLISHMENT.—Not later than January 1,
18 2010, in accordance with subsection (b), the Secretary
19 shall establish a program to provide rebates for expendi-
20 tures made by entities—

21 “(1) for the purchase and installation of a new
22 electric motor that has a nominal full load efficiency
23 that is not less than the nominal full load efficiency
24 as defined in—

1 “(A) table 12–12 of NEMA Standards
2 Publication MG 1–2006 for random wound mo-
3 tors rated 600 volts or lower; or

4 “(B) table 12–13 of NEMA Standards
5 Publication MG 1–2006 for form wound motors
6 rated 5000 volts or lower; and

7 “(2) to replace an installed motor of the entity
8 the specifications of which are established by the
9 Secretary by a date that is not later than 90 days
10 after the date of enactment of this section.

11 “(b) REQUIREMENTS.—

12 “(1) APPLICATION.—To be eligible to receive a
13 rebate under this section, an entity shall submit to
14 the Secretary an application in such form, at such
15 time, and containing such information as the Sec-
16 retary may require, including—

17 “(A) demonstrated evidence that the entity
18 purchased an electric motor described in sub-
19 section (a)(1) to replace an installed motor de-
20 scribed in subsection (a)(2);

21 “(B) demonstrated evidence that the enti-
22 ty—

23 “(i) removed the installed motor of
24 the entity from service; and

1 “(ii) properly disposed the installed
2 motor of the entity; and

3 “(C) the physical nameplate of the in-
4 stalled motor of the entity.

5 “(2) AUTHORIZED AMOUNT OF REBATE.—The
6 Secretary may provide to an entity that meets each
7 requirement under paragraph (1) a rebate the
8 amount of which shall be equal to the product ob-
9 tained by multiplying—

10 “(A) the nameplate horsepower of the elec-
11 tric motor purchased by the entity in accord-
12 ance with subsection (a)(1); and

13 “(B) \$25.00.

14 “(3) PAYMENTS TO DISTRIBUTORS OF QUALI-
15 FYING ELECTRIC MOTORS.—To assist in the pay-
16 ment for expenses relating to processing and motor
17 core disposal costs, the Secretary shall provide to the
18 distributor of an electric motor described in sub-
19 section (a)(1), the purchaser of which received a re-
20 bate under this section, an amount equal to the
21 product obtained by multiplying—

22 “(A) the nameplate horsepower of the elec-
23 tric motor; and

24 “(B) \$5.00.

1 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to carry out this section,
3 to remain available until expended—

4 “(1) \$80,000,000 for fiscal year 2011;

5 “(2) \$75,000,000 for fiscal year 2012;

6 “(3) \$70,000,000 for fiscal year 2013;

7 “(4) \$65,000,000 for fiscal year 2014; and

8 “(5) \$60,000,000 for fiscal year 2015.”.

9 (b) TABLE OF CONTENTS.—The table of contents of
10 the Energy Policy and Conservation Act (42 U.S.C. prec.
11 6201) is amended by adding at the end of the items relat-
12 ing to part C of title III the following:

“Sec. 347. Motor efficiency rebate program.”.

13 **Subtitle E—Improvements in En-**
14 **ergy Savings Performance Con-**
15 **tracting**

16 **SEC. 251. ENERGY SAVINGS PERFORMANCE CONTRACTS.**

17 (a) COMPETITION REQUIREMENTS FOR TASK OR DE-
18 LIVERY ORDERS UNDER ENERGY SAVINGS PERFORM-
19 ANCE CONTRACTS.—

20 (1) COMPETITION REQUIREMENTS.—Subsection
21 (a) of section 801 of the National Energy Conserva-
22 tion Policy Act (42 U.S.C. 8287(a)) is amended by
23 adding at the end the following paragraph:

1 “(3)(A) The head of a Federal agency may issue a
2 task or delivery order under an energy savings perform-
3 ance contract by—

4 “(i) notifying all contractors that have received
5 an award under such contract that the agency pro-
6 poses to discuss energy savings performance services
7 for some or all of its facilities and, following a rea-
8 sonable period of time to provide a proposal in re-
9 sponse to the notice, soliciting an expression of in-
10 terest in performing site surveys or investigations
11 and feasibility designs and studies and the submis-
12 sion of qualifications from such contractors, and in-
13 cluding in such notice summary information con-
14 cerning energy use for any facilities that the agency
15 has specific interest in including in such contract;

16 “(ii) reviewing all expressions of interest and
17 qualifications submitted pursuant to the notice
18 under clause (i);

19 “(iii) selecting two or more contractors (from
20 among those reviewed under clause (ii)) to conduct
21 discussions concerning the contractors’ respective
22 qualifications to implement potential energy con-
23 servation measures, including requesting references
24 demonstrating experience on similar efforts and the
25 resulting energy savings of such similar efforts, and

1 providing an opportunity for a post-award debriefing
2 to all contractors that submitted expressions of in-
3 terest and qualifications under clause (ii) pursuant
4 to the notice;

5 “(iv) selecting and authorizing—

6 “(I) more than one contractor (from
7 among those selected under clause (iii)) to con-
8 duct site surveys, investigations, feasibility de-
9 signs and studies or similar assessments for the
10 energy savings performance contract services
11 (or for discrete portions of such services), for
12 the purpose of allowing each such contractor to
13 submit a firm, fixed-price proposal to imple-
14 ment specific energy conservation measures; or

15 “(II) one contractor (from among those se-
16 lected under clause (iii)) to conduct a site sur-
17 vey, investigation, a feasibility design and study
18 or similar for the purpose of allowing the con-
19 tractor to submit a firm, fixed-price proposal to
20 implement specific energy conservation meas-
21 ures;

22 “(v) negotiating a task or delivery order for en-
23 ergy savings performance contracting services with
24 the contractor or contractors selected under clause

1 (iv) based on the energy conservation measures iden-
2 tified; and

3 “(vi) issuing a task or delivery order for energy
4 savings performance contracting services to such
5 contractor or contractors.

6 “(B) The issuance of a task or delivery order for en-
7 ergy savings performance contracting services pursuant to
8 subparagraph (A) is deemed to satisfy the task and deliv-
9 ery order competition requirements in section 2304e(d) of
10 title 10, United States Code, and section 303J(d) of the
11 Federal Property and Administrative Services Act of 1949
12 (41 U.S.C. 253j(d)).

13 “(C) The Secretary may issue guidance as necessary
14 to agencies issuing task or delivery orders pursuant to
15 subparagraph (A).”.

16 (2) EFFECTIVE DATE.—The amendment made
17 by paragraph (1) is inapplicable to task or delivery
18 orders issued before the date of enactment of this
19 section.

20 (b) INCLUSION OF THERMAL RENEWABLE EN-
21 ERGY.—Section 203 of the Energy Policy Act of 2005 (42
22 U.S.C. 15852) is amended—

23 (1) in subsection (a), by striking “electric”; and

24 (2) in subsection (b)(2), by inserting “or ther-
25 mal” after “means electric”.

1 (c) CREDIT FOR RENEWABLE ENERGY PRODUCED
2 AND USED ON SITE.—Subsection (c) of section 203 of the
3 Energy Policy Act of 2005 (42 U.S.C. 15852) is amended
4 to read as follows:

5 “(c) CALCULATION.—Renewable energy produced at
6 a Federal facility, on Federal lands, or on Indian lands
7 (as defined in title XXVI of the Energy Policy Act of 1992
8 (25 U.S.C. 3501 et seq.)) shall be calculated separately
9 from renewable energy consumed at a Federal facility, and
10 each may be used to comply with the consumption require-
11 ment under subsection (a).”.

12 (d) FINANCING FLEXIBILITY.—Section 801(a)(2)(E)
13 of the National Energy Conservation Policy Act (42
14 U.S.C. 8287(a)(2)(E)) is amended by striking “In” and
15 inserting “Notwithstanding any other provision of law,
16 in”.

17 **Subtitle F—Public Institutions**

18 **SEC. 261. PUBLIC INSTITUTIONS.**

19 Section 399A of the Energy Policy and Conservation
20 Act (42 U.S.C. 6371h–1) is amended—

21 (1) in subsection (a)(5), by striking “or a des-
22 ignee” and inserting “an Indian tribe, a not-for-
23 profit hospital or not-for-profit inpatient health care
24 facility, or a designated agent”;

1 (2) in subsection (c)(1), by striking subpara-
2 graph (C);

3 (3) in subsection (f)(3)(A), by striking
4 “\$1,000,000” and inserting “\$2,500,000”; and

5 (4) in subsection (i)(1), by striking
6 “\$250,000,000 for each of fiscal years 2009 through
7 2013” and inserting “\$250,000,000 for each of fis-
8 cal years 2010 through 2015”.

9 **SEC. 262. COMMUNITY ENERGY EFFICIENCY FLEXIBILITY.**

10 Section 545(b)(3) of the Energy Independence and
11 Security Act of 2007 (42 U.S.C. 17155(b)(3)) is amend-
12 ed—

13 (1) by striking “Indian tribe may use” and all
14 that follows through “for administrative expenses”
15 and inserting “Indian tribe may use for administra-
16 tive expenses”;

17 (2) by striking subparagraphs (B) and (C);

18 (3) by redesignating the remaining clauses (i)
19 and (ii) as subparagraphs (A) and (B), respectively
20 and adjusting the margin of those subparagraphs ac-
21 cordingly; and

22 (4) by striking the semicolon at the end and in-
23 serting a period.

1 **SEC. 263. SMALL COMMUNITY JOINT PARTICIPATION.**

2 (a) Section 541(3)(A) of the Energy Independence
3 and Security Act of 2007 is amended in clause (i) by strik-
4 ing “and” at the end of subclause (II), in clause (ii) by
5 striking the period at the end of subclause (II) and insert-
6 ing “; or”, and by inserting the following new clause (iii):

7 “(iii) a group of adjacent, contiguous, or
8 geographically proximate units of local govern-
9 ment that reach agreement to act jointly for
10 purposes of this section and that represent a
11 combined population of not less than 35,000.”.

12 (b) Section 541(3)(B) of the Energy Independence
13 and Security Act of 2007 is amended in clause (i) by strik-
14 ing “or”, in clause (ii) by striking the period at the end
15 and inserting “; or”, and by inserting the following new
16 clause (iii):

17 “(iii) a group of adjacent, contiguous, or
18 geographically proximate units of local govern-
19 ment that reach agreement to act jointly for
20 purposes of this section and that represent a
21 combined population of not less than 50,000.”.

22 **SEC. 264. LOW INCOME COMMUNITY ENERGY EFFICIENCY**
23 **PROGRAM.**

24 (a) IN GENERAL.—The Secretary of Energy is au-
25 thorized to make grants to private, nonprofit, mission-
26 driven community development organizations including

1 community development corporations and community de-
2 velopment financial institutions to provide financing to
3 businesses and projects that improve energy efficiency;
4 identify and develop alternative, renewable, and distrib-
5 uted energy supplies; provide technical assistance and pro-
6 mote job and business opportunities for low-income resi-
7 dents; and increase energy conservation in low income
8 rural and urban communities.

9 (b) GRANTS.—The purpose of such grants is to in-
10 crease the flow of capital and benefits to low income com-
11 munities, minority-owned and woman-owned businesses
12 and entrepreneurs and other projects and activities located
13 in low income communities in order to reduce environ-
14 mental degradation, foster energy conservation and effi-
15 ciency and create job and business opportunities for local
16 residents. The Secretary may make grants on a competi-
17 tive basis for—

18 (1) investments that develop alternative, renew-
19 able, and distributed energy supplies;

20 (2) capitalizing loan funds that lend to energy
21 efficiency projects and energy conservation pro-
22 grams;

23 (3) technical assistance to plan, develop, and
24 manage an energy efficiency financing program; and

1 (4) technical and financial assistance to assist
2 small-scale businesses and private entities develop
3 new renewable and distributed sources of power or
4 combined heat and power generation.

5 (c) AUTHORIZATION OF APPROPRIATIONS.—For the
6 purposes of this section there is authorized to be appro-
7 priated \$50,000,000 for each of the fiscal years 2010
8 through 2015.

9 **Subtitle G—Miscellaneous**

10 **SEC. 271. ENERGY EFFICIENT INFORMATION AND COMMU-** 11 **NICATIONS TECHNOLOGIES.**

12 Section 543 of the National Energy Conservation
13 Policy Act (42 U.S.C. 8253) is amended to read as follows:

14 **“SEC. 543. ENERGY EFFICIENT INFORMATION AND COMMU-** 15 **NICATIONS TECHNOLOGIES.**

16 “(a) IN GENERAL.—Not later than 1 year after the
17 date of enactment of the American Clean Energy and Se-
18 curity Act of 2009, each Federal agency shall collaborate
19 with the Director of the Office of Management and Budget
20 (referred to in this section as the ‘Director’) to create an
21 implementation strategy, including best practices and
22 measurement and verification techniques, for the purchase
23 and use of energy efficient information and communica-
24 tions technologies and practices. Wherever possible, exist-
25 ing standards, specifications, performance metrics, and

1 best management practices that have been or are being
2 developed in open collaboration and with broad stake-
3 holder input and review should be incorporated. In addi-
4 tion, agency strategies shall be flexible, cost-effective, and
5 based on the specific operating requirements and statutory
6 mission of each agency.

7 “(b) ENERGY EFFICIENT INFORMATION AND COM-
8 MUNICATIONS TECHNOLOGIES.—In developing an imple-
9 mentation strategy, each agency shall—

10 “(1) consider information and communications
11 technologies and infrastructure, including, but not
12 limited to, advanced metering infrastructure, infor-
13 mation and communications technology services and
14 products, efficient data center strategies, applica-
15 tions modernization and rationalization, building
16 systems energy efficiency, and telework; and

17 “(2) ensure that agencies are eligible to realize
18 the savings and rewards brought about through in-
19 creased efficiencies.

20 “(c) PERFORMANCE GOALS.—Not later than 6
21 months after the date of enactment of the American Clean
22 Energy and Security Act of 2009, the Director shall estab-
23 lish performance goals for evaluating the efforts of the
24 agencies in improving the maintenance, purchase and use
25 of energy efficiency of information and communications

1 technology systems. These performance goals should
2 measure information technology costs over a specific time
3 horizon (3 to 5 years), providing a complete picture of all
4 costs, including energy.

5 “(d) REPORT.—Not later than 18 months after the
6 date of enactment of the American Clean Energy and Se-
7 curity Act of 2009, and annually thereafter, the Director
8 shall submit a report to Congress on—

9 “(1) the progress of each agency in reducing
10 energy use through its implementation strategy; and

11 “(2) new and emerging technologies that would
12 help achieve increased energy efficiency.”.

13 **SEC. 272. NATIONAL ENERGY EFFICIENCY GOALS.**

14 (a) GOALS.—The energy efficiency goals of the
15 United States are—

16 (1) to achieve an improvement in the overall en-
17 ergy productivity of the United States (measured in
18 gross domestic product per unit of energy input) of
19 at least 2.5 percent per year by the year 2012; and

20 (2) to maintain that annual rate of improve-
21 ment each year through 2030.

22 (b) STRATEGIC PLAN.—

23 (1) IN GENERAL.—Not later than 1 year after
24 the date of enactment of this Act, the Secretary of
25 Energy (referred to in this section as the “Sec-

1 retary’’), in cooperation with the Administrator and
2 the heads of other appropriate Federal agencies,
3 shall develop a strategic plan to achieve the national
4 goals for improvement in energy productivity estab-
5 lished under subsection (a).

6 (2) PUBLIC INPUT AND COMMENT.—The Sec-
7 retary shall develop the plan in a manner that pro-
8 vides appropriate opportunities for public input and
9 comment.

10 (c) PLAN CONTENTS.—The strategic plan shall—

11 (1) identify future regulatory, funding, and pol-
12 icy priorities that would assist the United States in
13 meeting the national goals;

14 (2) include energy savings estimates for each
15 sector; and

16 (3) include data collection methodologies and
17 compilations used to establish baseline and energy
18 savings data.

19 (d) PLAN UPDATES.—

20 (1) IN GENERAL.—The Secretary shall—

21 (A) update the strategic plan biennially;
22 and

23 (B) include the updated strategic plan in
24 the national energy policy plan required by sec-

1 tion 801 of the Department of Energy Organi-
2 zation Act (42 U.S.C. 7321).

3 (2) CONTENTS.—In updating the plan, the Sec-
4 retary shall—

5 (A) report on progress made toward imple-
6 menting efficiency policies to achieve the na-
7 tional goals established under subsection (a);
8 and

9 (B) verify, to the maximum extent prac-
10 ticable, energy savings resulting from the poli-
11 cies.

12 (e) REPORT TO CONGRESS AND THE PUBLIC.—The
13 Secretary shall submit to Congress, and make available
14 to the public, the initial strategic plan developed under
15 subsection (b) and each updated plan.

16 **SEC. 273. AFFILIATED ISLAND ENERGY INDEPENDENCE**
17 **TEAM.**

18 (a) DEFINITIONS.—In this section:

19 (1) AFFILIATED ISLAND.—The term “affiliated
20 island” means—

21 (A) the Commonwealth of Puerto Rico;

22 (B) Guam;

23 (C) American Samoa;

24 (D) the Commonwealth of the Northern
25 Mariana Islands;

- 1 (E) the Federated States of Micronesia;
- 2 (F) the Republic of the Marshall Islands;
- 3 (G) the Republic of Palau; and
- 4 (H) the United States Virgin Islands.

5 (2) SECRETARY.—The term “Secretary” means
6 the Secretary of Energy (acting through the Assist-
7 ant Secretary of Energy Efficiency and Renewable
8 Energy), in consultation with the Secretary of the
9 Interior and the Secretary of State.

10 (3) TEAM.—The term “team” means the team
11 established by the Secretary under subsection (b).

12 (b) ESTABLISHMENT.—As soon as practicable after
13 the date of enactment of this Act, the Secretary shall as-
14 semble a team of technical, policy, and financial experts
15 to address the energy needs of each affiliated island—

16 (1) to reduce the reliance and expenditure of
17 each affiliated island on imported fossil fuels;

18 (2) to increase the use by each affiliated island
19 of indigenous, nonfossil fuel energy sources;

20 (3) to improve the performance of the energy
21 infrastructure of the affiliated island through
22 projects—

23 (A) to improve the energy efficiency of
24 power generation, transmission, and distribu-
25 tion; and

- 1 (B) to increase consumer energy efficiency;
- 2 (4) to improve the performance of the energy
- 3 infrastructure of each affiliated island through en-
- 4 hanced planning, education, and training;
- 5 (5) to adopt research-based and public-private
- 6 partnership-based approaches as appropriate;
- 7 (6) to stimulate economic development and job
- 8 creation; and
- 9 (7) to enhance the engagement by the Federal
- 10 Government in international efforts to address island
- 11 energy needs.

12 (c) DUTIES OF TEAM.—

13 (1) ENERGY ACTION PLANS.—

14 (A) IN GENERAL.—In accordance with

15 subparagraph (B), the team shall provide tech-

16 nical, programmatic, and financial assistance to

17 each utility of each affiliated island, and the

18 government of each affiliated island, as appro-

19 priate, to develop and implement an energy Ac-

20 tion Plan for each affiliated island to reduce the

21 reliance of each affiliated island on imported

22 fossil fuels through increased efficiency and use

23 of indigenous clean-energy resources.

1 (B) REQUIREMENTS.—Each Action Plan
2 described in subparagraph (A) for each affili-
3 ated island shall require and provide for—

4 (i) the conduct of 1 or more studies to
5 assess opportunities to reduce fossil fuel
6 use through—

7 (I) the improvement of the en-
8 ergy efficiency of the affiliated island;
9 and

10 (II) the increased use by the af-
11 filiated island of indigenous clean-en-
12 ergy resources;

13 (ii) the identification and implementa-
14 tion of the most cost-effective strategies
15 and projects to reduce the dependence of
16 the affiliated island on fossil fuels;

17 (iii) the promotion of education and
18 training activities to improve the capacity
19 of the local utilities of the affiliated island,
20 and the government of the affiliated island,
21 as appropriate, to plan for, maintain, and
22 operate the energy infrastructure of the af-
23 filiated island through the use of local or
24 regional institutions, as appropriate;

1 (iv) the coordination of the activities
2 described in clause (iii) to leverage the ex-
3 pertise and resources of international enti-
4 ties, the Department of Energy, the De-
5 partment of the Interior, and the regional
6 utilities of the affiliated island;

7 (v) the identification, and develop-
8 ment, as appropriate, of research-based
9 and private-public, partnership approaches
10 to implement the Action Plan; and

11 (vi) any other component that the
12 Secretary determines to be necessary to re-
13 duce successfully the use by each affiliated
14 island of fossil fuels.

15 (2) REPORTS TO SECRETARY.—Not later than
16 1 year after the date on which the Secretary estab-
17 lishes the team and biennially thereafter, the team
18 shall submit to the Secretary a report that contains
19 a description of the progress of each affiliated island
20 in—

21 (A) implementing the Action Plan of the
22 affiliated island developed under paragraph
23 (1)(A); and

24 (B) reducing the reliance of the affiliated
25 island on fossil fuels.

1 (d) USE OF REGIONAL UTILITY ORGANIZATIONS.—

2 To provide expertise to affiliated islands to assist the af-
3 filiated islands in meeting the purposes of this section, the
4 Secretary shall consider—

5 (1) including regional utility organizations in
6 the establishment of the team; and

7 (2) providing assistance through regional utility
8 organizations.

9 (e) ANNUAL REPORTS TO CONGRESS.—Not later
10 than 30 days after the date on which the Secretary re-
11 ceives a report submitted by the team under subsection
12 (c)(2), the Secretary shall submit to the appropriate com-
13 mittees of Congress a report that contains a summary of
14 the report of the team.

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

18 **SEC. 274. PRODUCT CARBON DISCLOSURE PROGRAM.**

19 (a) EPA STUDY.—The Administrator shall conduct
20 a study to determine the feasibility of establishing a na-
21 tional program for measuring, reporting, publicly dis-
22 closing, and labeling products or materials sold in the
23 United States for their carbon content, and shall, not later
24 than 18 months after the date of enactment of this Act,

1 transmit a report to Congress which shall include the fol-
2 lowing:

3 (1) A determination of whether a national prod-
4 uct carbon disclosure program and labeling program
5 would be effective in achieving the intended goals of
6 achieving greenhouse gas reductions and an exam-
7 ination of existing programs globally and their
8 strengths and weaknesses.

9 (2) Criteria for identifying and prioritizing sec-
10 tors and products and processes that should be cov-
11 ered in such program or programs.

12 (3) An identification of products, processes, or
13 sectors whose inclusion could have a substantial car-
14 bon impact (prioritizing industrial products such as
15 iron and steel, aluminum, cement, chemicals, and
16 paper products, and also including food, beverage,
17 hygiene, cleaning, household cleaners, construction,
18 metals, clothing, semiconductor, and consumer elec-
19 tronics).

20 (4) Suggested methodology and protocols for
21 measuring the carbon content of the products across
22 the entire carbon lifecycle of such products for use
23 in a carbon disclosure program and labeling pro-
24 gram.

1 (5) A review of existing greenhouse gas product
2 accounting standards, methodologies, and practices
3 including the Greenhouse Gas Protocol, ISO 14040/
4 44, ISO 14067, and Publically Available Specifica-
5 tion 2050, and including a review of the strengths
6 and weaknesses of each.

7 (6) A survey of secondary databases including
8 the Manufacturing Energy Consumption Survey and
9 evaluate the quality of data for use in a product car-
10 bon disclosure program and product carbon labeling
11 program and an identification of gaps in the data
12 relative to the potential purposes of a national prod-
13 uct carbon disclosure program and product carbon
14 labeling program and development of recommenda-
15 tions for addressing these data gaps.

16 (7) An assessment of the utility of comparing
17 products and the appropriateness of product carbon
18 standards.

19 (8) An evaluation of the information needed on
20 a label for clear and accurate communication, in-
21 cluding what pieces of quantitative and qualitative
22 information needs to be disclosed.

23 (9) An evaluation of the appropriate boundaries
24 of the carbon lifecycle analysis for different sectors
25 and products.

1 (10) An analysis of whether default values
2 should be developed for products whose producer
3 does not participate in the program or does not have
4 data to support a disclosure or label and determine
5 best ways to develop such default values.

6 (11) A recommendation of certification and
7 verification options necessary to assure the quality
8 of the information and avoid greenwashing or the
9 use of insubstantial or meaningless environmental
10 claims to promote a product.

11 (12) An assessment of options for educating
12 consumers about product carbon content and the
13 product carbon disclosure program and product car-
14 bon labeling program.

15 (13) An analysis of the costs and timelines as-
16 sociated with establishing a national product carbon
17 disclosure program and product carbon labeling pro-
18 gram, including options for a phased approach.
19 Costs should include those for businesses associated
20 with the measurement of carbon footprints and
21 those associated with creating a product carbon label
22 and managing and operating a product carbon label-
23 ing program, and options for minimizing these costs.

24 (14) An evaluation of incentives (such as finan-
25 cial incentives, brand reputation, and brand loyalty)

1 to determine whether reductions in emissions can be
2 accelerated through encouraging more efficient man-
3 ufacturing or by encouraging preferences for lower-
4 emissions products to substitute for higher-emissions
5 products whose level of performance is no better.

6 (b) DEVELOPMENT OF NATIONAL CARBON DISCLO-
7 SURE PROGRAM.—Upon conclusion of the study, and not
8 more than 36 months after the date of enactment of this
9 Act, the Administrator shall establish a national product
10 carbon disclosure program, participation in which shall be
11 voluntary, and which may involve a product carbon label
12 with broad applicability to the wholesale and consumer
13 markets to enable and encourage knowledge about carbon
14 content by producers and consumers and to inform efforts
15 to reduce energy consumption (carbon dioxide equivalent
16 emissions) nationwide. In developing such a program, the
17 Administrator shall—

18 (1) consider the results of the study conducted
19 under subsection (a);

20 (2) consider existing and planned programs and
21 proposals and measurement standards (including the
22 Publicly Available Specification 2050, standards to
23 be developed by the World Resource Institute/World
24 Business Council for Sustainable Development, the

1 International Standards Organization, and the bill
2 AB19 pending in the California legislature);

3 (3) consider the compatibility of a national
4 product carbon disclosure program with existing pro-
5 grams;

6 (4) utilize incentives and other means to spur
7 the adoption of product carbon disclosure and prod-
8 uct carbon labeling;

9 (5) develop protocols and parameters for a
10 product carbon disclosure program, including a
11 methodology and formula for assessing, verifying,
12 and potentially labeling a product's greenhouse gas
13 content, and for data quality requirements to allow
14 for product comparison;

15 (6) create a means to—

16 (A) document best practices;

17 (B) ensure clarity and consistency;

18 (C) work with suppliers, manufacturers,
19 and retailers to encourage participation;

20 (D) ensure that protocols are consistent
21 and comparable across like products; and

22 (E) evaluate the effectiveness of the pro-
23 gram;

24 (7) make publicly available information on
25 product carbon content to ensure transparency;

1 (8) provide for public outreach, including a con-
2 sumer education program to increase awareness;

3 (9) develop training and education programs to
4 help businesses learn how to measure and commu-
5 nicate their carbon footprint and easy tools and tem-
6 plates for businesses to use to reduce cost and time
7 to measure their products' carbon lifecycle;

8 (10) consult with the Secretary of Energy, the
9 Secretary of Commerce, the Federal Trade Commis-
10 sion, and other Federal agencies, as necessary;

11 (11) gather input from stakeholders through
12 consultations, public workshops or hearings with
13 representatives of consumer product manufacturers,
14 consumer groups, and environmental groups;

15 (12) utilize systems for verification and product
16 certification that will ensure that claims manufactur-
17 ers make about their products are valid;

18 (13) create a process for reviewing the accuracy
19 of product carbon label information and protecting
20 the product carbon label in the case of a change in
21 the product's energy source, supply chain, ingredi-
22 ents, or other factors, and specify the frequency to
23 which data should be updated; and

24 (14) develop a standardized, easily understand-
25 able carbon label, if appropriate, and create a proc-

1 ess for responding to inaccuracies and misuses of
2 such a label.

3 (c) REPORT TO CONGRESS.—Not later than 5 years
4 after the program is established pursuant to subsection
5 (b), the Administrator shall report to Congress on the ef-
6 fectiveness and impact of the program, the level of vol-
7 untary participation, and any recommendations for addi-
8 tional measures.

9 (d) DEFINITIONS.—As used in this section—

10 (1) the term “carbon content” means the
11 amount of greenhouse gas emissions and their
12 warming impact on the atmosphere expressed in car-
13 bon dioxide equivalent associated with a product’s
14 value chain;

15 (2) the term “carbon footprint” means the level
16 of greenhouse gas emissions produced by a par-
17 ticular activity, service, or entity; and

18 (3) the term “carbon lifecycle” means the
19 greenhouse gas emissions that are released as part
20 of the processes of creating, producing, processing or
21 manufacturing, modifying, transporting, distrib-
22 uting, storing, using, recycling, or disposing of goods
23 and services.

24 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
25 authorized to be appropriated to the Administrator

1 \$5,000,000 for the study required by subsection (a) and
2 \$25,000,000 for each of fiscal years 2010 through 2025
3 for the program required under subsection (b).

4 **TITLE III—REDUCING GLOBAL**
5 **WARMING POLLUTION**

6 **SEC. 301. SHORT TITLE.**

7 This title, and sections 112, 116, 221, 222, 223, and
8 401 of this Act, and the amendments made by this title
9 and those sections, may be cited as the “Safe Climate
10 Act”.

11 **Subtitle A—Reducing Global**
12 **Warming Pollution**

13 **SEC. 311. REDUCING GLOBAL WARMING POLLUTION.**

14 The Clean Air Act (42 U.S.C. and following) is
15 amended by adding after title VI the following new title:

16 **“TITLE VII—GLOBAL WARMING**
17 **POLLUTION REDUCTION PRO-**
18 **GRAM**

19 **“PART A—GLOBAL WARMING POLLUTION**
20 **REDUCTION GOALS AND TARGETS**

21 **“SEC. 701. FINDINGS AND PURPOSE.**

22 “(a) FINDINGS.—The Congress finds as follows:

23 “(1) Global warming poses a significant threat
24 to the national security, economy, public health and

1 welfare, and environment of the United States, as
2 well as of other nations.

3 “(2) Reviews of scientific studies, including by
4 the Intergovernmental Panel on Climate Change and
5 the National Academy of Sciences, demonstrate that
6 global warming is the result of the combined anthro-
7 pogenic greenhouse gas emissions from numerous
8 sources of all types and sizes. Each increment of
9 emission, when combined with other emissions,
10 causes or contributes materially to the acceleration
11 and extent of global warming and its adverse effects
12 for the lifetime of such gas in the atmosphere. Ac-
13 cordingly, controlling emissions in small as well as
14 large amounts is essential to prevent, slow the pace
15 of, reduce the threats from, and mitigate global
16 warming and its adverse effects.

17 “(3) Because they induce global warming,
18 greenhouse gas emissions cause or contribute to in-
19 juries to persons in the United States, including—

20 “(A) adverse health effects such as disease
21 and loss of life;

22 “(B) displacement of human populations;

23 “(C) damage to property and other inter-
24 ests related to ocean levels, acidification, and
25 ice changes;

1 “(D) severe weather and seasonal changes;

2 “(E) disruption, costs, and losses to busi-
3 ness, trade, employment, farms, subsistence,
4 aesthetic enjoyment of the environment, recre-
5 ation, culture, and tourism;

6 “(F) damage to plants, forests, lands, and
7 waters;

8 “(G) harm to wildlife and habitat;

9 “(H) scarcity of water and the decreased
10 abundance of other natural resources;

11 “(I) worsening of tropospheric air pollu-
12 tion;

13 “(J) substantial threats of similar damage;
14 and

15 “(K) other harm.

16 “(4) That many of these effects and risks of fu-
17 ture effects of global warming are widely shared
18 does not minimize the adverse effects individual per-
19 sons have suffered, will suffer, and are at risk of
20 suffering because of global warming.

21 “(5) That some of the adverse and potentially
22 catastrophic effects of global warming are at risk of
23 occurring and not a certainty does not negate the
24 harm persons suffer from actions that increase the

1 likelihood, extent, and severity of such future im-
2 pacts.

3 “(6) Nations of the world look to the United
4 States for leadership in addressing the threat of and
5 harm from global warming. Full implementation of
6 the Safe Climate Act is critical to engage other na-
7 tions in an international effort to mitigate the threat
8 of and harm from global warming.

9 “(7) Global warming and its adverse effects are
10 occurring and are likely to continue and increase in
11 magnitude, and to do so at a greater and more
12 harmful rate, unless the Safe Climate Act is fully
13 implemented and enforced in an expeditious manner.

14 “(b) PURPOSE.—It is the general purpose of the Safe
15 Climate Act to help prevent, reduce the pace of, mitigate,
16 and remedy global warming and its adverse effects. To ful-
17 fill such purpose, it is necessary to—

18 “(1) require the timely fulfillment of all govern-
19 mental acts and duties, both substantive and proce-
20 dural, and the prompt compliance of covered entities
21 with the requirements of the Safe Climate Act;

22 “(2) establish and maintain an effective, trans-
23 parent, and fair market for emission allowances and
24 preserve the integrity of the cap on emissions and of
25 offset credits;

1 “(3) advance the production and deployment of
2 clean energy and energy efficiency technologies; and

3 “(4) ensure effective enforcement of the Safe
4 Climate Act by citizens, States, Indian tribes, and
5 all levels of government because each violation of the
6 Safe Climate Act is likely to result in an additional
7 increment of greenhouse gas emission and will slow
8 the pace of implementation of the Safe Climate Act
9 and delay the achievement of the goals set forth in
10 section 702, and cause or contribute to global warm-
11 ing and its adverse effects.

12 **“SEC. 702. ECONOMY-WIDE REDUCTION GOALS.**

13 “The goals of the Safe Climate Act are to reduce
14 steadily the quantity of United States greenhouse gas
15 emissions such that—

16 “(1) in 2012, the quantity of United States
17 greenhouse gas emissions does not exceed 97 percent
18 of the quantity of United States greenhouse gas
19 emissions in 2005;

20 “(2) in 2020, the quantity of United States
21 greenhouse gas emissions does not exceed 80 percent
22 of the quantity of United States greenhouse gas
23 emissions in 2005;

24 “(3) in 2030, the quantity of United States
25 greenhouse gas emissions does not exceed 58 percent

1 of the quantity of United States greenhouse gas
2 emissions in 2005; and

3 “(4) in 2050, the quantity of United States
4 greenhouse gas emissions does not exceed 17 percent
5 of the quantity of United States greenhouse gas
6 emissions in 2005.

7 **“SEC. 703. REDUCTION TARGETS FOR SPECIFIED SOURCES.**

8 “(a) IN GENERAL.—The regulations issued under
9 section 721 shall cap and reduce annually the greenhouse
10 gas emissions of capped sources each calendar year begin-
11 ning in 2012 such that—

12 “(1) in 2012, the quantity of greenhouse gas
13 emissions from capped sources does not exceed 97
14 percent of the quantity of greenhouse gas emissions
15 from such sources in 2005;

16 “(2) in 2020, the quantity of greenhouse gas
17 emissions from capped sources does not exceed 83
18 percent of the quantity of greenhouse gas emissions
19 from such sources in 2005;

20 “(3) in 2030, the quantity of greenhouse gas
21 emissions from capped sources does not exceed 58
22 percent of the quantity of greenhouse gas emissions
23 from such sources in 2005; and

24 “(4) in 2050, the quantity of greenhouse gas
25 emissions from capped sources does not exceed 17

1 percent of the quantity of greenhouse gas emissions
2 from such sources in 2005.

3 “(b) DEFINITION.—For purposes of this section, the
4 term ‘greenhouse gas emissions from such sources in
5 2005’ means emissions to which section 722 would have
6 applied if the requirements of this title for the specified
7 year had been in effect for 2005.

8 **“SEC. 704. SUPPLEMENTAL POLLUTION REDUCTIONS.**

9 “For the purposes of decreasing the likelihood of cat-
10 astrophic climate change, preserving tropical forests,
11 building capacity to generate offset credits, and facili-
12 tating international action on global warming, the Admin-
13 istrator shall set aside the percentage specified in section
14 781 of the quantity of emission allowances established
15 under section 721(a) for each year, to be used to achieve
16 a reduction of greenhouse gas emissions from deforest-
17 ation in developing countries in accordance with part E.
18 In 2020, activities supported under part E shall provide
19 greenhouse gas reductions in an amount equal to an addi-
20 tional 10 percentage points of reductions from United
21 States greenhouse gas emissions in 2005. The Adminis-
22 trator shall distribute these allowances with respect to ac-
23 tivities in countries that enter into and implement agree-
24 ments or arrangements relating to reduced deforestation
25 as described in section 754(a)(2).

1 **“SEC. 705. REVIEW AND PROGRAM RECOMMENDATIONS.**

2 “(a) IN GENERAL.—The Administrator shall, in con-
3 sultation with appropriate Federal agencies, submit to
4 Congress a report not later than July 1, 2013, and every
5 4 years thereafter, that includes—

6 “(1) an analysis of key findings based on the
7 latest scientific information and data relevant to
8 global climate change;

9 “(2) an analysis of capabilities to monitor and
10 verify greenhouse gas reductions on a worldwide
11 basis, including for the United States, as required
12 under the Safe Climate Act; and

13 “(3) an analysis of the status of worldwide
14 greenhouse gas reduction efforts, including imple-
15 mentation of the Safe Climate Act and other poli-
16 cies, both domestic and international, for reducing
17 greenhouse gas emissions, preventing dangerous at-
18 mospheric concentrations of greenhouse gases, pre-
19 venting significant irreversible consequences of cli-
20 mate change, and reducing vulnerability to the im-
21 pacts of climate change.

22 “(b) EXCEPTION.—Paragraph (3) of subsection (a)
23 shall not apply to the first report submitted under such
24 subsection.

25 “(c) LATEST SCIENTIFIC INFORMATION.—The anal-
26 ysis required under subsection (a)(1) shall—

1 “(1) address existing scientific information and
2 reports, considering, to the greatest extent possible,
3 the most recent assessment report of the Intergov-
4 ernmental Panel on Climate Change, reports by the
5 United States Global Change Research Program, the
6 Natural Resources Climate Change Adaptation
7 Panel established under section 475 of the American
8 Clean Energy and Security Act of 2009, and Fed-
9 eral agencies, and the European Union’s global tem-
10 perature data assessment; and

11 “(2) review trends and projections for—

12 “(A) global and country-specific annual
13 emissions of greenhouse gases, and cumulative
14 greenhouse gas emissions produced between
15 1850 and the present, including—

16 “(i) global cumulative emissions of an-
17 thropogenic greenhouse gases;

18 “(ii) global annual emissions of an-
19 thropogenic greenhouse gases; and

20 “(iii) by country, annual total, annual
21 per capita, and cumulative anthropogenic
22 emissions of greenhouse gases for the top
23 50 emitting nations;

24 “(B) significant changes, both globally and
25 by region, in annual net non-anthropogenic

1 greenhouse gas emissions from natural sources,
2 including permafrost, forests, or oceans;

3 “(C) global atmospheric concentrations of
4 greenhouse gases, expressed in annual con-
5 centration units as well as carbon dioxide
6 equivalents based on 100-year global warming
7 potentials;

8 “(D) major climate forcing factors, such as
9 aerosols;

10 “(E) global average temperature, expressed
11 as seasonal and annual averages in land, ocean,
12 and land-plus-ocean averages; and

13 “(F) sea level rise;

14 “(3) assess the current and potential impacts of
15 global climate change on—

16 “(A) human populations, including impacts
17 on public health, economic livelihoods, subsist-
18 ence, human infrastructure, and displacement
19 or permanent relocation due to flooding, severe
20 weather, extended drought, erosion, or other
21 ecosystem changes;

22 “(B) freshwater systems, including water
23 resources for human consumption and agri-
24 culture and natural and managed ecosystems,
25 flood and drought risks, and relative humidity;

1 “(C) the carbon cycle, including impacts
2 related to the thawing of permafrost, the fre-
3 quency and intensity of wildfire, and terrestrial
4 and ocean carbon sinks;

5 “(D) ecosystems and animal and plant
6 populations, including impacts on species abun-
7 dance, phenology, and distribution;

8 “(E) oceans and ocean ecosystems, includ-
9 ing effects on sea level, ocean acidity, ocean
10 temperatures, coral reefs, ocean circulation,
11 fisheries, and other indicators of ocean eco-
12 system health;

13 “(F) the cryosphere, including effects on
14 ice sheet mass balance, mountain glacier mass
15 balance, and sea-ice extent and volume;

16 “(G) changes in the intensity, frequency,
17 or distribution of severe weather events, includ-
18 ing precipitation, tropical cyclones, tornadoes,
19 and severe heat waves;

20 “(H) agriculture and forest systems; and

21 “(I) any other indicators the Administrator
22 deems appropriate;

23 “(4) summarize any significant socio-economic
24 impacts of climate change in the United States, in-
25 cluding the territories of the United States, drawing

1 on work by Federal agencies and the academic lit-
2 erature, including impacts on—

3 “(A) public health;

4 “(B) economic livelihoods and subsistence;

5 “(C) displacement or permanent relocation
6 due to flooding, severe weather, extended
7 drought, erosion, or other ecosystem changes;

8 “(D) human infrastructure, including
9 coastal infrastructure vulnerability to extreme
10 events and sea level rise, river floodplain infra-
11 structure, and sewer and water management
12 systems;

13 “(E) agriculture and forests, including ef-
14 fects on potential growing season, distribution,
15 and yield;

16 “(F) water resources for human consump-
17 tion, agriculture and natural and managed eco-
18 systems, flood and drought risks, and relative
19 humidity;

20 “(G) energy supply and use; and

21 “(H) transportation;

22 “(5) in assessing risks and impacts, use a risk
23 management framework, including both qualitative
24 and quantitative measures, to assess the observed

1 and projected impacts of current and future climate
2 change, accounting for—

3 “(A) both monetized and non-monetized
4 losses;

5 “(B) potential nonlinear, abrupt, or essen-
6 tially irreversible changes in the climate system;

7 “(C) potential nonlinear increases in the
8 cost of impacts;

9 “(D) potential low-probability, high impact
10 events; and

11 “(E) whether impacts are transitory or es-
12 sentially permanent; and

13 “(6) based on the findings of the Administrator
14 under this section, as well as assessments produced
15 by the Intergovernmental Panel on Climate Change,
16 the United States Global Change Research program,
17 and other relevant scientific entities—

18 “(A) describe increased risks to natural
19 systems and society that would result from an
20 increase in global average temperature 3.6 de-
21 grees Fahrenheit (2 degrees Celsius) above the
22 pre-industrial average or an increase in atmos-
23 pheric greenhouse gas concentrations above 450
24 parts per million carbon dioxide equivalent; and

25 “(B) identify and assess—

1 “(i) significant residual risks not
2 avoided by the thresholds described in sub-
3 paragraph (A);

4 “(ii) alternative thresholds or targets
5 that may more effectively limit the risks
6 identified pursuant to clause (i); and

7 “(iii) thresholds above those described
8 in subparagraph (A) which significantly in-
9 crease the risk of certain impacts or render
10 them essentially permanent.

11 “(d) STATUS OF MONITORING AND VERIFICATION
12 CAPABILITIES TO EVALUATE GREENHOUSE GAS REDUC-
13 TION EFFORTS.—The analysis required under subsection
14 (a)(2) shall evaluate the capabilities of the monitoring, re-
15 porting, and verification systems used to quantify progress
16 in achieving reductions in greenhouse gas emissions both
17 globally and in the United States (as described in section
18 702), including—

19 “(1) quantification of emissions and emission
20 reductions by entities participating in the cap and
21 trade program under this title;

22 “(2) quantification of emissions and emission
23 reductions by entities participating in the offset pro-
24 gram under this title;

1 “(3) quantification of emission and emissions
2 reductions by entities regulated by performance
3 standards;

4 “(4) quantification of aggregate net emissions
5 and emissions reductions by the United States; and

6 “(5) quantification of global changes in net
7 emissions and in sources and sinks of greenhouse
8 gases.

9 “(e) STATUS OF GREENHOUSE GAS REDUCTION EF-
10 FORTS.—The analysis required under subsection (a)(3)
11 shall address—

12 “(1) whether the programs under Safe Climate
13 Act and other Federal statutes are resulting in suffi-
14 cient United States greenhouse gas emissions reduc-
15 tions to meet the emissions reduction goals described
16 in section 702, taking into account the use of off-
17 sets; and

18 “(2) whether United States actions, taking into
19 account international actions, commitments, and
20 trends, and considering the range of plausible emis-
21 sions scenarios, are sufficient to avoid—

22 “(A) atmospheric greenhouse gas con-
23 centrations above 450 parts per million carbon
24 dioxide equivalent;

1 “(B) global average surface temperature
2 3.6 degrees Fahrenheit (2 degrees Celsius)
3 above the pre-industrial average, or such other
4 temperature thresholds as the Administrator
5 deems appropriate; and

6 “(C) other temperature or greenhouse gas
7 thresholds identified pursuant to subsection
8 (c)(6)(B).

9 “(f) RECOMMENDATIONS.—

10 “(1) LATEST SCIENTIFIC INFORMATION.—
11 Based on the analysis described in subsection (a)(1),
12 each report under subsection (a) shall identify ac-
13 tions that could be taken to—

14 “(A) improve the characterization of
15 changes in the earth-climate system and im-
16 pacts of global climate change;

17 “(B) better inform decision making and
18 actions related to global climate change;

19 “(C) mitigate risks to natural and social
20 systems; and

21 “(D) design policies to better account for
22 climate risks.

23 “(2) MONITORING, REPORTING AND
24 VERIFICATION.—Based on the analysis described in
25 subsection (a)(2), each report under subsection (a)

1 shall identify key gaps in measurement, reporting,
2 and verification capabilities and make recommenda-
3 tions to improve the accuracy and reliability of those
4 capabilities.

5 “(3) STATUS OF GREENHOUSE GAS REDUCTION
6 EFFORTS.—Based on the analysis described in sub-
7 section (a)(3), taking into account international ac-
8 tions, commitments, and trends, and considering the
9 range of plausible emissions scenarios, each report
10 under subsection (a) shall identify—

11 “(A) the quantity of additional reductions
12 required to meet the emissions reduction goals
13 in section 702;

14 “(B) the quantity of additional reductions
15 in global greenhouse gas emissions needed to
16 avoid the concentration and temperature
17 thresholds identified in subsection (e); and

18 “(C) possible strategies and approaches for
19 achieving additional reductions.

20 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to carry out this section
22 such sums as may be necessary.

23 **“SEC. 706. NATIONAL ACADEMY REVIEW.**

24 “(a) IN GENERAL.—Not later than 1 year after the
25 date of enactment of this title, the Administrator shall

1 offer to enter into a contract with the National Academy
2 of Sciences (in this section referred to as the ‘Academy’)
3 under which the Academy shall, not later than July 1,
4 2014, and every 4 years thereafter, submit to Congress
5 and the Administrator a report that includes—

6 “(1) a review of the most recent report and rec-
7 ommendations issued under section 705; and

8 “(2) an analysis of technologies to achieve re-
9 ductions in greenhouse gas emissions.

10 “(b) FAILURE TO ISSUE A REPORT.—In the event
11 that the Administrator has not issued all or part of the
12 most recent report required under section 705, the Acad-
13 emy shall conduct its own review and analysis of the re-
14 quired information.

15 “(c) TECHNOLOGICAL INFORMATION.—The analysis
16 required under subsection (a)(2) shall—

17 “(1) review existing technological information
18 and reports, including the most recent reports by the
19 Department of Energy, the United States Global
20 Change Research Program, the Intergovernmental
21 Panel on Climate Change, and the International En-
22 ergy Agency and any other relevant information on
23 technologies or practices that reduce or limit green-
24 house gas emissions;

1 “(2) include the participation of technical ex-
2 perts from relevant private industry sectors;

3 “(3) review the current and future projected de-
4 ployment of technologies and practices in the United
5 States that reduce or limit greenhouse gas emis-
6 sions, including—

7 “(A) technologies for capture and seques-
8 tration of greenhouse gases;

9 “(B) technologies to improve energy effi-
10 ciency;

11 “(C) low- or zero-greenhouse gas emitting
12 energy technologies;

13 “(D) low- or zero-greenhouse gas emitting
14 fuels;

15 “(E) biological sequestration practices and
16 technologies; and

17 “(F) any other technologies the Academy
18 deems relevant; and

19 “(4) review and compare the emissions reduc-
20 tion potential, commercial viability, market penetra-
21 tion, investment trends, and deployment of the tech-
22 nologies described in paragraph (3), including—

23 “(A) the need for additional research and
24 development, including publicly funded research
25 and development;

1 “(B) the extent of commercial deployment,
2 including, where appropriate, a comparison to
3 the cost and level of deployment of conventional
4 fossil fuel-fired energy technologies and devices;
5 and

6 “(C) an evaluation of any substantial tech-
7 nological, legal, or market-based barriers to
8 commercial deployment.

9 “(d) RECOMMENDATIONS.—

10 “(1) LATEST SCIENTIFIC INFORMATION.—
11 Based on the review described in subsection (a)(1),
12 the Academy shall identify actions that could be
13 taken to—

14 “(A) improve the characterization of
15 changes in the earth-climate system and im-
16 pacts of global climate change;

17 “(B) better inform decision making and
18 actions related to global climate change;

19 “(C) mitigate risks to natural and social
20 systems;

21 “(D) design policies to better account for
22 climate risks; and

23 “(E) improve the accuracy and reliability
24 of capabilities to monitor, report, and verify
25 greenhouse gas emissions reduction efforts.

1 “(2) TECHNOLOGICAL INFORMATION.—Based
2 on the analysis described in subsection (a)(2), the
3 Academy shall identify—

4 “(A) additional emissions reductions that
5 may be possible as a result of technologies de-
6 scribed in the analysis;

7 “(B) barriers to the deployment of such
8 technologies; and

9 “(C) actions that could be taken to speed
10 deployment of such technologies.

11 “(3) STATUS OF GREENHOUSE GAS REDUCTION
12 EFFORTS.—Based on the review described in sub-
13 section (a)(1), the Academy shall identify—

14 “(A) the quantity of additional reductions
15 required to meet the emissions reduction goals
16 described in section 702; and

17 “(B) the quantity of additional reductions
18 in global greenhouse gas emissions needed to
19 avoid the concentration and temperature
20 thresholds described in section 705(c)(6)(A) or
21 identified pursuant to section 705(c)(6)(B).

22 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated to carry out this section
24 such sums as may be necessary.

1 **“SEC. 707. PRESIDENTIAL RESPONSE AND RECOMMENDA-**
2 **TIONS.**

3 “(a) AGENCY ACTIONS.—The President shall direct
4 relevant Federal agencies to use existing statutory author-
5 ity to take appropriate actions identified in the reports
6 submitted under sections 705 and 706, and to address any
7 shortfalls identified in such reports, not later than July
8 1, 2015, and every 4 years thereafter.

9 “(b) PLAN.—In the event that the Administrator or
10 the National Academy of Sciences has concluded, in the
11 most recent report submitted under section 705 or 706
12 respectively, that the United States will not achieve the
13 necessary domestic greenhouse gas emissions reductions,
14 or that global actions will not maintain safe global average
15 surface temperature and atmospheric greenhouse gas con-
16 centration thresholds, the President shall, not later than
17 July 1, 2015, and every 4 years thereafter, submit to Con-
18 gress a plan identifying domestic and international actions
19 that will achieve necessary additional greenhouse gas re-
20 ductions, including any recommendations for legislative
21 action.

22 **“PART B—DESIGNATION AND REGISTRATION OF**
23 **GREENHOUSE GASES**

24 **“SEC. 711. DESIGNATION OF GREENHOUSE GASES.**

25 “(a) GREENHOUSE GASES.—For purposes of this
26 title, the following are greenhouse gases:

1 “(1) Carbon dioxide.

2 “(2) Methane.

3 “(3) Nitrous oxide.

4 “(4) Sulfur hexafluoride.

5 “(5) Hydrofluorocarbons emitted from a chem-
6 ical manufacturing process at an industrial sta-
7 tionary source.

8 “(6) Any perfluorocarbon.

9 “(7) Nitrogen trifluoride.

10 “(8) Any other anthropogenic gas designated as
11 a greenhouse gas by the Administrator under this
12 section.

13 “(b) DETERMINATION ON ADMINISTRATOR’S INITIA-
14 TIVE.—The Administrator shall, by rule—

15 “(1) determine whether 1 metric ton of another
16 anthropogenic gas makes the same or greater con-
17 tribution to global warming over 100 years as 1 met-
18 ric ton of carbon dioxide;

19 “(2) determine the carbon dioxide equivalent
20 value for each gas with respect to which the Admin-
21 istrator makes an affirmative determination under
22 paragraph (1);

23 “(3) for each gas with respect to which the Ad-
24 ministrator makes an affirmative determination
25 under paragraph (1) and that is used as a substitute

1 for a class I or class II substance under title VI, de-
2 termine the extent to which to regulate that gas
3 under section 619 and specify appropriate compli-
4 ance obligations under section 619;

5 “(4) designate as a greenhouse gas for purposes
6 of this title each gas for which the Administrator
7 makes an affirmative determination under para-
8 graph (1), to the extent that it is not regulated
9 under section 619; and

10 “(5) specify the appropriate compliance obliga-
11 tions under this title for each gas designated as a
12 greenhouse gas under paragraph (4).

13 “(c) PETITIONS TO DESIGNATE A GREENHOUSE
14 GAS.—

15 “(1) IN GENERAL.—Any person may petition
16 the Administrator to designate as a greenhouse gas
17 any anthropogenic gas 1 metric ton of which makes
18 the same or greater contribution to global warming
19 over 100 years as 1 metric ton of carbon dioxide.

20 “(2) CONTENTS OF PETITION.—The petitioner
21 shall provide sufficient data, as specified by rule by
22 the Administrator, to demonstrate that the gas is
23 likely to be designated as a greenhouse gas and is
24 likely to be produced, imported, used, or emitted in
25 the United States. To the extent practicable, the pe-

1 titioner shall also identify producers, importers, dis-
2 tributors, users, and emitters of the gas in the
3 United States.

4 “(3) REVIEW AND ACTION BY THE ADMINIS-
5 TRATOR.—Not later than 90 days after receipt of a
6 petition under paragraph (2), the Administrator
7 shall determine whether the petition is complete and
8 notify the petitioner and the public of the decision.

9 “(4) ADDITIONAL INFORMATION.—The Admin-
10 istrator may require producers, importers, distribu-
11 tors, users, or emitters of the gas to provide infor-
12 mation on the contribution of the gas to global
13 warming over 100 years compared to carbon dioxide.

14 “(5) TREATMENT OF PETITION.—For any sub-
15 stance used as a substitute for a class I or class II
16 substance under title VI, the Administrator may
17 elect to treat a petition under this subsection as a
18 petition to list the substance as a class II, group II
19 substance under section 619, and may require the
20 petition to be amended to address listing criteria
21 promulgated under that section.

22 “(6) DETERMINATION.—Not later than 2 years
23 after receipt of a complete petition, the Adminis-
24 trator shall, after notice and an opportunity for com-
25 ment—

1 “(A) issue and publish in the Federal Reg-
2 ister—

3 “(i) a determination that 1 metric ton
4 of the gas does not make a contribution to
5 global warming over 100 years that is
6 equal to or greater than that made by 1
7 metric ton of carbon dioxide; and

8 “(ii) an explanation of the decision; or

9 “(B) determine that 1 metric ton of the
10 gas makes a contribution to global warming
11 over 100 years that is equal to or greater than
12 that made by 1 metric ton of carbon dioxide,
13 and take the actions described in subsection (b)
14 with respect to such gas.

15 “(7) GROUNDS FOR DENIAL.—The Adminis-
16 trator may not deny a petition under this subsection
17 solely on the basis of inadequate Environmental Pro-
18 tection Agency resources or time for review.

19 “(d) SCIENCE ADVISORY BOARD CONSULTATION.—

20 “(1) CONSULTATION.—The Administrator
21 shall—

22 “(A) give notice to the Science Advisory
23 Board prior to making a determination under
24 subsection (b)(1), (c)(6), or (e)(2)(B);

1 “(B) consider the written recommendations
2 of the Science Advisory Board under paragraph
3 (2) regarding the determination; and

4 “(C) consult with the Science Advisory
5 Board regarding such determination, including
6 consultation subsequent to receipt of such writ-
7 ten recommendations.

8 “(2) FORMULATION OF RECOMMENDATIONS.—
9 Upon receipt of notice under paragraph (1)(A) re-
10 garding a pending determination under subsection
11 (b)(1), (c)(6), or (e)(2)(B), the Science Advisory
12 Board shall—

13 “(A) formulate recommendations regarding
14 such determination, subject to a peer review
15 process; and

16 “(B) submit such recommendations in
17 writing to the Administrator.

18 “(e) MANUFACTURING AND EMISSION NOTICES.—

19 “(1) NOTICE REQUIREMENT.—

20 “(A) IN GENERAL.—Effective 24 months
21 after the date of enactment of this title, no per-
22 son may manufacture or introduce into inter-
23 state commerce a fluorinated gas, or emit a sig-
24 nificant quantity, as determined by the Admin-
25 istrator, of any fluorinated gas that is gen-

1 erated as a byproduct during the production or
2 use of another fluorinated gas, unless—

3 “(i) the gas is designated as a green-
4 house gas under this section or is an
5 ozone-depleting substance listed as a class
6 I or class II substance under title VI;

7 “(ii) the Administrator has deter-
8 mined that 1 metric ton of such gas does
9 not make a contribution to global warming
10 over 100 years that is equal to or greater
11 than that made by 1 metric ton of carbon
12 dioxide; or

13 “(iii) the person manufacturing or im-
14 porting the gas for distribution into inter-
15 state commerce, or emitting the gas, has
16 submitted to the Administrator, at least 90
17 days before the start of such manufacture,
18 introduction into commerce, or emission, a
19 notice of such person’s manufacture, intro-
20 duction into commerce, or emission of such
21 gas, and the Administrator has not deter-
22 mined that that notice or a substantially
23 similar notice submitted by that person is
24 incomplete.

1 “(B) ALTERNATIVE COMPLIANCE.—For a
2 gas that is a substitute for a class I or class II
3 substance under title VI and either has been
4 listed as acceptable for use under section 612
5 or is currently subject to evaluation under sec-
6 tion 612, the Administrator may accept the no-
7 tice and information provided pursuant to that
8 section as fulfilling the obligation under clause
9 (iii) of subparagraph (A).

10 “(2) REVIEW AND ACTION BY THE ADMINIS-
11 TRATOR.—

12 “(A) COMPLETENESS.—Not later than 90
13 days after receipt of notice under paragraph
14 (1)(A)(iii) or (B), the Administrator shall deter-
15 mine whether the notice is complete.

16 “(B) DETERMINATION.— If the Adminis-
17 trator determines that the notice is complete,
18 the Administrator shall, after notice and an op-
19 portunity for comment, not later than 12
20 months after receipt of the notice—

21 “(i) issue and publish in the Federal
22 Register—

23 “(I) a determination that 1 met-
24 ric ton of the gas does not make a
25 contribution to global warming over

1 100 years that is equal to or greater
2 than that made by 1 metric ton of
3 carbon dioxide; and

4 “(II) an explanation of the deci-
5 sion; or

6 “(ii) determine that 1 metric ton of
7 the gas makes a contribution to global
8 warming over 100 years that is equal to or
9 greater than that made by 1 metric ton of
10 carbon dioxide, and take the actions de-
11 scribed in subsection (b) with respect to
12 such gas.

13 “(f) REGULATIONS.—Not later than one year after
14 the date of enactment of this title, the Administrator shall
15 promulgate regulations to carry out this section. Such reg-
16 ulations shall include—

17 “(1) requirements for the contents of a petition
18 submitted under subsection (c);

19 “(2) requirements for the contents of a notice
20 required under subsection (e); and

21 “(3) methods and standards for evaluating the
22 carbon dioxide equivalent value of a gas.

23 “(g) GASES REGULATED UNDER TITLE VI.—The
24 Administrator shall not designate a gas as a greenhouse

1 gas under this section to the extent that the gas is regu-
 2 lated under title VI.

3 “(h) SAVINGS CLAUSE.—Nothing in this section shall
 4 be interpreted to relieve any person from complying with
 5 the requirements of section 612.

6 **“SEC. 712. CARBON DIOXIDE EQUIVALENT VALUE OF**
 7 **GREENHOUSE GASES.**

8 “(a) MEASURE OF QUANTITY OF GREENHOUSE
 9 GASES.—Any provision of this title or title VIII that refers
 10 to a quantity or percentage of a quantity of greenhouse
 11 gases shall mean the quantity or percentage of the green-
 12 house gases expressed in carbon dioxide equivalents.

13 “(b) INITIAL VALUE.—Except as provided by the Ad-
 14 ministrator under this section or section 711—

15 “(1) the carbon dioxide equivalent value of
 16 greenhouse gases for purposes of this Act shall be as
 17 follows:

**“CARBON DIOXIDE EQUIVALENT OF 1 TON OF LISTED
 GREENHOUSE GASES**

Greenhouse gas (1 metric ton)	Carbon dioxide equivalent (metric tons)
Carbon dioxide	1
Methane	25
Nitrous oxide	298
HFC-23	14,800
HFC-125	3,500
HFC-134a	1,430

**“CARBON DIOXIDE EQUIVALENT OF 1 TON OF LISTED
GREENHOUSE GASES—Continued**

Greenhouse gas (1 metric ton)	Carbon dioxide equivalent (metric tons)
HFC-143a	4,470
HFC-152a	124
HFC-227ea	3,220
HFC-236fa	9,810
HFC-4310mee	1,640
CF ₄	7,390
C ₂ F ₆	12,200
C ₄ F ₁₀	8,860
C ₆ F ₁₄	9,300
SF ₆	22,800
NF ₃	17,200

1 ; and

2 “(2) the carbon dioxide equivalent value for
3 purposes of this Act for any greenhouse gas not list-
4 ed in the table under paragraph (1) shall be the
5 100-year Global Warming Potentials provided in the
6 Intergovernmental Panel on Climate Change Fourth
7 Assessment Report.

8 “(c) PERIODIC REVIEW.—

9 “(1) Not later than February 1, 2017, and (ex-
10 cept as provided in paragraph (3)) not less than
11 every 5 years thereafter, the Administrator shall—

12 “(A) review and, if appropriate, revise the
13 carbon dioxide equivalent values established

1 under this section or section 711(b)(2), based
2 on a determination of the number of metric
3 tons of carbon dioxide that makes the same
4 contribution to global warming over 100 years
5 as 1 metric ton of each greenhouse gas; and

6 “(B) publish in the Federal Register the
7 results of that review and any revisions.

8 “(2) A revised determination published in the
9 Federal Register under paragraph (1)(B) shall take
10 effect for greenhouse gas emissions starting on Jan-
11 uary 1 of the first calendar year starting at least 9
12 months after the date on which the revised deter-
13 mination was published.

14 “(3) The Administrator may decrease the fre-
15 quency of review and revision under paragraph (1)
16 if the Administrator determines that such decrease
17 is appropriate in order to synchronize such review
18 and revision with any similar review process carried
19 out pursuant to the United Nations Framework
20 Convention on Climate Change, done at New York
21 on May 9, 1992, or to an agreement negotiated
22 under that convention, except that in no event shall
23 the Administrator carry out such review and revision
24 any less frequently than every 10 years.

1 “(d) **METHODOLOGY.**—In setting carbon dioxide
2 equivalent values, for purposes of this section or section
3 711, the Administrator shall take into account publica-
4 tions by the Intergovernmental Panel on Climate Change
5 or a successor organization under the auspices of the
6 United Nations Environmental Programme and the World
7 Meteorological Organization.

8 **“SEC. 713. GREENHOUSE GAS REGISTRY.**

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

10 “(1) **CLIMATE REGISTRY.**—The term ‘Climate
11 Registry’ means the greenhouse gas emissions reg-
12 istry jointly established and managed by more than
13 40 States and Indian tribes in 2007 to collect high-
14 quality greenhouse gas emission data from facilities,
15 corporations, and other organizations to support var-
16 ious greenhouse gas emission reporting and reduc-
17 tion policies for the member States and Indian
18 tribes.

19 “(2) **REPORTING ENTITY.**—The term ‘reporting
20 entity’ means—

21 “(A) a covered entity;

22 “(B) an entity that—

23 “(i) would be a covered entity if it had
24 emitted, produced, imported, manufac-
25 tured, or delivered in 2008 or any subse-

1 quent year more than the applicable
2 threshold level in the definition of covered
3 entity in paragraph (13) of section 700;
4 and

5 “(ii) has emitted, produced, imported,
6 manufactured, or delivered in 2008 or any
7 subsequent year more than the applicable
8 threshold level in the definition of covered
9 entity in paragraph (13) of section 700,
10 provided that the figure of 25,000 tons of
11 carbon dioxide equivalent is read instead
12 as 10,000 tons of carbon dioxide equivalent
13 and the figure of 460,000,000 cubic feet is
14 read instead as 184,000,000 cubic feet;

15 “(C) any other entity that emits a green-
16 house gas, or produces, imports, manufactures,
17 or delivers material whose use results or may
18 result in greenhouse gas emissions if the Ad-
19 ministrator determines that reporting under
20 this section by such entity will help achieve the
21 purposes of this title or title VIII;

22 “(D) any vehicle fleet with emissions of
23 more than 25,000 tons of carbon dioxide equiv-
24 alent on an annual basis, if the Administrator
25 determines that the inclusion of such fleet will

1 help achieve the purposes of this title or title
2 VIII; or

3 “(E) any entity that delivers electricity to
4 a facility in an energy-intensive industrial sec-
5 tor that meets the energy or greenhouse gas in-
6 tensity criteria in section 764(b)(2)(A)(i).

7 “(b) REGULATIONS.—

8 “(1) IN GENERAL.—Not later than 6 months
9 after the date of enactment of this title, the Admin-
10 istrator shall issue regulations establishing a Federal
11 greenhouse gas registry. Such regulations shall—

12 “(A) require reporting entities to submit to
13 the Administrator data on—

14 “(i) greenhouse gas emissions in the
15 United States;

16 “(ii) the production and manufacture
17 in the United States, importation into the
18 United States, and, at the discretion of the
19 Administrator, exportation from the
20 United States, of fuels and industrial gases
21 the uses of which result or may result in
22 greenhouse gas emissions;

23 “(iii) deliveries in the United States of
24 natural gas, and any other gas meeting the
25 specifications for commingling with natural

1 gas for purposes of delivery, the combus-
2 tion of which result or may result in green-
3 house gas emissions; and

4 “(iv) the capture and sequestration of
5 greenhouse gases;

6 “(B) require covered entities and, where
7 appropriate, other reporting entities to submit
8 to the Administrator data sufficient to ensure
9 compliance with or implementation of the re-
10 quirements of this title;

11 “(C) require reporting of electricity deliv-
12 ered to facilities in an energy-intensive indus-
13 trial sector that meets the energy or greenhouse
14 gas intensity criteria in section 764(b)(2)(A)(i);

15 “(D) ensure the completeness, consistency,
16 transparency, accuracy, precision, and reliability
17 of such data;

18 “(E) take into account the best practices
19 from the most recent Federal, State, tribal, and
20 international protocols for the measurement, ac-
21 counting, reporting, and verification of green-
22 house gas emissions, including protocols from
23 the Climate Registry and other mandatory
24 State or multistate authorized programs;

1 “(F) take into account the latest scientific
2 research;

3 “(G) require that, for covered entities with
4 respect to greenhouse gases to which section
5 722 applies, and, to the extent determined to be
6 appropriate by the Administrator, for covered
7 entities with respect to other greenhouse gases
8 and for other reporting entities, submitted data
9 are based on—

10 “(i) continuous monitoring systems
11 for fuel flow or emissions, such as contin-
12 uous emission monitoring systems;

13 “(ii) alternative systems that are dem-
14 onstrated as providing data with the same
15 precision, reliability, accessibility, and
16 timeliness, or, to the extent the Adminis-
17 trator determines is appropriate for report-
18 ing small amounts of emissions, the same
19 precision, reliability, and accessibility and
20 similar timeliness, as data provided by con-
21 tinuous monitoring systems for fuel flow or
22 emissions; or

23 “(iii) alternative methodologies that
24 are demonstrated to provide data with pre-
25 cision, reliability, accessibility, and timeli-

1 ness, or, to the extent the Administrator
2 determines is appropriate for reporting
3 small amounts of emissions, precision, reli-
4 ability, and accessibility, as similar as is
5 technically feasible to that of data gen-
6 erally provided by continuous monitoring
7 systems for fuel flow or emissions, if the
8 Administrator determines that, with re-
9 spect to a reporting entity, there is no con-
10 tinuous monitoring system or alternative
11 system described in clause (i) or (ii) that
12 is technically feasible;

13 “(H) require that the Administrator, in de-
14 termining the extent to which the requirement
15 to use systems or methodologies in accordance
16 with subparagraph (G) is appropriate for re-
17 porting entities other than covered entities or
18 for greenhouse gases to which section 722 does
19 not apply, consider the cost of using such sys-
20 tems and methodologies, and of using other sys-
21 tems and methodologies that are available and
22 suitable, for quantifying the emissions involved
23 in light of the purposes of this title, including
24 the goal of collecting consistent entity-wide
25 data;

1 “(I) include methods for minimizing double
2 reporting and avoiding irreconcilable double re-
3 porting of greenhouse gas emissions;

4 “(J) establish measurement protocols for
5 carbon capture and sequestration systems, tak-
6 ing into consideration the regulations promul-
7 gated under section 813;

8 “(K) require that reporting entities provide
9 the data required under this paragraph in re-
10 ports submitted electronically to the Adminis-
11 trator, in such form and containing such infor-
12 mation as may be required by the Adminis-
13 trator;

14 “(L) include requirements for keeping
15 records supporting or related to, and protocols
16 for auditing, submitted data;

17 “(M) establish consistent policies for calcu-
18 lating carbon content and greenhouse gas emis-
19 sions for each type of fossil fuel with respect to
20 which reporting is required;

21 “(N) subsequent to implementation of poli-
22 cies developed under subparagraph (M), provide
23 for immediate dissemination, to States, Indian
24 tribes, and on the Internet, of all data reported
25 under this section as soon as practicable after

1 electronic audit by the Administrator and any
2 resulting correction of data, except that data
3 shall not be disseminated under this subpara-
4 graph if—

5 “(i) its nondissemination is vital to
6 the national security of the United States,
7 as determined by the President; or

8 “(ii) it is confidential business infor-
9 mation that cannot be derived from infor-
10 mation that is otherwise publicly available
11 and that would cause significant calculable
12 competitive harm if published, except
13 that—

14 “(I) data relating to greenhouse
15 gas emissions, including any upstream
16 or verification data from reporting en-
17 tities, shall not be considered to be
18 confidential business information; and

19 “(II) data that is confidential
20 business information shall be provided
21 to a State or Indian tribe within
22 whose jurisdiction the reporting entity
23 is located, if the Administrator deter-
24 mines that such State or Indian tribe
25 has in effect protections for confiden-

1 tial business information that are at
2 least as protective as protections ap-
3 plicable to the Federal Government;

4 “(O) prescribe methods by which the Ad-
5 ministrator shall, in cases in which satisfactory
6 data are not submitted to the Administrator for
7 any period of time, estimate emission, produc-
8 tion, importation, manufacture, or delivery lev-
9 els—

10 “(i) for covered entities with respect
11 to greenhouse gas emissions, production,
12 importation, manufacture, or delivery regu-
13 lated under this title to ensure that emis-
14 sions, production, importation, manufac-
15 ture, or deliveries are not underreported,
16 and to create a strong incentive for meet-
17 ing data monitoring and reporting require-
18 ments—

19 “(I) with a conservative estimate
20 of the highest emission, production,
21 importation, manufacture, or delivery
22 levels that may have occurred during
23 the period for which data are missing;
24 or

1 “(II) to the extent the Adminis-
2 trator considers appropriate, with an
3 estimate of such levels assuming the
4 unit is emitting, producing, importing,
5 manufacturing, or delivering at a
6 maximum potential level during the
7 period, in order to ensure that such
8 levels are not underreported and to
9 create a strong incentive for meeting
10 data monitoring and reporting re-
11 quirements; and

12 “(ii) for covered entities with respect
13 to greenhouse gas emissions to which sec-
14 tion 722 does not apply and for other re-
15 porting entities, with a reasonable estimate
16 of the emission, production, importation,
17 manufacture, or delivery levels that may
18 have occurred during the period for which
19 data are missing;

20 “(P) require the designation of a des-
21 ignated representative for each reporting entity;

22 “(Q) require an appropriate certification,
23 by the designated representative for the report-
24 ing entity, of accurate and complete accounting

1 of greenhouse gas emissions, as determined by
2 the Administrator; and

3 “(R) include requirements for other data
4 necessary for accurate and complete accounting
5 of greenhouse gas emissions, as determined by
6 the Administrator, including data for quality
7 assurance of monitoring systems, monitors and
8 other measurement devices, and other data
9 needed to verify reported emissions, production,
10 importation, manufacture, or delivery.

11 “(2) TIMING.—

12 “(A) CALENDAR YEARS 2007 THROUGH
13 2010.—For a base period of calendar years
14 2007 through 2010, each reporting entity shall
15 submit annual data required under this section
16 to the Administrator not later than March 31,
17 2011. The Administrator may waive or modify
18 reporting requirements for calendar years 2007
19 through 2010 for categories of reporting enti-
20 ties to the extent that the Administrator deter-
21 mines that the reporting entities did not keep
22 data or records necessary to meet reporting re-
23 quirements. The Administrator may, in addition
24 to or in lieu of such requirements, collect infor-
25 mation on energy consumption and production.

1 “(B) SUBSEQUENT CALENDAR YEARS.—

2 For calendar year 2011 and each subsequent
3 calendar year, each reporting entity shall sub-
4 mit quarterly data required under this section
5 to the Administrator not later than 60 days
6 after the end of the applicable quarter, except
7 when the data is already being reported to the
8 Administrator on an earlier timeframe for an-
9 other program.

10 “(3) WAIVER OF REPORTING REQUIREMENTS.—

11 The Administrator may waive reporting require-
12 ments under this section for specific entities to the
13 extent that the Administrator determines that suffi-
14 cient and equally or more reliable verified and timely
15 data are available to the Administrator and the pub-
16 lic on the Internet under other mandatory statutory
17 requirements.

18 “(4) ALTERNATIVE THRESHOLD.—The Admin-
19 istrator may, by rule, establish applicability thresh-
20 olds for reporting under this section using alter-
21 native metrics and levels, provided that such metrics
22 and levels are easier to administer and cover the
23 same size and type of sources as the threshold de-
24 fined in this section.

1 “(c) INTERRELATIONSHIP WITH OTHER SYSTEMS.—
2 In developing the regulations issued under subsection (b),
3 the Administrator shall take into account the work done
4 by the Climate Registry and other mandatory State or
5 multistate programs. Such regulations shall include an ex-
6 planation of any major differences in approach between
7 the system established under the regulations and such reg-
8 istries and programs.

9 **“PART C—PROGRAM RULES**

10 **“SEC. 721. EMISSION ALLOWANCES.**

11 “(a) IN GENERAL.—The Administrator shall estab-
12 lish a separate quantity of emission allowances for each
13 calendar year starting in 2012, in the amounts prescribed
14 under subsection (e).

15 “(b) IDENTIFICATION NUMBERS.—The Adminis-
16 trator shall assign to each emission allowance established
17 under subsection (a) a unique identification number that
18 includes the vintage year for that emission allowance.

19 “(c) LEGAL STATUS OF EMISSION ALLOWANCES.—

20 “(1) IN GENERAL.—An allowance established
21 by the Administrator under this title does not con-
22 stitute a property right, nor does any credit or other
23 instrument established or issued under the American
24 Clean Energy and Security Act of 2009, and the

1 amendments made thereby, for the purpose of dem-
2 onstrating compliance with this title.

3 “(2) TERMINATION OR LIMITATION.—Nothing
4 in this Act or any other provision of law shall be
5 construed to limit or alter the authority of the
6 United States, including the Administrator acting
7 pursuant to statutory authority, to terminate or
8 limit allowances or offset credits.

9 “(3) OTHER PROVISIONS UNAFFECTED.—Ex-
10 cept as otherwise specified in this Act, nothing in
11 this Act relating to allowances or offset credits es-
12 tablished or issued under this title shall affect the
13 application of any other provision of law to a covered
14 entity, or the responsibility for a covered entity to
15 comply with any such provision of law.

16 “(d) SAVINGS PROVISION.—Nothing in this part shall
17 be construed as requiring a change of any kind in any
18 State law regulating electric utility rates and charges, or
19 as affecting any State law regarding such State regula-
20 tion, or as limiting State regulation (including any
21 prudency review) under such a State law. Nothing in this
22 part shall be construed as modifying the Federal Power
23 Act or as affecting the authority of the Federal Energy
24 Regulatory Commission under that Act. Nothing in this
25 part shall be construed to interfere with or impair any pro-

1 gram for competitive bidding for power supply in a State
 2 in which such program is established.

3 “(e) ALLOWANCES FOR EACH CALENDAR YEAR.—

4 “(1) IN GENERAL.—Except as provided in para-
 5 graph (2), the number of emission allowances estab-
 6 lished by the Administrator under subsection (a) for
 7 each calendar year shall be as provided in the fol-
 8 lowing table:

“Calendar year	Emission allowances (in mil- lions)
2012	4,627
2013	4,544
2014	5,099
2015	5,003
2016	5,482
2017	5,375
2018	5,269
2019	5,162
2020	5,056
2021	4,903
2022	4,751
2023	4,599
2024	4,446
2025	4,294
2026	4,142
2027	3,990
2028	3,837

“Calendar year	Emission allowances (in mil- lions)
2029	3,685
2030	3,533
2031	3,408
2032	3,283
2033	3,158
2034	3,033
2035	2,908
2036	2,784
2037	2,659
2038	2,534
2039	2,409
2040	2,284
2041	2,159
2042	2,034
2043	1,910
2044	1,785
2045	1,660
2046	1,535
2047	1,410
2048	1,285
2049	1,160
2050 and each year thereafter	1,035

1 “(2) REVISION.—

2 “(A) IN GENERAL.—The Administrator
3 may adjust, in accordance with subparagraph
4 (B), the number of emission allowances estab-

1 lished pursuant to paragraph (1) if, after notice
2 and an opportunity for public comment, the Ad-
3 ministrator determines that—

4 “(i) United States greenhouse gas
5 emissions in 2005 were other than 7,206
6 million metric tons carbon dioxide equiva-
7 lent;

8 “(ii) if the requirements of this title
9 for 2012 had been in effect in 2005, sec-
10 tion 722 would have required emission al-
11 lowances to be held for other than 66.2
12 percent of United States greenhouse gas
13 emissions in 2005;

14 “(iii) if the requirements of this title
15 for 2014 had been in effect in 2005, sec-
16 tion 722 would have required emission al-
17 lowances to be held for other than 75.7
18 percent of United States greenhouse gas
19 emissions in 2005; or

20 “(iv) if the requirements of this title
21 for 2016 had been in effect in 2005, sec-
22 tion 722 would have required emission al-
23 lowances to be held for other than 84.5
24 percent United States greenhouse gas
25 emissions in 2005.

1 “(B) ADJUSTMENT FORMULA.—

2 “(i) IN GENERAL.—If the Adminis-
3 trator adjusts under this paragraph the
4 number of emission allowances established
5 pursuant to paragraph (1), the number of
6 emission allowances the Administrator es-
7 tablishes for any given calendar year shall
8 equal the product of—

9 “(I) United States greenhouse
10 gas emissions in 2005, expressed in
11 tons of carbon dioxide equivalent;

12 “(II) the percent of United
13 States greenhouse gas emissions in
14 2005, expressed in tons of carbon di-
15 oxide equivalent, that would have been
16 subject to section 722 if the require-
17 ments of this title for the given cal-
18 endar year had been in effect in 2005;
19 and

20 “(III) the percentage set forth
21 for that calendar year in section
22 703(a), or determined under clause
23 (ii) of this subparagraph.

24 “(ii) TARGETS.—In applying the por-
25 tion of the formula in clause (i)(III) of this

1 subparagraph, for calendar years for which
2 a percentage is not listed in section 703(a),
3 the Administrator shall use a uniform an-
4 nual decline in the amount of emissions be-
5 tween the years that are specified.

6 “(iii) CARBON DIOXIDE EQUIVALENT
7 VALUE.—If the Administrator adjusts
8 under this paragraph the number of emis-
9 sion allowances established pursuant to
10 paragraph (1), the Administrator shall use
11 the carbon dioxide equivalent values estab-
12 lished pursuant to section 712.

13 “(iv) LIMITATION ON ADJUSTMENT
14 TIMING.—Once a calendar year has start-
15 ed, the Administrator may not adjust the
16 number of emission allowances to be estab-
17 lished for that calendar year.

18 “(C) LIMITATION ON ADJUSTMENT AU-
19 THORITY.—The Administrator may adjust
20 under this paragraph the number of emission
21 allowances to be established pursuant to para-
22 graph (1) only once.

23 “(f) COMPENSATORY ALLOWANCE.—

24 “(1) IN GENERAL.—The regulations promul-
25 gated under subsection (h) shall provide for the es-

1 establishment and distribution of compensatory allow-
2 ances for—

3 “(A) the destruction, in 2012 or later, of
4 fluorinated gases that are greenhouse gases if—

5 “(i) allowances or offset credits were
6 retired for their production or importation;
7 and

8 “(ii) such gases are not required to be
9 destroyed under any other provision of law;

10 “(B) the nonemissive use, in 2012 or later,
11 of petroleum-based or coal-based liquid or gas-
12 eous fuel, petroleum coke, natural gas liquid, or
13 natural gas as a feedstock, if allowances or off-
14 set credits were retired for the greenhouse
15 gases that would have been emitted from their
16 combustion; and

17 “(C) the conversionary use, in 2012 or
18 later, of fluorinated gases in a manufacturing
19 process, including semiconductor research or
20 manufacturing, if allowances or offset credits
21 were retired for the production or importation
22 of such gas.

23 “(2) ESTABLISHMENT AND DISTRIBUTION.—

24 “(A) IN GENERAL.—Not later than 90
25 days after the end of each calendar year, the

1 Administrator shall establish and distribute to
2 the entity taking the actions described in sub-
3 paragraph (A), (B), or (C) of paragraph (1) a
4 quantity of compensatory allowances equivalent
5 to the number of tons of carbon dioxide equiva-
6 lent of avoided emissions achieved through such
7 actions. In establishing the quantity of compen-
8 satory allowances, the Administrator shall take
9 into account the carbon dioxide equivalent value
10 of any greenhouse gas resulting from such ac-
11 tion.

12 “(B) SOURCE OF ALLOWANCES.—Compen-
13 satory allowances established under this sub-
14 section shall not be emission allowances estab-
15 lished under subsection (a).

16 “(C) IDENTIFICATION NUMBERS.—The
17 Administrator shall assign to each compen-
18 satory allowance established under subpara-
19 graph (A) a unique identification number.

20 “(3) DEFINITIONS.—For purposes of this sub-
21 section—

22 “(A) the term ‘destruction’ means the con-
23 version of a greenhouse gas by thermal, chem-
24 ical, or other means to another gas or set of

1 gases with little or no carbon dioxide equivalent
2 value;

3 “(B) the term ‘nonemissive use’ means the
4 use of fossil fuel as a feedstock in an industrial
5 or manufacturing process to the extent that
6 greenhouse gases are not emitted from such
7 process, and to the extent that the products of
8 such process are not intended for use as, or to
9 be contained in, a fuel; and

10 “(C) the term ‘conversionary use’ means
11 the conversion during research or manufac-
12 turing of a fluorinated gas into another green-
13 house gas or set of gases with a lower carbon
14 dioxide equivalent value.

15 “(4) FEEDSTOCK EMISSIONS STUDY.—

16 “(A) The Administrator may conduct a
17 study to determine the extent to which petro-
18 leum-based or coal-based liquid or gaseous fuel,
19 petroleum coke, natural gas liquid, or natural
20 gas are used as feedstocks in manufacturing
21 processes to produce products and the green-
22 house gas emissions resulting from such uses.

23 “(B) If as a result of such a study, the Ad-
24 ministrator determines that the use of such
25 products by noncovered sources results in sub-

1 stantial emissions of greenhouse gases and that
2 such emissions have not been adequately ad-
3 dressed under other requirements of this Act,
4 the Administrator may, after notice and com-
5 ment rulemaking, promulgate a regulation re-
6 ducing compensatory allowances commensu-
7 rately if doing so will not result in shifting
8 such emissions to noncovered sources.

9 “(g) FLUORINATED GASES ASSESSMENT.—No later
10 than March 31, 2014, the Administrator shall complete
11 an assessment of the regulation of non-HFC fluorinated
12 gases under this title to determine whether the most ap-
13 propriate point of regulation is at the gas manufacturer
14 or importer level, or at the source of emissions down-
15 stream. If the Administrator determines, based on consid-
16 eration of environmental effectiveness, cost effectiveness,
17 administrative feasibility, extent of coverage of emissions,
18 competitiveness and other relevant considerations con-
19 sistent with the purposes of this title, that emissions of
20 non-HFC fluorinated gases can best be regulated by desig-
21 nating downstream emission sources as covered entities
22 with compliance obligations under section 722, the Admin-
23 istrator shall, after notice and comment rulemaking,
24 change the definition of covered entity and the compliance
25 obligations under section 722 with respect to non-HFC

1 fluorinated gases accordingly, consistent with the purposes
2 of this title, and establish such other requirements as are
3 necessary to ensure compliance for such entities with the
4 requirements of this title.

5 “(h) REGULATIONS.—Not later than 24 months after
6 the date of enactment of this title, the Administrator shall
7 promulgate regulations to carry out the provisions of this
8 title.

9 **“SEC. 722. PROHIBITION OF EXCESS EMISSIONS.**

10 “(a) PROHIBITION.—Except as provided in sub-
11 section (c), effective January 1, 2012, each covered entity
12 is prohibited from emitting greenhouse gases and having
13 attributable greenhouse gas emissions, in combination, in
14 excess of its allowable emissions level. A covered entity’s
15 allowable emissions level for each calendar year is the
16 number of emission allowances (or credits or other allow-
17 ances as provided in subsection (d)) it holds as of 12:01
18 a.m. on April 1 (or a later date established by the Admin-
19 istrator under subsection (j)) of the following calendar
20 year.

21 “(b) METHODS OF DEMONSTRATING COMPLIANCE.—
22 Except as otherwise provided in this section, the owner
23 or operator of a covered entity shall not be considered to
24 be in compliance with the prohibition in subsection (a) un-
25 less, as of 12:01 a.m. on April 1 (or a later date estab-

1 lished by the Administrator under subsection (j)) of each
2 calendar year starting in 2013, the owner or operator
3 holds a quantity of emission allowances (or credits or other
4 allowances as provided in subsection (d)) at least as great
5 as the quantity calculated as follows:

6 “(1) ELECTRICITY SOURCES.—For a covered
7 entity described in section 700(13)(A), 1 emission
8 allowance for each ton of carbon dioxide equivalent
9 of greenhouse gas that such covered entity emitted
10 in the previous calendar year, excluding emissions
11 resulting from the combustion of—

12 “(A) petroleum-based or coal-based liquid
13 fuel;

14 “(B) natural gas liquid;

15 “(C) renewable biomass or gas derived
16 from renewable biomass; or

17 “(D) petroleum coke or gas derived from
18 petroleum coke.

19 “(2) FUEL PRODUCERS AND IMPORTERS.—For
20 a covered entity described in section 700(13)(B), 1
21 emission allowance for each ton of carbon dioxide
22 equivalent of greenhouse gas that would be emitted
23 from the combustion of any petroleum-based or coal-
24 based liquid fuel, petroleum coke, or natural gas liq-
25 uid, produced or imported by such covered entity

1 during the previous calendar year for sale or dis-
2 tribution in interstate commerce, assuming no cap-
3 ture and sequestration of any greenhouse gas emis-
4 sions.

5 “(3) INDUSTRIAL GAS PRODUCERS AND IM-
6 PORTERS.—For a covered entity described in section
7 700(13)(C), 1 emission allowance for each ton of
8 carbon dioxide equivalent of fossil fuel-based carbon
9 dioxide, nitrous oxide, or any other fluorinated gas
10 that is a greenhouse gas (except for nitrogen
11 trifluoride), or any combination thereof, produced or
12 imported by such covered entity during the previous
13 calendar year for sale or distribution in interstate
14 commerce.

15 “(4) NITROGEN TRIFLUORIDE SOURCES.—For
16 a covered entity described in section 700(13)(D), 1
17 emission allowance for each ton of carbon dioxide
18 equivalent of nitrogen trifluoride that such covered
19 entity emitted in the previous calendar year.

20 “(5) GEOLOGICAL SEQUESTRATION SITES.—For
21 a covered entity described in section 700(13)(E), 1
22 emission allowance for each ton of carbon dioxide
23 equivalent of greenhouse gas that such covered enti-
24 ty emitted in the previous calendar year.

1 “(6) INDUSTRIAL STATIONARY SOURCES.—For
2 a covered entity described in section 700(13)(F),
3 (G), or (H), 1 emission allowance for each ton of
4 carbon dioxide equivalent of greenhouse gas that
5 such covered entity emitted in the previous calendar
6 year, excluding emissions resulting from—

7 “(A) the combustion of petroleum-based or
8 coal-based liquid fuel;

9 “(B) the combustion of natural gas liquid;

10 “(C) the combustion of renewable biomass
11 or gas derived from renewable biomass;

12 “(D) the combustion of petroleum coke or
13 gas derived from petroleum coke; or

14 “(E) the use of any fluorinated gas that is
15 a greenhouse gas purchased for use at that cov-
16 ered entity, except for nitrogen trifluoride.

17 “(7) INDUSTRIAL FOSSIL FUEL-FIRED COMBUS-
18 TION DEVICES.—For a covered entity described in
19 section 700(13)(I), 1 emission allowance for each
20 ton of carbon dioxide equivalent of greenhouse gas
21 that the devices emitted in the previous calendar
22 year, excluding emissions resulting from the combus-
23 tion of—

24 “(A) petroleum-based or coal-based liquid
25 fuel;

1 “(B) natural gas liquid;

2 “(C) renewable biomass or gas derived
3 from renewable biomass; or

4 “(D) petroleum coke or gas derived from
5 petroleum coke.

6 “(8) NATURAL GAS LOCAL DISTRIBUTION COM-
7 PANIES.—For a covered entity described in section
8 700(13)(J), 1 emission allowance for each ton of
9 carbon dioxide equivalent of greenhouse gas that
10 would be emitted from the combustion of the natural
11 gas, and any other gas meeting the specifications for
12 commingling with natural gas for purposes of deliv-
13 ery, that such entity delivered during the previous
14 calendar year to customers that are not covered enti-
15 ties, assuming no capture and sequestration of that
16 greenhouse gas.

17 “(9) ALGAE-BASED FUELS.—Where carbon di-
18 oxide (or another greenhouse gas) generated by a
19 covered entity is used as an input in the production
20 of algae-based fuels, the Administrator shall ensure
21 that emission allowances are required to be held ei-
22 ther for the carbon dioxide generated by a covered
23 entity that is used to grow the algae or for the por-
24 tion of the carbon dioxide emitted from combustion
25 of the fuel produced from such algae that is attrib-

1 utable to carbon dioxide generated by a covered enti-
2 ty, but not for both.

3 “(10) FUGITIVE EMISSIONS.—The greenhouse
4 gas emissions to which paragraphs (1), (4), (6), and
5 (7) apply shall not include fugitive emissions of
6 greenhouse gas, except to the extent the Adminis-
7 trator determines that data on the carbon dioxide
8 equivalent value of greenhouse gas in the fugitive
9 emissions can be provided with sufficient precision,
10 reliability, accessibility, and timeliness to ensure the
11 integrity of emission allowances, the allowance track-
12 ing system, and the cap on emissions.

13 “(11) EXPORT EXEMPTION.—This section shall
14 not apply to any petroleum-based or coal-based liq-
15 uid fuel, petroleum coke, natural gas liquid, fossil
16 fuel-based carbon dioxide, nitrous oxide, or
17 fluorinated gas that is exported for sale or use.

18 “(12) NATURAL GAS LIQUIDS.—For natural gas
19 liquids, the covered entity subject to the requirement
20 stated in paragraph (2) shall be the owner of the
21 natural gas liquids at the point the natural gas liq-
22 uids are separated into merchantable products.

23 “(13) APPLICATION OF MULTIPLE PARA-
24 GRAPHS.—For a covered entity to which more than
25 1 of paragraphs (1) through (8) apply, all applicable

1 paragraphs shall apply, except that not more than 1
2 emission allowance shall be required for the same
3 emission.

4 “(14) APPLICATION TO FRACTIONS OF TONS.—
5 In applying paragraphs (1) through (8), any amount
6 less than 1 ton of carbon dioxide equivalent of emis-
7 sions or attributable greenhouse gas emissions shall
8 be treated as 1 ton of such carbon dioxide equiva-
9 lent.

10 “(c) PHASE-IN OF PROHIBITION.—

11 “(1) INDUSTRIAL STATIONARY SOURCES.—The
12 prohibition under subsection (a) shall first apply to
13 a covered entity described in section 700(13)(D),
14 (F), (G), (H), or (I), with respect to emissions oc-
15 ccurring during calendar year 2014.

16 “(2) NATURAL GAS LOCAL DISTRIBUTION COM-
17 PANIES.—The prohibition under subsection (a) shall
18 first apply to a covered entity described in section
19 700(13)(J) with respect to deliveries occurring dur-
20 ing calendar year 2016.

21 “(d) ADDITIONAL METHODS.—In addition to using
22 the method of compliance described in subsection (b), a
23 covered entity may do the following:

24 “(1) OFFSET CREDITS.—

1 “(A) IN GENERAL.—Covered entities col-
2 lectively may, in accordance with this para-
3 graph, use offset credits to demonstrate compli-
4 ance for up to a maximum of 2 billion tons of
5 greenhouse gas emissions annually. The ability
6 to demonstrate compliance with offset credits
7 shall be divided pro rata among covered entities
8 by allowing each covered entity to satisfy a per-
9 centage of the number of allowances required to
10 be held under subsection (b) to demonstrate
11 compliance by holding 1 domestic offset credit
12 or 1.25 international offset credits in lieu of an
13 emission allowance, except as provided in sub-
14 paragraph (D).

15 “(B) APPLICABLE PERCENTAGE.—The
16 percentage referred to in subparagraph (A) for
17 a given calendar year shall be determined by di-
18 viding 2 billion by the sum of 2 billion plus the
19 number of emission allowances established
20 under section 721(a) for the previous year, and
21 multiplying that number by 100. Not more than
22 one half of the applicable percentage under this
23 paragraph may be used by holding domestic off-
24 set credits, and not more than one half of the
25 applicable percentage under this paragraph may

1 be used by holding international offset credits,
2 except as provided in subparagraph (C).

3 “(C) MODIFIED PERCENTAGES.—If the
4 Administrator determines that domestic offset
5 credits available for use in demonstrating com-
6 pliance in any calendar year at domestic offset
7 prices generally equal to or less than emission
8 allowance prices, are likely to offset less than
9 0.9 billion tons of greenhouse gas emissions
10 (measured in tons of carbon dioxide equiva-
11 lents), for purposes of compliance demonstra-
12 tion in that year the Administrator shall—

13 “(i) increase the percentage of emis-
14 sions that can be offset through the use of
15 international offset credits to reflect the
16 amount that 1.0 billion exceeds the number
17 of domestic offset credits the Adminis-
18 trator determines is available, at prices
19 generally equal to or less than emission al-
20 lowance prices, for that year, up to a max-
21 imum of 0.5 billion tons of greenhouse gas
22 emissions; and

23 “(ii) decrease the percentage of emis-
24 sions that can be offset through the use of

1 domestic offset credits by the same
2 amount.

3 “(D) INTERNATIONAL OFFSET CREDITS.—
4 Notwithstanding subparagraph (A), to dem-
5 onstrate compliance prior to calendar year
6 2018, a covered entity may use 1 international
7 offset credit in lieu of an emission allowance up
8 to the amount permitted under this paragraph.

9 “(E) PRESIDENT’S RECOMMENDATION.—
10 The President may make a recommendation to
11 Congress as to whether the number 2 billion
12 specified in subparagraphs (A) and (B) should
13 be increased or decreased.

14 “(2) INTERNATIONAL EMISSION ALLOW-
15 ANCES.—To demonstrate compliance, a covered enti-
16 ty may hold an international emission allowance in
17 lieu of an emission allowance, except as modified
18 under section 728(d).

19 “(3) COMPENSATORY ALLOWANCES.—To dem-
20 onstrate compliance, a covered entity may hold a
21 compensatory allowance obtained under section
22 721(f) in lieu of an emission allowance.

23 “(e) RETIREMENT OF ALLOWANCES AND CREDITS.—
24 As soon as practicable after a deadline established for cov-
25 ered entities to demonstrate compliance with this title, the

1 Administrator shall retire the quantity of allowances or
2 credits required to be held under this title.

3 “(f) ALTERNATIVE METRICS.—For categories of cov-
4 ered entities described in subparagraph (B), (C), (D), (G),
5 (H), or (I) of section 700(13), the Administrator may, by
6 rule, establish an applicability threshold for inclusion
7 under those subparagraphs using an alternative metric
8 and level, provided that such metric and level are easier
9 to administer and cover the same size and type of sources
10 as the threshold defined in such subparagraphs.

11 “(g) THRESHOLD REVIEW.—For each category of
12 covered entities described in subparagraph (B), (C), (D),
13 (G), (H), or (I) of section 700(13), the Administrator
14 shall, in 2020 and once every 8 years thereafter, review
15 the carbon dioxide equivalent emission threshold that is
16 used to define covered entities in such category. After con-
17 sideration of—

18 “(1) emissions from covered entities in such
19 category, and from other entities of the same type
20 that emit less than the threshold amount for the cat-
21 egory (including emission sources that commence op-
22 eration after the date of enactment of this title that
23 are not covered entities); and

1 “(2) whether greater greenhouse gas emission
2 reductions can be cost-effectively achieved by low-
3 ering the applicable threshold,
4 the Administrator may by rule lower such threshold to not
5 less than 10,000 tons of carbon dioxide equivalent emis-
6 sions. In determining the cost effectiveness of potential re-
7 ductions from lowering the threshold for covered entities,
8 the Administrator shall consider alternative regulatory
9 greenhouse gas programs, including setting standards
10 under other titles of this Act.

11 “(h) DESIGNATED REPRESENTATIVES.—The regula-
12 tions promulgated under section 721(h) shall require that
13 each covered entity, and each entity holding allowances or
14 offset credits or receiving allowances or offset credits from
15 the Administrator under this title, submit to the Adminis-
16 trator a certificate of representation designating a des-
17 igned representative.

18 “(i) EDUCATION AND OUTREACH.—

19 “(1) IN GENERAL.—The Administrator shall es-
20 tablish and carry out a program of education and
21 outreach to assist covered entities, especially entities
22 having little experience with environmental regu-
23 latory requirements similar or comparable to those
24 under this title, in preparing to meet the compliance
25 obligations of this title. Such program shall include

1 education with respect to using markets to effec-
2 tively achieve such compliance.

3 “(2) FAILURE TO RECEIVE INFORMATION.—A
4 failure to receive information or assistance under
5 this subsection may not be used as a defense against
6 an allegation of any violation of this title.

7 “(j) ADJUSTMENT OF DEADLINE.—The Adminis-
8 trator may, by rule, establish a deadline for demonstrating
9 compliance, for a calendar year, later than the date pro-
10 vided in subsection (a), as necessary to ensure the avail-
11 ability of emissions data, but in no event shall the deadline
12 be later than June 1.

13 “(k) NOTICE REQUIREMENT FOR COVERED ENTI-
14 TIES RECEIVING NATURAL GAS FROM NATURAL GAS
15 LOCAL DISTRIBUTION COMPANIES.—The owner or oper-
16 ator of a covered entity that takes delivery of natural gas
17 from a natural gas local distribution company shall, not
18 later than September 1 of each calendar year, notify such
19 natural gas local distribution company in writing that
20 such entity will qualify as a covered entity under this title
21 for that calendar year.

22 “(l) COMPLIANCE OBLIGATION.—For purposes of
23 this title, the year of a compliance obligation is the year
24 in which compliance is determined, not the year in which

1 the greenhouse gas emissions occur or the covered entity
2 has attributable greenhouse gas emissions.

3 **“SEC. 723. PENALTY FOR NONCOMPLIANCE.**

4 “(a) ENFORCEMENT.—A violation of any prohibition
5 of, requirement of, or regulation promulgated pursuant to
6 this title shall be a violation of this Act. It shall be a viola-
7 tion of this Act for a covered entity to emit greenhouse
8 gases and have attributable greenhouse gas emissions, in
9 combination, in excess of its allowable emissions level as
10 provided in section 722(a). Each ton of carbon dioxide
11 equivalent for which a covered entity fails to demonstrate
12 compliance under section 722 shall be a separate violation.

13 “(b) EXCESS EMISSIONS PENALTY.—

14 “(1) IN GENERAL.—The owner or operator of
15 any covered entity that fails for any year to comply,
16 on the deadline described in section 722(a) or (j),
17 shall be liable for payment to the Administrator of
18 an excess emissions penalty in the amount described
19 in paragraph (2).

20 “(2) AMOUNT.—The amount of an excess emis-
21 sions penalty required to be paid under paragraph
22 (1) shall be equal to the product obtained by multi-
23 plying—

24 “(A) the tons of carbon dioxide equivalent
25 of greenhouse gas emissions or attributable

1 greenhouse gas emissions for which the owner
2 or operator of a covered entity failed to dem-
3 onstrate compliance under section 722 on the
4 deadline; by

5 “(B) twice the auction clearing price for
6 the earliest vintage year emission allowances in
7 the last auction carried out pursuant to section
8 791 before such deadline.

9 “(3) TIMING.—An excess emissions penalty re-
10 quired under this subsection shall be immediately
11 due and payable to the Administrator, without de-
12 mand, in accordance with regulations promulgated
13 by the Administrator, which shall be issued not later
14 than 2 years after the date of enactment of this
15 title.

16 “(4) NO EFFECT ON LIABILITY.—An excess
17 emissions penalty due and payable by the owners or
18 operators of a covered entity under this subsection
19 shall not diminish the liability of the owners or oper-
20 ators for any fine, penalty, or assessment against
21 the owners or operators for the same violation under
22 any other provision of this Act or any other law.

23 “(c) EXCESS EMISSIONS ALLOWANCES.—The owner
24 or operator of a covered entity that fails for any year to
25 comply on the deadline described in section 722(a) or (j)

1 shall be liable to offset the covered entity's excess com-
2 bination of greenhouse gases emitted and attributable
3 greenhouse gas emissions by an equal quantity of emission
4 allowances during the following calendar year, or such
5 longer period as the Administrator may prescribe. During
6 the year in which the covered entity failed to comply, or
7 any year thereafter, the Administrator may deduct the
8 emission allowances required under this subsection to off-
9 set the covered entity's excess greenhouse gas emissions
10 or attributable greenhouse gas emissions.

11 **“SEC. 724. TRADING.**

12 “(a) PERMITTED TRANSACTIONS.—Except as other-
13 wise provided in this title, the lawful holder of an emission
14 allowance, compensatory allowance, or offset credit may,
15 without restriction, sell, exchange, transfer, hold for com-
16 pliance in accordance with section 722, or request that the
17 Administrator retire the emission allowance, compensatory
18 allowance, or offset credit.

19 “(b) NO RESTRICTION ON TRANSACTIONS.—The
20 privilege of purchasing, holding, selling, exchanging,
21 transferring, and requesting retirement of emission allow-
22 ances, compensatory allowances, or offset credits shall not
23 be restricted to the owners and operators of covered enti-
24 ties, except as otherwise provided in this title.

1 “(c) EFFECTIVENESS OF ALLOWANCE TRANS-
2 FERS.—No transfer of an allowance or offset credit shall
3 be effective for purposes of this title until a certification
4 of the transfer, signed by the designated representative of
5 the transferor, is received and recorded by the Adminis-
6 trator in accordance with regulations promulgated under
7 section 721(h).

8 “(d) ALLOWANCE TRACKING SYSTEM.—The regula-
9 tions promulgated under section 721(h) shall include a
10 system for issuing, recording, holding, and tracking allow-
11 ances and offset credits that shall specify all necessary
12 procedures and requirements for an orderly and competi-
13 tive functioning of the allowance and offset credit markets.
14 Such regulations shall provide for appropriate publication
15 of the information in the system on the Internet.

16 **“SEC. 725. BANKING AND BORROWING.**

17 “(a) BANKING.—An emission allowance may be used
18 to comply with section 722 or section 723 for emissions
19 in—

20 “(1) the vintage year for the allowance; or

21 “(2) any calendar year subsequent to the vin-
22 tage year for the allowance.

23 “(b) EXPIRATION.—

24 “(1) REGULATIONS.—The Administrator may
25 establish by regulation criteria and procedures for

1 determining whether, and for implementing a deter-
2 mination that, the expiration of an allowance or off-
3 set credit established or issued by the Administrator
4 under this title, or expiration of the ability to use an
5 international emission allowance to comply with sec-
6 tion 722, is necessary to ensure the authenticity and
7 integrity of allowances or offset credits or the allow-
8 ance tracking system.

9 “(2) GENERAL RULE.—An allowance or offset
10 credit established or issued by the Administrator
11 under this title shall not expire unless—

12 “(A) it is retired by the Administrator pur-
13 suant to this title; or

14 “(B) it is determined to expire or to have
15 expired by a specific date by the Administrator
16 in accordance with regulations promulgated
17 under paragraph (1).

18 “(3) INTERNATIONAL EMISSION ALLOW-
19 ANCES.—The ability to use an international emission
20 allowance to comply with section 722 shall not ex-
21 pire unless—

22 “(A) the allowance is retired by the Ad-
23 ministrator pursuant to this title; or

24 “(B) the ability to use such allowance to
25 meet such compliance obligation requirements is

1 determined to expire or to have expired by a
2 specific date by the Administrator in accord-
3 ance with regulations promulgated under para-
4 graph (1).

5 “(c) BORROWING FUTURE VINTAGE YEAR ALLOW-
6 ANCES.—

7 “(1) BORROWING WITHOUT INTEREST.—In ad-
8 dition to the uses described in subsection (a), an
9 emission allowance may be used to demonstrate com-
10 pliance under section 722 or comply with section
11 723 for emissions, production, importation, manu-
12 facture, or deliveries in the calendar year imme-
13 diately preceding the vintage year for the allowance.

14 “(2) BORROWING WITH INTEREST.—

15 “(A) IN GENERAL.—A covered entity may
16 demonstrate compliance under section 722 in a
17 specific calendar year for up to 15 percent of
18 its emissions by holding emission allowances
19 with a vintage year 1 to 5 years later than that
20 calendar year.

21 “(B) LIMITATIONS.—An emission allow-
22 ance borrowed pursuant to this paragraph shall
23 be an emission allowance that is established by
24 the Administrator for a specific future calendar

1 year under section 721(a) and that is held by
2 the borrower.

3 “(C) PREPAYMENT OF INTEREST.—For
4 each emission allowance that an owner or oper-
5 ator of a covered entity borrows pursuant to
6 this paragraph, such owner or operator shall, at
7 the time it borrows the allowance, hold for re-
8 tirement by the Administrator, and the Admin-
9 istrator shall retire, a quantity of emission al-
10 lowances that is equal to the product obtained
11 by multiplying—

12 “(i) 0.08; by

13 “(ii) the number of years between the
14 calendar year in which the allowance is
15 being used to satisfy a compliance obliga-
16 tion and the vintage year of the allowance.

17 **“SEC. 726. STRATEGIC RESERVE.**

18 “(a) STRATEGIC RESERVE AUCTIONS.—

19 “(1) IN GENERAL.—Once each quarter of each
20 calendar year for which allowances are established
21 under section 721(a), the Administrator shall auc-
22 tion strategic reserve allowances.

23 “(2) RESTRICTION TO COVERED ENTITIES.—In
24 each auction conducted under paragraph (1), only
25 covered entities that the Administrator expects will

1 be required to comply with section 722 in the fol-
2 lowing calendar year shall be eligible to make pur-
3 chases.

4 “(b) POOL OF EMISSION ALLOWANCES FOR STRA-
5 TEGIC RESERVE AUCTIONS.—

6 “(1) FILLING THE STRATEGIC RESERVE INI-
7 TIALY.—

8 “(A) IN GENERAL.—The Administrator
9 shall, not later than 2 years after the date of
10 enactment of this title, establish a strategic re-
11 serve account, and shall place in that account
12 an amount of emission allowances established
13 under section 721(a) for each calendar year
14 from 2012 through 2050 in the amounts speci-
15 fied in subparagraph (B) of this paragraph.

16 “(B) AMOUNT.—The amount referred to in
17 subparagraph (A) shall be—

18 “(i) for each of calendar years 2012
19 through 2019, 1 percent of the quantity of
20 emission allowances established for that
21 year pursuant to section 721(e)(1);

22 “(ii) for each of calendar years 2020
23 through 2029, 2 percent of the quantity of
24 emission allowances established for that
25 year pursuant to section 721(e)(1); and

1 “(iii) for each of calendar years 2030
2 through 2050, 3 percent of the quantity of
3 emission allowances established for that
4 year pursuant to section 721(e)(1).

5 “(C) EFFECT ON OTHER PROVISIONS.—
6 Any provision in this title (except for subpara-
7 graph (B) of this paragraph) that refers to a
8 quantity or percentage of the emission allow-
9 ances established for a calendar year under sec-
10 tion 721(a) shall be considered to refer to the
11 amount of emission allowances as determined
12 pursuant to section 721(e), less any emission
13 allowances established for that year that are
14 placed in the strategic reserve account under
15 this paragraph.

16 “(2) SUPPLEMENTING THE STRATEGIC RE-
17 SERVE.—The Administrator shall also—

18 “(A) at the end of each calendar year,
19 transfer to the strategic reserve account each
20 emission allowance that was offered for sale but
21 not sold at any auction conducted under section
22 791; and

23 “(B) deposit emission allowances estab-
24 lished under subsection (g) from auction pro-
25 ceeds into the strategic reserve, to the extent

1 necessary to maintain the reserve at its original
2 size.

3 “(c) MINIMUM STRATEGIC RESERVE AUCTION
4 PRICE.—

5 “(1) IN GENERAL.—At each strategic reserve
6 auction, the Administrator shall offer emission al-
7 lowances for sale beginning at a minimum price per
8 emission allowance, which shall be known as the
9 ‘minimum strategic reserve auction price’.

10 “(2) INITIAL MINIMUM STRATEGIC RESERVE
11 AUCTION PRICES.—The minimum strategic reserve
12 auction price shall be \$28 (in constant 2009 dollars)
13 for the strategic reserve auctions held in 2012. For
14 the strategic reserve auctions held in 2013 and
15 2014, the minimum strategic reserve auction price
16 shall be the strategic reserve auction price for the
17 previous year increased by 5 percent plus the rate of
18 inflation (as measured by the Consumer Price Index
19 for All Urban Consumers).

20 “(3) MINIMUM STRATEGIC RESERVE AUCTION
21 PRICE IN SUBSEQUENT YEARS.—For each strategic
22 reserve auction held in 2015 and each year there-
23 after, the minimum strategic reserve auction price
24 shall be 60 percent above a rolling 36-month average
25 of the daily closing price for that year’s emission al-

1 lowance vintage as reported on registered carbon
2 trading facilities, calculated using constant dollars.

3 “(d) QUANTITY OF EMISSION ALLOWANCES RE-
4 LEASED FROM THE STRATEGIC RESERVE.—

5 “(1) INITIAL LIMITS.—For each of calendar
6 years 2012 through 2016, the annual limit on the
7 number of emission allowances from the strategic re-
8 serve account that may be auctioned is an amount
9 equal to 5 percent of the emission allowances estab-
10 lished for that calendar year under section 721(a).
11 This limit does not apply to international offset
12 credits sold on consignment pursuant to subsection
13 (h).

14 “(2) LIMITS IN SUBSEQUENT YEARS.—For cal-
15 endar year 2017 and each year thereafter, the an-
16 nual limit on the number of emission allowances
17 from the strategic reserve account that may be auc-
18 tioned is an amount equal to 10 percent of the emis-
19 sion allowances established for that calendar year
20 under section 721(a). This limit does not apply to
21 international offset credits sold on consignment pur-
22 suant to subsection (h).

23 “(3) ALLOCATION OF LIMITATION.—One-fourth
24 of each year’s annual strategic reserve auction limit
25 under this subsection shall be made available for

1 auction in each quarter. Any allowances from the
2 strategic reserve account that are made available for
3 sale in a quarterly auction and not sold shall be
4 rolled over and added to the quantity available for
5 sale in the following quarter, except that allowances
6 not sold at auction in the fourth quarter of a year
7 shall not be rolled over to the following calendar
8 year's auctions, but shall be returned to the stra-
9 tegic reserve account.

10 “(e) PURCHASE LIMIT.—

11 “(1) IN GENERAL.—Except as provided in para-
12 graph (2) or (3), the annual number of emission al-
13 lowances that a covered entity may purchase at the
14 strategic reserve auctions in each calendar year shall
15 not exceed 20 percent of the covered entity's com-
16 bined greenhouse gas emissions and attributable
17 greenhouse gas emissions during the most recent
18 year for which allowances or offset credits were re-
19 tired under section 722.

20 “(2) 2012 LIMIT.—For calendar year 2012, the
21 maximum aggregate number of emission allowances
22 that a covered entity may purchase from that year's
23 strategic reserve auctions shall be 20 percent of the
24 covered entity's combined greenhouse gas emissions
25 and attributable greenhouse gas emissions that the

1 covered entity reported to the registry established
2 under section 713 for 2011 and that would be sub-
3 ject to section 722(a) if occurring in later calendar
4 years.

5 “(3) NEW ENTRANTS.—The Administrator
6 shall, by regulation, establish a separate purchase
7 limit applicable to entities that expect to become a
8 covered entity in the year of the auction, permitting
9 them to purchase emission allowances at the stra-
10 tegic reserve auctions in their first calendar year of
11 operation in an amount of at least 20 percent of
12 their expected combined greenhouse gas emissions
13 and attributable greenhouse gas emissions for that
14 year.

15 “(f) DELEGATION OR CONTRACT.—Pursuant to regu-
16 lations under this section, the Administrator may, by dele-
17 gation or contract, provide for the conduct of strategic re-
18 serve auctions under the Administrator’s supervision by
19 other departments or agencies of the Federal Government
20 or by nongovernmental agencies, groups, or organizations.

21 “(g) USE OF AUCTION PROCEEDS.—

22 “(1) DEPOSIT IN STRATEGIC RESERVE FUND.—
23 The proceeds from strategic reserve auctions shall be
24 placed in the Strategic Reserve Fund established
25 under section 793(1), and shall be available without

1 further appropriation or fiscal year limitation for the
2 purposes described in this subsection.

3 “(2) INTERNATIONAL OFFSET CREDITS FOR RE-
4 DUCED DEFORESTATION.—The Administrator shall
5 use the proceeds from each strategic reserve auction
6 to purchase international offset credits issued for re-
7 duced deforestation activities pursuant to section
8 743(e). The Administrator shall retire those inter-
9 national offset credits and establish a number of
10 emission allowances equal to 80 percent of the num-
11 ber of international offset credits so retired. Emis-
12 sion allowances established under this paragraph
13 shall be in addition to those established under sec-
14 tion 721(a).

15 “(3) EMISSION ALLOWANCES.—The Adminis-
16 trator shall deposit emission allowances established
17 under paragraph (2) in the strategic reserve, except
18 that, with respect to any such emission allowances in
19 excess of the amount necessary to fill the strategic
20 reserve to its original size, the Administrator shall—

21 “(A) except as provided in subparagraph
22 (B), assign a vintage year to the emission al-
23 lowance, which shall be no earlier than the year
24 in which the allowance is established under
25 paragraph (2), and shall treat such allowances

1 as ones that are not designated for distribution
2 or auction for purposes of section 782(q) and
3 (r); and

4 “(B) to the extent any such allowances
5 cannot be assigned a vintage year because of
6 the limitation in paragraph (4), retire the allow-
7 ances.

8 “(4) LIMITATION.—In no case may the Admin-
9 istrator assign under paragraph (3)(A) more emis-
10 sion allowances to a vintage year than the number
11 of emission allowances from that vintage year that
12 were placed in the strategic reserve account under
13 subsection (b)(1).

14 “(h) AVAILABILITY OF INTERNATIONAL OFFSET
15 CREDITS FOR AUCTION.—

16 “(1) IN GENERAL.—The regulations promul-
17 gated under section 721(h) shall allow any entity
18 holding international offset credits from reduced de-
19 forestation issued under section 743(e) to request
20 that the Administrator include such offset credits in
21 an upcoming strategic reserve auction. The regula-
22 tions shall provide that—

23 “(A) such international offset credits will
24 be used to fill bid orders only after the supply

1 of strategic reserve allowances available for sale
2 at that auction has been depleted;

3 “(B) international offset credits may be
4 sold at a strategic reserve auction under this
5 subsection only if the Administrator determines
6 that it is highly likely that covered entities will,
7 to cover emissions occurring in the year the
8 auction is held, use offset credits to dem-
9 onstrate compliance under section 722 for emis-
10 sions equal to or greater than 80 percent of 2
11 billion tons of carbon dioxide equivalent;

12 “(C) upon sale of such international offset
13 credits, the Administrator shall retire those
14 international offset credits, and establish and
15 provide to the purchasers a number of emission
16 allowances equal to 80 percent of the number of
17 international offset credits so retired, which al-
18 lowances shall be in addition to those estab-
19 lished under section 721(a); and

20 “(D) for international offset credits sold
21 pursuant to this subsection, the proceeds for
22 the entity that offered the international offset
23 credits for sale shall be the lesser of—

24 “(i) the average daily closing price for
25 international offset credits sold on reg-

1 istered exchanges (or if such price is un-
2 available, the average price as determined
3 by the Administrator) during the six
4 months prior to the strategic reserve auc-
5 tion at which they were auctioned, with the
6 remaining funds collected upon the sale of
7 the international offset credits deposited in
8 the Treasury; and

9 “(ii) the amount received for the
10 international offset credits at the auction.

11 “(2) PROCEEDS.—For international offset cred-
12 its sold pursuant to this subsection, notwithstanding
13 section 3302 of title 31, United States Code, or any
14 other provision of law, within 90 days of receipt, the
15 United States shall transfer the proceeds from the
16 auction, as defined in paragraph (1)(D), to the enti-
17 ty that offered the international offset credits for
18 sale. No funds transferred from a purchaser to a
19 seller of international offset credits under this para-
20 graph shall be held by any officer or employee of the
21 United States or treated for any purpose as public
22 monies.

23 “(3) PRICING.—When the Administrator acts
24 under this subsection as the agent of an entity in
25 possession of international offset credits, the Admin-

1 istrator is not obligated to obtain the highest price
2 possible for the international offset credits, and in-
3 stead shall auction such international offset credits
4 in the same manner and pursuant to the same rules
5 (except as modified in paragraph (1)) as set forth
6 for auctioning strategic reserve allowances. Entities
7 requesting that such international offset credits be
8 offered for sale at a strategic reserve auction may
9 not set a minimum reserve price for their inter-
10 national offset credits that is different than the min-
11 imum strategic reserve auction price set pursuant to
12 subsection (c).

13 “(i) INITIAL REGULATIONS.—Not later than 24
14 months after the date of enactment of this title, the Ad-
15 ministrator shall promulgate regulations, in consultation
16 with other appropriate agencies, governing the auction of
17 allowances under this section. Such regulations shall in-
18 clude the following requirements:

19 “(1) FREQUENCY; FIRST AUCTION.—Auctions
20 shall be held four times per year at regular intervals,
21 with the first auction to be held no later than March
22 31, 2012.

23 “(2) AUCTION FORMAT.—Auctions shall follow
24 a single-round, sealed-bid, uniform price format.

1 “(3) PARTICIPATION; FINANCIAL ASSURANCE.—
2 Auctions shall be open to any covered entity eligible
3 to purchase emission allowances at the auction
4 under subsection (a)(2), except that the Adminis-
5 trator may establish financial assurance require-
6 ments to ensure that auction participants can and
7 will perform on their bids.

8 “(4) DISCLOSURE OF BENEFICIAL OWNER-
9 SHIP.—Each bidder in an auction shall be required
10 to disclose the person or entity sponsoring or bene-
11 fitting from the bidder’s participation in the auction
12 if such person or entity is, in whole or in part, other
13 than the bidder.

14 “(5) PURCHASE LIMITS.—No person may, di-
15 rectly or in concert with another participant, pur-
16 chase more than 20 percent of the allowances of-
17 fered for sale at any quarterly auction.

18 “(6) PUBLICATION OF INFORMATION.—After
19 the auction, the Administrator shall, in a timely
20 fashion, publish the identities of winning bidders,
21 the quantity of allowances obtained by each winning
22 bidder, and the auction clearing price.

23 “(7) OTHER REQUIREMENTS.—The Adminis-
24 trator may include in the regulations such other re-
25 quirements or provisions as the Administrator, in

1 consultation with other agencies as appropriate, con-
2 siders appropriate to promote effective, efficient,
3 transparent, and fair administration of auctions
4 under this section.

5 “(j) REVISION OF REGULATIONS.—The Adminis-
6 trator may, at any time, in consultation with other agen-
7 cies as appropriate, revise the initial regulations promul-
8 gated under subsection (i). Such revised regulations need
9 not meet the requirements identified in subsection (i) if
10 the Administrator determines that an alternative auction
11 design would be more effective, taking into account factors
12 including costs of administration, transparency, fairness,
13 and risks of collusion or manipulation. In determining
14 whether and how to revise the initial regulations under
15 this subsection, the Administrator shall not consider maxi-
16 mization of revenues to the Federal Government.

17 **“SEC. 727. PERMITS.**

18 “(a) PERMIT PROGRAM.—For stationary sources
19 subject to title V of this Act that are covered entities, the
20 provisions of this title shall be implemented by permits
21 issued to such covered entities (and enforced) in accord-
22 ance with the provisions of title V, as modified by this
23 title. Any such permit issued by the Administrator, or by
24 a State or Indian tribe with an approved permit program,
25 shall require the owner or operator of a covered entity to

1 hold allowances or offset credits at least equal to the total
2 annual amount of carbon dioxide equivalents for its com-
3 bined emissions and attributable greenhouse gas emissions
4 to which section 722 applies. No such permit shall be
5 issued that is inconsistent with the requirements of this
6 title, and title V as applicable. Nothing in this section re-
7 garding compliance plans or in title V shall be construed
8 as affecting allowances or offset credits. Submission of a
9 statement by the owner or operator, or the designated rep-
10 resentative of the owners and operators, of a covered enti-
11 ty that the owners and operators will hold allowances or
12 offset credits for the entity's combined emissions and at-
13 tributable greenhouse gas emissions to which section 722
14 applies shall be deemed to meet the proposed and ap-
15 proved planning requirements of title V. Recordation by
16 the Administrator of transfers of allowances and offset
17 credits shall amend automatically all applicable proposed
18 or approved permit applications, compliance plans, and
19 permits.

20 “(b) MULTIPLE OWNERS.—No permit shall be issued
21 under this section and no allowances or offset credits shall
22 be disbursed under this title to a covered entity or any
23 other person until the designated representative of the
24 owners or operators has filed a certificate of representa-
25 tion with regard to matters under this title, including the

1 holding and distribution of emission allowances and the
2 proceeds of transactions involving emission allowances.
3 Where there are multiple holders of a legal or equitable
4 title to, or a leasehold interest in, such a covered entity
5 or other entity or where a utility or industrial customer
6 purchases power under a long-term power purchase con-
7 tract from an independent power production facility that
8 is a covered entity, the certificate shall state—

9 “(1) that emission allowances and the proceeds
10 of transactions involving emission allowances will be
11 deemed to be held or distributed in proportion to
12 each holder’s legal, equitable, leasehold, or contrac-
13 tual reservation or entitlement; or

14 “(2) if such multiple holders have expressly pro-
15 vided for a different distribution of emission allow-
16 ances by contract, that emission allowances and the
17 proceeds of transactions involving emission allow-
18 ances will be deemed to be held or distributed in ac-
19 cordance with the contract.

20 A passive lessor, or a person who has an equitable interest
21 through such lessor, whose rental payments are not based,
22 either directly or indirectly, upon the revenues or income
23 from the covered entity or other entity shall not be deemed
24 to be a holder of a legal, equitable, leasehold, or contrac-
25 tual interest for the purpose of holding or distributing

1 emission allowances as provided in this subsection, during
2 either the term of such leasehold or thereafter, unless ex-
3 pressly provided for in the leasehold agreement. Except
4 as otherwise provided in this subsection, where all legal
5 or equitable title to or interest in a covered entity, or other
6 entity, is held by a single person, the certificate shall state
7 that all emission allowances received by the entity are
8 deemed to be held for that person.

9 “(c) PROHIBITION.—It shall be unlawful for any per-
10 son to operate any stationary source subject to the re-
11 quirements of this section except in compliance with the
12 terms and requirements of a permit issued by the Admin-
13 istrator or a State or Indian tribe with an approved permit
14 program in accordance with this section. For purposes of
15 this subsection, compliance, as provided in section 504(f),
16 with a permit issued under title V which complies with
17 this title for covered entities shall be deemed compliance
18 with this subsection as well as section 502(a).

19 “(d) RELIABILITY.—Nothing in this section or title
20 V shall be construed as requiring termination of oper-
21 ations of a stationary source that is a covered entity for
22 failure to have an approved permit, or compliance plan,
23 that is consistent with the requirements in the second and
24 fifth sentences of subsection (a) concerning the holding
25 of allowances or offset credits, except that any such cov-

1 ered entity may be subject to the applicable enforcement
2 provision of section 113.

3 “(e) REGULATIONS.—Not later than 2 years after the
4 date of enactment of this title, the Administrator shall
5 promulgate regulations to implement this section. To pro-
6 vide for permits required under this section, each State
7 in which one or more stationary sources that are covered
8 entities are located shall submit, in accordance with this
9 section and title V, revised permit programs for approval.

10 **“SEC. 728. INTERNATIONAL EMISSION ALLOWANCES.**

11 “(a) QUALIFYING PROGRAMS.—The Administrator,
12 in consultation with the Secretary of State, may by rule
13 designate an international climate change program as a
14 qualifying international program if—

15 “(1) the program is run by a national or supra-
16 national foreign government, and imposes a manda-
17 tory absolute tonnage limit on greenhouse gas emis-
18 sions from 1 or more foreign countries, or from 1 or
19 more economic sectors in such a country or coun-
20 tries; and

21 “(2) the program is at least as stringent as the
22 program established by this title, including provi-
23 sions to ensure at least comparable monitoring, com-
24 pliance, enforcement, quality of offsets, and restric-
25 tions on the use of offsets.

1 “(b) DISQUALIFIED ALLOWANCES.—An international
2 emission allowance may not be held under section
3 722(d)(2) if it is in the nature of an offset instrument
4 or allowance awarded based on the achievement of green-
5 house gas emission reductions or avoidance, or greenhouse
6 gas sequestration, that are not subject to the mandatory
7 absolute tonnage limits referred to in subsection (a)(1).

8 “(c) RETIREMENT.—

9 “(1) ENTITY CERTIFICATION.—The owner or
10 operator of an entity that holds an international
11 emission allowance under section 722(d)(2) shall
12 certify to the Administrator that such international
13 emission allowance has not previously been used to
14 comply with any foreign, international, or domestic
15 greenhouse gas regulatory program.

16 “(2) RETIREMENT.—

17 “(A) FOREIGN AND INTERNATIONAL REG-
18 ULATORY ENTITIES.—The Administrator, in
19 consultation with the Secretary of State, shall
20 seek, by whatever means appropriate, including
21 agreements and technical cooperation on allow-
22 ance tracking, to ensure that any relevant for-
23 eign, international, and domestic regulatory en-
24 tities—

1 “(i) are notified of the use, for pur-
2 poses of compliance with this title, of any
3 international emission allowance; and

4 “(ii) provide for the disqualification of
5 such international emission allowance for
6 any subsequent use under the relevant for-
7 eign, international, or domestic greenhouse
8 gas regulatory program, regardless of
9 whether such use is a sale, exchange, or
10 submission to satisfy a compliance obliga-
11 tion.

12 “(B) DISQUALIFICATION FROM FURTHER
13 USE.—The Administrator shall ensure that,
14 once an international emission allowance has
15 been disqualified or otherwise used for purposes
16 of compliance with this title, such allowance
17 shall be disqualified from any further use under
18 this title.

19 “(d) USE LIMITATIONS.—The Administrator may, by
20 rule, apply a limit to the percentage of the combined
21 greenhouse gas emissions and attributable greenhouse gas
22 emissions of a covered entity with respect to which compli-
23 ance may be demonstrated by holding international emis-
24 sion allowances under section 722(d)(2), consistent with
25 the purposes of the Safe Climate Act.

“PART D—OFFSETS

1

2 “SEC. 731. OFFSETS INTEGRITY ADVISORY BOARD.

3 “(a) ESTABLISHMENT.—Not later than 30 days after
4 the date of enactment of this title, the Administrator shall
5 establish an independent Offsets Integrity Advisory
6 Board. The Advisory Board shall make recommendations
7 to the Administrator for use in promulgating and revising
8 regulations under this part and part E, and for ensuring
9 the overall environmental integrity of the programs estab-
10 lished pursuant to those regulations.

11 “(b) MEMBERSHIP.—The Advisory Board shall be
12 comprised of at least nine members. Each member shall
13 be qualified by education, training, and experience to
14 evaluate scientific and technical information on matters
15 referred to the Board under this section. The Adminis-
16 trator shall appoint Advisory Board members, including
17 a chair and vice-chair of the Advisory Board. Terms shall
18 be 3 years in length, except for initial terms, which may
19 be up to 5 years in length to allow staggering. Members
20 may be reappointed only once for an additional 3-year
21 term, and such second term may follow directly after a
22 first term.

23 “(c) ACTIVITIES.—The Advisory Board established
24 pursuant to subsection (a) shall—

25 “(1) provide recommendations, not later than
26 90 days after the Advisory Board’s establishment

1 and periodically thereafter, to the Administrator re-
2 garding offset project types that should be consid-
3 ered for eligibility under section 733, taking into
4 consideration relevant scientific and other issues, in-
5 cluding—

6 “(A) the availability of a representative
7 data set for use in developing the activity base-
8 line;

9 “(B) the potential for accurate quantifica-
10 tion of greenhouse gas reduction, avoidance, or
11 sequestration for an offset project type;

12 “(C) the potential level of scientific and
13 measurement uncertainty associated with an
14 offset project type; and

15 “(D) any beneficial or adverse environ-
16 mental, public health, welfare, social, economic,
17 or energy effects associated with an offset
18 project type;

19 “(2) make available to the Administrator its ad-
20 vice and comments on offset methodologies that
21 should be considered under regulations promulgated
22 with respect to section 734, including methodologies
23 to address the issues of additionality, activity base-
24 lines, quantification methods, leakage, uncertainty,
25 permanence, and environmental integrity;

1 “(3) make available to the Administrator, and
2 other relevant Federal agencies, its advice and com-
3 ments regarding scientific, technical, and methodo-
4 logical issues specific to the issuance of international
5 offset credits under section 743;

6 “(4) make available to the Administrator, and
7 other relevant Federal agencies, its advice and com-
8 ments regarding scientific, technical, and methodo-
9 logical issues associated with the implementation of
10 part E;

11 “(5) make available to the Administrator its ad-
12 vice and comments on areas in which further knowl-
13 edge is required to appraise the adequacy of exist-
14 ing, revised, or proposed methodologies for use
15 under this part and part E, and describe the re-
16 search efforts necessary to provide the required in-
17 formation; and

18 “(6) make available to the Administrator its ad-
19 vice and comments on other ways to improve or
20 safeguard the environmental integrity of programs
21 established under this part and part E.

22 “(d) SCIENTIFIC REVIEW OF OFFSET AND DEFOR-
23 ESTATION REDUCTION PROGRAMS.—Not later than Janu-
24 ary 1, 2017, and at five-year intervals thereafter, the Ad-
25 visory Board shall submit to the Administrator and make

1 available to the public an analysis of relevant scientific and
2 technical information related to this part and part E. The
3 Advisory Board shall review approved and potential meth-
4 odologies, scientific studies, offset project monitoring, off-
5 set project verification reports, and audits related to this
6 part and part E, and evaluate the net emissions effects
7 of implemented offset projects. The Advisory Board shall
8 recommend changes to offset methodologies, protocols, or
9 project types, or to the overall offset program under this
10 part, to ensure that offset credits issued by the Adminis-
11 trator do not compromise the integrity of the annual emis-
12 sion reductions established under section 703, and to
13 avoid or minimize adverse effects to human health or the
14 environment.

15 **“SEC. 732. ESTABLISHMENT OF OFFSETS PROGRAM.**

16 “(a) REGULATIONS.—Not later than 2 years after
17 the date of enactment of this title, the Administrator, in
18 consultation with appropriate Federal agencies and taking
19 into consideration the recommendations of the Advisory
20 Board, shall promulgate regulations establishing a pro-
21 gram for the issuance of offset credits in accordance with
22 the requirements of this part. The Administrator shall pe-
23 riodically revise these regulations as necessary to meet the
24 requirements of this part.

1 “(b) REQUIREMENTS.—The regulations described in
2 subsection (a) shall—

3 “(1) authorize the issuance of offset credits
4 with respect to qualifying offset projects that result
5 in reductions or avoidance of greenhouse gas emis-
6 sions, or sequestration of greenhouse gases;

7 “(2) ensure that such offset credits represent
8 verifiable and additional greenhouse gas emission re-
9 ductions or avoidance, or increases in sequestration;

10 “(3) ensure that offset credits issued for se-
11 questration offset projects are only issued for green-
12 house gas reductions that are permanent;

13 “(4) provide for the implementation of the re-
14 quirements of this part; and

15 “(5) include as reductions in greenhouse gases
16 reductions achieved through the destruction of meth-
17 ane and its conversion to carbon dioxide, and reduc-
18 tions achieved through destruction of
19 chlorofluorocarbons or other ozone depleting sub-
20 stances, if permitted by the Administrator under
21 section 619(b)(9) and subject to the conditions spec-
22 ified in section 619(b)(9), based on the carbon diox-
23 ide equivalent value of the substance destroyed.

24 “(c) COORDINATION TO MINIMIZE NEGATIVE EF-
25 FECTS.—In promulgating and implementing regulations

1 under this part, the Administrator shall act (including by
2 rejecting projects, if necessary) to avoid or minimize, to
3 the maximum extent practicable, adverse effects on human
4 health or the environment resulting from the implementa-
5 tion of offset projects under this part.

6 “(d) **OFFSET REGISTRY.**—The Administrator shall
7 establish within the allowance tracking system established
8 under section 724(d) an Offset Registry for qualifying off-
9 set projects and offset credits issued with respect thereto
10 under this part.

11 “(e) **LEGAL STATUS OF OFFSET CREDIT.**—An offset
12 credit does not constitute a property right.

13 “(f) **FEEES.**—The Administrator shall assess fees pay-
14 able by offset project developers in an amount necessary
15 to cover the administrative costs to the Environmental
16 Protection Agency of carrying out the activities under this
17 part. Amounts collected for such fees shall be available
18 to the Administrator for carrying out the activities under
19 this part to the extent provided in advance in appropria-
20 tions Acts.

21 **“SEC. 733. ELIGIBLE PROJECT TYPES.**

22 “(a) **LIST OF ELIGIBLE PROJECT TYPES.**—

23 “(1) **IN GENERAL.**—As part of the regulations
24 promulgated under section 732(a), the Adminis-
25 trator shall establish, and may periodically revise, a

1 list of types of projects eligible to generate offset
2 credits, including international offset credits, under
3 this part.

4 “(2) ADVISORY BOARD RECOMMENDATIONS.—
5 In determining the eligibility of project types, the
6 Administrator shall take into consideration the rec-
7 ommendations of the Advisory Board. If a list estab-
8 lished under this section differs from the rec-
9 ommendations of the Advisory Board, the regula-
10 tions promulgated under section 732(a) shall include
11 a justification for the discrepancy.

12 “(3) INITIAL DETERMINATION.—The Adminis-
13 trator shall establish the initial eligibility list under
14 paragraph (1) not later than one year after the date
15 of enactment of this title. The Administrator shall
16 add additional project types to the list not later than
17 2 years after the date of enactment of this title. In
18 determining the initial list, the Administrator shall
19 give priority to consideration of offset project types
20 that are recommended by the Advisory Board and
21 for which there are well developed methodologies
22 that the Administrator determines would meet the
23 criteria of section 734, with such modifications as
24 the Administrator deems appropriate. In establishing
25 methodologies pursuant to section 734, the Adminis-

1 trator shall give priority to methodologies for offset
2 project types included on the initial eligibility list.

3 “(b) MODIFICATION OF LIST.—The Administrator—

4 “(1) may at any time, by rule, add a project
5 type to the list established under subsection (a) if
6 the Administrator, in consultation with appropriate
7 Federal agencies and taking into consideration the
8 recommendations of the Advisory Board, determines
9 that the project type can generate additional reduc-
10 tions or avoidance of greenhouse gas emissions, or
11 sequestration of greenhouse gases, subject to the re-
12 quirements of this part;

13 “(2) may at any time, by rule, determine that
14 a project type on the list does not meet the require-
15 ments of this part, and remove the project type from
16 the list established under subsection (a), in consulta-
17 tion with appropriate Federal agencies and taking
18 into consideration any recommendations of the Advi-
19 sory Board; and

20 “(3) shall consider adding to or removing from
21 the list established under subsection (a), at a min-
22 imum, project types proposed to the Adminis-
23 trator—

24 “(A) by petition pursuant to subsection
25 (c); or

1 “(B) by the Advisory Board.

2 “(c) PETITION PROCESS.—Any person may petition
3 the Administrator to modify the list established under sub-
4 section (a) by adding or removing a project type pursuant
5 to subsection (b). Any such petition shall include a show-
6 ing by the petitioner that there is adequate data to estab-
7 lish that the project type does or does not meet the re-
8 quirements of this part. Not later than 12 months after
9 receipt of such a petition, the Administrator shall either
10 grant or deny the petition and publish a written expla-
11 nation of the reasons for the Administrator’s decision. The
12 Administrator may not deny a petition under this sub-
13 section on the basis of inadequate Environmental Protec-
14 tion Agency resources or time for review.

15 **“SEC. 734. REQUIREMENTS FOR OFFSET PROJECTS.**

16 “(a) METHODOLOGIES.—As part of the regulations
17 promulgated under section 732(a), the Administrator shall
18 establish, for each type of offset project listed as eligible
19 under section 733, the following:

20 “(1) ADDITIONALITY.—A standardized method-
21 ology for determining the additionality of greenhouse
22 gas emission reductions or avoidance, or greenhouse
23 gas sequestration, achieved by an offset project of
24 that type. Such methodology shall ensure, at a min-
25 imum, that any greenhouse gas emission reduction

1 or avoidance, or any greenhouse gas sequestration, is
2 considered additional only to the extent that it re-
3 sults from activities that—

4 “(A) are not required by or undertaken to
5 comply with any law, including any regulation
6 or consent order;

7 “(B) were not commenced prior to Janu-
8 ary 1, 2009, except in the case of—

9 “(i) offset project activities that com-
10 menced after January 1, 2001, and were
11 registered as of the date of enactment of
12 this title under an offset program with re-
13 spect to which the Administrator has made
14 an affirmative determination under section
15 740(a)(2); or

16 “(ii) activities that are readily revers-
17 ible, with respect to which the Adminis-
18 trator may set an alternative earlier date
19 under this subparagraph that is not earlier
20 than January 1, 2001, where the Adminis-
21 trator determines that setting such an al-
22 ternative date may produce an environ-
23 mental benefit by removing an incentive to
24 cease and then reinitiate activities that
25 began prior to January 1, 2009; and

1 “(C) exceed the activity baseline estab-
2 lished under paragraph (2).

3 “(2) ACTIVITY BASELINES.—A standardized
4 methodology for establishing activity baselines for
5 offset projects of that type. The Administrator shall
6 set activity baselines to reflect a conservative esti-
7 mate of business-as-usual performance or practices
8 for the relevant type of activity such that the base-
9 line provides an adequate margin of safety to ensure
10 the environmental integrity of offsets calculated in
11 reference to such baseline.

12 “(3) QUANTIFICATION METHODS.—A standard-
13 ized methodology for determining the extent to
14 which greenhouse gas emission reductions or avoid-
15 ance, or greenhouse gas sequestration, achieved by
16 an offset project of that type exceed a relevant activ-
17 ity baseline, including protocols for monitoring and
18 accounting for uncertainty.

19 “(4) LEAKAGE.—A standardized methodology
20 for accounting for and mitigating potential leakage,
21 if any, from an offset project of that type, taking
22 uncertainty into account.

23 “(b) ACCOUNTING FOR REVERSALS.—

24 “(1) IN GENERAL.—For each type of sequestra-
25 tion project listed under section 733, the Adminis-

1 trator shall establish requirements to account for
2 and address reversals, including—

3 “(A) a requirement to report any reversal
4 with respect to an offset project for which offset
5 credits have been issued under this part;

6 “(B) provisions to require emission allow-
7 ances to be held in amounts to fully compensate
8 for greenhouse gas emissions attributable to re-
9 versals, and to assign responsibility for holding
10 such emission allowances; and

11 “(C) any other provisions the Adminis-
12 trator determines necessary to account for and
13 address reversals.

14 “(2) MECHANISMS.—The Administrator shall
15 prescribe mechanisms to ensure that any sequestra-
16 tion with respect to which an offset credit is issued
17 under this part results in a permanent net increase
18 in sequestration, and that full account is taken of
19 any actual or potential reversal of such sequestra-
20 tion, with an adequate margin of safety. The Admin-
21 istrator shall prescribe at least one of the following
22 mechanisms to meet the requirements of this para-
23 graph:

24 “(A) An offsets reserve, pursuant to para-
25 graph (3).

1 “(B) Insurance that provides for purchase
2 and provision to the Administrator for retire-
3 ment of an amount of offset credits or emission
4 allowances equal in number to the tons of car-
5 bon dioxide equivalents of greenhouse gas emis-
6 sions released due to reversal.

7 “(C) Another mechanism that the Admin-
8 istrator determines satisfies the requirements of
9 this part.

10 “(3) OFFSETS RESERVE.—

11 “(A) IN GENERAL.—An offsets reserve re-
12 ferred to in paragraph (2)(A) is a program
13 under which, before issuance of offset credits
14 under this part, the Administrator shall sub-
15 tract and reserve from the quantity to be issued
16 a quantity of offset credits based on the risk of
17 reversal. The Administrator shall—

18 “(i) hold these reserved offset credits
19 in the offsets reserve; and

20 “(ii) register the holding of the re-
21 served offset credits in the Offset Registry
22 established under section 732(d).

23 “(B) PROJECT REVERSAL.—

24 “(i) IN GENERAL.—If a reversal has
25 occurred with respect to an offset project

1 for which offset credits are reserved under
2 this paragraph, the Administrator shall re-
3 tire offset credits or emission allowances
4 from the offsets reserve to fully account
5 for the tons of carbon dioxide equivalent
6 that are no longer sequestered.

7 “(ii) INTENTIONAL REVERSALS.—If
8 the Administrator determines that a rever-
9 sal was intentional, the offset project devel-
10 oper for the relevant offset project shall
11 place into the offsets reserve a quantity of
12 offset credits, or combination of offset
13 credits and emission allowances, equal in
14 number to the number of reserve offset
15 credits that were canceled due to the rever-
16 sal pursuant to clause (i).

17 “(iii) UNINTENTIONAL REVERSALS.—
18 If the Administrator determines that a re-
19 versal was unintentional, the offset project
20 developer for the relevant offset project
21 shall place into the offsets reserve a quan-
22 tity of offset credits, or combination of off-
23 set credits and emission allowances, equal
24 in number to half the number of offset
25 credits that were reserved for that offset

1 project, or half the number of reserve off-
2 set credits that were canceled due to the
3 reversal pursuant to clause (i), whichever
4 is less.

5 “(C) USE OF RESERVED OFFSET CRED-
6 ITS.—Offset credits placed into the offsets re-
7 serve under this paragraph may not be used to
8 comply with section 722.

9 “(c) CREDITING PERIODS.—

10 “(1) IN GENERAL.—For each offset project
11 type, the Administrator shall specify a crediting pe-
12 riod, and establish provisions for petitions for new
13 crediting periods, in accordance with this subsection.

14 “(2) DURATION.—The crediting period shall be
15 no less than 5 and no greater than 10 years for any
16 project type other than those involving sequestra-
17 tion.

18 “(3) ELIGIBILITY.—An offset project shall be
19 eligible to generate offset credits under this part
20 only during the project’s crediting period. During
21 such crediting period, the project shall remain eligi-
22 ble to generate offset credits, subject to the meth-
23 odologies and project type eligibility list that applied
24 as of the date of project approval under section 735,

1 except as provided in paragraph (4) of this sub-
2 section.

3 “(4) PETITION FOR NEW CREDITING PERIOD.—

4 An offset project developer may petition for a new
5 crediting period to commence after termination of a
6 crediting period, subject to the methodologies and
7 project type eligibility list in effect at the time when
8 such petition is submitted. A petition may not be
9 submitted under this paragraph more than 18
10 months before the end of the pending crediting pe-
11 riod. The Administrator may limit the number of
12 new crediting periods available for projects of par-
13 ticular project types.

14 “(d) ENVIRONMENTAL INTEGRITY.—In establishing
15 the requirements under this section, the Administrator
16 shall apply conservative assumptions or methods to maxi-
17 mize the certainty that the environmental integrity of the
18 cap established under section 703 is not compromised.

19 “(e) PRE-EXISTING METHODOLOGIES.—In promul-
20 gating requirements under this section, the Administrator
21 shall give due consideration to methodologies for offset
22 projects existing as of the date of enactment of this title.

23 “(f) ADDED PROJECT TYPES.—The Administrator
24 shall establish methodologies described in subsection (a),
25 and, as applicable, requirements and mechanisms for re-

1 versals as described in subsection (b), for any project type
2 that is added to the list pursuant to section 733.

3 **“SEC. 735. APPROVAL OF OFFSET PROJECTS.**

4 “(a) APPROVAL PETITION.—An offset project devel-
5 oper shall submit an offset project approval petition pro-
6 viding such information as the Administrator requires to
7 determine whether the offset project is eligible for issuance
8 of offset credits under rules promulgated pursuant to this
9 part.

10 “(b) TIMING.—An approval petition shall be sub-
11 mitted to the Administrator under subsection (a) no later
12 than the time at which an offset project’s first verification
13 report is submitted under section 736.

14 “(c) APPROVAL PETITION REQUIREMENTS.—As part
15 of the regulations promulgated under section 732, the Ad-
16 ministrator shall include provisions for, and shall specify,
17 the required components of an offset project approval peti-
18 tion required under subsection (a), which shall include—

19 “(1) designation of an offset project developer;
20 and

21 “(2) any other information that the Adminis-
22 trator considers to be necessary to achieve the pur-
23 poses of this part.

24 “(d) APPROVAL AND NOTIFICATION.—Not later than
25 90 days after receiving a complete approval petition under

1 subsection (a), the Administrator shall make the approval
2 petition publicly available, approve or deny the petition in
3 writing and if the petition is denied, provide the reasons
4 for denial, and make the Administrator’s written decision
5 publicly available. After an offset project is approved, the
6 offset project developer shall not be required to resubmit
7 an approval petition during the offset project’s crediting
8 period, except as provided in section 734(e)(4).

9 “(e) APPEAL.—The Administrator shall establish
10 procedures for appeal and review of determinations made
11 under subsection (d).

12 “(f) VOLUNTARY PREAPPROVAL REVIEW.—The Ad-
13 ministrator may establish a voluntary preapproval review
14 procedure, to allow an offset project developer to request
15 the Administrator to conduct a preliminary eligibility re-
16 view for an offset project. Findings of such reviews shall
17 not be binding upon the Administrator. The voluntary
18 preapproval review procedure—

19 “(1) shall require the offset project developer to
20 submit such basic project information as the Admin-
21 istrator requires to provide a meaningful review; and

22 “(2) shall require a response from the Adminis-
23 trator not later than 6 weeks after receiving a re-
24 quest for review under this subsection.

1 **“SEC. 736. VERIFICATION OF OFFSET PROJECTS.**

2 “(a) IN GENERAL.—As part of the regulations pro-
3 mulgated under section 732(a), the Administrator shall es-
4 tablish requirements, including protocols, for verification
5 of the quantity of greenhouse gas emission reductions or
6 avoidance, or sequestration of greenhouse gases, resulting
7 from an offset project. The regulations shall require that
8 an offset project developer shall submit a report, prepared
9 by a third-party verifier accredited under subsection (d),
10 providing such information as the Administrator requires
11 to determine the quantity of greenhouse gas emission re-
12 ductions or avoidance, or sequestration of greenhouse
13 gases, resulting from the offset project.

14 “(b) SCHEDULE.—The Administrator shall prescribe
15 a schedule for the submission of verification reports under
16 subsection (a).

17 “(c) VERIFICATION REPORT REQUIREMENTS.—The
18 Administrator shall specify the required components of a
19 verification report required under subsection (a), which
20 shall include—

21 “(1) the name and contact information for a
22 designated representative for the offset project devel-
23 oper;

24 “(2) the quantity of greenhouse gases reduced,
25 avoided, or sequestered;

1 “(3) the methodologies applicable to the project
2 pursuant to section 734;

3 “(4) a certification that the project meets the
4 applicable requirements;

5 “(5) a certification establishing that the conflict
6 of interest requirements in the regulations promul-
7 gated under subsection (d)(1) have been complied
8 with; and

9 “(6) any other information that the Adminis-
10 trator considers to be necessary to achieve the pur-
11 poses of this part.

12 “(d) VERIFIER ACCREDITATION.—

13 “(1) IN GENERAL.—As part of the regulations
14 promulgated under section 732(a), the Adminis-
15 trator shall establish a process and requirements for
16 periodic accreditation of third-party verifiers to en-
17 sure that such verifiers are professionally qualified
18 and have no conflicts of interest.

19 “(2) STANDARDS.—

20 “(A) AMERICAN NATIONAL STANDARDS IN-
21 STITUTE ACCREDITATION.—The Administrator
22 may accredit, or accept for purposes of accredi-
23 tation under this subsection, verifiers accredited
24 under the American National Standards Insti-
25 tute (ANSI) accreditation program in accord-

1 ance with ISO 14065. The Administrator shall
2 accredit, or accept for accreditation, verifiers
3 under this subparagraph only if the Adminis-
4 trator finds that the American National Stand-
5 ards Institute accreditation program provides
6 sufficient assurance that the requirements of
7 this part will be met.

8 “(B) EPA ACCREDITATION.—As part of
9 the regulations promulgated under section
10 732(a), the Administrator may establish accred-
11 itation standards for verifiers under this sub-
12 section, and may establish related training and
13 testing programs and requirements.

14 “(3) PUBLIC ACCESSIBILITY.—Each verifier
15 meeting the requirements for accreditation in ac-
16 cordance with this subsection shall be listed in a
17 publicly accessible database, which shall be main-
18 tained and updated by the Administrator.

19 **“SEC. 737. ISSUANCE OF OFFSET CREDITS.**

20 “(a) DETERMINATION AND NOTIFICATION.—Not
21 later than 90 days after receiving a complete verification
22 report under section 736, the Administrator shall—

23 “(1) make the report publicly available;

24 “(2) make a determination of the quantity of
25 greenhouse gas emissions that have been reduced or

1 avoided, or greenhouse gases that have been seques-
2 tered, by the offset project; and

3 “(3) notify the offset project developer in writ-
4 ing of such determination and make such determina-
5 tion publicly available.

6 “(b) ISSUANCE OF OFFSET CREDITS.—The Adminis-
7 trator shall issue one offset credit to an offset project de-
8 veloper for each ton of carbon dioxide equivalent that the
9 Administrator has determined has been reduced, avoided,
10 or sequestered during the period covered by a verification
11 report submitted in accordance with section 736, only if—

12 “(1) the Administrator has approved the offset
13 project pursuant to section 735; and

14 “(2) the relevant emissions reduction, avoid-
15 ance, or sequestration has—

16 “(A) already occurred, during the offset
17 project’s crediting period; and

18 “(B) occurred after January 1, 2009.

19 “(c) APPEAL.—The Administrator shall establish
20 procedures for appeal and review of determinations made
21 under subsection (a).

22 “(d) TIMING.—Offset credits meeting the criteria es-
23 tablished in subsection (b) shall be issued not later than
24 2 weeks following the verification determination made by
25 the Administrator under subsection (a).

1 “(e) REGISTRATION.—The Administrator shall as-
2 sign a unique serial number to and register each offset
3 credit to be issued in the Offset Registry established under
4 section 732(d).

5 **“SEC. 738. AUDITS.**

6 “(a) IN GENERAL.—The Administrator shall, on an
7 ongoing basis, conduct random audits of offset projects,
8 offset credits, and practices of third-party verifiers. In
9 each year, the Administrator shall conduct audits, at min-
10 imum, for a representative sample of project types and
11 geographic areas.

12 “(b) DELEGATION.—The Administrator may delegate
13 to a State or tribal government the responsibility for con-
14 ducting audits under this section if the Administrator
15 finds that the program proposed by the State or tribal
16 government provides assurances equivalent to those pro-
17 vided by the auditing program of the Administrator, and
18 that the integrity of the offset program under this part
19 will be maintained. Nothing in this subsection shall pre-
20 vent the Administrator from conducting any audit the Ad-
21 ministrator considers necessary and appropriate.

22 **“SEC. 739. PROGRAM REVIEW AND REVISION.**

23 ““At least once every 5 years, the Administrator shall
24 review and, based on new or updated information and tak-

1 ing into consideration the recommendations of the Advi-
2 sory Board, update and revise—

3 “(1) the list of eligible project types established
4 under section 733;

5 “(2) the methodologies established, including
6 specific activity baselines, under section 734(a);

7 “(3) the reversal requirements and mechanisms
8 established or prescribed under section 734(b);

9 “(4) measures to improve the accountability of
10 the offsets program; and

11 “(5) any other requirements established under
12 this part to ensure the environmental integrity and
13 effective operation of this part.

14 **“SEC. 740. EARLY OFFSET SUPPLY.**

15 “(a) PROJECTS REGISTERED UNDER OTHER GOV-
16 ERNMENT-RECOGNIZED PROGRAMS.—Except as provided
17 in subsection (b) or (c), the Administrator shall issue one
18 offset credit for each ton of carbon dioxide equivalent
19 emissions reduced, avoided, or sequestered—

20 “(1) under an offset project that was started
21 after January 1, 2001;

22 “(2) for which a credit was issued under any
23 regulatory or voluntary greenhouse gas emission off-
24 set program that the Administrator determines—

1 “(A) was established under State or tribal
2 law or regulation prior to January 1, 2009, or
3 has been approved by the Administrator pursu-
4 ant to subsection (e);

5 “(B) has developed offset project type
6 standards, methodologies, and protocols
7 through a public consultation process or a peer
8 review process;

9 “(C) has made available to the public
10 standards, methodologies, and protocols that re-
11 quire that credited emission reductions, avoid-
12 ance, or sequestration are permanent, addi-
13 tional, verifiable, and enforceable;

14 “(D) requires that all emission reductions,
15 avoidance, or sequestration be verified by a
16 State or tribal regulatory agency or an accred-
17 ited third-party independent verification body;

18 “(E) requires that all credits issued are
19 registered in a publicly accessible registry, with
20 individual serial numbers assigned for each ton
21 of carbon dioxide equivalent emission reduc-
22 tions, avoidance, or sequestration; and

23 “(F) ensures that no credits are issued for
24 an activity if the entity administering the pro-
25 gram, or a program administrator or represent-

1 ative, has funded, solicited, or served as a fund
2 administrator for the development of the activ-
3 ity; and

4 “(3) for which the credit described in para-
5 graph (2) is transferred to the Administrator.

6 “(b) INELIGIBLE CREDITS.—Subsection (a) shall not
7 apply to offset credits that have expired or have been re-
8 tired, canceled, or used for compliance under a program
9 established under State or tribal law or regulation.

10 “(c) LIMITATION.—Notwithstanding subsection
11 (a)(1), offset credits shall be issued under this section—

12 “(1) only for reductions or avoidance of green-
13 house gas emissions, sequestration of greenhouse
14 gases, or destruction of chlorofluorocarbons (subject
15 to the conditions specified in section 619(b)(9) and
16 based on the carbon dioxide equivalent value of the
17 substance destroyed), that occur after January 1,
18 2009; and

19 “(2) only until the date that is 3 years after the
20 date of enactment of this title, or the date that regu-
21 lations promulgated under section 732(a) take ef-
22 fect, whichever occurs sooner.

23 “(d) RETIREMENT OF CREDITS.—The Administrator
24 shall seek to ensure that offset credits described in sub-

1 section (a)(2) are retired for purposes of use under a pro-
2 gram described in subsection (b).

3 “(e) OTHER PROGRAMS.—(1) Offset programs that
4 either—

5 “(A) were not established under State or tribal
6 law or regulation; or

7 “(B) were not established prior to January 1,
8 2009,

9 but that otherwise meet all of the criteria of subsection
10 (a)(2) may apply to the Administrator to be approved
11 under this subsection as an eligible program for early off-
12 set credits under this section.

13 “(2) The Administrator shall approve any such pro-
14 gram that the Administrator determines has criteria and
15 methodologies of at least equal stringency to the criteria
16 and methodologies of the programs established under
17 State or tribal law or regulation that the Administrator
18 determines meet the criteria of subsection (a)(2). The Ad-
19 ministrator may approve types of offsets under any such
20 program that are subject to criteria and methodologies of
21 at least equal stringency to the criteria and methodologies
22 for such types of offsets applied under the programs estab-
23 lished under State or tribal law or regulation that the Ad-
24 ministrator determines meet the criteria of subsection
25 (a)(2). The Administrator shall make a determination on

1 any application received under this section by no later
2 than 180 days from the date of receipt of the application.

3 **“SEC. 741. ENVIRONMENTAL CONSIDERATIONS.**

4 “If the Administrator lists forestry or other relevant
5 land management-related offset projects as eligible offset
6 project types under section 733, the Administrator, in con-
7 sultation with appropriate Federal agencies, shall promul-
8 gate regulations for the selection and use of species in
9 such offset projects—

10 “(1) to ensure that native species are given pri-
11 mary consideration in such projects;

12 “(2) to enhance biological diversity in such
13 projects;

14 “(3) to prohibit the use of federally designated
15 or State-designated noxious weeds;

16 “(4) to prohibit the use of a species listed by
17 a regional or State invasive plant authority within
18 the applicable region or State; and

19 “(5) in the case of forestry offset projects, in
20 accordance with widely accepted, environmentally
21 sustainable forestry practices.

22 **“SEC. 742. TRADING.**

23 “Section 724 shall apply to the trading of offset cred-
24 its.

1 **“SEC. 743. INTERNATIONAL OFFSET CREDITS.**

2 “(a) IN GENERAL.—The Administrator, in consulta-
3 tion with the Secretary of State and the Administrator
4 of the United States Agency for International Develop-
5 ment, may issue, in accordance with this section, inter-
6 national offset credits based on activities that reduce or
7 avoid greenhouse gas emissions, or increase sequestration
8 of greenhouse gases, in a developing country. Such credits
9 may be issued for projects eligible under section 733 or
10 as provided in subsection (c), (d), or (e) of this section.

11 “(b) ISSUANCE.—

12 “(1) REGULATIONS.—Not later than 2 years
13 after the date of enactment of this title, the Admin-
14 istrator, in consultation with the Secretary of State,
15 the Administrator of the United States Agency for
16 International Development, and any other appro-
17 priate Federal agency, and taking into consideration
18 the recommendations of the Advisory Board, shall
19 promulgate regulations for implementing this sec-
20 tion. Except as otherwise provided in this section,
21 the issuance of international offset credits under this
22 section shall be subject to the requirements of this
23 part.

24 “(2) REQUIREMENTS FOR INTERNATIONAL
25 OFFSET CREDITS.—The Administrator may issue
26 international offset credits only if—

1 “(A) the United States is a party to a bi-
2 lateral or multilateral agreement or arrange-
3 ment that includes the country in which the
4 project or measure achieving the relevant green-
5 house gas emission reduction or avoidance, or
6 greenhouse gas sequestration, has occurred;

7 “(B) such country is a developing country;
8 and

9 “(C) such agreement or arrangement—

10 “(i) ensures that the requirements of
11 this part apply to the issuance of inter-
12 national offset credits under this section;
13 and

14 “(ii) provides for the appropriate dis-
15 tribution of international offset credits
16 issued.

17 “(c) SECTOR-BASED CREDITS.—

18 “(1) IN GENERAL.—In order to minimize the
19 potential for leakage and to encourage countries to
20 take nationally appropriate mitigation actions to re-
21 duce or avoid greenhouse gas emissions, or sequester
22 greenhouse gases, the Administrator, in consultation
23 with the Secretary of State and the Administrator of
24 the United States Agency for International Develop-
25 ment, shall—

1 “(A) identify sectors of specific countries
2 with respect to which the issuance of inter-
3 national offset credits on a sectoral basis is ap-
4 propriate; and

5 “(B) issue international offset credits for
6 such sectors only on a sectoral basis.

7 “(2) IDENTIFICATION OF SECTORS.—

8 “(A) GENERAL RULE.—For purposes of
9 paragraph (1)(A), a sectoral basis shall be ap-
10 propriate for activities—

11 “(i) in countries that have compara-
12 tively high greenhouse gas emissions, or
13 comparatively greater levels of economic
14 development; and

15 “(ii) that, if located in the United
16 States, would be within a sector subject to
17 the compliance obligation under section
18 722.

19 “(B) FACTORS.—In determining the sec-
20 tors and countries for which international offset
21 credits should be awarded only on a sectoral
22 basis, the Administrator, in consultation with
23 the Secretary of State and the Administrator of
24 the United States Agency for International De-
25 velopment, shall consider the following factors:

1 “(i) The country’s gross domestic
2 product.

3 “(ii) The country’s total greenhouse
4 gas emissions.

5 “(iii) Whether the comparable sector
6 of the United States economy is covered by
7 the compliance obligation under section
8 722.

9 “(iv) The heterogeneity or homo-
10 geneity of sources within the relevant sec-
11 tor.

12 “(v) Whether the relevant sector pro-
13 vides products or services that are sold in
14 internationally competitive markets.

15 “(vi) The risk of leakage if inter-
16 national offset credits were issued on a
17 project-level basis, instead of on a sectoral
18 basis, for activities within the relevant sec-
19 tor.

20 “(vii) The capability of accurately
21 measuring, monitoring, reporting, and
22 verifying the performance of sources across
23 the relevant sector.

24 “(viii) Such other factors as the Ad-
25 ministrator, in consultation with the Sec-

1 retary of State and the Administrator of
2 the United States Agency for International
3 Development, determines are appropriate
4 to—

5 “(I) ensure the integrity of the
6 United States greenhouse gas emis-
7 sions cap established under section
8 703; and

9 “(II) encourage countries to take
10 nationally appropriate mitigation ac-
11 tions to reduce or avoid greenhouse
12 gas emissions, or sequester green-
13 house gases.

14 “(3) SECTORAL BASIS.—

15 “(A) DEFINITION.—In this subsection, the
16 term ‘sectoral basis’ means the issuance of
17 international offset credits only for the quantity
18 of sector-wide reductions or avoidance of green-
19 house gas emissions, or sector-wide increases in
20 sequestration of greenhouse gases, achieved
21 across the relevant sector of the economy rel-
22 ative to a domestically enforceable baseline level
23 of absolute emissions established in an agree-
24 ment or arrangement described in subsection
25 (b)(2)(A) for the sector.

1 “(B) BASELINE.—The baseline for a sec-
2 tor shall be established on an absolute basis
3 and at levels of greenhouse gas emissions con-
4 sistent with the thresholds identified in section
5 705(e)(2) and lower than would occur under a
6 business-as-usual scenario taking into account
7 relevant domestic or international policies or in-
8 centives to reduce greenhouse gas emissions,
9 among other factors, and additionality and per-
10 formance shall be determined on the basis of
11 such baseline.

12 “(d) CREDITS ISSUED BY AN INTERNATIONAL
13 BODY.—

14 “(1) IN GENERAL.—The Administrator, in con-
15 sultation with the Secretary of State, may issue
16 international offset credits in exchange for instru-
17 ments in the nature of offset credits that are issued
18 by an international body established pursuant to the
19 United Nations Framework Convention on Climate
20 Change, to a protocol to such Convention, or to a
21 treaty that succeeds such Convention. The Adminis-
22 trator may issue international offset credits under
23 this subsection only if, in addition to the require-
24 ments of subsection (b), the Administrator has de-
25 termined that the international body that issued the

1 instruments has implemented substantive and proce-
2 dural requirements for the relevant project type that
3 provide equal or greater assurance of the integrity of
4 such instruments as is provided by the requirements
5 of this part. Starting January 1, 2016, the Adminis-
6 trator shall issue no offset credit pursuant to this
7 subsection if the activity generating the greenhouse
8 gas emissions reductions or avoidance, or greenhouse
9 gas sequestration, occurs in a country and sector
10 identified by the Administrator under subsection (c).

11 “(2) RETIREMENT.—The Administrator, in
12 consultation with the Secretary of State, shall seek,
13 by whatever means appropriate, including agree-
14 ments, arrangements, or technical cooperation with
15 the international issuing body described in para-
16 graph (1), to ensure that such body—

17 “(A) is notified of the Administrator’s
18 issuance, under this subsection, of an inter-
19 national offset credit in exchange for an instru-
20 ment issued by such international body; and

21 “(B) provides, to the extent feasible, for
22 the disqualification of the instrument issued by
23 such international body for subsequent use
24 under any relevant foreign or international
25 greenhouse gas regulatory program, regardless

1 of whether such use is a sale, exchange, or sub-
2 mission to satisfy a compliance obligation.

3 “(e) OFFSETS FROM REDUCED DEFORESTATION.—

4 “(1) REQUIREMENTS.—The Administrator, in
5 accordance with the regulations promulgated under
6 subsection (b)(1) and an agreement or arrangement
7 described in subsection (b)(2)(A), shall issue inter-
8 national offset credits for greenhouse gas emission
9 reductions achieved through activities to reduce de-
10 forestation only if, in addition to the requirements of
11 subsection (b)—

12 “(A) the activity occurs in—

13 “(i) a country listed by the Adminis-
14 trator pursuant to paragraph (2);

15 “(ii) a state or province listed by the
16 Administrator pursuant to paragraph (5);

17 or

18 “(iii) a country listed by the Adminis-
19 trator pursuant to paragraph (6);

20 “(B) except as provided in paragraph (5)

21 or (6), the quantity of the international offset
22 credits is determined by comparing the national
23 emissions from deforestation relative to a na-
24 tional deforestation baseline for that country es-
25 tablished, in accordance with an agreement or

1 arrangement described in subsection (b)(2)(A),
2 pursuant to paragraph (4);

3 “(C) the reduction in emissions from de-
4 forestation has occurred before the issuance of
5 the international offset credit and, taking into
6 consideration relevant international standards,
7 has been demonstrated using ground-based in-
8 ventories, remote sensing technology, and other
9 methodologies to ensure that all relevant carbon
10 stocks are accounted;

11 “(D) the Administrator has made appro-
12 priate adjustments, such as discounting for any
13 additional uncertainty, to account for cir-
14 cumstances specific to the country, including its
15 technical capacity described in paragraph
16 (2)(A);

17 “(E) the activity is designed, carried out,
18 and managed—

19 “(i) in accordance with widely accept-
20 ed, environmentally sustainable forest
21 management practices;

22 “(ii) to promote or restore native for-
23 est species and ecosystems where prac-
24 ticable, and to avoid the introduction of
25 invasive nonnative species;

1 “(iii) in a manner that gives due re-
2 gard to the rights and interests of local
3 communities, indigenous peoples, forest-de-
4 pendent communities, and vulnerable social
5 groups;

6 “(iv) with consultations with, and full
7 participation of, local communities, indige-
8 nous peoples, and forest-dependent com-
9 munities, in affected areas, as partners
10 and primary stakeholders, prior to and
11 during the design, planning, implementa-
12 tion, and monitoring and evaluation of ac-
13 tivities; and

14 “(v) with equitable sharing of profits
15 and benefits derived from offset credits
16 with local communities, indigenous peoples,
17 and forest-dependent communities; and

18 “(F) the reduction otherwise satisfies and
19 is consistent with any relevant requirements es-
20 tablished by an agreement reached under the
21 auspices of the United Nations Framework
22 Convention on Climate Change.

23 “(2) ELIGIBLE COUNTRIES.—The Adminis-
24 trator, in consultation with the Secretary of State
25 and the Administrator of the United States Agency

1 for International Development, and in accordance
2 with an agreement or arrangement described in sub-
3 section (b)(2)(A), shall establish, and periodically re-
4 view and update, a list of the developing countries
5 that have the capacity to participate in deforestation
6 reduction activities at a national level, including—

7 “(A) the technical capacity to monitor,
8 measure, report, and verify forest carbon fluxes
9 for all significant sources of greenhouse gas
10 emissions from deforestation with an acceptable
11 level of uncertainty, as determined taking into
12 account relevant internationally accepted meth-
13 odologies, such as those established by the
14 Intergovernmental Panel on Climate Change;

15 “(B) the institutional capacity to reduce
16 emissions from deforestation, including strong
17 forest governance and mechanisms to equitably
18 distribute deforestation resources for local ac-
19 tions; and

20 “(C) a land use or forest sector strategic
21 plan that—

22 “(i) assesses national and local drivers
23 of deforestation and forest degradation and
24 identifies reforms to national policies need-
25 ed to address them;

1 “(ii) estimates the country’s emissions
2 from deforestation and forest degradation;

3 “(iii) identifies improvements in data
4 collection, monitoring, and institutional ca-
5 pacity necessary to implement a national
6 deforestation reduction program; and

7 “(iv) establishes a timeline for imple-
8 menting the program and transitioning to
9 low-emissions development with respect to
10 emissions from forest and land use activi-
11 ties.

12 “(3) PROTECTION OF INTERESTS.—With re-
13 spect to an agreement or arrangement described in
14 subsection (b)(2)(A) that addresses international off-
15 set credits under this subsection, the Administrator,
16 in consultation with the Secretary of State and the
17 Administrator of the United States Agency for
18 International Development, shall seek to ensure the
19 establishment and enforcement by such country of
20 legal regimes, processes, standards, and safeguards
21 that—

22 “(A) give due regard to the rights and in-
23 terests of local communities, indigenous peoples,
24 forest-dependent communities, and vulnerable
25 social groups;

1 “(B) promote consultations with, and full
2 participation of, forest-dependent communities
3 and indigenous peoples in affected areas, as
4 partners and primary stakeholders, prior to and
5 during the design, planning, implementation,
6 and monitoring and evaluation of activities; and

7 “(C) encourage equitable sharing of profits
8 and benefits derived from international offset
9 credits with local communities, indigenous peo-
10 ples, and forest-dependent communities.

11 “(4) NATIONAL DEFORESTATION BASELINE.—A
12 national deforestation baseline established under this
13 subsection shall—

14 “(A) be national in scope;

15 “(B) be consistent with nationally appro-
16 priate mitigation commitments or actions with
17 respect to deforestation, taking into consider-
18 ation the average annual historical deforestation
19 rates of the country during a period of at least
20 5 years, the applicable drivers of deforestation,
21 and other factors to ensure additionality;

22 “(C) establish a trajectory that would re-
23 sult in zero net deforestation by not later than
24 20 years after the national deforestation base-
25 line has been established;

1 “(D) be adjusted over time to take account
2 of changing national circumstances;

3 “(E) be designed to account for all signifi-
4 cant sources of greenhouse gas emissions from
5 deforestation in the country; and

6 “(F) be consistent with the national defor-
7 estation baseline, if any, established for such
8 country under section 754(d)(1) and (2).

9 “(5) STATE-LEVEL OR PROVINCE-LEVEL AC-
10 TIVITIES.—

11 “(A) ELIGIBLE STATES OR PROVINCES.—

12 The Administrator, in consultation with the
13 Secretary of State and the Administrator of the
14 United States Agency for International Devel-
15 opment, shall establish within 2 years after the
16 date of enactment of this title, and periodically
17 review and update, a list of states or provinces
18 in developing countries where—

19 “(i) the developing country is not in-
20 cluded on the list of countries established
21 pursuant to paragraph (6)(A);

22 “(ii) the state or province by itself is
23 a major emitter of greenhouse gases from
24 tropical deforestation on a scale commen-

1 surate to the emissions of other countries;
2 and

3 “(iii) the state or province meets the
4 eligibility criteria in paragraphs (2) and
5 (3) for the geographic area under its juris-
6 diction.

7 “(B) ACTIVITIES.—The Administrator may
8 issue international offset credits for greenhouse
9 gas emission reductions achieved through activi-
10 ties to reduce deforestation at a state or provin-
11 cial level that meet the requirements of this sec-
12 tion. Such credits shall be determined by com-
13 paring the emissions from deforestation within
14 that state or province relative to the state or
15 province deforestation baseline for that state or
16 province established, in accordance with an
17 agreement or arrangement described in sub-
18 section (b)(2)(A), pursuant to subparagraph
19 (C) of this paragraph.

20 “(C) STATE OR PROVINCE DEFOREST-
21 ATION BASELINE.—A state or province deforest-
22 ation baseline shall—

23 “(i) be consistent with any existing
24 nationally appropriate mitigation commit-
25 ments or actions for the country in which

1 the activity is occurring, taking into con-
2 sideration the average annual historical de-
3 forestation rates of the state or province
4 during a period of at least 5 years, rel-
5 evant drivers of deforestation, and other
6 factors to ensure additionality;

7 “(ii) establish a trajectory that would
8 result in zero net deforestation by not later
9 than 20 years after the state or province
10 deforestation baseline has been established;
11 and

12 “(iii) be designed to account for all
13 significant sources of greenhouse gas emis-
14 sions from deforestation in the state or
15 province and adjusted to fully account for
16 emissions leakage outside the state or
17 province.

18 “(D) PHASE OUT.—Beginning 5 years
19 after the first calendar year for which a covered
20 entity must demonstrate compliance with sec-
21 tion 722(a), the Administrator shall issue no
22 further international offset credits for eligible
23 state-level or province-level activities to reduce
24 deforestation pursuant to this paragraph.

1 “(6) PROJECTS AND PROGRAMS TO REDUCE
2 DEFORESTATION.—

3 “(A) ELIGIBLE COUNTRIES.—The Admin-
4 istrator, in consultation with the Secretary of
5 State and the Administrator of the United
6 States Agency for International Development,
7 shall establish within 2 years after the date of
8 enactment of this title, and periodically review
9 and update, a list of developing countries each
10 of which—

11 “(i) the Administrator determines,
12 based on recent, credible, and reliable
13 emissions data, accounts for less than 1
14 percent of global greenhouse gas emissions
15 and less than 3 percent of global forest-
16 sector and land use change greenhouse gas
17 emissions; and

18 “(ii) has, or in the determination of
19 the Administrator is making a good faith
20 effort to develop, a land use or forest sec-
21 tor strategic plan that meets the criteria
22 described in paragraph (2)(C).

23 “(B) ACTIVITIES.—The Administrator may
24 issue international offset credits for greenhouse
25 gas emission reductions achieved through

1 project or program level activities to reduce de-
2 forestation in countries listed under subpara-
3 graph (A) that meet the requirements of this
4 section. The quantity of international offset
5 credits shall be determined by comparing the
6 project-level or program-level emissions from
7 deforestation to a deforestation baseline for
8 such project or program established pursuant to
9 subparagraph (C).

10 “(C) PROJECT-LEVEL OR PROGRAM-LEVEL
11 BASELINE.—A project-level or program-level de-
12 forestation baseline shall—

13 “(i) be consistent with any existing
14 nationally appropriate mitigation commit-
15 ments or actions for the country in which
16 the project or program is occurring, taking
17 into consideration the average annual his-
18 torical deforestation rates relevant to the
19 specific project or program during a period
20 of at least 5 years, applicable drivers of de-
21 forestation, and other factors to ensure
22 additionality;

23 “(ii) be designed to account for all
24 significant sources of greenhouse gas emis-

1 sions from deforestation in the project or
2 program boundary; and

3 “(iii) be adjusted to fully account for
4 emissions leakage outside the project or
5 program boundary.

6 “(D) PHASE OUT.—(i) Beginning 5 years
7 after the first calendar year for which a covered
8 entity must demonstrate compliance with sec-
9 tion 722(a), the Administrator shall issue no
10 further international offset credits for project-
11 level or program-level activities pursuant to this
12 paragraph, except as provided in clause (ii).

13 “(ii) The Administrator may extend the
14 phase out deadline for the issuance of inter-
15 national offset credits under this paragraph by
16 up to 8 years with respect to eligible activities
17 taking place in a least developed country, which
18 for purposes of this paragraph is defined as a
19 foreign country that the United Nations has
20 identified as among the least developed of devel-
21 oping countries at the time that the Adminis-
22 trator determines to provide an extension, if the
23 Administrator, in consultation with the Sec-
24 retary of State and the Administrator of the

1 United States Agency for International Devel-
2 opment, determines the country—

3 “(I) lacks sufficient capacity to adopt
4 and implement effective programs to
5 achieve reductions in deforestation meas-
6 ured against national baselines;

7 “(II) is receiving support under part
8 E to develop such capacity; and

9 “(III) has developed and is working to
10 implement a credible national strategy or
11 plan to reduce deforestation.

12 “(7) DEFORESTATION.—In implementing this
13 subsection, the Administrator, taking into consider-
14 ation the recommendations of the Advisory Board,
15 may include forest degradation, or soil carbon losses
16 associated with forested wetlands or peatlands, with-
17 in the meaning of deforestation.

18 “(8) CONSULTATION.—In implementing this
19 subsection, the Administrator shall consult with the
20 Secretary of Agriculture on relevant matters within
21 such Secretary’s area of expertise.

22 “(f) MODIFICATION OF REQUIREMENTS.—In promul-
23 gating regulations under subsection (b)(1) with respect to
24 the issuance of international offset credits under sub-
25 section (c), (d), or (e), the Administrator, in consultation

1 with the Secretary of State and the Administrator of the
2 United States Agency for International Development, may
3 modify or omit a requirement of this part (excluding the
4 requirements of this section) if the Administrator deter-
5 mines that the application of that requirement to such
6 subsection is not feasible. In modifying or omitting such
7 a requirement on the basis of infeasibility, the Adminis-
8 trator, in consultation with the Secretary of State and the
9 Administrator of the United States Agency for Inter-
10 national Development, shall ensure, with an adequate
11 margin of safety, the integrity of international offset cred-
12 its issued under this section and of the greenhouse gas
13 emissions cap established pursuant to section 703.

14 “(g) AVOIDING DOUBLE COUNTING.—The Adminis-
15 trator, in consultation with the Secretary of State, shall
16 seek, by whatever means appropriate, including agree-
17 ments, arrangements, or technical cooperation, to ensure
18 that activities on the basis of which international offset
19 credits are issued under this section are not used for com-
20 pliance with an obligation to reduce or avoid greenhouse
21 gas emissions, or increase greenhouse gas sequestration,
22 under a foreign or international regulatory system. In ad-
23 dition, no international offset credits shall be issued for
24 emission reductions from activities with respect to which

1 emission allowances were allocated under section 781 for
2 distribution under part E.

3 “(h) LIMITATION.—The Administrator shall not issue
4 international offset credits generated by projects based on
5 the destruction of hydrofluorocarbons.

6 **“PART E—SUPPLEMENTAL EMISSIONS**

7 **REDUCTIONS FROM REDUCED DEFORESTATION**

8 **“SEC. 751. DEFINITIONS.**

9 “In this part:

10 “(1) LEAKAGE PREVENTION ACTIVITIES.—The
11 term ‘leakage prevention activities’ means activities
12 in developing countries that are directed at pre-
13 serving existing forest carbon stocks, including for-
14 ested wetlands and peatlands, that might, absent
15 such activities, be lost through leakage.

16 “(2) NATIONAL DEFORESTATION REDUCTION
17 ACTIVITIES.—The term ‘national deforestation re-
18 duction activities’ means activities in developing
19 countries that reduce a quantity of greenhouse gas
20 emissions from deforestation that is calculated by
21 measuring actual emissions against a national defor-
22 estation baseline established pursuant to section
23 754(d)(1) and (2).

24 “(3) SUBNATIONAL DEFORESTATION REDUC-
25 TION ACTIVITIES.—The term ‘subnational deforest-

1 ation reduction activities’ means activities in devel-
2 oping countries that reduce a quantity of greenhouse
3 gas emissions from deforestation that are calculated
4 by measuring actual emissions using an appropriate
5 baseline established by the Administrator that is less
6 than national in scope.

7 “(4) SUPPLEMENTAL EMISSIONS REDUC-
8 TIONS.—The term ‘supplemental emissions reduc-
9 tions’ means greenhouse gas emissions reductions
10 achieved from reduced or avoided deforestation
11 under this part.

12 “(5) USAID.—The term ‘USAID’ means the
13 United States Agency for International Develop-
14 ment.

15 **“SEC. 752. FINDINGS.**

16 “Congress finds that—

17 “(1) as part of a global effort to mitigate cli-
18 mate change, it is in the national interest of the
19 United States to assist developing countries to re-
20 duce and ultimately halt emissions from deforest-
21 ation;

22 “(2) deforestation is one of the largest sources
23 of greenhouse gas emissions in developing countries,
24 amounting to roughly 20 percent of overall emissions
25 globally;

1 “(3) recent scientific analysis shows that it will
2 be substantially more difficult to limit the increase
3 in global temperatures to less than 2 degrees centi-
4 grade above preindustrial levels without reducing
5 and ultimately halting net emissions from deforest-
6 ation;

7 “(4) reducing emissions from deforestation is
8 highly cost-effective, compared to many other
9 sources of emissions reductions;

10 “(5) in addition to contributing significantly to
11 worldwide efforts to address global warming, assist-
12 ance under this part will generate significant envi-
13 ronmental and social cobenefits, including protection
14 of biodiversity, ecosystem services, and forest-related
15 livelihoods; and

16 “(6) under the Bali Action Plan, developed
17 country parties to the United Nations Framework
18 Convention on Climate Change, including the United
19 States, committed to ‘enhanced action on the provi-
20 sion of financial resources and investment to support
21 action on mitigation and adaptation and technology
22 cooperation,’ including, inter alia, consideration of
23 ‘improved access to adequate, predictable, and sus-
24 tainable financial resources and financial and tech-
25 nical support, and the provision of new and addi-

1 tional resources, including official and concessional
2 funding for developing country parties' .

3 **“SEC. 753. SUPPLEMENTAL EMISSIONS REDUCTIONS**
4 **THROUGH REDUCED DEFORESTATION.**

5 “(a) REGULATIONS.—Not later than 2 years after
6 the date of enactment of this title, the Administrator, in
7 consultation with the Administrator of USAID and any
8 other appropriate agencies, shall promulgate regulations
9 establishing a program to use emission allowances set
10 aside for this purpose under section 781 to reduce green-
11 house gas emissions from deforestation in developing
12 countries in accordance with the requirements of this part.

13 “(b) OBJECTIVES.—The objectives of the program es-
14 tablished under this section shall be to—

15 “(1) achieve supplemental emissions reductions
16 of at least 720,000,000 tons of carbon dioxide equiv-
17 alent in 2020, a cumulative amount of at least
18 6,000,000,000 tons of carbon dioxide equivalent by
19 December 31, 2025, and additional supplemental
20 emissions reductions in subsequent years;

21 “(2) build capacity to reduce deforestation in
22 developing countries experiencing deforestation, in-
23 cluding preparing developing countries to participate
24 in international markets for international offset
25 credits for reduced emissions from deforestation; and

1 “(3) preserve existing forest carbon stocks in
2 countries where such forest carbon may be vulner-
3 able to international leakage, particularly in devel-
4 oping countries with largely intact native forests.

5 **“SEC. 754. REQUIREMENTS FOR INTERNATIONAL DEFOR-**
6 **ESTATION REDUCTION PROGRAM.**

7 “(a) ELIGIBLE COUNTRIES.—The Administrator
8 may support activities under this part only with respect
9 to a developing country that—

10 “(1) the Administrator, in consultation with the
11 Administrator of USAID, determines is experiencing
12 deforestation or forest degradation or has standing
13 forest carbon stocks that may be at risk of deforest-
14 ation or degradation; and

15 “(2) has entered into a bilateral or multilateral
16 agreement or arrangement with the United States
17 establishing the conditions of its participation in the
18 program established under this part, which shall in-
19 clude an agreement to meet the standards estab-
20 lished under subsection (d) for the activities to
21 which those standards apply.

22 “(b) ACTIVITIES.—

23 “(1) AUTHORIZED ACTIVITIES.—Subject to the
24 requirements of this part, the Administrator, in con-
25 sultation with the Administrator of USAID, may

1 support activities to achieve the objectives identified
2 in section 753(b), including—

3 “(A) national deforestation reduction ac-
4 tivities;

5 “(B) subnational deforestation reduction
6 activities, including pilot activities that reduce
7 greenhouse gas emissions but are subject to sig-
8 nificant uncertainty;

9 “(C) activities to measure, monitor, and
10 verify deforestation, avoided deforestation, and
11 deforestation rates;

12 “(D) leakage prevention activities;

13 “(E) development of measurement, moni-
14 toring, and verification capacities to enable a
15 country to quantify supplemental emissions re-
16 ductions and to generate for sale offset credits
17 from reduced or avoided deforestation;

18 “(F) development of governance structures
19 to reduce deforestation and illegal logging;

20 “(G) enforcement of requirements for re-
21 duced deforestation or forest conservation;

22 “(H) efforts to combat illegal logging and
23 increase enforcement cooperation;

1 “(I) providing incentives for policy reforms
2 to achieve the objectives identified in section
3 753(b); and

4 “(J) monitoring and evaluation of the re-
5 sults of the activities conducted under this sec-
6 tion.

7 “(2) ACTIVITIES SELECTED BY USAID.—

8 “(A) The Administrator of USAID, in con-
9 sultation with the Administrator, may select for
10 support and implementation pursuant to sub-
11 section (c) any of the activities described in
12 paragraph (1), consistent with this part and the
13 regulations promulgated under subsection (d),
14 and subject to the requirement to achieve the
15 objectives listed in section 753(b)(1).

16 “(B) With respect to the activities listed in
17 subparagraphs (D) through (J) of paragraph
18 (1), the Administrator of USAID, in consulta-
19 tion with the Administrator, shall have primary
20 but not exclusive responsibility for selecting the
21 activities to be supported and implemented.

22 “(3) INTERAGENCY COORDINATION.—The Ad-
23 ministrator and the Administrator of USAID shall
24 jointly develop and biennially update a strategic plan
25 for meeting the objectives listed in section 753(b)

1 and shall execute a memorandum of understanding
2 delineating the agencies' respective roles in imple-
3 menting this part.

4 “(c) MECHANISMS.—

5 “(1) IN GENERAL.—The Administrator may
6 support activities to achieve the objectives identified
7 in section 753(b) by—

8 “(A) developing and implementing pro-
9 grams and projects that achieve such objectives;
10 and

11 “(B) distributing emission allowances to a
12 country that is eligible under subsection (a), to
13 a private or public group (including inter-
14 national organizations), or to an international
15 fund established by an international agreement
16 to which the United States is a party, to carry
17 out activities to achieve such objectives.

18 “(2) USAID ACTIVITIES.—With respect to ac-
19 tivities selected and implemented by the Adminis-
20 trator of USAID pursuant to subsection (b)(2), the
21 Administrator shall distribute emission allowances as
22 provided in paragraph (1) of this subsection based
23 upon the direction of the Administrator of USAID,
24 subject to the availability of allowances for such ac-
25 tivities.

1 “(3) IMPLEMENTATION THROUGH INTER-
2 NATIONAL ORGANIZATIONS.—If support is distrib-
3 uted through an international organization, the
4 agency responsible for selecting activities in accord-
5 ance with subsection (b)(1) or (2), in consultation
6 with the Secretary of State, shall ensure the estab-
7 lishment and implementation of adequate mecha-
8 nisms to apply and enforce the eligibility require-
9 ments and other requirements of this section.

10 “(4) ROLE OF THE SECRETARY OF STATE.—
11 The Administrator may not distribute emission al-
12 lowances under this part to the government of an-
13 other country or to an international organization or
14 international fund unless the Secretary of State has
15 concurred with such distribution.

16 “(d) STANDARDS.—The Administrator, in consulta-
17 tion with the Administrator of USAID, shall promulgate
18 regulations establishing standards to ensure that supple-
19 mental emissions reductions achieved through supported
20 activities are additional, measurable, verifiable, perma-
21 nent, and monitored, and account for leakage and uncer-
22 tainty. In addition, such standards shall—

23 “(1) require the establishment of a national de-
24 forestation baseline for each country with national

1 deforestation reduction activities that is used to ac-
2 count for reductions achieved from such activities;

3 “(2) provide that a national deforestation base-
4 line established under paragraph (1) shall—

5 “(A) be national in scope;

6 “(B) be consistent with nationally appro-
7 appropriate mitigation commitments or actions with
8 respect to deforestation, taking into consider-
9 ation the average annual historical deforestation
10 rates of the country during a period of at least
11 5 years, the applicable drivers of deforestation,
12 and other factors to ensure additionality;

13 “(C) establish a trajectory that would re-
14 sult in zero net deforestation by not later than
15 20 years from the date the baseline is estab-
16 lished;

17 “(D) be adjusted over time to take account
18 of changing national circumstances;

19 “(E) be designed to account for all signifi-
20 cant sources of greenhouse gas emissions from
21 deforestation in the country; and

22 “(F) be consistent with the national defor-
23 estation baseline, if any, established for such
24 country under section 743(e)(4);

1 “(3) with respect to support provided pursuant
2 to subsection (b)(1)(A) or (B), require supplemental
3 emissions reductions to be achieved and verified
4 prior to compensation through the distribution of
5 emission allowances under this part;

6 “(4) with respect to accounting for subnational
7 deforestation reduction activities that lack the stand-
8 ardized or precise measurement and monitoring
9 techniques needed for a full accounting of changes
10 in emissions or baselines, or are subject to other
11 sources of uncertainty, apply a conservative discount
12 factor to reflect the uncertainty regarding the levels
13 of reductions achieved;

14 “(5) ensure that activities under this part shall
15 be designed, carried out, and managed—

16 “(A) in accordance with widely accepted,
17 environmentally sustainable forest management
18 practices;

19 “(B) to promote or restore native forest
20 species and ecosystems where practicable, and
21 to avoid the introduction of invasive nonnative
22 species;

23 “(C) in a manner that gives due regard to
24 the rights and interests of local communities,

1 indigenous peoples, forest-dependent commu-
2 nities, and vulnerable social groups;

3 “(D) with consultations with, and full par-
4 ticipation of, local communities, indigenous peo-
5 ples, and forest-dependent communities in af-
6 fected areas, as partners and primary stake-
7 holders, prior to and during the design, plan-
8 ning, implementation, and monitoring and eval-
9 uation of activities; and

10 “(E) with equitable sharing of profits and
11 benefits derived from the activities with local
12 communities, indigenous peoples, and forest-de-
13 pendent communities; and

14 “(6) with respect to support for all activities
15 under this part, seek to ensure the establishment
16 and enforcement, by the country in which the activi-
17 ties occur, of legal regimes, standards, processes,
18 and safeguards that—

19 “(A) give due regard to the rights and in-
20 terests of local communities, indigenous peoples,
21 forest-dependent communities, and vulnerable
22 social groups;

23 “(B) promote consultations with local com-
24 munities and indigenous peoples and forest-de-
25 pendent communities in affected areas, as part-

1 ners and primary stakeholders, prior to and
2 during the design, planning, implementation,
3 monitoring, and evaluation of activities under
4 this part; and

5 “(C) encourage equitable sharing of profits
6 and benefits from incentives for emissions re-
7 ductions or leakage prevention with local com-
8 munities, indigenous peoples, and forest-de-
9 pendent communities.

10 “(e) SCOPE.—(1) The Administrator shall include
11 within the scope of activities under this part reduced emis-
12 sions from forest degradation.

13 “(2) The Administrator, in consultation with the Ad-
14 ministrators of USAID, may decide, taking into account
15 any advice from the Advisory Board, to expand, where ap-
16 propriate, the scope of activities under this part to include
17 reduced soil carbon-derived emissions associated with de-
18 forestation and degradation of forested wetlands and
19 peatlands.

20 “(f) ACCOUNTING.—The Administrator shall estab-
21 lish a publicly accessible registry of the supplemental emis-
22 sions reductions achieved through support provided under
23 this part each year, after appropriately discounting for un-
24 certainty and other relevant factors as required by the
25 standards established under subsection (d).

1 “(g) TRANSITION TO NATIONAL REDUCTIONS.—Be-
2 ginning 5 years after the date that a country entered into
3 the agreement or arrangement required under subsection
4 (a)(2), the Administrator shall provide no further com-
5 pensation through emission allowances to that country
6 under this part for any subnational deforestation reduc-
7 tion activities, except that the Administrator may extend
8 this period by an additional 5 years if the Administrator,
9 in consultation with the Administrator of USAID, deter-
10 mines that—

11 “(1) the country is making substantial progress
12 towards adopting and implementing a program to
13 achieve reductions in deforestation measured against
14 a national baseline;

15 “(2) the greenhouse gas emissions reductions
16 achieved are not resulting in significant leakage; and

17 “(3) the greenhouse gas emissions reductions
18 achieved are being appropriately discounted to ac-
19 count for any leakage that is occurring.

20 The limitation under this subsection shall not apply to
21 support for activities to further the objectives listed in sec-
22 tion 753(b)(2) or (3).

23 “(h) COORDINATION WITH U.S. FOREIGN ASSIST-
24 ANCE.—Subject to the direction of the President, the Ad-
25 ministrator and the Administrator of USAID shall, to the

1 extent practicable and consistent with the objectives of
2 this program, seek to align activities under this section
3 with broader development, poverty alleviation, or natural
4 resource management objectives and initiatives in the re-
5 cipient country.

6 “(i) SUPPORT AS SUPPLEMENT.—The provision of
7 support for activities under this part shall be used to sup-
8 plement, and not to supplant, any other Federal, State,
9 or local support available to carry out such qualifying ac-
10 tivities under this part.

11 “(j) NOT ELIGIBLE FOR OFFSET CREDIT.—Activities
12 that receive support under this part shall not be issued
13 offset credits for the greenhouse gas emissions reductions
14 or avoidance, or greenhouse gas sequestration, produced
15 by such activities.

16 **“SEC. 755. REPORTS AND REVIEWS.**

17 “(a) REPORTS.—Not later than January 1, 2014,
18 and annually thereafter, the Administrator and the Ad-
19 ministrator of USAID shall submit to the Committee on
20 Energy and Commerce and the Committee on Foreign Af-
21 fairs of the House of Representatives, and the Committee
22 on Environment and Public Works and the Committee on
23 Foreign Relations of the Senate, and make available to
24 the public, a report on the support provided under this

1 part during the prior fiscal year. The report shall in-
2 clude—

3 “(1) a statement of the quantity of supple-
4 mental emissions reductions for which compensation
5 in the form of emission allowances was provided
6 under this part during the prior fiscal year, as reg-
7 istered by the Administrator under section 754(f);
8 and

9 “(2) a description of the national and sub-
10 national deforestation reduction activities, capacity-
11 building activities, and leakage prevention activities
12 supported under this part, including a statement of
13 the quantity of emission allowances distributed to
14 each recipient for each activity during the prior fis-
15 cal year, and a description of what was accomplished
16 through each of the activities.

17 “(b) **REVIEWS.**—Not later than 4 years after the date
18 of enactment of this title and every 5 years thereafter,
19 the Administrator and the Administrator of USAID, tak-
20 ing into consideration any evaluation by or recommenda-
21 tions from the Advisory Board established under section
22 731, shall conduct a review of the activities undertaken
23 pursuant to this part and make any appropriate changes
24 in the program established under this part, consistent with
25 the requirements of this part, based on the findings of the

1 review. The review shall include the effects of the activities
2 on—

3 “(1) total documented carbon stocks of each
4 country that directly or indirectly received support
5 under this part compared with such country’s na-
6 tional deforestation baseline established under sec-
7 tion 754(d)(1) and (2);

8 “(2) the number of countries with the capacity
9 to generate for sale instruments in the nature of off-
10 set credits from forest-related activities, and the
11 amount of such activities;

12 “(3) forest governance in each country that di-
13 rectly or indirectly received support under this part;

14 “(4) indigenous peoples and forest-dependent
15 communities residing in areas affected by such ac-
16 tivities;

17 “(5) biodiversity and ecosystem services within
18 forested areas associated with the activities;

19 “(6) subnational and international leakage; and

20 “(7) any program or mechanism established
21 under the United Nations Framework Convention on
22 Climate Change related to greenhouse gas emissions
23 from deforestation.

1 **“SEC. 756. LEGAL EFFECT OF PART.**

2 “(1) IN GENERAL.—Nothing in this part super-
3 sedes, limits, or otherwise affects any restriction im-
4 posed by Federal law (including regulations) on any
5 interaction between an entity located in the United
6 States and an entity located in a foreign country.

7 “(2) ROLE OF THE SECRETARY OF STATE.—
8 Nothing in this part shall be construed as affecting
9 the role of the Secretary of State or the responsibil-
10 ities of the Secretary under section 622(c) of the
11 Foreign Assistance Act of 1961.”.

12 **SEC. 312. DEFINITIONS.**

13 Title VII of the Clean Air Act, as added by section
14 311 of this Act, is amended by inserting before part A
15 the following new section:

16 **“SEC. 700. DEFINITIONS.**

17 “In this title:

18 “(1) ADDITIONAL.—The term ‘additional’,
19 when used with respect to reductions or avoidance of
20 greenhouse gas emissions, or to sequestration of
21 greenhouse gases, means reductions, avoidance, or
22 sequestration that result in a lower level of net
23 greenhouse gas emissions or atmospheric concentra-
24 tions than would occur in the absence of an offset
25 project.

1 “(2) ADDITIONALITY.—The term ‘additionality’
2 means the extent to which reductions or avoidance
3 of greenhouse gas emissions, or sequestration of
4 greenhouse gases, are additional.

5 “(3) ADVISORY BOARD.—The term ‘Advisory
6 Board’ means the Offsets Integrity Advisory Board
7 established under section 731.

8 “(4) AFFILIATED.—The term ‘affiliated’—

9 “(A) when used in relation to an entity
10 means owned or controlled by, or under com-
11 mon ownership or control with, another entity,
12 as determined by the Administrator; and

13 “(B) when used in relation to a natural
14 gas local distribution company, means owned or
15 controlled by, or under common ownership or
16 control with, another natural gas local distribu-
17 tion company, as determined by the Adminis-
18 trator.

19 “(5) ALLOWANCE.—The term ‘allowance’
20 means a limited authorization to emit, or have at-
21 tributable greenhouse gas emissions in an amount
22 of, 1 ton of carbon dioxide equivalent of a green-
23 house gas in accordance with this title. Such term
24 includes an emission allowance, a compensatory al-
25 lowance, and an international emission allowance,

1 but does not include an international reserve allow-
2 ance established under section 766.

3 “(6) ATTRIBUTABLE GREENHOUSE GAS EMIS-
4 SIONS.—The term ‘attributable greenhouse gas emis-
5 sions’, for a given calendar year, means—

6 “(A) for a covered entity that is a fuel pro-
7 ducer or importer described in paragraph
8 (13)(B), greenhouse gases that would be emit-
9 ted from the combustion of any petroleum-
10 based or coal-based liquid fuel, petroleum coke,
11 or natural gas liquid, produced or imported by
12 that covered entity during that calendar year
13 for sale or distribution in interstate commerce,
14 assuming no capture and sequestration of any
15 greenhouse gas emissions;

16 “(B) for a covered entity that is an indus-
17 trial gas producer or importer described in
18 paragraph (13)(C), the tons of carbon dioxide
19 equivalent of any gas described in clauses (i)
20 through (vi) of paragraph (13)(C)—

21 “(i) produced or imported by such
22 covered entity during that calendar year
23 for sale or distribution in interstate com-
24 merce; or

1 “(ii) released as fugitive emissions in
2 the production of fluorinated gas; and

3 “(C) for a natural gas local distribution
4 company described in paragraph (13)(J), green-
5 house gases that would be emitted from the
6 combustion of the natural gas, and any other
7 gas meeting the specifications for commingling
8 with natural gas for purposes of delivery, that
9 such entity delivered during that calendar year
10 to customers that are not covered entities, as-
11 suming no capture and sequestration of that
12 greenhouse gas.

13 “(7) BIOLOGICAL SEQUESTRATION; BIO-
14 LOGICALLY SEQUESTERED.—The terms ‘biological
15 sequestration’ and ‘biologically sequestered’ mean
16 the removal of greenhouse gases from the atmos-
17 phere by terrestrial biological means, such as by
18 growing plants, and the storage of those greenhouse
19 gases in plants or soils.

20 “(8) CAPPED EMISSIONS.—The term ‘capped
21 emissions’ means greenhouse gas emissions to which
22 section 722 applies, including emissions from the
23 combustion of natural gas, petroleum-based or coal-
24 based liquid fuel, petroleum coke, or natural gas liq-
25 uid to which section 722(b)(2) or (8) applies.

1 “(9) CAPPED SOURCE.—The term ‘capped
2 source’ means a source that directly emits capped
3 emissions.

4 “(10) CARBON DIOXIDE EQUIVALENT.—The
5 term ‘carbon dioxide equivalent’ means the unit of
6 measure, expressed in metric tons, of greenhouse
7 gases as provided under section 711 or 712.

8 “(11) CARBON STOCK.—The term ‘carbon
9 stock’ means the quantity of carbon contained in a
10 biological reservoir or system which has the capacity
11 to accumulate or release carbon.

12 “(12) COMPENSATORY ALLOWANCE.—The term
13 ‘compensatory allowance’ means an allowance issued
14 under section 721(f).

15 “(13) COVERED ENTITY.—The term ‘covered
16 entity’ means each of the following:

17 “(A) Any electricity source.

18 “(B) Any stationary source that produces,
19 and any entity that (or any group of two or
20 more affiliated entities that, in the aggregate)
21 imports, for sale or distribution in interstate
22 commerce in 2008 or any subsequent year, pe-
23 troleum-based or coal-based liquid fuel, petro-
24 leum coke, or natural gas liquid, the combus-
25 tion of which would emit 25,000 or more tons

1 of carbon dioxide equivalent, as determined by
2 the Administrator.

3 “(C) Any stationary source that produces,
4 and any entity that (or any group of two or
5 more affiliated entities that, in the aggregate)
6 imports, for sale or distribution in interstate
7 commerce, in bulk, or in products designated by
8 the Administrator, in 2008 or any subsequent
9 year 25,000 or more tons of carbon dioxide
10 equivalent of—

11 “(i) fossil fuel-based carbon dioxide;

12 “(ii) nitrous oxide;

13 “(iii) perfluorocarbons;

14 “(iv) sulfur hexafluoride;

15 “(v) any other fluorinated gas, except
16 for nitrogen trifluoride, that is a green-
17 house gas, as designated by the Adminis-
18 trator under section 711; or

19 “(vi) any combination of greenhouse
20 gases described in clauses (i) through (v).

21 “(D) Any stationary source that has emit-
22 ted 25,000 or more tons of carbon dioxide
23 equivalent of nitrogen trifluoride in 2008 or any
24 subsequent year.

25 “(E) Any geologic sequestration site.

1 “(F) Any stationary source in the following
2 industrial sectors:

3 “(i) Adipic acid production.

4 “(ii) Primary aluminum production.

5 “(iii) Ammonia manufacturing.

6 “(iv) Cement production, excluding
7 grinding-only operations.

8 “(v) Hydrochlorofluorocarbon produc-
9 tion.

10 “(vi) Lime manufacturing.

11 “(vii) Nitric acid production.

12 “(viii) Petroleum refining.

13 “(ix) Phosphoric acid production.

14 “(x) Silicon carbide production.

15 “(xi) Soda ash production.

16 “(xii) Titanium dioxide production.

17 “(xiii) Coal-based liquid or gaseous
18 fuel production.

19 “(G) Any stationary source in the chemical
20 or petrochemical sector that, in 2008 or any
21 subsequent year—

22 “(i) produces acrylonitrile, carbon
23 black, ethylene, ethylene dichloride, ethyl-
24 ene oxide, or methanol; or

1 “(ii) produces a chemical or petro-
2 chemical product if producing that product
3 results in annual combustion plus process
4 emissions of 25,000 or more tons of carbon
5 dioxide equivalent.

6 “(H) Any stationary source that—

7 “(i) is in one of the following indus-
8 trial sectors: ethanol production; ferroalloy
9 production; fluorinated gas production;
10 food processing; glass production; hydrogen
11 production; iron and steel production; lead
12 production; pulp and paper manufacturing;
13 and zinc production; and

14 “(ii) has emitted 25,000 or more tons
15 of carbon dioxide equivalent in 2008 or
16 any subsequent year.

17 “(I) Any fossil fuel-fired combustion device
18 (such as a boiler) or grouping of such devices
19 that—

20 “(i) is all or part of an industrial
21 source not specified in subparagraph (D),
22 (F), (G), or (H); and

23 “(ii) has emitted 25,000 or more tons
24 of carbon dioxide equivalent in 2008 or
25 any subsequent year.

1 “(J) Any natural gas local distribution
2 company that (or any group of 2 or more affili-
3 ated natural gas local distribution companies
4 that, in the aggregate), in 2008 or any subse-
5 quent year, delivers 460,000,000 cubic feet or
6 more of natural gas, and any other gas meeting
7 the specifications for commingling with natural
8 gas for purposes of delivery, to customers that
9 are not covered entities.

10 “(14) CREDITING PERIOD.—The term ‘crediting
11 period’ means the period with respect to which an
12 offset project is eligible to earn offset credits under
13 part D, as determined under section 734(c).

14 “(15) DESIGNATED REPRESENTATIVE.—The
15 term ‘designated representative’ means, with respect
16 to a covered entity, a reporting entity (as defined in
17 section 713), an offset project developer, or any
18 other entity receiving or holding allowances or offset
19 credits under this title, an individual authorized,
20 through a certificate of representation submitted to
21 the Administrator by the owners and operators or
22 similar entity official, to represent the owners and
23 operators or similar entity official in all matters per-
24 taining to this title (including the holding, transfer,
25 or disposition of allowances or offset credits), and to

1 make all submissions to the Administrator under
2 this title.

3 “(16) DEVELOPING COUNTRY.—The term ‘de-
4 veloping country’ means a country eligible to receive
5 official development assistance according to the in-
6 come guidelines of the Development Assistance Com-
7 mittee of the Organization for Economic Coopera-
8 tion and Development.

9 “(17) DOMESTIC OFFSET CREDIT.—The term
10 ‘domestic offset credit’ means an offset credit issued
11 under part D, other than an international offset
12 credit.

13 “(18) ELECTRICITY SOURCE.—The term ‘elec-
14 tricity source’ means a stationary source that in-
15 cludes one or more utility units.

16 “(19) EMISSION.—The term ‘emission’ means
17 the release of a greenhouse gas into the ambient air.
18 Such term does not include gases that are captured
19 and geologically sequestered, except to the extent
20 that they are later released into the atmosphere, in
21 which case compliance must be demonstrated pursu-
22 ant to section 722(b)(5).

23 “(20) EMISSION ALLOWANCE.—The term ‘emis-
24 sion allowance’ means an allowance established

1 under section 721(a) or section 726(g)(2) or
2 (h)(1)(C).

3 “(21) FAIR MARKET VALUE.—The term ‘fair
4 market value’ means the average daily closing price
5 on registered exchanges or, if such a price is un-
6 available, the average price as determined by the Ad-
7 ministrator, during a specified time period, of an
8 emission allowance.

9 “(22) FEDERAL LAND.—The term ‘Federal
10 land’ means land that is owned by the United
11 States, other than land held in trust for an Indian
12 or Indian tribe.

13 “(23) FOSSIL FUEL.—The term ‘fossil fuel’
14 means natural gas, petroleum, or coal, or any form
15 of solid, liquid, or gaseous fuel derived from such
16 material, including consumer products that are de-
17 rived from such materials and are combusted.

18 “(24) FOSSIL FUEL-FIRED.—The term ‘fossil
19 fuel-fired’ means powered by combustion of fossil
20 fuel, alone or in combination with any other fuel, re-
21 gardless of the percentage of fossil fuel consumed.

22 “(25) FUGITIVE EMISSIONS.—The term ‘fugi-
23 tive emissions’ means emissions from leaks, valves,
24 joints, or other small openings in pipes, ducts, or
25 other equipment, or from vents.

1 “(26) GEOLOGIC SEQUESTRATION; GEOLOGI-
2 CALLY SEQUESTERED.—The terms ‘geologic seques-
3 tration’ and ‘geologically sequestered’ mean the se-
4 questration of greenhouse gases in subsurface geo-
5 logic formations for purposes of permanent storage.

6 “(27) GEOLOGIC SEQUESTRATION SITE.—The
7 term ‘geologic sequestration site’ means a site where
8 carbon dioxide is geologically sequestered.

9 “(28) GREENHOUSE GAS.—The term ‘green-
10 house gas’ means any gas described in section
11 711(a) or designated under section 711, except to
12 the extent that it is regulated under title VI.

13 “(29) HIGH CONSERVATION PRIORITY LAND.—
14 The term ‘high conservation priority land’ means
15 land that is not Federal land and is—

16 “(A) globally or State ranked as critically
17 imperiled or imperiled under a State Natural
18 Heritage Program; or

19 “(B) old-growth or late-successional forest,
20 as identified by the office of the State Forester
21 or relevant State agency with regulatory juris-
22 diction over forestry activities.

23 “(30) HOLD.—The term ‘hold’ means, with re-
24 spect to an allowance or offset credit, to have in the
25 appropriate account in the allowance tracking sys-

1 tem established under section 724(d), or submit to
2 the Administrator for recording in such account.

3 “(31) INDUSTRIAL SOURCE.—The term ‘indus-
4 trial source’ means any stationary source that—

5 “(A) is not an electricity source; and

6 “(B) is in—

7 “(i) the manufacturing sector (as de-
8 fined in North American Industrial Classi-
9 fication System codes 31, 32, and 33); or

10 “(ii) the natural gas processing or
11 natural gas pipeline transportation sector
12 (as defined in North American Industrial
13 Classification System codes 211112 and
14 486210).

15 “(32) INTERNATIONAL EMISSION ALLOW-
16 ANCE.—The term ‘international emission allowance’
17 means a tradable authorization to emit 1 ton of car-
18 bon dioxide equivalent of greenhouse gas that is
19 issued by a national or supranational foreign govern-
20 ment pursuant to a qualifying international program
21 designated by the Administrator pursuant to section
22 728(a).

23 “(33) INTERNATIONAL OFFSET CREDIT.—The
24 term ‘international offset credit’ means an offset

1 credit issued by the Administrator under section
2 743.

3 “(34) LEAKAGE.—Except as provided in part
4 F, the term ‘leakage’ means a significant increase in
5 greenhouse gas emissions, or significant decrease in
6 sequestration, which is caused by an offset project or
7 activities under part E and occurs outside the
8 boundaries of the offset project or the relevant pro-
9 gram or project under part E.

10 “(35) MINERAL SEQUESTRATION.—The term
11 ‘mineral sequestration’ means sequestration of car-
12 bon dioxide from the atmosphere by capturing car-
13 bon dioxide into a permanent mineral, such as the
14 aqueous precipitation of carbonate minerals that re-
15 sults in the storage of carbon dioxide in a mineral
16 form.

17 “(36) NATURAL GAS LIQUID.—The term ‘nat-
18 ural gas liquid’ means ethane, butane, isobutane,
19 natural gasoline, and propane.

20 “(37) NATURAL GAS LOCAL DISTRIBUTION
21 COMPANY.—The term ‘natural gas local distribution
22 company’ has the meaning given the term ‘local dis-
23 tribution company’ in section 2(17) of the Natural
24 Gas Policy Act of 1978 (15 U.S.C. 3301(17)).

1 “(38) OFFSET CREDIT.—The term ‘offset cred-
2 it’ means a credit issued under part D.

3 “(39) OFFSET PROJECT.—The term ‘offset
4 project’ means a project or activity that reduces or
5 avoids greenhouse gas emissions, or sequesters
6 greenhouse gases, and for which offset credits are or
7 may be issued under part D.

8 “(40) OFFSET PROJECT DEVELOPER.—The
9 term ‘offset project developer’ means the individual
10 or entity designated as the offset project developer
11 in an offset project approval petition under section
12 735(c)(1).

13 “(41) PETROLEUM.—The term ‘petroleum’ in-
14 cludes crude oil, tar sands, oil shale, and heavy oils.

15 “(42) RENEWABLE BIOMASS.—The term ‘re-
16 newable biomass’ means any of the following:

17 “(A) Plant material, including waste mate-
18 rial, harvested or collected from actively man-
19 aged agricultural land that was in cultivation,
20 cleared, or fallow and nonforested on January
21 1, 2009.

22 “(B) Plant material, including waste mate-
23 rial, harvested or collected from pastureland
24 that was nonforested on January 1, 2009.

1 “(C) Nonhazardous vegetative matter de-
2 rived from waste, including separated yard
3 waste, landscape right-of-way trimmings, con-
4 struction and demolition debris or food waste
5 (but not municipal solid waste, recyclable waste
6 paper, painted, treated or pressurized wood, or
7 wood contaminated with plastic or metals).

8 “(D) Animal waste or animal byproducts,
9 including products of animal waste digesters.

10 “(E) Algae.

11 “(F) Trees, brush, slash, residues, or any
12 other vegetative matter removed from within
13 600 feet of any building, campground, or route
14 designated for evacuation by a public official
15 with responsibility for emergency preparedness,
16 or from within 300 feet of a paved road, electric
17 transmission line, utility tower, or water supply
18 line.

19 “(G) Residues from or byproducts of
20 milled logs.

21 “(H) Any of the following removed from
22 forested land that is not Federal land and is
23 not high conservation priority land:

24 “(i) Trees, brush, slash, residues,
25 interplanted energy crops, or any other

1 vegetative matter removed from an actively
2 managed tree plantation established—

3 “(I) prior to January 1, 2009; or

4 “(II) on land that, as of January
5 1, 2009, was cultivated or fallow and
6 non-forested.

7 “(ii) Trees, logging residue, thinnings,
8 cull trees, pulpwood, and brush removed
9 from naturally-regenerated forests or other
10 non-plantation forests, including for the
11 purposes of hazardous fuel reduction or
12 preventative treatment for reducing or con-
13 taining insect or disease infestation.

14 “(iii) Logging residue, thinnings, cull
15 trees, pulpwood, brush and species that are
16 non-native and noxious, from stands that
17 were planted and managed after January
18 1, 2009, to restore or maintain native for-
19 est types.

20 “(iv) Dead or severely damaged trees
21 removed within 5 years of fire, blowdown,
22 or other natural disaster, and badly in-
23 fested trees.

24 “(I) Materials, pre-commercial thinnings,
25 or removed invasive species from National For-

1 est System land and public lands (as defined in
2 section 103 of the Federal Land Policy and
3 Management Act of 1976 (43 U.S.C. 1702)),
4 including those that are byproducts of preven-
5 tive treatments (such as trees, wood, brush,
6 thinnings, chips, and slash), that are removed
7 as part of a federally recognized timber sale, or
8 that are removed to reduce hazardous fuels, to
9 reduce or contain disease or insect infestation,
10 or to restore ecosystem health, and that are—

11 “(i) not from components of the Na-
12 tional Wilderness Preservation System,
13 Wilderness Study Areas, Inventoried
14 Roadless Areas, old growth or mature for-
15 est stands, components of the National
16 Landscape Conservation System, National
17 Monuments, National Conservation Areas,
18 Designated Primitive Areas; or Wild and
19 Scenic Rivers corridors;

20 “(ii) harvested in environmentally sus-
21 tainable quantities, as determined by the
22 appropriate Federal land manager; and

23 “(iii) harvested in accordance with
24 Federal and State law, and applicable land
25 management plans.

1 “(43) RETIRE.—The term ‘retire’, with respect
2 to an allowance or offset credit established or issued
3 under this title, means to disqualify such allowance
4 or offset credit for any subsequent use under this
5 title, regardless of whether the use is a sale, ex-
6 change, or submission of the allowance or offset
7 credit to satisfy a compliance obligation.

8 “(44) REVERSAL.—The term ‘reversal’ means
9 an intentional or unintentional loss of sequestered
10 greenhouse gases to the atmosphere.

11 “(45) SEQUESTERED AND SEQUESTRATION.—
12 The terms ‘sequestered’ and ‘sequestration’ mean
13 the separation, isolation, or removal of greenhouse
14 gases from the atmosphere, as determined by the
15 Administrator. The terms include biological, geo-
16 logic, and mineral sequestration, but do not include
17 ocean fertilization techniques.

18 “(46) STATIONARY SOURCE.—The term ‘sta-
19 tionary source’ means any integrated operation com-
20 prising any plant, building, structure, or stationary
21 equipment, including support buildings and equip-
22 ment, that is located within one or more contiguous
23 or adjacent properties, is under common control of
24 the same person or persons, and emits or may emit
25 a greenhouse gas.

1 “(47) STRATEGIC RESERVE ALLOWANCE.—The
2 term ‘strategic reserve allowance’ means an emission
3 allowance reserved for, transferred to, or deposited
4 in the strategic reserve under section 726.

5 “(48) TON.—The term ‘ton’ means metric ton.

6 “(49) UNCAPPED EMISSIONS.—The term ‘un-
7 capped emissions’ means emissions of greenhouse
8 gases emitted after December 31, 2011, that are not
9 capped emissions.

10 “(50) UNITED STATES GREENHOUSE GAS EMIS-
11 SIONS.—The term ‘United States greenhouse gas
12 emissions’ means the total quantity of annual green-
13 house gas emissions from the United States, as cal-
14 culated by the Administrator and reported to the
15 United Nations Framework Convention on Climate
16 Change Secretariat.

17 “(51) UTILITY UNIT.—The term ‘utility unit’
18 means a combustion device that, on January 1,
19 2009, or any date thereafter, is fossil fuel-fired and
20 serves a generator that produces electricity for sale,
21 unless such combustion device, during the 12-month
22 period starting the later of January 1, 2009, or the
23 commencement of commercial operation and each
24 calendar year starting after such later date—

1 “(A) is part of an integrated cycle system
2 that cogenerates steam and electricity during
3 normal operation and that supplies one-third or
4 less of its potential electric output capacity and
5 25 MW or less of electrical output for sale; or

6 “(B) combusts materials of which more
7 than 95 percent is municipal solid waste on a
8 heat input basis.

9 “(52) VINTAGE YEAR.—The term ‘vintage year’
10 means the calendar year for which an emission al-
11 lowance is established under section 721(a) or which
12 is assigned to an emission allowance under section
13 726(g)(3)(A), except that the vintage year for a
14 strategic reserve allowance shall be the year in which
15 such allowance is purchased at auction.”.

16 **Subtitle B—Disposition of** 17 **Allowances**

18 **SEC. 321. DISPOSITION OF ALLOWANCES FOR GLOBAL** 19 **WARMING POLLUTION REDUCTION PRO-** 20 **GRAM.**

21 Title VII of the Clean Air Act, as added by section
22 311 of this Act, is amended by adding at the end the fol-
23 lowing part:

1 **“PART H—DISPOSITION OF ALLOWANCES**

2 **“SEC. 781. ALLOCATION OF ALLOWANCES FOR SUPPLE-**
3 **MENTAL REDUCTIONS.**

4 “(a) IN GENERAL.—The Administrator shall allocate
5 for each vintage year the following percentage of the emis-
6 sion allowances established under section 721(a), for dis-
7 tribution in accordance with part E:

8 “(1) For vintage years 2012 through 2025, 5
9 percent.

10 “(2) For vintage years 2026 through 2030, 3
11 percent.

12 “(3) For vintage years 2031 through 2050, 2
13 percent.

14 “(b) ADJUSTMENT.—The Administrator shall modify
15 the percentages set forth in subsection (a) as necessary
16 to ensure the achievement of the annual supplemental
17 emission reduction objective for 2020, and the cumulative
18 reduction objective through 2025, set forth in section
19 753(b)(1).

20 “(c) CARRYOVER.—If the Administrator has not dis-
21 tributed all of the allowances allocated pursuant to this
22 section for a given vintage year by the end of that year,
23 all such undistributed emission allowances shall, in accord-
24 ance with section 782(s), be exchanged for allowances
25 from the following vintage year and treated as part of the

1 allocation for supplemental reductions entities under this
2 section for that later vintage year.

3 **“SEC. 782. ALLOCATION OF EMISSION ALLOWANCES.**

4 “(a) ELECTRICITY CONSUMERS.—(1) The Adminis-
5 trator shall allocate emission allowances for the benefit of
6 electricity consumers, to be distributed in accordance with
7 section 783(b), (c), and (d) in the following amounts:

8 “(A) For vintage years 2012 and 2013: 43.75
9 percent of the emission allowances established for
10 each year under section 721(a).

11 “(B) For vintage years 2014 and 2015: 38.89
12 percent of the emission allowances established for
13 each year under section 721(a).

14 “(C) For vintage years 2016 through 2025:
15 35.00 percent of the emission allowances established
16 for each year under section 721(a).

17 “(D) For vintage year 2026: 28 percent of the
18 emission allowances established for that year under
19 section 721(a).

20 “(E) For vintage year 2027: 21 percent of the
21 emission allowances established for that year under
22 section 721(a).

23 “(F) For vintage year 2028: 14 percent of the
24 emission allowances established for that year under
25 section 721(a).

1 “(G) For vintage year 2029: 7 percent of the
2 emission allowances established for that year under
3 section 721(a).

4 “(2) The Administrator shall allocate emission allow-
5 ances for energy efficiency, renewable electricity, and low
6 income ratepayer assistance programs administered by
7 small electricity local distribution companies, to be distrib-
8 uted in accordance with section 783(e) in the following
9 amounts:

10 “(A) For vintage years 2012 through 2025: 0.5
11 percent of the emission allowances established each
12 year under section 721(a).

13 “(B) For vintage year 2026: 0.4 percent of the
14 emission allowances established for that year under
15 section 721(a).

16 “(C) For vintage year 2027: 0.3 percent of the
17 emission allowances established for that year under
18 section 721(a).

19 “(D) For vintage year 2028: 0.2 percent of the
20 emission allowances established for that year under
21 section 721(a).

22 “(E) For vintage year 2029: 0.1 percent of the
23 emission allowances established for that year under
24 section 721(a).

1 “(b) NATURAL GAS CONSUMERS.—The Adminis-
2 trator shall allocate emission allowances for the benefit of
3 natural gas consumers to be distributed in accordance
4 with section 784 in the following amounts:

5 “(1) For vintage years 2016 through 2025, 9
6 percent of the emission allowances established for
7 each year under section 721(a).

8 “(2) For vintage year 2026, 7.2 percent of the
9 emission allowances established for that year under
10 section 721(a).

11 “(3) For vintage year 2027, 5.4 percent of the
12 emission allowances established for that year under
13 section 721(a).

14 “(4) For vintage year 2028, 3.6 percent of the
15 emission allowances established for that year under
16 section 721(a).

17 “(5) For vintage year 2029, 1.8 percent of the
18 emission allowances established for that year under
19 section 721(a).

20 “(c) HOME HEATING OIL AND PROPANE CON-
21 SUMERS.—The Administrator shall allocate emission al-
22 lowances for the benefit of home heating oil and propane
23 consumers to be distributed in accordance with section
24 785 in the following amounts:

1 “(1) For vintage years 2012 and 2013, 1.875
2 percent of the emission allowances established for
3 each year under section 721(a).

4 “(2) For vintage years 2014 and 2015, 1.67
5 percent of the emission allowances established for
6 each year under section 721(a).

7 “(3) For vintage years 2016 through 2025, 1.5
8 percent of the emission allowances established for
9 each year under section 721(a).

10 “(4) For vintage year 2026, 1.2 percent of the
11 emission allowances established for that year under
12 section 721(a).

13 “(5) For vintage year 2027, 0.9 percent of the
14 emission allowances established for that year under
15 section 721(a).

16 “(6) For vintage year 2028, 0.6 percent of the
17 emission allowances established for that year under
18 section 721(a).

19 “(7) For vintage year 2029, 0.3 percent of the
20 emission allowances established for that year under
21 section 721(a).

22 “(d) LOW INCOME CONSUMERS.—For each vintage
23 year starting in 2012, the Administrator shall auction,
24 pursuant to section 791, 15 percent of the emission allow-
25 ances established for each year under section 721(a), with

1 the proceeds used for the benefit of low income consumers
2 to fund the program set forth in subtitle C of title IV of
3 American Clean Energy and Security Act of 2009 and the
4 amendments made thereby.

5 “(e) TRADE-VULNERABLE INDUSTRIES.—

6 “(1) IN GENERAL.—The Administrator shall al-
7 locate emission allowances to energy-intensive, trade-
8 exposed entities, to be distributed in accordance with
9 section 765, in the following amounts:

10 “(A) For vintage years 2012 and 2013, up
11 to 2.0 percent of the emission allowances estab-
12 lished for each year under section 721(a).

13 “(B) For vintage year 2014, up to 15 per-
14 cent of the emission allowances established for
15 that year under section 721(a).

16 “(C) For vintage year 2015, up to the
17 product of—

18 “(i) the amount specified in para-
19 graph (2); multiplied by

20 “(ii) the quantity of emission allow-
21 ances established for 2015 under section
22 721(a) divided by the quantity of emission
23 allowances established for 2014 under sec-
24 tion 721(a).

1 “(D) For vintage year 2016, up to the
2 product of—

3 “(i) the amount specified in para-
4 graph (3); multiplied by

5 “(ii) the quantity of emission allow-
6 ances established for 2015 under section
7 721(a) divided by the quantity of emission
8 allowances established for 2014 under sec-
9 tion 721(a).

10 “(E) For vintage years 2017 through
11 2025, up to the product of—

12 “(i) the amount specified in para-
13 graph (4); multiplied by

14 “(ii) the quantity of emission allow-
15 ances established for that year under sec-
16 tion 721(a) divided by the quantity of
17 emission allowances established for 2016
18 under section 721(a).

19 “(F) For vintage years 2026 through
20 2050, up to the product of the amount specified
21 in paragraph (4)—

22 “(i) multiplied by the quantity of
23 emission allowances established for the ap-
24 plicable year during 2026 through 2050
25 under section 721(a) divided by the quan-

1 tity of emission allowances established for
2 2016 under section 721(a); and

3 “(ii) multiplied by a factor that shall
4 equal 90 percent for 2026 and decline 10
5 percent for each year thereafter until
6 reaching zero, except that, if the President
7 modifies a percentage for a year under
8 subparagraph (A) of section 767(c)(3), the
9 highest percentage the President applies
10 for any sector under that subparagraph for
11 that year (not exceeding 100 percent) shall
12 be used for that year instead of the factor
13 otherwise specified in this clause.

14 “(2) CARRYOVER.—After the Administrator dis-
15 tributes emission allowances pursuant to section 765
16 for any given vintage year, any emission allowances
17 allocated to energy-intensive, trade-exposed entities
18 pursuant to this subsection that have not been so
19 distributed shall, in accordance with subsection (s),
20 be exchanged for allowances from the following vin-
21 tage year and treated as part of the allocation to
22 such entities for that later vintage year.

23 “(f) DEPLOYMENT OF CARBON CAPTURE AND SE-
24 QUESTRATION TECHNOLOGY.—

1 “(1) ANNUAL ALLOCATION.—The Adminis-
2 trator shall allocate emission allowances for the de-
3 ployment of carbon capture and sequestration tech-
4 nology to be distributed in accordance with section
5 786 in the following amounts:

6 “(A) For vintage years 2014 through
7 2017, 1.75 percent of the emission allowances
8 established for each year under section 721(a).

9 “(B) For vintage years 2018 and 2019,
10 4.75 percent of the emission allowances estab-
11 lished for each year under section 721(a).

12 “(C) For vintage years 2020 through
13 2050, 5 percent of the emission allowances es-
14 tablished for each year under section 721(a).

15 “(2) CARRYOVER.—If the Administrator has
16 not distributed all of the allowances allocated pursu-
17 ant to this subsection for a given vintage year by the
18 end of that year, all such undistributed emission al-
19 lowances shall, in accordance with subsection (s), be
20 exchanged for allowances from the following vintage
21 year and treated as part of the allocation for the de-
22 ployment of carbon capture and sequestration tech-
23 nology under this subsection for that later vintage
24 year.

1 “(g) INVESTMENT IN ENERGY EFFICIENCY AND RE-
2 NEWABLE ENERGY.—The Administrator shall allocate
3 emission allowances to invest in energy efficiency and re-
4 newable energy as follows:

5 “(1) To be distributed in accordance with sec-
6 tion 132 of the American Clean Energy and Security
7 Act of 2009 in the following amounts:

8 “(A) For vintage years 2012 through
9 2015, 9.5 percent of the emission allowances es-
10 tablished for each year under section 721(a).

11 “(B) For vintage years 2016 through
12 2017, 6.5 percent of the emission allowances es-
13 tablished for each year under section 721(a).

14 “(C) For vintage years 2018 through
15 2021, 5.5 percent of the emission allowances es-
16 tablished for each year under section 721(a).

17 “(D) For vintage years 2022 through
18 2025, 1.0 percent of the emission allowances es-
19 tablished for each year under section 721(a).

20 “(E) For vintage years 2026 through
21 2050, 4.5 percent of the emission allowances es-
22 tablished for each year under section 721(a).

23 “(F) At the same time allowances are dis-
24 tributed under subparagraph (D) for each of
25 the vintage years 2022 through 2025, 3.55 per-

1 cent of emission allowances established under
2 section 721(a) for the vintage year four years
3 after that vintage year shall also be distributed
4 (which shall be in addition to the emission al-
5 lowances distributed under subparagraph (E)).

6 “(2) To be distributed in accordance with sec-
7 tion 304 of the Energy Conservation and Production
8 Act, as amended by section 201 of the American
9 Clean Energy and Security Act of 2009, for each
10 vintage year from 2012 through 2050, 0.5 percent
11 of emission allowances established for that year
12 under section 721(a).

13 “(h) ENERGY RESEARCH AND DEVELOPMENT.—

14 “(1) ENERGY INNOVATION HUBS.—For vintage
15 years 2012 through 2050, the Administrator shall
16 allocate 0.45 percent of the emission allowances es-
17 tablished under section 721(a) to be distributed to
18 Energy Innovation Hubs in accordance with section
19 171 of the American Clean Energy and Security Act
20 of 2009.

21 “(2) ADVANCED ENERGY RESEARCH.—For vin-
22 tage years 2012 through 2050, the Administrator
23 shall allocate 1.05 percent of the emission allowances
24 established under section 721(a) for the Advanced
25 Research Project Agency-Energy to be distributed in

1 accordance with section 172 of the American Clean
2 Energy and Security Act of 2009.

3 “(i) INVESTMENT IN CLEAN VEHICLE TECH-
4 NOLOGY.—The Administrator shall allocate emission al-
5 lowances to invest in the development and deployment of
6 clean vehicles, to be distributed in accordance with section
7 124 of the American Clean Energy and Security Act of
8 2009 in the following amounts:

9 “(1) For vintage years 2012 through 2017, 3
10 percent of the emission allowances established for
11 each year under section 721(a).

12 “(2) For vintage years 2018 through 2025, 1
13 percent of the emission allowances established for
14 each year under section 721(a).

15 “(j) DOMESTIC FUEL PRODUCTION.—For vintage
16 years 2014 through 2026, the Administrator shall allocate
17 and distribute according to section 787—

18 “(1) 2 percent of the emission allowances estab-
19 lished for each year under section 721(a) to domes-
20 tic petroleum refineries that are covered entities pur-
21 suant to section 700(13)(F)(viii), including small
22 business refiners; and

23 “(2) an additional 0.25 percent of the emissions
24 allowances established for each year under section

1 721(a) to small business refiners that are covered
2 entities pursuant to section 700(13)(F)(viii).

3 “(k) INVESTMENT IN WORKERS.—The Administrator
4 shall auction pursuant to section 791 emission allowances
5 for the benefit of workers pursuant to part 2 of subtitle
6 B of the American Clean Energy and Security Act of 2009
7 in the following amounts, and shall deposit into the Cli-
8 mate Change Worker Adjustment Assistance Fund estab-
9 lished pursuant to section 793, and report to the Secretary
10 of Labor on, the proceeds from the sale of these allow-
11 ances:

12 “(1) For vintage years 2012 through 2021, 0.5
13 percent of the emission allowances established for
14 each year under section 721(a).

15 “(2) For vintage years 2022 through 2050, 1.0
16 percent of the emission allowances established for
17 each year under section 721(a).

18 All amounts deposited into the fund shall be available to
19 the Secretary of Labor until expended to carry out part
20 2 of subtitle B of title IV of the American Clean Energy
21 and Security Act of 2009. Of the amounts deposited, not
22 more than \$10,000,000 shall be available to the Secretary
23 of Labor for Federal administration costs of such part 2
24 each fiscal year.

1 “(l) DOMESTIC ADAPTATION.—The Administrator
2 shall allocate emission allowances for domestic adaptation
3 as follows:

4 “(1) To be distributed in accordance with sec-
5 tion 453 of the American Clean Energy and Security
6 Act of 2009 in the following amounts:

7 “(A) For vintage years 2012 through
8 2021, 0.9 percent of the emission allowances es-
9 tablished for each year under section 721(a).

10 “(B) For vintage years 2022 through
11 2026, 1.9 percent of the emission allowances es-
12 tablished for each year under section 721(a).

13 “(C) For vintage years 2027 through
14 2050, 3.9 percent of the emission allowances es-
15 tablished for each year under section 721(a).

16 “(2) For vintage year 2012 and thereafter, the
17 Administrator shall auction, pursuant to section
18 791, 0.1 percent of the emission allowances estab-
19 lished for each year under section 721(a), and shall
20 deposit the proceeds in the Climate Change Health
21 Protection and Promotion Fund established by sec-
22 tion 467 of the American Clean Energy and Security
23 Act of 2009.

24 “(m) WILDLIFE AND NATURAL RESOURCE ADAPTA-
25 TION.—The Administrator shall allocate emission allow-

1 ances for wildlife and natural resource adaptation as fol-
2 lows:

3 “(1) To be distributed to State agencies in ac-
4 cordance with section 480(a) of the American Clean
5 Energy and Security Act of 2009 in the following
6 amounts:

7 “(A) For vintage years 2012 through
8 2021, 0.385 percent of the emission allowances
9 established for each year under section 721(a).

10 “(B) For vintage years 2022 through
11 2026, 0.77 percent of the emission allowances
12 established for each year under section 721(a).

13 “(C) For vintage years 2027 through
14 2050, 1.54 percent of the emission allowances
15 established for each year under section 721(a).

16 “(2) To be auctioned pursuant to section 791,
17 with the proceeds to be deposited in the Natural Re-
18 sources Climate Change Adaptation Fund estab-
19 lished pursuant to section 480(b), in the following
20 amounts:

21 “(A) For vintage years 2012 through
22 2021, 0.615 percent of the emission allowances
23 established for each year under section 721(a).

1 “(B) For vintage years 2022 through
2 2026, 1.23 percent of the emission allowances
3 established for each year under section 721(a).

4 “(C) For vintage years 2027 through
5 2050, 2.46 percent of the emission allowances
6 established for each year under section 721(a).

7 “(n) INTERNATIONAL ADAPTATION.—The Adminis-
8 trator shall allocate emission allowances for international
9 adaptation to be distributed in accordance with part 2 of
10 subtitle E of title IV of the American Clean Energy and
11 Security Act of 2009 in the following amounts:

12 “(1) For vintage years 2012 through 2021, 1.0
13 percent of the emission allowances established for
14 each year under section 721(a).

15 “(2) For vintage years 2022 through 2026, 2.0
16 percent of the emission allowances established for
17 each year under section 721(a).

18 “(3) For vintage years 2027 through 2050, 4.0
19 percent of the emission allowances established for
20 each year under section 721(a).

21 “(o) INTERNATIONAL CLEAN TECHNOLOGY DEPLOY-
22 MENT.—The Administrator shall allocate emission allow-
23 ances for international clean technology deployment for
24 distribution in accordance with subtitle D of title IV of

1 the American Clean Energy and Security Act of 2009 in
2 the following amounts:

3 “(1) For vintage years 2012 through 2021, 1.0
4 percent of the emission allowances established for
5 each year under section 721(a).

6 “(2) For vintage years 2022 through 2026, 2.0
7 percent of the emission allowances established for
8 each year under section 721(a).

9 “(3) For vintage years 2027 through 2050, 4.0
10 percent of the emission allowances established for
11 each year under section 721(a).

12 “(p) RELEASE OF FUTURE ALLOWANCES.—The Ad-
13 ministrators shall make future year allowances available by
14 auctioning allowances, pursuant to section 791, in the fol-
15 lowing amounts:

16 “(1) In each of calendar years 2014 through
17 2019, a string of 0.70 billion allowances with vintage
18 years 12 to 17 years after the year of the auction,
19 with an equal number of allowances from each vin-
20 tage year in the string.

21 “(2) In each of calendar years 2020 through
22 2025, a string of 0.50 billion allowances with vintage
23 years 12 to 17 years after the year of the auction,
24 with an equal number of allowances from each vin-
25 tage year in the string.

1 “(3) In each of calendar years 2026 through
2 2030, a string of 0.3 billion allowances with vintage
3 years 12 to 17 years after the year of the auction,
4 with an equal number of allowances from each vin-
5 tage year in the string.

6 “(q) DEFICIT REDUCTION.—

7 “(1) For each of vintage years 2012 through
8 2025, any allowances not allocated for distribution
9 or auction pursuant to section 781 or subsections
10 (a) through (o) of this section, or disbursed pursu-
11 ant to section 790, shall be auctioned by the Admin-
12 istrator pursuant to section 791 and the proceeds
13 shall be deposited into the Treasury.

14 “(2) Unless otherwise specified, any allowances
15 allocated pursuant to subsections (a) through (o)
16 and not distributed by March 31 of the calendar
17 year following the allowance’s vintage year, shall be
18 auctioned by the Administrator and the proceeds
19 shall be deposited into the Treasury.

20 “(3) For auctions conducted through calendar
21 year 2020 pursuant to subsection (p), the auction
22 proceeds shall be deposited into the Treasury.

23 “(r) CLIMATE CHANGE CONSUMER REFUND.—

24 “(1) For each of vintage years 2026 through
25 2050, the Administrator shall auction the following

1 allowances established under section 721(a) and de-
2 posit the proceeds into the Climate Change Con-
3 sumer Refund Account:

4 “(A) Any allowances not allocated for dis-
5 tribution or auction pursuant to section 781 or
6 subsections (a) through (p) of this section, or
7 disbursed pursuant to section 790.

8 “(B) Unless otherwise specified, any allow-
9 ances allocated pursuant to subsections (a)
10 through (o) and not distributed by March 31 of
11 the calendar year following the allowance’s vin-
12 tage year.

13 “(2) For auctions conducted pursuant to sub-
14 section (p) in calendar years 2021 and thereafter,
15 the Administrator shall place the proceeds from the
16 sales of the these allowances into the Climate
17 Change Consumer Refund Account.

18 “(3) Funds deposited into the Climate Change
19 Consumer Refund Account shall be used as specified
20 in section 789 and shall be available for expenditure,
21 without further appropriation or fiscal year limita-
22 tion.

23 “(s) TREATMENT OF CARRYOVER ALLOWANCES.—

24 “(1) IN GENERAL.—If there are undistributed
25 allowances from a vintage year for supplemental re-

1 ductions pursuant to section 781(c), energy-inten-
2 sive, trade-exposed industries pursuant to subsection
3 (e)(2) of this section, or deployment of carbon cap-
4 ture and sequestration technology pursuant to sub-
5 section (f)(2) of this section, the Administrator
6 shall—

7 “(A) use the undistributed allowances to
8 increase for the same vintage year—

9 “(i) the allocation of allowances to be
10 auctioned for deficit reduction pursuant to
11 subsection (q) or for consumer refunds
12 pursuant to subsection (r);

13 “(ii) the allocation of allowances to be
14 auctioned for low income consumers pursu-
15 ant to subsection (d); or

16 “(iii) a combination of both; and

17 “(B) except as provided in paragraph
18 (2)—

19 “(i) decrease by the same amount for
20 the following vintage year the allocation for
21 the purpose for which the allocation was
22 increased pursuant to subparagraph (A);
23 and

24 “(ii) increase by the same amount for
25 the following vintage year the allocation for

1 the purpose for which the undistributed al-
2 lowances were originally allocated.

3 “(2) EXCESS UNDISTRIBUTED ALLOWANCES.—

4 (A) For each vintage year for which this subsection
5 applies, the Administrator shall determine wheth-
6 er—

7 “(i) the total quantity of undistributed al-
8 lowances for that vintage year that were allo-
9 cated pursuant to section 781(e), and sub-
10 sections (e)(2) and (f)(2) of this section, ex-
11 ceeds

12 “(ii) the total quantity of allowances allo-
13 cated pursuant to subsection (d), (q) and (r)
14 for the following vintage year, decreased by the
15 quantity of allowances for that following vintage
16 year set aside for the reserve established by sec-
17 tion 791(f).

18 “(B) If the Administrator determines under
19 subparagraph (A) that the quantity described in
20 subparagraph (A)(i) exceeds the quantity described
21 in subparagraph (A)(ii), paragraph (1)(B)(ii) of this
22 subsection shall not apply. Instead, for each purpose
23 described in section 781(e), or subsections (e)(2) or
24 (f)(2) of this section for which undistributed allow-
25 ances for a given vintage year were allocated, the

1 Administrator shall increase the allocation for the
2 following vintage year by the amount that is the
3 product of—

4 “(i) the number of undistributed allow-
5 ances for that purpose, times

6 “(ii) the quantity described in subpara-
7 graph (A)(ii) divided by the quantity described
8 in subparagraph (A)(i).

9 **“SEC. 783. ELECTRICITY CONSUMERS.**

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

11 “(1) COAL-FUELED UNIT.—The term ‘coal-
12 fueled unit’ means a utility unit that derives at least
13 85 percent of its heat input from coal, petroleum
14 coke, or any combination of these 2 fuels.

15 “(2) ELECTRICITY LOCAL DISTRIBUTION COM-
16 PANY.—The term ‘electricity local distribution com-
17 pany’ means an electric utility—

18 “(A) that has a legal, regulatory, or con-
19 tractual obligation to deliver electricity directly
20 to retail consumers in the United States, re-
21 gardless of whether that entity or another enti-
22 ty sells the electricity as a commodity to those
23 retail consumers; and

1 “(B) the retail rates of which, except in
2 the case of an electric cooperative, are regulated
3 or set by—

4 “(i) a State regulatory authority;

5 “(ii) a State or political subdivision
6 thereof (or an agency or instrumentality
7 of, or corporation wholly owned by, either
8 of the foregoing); or

9 “(iii) an Indian tribe pursuant to trib-
10 al law.

11 “(3) ELECTRICITY SAVINGS; RENEWABLE EN-
12 ERGY RESOURCE.—The terms ‘electricity savings’
13 and ‘renewable energy resource’ shall have the
14 meaning given those terms in section 610 of the
15 Public Utility Regulatory Policies Act of 1978 (as
16 added by section 101 of the American Clean Energy
17 and Security Act of 2009).

18 “(4) INDEPENDENT POWER PRODUCTION FA-
19 CILITY.—The term ‘independent power production
20 facility’ means a facility—

21 “(A) that is used for the generation of
22 electric energy, at least 80 percent of which is
23 sold at wholesale; and

1 “(B) the sales of the output of which are
2 not subject to retail rate regulation or setting
3 of retail rates by—

4 “(i) a State regulatory authority;

5 “(ii) a State or political subdivision
6 thereof (or an agency or instrumentality
7 of, or corporation wholly owned by, either
8 of the foregoing);

9 “(iii) an electric cooperative; or

10 “(iv) an Indian tribe pursuant to trib-
11 al law.

12 “(5) LONG-TERM CONTRACT GENERATOR.—The
13 term ‘long-term contract generator’ means a quali-
14 fying small power production facility, a qualifying
15 cogeneration facility), an independent power pro-
16 duction facility, or a facility for the production of
17 electric energy for sale to others that is owned and
18 operated by an electric cooperative that is—

19 “(A) a covered entity; and

20 “(B) as of the date of enactment of this
21 title—

22 “(i) a facility with 1 or more sales or
23 tolling agreements executed before March
24 1, 2007, that govern the facility’s elec-
25 tricity sales and provide for sales at a price

1 (whether a fixed price or a price formula)
2 for electricity that does not allow for recov-
3 ery of the costs of compliance with the lim-
4 itation on greenhouse gas emissions under
5 this title, provided that such agreements
6 are not between entities that are affiliates
7 of one another; or

8 “(ii) a facility consisting of 1 or more
9 cogeneration units that makes useful ther-
10 mal energy available to an industrial or
11 commercial process with 1 or more sales
12 agreements executed before March 1,
13 2007, that govern the facility’s useful ther-
14 mal energy sales and provide for sales at
15 a price (whether a fixed price or price for-
16 mula) for useful thermal energy that does
17 not allow for recovery of the costs of com-
18 pliance with the limitation on greenhouse
19 gas emissions under this title, provided
20 that such agreements are not between enti-
21 ties that are affiliates of one another.

22 “(6) MERCHANT COAL UNIT.—The term ‘mer-
23 chant coal unit’ means a coal-fueled unit that—

24 “(A) is or is part of a covered entity;

1 “(B) is not owned by a Federal, State, or
2 regional agency or power authority; and

3 “(C) generates electricity solely for sale to
4 others, provided that all or a portion of such
5 sales are made by a separate legal entity that—

6 “(i) has a full or partial ownership or
7 leasehold interest in the unit, as certified
8 in accordance with such requirements as
9 the Administrator shall prescribe; and

10 “(ii) is not subject to retail rate regu-
11 lation or setting of retail rates by—

12 “(I) a State regulatory authority;

13 “(II) a State or political subdivi-
14 sion thereof (or an agency or instru-
15 mentality of, or corporation wholly
16 owned by, either of the foregoing);

17 “(III) an electric cooperative; or

18 “(IV) an Indian tribe pursuant
19 to tribal law.

20 “(7) MERCHANT COAL UNIT SALES.—The term
21 ‘merchant coal unit sales’ means sales to others of
22 electricity generated by a merchant coal unit that
23 are made by the owner or leaseholder described in
24 paragraph (6)(C).

1 “(8) NEW COAL-FUELED UNIT.—The term ‘new
2 coal-fueled unit’ means a coal-fueled unit that com-
3 menced operation on or after January 1, 2009 and
4 before September 30, 2012.

5 “(9) NEW MERCHANT COAL UNIT.—The term
6 ‘new merchant coal unit’ means a merchant coal
7 unit—

8 “(A) that commenced operation on or after
9 January 1, 2009 and before September 30,
10 2012; and

11 “(B) the actual, on-site construction of
12 which commenced prior to January 1, 2009.

13 “(10) QUALIFYING SMALL POWER PRODUCTION
14 FACILITY; QUALIFYING COGENERATION FACILITY.—
15 The terms ‘qualifying small power production facil-
16 ity’ and ‘qualifying cogeneration facility’ have the
17 meanings given those terms in section 3(17)(C) and
18 3(18)(B) of the Federal Power Act (16 U.S.C.
19 796(17)(C) and 796(18)(B)).

20 “(11) SMALL LDC.—The term ‘small LDC’
21 means, for any given year, an electricity local dis-
22 tribution company that delivered less than 4,000,000
23 megawatt hours of electric energy directly to retail
24 consumers in the preceding year.

1 “(12) STATE REGULATORY AUTHORITY.—The
2 term ‘State regulatory authority’ has the meaning
3 given that term in section 3(17) of the Public Utility
4 Regulatory Policies Act of 1978 (16 U.S.C.
5 2602(17)).

6 “(13) USEFUL THERMAL ENERGY.—The term
7 ‘useful thermal energy’ has the meaning given that
8 term in section 371(7) of the Energy Policy and
9 Conservation Act (42 U.S.C. 6341(7)).

10 “(b) ELECTRICITY LOCAL DISTRIBUTION COMPA-
11 NIES.—

12 “(1) DISTRIBUTION OF ALLOWANCES.—Not
13 later than September 30 of 2011 and each calendar
14 year thereafter through 2028, the Administrator
15 shall distribute to electricity local distribution com-
16 panies for the benefit of retail ratepayers the quan-
17 tity of emission allowances allocated for the fol-
18 lowing vintage year pursuant to section 782(a)(1).
19 Notwithstanding the preceding sentence, the Admin-
20 istrator shall withhold from distribution under this
21 subsection a quantity of emission allowances equal to
22 the lesser of 14.3 percent of the quantity of emission
23 allowances allocated under section 782(a)(1) for the
24 relevant vintage year, or 105 percent of the emission
25 allowances for the relevant vintage year that the Ad-

1 administrator anticipates will be distributed to mer-
2 chant coal units and to long-term contract genera-
3 tors, respectively, under subsections (c) and (d). If
4 not required by subsections (c) and (d) to distribute
5 all of these reserved allowances, the Administrator
6 shall distribute any remaining emission allowances
7 to electricity local distribution companies in accord-
8 ance with this subsection.

9 “(2) DISTRIBUTION BASED ON EMISSIONS.—

10 “(A) IN GENERAL.—For each vintage year,
11 50 percent of the emission allowances available
12 for distribution under paragraph (1), after re-
13 serving allowances for distribution under sub-
14 sections (c) and (d), shall be distributed by the
15 Administrator among individual electricity local
16 distribution companies ratably based on the an-
17 nual average carbon dioxide emissions attrib-
18 utable to generation of electricity delivered at
19 retail by each such company during the base
20 period determined under subparagraph (B).

21 “(B) BASE PERIOD.—

22 “(i) VINTAGE YEARS 2012 AND 2013.—
23 For vintage years 2012 and 2013, an elec-
24 tricity local distribution company’s base
25 period shall be—

1 “(I) calendar years 2006 through
2 2008; or

3 “(II) any 3 consecutive calendar
4 years between 1999 and 2008, inclu-
5 sive, that such company selects, pro-
6 vided that the company timely informs
7 the Administrator of such selection.

8 “(ii) VINTAGE YEARS 2014 AND
9 THEREAFTER.—For vintage years 2014
10 and thereafter, the base period shall be—

11 “(I) the base period selected
12 under clause (i); or

13 “(II) calendar year 2012, in the
14 case of an electricity local distribution
15 company that owns, co-owns, or pur-
16 chases through a power purchase
17 agreement (whether directly or
18 through a cooperative arrangement) a
19 substantial portion of the electricity
20 generated by a new coal-fueled unit,
21 provided that such company timely in-
22 forms the Administrator of its election
23 to use 2012 as its base period.

24 “(C) DETERMINATION OF EMISSIONS.—

1 “(i) DETERMINATION FOR 1999-
2 2008.—As part of the regulations promul-
3 gated pursuant to subsection (f), the Ad-
4 ministrators, after consultation with the
5 Energy Information Administration, shall
6 determine the average amount of carbon
7 dioxide emissions attributable to genera-
8 tion of electricity delivered at retail by
9 each electricity local distribution company
10 for each of the years 1999 through 2008,
11 taking into account entities’ electricity gen-
12 eration, electricity purchases, and elec-
13 tricity sales. In the case of any electricity
14 local distribution company that owns, co-
15 owns, or purchases through a power pur-
16 chase agreement (whether directly or
17 through a cooperative arrangement) a sub-
18 stantial portion of the electricity generated
19 by, a coal-fueled unit that commenced op-
20 eration after January 1, 2006 and before
21 December 31, 2008, the Administrator
22 shall adjust the emissions attributable to
23 such company’s retail deliveries in calendar
24 years 2006 through 2008 to reflect the
25 emissions that would have occurred if the

1 relevant unit were in operation during the
2 entirety of such 3-year period.

3 “(ii) ADJUSTMENTS FOR NEW COAL-
4 FUELED UNITS.—

5 “(I) VINTAGE YEARS 2012 AND
6 2013.—For purposes of emission al-
7 lowance distributions for vintage years
8 2012 and 2013, in the case of any
9 electricity local distribution company
10 that owns, co-owns, or purchases
11 through a power purchase agreement
12 (whether directly or through a cooper-
13 ative arrangement) a substantial por-
14 tion of the electricity generated by, a
15 new coal-fueled unit, the Adminis-
16 trator shall adjust the emissions at-
17 tributable to such company’s retail de-
18 liveries in the applicable base period
19 to reflect the emissions that would
20 have occurred if the new coal-fueled
21 unit were in operation during such pe-
22 riod.

23 “(II) VINTAGE YEAR 2014 AND
24 THEREAFTER.—Not later than nec-
25 essary for use in making emission al-

1 lowance distributions under this sub-
2 section for vintage year 2014, the Ad-
3 ministrator shall, for any electricity
4 local distribution company that owns,
5 co-owns, or purchases through a
6 power purchase agreement (whether
7 directly or through a cooperative ar-
8 rangement) a substantial portion of
9 the electricity generated by a new
10 coal-fueled unit and has selected cal-
11 endar year 2012 as its base period
12 pursuant to subparagraph (B)(ii)(II),
13 determine the amount of carbon diox-
14 ide emissions attributable to genera-
15 tion of electricity delivered at retail by
16 such company in calendar year 2012.
17 If the relevant new coal-fueled unit
18 was not yet operational by January 1,
19 2012, the Administrator shall adjust
20 such determination to reflect the
21 emissions that would have occurred if
22 such unit were in operation for all of
23 calendar year 2012.

24 “(iii) REQUIREMENTS.—Determina-
25 tions under this paragraph shall be as pre-

1 cise as practicable, taking into account the
2 nature of data currently available and the
3 nature of markets and regulation in effect
4 in various regions of the country. The fol-
5 lowing requirements shall apply to such de-
6 terminations:

7 “(I) The Administrator shall de-
8 termine the amount of fossil fuel-
9 based electricity delivered at retail by
10 each electricity local distribution com-
11 pany, and shall use appropriate emis-
12 sion factors to calculate carbon diox-
13 ide emissions associated with the gen-
14 eration of such electricity.

15 “(II) Where it is not practical to
16 determine the precise fuel mix for the
17 electricity delivered at retail by an in-
18 dividual electricity local distribution
19 company, the Administrator may use
20 the best available data, including aver-
21 age data on a regional basis with ref-
22 erence to Regional Transmission Or-
23 ganizations or regional entities (as
24 that term is defined in section
25 215(a)(7) of the Federal Power Act

1 (16 U.S.C. 824o(a)(7)), to estimate
2 fuel mix and emissions. Different
3 methodologies may be applied in dif-
4 ferent regions if appropriate to obtain
5 the most accurate estimate.

6 “(3) DISTRIBUTION BASED ON DELIVERIES.—

7 “(A) INITIAL FORMULA.—Except as pro-
8 vided in subparagraph (B), for each vintage
9 year, the Administrator shall distribute 50 per-
10 cent of the emission allowances available for
11 distribution under paragraph (1), after reserv-
12 ing allowances for distribution under sub-
13 sections (c) and (d), among individual elec-
14 tricity local distribution companies ratably
15 based on each electricity local distribution com-
16 pany’s annual average retail electricity deliv-
17 eries for calendar years 2006 through 2008, un-
18 less the owner or operator of the company se-
19 lects 3 other consecutive years between 1999
20 and 2008, inclusive, and timely notifies the Ad-
21 ministrator of its selection.

22 “(B) UPDATING.—Prior to distributing
23 2015 vintage year emission allowances under
24 this paragraph and at 3-year intervals there-
25 after, the Administrator shall update the dis-

1 tribution formula under this paragraph to re-
2 flect changes in each electricity local distribu-
3 tion company’s service territory since the most
4 recent formula was established. For each suc-
5 cessive 3-year period, the Administrator shall
6 distribute allowances ratably among individual
7 electricity local distribution companies based on
8 the product of—

9 “(i) each electricity local distribution
10 company’s average annual deliveries per
11 customer during calendar years 2006
12 through 2008, or during the 3 alternative
13 consecutive years selected by such company
14 under subparagraph (A); and

15 “(ii) the number of customers of such
16 electricity local distribution company in the
17 most recent year in which the formula is
18 updated under this subparagraph.

19 “(4) PROHIBITION AGAINST EXCESS DISTRIBUTI-
20 TIONS.—The regulations promulgated under sub-
21 section (f) shall ensure that, notwithstanding para-
22 graphs (2) and (3), no electricity local distribution
23 company shall receive a greater quantity of allow-
24 ances under this subsection than is necessary to off-
25 set any increased electricity costs to such company’s

1 retail ratepayers, including increased costs attrib-
2 utable to purchased power costs, due to enactment
3 of this title. Any emission allowances withheld from
4 distribution to an electricity local distribution com-
5 pany pursuant to this paragraph shall be distributed
6 among all remaining electricity local distribution
7 companies ratably based on emissions pursuant to
8 paragraph (2).

9 “(5) USE OF ALLOWANCES.—

10 “(A) RATEPAYER BENEFIT.—Emission al-
11 lowances distributed to an electricity local dis-
12 tribution company under this subsection shall
13 be used exclusively for the benefit of retail rate-
14 payers of such electricity local distribution com-
15 pany and may not be used to support electricity
16 sales or deliveries to entities or persons other
17 than such ratepayers.

18 “(B) RATEPAYER CLASSES.—In using
19 emission allowances distributed under this sub-
20 section for the benefit of ratepayers, an elec-
21 tricity local distribution company shall ensure
22 that ratepayer benefits are distributed—

23 “(i) among ratepayer classes ratably
24 based on electricity deliveries to each class;
25 and

1 “(ii) equitably among individual rate-
2 payers within each ratepayer class, includ-
3 ing entities that receive emission allow-
4 ances pursuant to part F.

5 “(C) LIMITATION.—In general, an elec-
6 tricity local distribution company shall not use
7 the value of emission allowances distributed
8 under this subsection to provide to any rate-
9 payer a rebate that is based solely on the quan-
10 tity of electricity delivered to such ratepayer.
11 To the extent an electricity local distribution
12 company uses the value of emission allowances
13 distributed under this subsection to provide re-
14 bates, it shall, to the maximum extent prac-
15 ticable, provide such rebates with regard to the
16 fixed portion of ratepayers’ bills or as a fixed
17 credit or rebate on electricity bills.

18 “(D) INDUSTRIAL RATEPAYERS.—Notwith-
19 standing subparagraph (C), if compliance with
20 the requirements of this title results (or would
21 otherwise result) in an increase in electricity
22 costs for industrial retail ratepayers of any
23 given electricity local distribution company (in-
24 cluding entities that receive emission allowances

1 pursuant to part F), such electricity local dis-
2 tribution company—

3 “(i) shall pass through to industrial
4 retail ratepayers their ratable share (based
5 on deliveries to each ratepayer class) of the
6 value of the emission allowances distrib-
7 uted to such company under this sub-
8 section, to reduce electricity cost impacts
9 on such ratepayers; and

10 “(ii) may do so based on the quantity
11 of electricity delivered to individual indus-
12 trial retail ratepayers.

13 “(E) GUIDELINES.—As part of the regula-
14 tions promulgated under subsection (f), the Ad-
15 ministrators shall, after consultation with State
16 regulatory authorities, prescribe guidelines for
17 the implementation of the requirements of this
18 paragraph. Such guidelines shall include re-
19 quirements to ensure that industrial retail rate-
20 payers (including entities that receive emission
21 allowances under part F) receive their ratable
22 share of the value of the allowances distributed
23 to each electricity local distribution company
24 pursuant to this subsection.

25 “(6) REGULATORY PROCEEDINGS.—

1 “(A) REQUIREMENT.—No electricity local
2 distribution company shall be eligible to receive
3 emission allowances under this subsection or
4 subsection (e) unless the State regulatory au-
5 thority with authority over such company’s re-
6 tail rates, or the entity with authority to regu-
7 late or set retail electricity rates of an elec-
8 tricity local distribution company not regulated
9 by a State regulatory authority, has—

10 “(i) after public notice and an oppor-
11 tunity for comment, promulgated a regula-
12 tion or completed a rate proceeding (or the
13 equivalent, in the case of a ratemaking en-
14 tity other than a State regulatory author-
15 ity) that provides for the full implementa-
16 tion of the requirements of paragraph (5)
17 of this subsection and the requirements of
18 subsection (e); and

19 “(ii) made available to the Adminis-
20 trator and the public a report describing,
21 in adequate detail, the manner in which
22 the requirements of paragraph (5) and the
23 requirements of subsection (e) will be im-
24 plemented.

1 “(B) UPDATING.—The Administrator shall
2 require, as a condition of continued receipt of
3 emission allowances under this subsection by an
4 electricity local distribution company, that a
5 new regulation be promulgated or rate pro-
6 ceeding be completed , after public notice and
7 an opportunity for comment, and a new report
8 be made available to the Administrator and the
9 public, pursuant to subparagraph (A), not less
10 frequently than every 5 years.

11 “(7) PLANS AND REPORTING.—

12 “(A) REGULATIONS.—As part of the regu-
13 lations promulgated under subsection (f), the
14 Administrator shall prescribe requirements gov-
15 erning plans and reports to be submitted in ac-
16 cordance with this paragraph.

17 “(B) PLANS.—Not later than April 30 of
18 2011 and every 5 years thereafter through
19 2026, each electricity local distribution com-
20 pany shall submit to the Administrator a plan,
21 approved by the State regulatory authority or
22 other entity charged with regulating tor setting
23 the retail rates of such company, describing
24 such company’s plans for the disposition of the
25 value of emission allowances to be received pur-

1 suant to this subsection and subsection (e), in
2 accordance with the requirements of this sub-
3 section and subsection (e). Such plan shall in-
4 clude a description of the manner in which the
5 company will provide to industrial retail rate-
6 payers (including entities that receive emission
7 allowances under part F) their ratable share of
8 the value of such allowances.

9 “(C) REPORTS.—Not later than June 30
10 of 2013 and each calendar year thereafter
11 through 2031, each electricity local distribution
12 company shall submit a report to the Adminis-
13 trator, and to the relevant State regulatory au-
14 thority or other entity charged with regulating
15 or setting the retail electricity rates of such
16 company, describing the disposition of the value
17 of any emission allowances received by such
18 company in the prior calendar year pursuant to
19 this subsection and subsection (e), including—

20 “(i) a description of sales, transfer,
21 exchange, or use by the company for com-
22 pliance with obligations under this title, of
23 any such emission allowances;

24 “(ii) the monetary value received by
25 the company, whether in money or in some

1 other form, from the sale, transfer, or ex-
2 change of any such emission allowances;

3 “(iii) the manner in which the com-
4 pany’s disposition of any such emission al-
5 lowances complies with the requirements of
6 this subsection and of subsection (e), in-
7 cluding each of the requirements of para-
8 graph (5) of this subsection, including the
9 requirement that industrial retail rate-
10 payers (including entities that receive
11 emission allowances under part F) receive
12 their ratable share of the value of such al-
13 lowances; and

14 “(iv) such other information as the
15 Administrator may require pursuant to
16 subparagraph (A).

17 “(D) PUBLICATION.—The Administrator
18 shall make available to the public all plans and
19 reports submitted under this subsection, includ-
20 ing by publishing such plans and reports on the
21 Internet.

22 “(8) AUDITS.—Each year, the Administrator
23 shall audit a representative sample of electricity local
24 distribution companies to ensure that emission al-
25 lowances distributed under this subsection have been

1 used exclusively for the benefit of retail ratepayers
2 and that such companies are complying with the re-
3 quirements of this subsection and of subsection (e),
4 including the requirement that industrial retail rate-
5 payers (including entities that receive emission al-
6 lowances under part F) receive their ratable share of
7 the value of such allowances. In selecting companies
8 for audit, the Administrator shall take into account
9 any credible evidence of noncompliance with such re-
10 quirements. The Administrator shall make available
11 to the public a report describing the results of each
12 such audit, including by publishing such report on
13 the Internet.

14 “(9) ENFORCEMENT.—A violation of any re-
15 quirement of this subsection or of subsection (e)
16 shall be a violation of this Act. Each emission allow-
17 ance the value of which is used in violation of the
18 requirements of this subsection or of subsection (e)
19 shall be a separate violation.

20 “(c) MERCHANT COAL UNITS.—

21 “(1) QUALIFYING EMISSIONS.—The qualifying
22 emissions for a merchant coal unit for a given cal-
23 endar year shall be the product of the number of
24 megawatt hours of merchant coal unit sales gen-
25 erated by such unit in such calendar year and the

1 average carbon dioxide emissions per megawatt hour
2 generated by such unit during the base period under
3 paragraph (2), provided that the number of mega-
4 watt hours in a given calendar year for purposes of
5 such calculation shall be reduced in proportion to
6 the portion of such unit's carbon dioxide emissions
7 that are either—

8 “(A) captured and sequestered in such cal-
9 endar year; or

10 “(B) attributable to the combustion or gas-
11 ification of biomass, to the extent that the
12 owner or operator of the unit is not required to
13 hold emission allowances for such emissions.

14 “(2) BASE PERIOD.—For purposes of this sub-
15 section, the base period for a merchant coal unit
16 shall be—

17 “(A) calendar years 2006 through 2008; or

18 “(B) in the case of a new merchant coal
19 unit—

20 “(i) the first full calendar year of op-
21 eration of such unit, provided that such
22 year shall not be any year after calendar
23 year 2012; or

1 “(ii) calendar year 2012, if such unit
2 commences operation on or after January
3 1, 2012.

4 “(3) PHASE-DOWN SCHEDULE.—The Adminis-
5 trator shall identify an annual phase-down factor,
6 applicable to distributions to merchant coal units for
7 each of vintage years 2012 through 2029, that cor-
8 responds to the overall decline in the amount of
9 emission allowances allocated to the electricity sector
10 in such years pursuant to section 782(a)(1). Such
11 factor shall—

12 “(A) for vintage year 2012, be equal to
13 1.0;

14 “(B) for each of vintage years 2013
15 through 2029, correspond to the quotient of—

16 “(i) the quantity of emission allow-
17 ances allocated under section 782(a)(1) for
18 such vintage year; divided by

19 “(ii) the quantity of emission allow-
20 ances allocated under section 782(a)(1) for
21 vintage year 2012.

22 “(4) DISTRIBUTION OF EMISSION ALLOW-
23 ANCES.—Not later than March 1 of 2013 and each
24 calendar year through 2030, the Administrator shall
25 distribute emission allowances of the preceding vin-

1 tage year to the owner or operator of each merchant
2 coal unit described in subsection (a)(6)(C) in an
3 amount equal to the product of—

4 “(A) 0.5;

5 “(B) the qualifying emissions for such
6 merchant coal unit for the preceding year, as
7 determined under paragraph (1); and

8 “(C) the phase-down factor for the pre-
9 ceding calendar year, as identified under para-
10 graph (3).

11 “(5) ADJUSTMENT.—

12 “(A) STUDY.—Not later than July 1,
13 2014, the Administrator, in consultation with
14 the Federal Energy Regulatory Commission,
15 shall complete a study to determine whether the
16 allocation formula under paragraph (3) is re-
17 sulting in, or is likely to result in, windfall prof-
18 its to merchant coal generators or substantially
19 disparate treatment of merchant coal genera-
20 tors operating in different markets or regions.

21 “(B) REGULATION.—If the Administrator,
22 in consultation with the Federal Energy Regu-
23 latory Commission, makes an affirmative find-
24 ing of windfall profits or disparate treatment
25 under subparagraph (A), the Administrator

1 shall, not later than 18 months after the com-
2 pletion of the study described in subparagraph
3 (A), promulgate regulations providing for the
4 adjustment of the allocation formula under
5 paragraph (3) to mitigate, to the extent prac-
6 ticable, such windfall profits, if any, and such
7 disparate treatment, if any.

8 “(6) LIMITATION ON ALLOWANCES.—Notwith-
9 standing paragraph (4) or (5), for each vintage year
10 the Administrator shall distribute under this sub-
11 section no more than 10 percent of the total quan-
12 tity of emission allowances available for such vintage
13 year for distribution to the electricity sector under
14 section 782(a)(1). If the quantity of emission allow-
15 ances that would otherwise be distributed pursuant
16 to paragraph (4) or (5) for any vintage year would
17 exceed such limit, the Administrator shall distribute
18 10 percent of the total emission allowances available
19 for distribution under section 782(a)(1) for such vin-
20 tage year ratably among merchant coal generators
21 based on the applicable formula under paragraph (4)
22 or (5).

23 “(7) ELIGIBILITY.—The owner or operator of a
24 merchant coal unit shall not be eligible to receive
25 emission allowances under this subsection for any

1 vintage year for which such owner or operator has
2 elected to receive emission allowances for the same
3 unit under subsection (d).

4 “(d) LONG-TERM CONTRACT GENERATORS.—

5 “(1) DISTRIBUTION.—Not later than March 1
6 of 2013 and each calendar year through 2030, the
7 Administrator shall distribute to the owner or oper-
8 ator of each long-term contract generator a quantity
9 of emission allowances of the preceding vintage year
10 that is equal to the sum of—

11 “(A) the number of tons of carbon dioxide
12 emitted as a result of a qualifying electricity
13 sales agreement referred to in subsection
14 (a)(5)(B)(i); and

15 “(B) the incremental number of tons of
16 carbon dioxide emitted solely as a result of a
17 qualifying thermal sales agreement referred to
18 in subsection (a)(5)(B)(ii), provided that in no
19 event shall the Administrator distribute more
20 than 1 emission allowance for the same ton of
21 emissions.

22 “(2) LIMITATION ON ALLOWANCES.— Notwith-
23 standing paragraph (1), for each vintage year the
24 Administrator shall distribute under this subsection
25 no more than 4.3 percent of the total quantity of

1 emission allowances available for such vintage year
2 for distribution to the electricity sector under section
3 782(a)(1). If the quantity of emission allowances
4 that would otherwise be distributed pursuant to
5 paragraph (1) for any vintage year would exceed
6 such limit, the Administrator shall distribute 4.3
7 percent of the total emission allowances available for
8 distribution under section 782(a)(1) for such vintage
9 year ratably among long-term contract generators
10 based on paragraph (1).

11 “(3) ELIGIBILITY.—

12 “(A) FACILITY ELIGIBILITY.—The owner
13 or operator of a facility shall cease to be eligible
14 to receive emission allowances under this sub-
15 section upon the earliest date on which the fa-
16 cility no longer meets each and every element of
17 the definition of a long-term contract generator
18 under subsection (a)(5).

19 “(B) CONTRACT ELIGIBILITY.—The owner
20 or operator of a facility shall cease to be eligible
21 to receive emission allowances under this sub-
22 section based on an electricity or thermal sales
23 agreement referred to in subsection (a)(5)(B)
24 upon the earliest date that such agreement—

25 “(i) expires;

1 “(ii) is terminated; or

2 “(iii) is amended in any way that
3 changes the location of the facility, the
4 price (whether a fixed price or price for-
5 mula) for electricity or thermal energy sold
6 under such agreement, the quantity of
7 electricity or thermal energy sold under the
8 agreement, or the expiration or termi-
9 nation date of the agreement.

10 “(4) DEMONSTRATION OF ELIGIBILITY.—To be
11 eligible to receive allowance distributions under this
12 subsection, the owner or operator of a long-term
13 contract generator shall submit each of the following
14 in writing to the Administrator within 180 days
15 after the date of enactment of this title, and not
16 later than September 30 of each vintage year for
17 which such generator wishes to receive emission al-
18 lowances:

19 “(A) A certificate of representation de-
20 scribed in section 700(15).

21 “(B) An identification of each owner and
22 each operator of the facility.

23 “(C) An identification of the units at the
24 facility and the location of the facility.

1 “(D) A written certification by the des-
2 gnated representative that the facility meets all
3 the requirements of the definition of a long-
4 term contract generator.

5 “(E) The expiration date of each quali-
6 fying electricity or thermal sales agreement re-
7 ferred to in subsection (a)(5)(B).

8 “(F) A copy of each qualifying electricity
9 or thermal sales agreement referred to in sub-
10 section (a)(5)(B).

11 “(5) NOTIFICATION.—Not later than 30 days
12 after, in accordance with paragraph (3), a facility or
13 an agreement ceases to meet the eligibility require-
14 ments for distribution of emission allowances pursu-
15 ant to this subsection, the designated representative
16 of such facility shall notify the Administrator in
17 writing when, and on what basis, such facility or
18 agreement ceased to meet such requirements.

19 “(e) SMALL LDCs.—

20 “(1) DISTRIBUTION.—Not later than Sep-
21 tember 30 of each calendar year from 2011 through
22 2028, the Administrator shall, in accordance with
23 this subsection, distribute emission allowances allo-
24 cated pursuant to section 782(a)(2) for the following
25 vintage year. Such allowances shall be distributed

1 ratably among small LDCs based on historic emis-
2 sions in accordance with the same measure of such
3 emissions applied to each such small LDC for the
4 relevant vintage year under subsection (b)(2) of this
5 section.

6 “(2) USES.—A small LDC receiving allowances
7 under this section shall use such allowances exclu-
8 sively for the following purposes:

9 “(A) Cost-effective programs to achieve
10 electricity savings, provided that such savings
11 shall not be transferred or used for compliance
12 with section 610 of the Public Utility Regu-
13 latory Policies Act of 1978.

14 “(B) Deployment of technologies to gen-
15 erate electricity from renewable energy re-
16 sources, provided that any Federal renewable
17 electricity credits issued based on generation
18 supported under this section shall be submitted
19 to the Federal Energy Regulatory Commission
20 for voluntary retirement and shall not be used
21 for compliance with section 610 of the Public
22 Utility Regulatory Policies Act of 1978.

23 “(C) Assistance programs to reduce elec-
24 tricity costs for low-income residential rate-
25 payers of such small LDC, provided that such

1 assistance is made available equitably to all res-
2 idential ratepayers below a certain income level,
3 which shall not be higher than 200 percent of
4 the poverty line (as that term is defined in sec-
5 tion 673(2) of the Community Services Block
6 Grant Act (42 U.S.C. 9902(2)).

7 “(3) REQUIREMENTS.—As part of the regula-
8 tions promulgated under subsection (f), the Adminis-
9 trator shall prescribe—

10 “(A) after consultation with the Federal
11 Energy Regulatory Commission, requirements
12 to ensure that programs and projects under
13 paragraph (2)(A) and (B) are consistent with
14 the standards established by, and effectively
15 supplement electricity savings and generation of
16 electricity from renewable energy resources
17 achieved by, the Combined Efficiency and Re-
18 newable Electricity Standard established under
19 section 610 of the Public Utility Regulatory
20 Policies Act of 1978;

21 “(B) eligibility criteria and guidelines for
22 consumer assistance programs for low-income
23 residential ratepayers under paragraph (2)(C);
24 and

1 “(C) such other requirements as the Ad-
2 ministrator determines appropriate to ensure
3 compliance with the requirements of this sub-
4 section.

5 “(4) REPORTING.—Reports submitted under
6 subsection (b)(7) shall include, in accordance with
7 such requirements as the Administrator may pre-
8 scribe—

9 “(A) a description of any facilities de-
10 ployed under paragraph (2)(A), the quantity of
11 resulting electricity generation from renewable
12 energy resources;

13 “(B) an assessment demonstrating the
14 cost-effectiveness of, and electricity savings
15 achieved by, programs supported under para-
16 graph (2)(B); and

17 “(C) a description of assistance provided to
18 low-income retail ratepayers under paragraph
19 (2)(C).

20 “(f) REGULATIONS.—Not later than 2 years after the
21 date of enactment of this title, the Administrator, in con-
22 sultation with the Federal Energy Regulatory Commis-
23 sion, shall promulgate regulations to implement the re-
24 quirements of this section.

1 **“SEC. 784. NATURAL GAS CONSUMERS.**

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

3 “(1) COST-EFFECTIVE.—The term ‘cost-effec-
4 tive’, with respect to an energy efficiency program,
5 means that the program meets the Total Resource
6 Cost Test, which requires that the net present value
7 of economic benefits over the life of the program, in-
8 cluding avoided supply and delivery costs and de-
9 ferred or avoided investments, is greater than the
10 net present value of the economic costs over the life
11 of the program, including program costs and incre-
12 mental costs borne by the energy consumer.

13 “(2) NATURAL GAS LOCAL DISTRIBUTION COM-
14 PANY.—The term ‘natural gas local distribution
15 company’ means a natural gas local distribution
16 company that is a covered entity.

17 “(3) NON-COVERED ENTITY.—The term ‘non-
18 covered entity’ means, when used in reference to a
19 date or period prior to the enactment of this title,
20 an entity that would not have been a covered entity
21 if this title had been in effect during such date or
22 period.

23 “(4) STATE REGULATORY AUTHORITY.—The
24 term ‘State regulatory authority’ has the meaning
25 given the term ‘State commission’ in section 2(8) of
26 the Natural Gas Act (15 U.S.C. 717a(8)).

1 “(b) DISTRIBUTION.—Not later than June 30 of
2 2015 and each calendar year thereafter through 2028, the
3 Administrator shall distribute to natural gas local dis-
4 tribution companies for the benefit of retail ratepayers the
5 quantity of emission allowances allocated for the following
6 vintage year pursuant to section 782(b). Such allowances
7 shall be distributed among local natural gas distribution
8 companies based on the following formula:

9 “(1) INITIAL FORMULA.—Except as provided in
10 paragraph (2), for each vintage year, the Adminis-
11 trator shall distribute emission allowances among
12 natural gas local distribution companies ratably
13 based on each such company’s annual average retail
14 natural gas deliveries for 2006 through 2008 to cus-
15 tomers that were non-covered entities, unless the
16 owner or operator of the company selects 3 other
17 consecutive years between 1999 and 2008, inclusive,
18 and timely notifies the Administrator of its selection.

19 “(2) UPDATING.—Prior to distributing 2019
20 vintage year emission allowances and at 3-year inter-
21 vals thereafter, the Administrator shall update the
22 distribution formula under this subsection to reflect
23 changes in each natural gas local distribution com-
24 pany’s service territory since the most recent for-
25 mula was established. For each successive 3-year pe-

1 riod, the Administrator shall distribute allowances
2 ratably among natural gas local distribution compa-
3 nies based on the product of—

4 “(A) each natural gas local distribution
5 company’s average annual natural gas deliveries
6 per customer to customers that were non-cov-
7 ered entities during calendar years 2006
8 through 2008, or during the 3 alternative con-
9 secutive years selected by such company under
10 paragraph (1); and

11 “(B) the number of customers of such nat-
12 ural gas local distribution company that are not
13 covered entities in the most recent year in
14 which the formula is updated under this para-
15 graph.

16 “(c) USE OF ALLOWANCES.—

17 “(1) RATEPAYER BENEFIT.—Emission allow-
18 ances distributed to a natural gas local distribution
19 company under this section shall be used exclusively
20 for the benefit of retail ratepayers of such natural
21 gas local distribution company other than covered
22 entities and may not be used to support natural gas
23 sales or deliveries to entities or persons other than
24 such ratepayers.

1 “(2) RATEPAYER CLASSES.—In using emission
2 allowances distributed under this section for the ben-
3 efit of ratepayers, a natural gas local distribution
4 company shall ensure that ratepayer benefits are
5 distributed—

6 “(A) among ratepayer classes ratably
7 based on natural gas deliveries to each class,
8 excluding deliveries to covered entities; and

9 “(B) equitably among individual ratepayers
10 other than covered entities within each rate-
11 payer class.

12 “(3) LIMITATION.—In general, a natural gas
13 local distribution company shall not use the value of
14 emission allowances distributed under this section to
15 provide to any ratepayer a rebate that is based solely
16 on the quantity of natural gas delivered to such
17 ratepayer. To the extent a natural gas local distribu-
18 tion company uses the value of emission allowances
19 distributed under this section to provide rebates, it
20 shall, to the maximum extent practicable, provide
21 such rebates with regard to the fixed portion of rate-
22 payers’ bills or as a fixed creditor rebate on natural
23 gas bills.

24 “(4) INDUSTRIAL RATEPAYERS.—Notwith-
25 standing paragraph (3), if compliance with the re-

1 requirements of this title results (or would otherwise
2 result) in an increase in natural gas costs for indus-
3 trial retail ratepayers of any given natural gas local
4 distribution company that are not covered entities
5 (including entities that receive emission allowances
6 pursuant to part F), such natural gas local distribu-
7 tion company—

8 “(A) shall pass through to industrial retail
9 ratepayers that are not covered entities their
10 ratable share (based on deliveries to each rate-
11 payer class) of the value of the emission allow-
12 ances distributed to such company under this
13 subsection, to reduce natural gas cost impacts
14 on such ratepayers; and

15 “(B) may do so based on the quantity of
16 natural gas delivered to individual industrial re-
17 tail ratepayers.

18 “(5) ENERGY EFFICIENCY PROGRAMS.—The
19 value of no less than one third of the emission allow-
20 ances distributed to natural gas local distribution
21 companies pursuant to this section in any calendar
22 year shall be used for cost-effective energy efficiency
23 programs for natural gas consumers. Such programs
24 must be authorized and overseen by the State regu-
25 latory authority, or by the entity with authority to

1 regulate or set retail natural gas rates in the case
2 of a natural gas local distribution company that is
3 not regulated by a State regulatory authority.

4 “(6) CERTAIN INTRACOMPANY DELIVERIES.—If
5 a natural gas local distribution company makes an
6 intracompany delivery of natural gas to a customer
7 that is not a covered entity, for which such company
8 is required to hold emission allowances under section
9 722, such customer shall, for purposes of this sec-
10 tion, be considered a retail ratepayer and a member
11 of a ratepayer class to be determined by the relevant
12 State regulatory authority, or other entity with au-
13 thority to regulate or set natural gas rates in the
14 case of a company not regulated by a State regu-
15 latory authority.

16 “(7) GUIDELINES.—As part of the regulations
17 promulgated under subsection (h), the Administrator
18 shall, after consultation with State regulatory au-
19 thorities, prescribe guidelines for the implementation
20 of the requirements of this subsection. Such guide-
21 lines shall include requirements to ensure that in-
22 dustrial retail ratepayers that are not covered enti-
23 ties (including entities that receive emission allow-
24 ances under part F) receive their ratable share of
25 the value of the allowances distributed to each nat-

1 ural gas local distribution company pursuant to this
2 section.

3 “(d) REGULATORY PROCEEDINGS.—

4 “(1) REQUIREMENT.—No natural gas local dis-
5 tribution company shall be eligible to receive emis-
6 sion allowances under this section unless the State
7 regulatory authority with authority over the retail
8 rates of such company, or the entity with authority
9 to regulate or set retail rates of a natural gas local
10 distribution company not regulated by a State regu-
11 latory authority, has—

12 “(A) after public notice and an opportunity
13 for comment, promulgated a regulation or com-
14 pleted a public rate proceeding (or the equiva-
15 lent, in the case of a ratemaking entity other
16 than a State regulatory authority) that provides
17 for the full implementation of the requirements
18 of subsection (c); and

19 “(B) made available to the Administrator
20 and the public a report describing, in adequate
21 detail, the manner in which the requirements of
22 subsection (c) will be implemented.

23 “(2) UPDATING.—The Administrator shall re-
24 quire, as a condition of continued receipt of emission
25 allowances under this section, that a new regulation

1 be promulgated or rate proceeding be completed,
2 after public notice and an opportunity for comment,
3 and a new report be made available to the Adminis-
4 trator and the public, pursuant to paragraph (1),
5 not less frequently than every 5 years.

6 “(e) PLANS AND REPORTING.—

7 “(1) REGULATIONS.—As part of the regulations
8 promulgated under subsection (h), the Administrator
9 shall prescribe requirements governing plans and re-
10 ports to be submitted in accordance with this sub-
11 section.

12 “(2) PLANS.—Not later than April 30 of 2015
13 and every 5 years thereafter through 2025, each
14 natural gas local distribution company shall submit
15 to the Administrator a plan, approved by the State
16 regulatory authority or other entity charged with
17 regulating or setting the retail rates of such com-
18 pany, describing such company’s plans for the dis-
19 position of the value of emission allowances to be re-
20 ceived pursuant to this section, in accordance with
21 the requirements of this section.

22 “(3) REPORTS.—Not later than June 30 of
23 2017 and each calendar year thereafter through
24 2031, each natural gas local distribution company
25 shall submit a report to the Administrator, approved

1 by the relevant State regulatory authority or other
2 entity charged with regulating or setting the retail
3 natural gas rates of such company, describing the
4 disposition of the value of any emission allowances
5 received by such company in the prior calendar year
6 pursuant to this section, including—

7 “(A) a description of sales, transfer, ex-
8 change, or use by the company for compliance
9 with obligations under this title, of any such
10 emission allowances;

11 “(B) the monetary value received by the
12 company, whether in money or in some other
13 form, from the sale, transfer, or exchange of
14 emission allowances received by the company
15 under this section;

16 “(C) the manner in which the company’s
17 disposition of emission allowances received
18 under this section complies with the require-
19 ments of this section, including each of the re-
20 quirements of subsection (c);

21 “(D) the cost-effectiveness of, and energy
22 savings achieved by, energy efficiency programs
23 supported through such emission allowances;
24 and

1 “(E) such other information as the Admin-
2 istrator may require pursuant to paragraph (1).

3 “(4) PUBLICATION.—The Administrator shall
4 make available to the public all plans and reports
5 submitted by natural gas local distribution compa-
6 nies under this subsection, including by publishing
7 such plans and reports on the Internet.

8 “(f) AUDITS.—Each year, the Administrator shall
9 audit a representative sample of natural gas local distribu-
10 tion companies to ensure that emission allowances distrib-
11 uted under this section have been used exclusively for the
12 benefit of retail ratepayers and that such companies are
13 complying with the requirements of this section. In select-
14 ing companies for audit, the Administrator shall take into
15 account any credible evidence of noncompliance with such
16 requirements. The Administrator shall make available to
17 the public a report describing the results of each such
18 audit, including by publishing such report on the Internet.

19 “(g) ENFORCEMENT.—A violation of any require-
20 ment of this section shall be a violation of this Act. Each
21 emission allowance the value of which is used in violation
22 of the requirements of this section shall be a separate vio-
23 lation.

24 “(h) REGULATIONS.—Not later than January 1,
25 2014, the Administrator, in consultation with the Federal

1 Energy Regulatory Commission, shall promulgate regula-
2 tions to implement the requirements of this section.

3 **“SEC. 785. HOME HEATING OIL, PROPANE, AND KEROSENE**
4 **CONSUMERS.**

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

6 “(1) CARBON CONTENT.—The term ‘carbon
7 content’ means the amount of carbon dioxide that
8 would be emitted as a result of the combustion of a
9 fuel.

10 “(2) COST-EFFECTIVE.—The term ‘cost-effec-
11 tive’ has the meaning given that term in section
12 784(a)(1).

13 “(3) OILHEAT FUEL.—The term ‘oilheat fuel’
14 means fuel that—

15 “(A) is—

16 “(i) No. 1 distillate;

17 “(ii) No. 2 dyed distillate;

18 “(iii) a liquid blended with No. 1 dis-
19 tillate or No. 2 dyed distillate; or

20 “(iv) a biobased liquid; and

21 “(B) is used as a fuel for nonindustrial
22 commercial or residential space or hot water
23 heating.

24 “(b) DISTRIBUTION AMONG STATES.—Not later than
25 September 30 of each of calendar years 2011 through

1 2028, the Administrator shall distribute among the States,
2 in accordance with this section, the quantity of emission
3 allowances allocated for the following vintage year pursu-
4 ant to section 782(c). The Administrator shall distribute
5 emission allowances among the States under this section
6 each year ratably based on the ratio of—

7 “(1) the carbon content of oilheat fuel, propane,
8 and kerosene sold to consumers within each State in
9 the preceding year for residential or commercial
10 uses; to

11 “(2) the carbon content of oilheat fuel, propane,
12 and kerosene sold to consumers within the United
13 States in the preceding year for residential or com-
14 mercial uses.

15 “(c) USE OF ALLOWANCES.—

16 “(1) IN GENERAL.—States shall use emission
17 allowances distributed under this section exclusively
18 for the benefit of consumers of oilheat fuel, propane,
19 or kerosene for residential or commercial purposes.
20 Such proceeds shall be used exclusively for—

21 “(A) cost-effective energy efficiency pro-
22 grams for consumers that use oilheat fuel, pro-
23 pane, or kerosene for residential or commercial
24 purposes; or

1 “(B) rebates or other direct financial as-
2 sistance programs for consumers of oilheat fuel,
3 propane, or kerosene used for residential or
4 commercial purposes.

5 “(2) ADMINISTRATION AND DELIVERY MECHA-
6 NISMS.—In administering programs supported by
7 this section, States shall

8 “(A) use no less than 50 percent of the
9 value of emission allowances received under this
10 section for cost-effective energy efficiency pro-
11 grams to reduce consumers’ overall fuel costs;

12 “(B) to the extent practicable, deliver con-
13 sumer support under this section through exist-
14 ing energy efficiency and consumer energy as-
15 sistance programs or delivery mechanisms, in-
16 cluding, where appropriate, programs or mecha-
17 nisms administered by parties other than the
18 State; and

19 “(C) seek to coordinate the administration
20 and delivery of energy efficiency and consumer
21 energy assistance programs supported under
22 this section, with one another and with existing
23 programs for various fuel types, so as to deliver
24 comprehensive, fuel-blind, coordinated programs
25 to consumers.

1 “(d) REPORTING.—Each State receiving emission al-
2 lowances under this section shall submit to the Adminis-
3 trator, within 12 months of each receipt of such allow-
4 ances, a report, in accordance with such requirements as
5 the Administrator may prescribe, that—

6 “(1) describes the State’s use of emission allow-
7 ances distributed under this section, including a de-
8 scription of the energy efficiency and consumer as-
9 sistance programs supported with such allowances;

10 “(2) demonstrates the cost-effectiveness of, and
11 the energy savings and greenhouse gas emissions re-
12 ductions achieved by, energy efficiency programs
13 supported under this section; and

14 “(3) includes a report prepared by an inde-
15 pendent third party, in accordance with such regula-
16 tions as the Administrator may promulgate, evalu-
17 ating the performance of the energy efficiency and
18 consumer assistance programs supported under this
19 section.

20 “(e) ENFORCEMENT.—If the Administrator deter-
21 mines that a State is not in compliance with this section,
22 the Administrator may withhold a portion of the emission
23 allowances, the quantity of which is equal to up to twice
24 the quantity of the allowances that the State failed to use
25 in accordance with the requirements of this section, that

1 such State would otherwise be eligible to receive under this
2 section in later years. Allowances withheld pursuant to
3 this subsection shall be distributed among the remaining
4 States ratably in accordance with the formula in sub-
5 section (b).

6 **“SEC. 787. ALLOCATIONS TO REFINERIES.**

7 “(a) PURPOSE.—The purpose of this section is to
8 provide emission allowance rebates to petroleum refineries
9 in the United States in a manner that promotes energy
10 efficiency and a reduction in greenhouse gas emissions at
11 such facilities.

12 “(b) DEFINITIONS.—In this section:

13 “(1) EMISSIONS.—The term ‘emissions’ in-
14 cludes direct emissions from fuel combustion, proc-
15 ess emissions, and indirect emissions from the gen-
16 eration of electricity, steam, and hydrogen used to
17 produce the output of a petroleum refinery or the
18 petroleum refinery sector.

19 “(2) PETROLEUM REFINERY.—The term ‘petro-
20 leum refinery’ means a facility classified under code
21 324110 of the North American Industrial Classifica-
22 tion System of 2002.

23 “(3) SMALL BUSINESS REFINER.—The term
24 ‘small business refiner’ means a refiner that meets
25 the applicable Federal refinery capacity and em-

1 ployee limitations criteria described in section
2 45H(c)(1) of the Internal Revenue Code of 1986 (as
3 in effect on the date of enactment of this section and
4 without regard to section 45H(d)). Eligibility of a
5 small business refiner under this paragraph shall not
6 be recalculated or disallowed on account of (i) its
7 merger with another small business refiner or refin-
8 ers after December 31, 2002 or (ii) its acquisition
9 of another small business refiner (or refinery of such
10 refiner) after December 31, 2002.

11 “(c) IN GENERAL.—For each vintage year between
12 2014 and 2026, the Administrator shall distribute allow-
13 ances pursuant to this section to owners and operators of
14 petroleum refineries, including small business refiners, in
15 the United States.

16 “(d) DISTRIBUTION SCHEDULE.—The Administrator
17 shall distribute emission allowances pursuant to the regu-
18 lations issued under subsection (e) for each vintage year
19 no later than October 31 of the preceding calendar year.

20 “(e) REGULATIONS.—Not later than 3 years after the
21 date of enactment of this title, the Administrator, in con-
22 sultation with the Administrator of the Energy Informa-
23 tion Administration, shall promulgate regulations that es-
24 tablish a formula for distributing emission allowances con-
25 sistent with the purpose of this section. In establishing

1 such formula, the Administrator shall consider the relative
2 complexity of refinery processes and appropriate mecha-
3 nisms to take energy efficiency and greenhouse gas reduc-
4 tions into account. If a petroleum refinery’s electricity pro-
5 vider received a free allocation of emission allowances pur-
6 suant to section 782(a), the Administrator shall take this
7 free allocation into account when establishing such for-
8 mula to avoid rebates to a petroleum refinery for costs
9 that the Administrator determines were not incurred by
10 the petroleum refinery because the allowances were freely
11 allocated to the petroleum refinery’s electricity provider
12 and used for the benefit of the petroleum refinery. This
13 formula shall apply separately to the distribution of allow-
14 ances allocated pursuant to section 782(j)(1) and to those
15 allocated under section 782(j)(2).

16 **“SEC. 788. [SECTION RESERVED].**

17 **“SEC. 789. CLIMATE CHANGE CONSUMER REFUNDS.**

18 “(a) REFUND.—In each year after deposits are made
19 to the Climate Change Consumer Refund Account, the
20 Secretary of the Treasury shall provide tax refunds on a
21 per capita basis to each household in the United States
22 that shall collectively equal the amount deposited into the
23 Climate Change Consumer Refund Account.

1 “(b) LIMITATIONS.—The Secretary of the Treasury
2 shall establish procedures to ensure that individuals who
3 are not—

4 “(1) citizens or nationals of the United States;

5 or

6 “(2) immigrants lawfully residing in the United
7 States,

8 are excluded for the purpose of calculating and distrib-
9 uting refunds under this section.

10 **“SEC. 790. EXCHANGE FOR STATE-ISSUED ALLOWANCES.**

11 “(a) IN GENERAL.—Not later than one year after the
12 date of enactment of this title, the Administrator shall
13 issue regulations allowing any person in the United States
14 to exchange greenhouse gas emission allowances issued be-
15 fore December 31, 2011, by the State of California or for
16 the Regional Greenhouse Gas Initiative, or the Western
17 Climate Initiative (in this section referred to as ‘State al-
18 lowances’) for emission allowances established by the Ad-
19 ministrator under section 721(a).

20 “(b) REGULATIONS.—Regulations issued under sub-
21 section (a) shall—

22 “(1) provide that a person exchanging State al-
23 lowances under this section receive emission allow-
24 ances established under section 721(a) in the

1 amount that is sufficient to compensate for the cost
2 of obtaining and holding such State allowances;

3 “(2) establish a deadline by which persons must
4 exchange the State allowances; and

5 “(3) provide that the Federal emission allow-
6 ances disbursed pursuant to this section shall be de-
7 ducted from the allowances to be auctioned pursuant
8 to section 782(d).

9 “(c) COST OF OBTAINING STATE ALLOWANCE.—For
10 purposes of this section, the cost of obtaining a State al-
11 lowance shall be the average auction price, for emission
12 allowances issued in the year in which the State allowance
13 was issued, under the program under which the State al-
14 lowance was issued.

15 **“SEC. 791. AUCTION PROCEDURES.**

16 “(a) IN GENERAL.—To the extent that auctions of
17 emission allowances by the Administrator are authorized
18 by this part, such auctions shall be carried out pursuant
19 to this section and the regulations established hereunder.

20 “(b) INITIAL REGULATIONS.—Not later than 12
21 months after the date of enactment of this title, the Ad-
22 ministrator, in consultation with other agencies, as appro-
23 priate, shall promulgate regulations governing the auction
24 of allowances under this section. Such regulations shall in-
25 clude the following requirements:

1 “(1) FREQUENCY; FIRST AUCTION.—Auctions
2 shall be held four times per year at regular intervals,
3 with the first auction to be held no later than March
4 31, 2011.

5 “(2) AUCTION SCHEDULE; CURRENT AND FU-
6 TURE VINTAGES.—The Administrator shall, at each
7 quarterly auction under this section, offer for sale
8 both a portion of the allowances with the same vin-
9 tage year as the year in which the auction is being
10 conducted and a portion of the allowances with vin-
11 tage years from future years. The preceding sen-
12 tence shall not apply to auctions held before 2012,
13 during which period, by necessity, the Administrator
14 shall auction only allowances with a vintage year
15 that is later than the year in which the auction is
16 held. Beginning with the first auction and at each
17 quarterly auction held thereafter, the Administrator
18 may offer for sale allowances with vintage years of
19 up to four years after the year in which the auction
20 is being conducted, except as provided in section
21 782(p).

22 “(3) AUCTION FORMAT.—Auctions shall follow
23 a single-round, sealed-bid, uniform price format.

24 “(4) PARTICIPATION; FINANCIAL ASSURANCE.—
25 Auctions shall be open to any person, except that

1 the Administrator may establish financial assurance
2 requirements to ensure that auction participants can
3 and will perform on their bids.

4 “(5) DISCLOSURE OF BENEFICIAL OWNER-
5 SHIP.—Each bidder in the auction shall be required
6 to disclose the person or entity sponsoring or bene-
7 fitting from the bidder’s participation in the auction
8 if such person or entity is, in whole or in part, other
9 than the bidder.

10 “(6) PURCHASE LIMITS.—No person may, di-
11 rectly or in concert with another participant, pur-
12 chase more than 5 percent of the allowances offered
13 for sale at any quarterly auction.

14 “(7) PUBLICATION OF INFORMATION.—After
15 the auction, the Administrator shall, in a timely
16 fashion, publish the identities of winning bidders,
17 the quantity of allowances obtained by each winning
18 bidder, and the auction clearing price.

19 “(8) OTHER REQUIREMENTS.—The Adminis-
20 trator may include in the regulations such other re-
21 quirements or provisions as the Administrator, in
22 consultation with other agencies, as appropriate,
23 considers appropriate to promote effective, efficient,
24 transparent, and fair administration of auctions
25 under this section.

1 “(c) REVISION OF REGULATIONS.—The Adminis-
2 trator may, in consultation with other agencies, as appro-
3 priate, at any time, revise the initial regulations promul-
4 gated under subsection (b) by promulgating new regula-
5 tions. Such revised regulations need not meet the require-
6 ments identified in subsection (b) if the Administrator de-
7 termines that an alternative auction design would be more
8 effective, taking into account factors including costs of ad-
9 ministration, transparency, fairness, and risks of collusion
10 or manipulation. In determining whether and how to re-
11 vise the initial regulations under this subsection, the Ad-
12 ministrator shall not consider maximization of revenues to
13 the Federal Government.

14 “(d) RESERVE AUCTION PRICE.—The minimum re-
15 serve auction price shall be \$10 (in constant 2009 dollars)
16 for auctions occurring in 2012. The minimum reserve
17 price for auctions occurring in years after 2012 shall be
18 the minimum reserve auction price for the previous year
19 increased by 5 percent plus the rate of inflation (as meas-
20 ured by the Consumer Price Index for all urban con-
21 sumers).

22 “(e) DELEGATION OR CONTRACT.—Pursuant to reg-
23 ulations under this section, the Administrator may by del-
24 egation or contract provide for the conduct of auctions
25 under the Administrator’s supervision by other depart-

1 ments or agencies of the Federal Government or by non-
2 governmental agencies, groups, or organizations.

3 “(f) SMALL BUSINESS REFINER RESERVE.—The Ad-
4 ministrator shall, in accordance with this subsection, issue
5 regulations setting aside a specified number of allowances
6 that small business refiners may purchase at the average
7 auction price and may use to demonstrate compliance pur-
8 suant to section 722. These regulations shall provide the
9 following:

10 “(1) AMOUNT.—The Administrator shall place
11 in the small business refiner reserve account allow-
12 ances that are to be sold at auction pursuant to the
13 allocations in section 782 in an amount equal to—

14 “(A) 6.2 percent of the emission allow-
15 ances established under section 721(a) for each
16 vintage year from 2012 through 2013;

17 “(B) 5.4 percent of the emission allow-
18 ances established under section 721(a) for each
19 vintage year from 2014 through 2015; and

20 “(C) 4.9 percent of the emission allow-
21 ances established under section 721(a) for each
22 vintage year from 2016 through 2024.

23 “(2) ALLOWED PURCHASES.—From January 1
24 of the calendar year that matches the vintage year
25 for which allowances have been placed in the reserve,

1 through January 14 of the following year, small
2 business refiners (as defined in section 787(b)) may
3 purchase allowances from this reserve at the price
4 determined pursuant to paragraph (3).

5 “(3) PRICE.—The price for allowances pur-
6 chased from this reserve shall be the average auction
7 price for allowances of the same vintage year pur-
8 chased at auctions conducted pursuant to this sec-
9 tion during the 12 months preceding the purchase of
10 the allowances.

11 “(4) USE OF ALLOWANCES.—Allowances pur-
12 chased from this reserve shall only be used by the
13 purchaser to demonstrate compliance pursuant to
14 section 722 for attributable greenhouse gas emis-
15 sions in the calendar year that matches the vintage
16 year of the purchased allowance. Allowances pur-
17 chased from this reserve may not be banked, traded
18 or borrowed.

19 “(5) LIMITATIONS ON PURCHASE AMOUNT.—
20 The Administrator, by regulation adopted after pub-
21 lic notice and an opportunity for comment, shall es-
22 tablish procedures to distribute the ability to pur-
23 chase allowances from the reserve fairly among all
24 small business refiners interested in purchasing al-
25 lowances from this reserve so as to address the po-

1 sion allowances or compensatory allowances, the Adminis-
2 trator is not obligated to obtain the highest price possible
3 for the allowances, and instead shall auction consignment
4 allowances in the same manner and pursuant to the same
5 rules as auctions of other allowances under section 791.
6 The Administrator may permit the entity offering the al-
7 lowance for sale to condition the sale of its allowances pur-
8 suant to this section on a minimum reserve price that is
9 different than the reserve auction price set pursuant to
10 section 791(d).

11 “(c) PROCEEDS.—For emission allowances and com-
12 pensatory allowances auctioned pursuant to this section,
13 notwithstanding section 3302 of title 31, United States
14 Code, or any other provision of law, within 90 days of re-
15 ceipt, the United States shall transfer the proceeds from
16 the auction to the entity which held the allowances auc-
17 tioned. No funds transferred from a purchaser to a seller
18 of emission allowances or compensatory allowances under
19 this subsection shall be held by any officer or employee
20 of the United States or treated for any purpose as public
21 monies.

22 “(d) UNSOLD ALLOWANCES.—Allowances offered for
23 sale under this section that are not sold shall be returned
24 to the entity in possession of the allowance, notwith-
25 standing section 726(b)(2)(A).

1 “(e) REGULATIONS.—The Administrator shall issue
2 regulations within 24 months after the date of enactment
3 of this title to implement this section.

4 **“SEC. 793. ESTABLISHMENT OF FUNDS.**

5 “There is hereby established in the Treasury of the
6 United States the following separate accounts:

7 “(1) The Strategic Reserve Fund.

8 “(2) The Climate Change Consumer Refund
9 Account.

10 “(3) The Climate Change Worker Adjustment
11 Assistance Fund.

12 **“SEC. 794. OVERSIGHT OF ALLOCATIONS.**

13 “(a) IN GENERAL.—Not later than January 1, 2014,
14 and every 2 years thereafter, the Comptroller General of
15 the United States shall carry out and report to Congress
16 on the results of a review of programs administered by
17 the Federal Government that distribute emission allow-
18 ances or funds from any Federal auction of allowances.

19 “(b) CONTENTS.—Each such report shall include a
20 comprehensive evaluation of the administration and effec-
21 tiveness of each program, including—

22 “(1) the efficiency, transparency, and sound-
23 ness of the administration of each program;

24 “(2) the performance of activities receiving as-
25 sistance under each program;

1 “(3) the cost-effectiveness of each program in
2 achieving the stated purposes of the program; and

3 “(4) recommendations, if any, for legislative,
4 regulatory, or administrative changes to each pro-
5 gram to improve its effectiveness.

6 “(c) FOCUS.—In evaluating program performance,
7 each review under this section review shall address the ef-
8 fectiveness of such programs in—

9 “(1) creating and preserving jobs;

10 “(2) ensuring a manageable transition for
11 working families and workers;

12 “(3) reducing the emissions, or enhancing se-
13 questration, of greenhouse gases;

14 “(4) developing clean technologies; and

15 “(5) building resilience to the impacts of cli-
16 mate change.”.

17 **Subtitle C—Additional Greenhouse** 18 **Gas Standards**

19 **SEC. 331. GREENHOUSE GAS STANDARDS.**

20 The Clean Air Act (42 U.S.C. 7401 and following),
21 as amended by subtitles A and B of this title, is further
22 amended by adding the following new title after title VII:

1 **“TITLE VIII—ADDITIONAL**
2 **GREENHOUSE GAS STANDARDS**

3 **“SEC. 801. DEFINITIONS.**

4 “For purposes of this title, terms that are defined
5 in title VII, except for the term ‘stationary source’, shall
6 have the meaning given those terms in title VII.

7 **“PART A—STATIONARY SOURCE STANDARDS**

8 **“SEC. 811. STANDARDS OF PERFORMANCE.**

9 “(a) UNCAPPED STATIONARY SOURCES.—

10 “(1) INVENTORY OF SOURCE CATEGORIES.—(A)

11 Within 12 months after the date of enactment of
12 this title, the Administrator shall publish under sec-
13 tion 111(b)(1)(A) an inventory of categories of sta-
14 tionary sources that consist of those categories that
15 contain sources that individually had uncapped
16 greenhouse gas emissions greater than 10,000 tons
17 of carbon dioxide equivalent and that, in the aggre-
18 gate, were responsible for emitting at least 20 per-
19 cent annually of the uncapped greenhouse gas emis-
20 sions.

21 “(B) The Administrator shall include in the in-
22 ventory under this paragraph each source category
23 that is responsible for at least 10 percent of the un-
24 capped methane emissions in 2005. Notwithstanding
25 any other provision, the inventory required by this

1 section shall not include sources of enteric fermenta-
2 tion. The list under this paragraph shall include in-
3 dustrial sources, the emissions from which, when
4 added to the capped emissions from industrial
5 sources, constitute at least 95 percent of the green-
6 house gas emissions of the industrial sector.

7 “(C) For purposes of this subsection, emissions
8 shall be calculated using tons of carbon dioxide
9 equivalents. In promulgating the inventory required
10 by this paragraph and the schedule required under
11 by paragraph (2)(C), the Administrator shall use the
12 most current emissions data available at the time of
13 promulgation, except as provided in subparagraph
14 (B).

15 “(D) Notwithstanding any other provisions, the
16 Administrator may list under 111(b) any source cat-
17 egory identified in the inventory required by this
18 subsection without making a finding that the source
19 category causes or contributes significantly to, air
20 pollution with may be reasonably anticipated to en-
21 danger public health or welfare.

22 “(2) STANDARDS AND SCHEDULE.—(A) For
23 each category identified as provided in paragraph
24 (1), the Administrator shall promulgate standards of
25 performance under section 111 for the uncapped

1 emissions of greenhouse gases from stationary
2 sources in that category and shall promulgate cor-
3 responding regulations under section 111(d).

4 “(B) The Administrator shall promulgate
5 standards as required by this subsection for sta-
6 tionary sources in categories identified as provided
7 in paragraph (1) as expeditiously as practicable, as-
8 suring that—

9 “(i) standards for identified source cat-
10 egories that, combined, emitted 80 percent or
11 more of the greenhouse gas emissions of the
12 identified source categories shall be promul-
13 gated not later than 3 years after the date of
14 enactment of this title and shall include stand-
15 ards for natural gas extraction; and

16 “(ii) for all other identified source cat-
17 egories—

18 “(I) standards for not less than an
19 additional 25 percent of the identified cat-
20 egories shall be promulgated not later than
21 5 years after the date of enactment of this
22 title;

23 “(II) standards for not less than an
24 additional 25 percent of the identified cat-
25 egories shall be promulgated not later than

1 7 years after the date of enactment of this
2 title; and

3 “(III) standards for all the identified
4 categories shall be promulgated not later
5 than 10 years after the date of enactment
6 of this title.

7 “(C) Not later than 24 months after the date
8 of enactment of this title and after notice and oppor-
9 tunity for comment, the Administrator shall publish
10 a schedule establishing a date for the promulgation
11 of standards for each category of sources identified
12 pursuant to paragraph (1). The date for each cat-
13 egory shall be consistent with the requirements of
14 subparagraph (B). The determination of priorities
15 for the promulgation of standards pursuant to this
16 paragraph is not a rulemaking and shall not be sub-
17 ject to judicial review, except that failure to promul-
18 gate any standard pursuant to the schedule estab-
19 lished by this paragraph shall be subject to review
20 under section 304(a)(2).

21 “(D) Notwithstanding section 307, no action of
22 the Administrator listing a source category under
23 paragraph (1) shall be a final agency action subject
24 to judicial review, except that any such action may
25 be reviewed under section 307 when the Adminis-

1 trator issues performance standards for such cat-
2 egory.

3 “(b) CAPPED SOURCES.—No standard of perform-
4 ance shall be established under section 111 for capped
5 greenhouse gas emissions from a capped source unless the
6 Administrator determines that such standards are appro-
7 priate because of effects that do not include climate
8 change effects. In promulgating a standard of perform-
9 ance under section 111 for the emission from capped
10 sources of any air pollutant that is not a greenhouse gas,
11 the Administrator shall treat the emission of any green-
12 house gas by those entities as a nonair quality public
13 health and environmental impact within the meaning of
14 section 111(a)(1).

15 “(c) PERFORMANCE STANDARDS.—For purposes of
16 setting a performance standard for source categories iden-
17 tified pursuant to subsection (a)—

18 “(1) The Administrator shall take into account
19 the goal of reducing total United States greenhouse
20 gas emissions as set forth in section 702.

21 “(2) The Administrator may promulgate a de-
22 sign, equipment, work practice, or operational stand-
23 ard, or any combination thereof, under section 111
24 in lieu of a standard of performance under that sec-
25 tion without regard to any determination of feasi-

1 bility that would otherwise be required under section
2 111(h).

3 “(3) Notwithstanding any other provision, in
4 setting the level of each standard required by this
5 section, the Administrator shall take into account
6 projections of allowance prices, such that the mar-
7 ginal cost of compliance (expressed as dollars per
8 ton of carbon dioxide equivalent reduced) imposed by
9 the standard would not, in the judgement of the Ad-
10 ministrator, be expected to exceed the Administra-
11 tor’s projected allowance prices over the time period
12 spanning from the date of initial compliance to the
13 date that the next revisions of the standard would
14 come into effect pursuant to the schedule under sec-
15 tion 111(b)(1)(B).

16 “(d) DEFINITIONS.—In this section, the terms ‘un-
17 capped greenhouse gas emissions’ and ‘uncapped methane
18 emissions’ mean those greenhouse gas or methane emis-
19 sions, respectively, to which section 722 would not have
20 applied if the requirements of this title had been in effect
21 for the same year as the emissions data upon which the
22 list is based.

23 “(e) STUDY OF THE EFFECTS OF PERFORMANCE
24 STANDARDS.—

1 “(1) STUDY.—The Administrator shall conduct
2 a study of the impacts of performance standards re-
3 quired under this section, which shall evaluate the
4 effect of such standards on the—

5 “(A) costs of achieving compliance with the
6 economy-wide reduction goals specified in sec-
7 tion 702 and the reduction targets specified in
8 section 703;

9 “(B) available supply of offset credits; and

10 “(C) ability to achieve the economy-wide
11 reduction goals specified in section 702 and any
12 other benefits of such standards.

13 “(2) REPORT.—The Administrator shall submit
14 to the House Energy and Commerce Committee a
15 report that describes the results of the study not
16 later than 18 months after the publication of the
17 standards required under subsection (a)(2)(B)(i).

18 **“PART C—EXEMPTIONS FROM OTHER PROGRAMS**

19 **“SEC. 831. CRITERIA POLLUTANTS.**

20 “As of the date of the enactment of the Safe Climate
21 Act, no greenhouse gas may be added to the list under
22 section 108(a) on the basis of its effect on global climate
23 change.

1 **“SEC. 832. INTERNATIONAL AIR POLLUTION.**

2 “Section 115 shall not apply to an air pollutant with
3 respect to that pollutant’s contribution to global warming.

4 **“SEC. 833. HAZARDOUS AIR POLLUTANTS.**

5 “No greenhouse gas may be added to the list of haz-
6 ardous air pollutants under section 112 unless such green-
7 house gas meets the listing criteria of section 112(b) inde-
8 pendent of its effects on global climate change.

9 **“SEC. 834. NEW SOURCE REVIEW.**

10 “The provisions of part C of title I shall not apply
11 to a major emitting facility that is initially permitted or
12 modified after January 1, 2009, on the basis of its emis-
13 sions of any greenhouse gas.

14 **“SEC. 835. TITLE V PERMITS.**

15 “Notwithstanding any provision of title III or V, no
16 stationary source shall be required to apply for, or operate
17 pursuant to, a permit under title V, solely because the
18 source emits any greenhouse gases that are regulated sole-
19 ly because of their effect on global climate change.”.

20 **SEC. 332. HFC REGULATION.**

21 (a) IN GENERAL.—Title VI of the Clean Air Act (42
22 U.S.C. 7671 et seq.) (relating to stratospheric ozone pro-
23 tection) is amended by adding at the end the following:

24 **“SEC. 619. HYDROFLUOROCARBONS (HFCS).**

25 “(a) TREATMENT AS CLASS II, GROUP II SUB-
26 STANCES.—Except as otherwise provided in this section,

1 hydrofluorocarbons shall be treated as class II substances
2 for purposes of applying the provisions of this title. The
3 Administrator shall establish two groups of class II sub-
4 stances. Class II, group I substances shall include all
5 hydrochlorofluorocarbons (HCFCs) listed pursuant to sec-
6 tion 602(b). Class II, group II substances shall include
7 each of the following:

- 8 “(1) Hydrofluorocarbon-23 (HFC-23).
- 9 “(2) Hydrofluorocarbon-32 (HFC-32).
- 10 “(3) Hydrofluorocarbon-41 (HFC-41).
- 11 “(4) Hydrofluorocarbon-125 (HFC-125).
- 12 “(5) Hydrofluorocarbon-134 (HFC-134).
- 13 “(6) Hydrofluorocarbon-134a (HFC-134a).
- 14 “(7) Hydrofluorocarbon-143 (HFC-143).
- 15 “(8) Hydrofluorocarbon-143a (HFC-143a).
- 16 “(9) Hydrofluorocarbon-152 (HFC-152).
- 17 “(10) Hydrofluorocarbon-152a (HFC-152a).
- 18 “(11) Hydrofluorocarbon-227ea (HFC-227ea).
- 19 “(12) Hydrofluorocarbon-236cb (HFC-236cb).
- 20 “(13) Hydrofluorocarbon-236ea (HFC-236ea).
- 21 “(14) Hydrofluorocarbon-236fa (HFC-236fa).
- 22 “(15) Hydrofluorocarbon-245ca (HFC-245ca).
- 23 “(16) Hydrofluorocarbon-245fa (HFC-245fa).
- 24 “(17) Hydrofluorocarbon-365mfc (HFC-
25 365mfc).

1 “(18) Hydrofluorocarbon-43-10mee (HFC-43-
2 10mee).

3 “(19) Hydrofluoroolefin-1234yf (HFO-1234yf).

4 “(20) Hydrofluoroolefin-1234ze (HFO-1234ze).

5 Not later than 6 months after the date of enactment of
6 this title, the Administrator shall publish an initial list of
7 class II, group II substances, which shall include the sub-
8 stances listed in this subsection. The Administrator may
9 add to the list of class II, group II substances any other
10 substance used as a substitute for a class I or II substance
11 if the Administrator determines that 1 metric ton of the
12 substance makes the same or greater contribution to glob-
13 al warming over 100 years as 1 metric ton of carbon diox-
14 ide. Within 24 months after the date of enactment of this
15 section, the Administrator shall amend the regulations
16 under this title (including the regulations referred to in
17 sections 603, 608, 609, 610, 611, 612, and 613) to apply
18 to class II, group II substances.

19 “(b) CONSUMPTION AND PRODUCTION OF CLASS II,
20 GROUP II SUBSTANCES.—

21 “(1) IN GENERAL.—

22 “(A) CONSUMPTION PHASE DOWN.—In the
23 case of class II, group II substances, in lieu of
24 applying section 605 and the regulations there-
25 under, the Administrator shall promulgate reg-

1 ulations phasing down the consumption of class
2 II, group II substances in the United States,
3 and the importation of products containing any
4 class II, group II substance, in accordance with
5 this subsection within 18 months after the date
6 of enactment of this section. Effective January
7 1, 2012, it shall be unlawful for any person to
8 produce any class II, group II substance, im-
9 port any class II, group II substance, or import
10 any product containing any class II, group II
11 substance without holding one consumption al-
12 lowance or one destruction offset credit for each
13 carbon dioxide equivalent ton of the class II,
14 group II substance. Any person who exports a
15 class II, group II substance for which a con-
16 sumption allowance was retired may receive a
17 refund of that allowance from the Adminis-
18 trator following the export.

19 “(B) PRODUCTION.—If the United States
20 becomes a party or otherwise adheres to a mul-
21 tilateral agreement, including any amendment
22 to the Montreal Protocol on Substances That
23 Deplete the Ozone Layer, that restricts the pro-
24 duction of class II, group II substances, the Ad-
25 ministrator shall promulgate regulations estab-

1 lishing a baseline for the production of class II,
2 group II substances in the United States and
3 phasing down the production of class II, group
4 II substances in the United States, in accord-
5 ance with such multilateral agreement and sub-
6 ject to the same exceptions and other provisions
7 as are applicable to the phase down of con-
8 sumption of class II, group II substances under
9 this section (except that the Administrator shall
10 not require a person who obtains production al-
11 lowances from the Administrator to make pay-
12 ment for such allowances if the person is mak-
13 ing payment for a corresponding quantity of
14 consumption allowances of the same vintage
15 year). Upon the effective date of such regula-
16 tions, it shall be unlawful for any person to
17 produce any class II, group II substance with-
18 out holding one consumption allowance and one
19 production allowance, or one destruction offset
20 credit, for each carbon dioxide equivalent ton of
21 the class II, group II substance.

22 “(C) INTEGRITY OF CAP.—To maintain
23 the integrity of the class II, group II cap, the
24 Administrator may, through rulemaking, limit
25 the percentage of each person’s compliance obli-

1 gation that may be met through the use of de-
2 struction offset credits or banked allowances.

3 “(D) COUNTING OF VIOLATIONS.—Each
4 consumption allowance, production allowance,
5 or destruction offset credit not held as required
6 by this section shall be a separate violation of
7 this section.

8 “(2) SCHEDULE.—Pursuant to the regulations
9 promulgated pursuant to paragraph (1)(A), the
10 number of class II, group II consumption allowances
11 established by the Administrator for each calendar
12 year beginning in 2012 shall be the following per-
13 centage of the baseline, as established by the Admin-
14 istrator pursuant to paragraph (3):

“Calendar Year	Percent of Baseline
2012	90
2013	87.5
2014	85
2015	82.5
2016	80
2017	77.5
2018	75
2019	71
2020	67
2021	63
2022	59

“Calendar Year	Percent of Baseline
2023	54
2024	50
2025	46
2026	42
2027	38
2028	34
2029	30
2030	25
2031	21
2032	17
after 2032	15

1 “(3) BASELINE.—(A) Within 12 months after
2 the date of enactment of this section, the Adminis-
3 trator shall promulgate regulations to establish the
4 baseline for purposes of paragraph (2). The baseline
5 shall be the sum, expressed in metric tons of carbon
6 dioxide equivalents, of—

7 “(i) the annual average consumption of all
8 class II substances in calendar years 2004,
9 2005, and 2006; plus

10 “(ii) the annual average quantity of all
11 class II substances contained in imported prod-
12 ucts in calendar years 2004, 2005, and 2006.

13 “(B) Notwithstanding subparagraph (A), if the
14 Administrator determines that the baseline is higher

1 than 370 million metric tons of carbon dioxide
2 equivalents, then the Administrator shall establish
3 the baseline at 370 million metric tons of carbon di-
4 oxide equivalents.

5 “(C) Notwithstanding subparagraph (A), if the
6 Administrator determines that the baseline is lower
7 than 280 million metric tons of carbon dioxide
8 equivalents, then the Administrator shall establish
9 the baseline at 280 million metric tons of carbon di-
10 oxide equivalents.

11 “(4) DISTRIBUTION OF ALLOWANCES.—

12 “(A) IN GENERAL.—Pursuant to the regu-
13 lations promulgated under paragraph (1)(A),
14 for each calendar year beginning in 2012, the
15 Administrator shall sell consumption allowances
16 in accordance with this paragraph.

17 “(B) ESTABLISHMENT OF POOLS.—The
18 Administrator shall establish two allowance
19 pools. Eighty percent of the consumption allow-
20 ances available for a calendar year shall be
21 placed in the producer-importer pool, and 20
22 percent of the consumption allowances available
23 for a calendar year shall be placed in the sec-
24 ondary pool.

25 “(C) PRODUCER-IMPORTER POOL.—

1 “(i) AUCTION.—(I) For each calendar
 2 year, the Administrator shall offer for sale
 3 at auction the following percentage of the
 4 consumption allowances in the producer-
 5 importer pool:

“Calendar Year	Percent Available for Auction
2012	10
2013	20
2014	30
2015	40
2016	50
2017	60
2018	70
2019	80
2020 and thereafter	90

6 “(II) Any person who produced or im-
 7 ported any class II substance during cal-
 8 endar year 2004, 2005, or 2006 may par-
 9 ticipate in the auction. No other persons
 10 may participate in the auction unless per-
 11 mitted to do so pursuant to subclause
 12 (III).

13 “(III) Not later than three years after
 14 the date of the initial auction and from
 15 time to time thereafter, the Administrator
 16 shall determine through rulemaking wheth-

1 er any persons who did not produce or im-
2 port a class II substance during calendar
3 year 2004, 2005, or 2006 will be permitted
4 to participate in future auctions. The Ad-
5 ministrator shall base this determination
6 on the duration, consistency, and scale of
7 such person's purchases of consumption al-
8 lowances in the secondary pool under sub-
9 paragraph (D)(ii)(III), as well as economic
10 or technical hardship and other factors
11 deemed relevant by the Administrator.

12 “(IV) The Administrator shall set a
13 minimum bid per consumption allowance of
14 the following:

15 “(aa) For vintage year 2012,
16 \$1.00.

17 “(bb) For vintage year 2013,
18 \$1.20.

19 “(cc) For vintage year 2014,
20 \$1.40.

21 “(dd) For vintage year 2015,
22 \$1.60.

23 “(ee) For vintage year 2016,
24 \$1.80.

1 “(ff) For vintage year 2017,
2 \$2.00.

3 “(gg) For vintage year 2018 and
4 thereafter, \$2.00 adjusted for infla-
5 tion after vintage year 2017 based
6 upon the producer price index as pub-
7 lished by the Department of Com-
8 merce.

9 “(ii) NON-AUCTION SALE.—(I) For
10 each calendar year, as soon as practicable
11 after auction, the Administrator shall offer
12 for sale the remaining consumption allow-
13 ances in the producer-importer pool at the
14 following prices:

15 “(aa) A fee of \$1.00 per vintage
16 year 2012 allowance.

17 “(bb) A fee of \$1.20 per vintage
18 year 2013 allowance.

19 “(cc) A fee of \$1.40 per vintage
20 year 2014 allowance.

21 “(dd) For each vintage year
22 2015 allowance, a fee equal to the av-
23 erage of \$1.10 and the auction clear-
24 ing price for vintage year 2014 allow-
25 ances.

1 “(ee) For each vintage year 2016
2 allowance, a fee equal to the average
3 of \$1.30 and the auction clearing
4 price for vintage year 2015 allow-
5 ances.

6 “(ff) For each vintage year 2017
7 allowance, a fee equal to the average
8 of \$1.40 and the auction clearing
9 price for vintage year 2016 allow-
10 ances.

11 “(gg) For each allowance of vin-
12 tage year 2018 and subsequent vin-
13 tage years, a fee equal to the auction
14 clearing price for that vintage year.

15 “(II) The Administrator shall offer to
16 sell the remaining consumption allowances
17 in the producer-importer pool to producers
18 of class II, group II substances and im-
19 porters of class II, group II substances in
20 proportion to their relative allocation
21 share.

22 “(III) Such allocation share for such
23 sale shall be determined by the Adminis-
24 trator using such producer’s or importer’s
25 annual average data on class II substances

1 from calendar years 2004, 2005, and
2 2006, on a carbon dioxide equivalent basis,
3 and—

4 “(aa) shall be based on a pro-
5 ducer’s production, plus importation,
6 plus acquisitions and purchases from
7 persons who produced class II sub-
8 stances in the United States during
9 calendar years 2004, 2005, or 2006,
10 less exportation, less transfers and
11 sales to persons who produced class II
12 substances in the United States dur-
13 ing calendar years 2004, 2005, or
14 2006; and

15 “(bb) for an importer of class II
16 substances that did not produce in the
17 United States any class II substance
18 during calendar years 2004, 2005,
19 and 2006, shall be based on the im-
20 porter’s importation less exportation.

21 For purposes of item (aa), the Adminis-
22 trator shall account for 100 percent of
23 class II, group II substances and 60 per-
24 cent of class II, group I substances. For
25 purposes of item (bb), the Administrator

1 shall account for 100 percent of class II,
2 group II substances and 100 percent of
3 class II, group I substances.

4 “(IV) Any consumption allowances
5 made available for nonauction sale to a
6 specific producer or importer of class II,
7 group II substances but not purchased by
8 the specific producer or importer shall be
9 made available for sale to any producer or
10 importer of class II substances during cal-
11 endar years 2004, 2005, or 2006. If de-
12 mand for such consumption allowances ex-
13 ceeds supply of such consumption allow-
14 ances, the Administrator shall develop and
15 utilize criteria for the sale of such con-
16 sumption allowances that may include pro
17 rata shares, historic production and impor-
18 tation, economic or technical hardship, or
19 other factors deemed relevant by the Ad-
20 ministrator. If the supply of such con-
21 sumption allowances exceeds demand, the
22 Administrator may offer such consumption
23 allowances for sale in the secondary pool as
24 set forth in subparagraph (D).

1 “(D) SECONDARY POOL.—(i) For each cal-
2 endar year, as soon as practicable after the auc-
3 tion required in subparagraph (C), the Adminis-
4 trator shall offer for sale the consumption al-
5 lowances in the secondary pool at the prices
6 listed in subparagraph (C)(ii).

7 “(ii) The Administrator shall accept appli-
8 cations for purchase of secondary pool con-
9 sumption allowances from—

10 “(I) importers of products containing
11 class II, group II substances;

12 “(II) persons who purchased any class
13 II, group II substance directly from a pro-
14 ducer or importer of class II, group II sub-
15 stances for use in a product containing a
16 class II, group II substance, a manufac-
17 turing process, or a reclamation process;

18 “(III) persons who did not produce or
19 import a class II substance during cal-
20 endar year 2004, 2005, or 2006, but who
21 the Administrator determines have subse-
22 quently taken significant steps to produce
23 or import a substantial quantity of any
24 class II, group II substance; and

1 “(IV) persons who produced or im-
2 ported any class II substance during cal-
3 endar year 2004, 2005, or 2006.

4 “(iii) If the supply of consumption allow-
5 ances in the secondary pool equals or exceeds
6 the demand for consumption allowances in the
7 secondary pool as presented in the applications
8 for purchase, the Administrator shall sell the
9 consumption allowances in the secondary pool
10 to the applicants in the amounts requested in
11 the applications for purchase. Any consumption
12 allowances in the secondary pool not purchased
13 in a calendar year may be rolled over and added
14 to the quantity available in the secondary pool
15 in the following year.

16 “(iv) If the demand for consumption allow-
17 ances in the secondary pool as presented in the
18 applications for purchase exceeds the supply of
19 consumption allowances in the secondary pool,
20 the Administrator shall sell the consumption al-
21 lowances as follows:

22 “(I) The Administrator shall first sell
23 the consumption allowances in the sec-
24 ondary pool to any importers of products
25 containing class II, group II substances in

1 the amounts requested in their applications
2 for purchase. If the demand for such con-
3 sumption allowances exceeds supply of
4 such consumption allowances, the Adminis-
5 trator shall develop and utilize criteria for
6 the sale of such consumption allowances
7 among importers of products containing
8 class II, group II substances that may in-
9 clude pro rata shares, historic importation,
10 economic or technical hardship, or other
11 factors deemed relevant by the Adminis-
12 trator.

13 “(II) The Administrator shall next
14 sell any remaining consumption allowances
15 to persons identified in subclauses (II) and
16 (III) of clause (ii) in the amounts re-
17 quested in their applications for purchase.
18 If the demand for such consumption allow-
19 ances exceeds remaining supply of such
20 consumption allowances, the Administrator
21 shall develop and utilize criteria for the
22 sale of such consumption allowances
23 among subclauses (II) and (III) applicants
24 that may include pro rata shares, historic
25 use, economic or technical hardship, or

1 other factors deemed relevant by the Ad-
2 ministrator.

3 “(III) The Administrator shall then
4 sell any remaining consumption allowances
5 to persons who produced or imported any
6 class II substance during calendar year
7 2004, 2005, or 2006 in the amounts re-
8 quested in their applications for purchase.
9 If demand for such consumption allow-
10 ances exceeds remaining supply of such
11 consumption allowances, the Administrator
12 shall develop and utilize criteria for the
13 sale of such consumption allowances that
14 may include pro rata shares, historic pro-
15 duction and importation, economic or tech-
16 nical hardship, or other factors deemed rel-
17 evant by the Administrator.

18 “(IV) Each person who purchases
19 consumption allowances in a non-auction
20 sale under this subparagraph shall be re-
21 quired to disclose the person or entity
22 sponsoring or benefitting from the pur-
23 chases if such person or entity is, in whole
24 or in part, other than the purchaser or the
25 purchaser’s employer.

1 “(E) DISCRETION TO WITHHOLD ALLOW-
2 ANCES.—Nothing in this paragraph prevents
3 the Administrator from exercising discretion to
4 withhold and retire consumption allowances
5 that would otherwise be available for auction or
6 nonauction sale. Not later than 18 months after
7 the date of enactment of this section, the Ad-
8 ministrators shall promulgate regulations estab-
9 lishing criteria for withholding and retiring con-
10 sumption allowances.

11 “(5) BANKING.—A consumption allowance or
12 destruction offset credit may be used to meet the
13 compliance obligation requirements of paragraph (1)
14 in—

15 “(A) the vintage year for the allowance or
16 destruction offset credit; or

17 “(B) any calendar year subsequent to the
18 vintage year for the allowance or destruction
19 offset credit.

20 “(6) AUCTIONS.—

21 “(A) INITIAL REGULATIONS.—Not later
22 than 18 months after the date of enactment of
23 this section, the Administrator shall promulgate
24 regulations governing the auction of allowances

1 under this section. Such regulations shall in-
2 clude the following requirements:

3 “(i) FREQUENCY; FIRST AUCTION.—

4 Auctions shall be held one time per year at
5 regular intervals, with the first auction to
6 be held no later than October 31, 2011.

7 “(ii) AUCTION FORMAT.—Auctions

8 shall follow a single-round, sealed-bid, uni-
9 form price format.

10 “(iii) FINANCIAL ASSURANCE.—The

11 Administrator may establish financial as-
12 surance requirements to ensure that auc-
13 tion participants can and will perform on
14 their bids.

15 “(iv) DISCLOSURE OF BENEFICIAL

16 OWNERSHIP.—Each bidder in the auction
17 shall be required to disclose the person or
18 entity sponsoring or benefitting from the
19 bidder’s participation in the auction if such
20 person or entity is, in whole or in part,
21 other than the bidder.

22 “(v) PUBLICATION OF INFORMA-

23 TION.—After the auction, the Adminis-
24 trator shall, in a timely fashion, publish
25 the number of bidders, number of winning

1 bidders, the quantity of allowances sold,
2 and the auction clearing price.

3 “(vi) BIDDING LIMITS IN 2012.—In
4 the vintage year 2012 auction, no auction
5 participant may, directly or in concert with
6 another participant, bid for or purchase
7 more allowances offered for sale at the
8 auction than the greater of—

9 “(I) the number of allowances
10 which, when added to the number of
11 allowances available for purchase by
12 the participant in the producer-im-
13 porter pool non-auction sale, would
14 equal the participant’s annual average
15 consumption of class II, group II sub-
16 stances in calendar years 2004, 2005,
17 and 2006; or

18 “(II) the number of allowances
19 equal to the product of—

20 “(aa) 1.20 multiplied by the
21 participant’s allocation share of
22 the producer-importer pool non-
23 auction sale as determined under
24 paragraph (4)(C)(ii); and

1 “(bb) the number of vintage
2 year 2012 allowances offered at
3 auction.

4 “(vii) BIDDING LIMITS IN 2013.—In
5 the vintage year 2013 auction, no auction
6 participant may, directly or in concert with
7 another participant, bid for or purchase
8 more allowances offered for sale at the
9 auction than the product of—

10 “(I) 1.15 multiplied by the ratio
11 of the total number of vintage year
12 2012 allowances purchased by the
13 participant from the auction and from
14 the producer-importer pool non-auc-
15 tion sale to the total number of vin-
16 tage year 2012 allowances in the pro-
17 ducer-importer pool; and

18 “(II) the number of vintage year
19 2013 allowances offered at auction.

20 “(viii) BIDDING LIMITS IN SUBSE-
21 QUENT YEARS.—In the auctions for vin-
22 tage year 2014 and subsequent vintage
23 years, no auction participant may, directly
24 or in concert with another participant, bid
25 for or purchase more allowances offered

1 for sale at the auction than the product
2 of—

3 “(I) 1.15 multiplied by the ratio
4 of the highest number of allowances
5 required to be held by the participant
6 in any of the three prior vintage years
7 to meet its compliance obligation
8 under paragraph (1) to the total num-
9 ber of allowances in the producer-im-
10 porter pool for such vintage year; and

11 “(II) the number of allowances
12 offered at auction for that vintage
13 year.

14 “(ix) OTHER REQUIREMENTS.—The
15 Administrator may include in the regula-
16 tions such other requirements or provisions
17 as the Administrator considers necessary
18 to promote effective, efficient, transparent,
19 and fair administration of auctions under
20 this section.

21 “(B) REVISION OF REGULATIONS.—The
22 Administrator may, at any time, revise the ini-
23 tial regulations promulgated under subpara-
24 graph (A) based on the Administrator’s experi-
25 ence in administering allowance auctions by

1 promulgating new regulations. Such revised reg-
2 ulations need not meet the requirements identi-
3 fied in subparagraph (A) if the Administrator
4 determines that an alternative auction design
5 would be more effective, taking into account
6 factors including costs of administration, trans-
7 parency, fairness, and risks of collusion or ma-
8 nipulation. In determining whether and how to
9 revise the initial regulations under this para-
10 graph, the Administrator shall not consider
11 maximization of revenues to the Federal Gov-
12 ernment.

13 “(C) DELEGATION OR CONTRACT.—Pursu-
14 ant to regulations under this section, the Ad-
15 ministrator may, by delegation or contract, pro-
16 vide for the conduct of auctions under the Ad-
17 ministrator’s supervision by other departments
18 or agencies of the Federal Government or by
19 nongovernmental agencies, groups, or organiza-
20 tions.

21 “(7) PAYMENTS FOR ALLOWANCES.—

22 “(A) INITIAL REGULATIONS.—Not later
23 than 18 months after the date of enactment of
24 this section, the Administrator shall promulgate
25 regulations governing the payment for allow-

1 ances purchased in auction and non-auction
2 sales under this section. Such regulations shall
3 include the requirement that, in the event that
4 full payment for purchased allowances is not
5 made on the date of purchase, equal payments
6 shall be made one time per calendar quarter
7 with all payments for allowances of a vintage
8 year made by the end of that vintage year.

9 “(B) REVISION OF REGULATIONS.— The
10 Administrator may, at any time, revise the ini-
11 tial regulations promulgated under subpara-
12 graph (A) based on the Administrator’s experi-
13 ence in administering collection of payments by
14 promulgating new regulations. Such revised reg-
15 ulations need not meet the requirements identi-
16 fied in subparagraph (A) if the Administrator
17 determines that an alternative payment struc-
18 ture or frequency would be more effective, tak-
19 ing into account factors including cost of ad-
20 ministration, transparency, and fairness. In de-
21 termining whether and how to revise the initial
22 regulations under this paragraph, the Adminis-
23 trator shall not consider maximization of reve-
24 nues to the Federal Government.

1 “(C) PENALTIES FOR NON-PAYMENT.—
2 Failure to pay for purchased allowances in ac-
3 cordance with the regulations promulgated pur-
4 suant to this paragraph shall be a violation of
5 the requirements of subsection (b). Section
6 113(c)(3) shall apply in the case of any person
7 who knowingly fails to pay for purchased allow-
8 ances in accordance with the regulations pro-
9 mulgated pursuant to this paragraph.

10 “(8) IMPORTED PRODUCTS.—If the United
11 States becomes a party or otherwise adheres to a
12 multilateral agreement, including any amendment to
13 the Montreal Protocol on Substances That Deplete
14 the Ozone Layer, which restricts the production or
15 consumption of class II, group II substances—

16 “(A) as of the date on which such agree-
17 ment or amendment enters into force, it shall
18 no longer be unlawful for any person to import
19 from a party to such agreement or amendment
20 any product containing any class II, group II
21 substance whose production or consumption is
22 regulated by such agreement or amendment
23 without holding one consumption allowance or
24 one destruction offset credit for each carbon di-

1 oxide equivalent ton of the class II, group II
2 substance;

3 “(B) the Administrator shall promulgate
4 regulations within 12 months of the date the
5 United States becomes a party or otherwise ad-
6 heres to such agreement or amendment, or the
7 date on which such agreement or amendment
8 enters into force, whichever is later, to establish
9 a new baseline for purposes of paragraph (2),
10 which new baseline shall be the original baseline
11 less the carbon dioxide equivalent of the annual
12 average quantity of any class II substances reg-
13 ulated by such agreement or amendment con-
14 tained in products imported from parties to
15 such agreement or amendment in calendar
16 years 2004, 2005, and 2006;

17 “(C) as of the date on which such agree-
18 ment or amendment enters into force, no per-
19 son importing any product containing any class
20 II, group II substance may, directly or in con-
21 cert with another person, purchase any con-
22 sumption allowances for sale by the Adminis-
23 trator for the importation of products from a
24 party to such agreement or amendment that

1 contain any class II, group II substance re-
2 stricted by such agreement or amendment; and

3 “(D) the Administrator may adjust the
4 two allowance pools established in paragraph
5 (4) such that up to 90 percent of the consump-
6 tion allowances available for a calendar year are
7 placed in the producer-importer pool with the
8 remaining consumption allowances placed in the
9 secondary pool.

10 “(9) OFFSETS.—

11 “(A) CHLOROFLUOROCARBON DESTRUC-
12 TION.—Within 18 months after the date of en-
13 actment of this section, the Administrator shall
14 promulgate regulations to provide for the
15 issuance of offset credits for the destruction, in
16 the calendar year 2012 or later, of
17 chlorofluorocarbons in the United States. The
18 Administrator shall establish and distribute to
19 the destroying entity a quantity of destruction
20 offset credits equal to 0.8 times the number of
21 metric tons of carbon dioxide equivalents of re-
22 duction achieved through the destruction. No
23 destruction offset credits shall be established
24 for the destruction of a class II, group II sub-
25 stance.

1 “(B) DEFINITION.—For purposes of this
2 paragraph, the term ‘destruction’ means the
3 conversion of a substance by thermal, chemical,
4 or other means to another substance with little
5 or no carbon dioxide equivalent value and no
6 ozone depletion potential.

7 “(C) REGULATIONS.—The regulations pro-
8 mulgated under this paragraph shall include
9 standards and protocols for project eligibility,
10 certification of destroyers, monitoring, tracking,
11 destruction efficiency, quantification of project
12 and baseline emissions and carbon dioxide
13 equivalent value, and verification. The Adminis-
14 trator shall ensure that destruction offset cred-
15 its represent real and verifiable destruction of
16 chlorofluorocarbons or other class I or class II,
17 group I, substances authorized under subpara-
18 graph (D).

19 “(D) OTHER SUBSTANCES.—The Adminis-
20 trator may promulgate regulations to add to the
21 list of class I and class II, group I, substances
22 that may be destroyed for destruction offset
23 credits, taking into account a candidate sub-
24 stance’s carbon dioxide equivalent value, ozone
25 depletion potential, prevalence in banks in the

1 United States, and emission rates, as well as
2 the need for additional cost containment under
3 the class II, group II cap and the integrity of
4 the class II, group II cap. The Administrator
5 shall not add a class I or class II, group I sub-
6 stance to the list if the consumption of the sub-
7 stance has not been completely phased-out
8 internationally (except for essential use exemp-
9 tions or other similar exemptions) pursuant to
10 the Montreal Protocol.

11 “(E) EXTENSION OF OFFSETS.—(i) At any
12 time after the Administrator promulgates regu-
13 lations pursuant to subparagraph (A), the Ad-
14 ministrator may, pursuant to the requirements
15 of part D of title VII and based on the carbon
16 dioxide equivalent value of the substance de-
17 stroyed, add the types of destruction projects
18 authorized to receive destruction offset credits
19 under this paragraph to the list of types of
20 projects eligible for offset credits under section
21 733. If such projects are added to the list under
22 section 733, the issuance of offset credits for
23 such projects under part D of title VII shall be
24 governed by the requirements of such part D,
25 while the issuance of offset credits for such

1 projects under this paragraph shall be governed
2 by the requirements of this paragraph. Nothing
3 in this paragraph shall affect the issuance of
4 offset credits under section 740.

5 “(ii) The Administrator shall not make the
6 addition under clause (i) unless the Adminis-
7 trator finds that insufficient destruction is oc-
8 ccurring or is projected to occur under this para-
9 graph and that the addition would increase de-
10 struction.

11 “(iii) In no event shall more than one de-
12 struction offset credit be issued under title VII
13 and this section for the destruction of the same
14 quantity of a substance.

15 “(10) LEGAL STATUS OF ALLOWANCES AND
16 CREDITS.—None of the following constitutes a prop-
17 erty right:

18 “(A) A production or consumption allow-
19 ance.

20 “(B) A destruction offset credit.

21 “(c) DEADLINES FOR COMPLIANCE.—Notwith-
22 standing the deadlines specified for class II substances in
23 sections 608, 609, 610, 612, and 613 that occur prior to
24 January 1, 2009, the deadline for promulgating regula-

1 tions under those sections for class II, group II substances
2 shall be January 1, 2012.

3 “(d) EXCEPTIONS FOR ESSENTIAL USES.—Notwith-
4 standing any phase down of production and consumption
5 required by this section, to the extent consistent with any
6 applicable multilateral agreement to which the United
7 States is a party or otherwise adheres, the Administrator
8 may provide the following exceptions for essential uses:

9 “(1) MEDICAL DEVICES.—The Administrator,
10 after notice and opportunity for public comment,
11 and in consultation with the Commissioner of the
12 Food and Drug Administration, may provide an ex-
13 ception for the production and consumption of class
14 II, group II substances solely for use in medical de-
15 vices.

16 “(2) AVIATION AND SPACE VEHICLE SAFETY.—
17 The Administrator, after notice and opportunity for
18 public comment, may authorize the production and
19 consumption of limited quantities of class II, group
20 II substances solely for the purposes of aviation or
21 space vehicle safety if either the Administrator of
22 the Federal Aviation Administration or the Adminis-
23 trator of the National Aeronautics and Space Ad-
24 ministration, in consultation with the Administrator,
25 determines that no safe and effective substitute has

1 been developed and that such authorization is nec-
2 essary for aviation or space flight safety purposes.

3 “(e) DEVELOPING COUNTRIES.—Notwithstanding
4 any phase down of production required by this section, the
5 Administrator, after notice and opportunity for public
6 comment, may authorize the production of limited quan-
7 tities of class II, group II substances in excess of the
8 amounts otherwise allowable under this section solely for
9 export to, and use in, developing countries. Any produc-
10 tion authorized under this subsection shall be solely for
11 purposes of satisfying the basic domestic needs of such
12 countries as provided in applicable international agree-
13 ments, if any, to which the United States is a party or
14 otherwise adheres.

15 “(f) NATIONAL SECURITY; FIRE SUPPRESSION,
16 ETC.—The provisions of subsection (f) and paragraphs (1)
17 and (2) of subsection (g) of section 604 shall apply to any
18 consumption and production phase down of class II, group
19 II substances in the same manner and to the same extent,
20 consistent with any applicable international agreement to
21 which the United States is a party or otherwise adheres,
22 as such provisions apply to the substances specified in
23 such subsection.

24 “(g) ACCELERATED SCHEDULE.—In lieu of section
25 606, the provisions of paragraphs (1), (2), and (3) of this

1 subsection shall apply in the case of class II, group II sub-
2 stances.

3 “(1) IN GENERAL.—The Administrator shall
4 promulgate initial regulations not later than 18
5 months after the date of enactment of this section,
6 and revised regulations any time thereafter, which
7 establish a schedule for phasing down the consump-
8 tion (and, if the condition in subsection (b)(1)(B) is
9 met, the production) of class II, group II substances
10 that is more stringent than the schedule set forth in
11 this section if, based on the availability of sub-
12 stitutes, the Administrator determines that such
13 more stringent schedule is practicable, taking into
14 account technological achievability, safety, and other
15 factors the Administrator deems relevant, or if the
16 Montreal Protocol, or any applicable international
17 agreement to which the United States is a party or
18 otherwise adheres, is modified or established to in-
19 clude a schedule or other requirements to control or
20 reduce production, consumption, or use of any class
21 II, group II substance more rapidly than the appli-
22 cable schedule under this section.

23 “(2) PETITION.—Any person may submit a pe-
24 tition to promulgate regulations under this sub-

1 section in the same manner and subject to the same
2 procedures as are provided in section 606(b).

3 “(3) INCONSISTENCY.—If the Administrator de-
4 termines that the provisions of this section regarding
5 banking, allowance rollover, or destruction offset
6 credits create a significant potential for inconsis-
7 tency with the requirements of any applicable inter-
8 national agreement to which the United States is a
9 party or otherwise adheres, the Administrator may
10 promulgate regulations restricting the availability of
11 banking, allowance rollover, or destruction offset
12 credits to the extent necessary to avoid such incon-
13 sistency.

14 “(h) EXCHANGE.—Section 607 shall not apply in the
15 case of class II, group II substances. Production and con-
16 sumption allowances for class II, group II substances may
17 be freely exchanged or sold but may not be converted into
18 allowances for class II, group I substances.

19 “(i) LABELING.—(1) In applying section 611 to prod-
20 ucts containing or manufactured with class II, group II
21 substances, in lieu of the words ‘destroying ozone in the
22 upper atmosphere’ on labels required under section 611
23 there shall be substituted the words ‘contributing to global
24 warming’.

1 “(2) The Administrator may, through rulemaking,
2 exempt from the requirements of section 611 products
3 containing or manufactured with class II, group II sub-
4 stances determined to have little or no carbon dioxide
5 equivalent value compared to other substances used in
6 similar products.

7 “(j) NONESSENTIAL PRODUCTS.—For the purposes
8 of section 610, class II, group II substances shall be regu-
9 lated under section 610(b), except that in applying section
10 610(b) the word ‘hydrofluorocarbon’ shall be substituted
11 for the word ‘chlorofluorocarbon’ and the term ‘class II,
12 group II’ shall be substituted for the term ‘class I’. Class
13 II, group II substances shall not be subject to the provi-
14 sions of section 610(d).

15 “(k) INTERNATIONAL TRANSFERS.—In the case of
16 class II, group II substances, in lieu of section 616, this
17 subsection shall apply. To the extent consistent with any
18 applicable international agreement to which the United
19 States is a party or otherwise adheres, including any
20 amendment to the Montreal Protocol, the United States
21 may engage in transfers with other parties to such agree-
22 ment or amendment under the following conditions:

23 “(1) The United States may transfer produc-
24 tion allowances to another party to such agreement
25 or amendment if, at the time of the transfer, the

1 Administrator establishes revised production limits
2 for the United States accounting for the transfer in
3 accordance with regulations promulgated pursuant
4 to this subsection.

5 “(2) The United States may acquire production
6 allowances from another party to such agreement or
7 amendment if, at the time of the transfer, the Ad-
8 ministrator finds that the other party has revised its
9 domestic production limits in the same manner as
10 provided with respect to transfers by the United
11 States in the regulations promulgated pursuant to
12 this subsection.

13 “(1) RELATIONSHIP TO OTHER LAWS.—

14 “(1) STATE LAWS.—For purposes of section
15 116, the requirements of this section for class II,
16 group II substances shall be treated as requirements
17 for the control and abatement of air pollution.

18 “(2) MULTILATERAL AGREEMENTS.—Section
19 614 shall apply to the provisions of this section con-
20 cerning class II, group II substances, except that for
21 the words ‘Montreal Protocol’ there shall be sub-
22 stituted the words ‘Montreal Protocol, or any appli-
23 cable multilateral agreement to which the United
24 States is a party or otherwise adheres that restricts
25 the production or consumption of class II, group II

1 substances,’ and for the words ‘Article 4 of the Mon-
2 treal Protocol’ there shall be substituted ‘any provi-
3 sion of such multilateral agreement regarding trade
4 with non-parties’.

5 “(3) FEDERAL FACILITIES.—For purposes of
6 section 118, the requirements of this section for
7 class II, group II substances and corresponding
8 State, interstate, and local requirements, administra-
9 tive authority, and process and sanctions shall be
10 treated as requirements for the control and abate-
11 ment of air pollution within the meaning of section
12 118.

13 “(m) CARBON DIOXIDE EQUIVALENT VALUE.—(1)
14 In lieu of section 602(e), the provisions of this subsection
15 shall apply in the case of class II, group II substances.
16 Simultaneously with establishing the list of class II, group
17 II substances, and simultaneously with any addition to
18 that list, the Administrator shall publish the carbon diox-
19 ide equivalent value of each listed class II, group II sub-
20 stance, based on a determination of the number of metric
21 tons of carbon dioxide that makes the same contribution
22 to global warming over 100 years as 1 metric ton of each
23 class II, group II substance.

24 “(2) Not later than February 1, 2017, and not less
25 than every 5 years thereafter, the Administrator shall—

1 “(A) review, and if appropriate, revise the car-
2 bon dioxide equivalent values established for class II,
3 group II substances based on a determination of the
4 number of metric tons of carbon dioxide that makes
5 the same contributions to global warming over 100
6 years as 1 metric ton of each class II, group II sub-
7 stance; and

8 “(B) publish in the Federal Register the results
9 of that review and any revisions.

10 “(3) A revised determination published in the Federal
11 Register under paragraph (2)(B) shall take effect for pro-
12 duction of class II, group II substances, consumption of
13 class II, group II substances, and importation of products
14 containing class II, group II substances starting on Janu-
15 ary 1 of the first calendar year starting at least 9 months
16 after the date on which the revised determination was pub-
17 lished.

18 “(4) The Administrator may decrease the frequency
19 of review and revision under paragraph (2) if the Adminis-
20 trator determines that such decrease is appropriate in
21 order to synchronize such review and revisions with any
22 similar review process carried out pursuant to the United
23 Nations Framework Convention on Climate Change, an
24 agreement negotiated under that convention, The Vienna
25 Convention for the Protection of the Ozone Layer, or an

1 agreement negotiated under that convention, except that
2 in no event shall the Administrator carry out such review
3 and revision any less frequently than every 10 years.

4 “(n) REPORTING REQUIREMENTS.—In lieu of sub-
5 sections (b) and (c) of section 603, paragraphs (1) and
6 (2) of this subsection shall apply in the case of class II,
7 group II substances:

8 “(1) IN GENERAL.—On a quarterly basis, or
9 such other basis (not less than annually) as deter-
10 mined by the Administrator, each person who pro-
11 duced, imported, or exported a class II, group II
12 substance, or who imported a product containing a
13 class II, group II substance, shall file a report with
14 the Administrator setting forth the carbon dioxide
15 equivalent amount of the substance that such person
16 produced, imported, or exported, as well as the
17 amount that was contained in products imported by
18 that person, during the preceding reporting period.
19 Each such report shall be signed and attested by a
20 responsible officer. If all other reporting is complete,
21 no such report shall be required from a person after
22 April 1 of the calendar year after such person per-
23 manently ceases production, importation, and expor-
24 tation of the substance, as well as importation of
25 products containing the substance, and so notifies

1 the Administrator in writing. If the United States
2 becomes a party or otherwise adheres to a multilat-
3 eral agreement, including any amendment to the
4 Montreal Protocol on Substances That Deplete the
5 Ozone Layer, that restricts the production or con-
6 sumption of class II, group II substances, then, if all
7 other reporting is complete, no such report shall be
8 required from a person with respect to importation
9 from parties to such agreement or amendment of
10 products containing any class II, group II substance
11 restricted by such agreement or amendment, after
12 April 1 of the calendar year following the year dur-
13 ing which such agreement or amendment enters into
14 force.

15 “(2) BASELINE REPORTS FOR CLASS II, GROUP
16 II SUBSTANCES.—

17 “(A) IN GENERAL.—Unless such informa-
18 tion has been previously reported to the Admin-
19 istrator, on the date on which the first report
20 under paragraph (1) of this subsection is re-
21 quired to be filed, each person who produced,
22 imported, or exported a class II, group II sub-
23 stance, or who imported a product containing a
24 class II substance, (other than a substance
25 added to the list of class II, group II substances

1 after the publication of the initial list of such
2 substances under this section), shall file a re-
3 port with the Administrator setting forth the
4 amount of such substance that such person pro-
5 duced, imported, exported, or that was con-
6 tained in products imported by that person,
7 during each of calendar years 2004, 2005, and
8 2006.

9 “(B) PRODUCERS.—In reporting under
10 subparagraph (A), each person who produced in
11 the United States a class II substance during
12 calendar years 2004, 2005, or 2006 shall—

13 “(i) report all acquisitions or pur-
14 chases of class II substances during each
15 of calendar years 2004, 2005, and 2006
16 from all other persons who produced in the
17 United States a class II substance during
18 calendar years 2004, 2005, or 2006, and
19 supply evidence of such acquisitions and
20 purchases as deemed necessary by the Ad-
21 ministrator; and

22 “(ii) report all transfers or sales of
23 class II substances during each of calendar
24 years 2004, 2005, and 2006 to all other
25 persons who produced in the United States

1 a class II substance during calendar years
2 2004, 2005, or 2006, and supply evidence
3 of such transfers and sales as deemed nec-
4 essary by the Administrator.

5 “(C) ADDED SUBSTANCES.—In the case of
6 a substance added to the list of class II, group
7 II substances after publication of the initial list
8 of such substances under this section, each per-
9 son who produced, imported, exported, or im-
10 ported products containing such substance in
11 calendar year 2004, 2005, or 2006 shall file a
12 report with the Administrator within 180 days
13 after the date on which such substance is added
14 to the list, setting forth the amount of the sub-
15 stance that such person produced, imported,
16 and exported, as well as the amount that was
17 contained in products imported by that person,
18 in calendar years 2004, 2005, and 2006.

19 “(o) STRATOSPHERIC OZONE AND CLIMATE PROTEC-
20 TION FUND.—

21 “(1) IN GENERAL.—There is established in the
22 Treasury of the United States a Stratospheric Ozone
23 and Climate Protection Fund.

24 “(2) DEPOSITS.—The Administrator shall de-
25 posit all proceeds from the auction and non-auction

1 sale of allowances under this section into the Strato-
2 spheric Ozone and Climate Protection Fund.

3 “(3) USE.—Amounts deposited into the Strato-
4 spheric Ozone and Climate Protection Fund shall be
5 available, subject to appropriations, exclusively for
6 the following purposes:

7 “(A) RECOVERY, RECYCLING, AND REC-
8 LAMATION.—The Administrator may utilize
9 funds to establish a program to incentivize the
10 recovery, recycling, and reclamation of any
11 Class II substances in order to reduce emissions
12 of such substances.

13 “(B) MULTILATERAL FUND.—If the
14 United States becomes a party or otherwise ad-
15 heres to a multilateral agreement, including any
16 amendment to the Montreal Protocol on Sub-
17 stances That Deplete the Ozone Layer, which
18 restricts the production or consumption of class
19 II, group II substances, the Administrator may
20 utilize funds to meet any related contribution
21 obligation of the United States to the Multilat-
22 eral Fund for the Implementation of the Mon-
23 treal Protocol or similar multilateral fund es-
24 tablished under such multilateral agreement.

1 “(C) BEST-IN-CLASS APPLIANCES DEPLOY-
2 MENT PROGRAM.—The Secretary of Energy is
3 authorized to utilize funds to carry out the pur-
4 poses of section 214 of the American Clean En-
5 ergy and Security Act of 2009.

6 “(D) LOW GLOBAL WARMING PRODUCT
7 TRANSITION ASSISTANCE PROGRAM.—

8 “(i) IN GENERAL.—The Adminis-
9 trator, in consultation with the Secretary
10 of Energy, may utilize funds in fiscal years
11 2012 through 2022 to establish a program
12 to provide financial assistance to manufac-
13 turers of products containing class II,
14 group II substances to facilitate the transi-
15 tion to products that contain or utilize al-
16 ternative substances with no or low carbon
17 dioxide equivalent value and no ozone de-
18 pletion potential.

19 “(ii) DEFINITION.—In this subpara-
20 graph, the term ‘products’ means refrig-
21 erators, freezers, dehumidifiers, air condi-
22 tioners, foam insulation, technical aerosols,
23 fire protection systems, and semiconduc-
24 tors.

1 “(iii) FINANCIAL ASSISTANCE.—The
2 Administrator may provide financial assist-
3 ance to manufacturers pursuant to clause
4 (i) for—

5 “(I) the design and configuration
6 of new products that use alternative
7 substances with no or low carbon di-
8 oxide equivalent value and no ozone
9 depletion potential; and

10 “(II) the redesign and retooling
11 of facilities for the manufacture of
12 products in the United States that use
13 alternative substances with no or low
14 carbon dioxide equivalent value and
15 no ozone depletion potential.

16 “(iv) REPORTS.—For any fiscal year
17 during which the Administrator provides
18 financial assistance pursuant to this sub-
19 paragraph, the Administrator shall submit
20 a report to the Congress within 3 months
21 of the end of such fiscal year detailing the
22 amounts, recipients, specific purposes, and
23 results of the financial assistance pro-
24 vided.”.

1 (b) TABLE OF CONTENTS.—The table of contents of
2 title VI of the Clean Air Act (42 U.S.C. 7671 et seq.)
3 is amended by adding the following new item at the end
4 thereof:

“Sec. 619. Hydrofluorocarbons (HFCs).”.

5 (c) FIRE SUPPRESSION AGENTS.—Section 605(a) of
6 the Clean Air Act (42 U.S.C. 7671(a)) is amended—

7 (1) by striking “or” at the end of paragraph

8 (2);

9 (2) by striking the period at the end of para-
10 graph (3) and inserting “; or”; and

11 (3) by adding the following new paragraph after
12 paragraph (3):

13 “(4) is listed as acceptable for use as a fire sup-
14 pression agent for nonresidential applications in ac-
15 cordance with section 612(c).”.

16 (d) MOTOR VEHICLE AIR CONDITIONERS.—

17 (1) Section 609(e) of the Clean Air Act (42
18 U.S.C. 7671h(e)) is amended by inserting “, group
19 I” after each reference to “class II” in the text and
20 heading.

21 (2) Section 609 of the Clean Air Act (42 U.S.C.
22 7671h) is amended by adding the following new sub-
23 section after subsection (e):

24 “(f) CLASS II, GROUP II SUBSTANCES.—

1 “(1) REPAIR.—The Administrator may promul-
2 gate regulations establishing requirements for repair
3 of motor vehicle air conditioners prior to adding a
4 class II, group II substance.

5 “(2) SMALL CONTAINERS.—(A) The Adminis-
6 trator may promulgate regulations establishing serv-
7 icing practices and procedures for recovery of class
8 II, group II substances from containers which con-
9 tain less than 20 pounds of such class II, group II
10 substances.

11 “(B) Not later than 18 months after enactment
12 of this subsection, the Administrator shall either
13 promulgate regulations requiring that containers
14 which contain less than 20 pounds of a class II,
15 group II substance be equipped with a device or
16 technology that limits refrigerant emissions and
17 leaks from the container and limits refrigerant emis-
18 sions and leaks during the transfer of refrigerant
19 from the container to the motor vehicle air condi-
20 tioner or issue a determination that such require-
21 ments are not necessary or appropriate.

22 “(C) Not later than 18 months after enactment
23 of this subsection, the Administrator shall promul-
24 gate regulations establishing requirements for con-
25 sumer education materials on best practices associ-

1 ated with the use of containers which contain less
2 than 20 pounds of a class II, group II substance and
3 prohibiting the sale or distribution, or offer for sale
4 or distribution, of any class II, group II substance
5 in any container which contains less than 20 pounds
6 of such class II, group II substance, unless con-
7 sumer education materials consistent with such re-
8 quirements are displayed and available at point-of-
9 sale locations, provided to the consumer, or included
10 in or on the packaging of the container which con-
11 tain less than 20 pounds of a class II, group II sub-
12 stance.

13 “(D) The Administrator may, through rule-
14 making, extend the requirements established under
15 this paragraph to containers which contain 30
16 pounds or less of a class II, group II substance if
17 the Administrator determines that such action would
18 produce significant environmental benefits.

19 “(3) RESTRICTION OF SALES.—Effective Janu-
20 ary 1, 2014, no person may sell or distribute or offer
21 to sell or distribute or otherwise introduce into inter-
22 state commerce any motor vehicle air conditioner re-
23 frigerant in any size container unless the substance
24 has been found acceptable for use in a motor vehicle
25 air conditioner under section 612.”.

1 (e) SAFE ALTERNATIVES POLICY.—Section 612(e) of
2 the Clean Air Act (42 U.S.C. 7671k(e)) is amended by
3 inserting “or class II” after each reference to “class I”.

4 **SEC. 333. BLACK CARBON.**

5 (a) DEFINITION.—As used in this section, the term
6 “black carbon” means primary light absorbing aerosols,
7 as defined by the Administrator, based on the best avail-
8 able science.

9 (b) BLACK CARBON ABATEMENT REPORT.—Not
10 later than one year after the date of enactment of this
11 section, the Administrator shall, in consultation with other
12 appropriate Federal agencies, submit to Congress a report
13 regarding black carbon emissions. The report shall include
14 the following:

15 (1) A summary of the current information and
16 research that identifies—

17 (A) an inventory of the major sources of
18 black carbon emissions in the United States
19 and throughout the world, including—

20 (i) an estimate of the quantity of cur-
21 rent and projected future emissions; and

22 (ii) the net climate forcing of the
23 emissions from such sources, including
24 consideration of co-emissions of other pol-
25 lutants;

1 (B) effective and cost-effective control
2 technologies, operations, and strategies for ad-
3 ditional domestic and international black carbon
4 emissions reductions, such as diesel retrofit
5 technologies on existing on-road, non-road, and
6 stationary engines and programs to address res-
7 idential cookstoves, and forest and agriculture-
8 based burning;

9 (C) potential metrics and approaches for
10 quantifying the climatic effects of black carbon
11 emissions, including its radiative forcing and
12 warming effects, that may be used to compare
13 the climate benefits of different mitigation
14 strategies, including an assessment of the un-
15 certainty in such metrics and approaches; and

16 (D) the public health and environmental
17 benefits associated with additional controls for
18 black carbon emissions.

19 (2) Recommendations regarding—

20 (A) development of additional emissions
21 monitoring techniques and capabilities, mod-
22 eling, and other black carbon-related areas of
23 study;

24 (B) areas of focus for additional study of
25 technologies, operations, and strategies with the

1 greatest potential to reduce emissions of black
2 carbon and associated public health, economic,
3 and environmental impacts associated with
4 these emissions; and

5 (C) actions, in addition to those identified
6 by the Administrator under section 851 of the
7 Clean Air Act (as added by subsection (c)), the
8 Federal Government may take to encourage or
9 require reductions in black carbon emissions.

10 (c) **BLACK CARBON MITIGATION.**—Title VIII of the
11 Clean Air Act, as added by section 331 of this Act, and
12 amended by section 222 of this Act, is further amended
13 by adding after part D the following new part:

14 **“PART E—BLACK CARBON**

15 **“SEC. 851. BLACK CARBON.**

16 “(a) **DOMESTIC BLACK CARBON MITIGATION.**—Not
17 later than 18 months after the date of enactment of this
18 section, the Administrator, taking into consideration the
19 public health and environmental impacts of black carbon
20 emissions, including the effects on global and regional
21 warming, the Arctic, and other snow and ice-covered sur-
22 faces, shall propose regulations under the existing authori-
23 ties of this Act to reduce emissions of black carbon or pro-
24 pose a finding that existing regulations promulgated pur-
25 suant to this Act adequately regulate black carbon emis-

1 sions. Not later than two years after the date of enactment
2 of this section, the Administrator shall promulgate final
3 regulations under the existing authorities of this Act or
4 finalize the proposed finding. Such regulations shall not
5 apply to specific types, classes, categories, or other suit-
6 able groupings of emissions sources that the Adminis-
7 trator finds are subject to adequate regulation.

8 “(b) INTERNATIONAL BLACK CARBON MITIGA-
9 TION.—

10 “(1) REPORT.—Not later than one year after
11 the date of enactment of this section, the Adminis-
12 trator, in coordination with the Secretary of State
13 and other appropriate Federal agencies, shall trans-
14 mit a report to Congress on the amount, type, and
15 direction of all present United States financial, tech-
16 nical, and related assistance to foreign countries to
17 reduce, mitigate, and otherwise abate black carbon
18 emissions.

19 “(2) OTHER OPPORTUNITIES.—The report re-
20 quired under paragraph (1) shall also identify oppor-
21 tunities and recommendations, including action
22 under existing authorities, to achieve significant
23 black carbon emission reductions in foreign countries
24 through technical assistance or other approaches
25 to—

1 “(A) promote sustainable solutions to
2 bring clean, efficient, safe, and affordable
3 stoves, fuels, or both stoves and fuels to resi-
4 dents of developing countries that are reliant on
5 solid fuels such as wood, dung, charcoal, coal,
6 or crop residues for home cooking and heating,
7 so as to help reduce the public health, environ-
8 mental, and economic impacts of black carbon
9 emissions from these sources by—

10 “(i) identifying key regions for large-
11 scale demonstration efforts, and key part-
12 ners in each such region; and

13 “(ii) developing for each such region a
14 large-scale implementation strategy with a
15 goal of collectively reaching 20,000,000
16 homes over 5 years with interventions that
17 will—

18 “(I) increase stove efficiency by
19 over 50 percent (or such other goal as
20 determined by the Administrator);

21 “(II) reduce emissions of black
22 carbon by over 60 percent (or such
23 other goal as determined by the Ad-
24 ministrator); and

1 “(III) reduce the incidence of se-
2 vere pneumonia in children under 5
3 years old by over 30 percent (or such
4 other goal as determined by the Ad-
5 ministrator);

6 “(B) make technological improvements to
7 diesel engines and provide greater access to
8 fuels that emit less or no black carbon;

9 “(C) reduce unnecessary agricultural or
10 other biomass burning where feasible alter-
11 natives exist;

12 “(D) reduce unnecessary fossil fuel burn-
13 ing that produces black carbon where feasible
14 alternatives exist;

15 “(E) reduce other sources of black carbon
16 emissions; and

17 “(F) improve capacity to achieve greater
18 compliance with existing laws to address black
19 carbon emissions.”.

20 (d) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated such sums as are nec-
22 essary to carry out this section.

23 **SEC. 334. STATES.**

24 Section 116 of the Clean Air Act (42 U.S.C. 7416)
25 is amended by adding the following at the end thereof:

1 “For the purposes of this section, the phrases ‘standard
2 or limitation respecting emissions of air pollutants’ and
3 ‘requirements respecting control or abatement of air pollu-
4 tion’ shall include any provision to: cap greenhouse gas
5 emissions, require surrender to the State or a political
6 subdivision thereof of emission allowances or offset credits
7 established or issued under this Act, and require the use
8 of such allowances or credits as a means of demonstrating
9 compliance with requirements established by a State or
10 political subdivision thereof.”.

11 **SEC. 335. STATE PROGRAMS.**

12 Title VIII of the Clean Air Act, as added by section
13 331 of this Act and amended by several sections of this
14 Act, is further amended by adding after part E (as added
15 by section 333(c) of this Act) the following new part:

16 **“PART F—MISCELLANEOUS**

17 **“SEC. 861. STATE PROGRAMS.**

18 “Notwithstanding section 116, no State or political
19 subdivision thereof shall implement or enforce a cap and
20 trade program that covers any capped emissions emitted
21 during the years 2012 through 2017. For purposes of this
22 section, the term ‘cap and trade program’ means a system
23 of greenhouse gas regulation under which a State or polit-
24 ical subdivision issues a limited number of tradable instru-
25 ments in the nature of emission allowances and requires

1 that sources within its jurisdiction surrender such
2 tradeable instruments for each unit of greenhouse gases
3 emitted during a compliance period. For purposes of this
4 section, a ‘cap-and-trade program’ does not include a tar-
5 get or limit on greenhouse gas emissions adopted by a
6 State or political subdivision that is implemented other
7 than through the issuance and surrender of a limited num-
8 ber of tradable instruments in the nature of emission al-
9 lowances, nor does it include any other standard, limit,
10 regulation, or program to reduce greenhouse gas emissions
11 that is not implemented through the issuance and sur-
12 render of a limited number of tradeable instruments in
13 the nature of emission allowances. For purposes of this
14 section, the term ‘cap and trade program’ does not in-
15 clude, among other things, fleet-wide motor vehicle emis-
16 sion requirements that allow greater emissions with in-
17 creased vehicle production, or requirements that fuels, or
18 other products, meet an average pollution emission rate
19 or lifecycle greenhouse gas standard.

20 **“SEC. 862. GRANTS FOR SUPPORT OF AIR POLLUTION CON-**
21 **TROL PROGRAMS.**

22 “The Administrator is authorized to make grants to
23 air pollution control agencies pursuant to section 105 for
24 purposes of assisting in the implementation of programs

1 to address global warming established under the Safe Cli-
2 mate Act.”.

3 **SEC. 336. ENFORCEMENT.**

4 (a) REMAND.—Section 307(b) of the Clean Air Act
5 (42 U.S.C. 7607(b)) is amended by adding the following
6 new paragraphs at the end thereof:

7 “(3) If the court determines that any action of
8 the Administrator is arbitrary, capricious, or other-
9 wise unlawful, the court may remand such action,
10 without vacatur, if vacatur would impair or delay
11 protection of the environment or public health or
12 otherwise undermine the timely achievement of the
13 purposes of this Act.

14 “(4) If the court determines that any action of
15 the Administrator is arbitrary, capricious, or other-
16 wise unlawful, and remands the matter to the Ad-
17 ministrator, the Administrator shall complete final
18 action on remand within an expeditious time period
19 no longer than the time originally allowed for the ac-
20 tion or one year, whichever is less, unless the court
21 on motion determines that a shorter or longer period
22 is necessary, appropriate, and consistent with the
23 purposes of this Act. The court of appeals shall have
24 jurisdiction to enforce a deadline for action on re-
25 mand under this subparagraph.”.

1 (b) PETITION FOR RECONSIDERATION.—Section
2 307(d)(7)(B) of the Clean Air Act (42 U.S.C.
3 7607(d)(7)(B)) is amended as follows:

4 (1) By inserting after the second sentence “If
5 a petition for reconsideration is filed, the Adminis-
6 trator shall take final action on such petition, in-
7 cluding promulgation of final action either revising
8 or determining not to revise the action for which re-
9 consideration is sought, within 150 days after the
10 petition is received by the Administrator or the peti-
11 tion shall be deemed denied for the purpose of judi-
12 cial review.”.

13 (2) By amending the third sentence to read as
14 follows: “Such person may seek judicial review of
15 such denial, or of any other final action, by the Ad-
16 ministrator, in response to a petition for reconsider-
17 ation, in the United States court of appeals for the
18 appropriate circuit (as provided in subsection (b)).”.

19 **SEC. 337. CONFORMING AMENDMENTS.**

20 (a) FEDERAL ENFORCEMENT.—Section 113 of the
21 Clean Air Act (42 U.S.C. 7413) is amended as follows:

22 (1) In subsection (a)(3), by striking “or title
23 VI,” and inserting “title VI, title VII, or title VIII”.

24 (2) In subsection (b), by striking “or a major
25 stationary source” and inserting “a major stationary

1 source, or a covered EGU under title VIII” in the
2 material preceding paragraph (1).

3 (3) In paragraph (2) of subsection (b), by strik-
4 ing “or title VI” and inserting “title VI, title VII,
5 or title VIII”.

6 (4) In subsection (c)—

7 (A) in the first sentence of paragraph (1),
8 by striking “or title VI (relating to strato-
9 spheric ozone control),” and inserting “title VI,
10 title VII, or title VIII,”; and

11 (B) in the first sentence of paragraph (3),
12 by striking “or VI” and inserting “VI, VII, or
13 VIII”.

14 (5) In subsection (d)(1)(B), by striking “or VI”
15 and inserting “VI, VII, or VIII”.

16 (6) In subsection (f), in the first sentence, by
17 striking “or VI” and inserting “VI, VII, or VIII”.

18 (b) RETENTION OF STATE AUTHORITY.—Section
19 116 of the Clean Air Act (42 U.S.C. 7416) is amended
20 as follows:

21 (1) By striking “and 233” and inserting “233”.

22 (2) By striking “of moving sources)” and in-
23 sserting “of moving sources), and 861 (preempting
24 certain State greenhouse gas programs for a limited
25 time)”.

1 (c) INSPECTIONS, MONITORING, AND ENTRY.—Sec-
2 tion 114(a) of the Clean Air Act (42 U.S.C. 7414(a)) is
3 amended by striking “section 112,” and all that follows
4 through “(ii)” and inserting the following: “section 112,
5 or any regulation of greenhouse gas emissions under title
6 VII or VIII, (ii)”.

7 (d) ENFORCEMENT.—Subsection (f) of section 304 of
8 the Clean Air Act (42 U.S.C. 7604(f)) is amended as fol-
9 lows:

10 (1) By striking “; or” at the end of paragraph

11 (3) thereof and inserting a comma.

12 (2) By striking the period at the end of para-
13 graph (4) thereof and inserting “, or”.

14 (3) By adding the following after paragraph (4)
15 thereof:

16 “(5) any requirement of title VII or VIII.”.

17 (e) ADMINISTRATIVE PROCEEDINGS AND JUDICIAL
18 REVIEW.—Section 307 of the Clean Air Act (42 U.S.C.
19 7607) is amended as follows:

20 (1) In subsection (a), by striking “, or section
21 306” and inserting “section 306, or title VII or
22 VIII”.

23 (2) In subsection (b)(1)—

24 (A) by striking “,” and inserting “,” in
25 each place such punctuation appears; and

1 (B) by striking “section 120,” in the first
2 sentence and inserting “section 120, any final
3 action under title VII or VIII,”.

4 (3) In subsection (d)(1) by amending subpara-
5 graph (S) to read as follows:

6 “(S) the promulgation or revision of any
7 regulation under title VII or VIII,”.

8 **SEC. 338. DAVIS-BACON COMPLIANCE.**

9 (a) IN GENERAL.—Notwithstanding any other provi-
10 sion of law and in a manner consistent with other provi-
11 sions in this Act, to receive emission allowances or funding
12 under this Act, or the amendments made by this Act, the
13 recipient shall provide reasonable assurances that all la-
14 borers and mechanics employed by contractors and sub-
15 contractors on projects funded directly by or assisted in
16 whole or in part by and through the Federal Government
17 pursuant to this Act, or the amendments made by this
18 Act, or by any entity established in accordance with this
19 Act, or the amendments made by this Act, including the
20 Carbon Storage Research Corporation, will be paid wages
21 at rates not less than those prevailing on projects of a
22 character similar in the locality as determined by the Sec-
23 retary of Labor in accordance with subchapter IV of chap-
24 ter 31 of title 40, United States Code (commonly known
25 as the “Davis-Bacon Act”). With respect to the labor

1 standards specified in this section, the Secretary of Labor
2 shall have the authority and functions set forth in Reorga-
3 nization Plan Numbered 14 of 1950 (64 Stat. 1267; 5
4 U.S.C. App.) and section 3145 of title 40, United States
5 Code.

6 (b) EXEMPTION.—Neither subsection (a) nor the re-
7 quirements of subchapter IV of chapter 31 of title 40,
8 United States Code, shall apply to retrofitting of the fol-
9 lowing:

10 (1) Single family homes (both attached and de-
11 tached) under section 202.

12 (2) Owner-occupied residential units in larger
13 buildings that have their own dedicated space-condi-
14 tioning systems under section 202.

15 (3) Residential buildings (as defined in section
16 202(a)(5)) if designed for residential use by less
17 than 4 families.

18 (4) Nonresidential buildings (as defined in sec-
19 tion 202(a)(1)) if the net interior space of such non-
20 residential building is less than 6,500 square feet.

21 **SEC. 339. NATIONAL STRATEGY FOR DOMESTIC BIOLOGI-**
22 **CAL CARBON SEQUESTRATION.**

23 Not later than 1 year after the date of enactment
24 of this Act, the Administrator of the Environmental Pro-
25 tection Agency, in consultation with the Secretary of En-

1 ergy, the Secretary of Agriculture, the Secretary of the
2 Interior, and the heads of such other relevant Federal
3 agencies as the President may designate, shall submit to
4 Congress a report setting forth a unified and comprehen-
5 sive strategy to address the key legal, regulatory, techno-
6 logical, and other barriers to maximizing the potential for
7 sustainable biological sequestration of carbon within the
8 United States.

9 **Subtitle D—Carbon Market** 10 **Assurance**

11 **SEC. 341. CARBON MARKET ASSURANCE.**

12 (a) AMENDMENT.—The Federal Power Act (16
13 U.S.C. 791a and following) is amended by adding at the
14 end the following:

15 **“PART IV—CARBON MARKET ASSURANCE**

16 **“SEC. 401. OVERSIGHT AND ASSURANCE OF CARBON MAR-** 17 **KETS.**

18 “(a) DEFINITIONS.—In this section:

19 “(1) CONTRACT OF SALE.—The term ‘contract
20 of sale’ includes sales, agreements of sale, and
21 agreements to sell.

22 “(2) COVERED ENTITY.—The term ‘covered en-
23 tity’ shall have the meaning given in section 700 of
24 the Clean Air Act.

1 “(3) FUTURE DELIVERY.—The term ‘future de-
2 livery’ does not include any sale of any cash com-
3 modity for deferred shipment or delivery.

4 “(4) OFFSET CREATION CONTRACT.—The term
5 ‘offset creation contract’ mean a written agreement
6 for the origination and development of an offset
7 project, and the related issuance of offset credits,
8 pursuant to title VII of the Clean Air Act.

9 “(5) REGULATED ALLOWANCE.—The term ‘reg-
10 ulated allowance’ means any emission allowance,
11 compensatory allowance, offset credit, or Federal re-
12 newable electricity credit established or issued under
13 the American Clean Energy and Security Act of
14 2009.

15 “(6) REGULATED ALLOWANCE DERIVATIVE.—
16 The term ‘regulated allowance derivative’ means an
17 instrument that is, or includes, an instrument—

18 “(A) which—

19 “(i) is of the character of, or is com-
20 monly known to the trade as, a ‘put op-
21 tion’, ‘call option’, ‘privilege’, ‘indemnity’,
22 ‘advance guaranty’, ‘decline guaranty’, or
23 ‘swap agreement’; or

1 “(ii) is a contract of sale for future
2 delivery other than an offset creation con-
3 tract; and

4 “(B) the value of which, in whole or in
5 part, is expressly linked to the price of a regu-
6 lated allowance or another regulated allowance
7 derivative.

8 “(7) REGULATED INSTRUMENT.—The term
9 ‘regulated instrument’ means a regulated allowance
10 or a regulated allowance derivative.

11 “(b) REGULATED ALLOWANCE MARKET.—

12 “(1) AUTHORITY.—The Commission shall pro-
13 mulgate regulations for the establishment, operation,
14 and oversight of markets for regulated allowances
15 not later than 18 months after the date of the enact-
16 ment of this section, and from time to time there-
17 after as may be appropriate.

18 “(2) REGULATIONS.—The regulations promul-
19 gated pursuant to paragraph (1) shall—

20 “(A) provide for effective and comprehen-
21 sive market oversight;

22 “(B) prohibit fraud, market manipulation
23 (including an entity’s fraudulent or manipula-
24 tive conduct with respect to regulated allowance
25 derivatives that benefits the entity in regulated

1 allowance markets), and excess speculation, and
2 provide measures to limit unreasonable fluctua-
3 tion in the prices of regulated allowances;

4 “(C) facilitate compliance with title VII of
5 the Clean Air Act by covered entities;

6 “(D) ensure market transparency and rec-
7 ordkeeping deemed necessary and appropriate
8 by the Commission to provide for efficient price
9 discovery; prevention of fraud, market manipu-
10 lation, and excess speculation; and compliance
11 with title VII of the Clean Air Act and section
12 610 of the Public Utility Regulatory Policies
13 Act of 1978;

14 “(E) as necessary, ensure that position
15 limitations for individual market participants
16 are established with respect to each class of
17 regulated allowances;

18 “(F) as necessary, ensure that margin re-
19 quirements are established for each class of reg-
20 ulated allowances;

21 “(G) provide for the formation and oper-
22 ation of a fair, orderly and liquid national mar-
23 ket system that allows for the best execution in
24 the trading of regulated allowances;

1 “(H) limit or eliminate counterparty risks,
2 market power concentration risks, and other
3 risks associated with over-the-counter trading;
4 and

5 “(I) establish standards for qualification
6 as, and operation of, trading facilities for regu-
7 lated allowances;

8 “(J) establish standards for qualification
9 as, and operation of, clearing organizations for
10 trading facilities for regulated allowances; and

11 “(K) include such other requirements as
12 necessary to preserve market integrity and fa-
13 cilitate compliance with title VII of the Clean
14 Air Act and section 610 of the Public Utility
15 Regulatory Policies Act of 1978 and the regula-
16 tions promulgated under such title and such
17 section.

18 “(3) ENFORCEMENT.—

19 “(A) IN GENERAL.—If the Commission de-
20 termines, after notice and an opportunity for a
21 hearing on the record, that any entity has vio-
22 lated any rule or order issued by the Commis-
23 sion under this subsection, the Commission may
24 issue an order—

1 “(i) prohibiting the entity from trad-
2 ing on a trading facility for regulated al-
3 lowances registered with the Commission,
4 and requiring all such facilities to refuse
5 the entity all privileges for such period as
6 may be specified in the order;

7 “(ii) if the entity is registered with
8 the Commission in any capacity, sus-
9 pending for a period of not more than 6
10 months, or revoking, the registration of the
11 entity;

12 “(iii) assessing the entity a civil pen-
13 alty of not more than \$1,000,000 per day
14 per violation for as long as the violation
15 continues (and in determining the amount
16 of a civil penalty, the Commission shall
17 take into account the nature and serious-
18 ness of the violation and the efforts to
19 remedy the violation); and

20 “(iv) requiring disgorgement of unjust
21 profits, restitution to entities harmed by
22 the violation as determined by the Com-
23 mission, or both.

24 “(B) AUTHORITY TO SUSPEND OR REVOKE
25 REGISTRATION.—The Commission may suspend

1 for a period of not more than 6 months, or re-
2 voke, the registration of a trading facility for
3 regulated allowances or of a clearing organiza-
4 tion registered by the Commission if, after no-
5 tice and opportunity for a hearing on the
6 record, the Commission finds that—

7 “(i) the entity violated any rule or
8 order issued by the Commission under this
9 subsection; or

10 “(ii) a director, officer, employee, or
11 agent of the entity has violated any rule or
12 order issued by the Commission under this
13 subsection.

14 “(C) CEASE AND DESIST PROCEEDINGS.—

15 “(i) IN GENERAL.—If the Commission
16 determines that any entity may be vio-
17 lating, may have violated, or may be about
18 to violate any provision of this part, or any
19 regulation promulgated by, or any restric-
20 tion, condition, or order made or imposed
21 by, the Commission under this Act, and if
22 the Commission finds that the alleged vio-
23 lation or threatened violation, or the con-
24 tinuation of the violation, is likely to result
25 in significant harm to covered entities or

1 market participants, or significant harm to
2 the public interest, the Commission may
3 issue a temporary order requiring the enti-
4 ty—

5 “(I) to cease and desist from the
6 violation or threatened violation;

7 “(II) to take such action as is
8 necessary to prevent the violation or
9 threatened violation; and

10 “(III) to prevent, as the Commis-
11 sion determines to be appropriate—

12 “(aa) significant harm to
13 covered entities or market par-
14 ticipants;

15 “(bb) significant harm to
16 the public interest; and

17 “(cc) frustration of the abil-
18 ity of the Commission to conduct
19 the proceedings or to redress the
20 violation at the conclusion of the
21 proceedings.

22 “(ii) TIMING OF ENTRY.—An order
23 issued under clause (i) shall be entered
24 only after notice and opportunity for a
25 hearing, unless the Commission determines

1 that notice and hearing before entry would
2 be impracticable or contrary to the public
3 interest.

4 “(iii) EFFECTIVE DATE.—A tem-
5 porary order issued under clause (i)
6 shall—

7 “(I) become effective upon serv-
8 ice upon the entity; and

9 “(II) unless set aside, limited, or
10 suspended by the Commission or a
11 court of competent jurisdiction, re-
12 main effective and enforceable pend-
13 ing the completion of the proceedings.

14 “(D) PROCEEDINGS REGARDING DISSIPATION OR CONVERSION OF ASSETS.—

15
16 “(i) IN GENERAL.—In a proceeding
17 involving an alleged violation of a regula-
18 tion or order promulgated or issued by the
19 Commission, if the Commission determines
20 that the alleged violation or related cir-
21 cumstances are likely to result in signifi-
22 cant dissipation or conversion of assets,
23 the Commission may issue a temporary
24 order requiring the respondent to take

1 such action as is necessary to prevent the
2 dissipation or conversion of assets.

3 “(ii) TIMING OF ENTRY.—An order
4 issued under clause (i) shall be entered
5 only after notice and opportunity for a
6 hearing, unless the Commission determines
7 that notice and hearing before entry would
8 be impracticable or contrary to the public
9 interest.

10 “(iii) EFFECTIVE DATE.—A tem-
11 porary order issued under clause (i)
12 shall—

13 “(I) become effective upon serv-
14 ice upon the respondent; and

15 “(II) unless set aside, limited, or
16 suspended by the Commission or a
17 court of competent jurisdiction, re-
18 main effective and enforceable pend-
19 ing the completion of the proceedings.

20 “(E) REVIEW OF TEMPORARY ORDERS.—

21 “(i) APPLICATION FOR REVIEW.—At
22 any time after a respondent has been
23 served with a temporary cease-and-desist
24 order pursuant to subparagraph (C) or
25 order regarding the dissipation or conver-

1 sion of assets pursuant to subparagraph
2 (D), the respondent may apply to the Com-
3 mission to have the order set aside, lim-
4 ited, or suspended.

5 “(ii) NO PRIOR HEARING.—If a re-
6 spondent has been served with a temporary
7 order entered without a prior hearing of
8 the Commission—

9 “(I) the respondent may, not
10 later than 10 days after the date on
11 which the order was served, request a
12 hearing on the application; and

13 “(II) the Commission shall hold a
14 hearing and render a decision on the
15 application at the earliest practicable
16 time.

17 “(iii) JUDICIAL REVIEW.—

18 “(I) IN GENERAL.—An entity
19 shall not be required to submit a re-
20 quest for rehearing of a temporary
21 order before seeking judicial review in
22 accordance with this subparagraph.

23 “(II) TIMING OF REVIEW.—Not
24 later than 10 days after the date on
25 which a respondent is served with a

1 temporary cease-and-desist order en-
2 tered with a prior hearing of the Com-
3 mission, or 10 days after the date on
4 which the Commission renders a deci-
5 sion on an application and hearing
6 under clause (i) with respect to any
7 temporary order entered without such
8 a prior hearing—

9 “(aa) the respondent may
10 obtain a review of the order in a
11 United States circuit court hav-
12 ing jurisdiction over the circuit in
13 which the respondent resides or
14 has a principal place of business,
15 or in the United States Court of
16 Appeals for the District of Co-
17 lumbia Circuit, for an order set-
18 ting aside, limiting, or sus-
19 pending the effectiveness or en-
20 forcement of the order; and

21 “(bb) the court shall have
22 jurisdiction to enter such an
23 order.

24 “(III) NO PRIOR HEARING.—A
25 respondent served with a temporary

1 order entered without a prior hearing
2 of the Commission may not apply to
3 the applicable court described in sub-
4 clause (II) except after a hearing and
5 decision by the Commission on the ap-
6 plication of the respondent under
7 clauses (i) and (ii).

8 “(iv) PROCEDURES.—Section 222 and
9 Part III shall apply to—

10 “(I) an application for review of
11 an order under clause (i); and

12 “(II) an order subject to review
13 under clause (iii).

14 “(v) NO AUTOMATIC STAY OF TEM-
15 PORARY ORDER.—The commencement of
16 proceedings under clause (iii) shall not, un-
17 less specifically ordered by the court, oper-
18 ate as a stay of the order of the Commis-
19 sion.

20 “(F) ACTIONS TO COLLECT CIVIL PEN-
21 ALTIES.—If any person fails to pay a civil pen-
22 alty assessed under this subsection after an
23 order assessing the penalty has become final
24 and unappealable, the Commission shall bring

1 an action to recover the amount of the penalty
2 in any appropriate United States district court.

3 “(4) TRANSACTION FEES.—

4 “(A) IN GENERAL.—The Commission
5 shall, in accordance with this paragraph, estab-
6 lish and collect transaction fees designed to re-
7 cover the costs to the Federal Government of
8 the supervision and regulation of regulated al-
9 lowance markets and market participants, in-
10 cluding related costs for enforcement activities,
11 policy and rulemaking activities, administration,
12 legal services, and international regulatory ac-
13 tivities.

14 “(B) INITIAL FEE RATE.—Each trading
15 facility on or through which regulated allow-
16 ances are transacted shall pay to the Commis-
17 sion a fee at a rate of not more than \$15 per
18 \$1,000,000 of the aggregate dollar amount of
19 sales of regulated allowances transacted
20 through the facility.

21 “(C) ANNUAL ADJUSTMENT OF FEE
22 RATE.—The Commission shall, on an annual
23 basis—

24 “(i) assess the rate at which fees are
25 to be collected as necessary to meet the

1 cost recovery requirement in subparagraph
2 (A); and

3 “(ii) consistent with subparagraph
4 (B), adjust the rate as necessary in order
5 to meet the requirement.

6 “(D) REPORT ON ADEQUACY OF FEES IN
7 RECOVERING COSTS.—The Commission, shall,
8 on an annual basis, report to the Committee on
9 Energy and Commerce of the House of Rep-
10 resentatives and the Committee on Energy and
11 Natural Resources of the Senate on the ade-
12 quacy of the transaction fees in providing fund-
13 ing for the Commission to regulate the regu-
14 lated allowance markets.

15 “(5) JUDICIAL REVIEW.—Judicial review of ac-
16 tions taken by the Commission under this subsection
17 shall be pursuant to part III.

18 “(6) INFORMATION-SHARING.—Within 6
19 months after a Federal agency with jurisdiction over
20 regulated allowance derivatives is delegated author-
21 ity pursuant to subsection (c)(1), the agency shall
22 enter into a memorandum of understanding with the
23 Commission relating to information sharing, which
24 shall include provisions ensuring that information re-
25 quests to markets within the respective jurisdiction

1 of the agency are properly coordinated to facilitate,
2 among other things, effective information-sharing
3 while minimizing duplicative information requests,
4 and provisions regarding the treatment of propri-
5 etary information.

6 “(7) ADDITIONAL EMPLOYEES REPORT AND AP-
7 POINTMENT.—Within 18 months after the date of
8 the enactment of this section, the Commission shall
9 submit to the President, the Committee on Energy
10 and Commerce of the House of Representatives, and
11 the Committee on Energy and Natural Resources of
12 the Senate, a report that contains recommendations
13 as to how many additional employees would be nec-
14 essary to provide robust oversight and enforcement
15 of the regulations promulgated under this sub-
16 section. As soon as practicable after the completion
17 of the report, subject to appropriations, the Commis-
18 sion shall appoint the recommended number of addi-
19 tional employees for such purposes.

20 “(c) DELEGATION OF AUTHORITY BY THE PRESI-
21 DENT.—

22 “(1) DELEGATION.—The President, taking into
23 consideration the recommendations of the inter-
24 agency working group established in subsection (d),
25 shall delegate to members of the working group and

1 the heads of other appropriate Federal agencies the
2 authority to promulgate regulations for the estab-
3 lishment, operation, and oversight of all markets for
4 regulated allowance derivatives.

5 “(2) REGULATIONS.—The regulations promul-
6 gated pursuant to paragraph (1) shall—

7 “(A) provide for effective and comprehen-
8 sive market oversight;

9 “(B) prohibit fraud, market manipulation,
10 and excess speculation, and provide measures to
11 limit unreasonable fluctuation in the prices of
12 regulated allowance derivatives;

13 “(C) facilitate compliance with title VII of
14 the Clean Air Act by covered entities;

15 “(D) ensure market transparency and rec-
16 ordkeeping necessary to provide for efficient
17 price discovery; prevention of fraud, market ma-
18 nipulation, and excess speculation; and compli-
19 ance with title VII of the Clean Air Act and
20 section 610 of the Public Utility Regulatory
21 Policies Act of 1978;

22 “(E) ensure that position limitations for
23 individual market participants are established
24 with respect to each regulated allowance deriva-
25 tive and aggregate position limitations for indi-

1 vidual market participants are established with
2 respect to all regulated allowance derivative
3 markets;

4 “(F) ensure that margin requirements are
5 established for each regulated allowance deriva-
6 tive;

7 “(G) provide for the formation and oper-
8 ation of a market system that allows for best
9 execution in the trading of regulated allowance
10 derivatives;

11 “(H) to the extent the regulations deviate
12 from the rule set forth in paragraph (4)(B),
13 limit or eliminate counterparty risks, market
14 power concentration risks, and other risks asso-
15 ciated with over-the-counter trading, and pro-
16 mulgate reporting and market transparency
17 rules for large traders;

18 “(I) ensure that market participants do
19 not evade position limits or otherwise under-
20 mine the integrity and effectiveness of the regu-
21 lations promulgated under subparagraph (C)
22 through participation in markets not subject to
23 the position limits and regulations;

1 “(J) establish standards, as necessary, for
2 qualification as, and operation of, trading facili-
3 ties for regulated allowance derivatives;

4 “(K) establish standards, as necessary, for
5 qualification as, and operation of, clearing orga-
6 nizations for trading facilities for regulated al-
7 lowance derivatives;

8 “(L) provide boards of trade designated as
9 contract markets under the Commodity Ex-
10 change Act, and market participants, with an
11 adequate transition period for compliance with
12 any new regulatory requirements established
13 under this paragraph;

14 “(M) determine whether and to what ex-
15 tent offset creation contracts, to the extent in-
16 corporating regulated allowance derivatives,
17 should be governed by the same regulations
18 that apply to other regulated allowance deriva-
19 tives; and

20 “(N) include such other requirements as
21 necessary to preserve market integrity and fa-
22 cilitate compliance with title VII of the Clean
23 Air Act and section 610 of the Public Utility
24 Regulatory Policies Act of 1978 and the regula-

1 tions promulgated under such title and such
2 section.

3 “(3) DEADLINE.—The agencies authorized to
4 promulgate regulations for the establishment, oper-
5 ation, and oversight of markets for regulated allow-
6 ance derivatives pursuant to paragraph (1) shall
7 promulgate such regulations not later than 18
8 months after the date of the enactment of this sec-
9 tion, and from time to time thereafter as may be ap-
10 propriate.

11 “(4) DEFAULT RULES.—

12 “(A) An individual market participant, di-
13 rectly or in concert with another participant,
14 shall not control more than 10 percent of the
15 open interest in any regulated allowance deriva-
16 tive.

17 “(B) All contracts for the purchase or sale
18 of any regulated allowance derivative shall be
19 executed on or through a board of trade des-
20 ignated as a contract market under the Com-
21 modity Exchange Act.

22 “(C) To the extent that regulations pro-
23 mulgated under this subsection provide dif-
24 ferent rules with respect to the matters de-
25 scribed in subparagraph (A) or (B), the regula-

1 tions shall supersede subparagraph (A) or (B),
2 as the case may be.

3 “(d) WORKING GROUP.—

4 “(1) ESTABLISHMENT.—Not later than 30 days
5 after the date of the enactment of this section, the
6 President shall establish an interagency working
7 group on carbon market oversight, which shall in-
8 clude the Administrator of the Environmental Pro-
9 tection Agency and representatives of other relevant
10 agencies, to make recommendations to the President
11 regarding proposed regulations for the establish-
12 ment, operation, and oversight of markets for regu-
13 lated allowance derivatives.

14 “(2) REPORT.—Not later than 180 days after
15 the date of the enactment of this section, and bienni-
16 ally thereafter, the interagency working group shall
17 submit a written report to the President and Con-
18 gress that includes its recommendations to the
19 President regarding proposed regulations for the es-
20 tablishment, operation, and oversight of markets for
21 regulated allowance derivatives and any rec-
22 ommendations to Congress for statutory changes
23 needed to ensure the establishment, operation, and
24 oversight of transparent, fair, stable, and efficient
25 markets for regulated allowance derivatives.

1 “(e) ENFORCEMENT OF REGULATIONS.—Each Fed-
2 eral agency that promulgates under subsection (c) a regu-
3 lation of conduct with respect to a regulated allowance de-
4 rivative shall have the same authority to enforce compli-
5 ance with the regulation as the Commodity Futures Trad-
6 ing Commission has to enforce compliance with any regu-
7 lation of similar conduct with respect to a contract, agree-
8 ment, or transaction over which the Commodity Futures
9 Trading Commission has jurisdiction, except that any en-
10 forcement by the Federal Energy Regulatory Commission
11 shall be pursuant to section 222 and Part III.

12 “(f) PENALTY FOR FRAUD AND FALSE OR MIS-
13 LEADING STATEMENTS.—A person convicted under sec-
14 tion 1041 of title 18, United States Code, may be prohib-
15 ited from holding or trading regulated allowances for a
16 period of not more than 5 years pursuant to the regula-
17 tions promulgated under this section, except that, if the
18 person is a covered entity, the person shall be allowed to
19 hold sufficient regulated allowances to meet its compliance
20 obligations.

21 “(g) RELATION TO STATE LAW.—Nothing in this
22 section shall preclude, diminish or qualify any authority
23 of a State or political subdivision thereof to adopt or en-
24 force any unfair competition, antitrust, consumer protec-
25 tion, securities, commodities or any other law or regula-

1 tion, except that no such State law or regulation may re-
2 lieve any person of any requirement otherwise applicable
3 under this section.

4 “(h) MARKET REPORTS.—

5 “(1) COLLECTION AND ANALYSIS OF INFORMA-
6 TION.—The Commission, in conjunction with the
7 Federal agency with jurisdiction over regulated al-
8 lowance derivatives pursuant to subsection (c)(1),
9 shall, on a continuous basis, collect and analyze the
10 following information on the functioning of the mar-
11 kets for regulated instruments established under this
12 part:

13 “(A) The status of, and trends in, the
14 markets, including prices, trading volumes,
15 transaction types, and trading channels and
16 mechanisms.

17 “(B) Spikes, collapses, and volatility in
18 prices of regulated instruments, and the causes
19 therefor.

20 “(C) The relationship between the market
21 for regulated allowances and allowance deriva-
22 tives, and the spot and futures markets for en-
23 ergy commodities, including electricity.

24 “(D) Evidence of fraud or manipulation in
25 any such market, the effects on any such mar-

1 ket of any such fraud or manipulation (or
2 threat of fraud or manipulation) that the Com-
3 mission, in conjunction with the Federal agen-
4 cy, has identified, and the effectiveness of cor-
5 rective measures undertaken by the Commis-
6 sion, in conjunction with the Federal agency, to
7 address the fraud, manipulation, or threat.

8 “(E) The economic effects of the markets,
9 including to macro- and micro-economic effects
10 of unexpected significant increases and de-
11 creases in the price of regulated instruments.

12 “(F) Any changes in the roles, activities,
13 or strategies of various market participants.

14 “(G) Regional, industrial, and consumer
15 responses to the markets, and energy invest-
16 ment responses to the markets.

17 “(H) Any other issue related to the mar-
18 kets that the Commission, in conjunction with
19 the entities, deems appropriate.

20 “(2) ANNUAL REPORTS TO THE CONGRESS.—

21 Not later than 1 month after the end of each cal-
22 endar year, the Commission, in conjunction with the
23 Federal agency, shall submit to the President, the
24 Committee on Energy and Commerce of the House
25 of Representatives, and the Committee on Energy

1 and Natural Resources of the Senate, and make
2 available to the public, a report on the matters de-
3 scribed in paragraph (1) with respect to the year, in-
4 cluding recommendations for any administrative or
5 statutory measures the Commission, in conjunction
6 with the Federal agency, considers necessary to ad-
7 dress any threats to the transparency, fairness, or
8 integrity of the markets in regulated instruments.

9 **“SEC. 402. APPLICABILITY OF PART III PROVISIONS.**

10 “(a) SECTIONS 301, 304, AND 306.—Sections 301,
11 304, and 306 shall not apply to this part.

12 “(b) SECTIONS 307, 309, AND 314.—Sections 307,
13 309, and 314 shall only apply to section 401(c) to the ex-
14 tent that the Commission is delegated authority to pro-
15 mulgate regulations for the establishment, operation, and
16 oversight of markets for regulated allowance derivatives
17 (as defined in section 401). If the Commission is not dele-
18 gated authority to promulgate regulations for the estab-
19 lishment, operation, and oversight of markets for regu-
20 lated allowance derivatives, sections 307, 309, and 314
21 shall not apply to section 401(f) in the case of regulated
22 allowance derivatives.

23 “(c) SECTION 315.—In applying section 315(a) to
24 this part, the words “person or entity” shall be substituted
25 for the words “licensee or public utility”. In applying sec-

1 tion 315(b) to this part, the words “an entity” shall be
2 substituted for the words “a licensee or public utility” and
3 the words “such entity” shall be substituted for the words
4 “such licensee or public utility.”

5 “(d) SECTION 316.—Section 316(a) shall not apply
6 to section 401(f).”.

7 (b) CRIMINAL PROHIBITION AGAINST FRAUD AND
8 FALSE OR MISLEADING STATEMENTS.—

9 (1) Chapter 47 of title 18, United States Code,
10 is amended by adding at the end the following:

11 **“§ 1041. Fraud and false statements in connection**
12 **with regulated allowances**

13 “Whoever in connection with a transaction involving
14 a regulated allowance (as defined in section 401(a) of the
15 Federal Power Act, as added by section 341 of the Amer-
16 ican Clean Energy and Security Act of 2009), know-
17 ingly—

18 “(1) makes or uses a materially false or mis-
19 leading statement, writing, representation, scheme,
20 or device; or

21 “(2) falsifies, conceals, or covers up by any
22 trick, scheme, or device any material fact,
23 shall be fined not more than \$5,000,000 (or \$25,000,000
24 in the case of an organization) or imprisoned not more
25 than 20 years, or both.”.

1 (2) The table of sections at the beginning of
2 chapter 47 of title 18, United States Code, is
3 amended by adding at the end the following new
4 item:

“1041. Fraud and false statements in connection with regulated allowances.”.

5 **Subtitle E—Additional Market**
6 **Assurance**

7 **SEC. 351. REGULATION OF CERTAIN TRANSACTIONS IN DE-**
8 **RIVATIVES INVOLVING ENERGY COMMOD-**
9 **ITIES.**

10 (a) ENERGY COMMODITY DEFINED.—Section 1a of
11 the Commodity Exchange Act (7 U.S.C. 1a) is amended—

12 (1) in paragraph (14), by inserting “, an energy
13 commodity,” after “excluded commodity”;

14 (2) by redesignating paragraphs (13) through
15 (21) and paragraphs (22) through (34) as para-
16 graphs (14) through (22) and paragraphs (24)
17 through (36), respectively;

18 (3) by inserting after paragraph (12) the fol-
19 lowing:

20 “(13) ENERGY COMMODITY.—The term ‘energy
21 commodity’ means—

22 “(A) coal;

23 “(B) crude oil, gasoline, diesel fuel, jet
24 fuel, heating oil, and propane;

1 “(C) electricity (excluding financial trans-
2 mission rights which are subject to regulation
3 and oversight by the Federal Energy Regu-
4 latory Commission);

5 “(D) natural gas; and

6 “(E) any other substance (other than an
7 excluded commodity, a metal, or an agricultural
8 commodity) that is used as a source of energy,
9 as the Commission, in its discretion, deems ap-
10 propriate.”; and

11 (4) by inserting after paragraph (22) (as so re-
12 designated by paragraph (2) of this subsection) the
13 following:

14 “(23) INCLUDED ENERGY TRANSACTION.—The
15 term ‘included energy transaction’ means a contract,
16 agreement, or transaction in an energy commodity
17 for future delivery that provides for a delivery point
18 of the energy commodity in the United States or a
19 territory or possession of the United States, or that
20 is offered or transacted on or through a computer
21 terminal located in the United States.”.

22 (b) EXTENSION OF REGULATORY AUTHORITY TO
23 SWAPS INVOLVING ENERGY TRANSACTIONS.—Section
24 2(g) of such Act (7 U.S.C. 2(g)) is amended by inserting

1 “or an energy commodity” after “agricultural com-
2 modity”.

3 (c) ELIMINATION OF EXEMPTION FOR OVER-THE-
4 COUNTER SWAPS INVOLVING ENERGY COMMODITIES.—
5 Section 2(h)(1) of such Act (7 U.S.C. 2(h)(1)) is amended
6 by inserting “(other than an energy commodity)” after
7 “exempt commodity”.

8 (d) EXTENSION OF REGULATORY AUTHORITY TO IN-
9 CLUDED ENERGY TRANSACTIONS ON FOREIGN BOARDS
10 OF TRADE.—Section 4 of such Act (7 U.S.C. 6) is amend-
11 ed—

12 (1) in subsection (a), by inserting “, and which
13 is not an included energy transaction” after “terri-
14 tories or possessions” the 2nd place it appears; and

15 (2) in subsection (b), by adding at the end the
16 following: “The preceding sentence shall not apply
17 with respect to included energy transactions.”.

18 (e) LIMITATION OF GENERAL EXEMPTIVE AUTHOR-
19 ITY OF THE CFTC WITH RESPECT TO INCLUDED EN-
20 ERGY TRANSACTIONS.—

21 (1) IN GENERAL.—Section 4(c) of such Act (7
22 U.S.C. 6(c)) is amended by adding at the end the
23 following:

24 “(6) The Commission may not exempt any included
25 energy transaction from the requirements of subsection

1 (a), unless the Commission provides 60 days advance no-
2 tice to the Congress and the Position Limit Energy Advi-
3 sory Group and solicits public comment about the exemp-
4 tion request and any proposed Commission action.”.

5 (2) NULLIFICATION OF NO-ACTION LETTER EX-
6 EMPTIONS TO CERTAIN REQUIREMENTS APPLICABLE
7 TO INCLUDED ENERGY TRANSACTIONS.—Beginning
8 180 days after the date of the enactment of this Act,
9 any exemption provided by the Commodity Futures
10 Trading Commission that has allowed included en-
11 ergy transactions (as defined in section 1a(13) of
12 the Commodity Exchange Act) to be conducted with-
13 out regard to the requirements of section 4(a) of
14 such Act shall be null and void.

15 (f) REQUIREMENT TO ESTABLISH UNIFORM SPECU-
16 LATIVE POSITION LIMITS FOR ENERGY TRANSACTIONS.—

17 (1) IN GENERAL.—Section 4a(a) of such Act (7
18 U.S.C. 6a(a)) is amended—

19 (A) by inserting “(1)” after “(a)”;

20 (B) by inserting after the 2nd sentence the
21 following: “With respect to energy transactions,
22 the Commission shall fix limits on the aggre-
23 gate number of positions which may be held by
24 any person for each month across all markets
25 subject to the jurisdiction of the Commission.”;

1 (C) in the 4th sentence by inserting “, con-
2 sistent with the 3rd sentence,” after “Commis-
3 sion”; and

4 (D) by adding after and below the end the
5 following:

6 “(2)(A) Not later than 60 days after the date of the
7 enactment of this paragraph, the Commission shall con-
8 vene a Position Limit Energy Advisory Group consisting
9 of representatives from—

10 “(i) 7 predominantly commercial short hedgers
11 of the actual energy commodity for future delivery;

12 “(ii) 7 predominantly commercial long hedgers
13 of the actual energy commodity for future delivery;

14 “(iii) 4 non-commercial participants in markets
15 for energy commodities for future delivery; and

16 “(iv) each designated contract market or de-
17 rivatives transaction execution facility upon which a
18 contract in the energy commodity for future delivery
19 is traded, and each electronic trading facility that
20 has a significant price discovery contract in the en-
21 ergy commodity.

22 “(B) Not later than 60 days after the date on which
23 the advisory group is convened under subparagraph (A),
24 and annually thereafter, the advisory group shall submit

1 to the Commission advisory recommendations regarding
2 the position limits to be established in paragraph (1).

3 “(C) The Commission shall have exclusive authority
4 to grant exemptions for bona fide hedging transactions
5 and positions from position limits imposed under this Act
6 on energy transactions.”.

7 (2) CONFORMING AMENDMENTS.—

8 (A) SIGNIFICANT PRICE DISCOVERY CON-
9 TRACTS.—Section 2(h)(7) of such Act (7 U.S.C.
10 2(h)(7)) is amended—

11 (i) in subparagraph (A)—

12 (I) by inserting “of this para-
13 graph and section 4a(a)” after “(B)
14 through (D)”;

15 (II) by inserting “of this para-
16 graph” before the period; and

17 (ii) in subparagraph (C)(ii)(IV)—

18 (I) in the heading, by striking
19 “LIMITATIONS OR”; and

20 (II) by striking “position limita-
21 tions or”.

22 (B) CONTRACTS TRADED ON OR THROUGH
23 DESIGNATED CONTRACT MARKETS.—Section
24 5(d)(5) of such Act (7 U.S.C. 7(d)(5)) is
25 amended—

1 (i) in the heading by striking “LIMI-
2 TATIONS OR”; and

3 (ii) by striking “position limitations
4 or”.

5 (C) CONTRACTS TRADED ON OR THROUGH
6 DERIVATIVES TRANSACTION EXECUTION FACILI-
7 TIES.—Section 5a(d)(4) of such Act (7 U.S.C.
8 7a(d)(4)) is amended—

9 (i) in the heading by striking “LIMI-
10 TATIONS OR”; and

11 (ii) by striking “position limits or”.

12 (g) ELIMINATION OF THE SWAPS LOOPHOLE.—Sec-
13 tion 4a(c) of such Act (7 U.S.C. 6a(c)) is amended—

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

15 (2) by adding after and below the end the fol-
16 lowing:

17 “(2) For the purposes of contracts of sale for future
18 delivery and options on such contracts or commodities, the
19 Commission shall define what constitutes a bona fide
20 hedging transaction or position as a transaction or posi-
21 tion that—

22 “(A)(i) represents a substitute for transactions
23 made or to be made or positions taken or to be
24 taken at a later time in a physical marketing chan-
25 nel;

1 “(ii) is economically appropriate to the reduc-
2 tion of risks in the conduct and management of a
3 commercial enterprise; and

4 “(iii) arises from the potential change in the
5 value of—

6 “(I) assets that a person owns, produces,
7 manufactures, processes, or merchandises or
8 anticipates owning, producing, manufacturing,
9 processing, or merchandising;

10 “(II) liabilities that a person owns or an-
11 ticipates incurring; or

12 “(III) services that a person provides, pur-
13 chases, or anticipates providing or purchasing;
14 or

15 “(B) reduces risks attendant to a position re-
16 sulting from a transaction that—

17 “(i) was executed pursuant to subsection
18 (d), (g), (h)(1), or (h)(2) of section 2, or an ex-
19 emption issued by the Commission by rule, reg-
20 ulation or order; and

21 “(ii) was executed opposite a counterparty
22 for which the transaction would qualify as a
23 bona fide hedging transaction pursuant to para-
24 graph (2)(A) of this subsection.”.

1 (h) DETAILED REPORTING AND DISAGGREGATION OF
2 MARKET DATA.—Section 4 of such Act (7 U.S.C. 6) is
3 amended by adding at the end the following:

4 “(e) DETAILED REPORTING AND DISAGGREGATION
5 OF MARKET DATA.—

6 “(1) INDEX TRADERS AND SWAP DEALERS RE-
7 PORTING.—The Commission shall issue a proposed
8 rule defining and classifying index traders and swap
9 dealers (as those terms are defined by the Commis-
10 sion) for purposes of data reporting requirements
11 and setting routine detailed reporting requirements
12 for any positions of such entities in contracts traded
13 on designated contract markets, over-the-counter
14 markets, derivatives transaction execution facilities,
15 foreign boards of trade subject to section 4(f), and
16 electronic trading facilities with respect to signifi-
17 cant price discovery contracts not later than 120
18 days after the date of the enactment of this sub-
19 section, and issue a final rule within 180 days after
20 such date of enactment.

21 “(2) DISAGGREGATION OF INDEX FUNDS AND
22 OTHER DATA IN MARKETS.—Subject to section 8
23 and beginning within 60 days of the issuance of the
24 final rule required by paragraph (1), the Commis-
25 sion shall disaggregate and make public weekly—

1 “(A) the number of positions and total no-
2 tional value of index funds and other passive,
3 long-only and short-only positions (as defined
4 by the Commission) in all markets to the extent
5 such information is available; and

6 “(B) data on speculative positions relative
7 to bona fide physical hedgers in those markets
8 to the extent such information is available.

9 “(3) DISCLOSURE OF IDENTITY OF HOLDERS
10 OF POSITIONS IN INDEXES IN EXCESS OF POSITION
11 LIMITS.—The Commission shall include in its weekly
12 Commitment of Trader reports the identity of each
13 person who holds a position in an index in excess of
14 a limit imposed under section 4i.”.

15 (i) AUTHORITY TO SET LIMITS TO PREVENT EXCES-
16 SIVE SPECULATION IN INDEXES.—

17 (1) IN GENERAL.—Section 4a of such Act (7
18 U.S.C. 6a) is amended by adding at the end the fol-
19 lowing:

20 “(f) The provisions of this section shall apply to the
21 amounts of trading which may be done or positions which
22 may be held by any person under contracts of sale of an
23 index for future delivery on or subject to the rules of any
24 contract market, derivatives transaction execution facility,
25 or over-the-counter market, or on an electronic trading fa-

1 cility with respect to a significant price discovery contract,
 2 in the same manner in which this section applies to con-
 3 tracts of sale of a commodity for future delivery.”.

4 (2) REGULATIONS.—The Commodity Futures
 5 Trading Commission shall issue regulations under
 6 section 4a(f) of the Commodity Exchange Act within
 7 180 days after the date of the enactment of this Act.

8 **SEC. 352. NO EFFECT ON AUTHORITY OF THE FEDERAL EN-**
 9 **ERGY REGULATORY COMMISSION.**

10 Section 2 of the Commodity Exchange Act (7 U.S.C.
 11 2) is amended by adding at the end the following:.

12 “(j) This Act shall not be interpreted to affect the
 13 jurisdiction of the Federal Energy Regulatory Commission
 14 with respect to the authority of the Federal Energy Regu-
 15 latory Commission under the Federal Power Act (16
 16 U.S.C. 791a et seq.), the Natural Gas Act (15 U.S.C. 717
 17 et seq.), or other law to obtain information, carry out en-
 18 forcement actions, or otherwise carry out the responsibil-
 19 ities of the Federal Energy Regulatory Commission.”.

20 **SEC. 353. INSPECTOR GENERAL OF THE COMMODITY FU-**
 21 **TURES TRADING COMMISSION.**

22 (a) ELEVATION OF OFFICE.—

23 (1) INCLUSION OF CFTC IN DEFINITION OF ES-
 24 TABLISHMENT.—

1 (A) Section 12(1) of the Inspector General
2 Act of 1978 (5 U.S.C. App.) is amended by
3 striking “or the Federal Cochairpersons of the
4 Commissions established under section 15301
5 of title 40, United States Code;” and inserting
6 “the Federal Cochairpersons of the Commis-
7 sions established under section 15301 of title
8 40, United States Code; or the Chairman of the
9 Commodity Futures Trading Commission;”.

10 (B) Section 12(2) of the Inspector General
11 Act of 1978 (5 U.S.C. App.) is amended by
12 striking “or the Commissions established under
13 section 15301 of title 40, United States Code,”
14 and inserting “the Commissions established
15 under section 15301 of title 40, United States
16 Code, or the Commodity Futures Trading Com-
17 mission;”.

18 (2) EXCLUSION OF CFTC FROM DEFINITION OF
19 DESIGNATED FEDERAL ENTITY.—Section 8G(a)(2)
20 of the Inspector General Act of 1978 (5 U.S.C.
21 App.) is amended by striking “the Commodity Fu-
22 tures Trading Commission;”.

23 (b) PROVISIONS RELATING TO PAY AND PERSONNEL
24 AUTHORITY.—

1 (1) PROVISION RELATING TO THE POSITION OF
2 INSPECTOR GENERAL OF THE CFTC.—In the case of
3 the Inspector General of the Commodities Futures
4 Trading Commission, subsections (b) and (c) of sec-
5 tion 4 of the Inspector General Reform Act of 2008
6 (Public Law 110-409) shall apply in the same man-
7 ner as if the Commission was a designated Federal
8 entity under section 8G. The Inspector General of
9 the Commodities Futures Trading Commission shall
10 not be subject to section 3(e) of such Act.

11 (2) PROVISION RELATING TO OTHER PER-
12 SONNEL.—Notwithstanding paragraphs (7) and (8)
13 of section 6(a) of the Inspector General Act of 1978
14 (5 U.S.C. App.), the Inspector General of the Com-
15 modities Futures Trading Commission may select,
16 appoint, and employ such officers and employees as
17 may be necessary for carrying out the functions,
18 powers, and duties of the Office of Inspector General
19 and to obtain the temporary or intermittent services
20 of experts or consultants or an organization of ex-
21 perts or consultants, subject to the applicable laws
22 and regulations that govern such selections, appoint-
23 ments, and employment, and the obtaining of such
24 services, within the Commodities Futures Trading
25 Commission.

1 (c) EFFECTIVE DATE; TRANSITION RULE.—

2 (1) EFFECTIVE DATE.—The amendments made
3 by this section shall take effect 30 days after the
4 date of the enactment of this Act.

5 (2) TRANSITION RULE.—An individual serving
6 as Inspector General of the Commodity Futures
7 Trading Commission on the effective date of this
8 section pursuant to an appointment made under sec-
9 tion 8G of the Inspector General Act of 1978 (5
10 U.S.C. App.)—

11 (A) may continue so serving until the
12 President makes an appointment under section
13 3(a) of such Act consistent with the amend-
14 ments made by this section; and

15 (B) shall, while serving under subpara-
16 graph (A), remain subject to the provisions of
17 section 8G of such Act which apply with respect
18 to the Commodity Futures Trading Commis-
19 sion.

20 **SEC. 354. SETTLEMENT AND CLEARING THROUGH REG-**
21 **ISTERED DERIVATIVES CLEARING ORGANIZA-**
22 **TIONS.**

23 (a) IN GENERAL.—

24 (1) APPLICATION TO EXCLUDED DERIVATIVE
25 TRANSACTIONS.—

1 (A) Section 2(d)(1) of the Commodity Ex-
2 change Act (7 U.S.C. 2(d)(1)) is amended—

3 (i) by striking “and” at the end of
4 subparagraph (A);

5 (ii) by striking the period at the end
6 of subparagraph (B) and inserting “;
7 and”; and

8 (iii) by adding at the end the fol-
9 lowing:

10 “(C) except as provided in section 4(f), the
11 agreement, contract, or transaction is settled
12 and cleared through a derivatives clearing orga-
13 nization registered with the Commission.”.

14 (B) Section 2(d)(2) of such Act (7 U.S.C.
15 2(d)(2)) is amended—

16 (i) by striking “and” at the end of
17 subparagraph (B);

18 (ii) by striking the period at the end
19 of subparagraph (C) and inserting “; and”;
20 and

21 (iii) by adding at the end the fol-
22 lowing:

23 “(D) except as provided in section 4(f), the
24 agreement, contract, or transaction is settled

1 and cleared through a derivatives clearing orga-
2 nization registered with the Commission.”.

3 (2) APPLICATION TO CERTAIN SWAP TRANS-
4 ACTIONS.—Section 2(g) of such Act (7 U.S.C. 2(g))
5 is amended—

6 (A) by striking “and” at the end of para-
7 graph (2);

8 (B) by striking the period at the end of
9 paragraph (3) and inserting “; and”; and

10 (C) by adding at the end the following:

11 “(4) except as provided in section 4(f), settled
12 and cleared through a derivatives clearing organiza-
13 tion registered with the Commission.”.

14 (3) APPLICATION TO CERTAIN TRANSACTIONS
15 IN EXEMPT COMMODITIES.—

16 (A) Section 2(h)(1) of such Act (7 U.S.C.
17 2(h)(1)) is amended—

18 (i) by striking “and” at the end of
19 subparagraph (A);

20 (ii) by striking the period at the end
21 of subparagraph (B) and inserting “;
22 and”; and

23 (iii) by adding at the end the fol-
24 lowing:

1 “(C) except as provided in section 4(f), is
2 settled and cleared through a derivatives clear-
3 ing organization registered with the Commis-
4 sion.”.

5 (B) Section 2(h)(3) of such Act (7 U.S.C.
6 2(h)(3)) is amended—

7 (i) by striking “and” at the end of
8 subparagraph (A);

9 (ii) by striking the period at the end
10 of subparagraph (B) and inserting “;
11 and”; and

12 (iii) by adding at the end the fol-
13 lowing:

14 “(C) except as provided in section 4(f), set-
15 tled and cleared through a derivatives clearing
16 organization registered with the Commission.”.

17 (4) GENERAL EXEMPTIVE AUTHORITY.—Sec-
18 tion 4(c)(1) of such Act (7 U.S.C. 6(c)(1)) is
19 amended by inserting “the agreement, contract, or
20 transaction, except as provided in section 4(h), will
21 be settled and cleared through a derivatives clearing
22 organization registered with the Commission and”
23 before “the Commission determines”.

24 (5) CONFORMING AMENDMENT RELATING TO
25 SIGNIFICANT PRICE DISCOVERY CONTRACTS.—Sec-

1 tion 2(h)(7)(D) of such Act (7 U.S.C. 2(h)(7)(D)) is
2 amended by striking the designation and heading for
3 the subparagraph and all that follows through “As
4 part of” and inserting the following:

5 “(D) REVIEW OF IMPLEMENTATION.—As
6 part of”.

7 (b) ALTERNATIVES TO CLEARING THROUGH DES-
8 IGNATED CLEARING ORGANIZATIONS.—Section 4 of such
9 Act (7 U.S.C. 6), as amended by section 351(h) of this
10 Act, is amended by adding at the end the following:

11 “(f) ALTERNATIVES TO CLEARING THROUGH DES-
12 IGNATED CLEARING ORGANIZATIONS.—

13 “(1) SETTLEMENT AND CLEARING THROUGH
14 CERTAIN OTHER REGULATED ENTITIES.—An agree-
15 ment, contract, or transaction, or class thereof, re-
16 lating to an excluded commodity, that would other-
17 wise be required to be settled and cleared by section
18 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), or
19 2(h)(3)(C) of this Act, or subsection (c)(1) of this
20 section may be settled and cleared through an entity
21 listed in subsections (a) or (b) of section 409 of the
22 Federal Deposit Insurance Corporation Improvement
23 Act of 1991.

24 “(2) WAIVER OF CLEARING REQUIREMENT.—

1 “(A) The Commission, in its discretion,
2 may exempt an agreement, contract, or trans-
3 action, or class thereof, that would otherwise be
4 required by section 2(d)(1)(C), 2(d)(2)(D),
5 2(g)(4), 2(h)(1)(C), or 2(h)(3)(C) of this Act,
6 or subsection (c)(1) of this section to be settled
7 and cleared through a derivatives clearing orga-
8 nization registered with the Commission from
9 such requirement.

10 “(B) In granting exemptions pursuant to
11 subparagraph (A), the Commission shall consult
12 with the Securities and Exchange Commission
13 and the Board of Governors of the Federal Re-
14 serve System regarding exemptions that relate
15 to excluded commodities or entities for which
16 the Securities Exchange Commission or the
17 Board of Governors of the Federal Reserve Sys-
18 tem serve as the primary regulator.

19 “(C) Before granting an exemption pursu-
20 ant to subparagraph (A), the Commission shall
21 find that the agreement, contract, or trans-
22 action, or class thereof—

23 “(i) is highly customized as to its ma-
24 terial terms and conditions;

25 “(ii) is transacted infrequently;

1 “(iii) does not serve a significant
2 price-discovery function in the market-
3 place; and

4 “(iv) is being entered into by parties
5 who can demonstrate the financial integ-
6 rity of the agreement, contract, or trans-
7 action and their own financial integrity, as
8 such terms and standards are determined
9 by the Commission. The standards may in-
10 clude, with respect to any federally regu-
11 lated financial entity for which net capital
12 requirements are imposed, a net capital re-
13 quirement associated with any agreement,
14 contract, or transaction subject to an ex-
15 emption from the clearing requirement
16 that is higher than the net capital require-
17 ment that would be associated with such a
18 transaction were it cleared

19 “(D) Any agreement, contract, or trans-
20 action, or class thereof, which is exempted pur-
21 suant to subparagraph (A) shall be reported to
22 the Commission in a manner designated by the
23 Commission, or to such other entity the Com-
24 mission deems appropriate.

1 “(E) The Commission, the Securities and
2 Exchange Commission and the Board of Gov-
3 ernors of the Federal Reserve System shall
4 enter into a memorandum of understanding by
5 which the information reported to the Commis-
6 sion pursuant to subparagraph (D) with regard
7 to excluded commodities or entities for which
8 the Securities Exchange Commission or the
9 Board of Governors of the Federal Reserve Sys-
10 tem serve as the primary regulator may be pro-
11 vided to the other agencies.

12 “(g) SPOT AND FORWARD EXCLUSION.—The settle-
13 ment and clearing requirements of section 2(d)(1)(C),
14 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), or 4(e)(1)
15 shall not apply to an agreement, contract, or transaction
16 of any cash commodity for immediate or deferred ship-
17 ment or delivery, as defined by the Commission.”.

18 (c) ADDITIONAL REQUIREMENTS APPLICABLE TO
19 APPLICANTS FOR REGISTRATION AS A DERIVATIVE
20 CLEARING ORGANIZATION.—Section 5b(e)(2) of such Act
21 (7 U.S.C. 7a-1(e)(2)) is amended by adding at the end
22 the following:

23 “(O) DISCLOSURE OF GENERAL INFORMA-
24 TION.—The applicant shall disclose publicly and
25 to the Commission information concerning—

1 “(i) the terms and conditions of con-
2 tracts, agreements, and transactions
3 cleared and settled by the applicant;

4 “(ii) the conventions, mechanisms,
5 and practices applicable to the contracts,
6 agreements, and transactions;

7 “(iii) the margin-setting methodology
8 and the size and composition of the finan-
9 cial resource package of the applicant; and

10 “(iv) other information relevant to
11 participation in the settlement and clearing
12 activities of the applicant.

13 “(P) DAILY PUBLICATION OF TRADING IN-
14 FORMATION.—The applicant shall make public
15 daily information on settlement prices, volume,
16 and open interest for contracts settled or
17 cleared pursuant to the requirements of section
18 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C),
19 2(h)(3)(C) or 4(c)(1) of this Act by the appli-
20 cant if the Commission determines that the
21 contracts perform a significant price discovery
22 function for transactions in the cash market for
23 the commodity underlying the contracts.

24 “(Q) FITNESS STANDARDS.—The applicant
25 shall establish and enforce appropriate fitness

1 standards for directors, members of any dis-
2 ciplinary committee, and members of the appli-
3 cant, and any other persons with direct access
4 to the settlement or clearing activities of the
5 applicant, including any parties affiliated with
6 any of the persons described in this subpara-
7 graph.”.

8 (d) AMENDMENTS.—

9 (1) Section 409 of the Federal Deposit Insur-
10 ance Corporation Improvement Act of 1991 (12
11 U.S.C. 4422) is amended by adding at the end the
12 following:

13 “(c) CLEARING REQUIREMENT.—A multilateral
14 clearing organization described in subsections (a) or (b)
15 of this section shall comply with requirements similar to
16 the requirements of sections 5b and 5c of the Commodity
17 Exchange Act.”.

18 (2) Section 407 of the Legal Certainty for
19 Bank Products Act of 2000 (7 U.S.C. 27e) is
20 amended by inserting “and the settlement and clear-
21 ing requirements of sections 2(d)(1)(C), 2(d)(2)(D),
22 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), and 4(c)(1) of such
23 Act” after “the clearing of covered swap agree-
24 ments”.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect 150 days after the date of
3 the enactment of this Act.

4 (f) TRANSITION RULE.—Any agreement, contract, or
5 transaction entered into before the date of the enactment
6 of this Act or within 150 days after such date of enact-
7 ment, in reliance on subsection (d), (g), (h)(1), or (h)(3)
8 of section 2 of the Commodity Exchange Act or any other
9 exemption issued by the Commission Futures Trading
10 Commission by rule, regulation, or order shall, within 90
11 days after such date of enactment, unless settled and
12 cleared through an entity registered with the Commission
13 as a derivatives clearing organization or another clearing
14 entity pursuant to section 4(f) of such Act, be reported
15 to the Commission in a manner designated by the Com-
16 mission, or to such other entity as the Commission deems
17 appropriate.

18 **SEC. 355. LIMITATION ON ELIGIBILITY TO PURCHASE A**
19 **CREDIT DEFAULT SWAP.**

20 (a) IN GENERAL.—Section 4c of the Commodity Ex-
21 change Act (7 U.S.C. 6c) is amended by adding at the
22 end the following:

23 “(h) LIMITATION ON ELIGIBILITY TO PURCHASE A
24 CREDIT DEFAULT SWAP.—It shall be unlawful for any

1 person to enter into a credit default swap unless the per-
2 son—

3 “(1) owns a credit instrument which is insured
4 by the credit default swap;

5 “(2) would experience financial loss if an event
6 that is the subject of the credit default swap occurs
7 with respect to the credit instrument; and

8 “(3) meets such minimum capital adequacy
9 standards as may be established by the Commission,
10 in consultation with the Board of Governors of the
11 Federal Reserve System, or such more stringent
12 minimum capital adequacy standards as may be es-
13 tablished by or under the law of any State in which
14 the swap is originated or entered into, or in which
15 possession of the contract involved takes place.”.

16 (b) ELIMINATION OF PREEMPTION OF STATE
17 BUCKETING LAWS REGARDING NAKED CREDIT DEFAULT
18 SWAPS.—Section 12(e)(2)(B) of such Act (7 U.S.C.
19 16(e)(2)(B)) is amended by inserting “(other than a credit
20 default swap in which the purchaser of the swap would
21 not experience financial loss if an event that is the subject
22 of the swap occurred)” before “that is excluded”.

23 (c) DEFINITION OF CREDIT DEFAULT SWAP.—Sec-
24 tion 1a of such Act (7 U.S.C. 1a), as amended by section

1 351(a) of this Act, is amended by adding at the end the
2 following:

3 “(37) CREDIT DEFAULT SWAP.—The term
4 ‘credit default swap’ means a contract which insures
5 a party to the contract against the risk that an enti-
6 ty may experience a loss of value as a result of an
7 event specified in the contract, such as a default or
8 credit downgrade. A credit default swap that is trad-
9 ed on or cleared by a registered entity shall be ex-
10 cluded from the definition of a security as defined in
11 this Act and in section 2(a)(1) of the Securities Act
12 of 1933 or section 3(a)(10) of the Securities Ex-
13 change Act of 1934, except it shall be deemed a se-
14 curity solely for purpose of enforcing prohibitions
15 against insider trading in sections 10 and 16 of the
16 Securities Exchange Act of 1934.”.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall be effective for credit default swaps (as
19 defined in section 1a(37) of the Commodity Exchange Act)
20 entered into after 60 days after the date of the enactment
21 of this section.

22 **SEC. 356. TRANSACTION FEES.**

23 (a) IN GENERAL.—Section 12 of the Commodity Ex-
24 change Act (7 U.S.C. 16) is amended by redesignating
25 subsections (e), (f), and (g) as subsections (f), (g), and

1 (h), respectively, and inserting after subsection (d) the fol-
2 lowing:

3 “(e) CLEARING FEES.—

4 “(1) IN GENERAL.—The Commission shall, in
5 accordance with this subsection, charge and collect
6 from each registered clearing organization, and each
7 such organization shall pay to the Commission,
8 transaction fees at a rate calculated to recover the
9 costs to the Federal Government of the supervision
10 and regulation of futures markets, except those di-
11 rectly related to enforcement.

12 “(2) FEES ASSESSED PER SIDE OF CLEARED
13 CONTRACTS.—

14 “(A) IN GENERAL.—The Commission shall
15 determine the fee rate referred to in paragraph
16 (1), and shall apply the fee rate per side of any
17 transaction cleared.

18 “(B) AUTHORITY TO DELEGATE.— The
19 Commission may determine the procedures by
20 which the fee rate is to be applied on the trans-
21 actions subject to the fee, or delegate the au-
22 thority to make the determination to any appro-
23 priate derivatives clearing organization.

24 “(3) EXEMPTIONS.—The Commission may not
25 impose a fee under paragraph (1) on—

1 “(A) a class of contracts or transactions if
2 the Commission finds that it is in the public in-
3 terest to exempt the class from the fee; or

4 “(B) a contract or transaction cleared by
5 a registered derivatives clearing organization
6 that is—

7 “(i) subject to fees under section 31
8 of the Securities Exchange Act of 1934; or

9 “(ii) a security as defined in the Secu-
10 rities Act of 1933 or the Securities Ex-
11 change Act of 1934.

12 “(4) DATES FOR PAYMENT OF FEES.—The fees
13 imposed under paragraph (1) shall be paid on or be-
14 fore—

15 “(A) March 15 of each year, with respect
16 to transactions occurring on or after the pre-
17 ceeding September 1 and on or before the pre-
18 ceeding December 31; and

19 “(B) September 15 of each year, with re-
20 spect to transactions occurring on or after the
21 preceding January 1 and on or before the pre-
22 ceeding August 31.

23 “(5) ANNUAL ADJUSTMENT OF FEE RATES.—

24 “(A) IN GENERAL.—Not later than April
25 30 of each fiscal year , the Commission shall,

1 by order, adjust each fee rate determined under
2 paragraph (2) for the fiscal year to a uniform
3 adjusted rate that, when applied to the esti-
4 mated aggregate number of cleared sides of
5 transactions for the fiscal year, is reasonably
6 likely to produce aggregate fee receipts under
7 this subsection for the fiscal year equal to the
8 target offsetting receipt amount for the fiscal
9 year.

10 “(B) DEFINITIONS.—In subparagraph (A):

11 “(i) ESTIMATED AGGREGATE NUMBER
12 OF CLEARED SIDES OF TRANSACTIONS.—

13 The term ‘estimated aggregate number of
14 cleared sides of transactions’ means, with
15 respect to a fiscal year, the aggregate
16 number of cleared sides of transactions to
17 be cleared by registered derivatives clear-
18 ing organizations during the fiscal year, as
19 estimated by the Commission, after con-
20 sultation with the Office of Management
21 and Budget, using the methodology re-
22 quired for making projections pursuant to
23 section 257 of the Balanced Budget and
24 Emergency Deficit Control Act of 1985.

1 “(ii) TARGET OFFSETTING RECEIPT
2 AMOUNT.—The term ‘target offsetting re-
3 ceipt amount’ means, with respect to a fis-
4 cal year, the total level of Commission
5 budget authority for all non-enforcement
6 activities of the Commission, as contained
7 in the regular appropriations Acts for the
8 fiscal year.

9 “(C) NO JUDICIAL REVIEW.—An adjusted
10 fee rate prescribed under subparagraph (A)
11 shall not be subject to judicial review.

12 “(6) PUBLICATION.—Not later than April 30 of
13 each fiscal year, the Commission shall cause to be
14 published in the Federal Register notices of the fee
15 rates applicable under this subsection for the suc-
16 ceeding fiscal year, and any estimate or projection
17 on which the fee rates are based.

18 “(7) ESTABLISHMENT OF FUTURES AND OP-
19 TIONS TRANSACTION FEE ACCOUNT; DEPOSIT OF
20 FEES.—There is established in the Treasury of the
21 United States an account which shall be known as
22 the ‘Futures and Options Transaction Fee Account’.
23 All fees collected under this subsection for a fiscal
24 year shall be deposited in the account. Amounts in

1 the account are authorized to be appropriated to
2 fund the expenditures of the Commission.”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 subsection (a) shall apply to fiscal years beginning 30 or
5 more days after the date of the enactment of this Act.

6 (c) TRANSITION RULE.—If this section becomes law
7 after March 31 and before September 1 of a fiscal year,
8 then paragraphs (5)(A) and (6) of section 12(e) of the
9 Commodity Exchange Act shall be applied, in the case of
10 the 1st fiscal year beginning after the date of the enact-
11 ment of this Act, by substituting “August 31” for “April
12 30”.

13 **SEC. 357. NO EFFECT ON ANTITRUST LAW OR AUTHORITY**
14 **OF THE FEDERAL TRADE COMMISSION.**

15 (a) Nothing in this subtitle shall be construed to mod-
16 ify, impair, or supersede the operation of any of the anti-
17 trust laws. For purposes of this subsection, the term
18 “antitrust laws” has the meaning given it in subsection
19 (a) of the 1st section of the Clayton Act (15 U.S.C. 12(a)),
20 except that such term includes section 5 of the Federal
21 Trade Commission Act (15 U.S.C. 45) to the extent that
22 such term applies to unfair methods of competition.

23 (b) Nothing in this subtitle shall be construed to af-
24 fect or diminish the jurisdiction or authority of the Fed-
25 eral Trade Commission with respect to its authorities

1 under the Federal Trade Commission Act (15 U.S.C. 41
2 et seq.) or the Energy Independence and Security Act of
3 2007 (Public Law 110–140) to obtain information, to
4 carry out enforcement activities, or otherwise to carry out
5 the responsibilities of the Federal Trade Commission.

6 **SEC. 358. REGULATION OF CARBON DERIVATIVES MAR-**
7 **KETS.**

8 (a) **DEFAULT RULE.**—Section 2 of the Commodity
9 Exchange Act (7 U.S.C. 2), as amended by section 352
10 of this Act, is amended by adding at the end the following:

11 “(k) The Commission shall have jurisdiction over the
12 establishment, operations, and oversight of markets for
13 regulated allowance derivatives (as defined in section 401
14 of the Federal Power Act (16 U.S.C. 791a and following)),
15 and shall provide for the establishment, operation, and
16 oversight of the markets in accordance with the same reg-
17 ulations that apply under this Act to included energy
18 transactions.”.

19 (b) **PRESIDENTIAL DETERMINATIONS.**—To the ex-
20 tent that the President delegates the authority to promul-
21 gate regulations for the establishment, operation, and
22 oversight of all markets for regulated allowance derivatives
23 to a Federal agency other than the Commodity Futures
24 Trading Commission pursuant to section 401 of the Fed-
25 eral Power Act, such determination shall supersede sub-

1 section (a). To the extent that the President determines
2 that regulations promulgated pursuant to section
3 401(c)(2) of the Federal Power Act would provide for
4 more stringent and effective market oversight, such regu-
5 lations shall supersede subsection (a). Nothing in this sec-
6 tion shall be construed to affect the operation of the de-
7 fault rules established in section 401(c)(4) of the Federal
8 Power Act.

9 **SEC. 359. CEASE-AND-DESIST AUTHORITY.**

10 (a) NATURAL GAS ACT.—Section 20 of the Natural
11 Gas Act (15 U.S.C. 717s) is amended by adding the fol-
12 lowing at the end:

13 “(e) CEASE-AND-DESIST PROCEEDINGS; TEMPORARY
14 ORDERS; AUTHORITY OF THE COMMISSION.—

15 “(1) IN GENERAL.—If the Commission finds,
16 after notice and opportunity for hearing, that any
17 entity may be violating, may have violated, or may
18 be about to violate any provision of this Act, or any
19 rule, regulation, restriction, condition, or order made
20 or imposed by the Commission under the authority
21 of this Act, the Commission may publish its findings
22 and issue an order requiring such entity, and any
23 other entity that is, was, or would be a cause of the
24 violation, due to an act or omission the entity knew
25 or should have known would contribute to such vio-

1 lation, to cease and desist from committing or caus-
2 ing such violation and any future violation of the
3 same provision, rule, or regulation. Such order may,
4 in addition to requiring an entity to cease and desist
5 from committing or causing a violation, require such
6 entity to comply, to provide an accounting and
7 disgorgement, or to take steps to effect compliance,
8 with such provision, rule, or regulation, upon such
9 terms and conditions and within such time as the
10 Commission may specify in such order. Any such
11 order may, as the Commission deems appropriate,
12 require future compliance or steps to effect future
13 compliance, either permanently or for such period of
14 time as the Commission may specify.

15 “(2) TIMING OF ENTRY.—An order issued
16 under this subsection shall be entered only after no-
17 tice and opportunity for a hearing, unless the Com-
18 mission determines that notice and hearing prior to
19 entry would be impracticable or contrary to the pub-
20 lic interest.

21 “(f) HEARING.—The notice instituting proceedings
22 pursuant to subsection (e) shall fix a hearing date not ear-
23 lier than 30 days nor later than 60 days after service of
24 the notice unless an earlier or a later date is set by the
25 Commission with the consent of any respondent so served.

1 “(g) TEMPORARY ORDER.—Whenever the Commis-
2 sion determines that—

3 “(1) a respondent may take actions to dissipate
4 or convert assets prior to the completion of the pro-
5 ceedings referred to in subsection (e), and such as-
6 sets would be necessary to comply with or otherwise
7 satisfy a final enforcement order of the Commission
8 pursuant to alleged violations or threatened viola-
9 tions specified in the notice instituting proceedings;
10 or

11 “(2) a respondent is engaged in actual or
12 threatened violations of this Act or a Commission
13 rule, regulation, restriction or order referred to in
14 subsection (e),
15 the Commission may issue a temporary order requiring
16 the respondent to take such action to prevent dissipation
17 or conversion of assets, significant harm to energy con-
18 sumers, or substantial harm to the public interest, frustra-
19 tion of the Commission’s ability to conduct the pro-
20 ceedings, or frustration of the Commission’s ability to re-
21 dress said violation at the conclusion of the proceedings,
22 as the Commission deems appropriate pending completion
23 of such proceedings.

24 “(h) REVIEW OF TEMPORARY ORDERS.—

1 “(1) COMMISSION REVIEW.—At any time after
2 the respondent has been served with a temporary
3 cease-and-desist order pursuant to subsection (g),
4 the respondent may apply to the Commission to have
5 the order set aside, limited, or suspended. If the re-
6 spondent has been served with a temporary cease-
7 and-desist order entered without a prior Commission
8 hearing, the respondent may, within 10 days after
9 the date on which the order was served, request a
10 hearing on such application and the Commission
11 shall hold a hearing and render a decision on such
12 application at the earliest possible time.

13 “(2) JUDICIAL REVIEW.—Within—

14 “(A) 10 days after the date the respondent
15 was served with a temporary cease-and-desist
16 order entered with a prior Commission hearing;
17 or

18 “(B) 10 days after the Commission ren-
19 ders a decision on an application and hearing
20 under paragraph (1),

21 with respect to any temporary cease-and-desist order
22 entered without a prior Commission hearing, the re-
23 spondent may apply to the United States circuit
24 court having jurisdiction over the circuit in which
25 the respondent resides or has its principal place of

1 business, or to the United States Court of Appeals
2 for the District of Columbia Circuit, for an order
3 setting aside, limiting, or suspending the effective-
4 ness or enforcement of the order, and the court shall
5 have jurisdiction to enter such an order. A respond-
6 ent served with a temporary cease-and-desist order
7 entered without a prior Commission hearing may not
8 apply to the court except after hearing and decision
9 by the Commission on the respondent's application
10 under paragraph (1) of this subsection.

11 “(3) NO AUTOMATIC STAY OF TEMPORARY
12 ORDER.—The commencement of proceedings under
13 paragraph (2) of this subsection shall not, unless
14 specifically ordered by the court, operate as a stay
15 of the Commission's order.

16 “(4) EXCLUSIVE REVIEW.—Sections 19(d) and
17 24 shall not apply to a temporary order entered pur-
18 suant to this section.

19 “(i) IMPLEMENTATION.—The Commission is author-
20 ized to adopt rules, regulations, and orders as it deems
21 appropriate to implement this section.”.

22 (c) NATURAL GAS POLICY ACT OF 1978.—Section
23 504 of the Natural Gas Policy Act of 1978 (15 U.S.C.
24 3414) is amended by adding the following at the end:

1 “(d) CEASE-AND-DESIST PROCEEDINGS; TEMPORARY
2 ORDERS; AUTHORITY OF THE COMMISSION.—

3 “(1) IN GENERAL.—If the Commission finds,
4 after notice and opportunity for hearing, that any
5 entity may be violating, may have violated, or may
6 be about to violate any provision of this Act, or any
7 rule, regulation, restriction, condition, or order made
8 or imposed by the Commission under the authority
9 of this Act, the Commission may publish its findings
10 and issue an order requiring such entity, and any
11 other entity that is, was, or would be a cause of the
12 violation, due to an act or omission the entity knew
13 or should have known would contribute to such vio-
14 lation, to cease and desist from committing or caus-
15 ing such violation and any future violation of the
16 same provision, rule, or regulation. Such order may,
17 in addition to requiring an entity to cease and desist
18 from committing or causing a violation, require such
19 entity to comply, to provide an accounting and
20 disgorgement, or to take steps to effect compliance,
21 with such provision, rule, or regulation, upon such
22 terms and conditions and within such time as the
23 Commission may specify in such order. Any such
24 order may, as the Commission deems appropriate,
25 require future compliance or steps to effect future

1 compliance, either permanently or for such period of
2 time as the Commission may specify.

3 “(2) TIMING OF ENTRY.—An order issued
4 under this subsection shall be entered only after no-
5 tice and opportunity for a hearing, unless the Com-
6 mission determines that notice and hearing prior to
7 entry would be impracticable or contrary to the pub-
8 lic interest.

9 “(3) HEARING.—The notice instituting pro-
10 ceedings pursuant to paragraph (1) shall fix a hear-
11 ing date not earlier than 30 days nor later than 60
12 days after service of the notice unless an earlier or
13 a later date is set by the Commission with the con-
14 sent of any respondent so served.

15 “(4) TEMPORARY ORDER.—Whenever the Com-
16 mission determines that—

17 “(A) a respondent may take actions to dis-
18 sipate or convert assets prior to the completion
19 of the proceedings referred to in paragraph (1)
20 and such assets would be necessary to comply
21 with or otherwise satisfy a final enforcement
22 order of the Commission pursuant to alleged
23 violations or threatened violations specified in
24 the notice instituting proceedings; or

1 “(B) a respondent is engaged in actual or
2 threatened violations of this Act or a Commis-
3 sion rule, regulation, restriction or order re-
4 ferred to in paragraph (1),
5 the Commission may issue a temporary order requir-
6 ing the respondent to take such action to prevent
7 dissipation or conversion of assets, significant harm
8 to energy consumers, or substantial harm to the
9 public interest, frustration of the Commission’s abil-
10 ity to conduct the proceedings, or frustration of the
11 Commission’s ability to redress said violation at the
12 conclusion of the proceedings, as the Commission
13 deems appropriate pending completion of such pro-
14 ceedings.

15 “(5) REVIEW OF TEMPORARY ORDERS.—

16 “(A) COMMISSION REVIEW.—At any time
17 after the respondent has been served with a
18 temporary cease-and-desist order pursuant to
19 paragraph (4), the respondent may apply to the
20 Commission to have the order set aside, limited,
21 or suspended. If the respondent has been served
22 with a temporary cease-and-desist order entered
23 without a prior Commission hearing, the re-
24 spondent may, within 10 days after the date on
25 which the order was served, request a hearing

1 on such application and the Commission shall
2 hold a hearing and render a decision on such
3 application at the earliest possible time.

4 “(B) JUDICIAL REVIEW.—Within—

5 “(i) 10 days after the date the re-
6 spondent was served with a temporary
7 cease-and-desist order entered with a prior
8 Commission hearing; or

9 “(ii) 10 days after the Commission
10 renders a decision on an application and
11 hearing under subparagraph (A), with re-
12 spect to any temporary cease-and-desist
13 order entered without a prior Commission
14 hearing, the respondent may apply to the
15 United States circuit court having jurisdic-
16 tion over the circuit in which the respon-
17 dent resides or has its principal place of
18 business, or to the United States Court of
19 Appeals for the District of Columbia Cir-
20 cuit, for an order setting aside, limiting, or
21 suspending the effectiveness or enforce-
22 ment of the order, and the court shall have
23 jurisdiction to enter such an order. A re-
24 spondent served with a temporary cease-
25 and-desist order entered without a prior

1 Commission hearing may not apply to the
2 court except after hearing and decision by
3 the Commission on the respondent’s appli-
4 cation under paragraph (1) of this sub-
5 section.

6 “(C) NO AUTOMATIC STAY OF TEMPORARY
7 ORDER.—The commencement of proceedings
8 under subparagraph (B) of this paragraph shall
9 not, unless specifically ordered by the court, op-
10 erate as a stay of the Commission’s order.

11 “(6) IMPLEMENTATION.—The Commission is
12 authorized to adopt rules, regulations, and orders as
13 it deems appropriate to implement this subsection.”.

14 **TITLE IV—TRANSITIONING TO A**
15 **CLEAN ENERGY ECONOMY**
16 **Subtitle A—Ensuring Real**
17 **Reductions in Industrial Emissions**

18 **SEC. 401. ENSURING REAL REDUCTIONS IN INDUSTRIAL**
19 **EMISSIONS.**

20 Title VII of the Clean Air Act is amended by insert-
21 ing after part E the following new part:

1 **“PART F—ENSURING REAL REDUCTIONS IN**
2 **INDUSTRIAL EMISSIONS**

3 **“SEC. 761. PURPOSES.**

4 “(a) PURPOSE OF PART.—The purposes of this part
5 are—

6 “(1) to promote a strong global effort to signifi-
7 cantly reduce greenhouse gas emissions, and,
8 through this global effort, stabilize greenhouse gas
9 concentrations in the atmosphere at a level that will
10 prevent dangerous anthropogenic interference with
11 the climate system; and

12 “(2) to prevent an increase in greenhouse gas
13 emissions in countries other than the United States
14 as a result of direct and indirect compliance costs in-
15 curred under this title.

16 “(b) PURPOSES OF SUBPART 1.—The purposes of
17 subpart 1 are additionally—

18 “(1) to rebate the owners and operators of enti-
19 ties in domestic eligible industrial sectors for their
20 greenhouse gas emission costs incurred under this
21 title, but not for costs associated with other related
22 or unrelated market dynamics;

23 “(2) to design such rebates in a way that will
24 prevent carbon leakage while also rewarding innova-
25 tion and facility-level investments in energy effi-
26 ciency performance improvements; and

1 “(3) to eliminate or reduce distribution of emis-
2 sion allowances under this part when such distribu-
3 tion is no longer necessary to prevent carbon leakage
4 from eligible industrial sectors.

5 **“SEC. 762. INTERNATIONAL NEGOTIATIONS.**

6 “(a) FINDING.—Congress finds that the purposes of
7 this part, as set forth in section 761, can be most effec-
8 tively addressed and achieved through agreements nego-
9 tiated between the United States and foreign countries.

10 “(b) STATEMENT OF POLICY.—It is the policy of the
11 United States to work proactively under the United Na-
12 tions Framework Convention on Climate Change, and in
13 other appropriate forums, to establish binding agreements,
14 including sectoral agreements, committing all major
15 greenhouse gas-emitting nations to contribute equitably to
16 the reduction of global greenhouse gas emissions.

17 “(c) NOTIFICATION OF FOREIGN COUNTRIES.—Not
18 later than January 1, 2020, the President shall notify for-
19 eign countries that an International Reserve Allowance
20 Program, as described in subpart 2, may apply to primary
21 products produced in a foreign country by a sector with
22 respect to which the President has made a determination
23 under section 767(b) that 70 percent or less of the global
24 output for the sector is produced or manufactured in coun-

1 tries that have met one or more of the criteria in that
2 subsection.

3 **“SEC. 763. DEFINITIONS.**

4 “In this part:

5 “(1) CARBON LEAKAGE.—The term ‘carbon
6 leakage’ means any substantial increase (as deter-
7 mined by the Administrator) in greenhouse gas
8 emissions by industrial entities located in other
9 countries if such increase is caused by an incre-
10 mental cost of production increase in the United
11 States resulting from the implementation of this
12 title.

13 “(2) ELIGIBLE INDUSTRIAL SECTOR.—The
14 term ‘eligible industrial sector’ means an industrial
15 sector determined by the Administrator under sec-
16 tion 764(b) to be eligible to receive emission allow-
17 ance rebates under subpart 1.

18 “(3) INDUSTRIAL SECTOR.—The term ‘indus-
19 trial sector’ means any sector that is in the manu-
20 facturing sector (as defined in NAICS codes 31, 32,
21 and 33).

22 “(4) NAICS.—The term ‘NAICS’ means the
23 North American Industrial Classification System of
24 2002.

1 “(5) OUTPUT.—The term ‘output’ means the
2 total tonnage or other standard unit of production
3 (as determined by the Administrator) produced by
4 an entity in an industrial sector. The output of the
5 cement sector is hydraulic cement, and not clinker.

6 “(6) PRIMARY PRODUCT.—The term ‘primary
7 product’ means a product manufactured by an eligi-
8 ble industrial sector that is—

9 “(A) iron, steel, steel mill products (includ-
10 ing pipe and tube), aluminum, cement, glass
11 (including flat, container, and specialty glass
12 and fiberglass), pulp, paper, chemicals, or in-
13 dustrial ceramics; or

14 “(B) any other manufactured product that
15 is sold in bulk for purposes of further manufac-
16 ture or inclusion in a finished product.

17 **“Subpart 1—Emission Allowance Rebate Program**

18 **“SEC. 764. ELIGIBLE INDUSTRIAL SECTORS.**

19 “(a) LIST.—

20 “(1) INITIAL LIST.—Not later than June 30,
21 2011, the Administrator shall publish in the Federal
22 Register a list of eligible industrial sectors pursuant
23 to subsection (b). Such list shall include the amount
24 of the emission allowance rebate per unit of produc-
25 tion that shall be provided to entities in each eligible

1 industrial sector in the following two calendar years
2 pursuant to section 765.

3 “(2) SUBSEQUENT LISTS.—Not later than Feb-
4 ruary 1, 2013, and every four years thereafter, the
5 Administrator shall publish in the Federal Register
6 an updated version of the list published under para-
7 graph (1).

8 “(b) ELIGIBLE INDUSTRIAL SECTORS.—

9 “(1) IN GENERAL.—Not later than June 30,
10 2011, the Administrator shall promulgate a rule des-
11 ignating, based on the criteria under paragraph (2),
12 the industrial sectors eligible for emission allowance
13 rebates under this subpart.

14 “(2) PRESUMPTIVELY ELIGIBLE INDUSTRIAL
15 SECTORS.—

16 “(A) ELIGIBILITY CRITERIA.—An owner or
17 operator of an entity shall be eligible to receive
18 emission allowance rebates under this subpart if
19 such entity is in an industrial sector that is in-
20 cluded in a six-digit classification of the NAICS
21 that meets the criteria in both clauses (i) and
22 (ii), or the criteria in clause (iii).

23 “(i) ENERGY OR GREENHOUSE GAS
24 INTENSITY.—As determined by the Admin-
25 istrator, the industrial sector had—

1 “(I) an energy intensity of at
2 least 5 percent, calculated by dividing
3 the cost of purchased electricity and
4 fuel costs of the sector by the value of
5 the shipments of the sector, based on
6 data described in subparagraph (E);
7 or

8 “(II) a greenhouse gas intensity
9 of at least 5 percent, calculated by di-
10 viding—

11 “(aa) the number 20 multi-
12 plied by the number of tons of
13 carbon dioxide equivalent green-
14 house gas emissions (including
15 direct emissions from fuel com-
16 bustion, process emissions, and
17 indirect emissions from the gen-
18 eration of electricity used to
19 produce the output of the sector)
20 of the sector based on data de-
21 scribed in subparagraph (E); by

22 “(bb) the value of the ship-
23 ments of the sector, based on
24 data described in subparagraph
25 (E).

1 “(ii) TRADE INTENSITY.—As deter-
2 mined by the Administrator, the industrial
3 sector had a trade intensity of at least 15
4 percent, calculated by dividing the value of
5 the total imports and exports of such sec-
6 tor by the value of the shipments plus the
7 value of imports of such sector, based on
8 data described in subparagraph (E).

9 “(iii) VERY HIGH ENERGY OR GREEN-
10 HOUSE GAS INTENSITY.—As determined by
11 the Administrator, the industrial sector
12 had an energy or greenhouse gas intensity,
13 as calculated under clause (i)(I) or (II), of
14 at least 20 percent.

15 “(B) IRON AND STEEL SECTOR.—For pur-
16 poses of this subpart, in carrying out this sec-
17 tion and section 765, the Administrator shall
18 consider as in different industrial sectors—

19 “(i) entities using integrated iron and
20 steelmaking technologies (including coke
21 ovens, blast furnaces, and other iron-mak-
22 ing technologies); and

23 “(ii) entities using electric arc furnace
24 technologies.

1 “(C) METAL AND PHOSPHATE PRODUC-
2 TION CLASSIFIED UNDER MORE THAN ONE
3 NAICS CODE.—For purposes of this subpart, in
4 carrying out this section and section 765, the
5 Administrator shall—

6 “(i) aggregate data for the
7 beneficiation or other processing of iron
8 and copper ores and phosphate with subse-
9 quent steps in the process of metal and
10 phosphate manufacturing regardless of the
11 NAICS code under which such activity is
12 classified; and

13 “(ii) aggregate data for the manufac-
14 turing of steel with the manufacturing of
15 steel pipe and tube made from purchased
16 steel in a nonintegrated process.

17 “(D) EXCLUSION.—The petroleum refining
18 sector shall not be an eligible industrial sector.

19 “(E) DATA SOURCES.—

20 “(i) ELECTRICITY AND FUEL COSTS,
21 VALUE OF SHIPMENTS.—The Adminis-
22 trator shall determine electricity and fuel
23 costs and the value of shipments under
24 this subsection from data from the United
25 States Census of Mineral Industries and

1 the United States Census Annual Survey
2 of Manufacturers. The Administrator shall
3 take the average of data from as many of
4 the years of 2004, 2005, and 2006 for
5 which such data are available. If such data
6 are unavailable, the Administrator shall
7 make a determination based upon 2002 or
8 2006 data from the most detailed indus-
9 trial classification level of Energy Informa-
10 tion Agency's Manufacturing Energy Con-
11 sumption Survey (using 2006 data if it is
12 available) and the 2002 or 2007 Economic
13 Census of the United States (using 2007
14 data if it is available). If data from the
15 Manufacturing Energy Consumption Sur-
16 vey are unavailable for any sector at the
17 six-digit classification level in the NAICS,
18 then the Administrator may extrapolate
19 the information necessary to determine the
20 eligibility of a sector under this paragraph
21 from available Manufacturing Energy Con-
22 sumption Survey data pertaining to a
23 broader industrial category classified in the
24 NAICS. Fuel cost data shall not include

1 the cost of fuel used as feedstock by an in-
2 dustrial sector.

3 “(ii) IMPORTS AND EXPORTS.—The
4 Administrator shall base the value of im-
5 ports and exports under this subsection on
6 United States International Trade Com-
7 mission data. The Administrator shall take
8 the average of data from as many of the
9 years of 2004, 2005, and 2006 for which
10 such data are available.

11 “(iii) PERCENTAGES.—The Adminis-
12 trator shall round the energy intensity,
13 greenhouse gas intensity, and trade inten-
14 sity percentages under subparagraph (A)
15 to the nearest whole number.

16 “(iv) GREENHOUSE GAS EMISSION
17 CALCULATIONS.—When calculating the
18 tons of carbon dioxide equivalent green-
19 house gas emissions for each sector under
20 subparagraph (A)(i)(II)(aa), the Adminis-
21 trator—

22 “(I) shall use the best available
23 data from as many of the years 2004,
24 2005, and 2006 for which such data
25 is available; and

1 “(II) may, to the extent nec-
2 essary with respect to a sector, use
3 economic and engineering models and
4 the best available information on tech-
5 nology performance levels for such
6 sector.

7 “(3) ADMINISTRATIVE DETERMINATION OF AD-
8 DITIONAL ELIGIBLE INDUSTRIAL SECTORS.—

9 “(A) UPDATED TRADE INTENSITY DATA.—
10 The Administrator shall designate as eligible to
11 receive emission allowance rebates under this
12 subpart an industrial sector that—

13 “(i) met the energy or greenhouse gas
14 intensity criteria in paragraph (2)(A)(i) as
15 of the date of promulgation of the rule
16 under paragraph (1); and

17 “(ii) meets the trade intensity criteria
18 in paragraph (2)(A)(ii), using data from
19 any year after 2006.

20 “(B) INDIVIDUAL SHOWING PETITION.—

21 “(i) PETITION.—In addition to des-
22 ignation under paragraph (2) or subpara-
23 graph (A) of this paragraph, the owner or
24 operator of an entity in an industrial sec-
25 tor may petition the Administrator to des-

1 ignite as eligible industrial sectors under
2 this subpart an entity or a group of enti-
3 ties that—

4 “(I) represent a subsector of a
5 six-digit section of the NAICS code;
6 and

7 “(II) meet the eligibility criteria
8 in both clauses (i) and (ii) of para-
9 graph (2)(A), or the eligibility criteria
10 in clause (iii) of paragraph (2)(A).

11 “(ii) DATA.—In making a determina-
12 tion under this subparagraph, the Admin-
13 istrator shall consider data submitted by
14 the petitioner that is specific to the entity,
15 data solicited by the Administrator from
16 other entities in the subsector, if such
17 other entities exist, and data specified in
18 paragraph (2)(E).

19 “(iii) BASIS OF SUBSECTOR DETER-
20 MINATION.—The Administrator shall de-
21 termine an entity or group of entities to be
22 a subsector of a six-digit section of the
23 NAICS code based only upon the products
24 manufactured and not the industrial proc-
25 ess by which the products are manufac-

1 tured, except that the Administrator may
2 determine an entity or group of entities
3 that manufacture a product from a [virgin
4 material] to be a separate subsector from
5 another entity or group of entities that
6 manufacture the same product from recy-
7 cled material.

8 “(iv) USE OF MOST RECENT DATA.—

9 In determining whether to designate a sec-
10 tor or subsector as an eligible industrial
11 sector under this subparagraph, the Ad-
12 ministrator shall use the most recent data
13 available from the sources described in
14 paragraph (2)(E), rather than the data
15 from the years specified in paragraph
16 (2)(E), to determine the trade intensity of
17 such sector or subsector, but only for de-
18 termining such trade intensity.

19 “(v) FINAL ACTION.—The Adminis-
20 trator shall take final action on such peti-
21 tion no later than 6 months after the peti-
22 tion is received by the Administrator.

23 **“SEC. 765. DISTRIBUTION OF EMISSION ALLOWANCE RE-**
24 **BATES.**

25 “(a) DISTRIBUTION SCHEDULE.—

1 “(1) IN GENERAL.—For each vintage year, the
2 Administrator shall distribute pursuant to this sec-
3 tion emission allowances made available under sec-
4 tion 782(e), no later than October 31 of the pre-
5 ceding calendar year. The Administrator shall make
6 such annual distributions to the owners and opera-
7 tors of each entity in an eligible industrial sector in
8 the amount of emission allowances calculated under
9 subsection (b), except that—

10 “(A) for vintage years 2012 and 2013, the
11 distribution for a covered entity shall be the en-
12 tity’s indirect carbon factor as calculated under
13 subsection (b)(3); and

14 “(B) for vintage year 2026 and thereafter,
15 the distribution shall be the amount calculated
16 under subsection (b) multiplied by, except as
17 modified by the President pursuant to section
18 767(c)(3)(A) for a sector—

19 “(i) 90 percent for vintage year 2026;

20 “(ii) 80 percent for vintage year
21 2027;

22 “(iii) 70 percent for vintage year
23 2028;

24 “(iv) 60 percent for vintage year
25 2029;

1 “(v) 50 percent for vintage year 2030;
2 “(vi) 40 percent for vintage year
3 2031;
4 “(vii) 30 percent for vintage year
5 2032;
6 “(viii) 20 percent for vintage year
7 2033;
8 “(ix) 10 percent for vintage year
9 2034; and
10 “(x) 0 percent for vintage year 2035
11 and thereafter.

12 “(2) RESUMPTION OF REDUCTION.—If the
13 President has modified the percentage stated in
14 paragraph (1)(B) under section 767(c)(3)(A), and
15 the President subsequently makes a determination
16 under section 767(b) for an eligible industrial sector
17 that more than 70 percent of global output for that
18 sector is produced or manufactured in countries that
19 have met at least one of the criteria in that sub-
20 section, then the 10-year reduction schedule set
21 forth in paragraph (1)(B) of this subsection shall
22 begin in the next vintage year, with the percentage
23 reduction based on the amount of the distribution of
24 emission allowances under this section in the pre-
25 vious year.

1 “(3) NEWLY ELIGIBLE SECTORS.—In addition
2 to receiving a distribution of emission allowances
3 under this section in the first distribution occurring
4 after an industrial sector is designated as eligible
5 under section 764(b)(3), the owner or operator of an
6 entity in that eligible industrial sector may receive a
7 prorated share of any emission allowances made
8 available for distribution under this section that
9 were not distributed for the year in which the peti-
10 tion for eligibility was granted under section
11 764(b)(3)(B).

12 “(b) CALCULATION OF DIRECT AND INDIRECT CAR-
13 BON FACTORS.—

14 “(1) IN GENERAL.—

15 “(A) COVERED ENTITIES.—Except as pro-
16 vided in subsection (a), for covered entities that
17 are in eligible industrial sectors, the amount of
18 emission allowance rebates shall be based on
19 the sum of the covered entity’s direct and indi-
20 rect carbon factors.

21 “(B) OTHER ELIGIBLE ENTITIES.—For
22 entities that are in eligible industrial sectors
23 but are not covered entities, the amount of
24 emission allowance rebates shall be based on
25 the entity’s indirect carbon factor.

1 “(C) NEW ENTITIES.—Not later than 2
2 years after the date of enactment of this title,
3 the Administrator shall issue regulations gov-
4 erning the distribution of emission allowance re-
5 bates for the first and second years of operation
6 of a new entity in an eligible industrial sector.
7 These regulations shall provide for—

8 “(i) the distribution of emission allow-
9 ance rebates to such entities based on com-
10 parable entities in the same sector; and

11 “(ii) an adjustment in the third and
12 fourth years of operation to reconcile the
13 total amount of emission allowance rebates
14 received during the first and second years
15 of operation to the amount the entity
16 would have received during the first and
17 second years of operation had the appro-
18 priate data been available.

19 “(2) DIRECT CARBON FACTOR.—The direct car-
20 bon factor for a covered entity for a vintage year is
21 the product of—

22 “(A) the average output of the covered en-
23 tity for the two years preceding the year of the
24 distribution; and

1 “(B) the most recent calculation of the av-
2 erage direct greenhouse gas emissions (ex-
3 pressed in tons of carbon dioxide equivalent)
4 per unit of output for all covered entities in the
5 sector, as determined by the Administrator
6 under paragraph (4).

7 “(3) INDIRECT CARBON FACTOR.—

8 “(A) IN GENERAL.—The indirect carbon
9 factor for an entity for a vintage year is the
10 product obtained by multiplying the average
11 output of the entity for the two years preceding
12 the year of the distribution by both the elec-
13 tricity emissions intensity factor determined
14 pursuant to subparagraph (B) and the elec-
15 tricity efficiency factor determined pursuant to
16 subparagraph (C) for the year concerned.

17 “(B) ELECTRICITY EMISSIONS INTENSITY
18 FACTOR.—Each person selling electricity to the
19 owner or operator of an entity in any sector
20 designated as an eligible industrial sector under
21 section 764(b) shall provide the owner or oper-
22 ator of the entity and the Administrator, on an
23 annual basis, the electricity emissions intensity
24 factor for the entity. [The electricity emissions
25 intensity factor for the entity, expressed in tons

1 of carbon dioxide equivalents per kilowatt hour,
2 is determined by dividing—】

3 【“(i) the annual sum of the hourly
4 product of—】

5 【“(I) the electricity purchased by
6 the entity from that person in each
7 hour (expressed in kilowatt hours);
8 multiplied by】

9 【“(II) the marginal 【or】 weight-
10 ed 【average】 tons of carbon dioxide
11 equivalent per kilowatt hour that the
12 person selling the electricity
13 【charges】 to the entity, taking into
14 account the entity’s retail rate ar-
15 rangements; by】

16 【“(ii) the total kilowatt hours of elec-
17 tricity purchased by the entity from that
18 person during that year.】

19 “(C) ELECTRICITY EFFICIENCY FACTOR.—

20 The electricity efficiency factor is the average
21 amount of electricity (in kilowatt hours) used
22 per unit of output for all entities in the relevant
23 sector, as determined by the Administrator
24 based on the best available data, including data
25 provided under paragraph (6).

1 “(D) INDIRECT CARBON FACTOR REDUC-
2 TION.—If an electricity provider received a free
3 allocation of emission allowances pursuant to
4 section 782(a), the Administrator shall adjust
5 the indirect carbon factor to avoid rebates to
6 the eligible entity for costs that the Adminis-
7 trator determines were not incurred by the in-
8 dustrial entity because the allowances were free-
9 ly allocated to the eligible entity’s electricity
10 provider and used for the benefit of industrial
11 consumers.

12 “(4) GREENHOUSE GAS INTENSITY CALCULA-
13 TIONS.—The Administrator shall calculate the aver-
14 age direct greenhouse gas emissions (expressed in
15 tons of carbon dioxide equivalent) per unit of output
16 for all covered entities in each eligible industrial sec-
17 tor every four years using an average of the two
18 most recent years of the best available data.

19 “(5) ENSURING EFFICIENCY IMPROVEMENTS.—
20 When making greenhouse gas calculations, the Ad-
21 ministrators shall—

22 “(A) limit the average direct greenhouse
23 gas emissions per unit of output, calculated
24 under paragraph (4), for any eligible industrial
25 sector to an amount that is not greater than it

1 was in any previous calculation under this sub-
2 section; and

3 “(B) limit the electricity emissions inten-
4 sity factor, calculated under paragraph (3)(B)
5 and resulting from a change in electricity sup-
6 ply, for any entity to an amount that is not
7 greater than it was during any previous year.

8 “(6) DATA SOURCES.—For the purposes of this
9 subsection—

10 “(A) the Administrator shall use data from
11 the greenhouse gas registry established under
12 section 713, where it is available; and

13 “(B) each owner or operator of an entity
14 in an eligible industrial sector and each depart-
15 ment, agency, and instrumentality of the
16 United States shall provide the Administrator
17 with such information as the Administrator
18 finds necessary to determine the direct carbon
19 factor and the indirect carbon factor for each
20 entity subject to this section.

21 “(c) TOTAL MAXIMUM DISTRIBUTION.—Notwith-
22 standing subsections (a) and (b), the Administrator shall
23 not distribute more allowances for any vintage year pursu-
24 ant to this section than are allocated for use under this
25 part pursuant to section 782(e) for that vintage year. For

1 “(C) exempting from the requirements of
2 subparagraph (B) primary products produced
3 in—

4 “(i) a foreign country that the United
5 Nations has identified as among the least
6 developed or developing countries; or

7 “(ii) a foreign country that the Presi-
8 dent has determined to be responsible for
9 less than 0.5 percent of total global green-
10 house gas emissions; and

11 “(D) prohibiting the introduction into
12 interstate commerce of a primary product with-
13 out submitting the required number of inter-
14 national reserve allowances in accordance with
15 such regulations, unless the product was pro-
16 duced by a covered entity under this title, or by
17 an entity that is [or could be] regulated under
18 this title.

19 “(2) PURPOSE OF PROGRAM.—The Adminis-
20 trator shall establish the program under paragraph
21 (1) in a manner that addresses, consistent with
22 international agreements to which the United States
23 is a party, the competitive imbalance in the costs of
24 producing or manufacturing primary products in in-

1 industrial sectors resulting from the difference be-
2 tween—

3 “(A) the direct and indirect costs of com-
4 plying with this title; and

5 “(B) the direct and indirect costs, if any,
6 of complying in other countries with greenhouse
7 gas regulatory programs, requirements, or ex-
8 port tariffs, or other measures adopted or im-
9 posed that are related to the reduction of green-
10 house gas emissions.

11 “(3) EMISSION ALLOWANCE REBATES.—The
12 Administrator shall take into account the value of
13 emission allowance rebates distributed under subpart
14 1 when making calculations under paragraph (2).

15 “(4) LIMITATION.—The International Reserve
16 Allowance Program may not begin before January 1,
17 2025.

18 “(b) COVERED ENTITIES.—International reserve al-
19 lowances may not be held by covered entities to comply
20 with section 722.

21 **“Subpart 3—Presidential Determination**

22 **“SEC. 767. PRESIDENTIAL REPORTS AND DETERMINA-**
23 **TIONS.**

24 “(a) REPORT.—Not later than January 1, 2018, the
25 President shall submit a report to Congress on the effec-

1 tiveness of the distribution of emission allowance rebates
2 under subpart 1 in mitigating carbon leakage in industrial
3 sectors. Such report shall also include—

4 “(1) recommendations on how to better achieve
5 the purposes of this part, including an assessment of
6 the feasibility and usefulness of an International Re-
7 serve Allowance Program; and

8 “(2) an assessment of the amount and duration
9 of assistance, including distribution of free allow-
10 ances, being provided to eligible industrial sectors in
11 other developed countries to mitigate costs of com-
12 pliance with domestic greenhouse gas reduction pro-
13 grams in such countries.

14 “(b) PRESIDENTIAL DETERMINATION.—Not later
15 than June 30, 2022, and every four years thereafter, the
16 President, in consultation with the Administrator and
17 other appropriate agencies, shall determine, for each eligi-
18 ble industrial sector, whether more than 70 percent of
19 global output for that sector is produced or manufactured
20 in countries that have met at least one of the following
21 criteria:

22 “(1) The country is a party to an international
23 agreement to which the United States is a party
24 that includes a nationally enforceable greenhouse gas
25 emissions reduction commitment for that country

1 that is at least as stringent as that of the United
2 States.

3 “(2) The country is a party to a multilateral or
4 bilateral emission reduction agreement for that sec-
5 tor to which the United States is a party.

6 “(3) The country has an annual energy or
7 greenhouse gas intensity, as described in section
8 764(b)(2)(A)(i), for the sector that is equal to or
9 less than the energy or greenhouse gas intensity for
10 such sector in the United States in the most recent
11 calendar year for which data are available.

12 “(4) The country has implemented policies, in-
13 cluding sectoral caps, export tariffs, production fees,
14 electricity generation regulations, or greenhouse gas
15 emissions fees, that individually or collectively im-
16 pose an incremental increase on the cost of produc-
17 tion associated with greenhouse gas emissions from
18 the sector that is at least 60 percent of the cost of
19 complying with this title in the United States for
20 such sector, averaged over a two-year period.

21 “(c) EFFECT OF PRESIDENTIAL DETERMINATION.—
22 If the President makes a determination under subsection
23 (b) with respect to an eligible industrial sector that 70
24 percent or less of the global output for the sector is pro-
25 duced or manufactured in countries that have met one or

1 more of the criteria in subsection (b), then the President
2 shall, not later than June 30, 2022, and every four years
3 thereafter—

4 “(1) assess the extent to which the emission al-
5 lowance rebates provided pursuant to subpart 1 have
6 mitigated or addressed, or could mitigate or address,
7 carbon leakage in that sector;

8 “(2) assess the extent to which an International
9 Reserve Allowance Program has mitigated or ad-
10 dressed, or could mitigate or address, carbon leakage
11 in that sector and the feasibility of establishing such
12 a program; and

13 “(3) with respect to that sector—

14 “(A) modify the percentage by which direct
15 and indirect carbon factors will be multiplied
16 under section 765(a)(1)(B);

17 “(B) implement an International Reserve
18 Allowance Program under section 766 for the
19 products of the sector; or

20 “(C) take the actions in both subparagraph
21 (A) and (B).

22 “(d) REPORT TO CONGRESS.—Not later than June
23 30, 2022, and every four years thereafter, the President
24 shall transmit to the Congress a report providing notice
25 of any determination made under subsection (b), explain-

1 ing the reasons for such determination, and identifying the
2 actions taken by the President under subsection (c).

3 “(e) LIMITATION.—The President may only imple-
4 ment an International Reserve Allowance Program for sec-
5 tors producing primary products.

6 “(f) IRON AND STEEL SECTOR.—For the purposes
7 of this subpart, the Administrator shall consider to be in
8 the same industrial sector—

9 “(1) entities using integrated iron and
10 steelmaking technologies (including coke ovens, blast
11 furnaces, and other iron-making technologies); and

12 “(2) entities using electric arc furnace tech-
13 nologies.”.

14 **Subtitle B—Green Jobs and** 15 **Worker Transition**

16 **PART 1—GREEN JOBS**

17 **SEC. 421. CLEAN ENERGY CURRICULUM DEVELOPMENT** 18 **GRANTS.**

19 (a) AUTHORIZATION.—The Secretary of Education is
20 authorized to award grants, on a competitive basis, to eli-
21 gible partnerships to develop programs of study (con-
22 taining the information described in section 122(c)(1)(A)
23 of the Carl D. Perkins Career and Technical Education
24 Act of 2006 (20 U.S.C. 2342)), that are focused on emerg-
25 ing careers and jobs in the fields of clean energy, renew-

1 able energy, energy efficiency, climate change mitigation,
2 and climate change adaptation. The Secretary of Edu-
3 cation shall consult with the Secretary of Labor and the
4 Secretary of Energy prior to the issuance of a solicitation
5 for grant applications.

6 (b) ELIGIBLE PARTNERSHIPS.—For purposes of this
7 section, an eligible partnership shall include—

8 (1) at least 1 local educational agency eligible
9 for funding under section 131 of the Carl D. Per-
10 kins Career and Technical Education Act of 2006
11 (20 U.S.C. 2351) or an area career and technical
12 education school or education service agency de-
13 scribed in such section;

14 (2) at least 1 postsecondary institution eligible
15 for funding under section 132 of such Act (20
16 U.S.C. 2352); and

17 (3) representatives of the community including
18 business, labor organizations, and industry that have
19 experience in fields as described in subsection (a).

20 (c) APPLICATION.—An eligible partnership seeking a
21 grant under this section shall submit an application to the
22 Secretary at such time and in such manner as the Sec-
23 retary may require. Applications shall include—

24 (1) a description of the eligible partners and
25 partnership, the roles and responsibilities of each

1 partner, and a demonstration of each partner's ca-
2 pacity to support the program;

3 (2) a description of the career area or areas
4 within the fields as described in subsection (a) to be
5 developed, the reason for the choice, and evidence of
6 the labor market need to prepare students in that
7 area;

8 (3) a description of the new or existing program
9 of study and both secondary and postsecondary com-
10 ponents;

11 (4) a description of the students to be served by
12 the new program of study;

13 (5) a description of how the program of study
14 funded by the grant will be replicable and dissemi-
15 nated to schools outside of the partnership, including
16 urban and rural areas;

17 (6) a description of applied learning that will be
18 incorporated into the program of study and how it
19 will incorporate or reinforce academic learning;

20 (7) a description of how the program of study
21 will be delivered;

22 (8) a description of how the program will pro-
23 vide accessibility to students, especially economically
24 disadvantaged, low performing, and urban and rural
25 students;

1 (9) a description of how the program will ad-
2 dress placement of students in nontraditional fields
3 as described in section 3(20) of the Carl D. Perkins
4 Career and Technical Education Act of 2006 (20
5 U.S.C. 2302(20)); and

6 (10) a description of how the applicant proposes
7 to consult or has consulted with a labor organiza-
8 tion, labor management partnership, apprenticeship
9 program, or joint apprenticeship and training pro-
10 gram that provides education and training in the
11 field of study for which the applicant proposes to de-
12 velop a curriculum.

13 (d) PRIORITY.—The Secretary shall give priority to
14 applications that—

15 (1) use online learning or other innovative
16 means to deliver the program of study to students,
17 educators, and instructors outside of the partner-
18 ship; and

19 (2) focus on low performing students and spe-
20 cial populations as defined in section 3(29) of the
21 Carl D. Perkins Career and Technical Education
22 Act of 2006 (20 U.S.C. 2302(29)).

23 (e) PEER REVIEW.—The Secretary shall convene a
24 peer review process to review applications for grants under
25 this section and to make recommendations regarding the

1 selection of grantees. Members of the peer review com-
2 mittee shall include—

3 (1) educators who have experience imple-
4 menting curricula with comparable purposes; and

5 (2) business and industry experts in fields as
6 described in subsection (a).

7 (f) USES OF FUNDS.—Grants awarded under this
8 section shall be used for the development, implementation,
9 and dissemination of programs of study (as described in
10 section 122(c)(1)(A) of the Carl D. Perkins Career and
11 Technical Education Act (20 U.S.C. 2342(c)(1)(A))) in
12 career areas related to clean energy, renewable energy, en-
13 ergy efficiency, climate change mitigation, and climate
14 change adaptation.

15 **SEC. 422. INCREASED FUNDING FOR ENERGY WORKER**
16 **TRAINING PROGRAM.**

17 Section 171(e)(8) of the Workforce Investment Act
18 of 1998 (29 U.S.C. 2916(e)(8)) is amended by striking
19 “\$125,000,000” and inserting “\$150,000,000”.

20 **PART 2—CLIMATE CHANGE WORKER**
21 **ADJUSTMENT ASSISTANCE**

22 **SEC. 425. PETITIONS, ELIGIBILITY REQUIREMENTS, AND**
23 **DETERMINATIONS.**

24 (a) PETITIONS.—

1 (1) FILING.—A petition for certification of eli-
2 gibility to apply for adjustment assistance for a
3 group of workers under this part may be filed by
4 any of the following:

5 (A) The group of workers.

6 (B) The certified or recognized union or
7 other duly authorized representative of such
8 workers.

9 (C) Employers of such workers, one-stop
10 operators or one-stop partners (as defined in
11 section 101 of the Workforce Investment Act of
12 1998 (29 U.S.C. 2801)), including State em-
13 ployment security agencies, or the State dis-
14 located worker unit established under title I of
15 such Act, on behalf of such workers.

16 The petition shall be filed simultaneously with the
17 Secretary of Labor and with the Governor of the
18 State in which such workers' employment site is lo-
19 cated.

20 (2) ACTION BY GOVERNORS.—Upon receipt of a
21 petition filed under paragraph (1), the Governor
22 shall—

23 (A) ensure that rapid response activities
24 and appropriate core and intensive services (as
25 described in section 134 of the Workforce In-

1 vestment Act of 1998 (29 U.S.C. 2864)) au-
2 thorized under other Federal laws are made
3 available to the workers covered by the petition
4 to the extent authorized under such laws; and

5 (B) assist the Secretary in the review of
6 the petition by verifying such information and
7 providing such other assistance as the Secretary
8 may request.

9 (3) ACTION BY THE SECRETARY.—Upon receipt
10 of the petition, the Secretary shall promptly publish
11 notice in the Federal Register and on the website of
12 the Department of Labor that the Secretary has re-
13 ceived the petition and initiated an investigation.

14 (4) HEARINGS.—If the petitioner, or any other
15 person found by the Secretary to have a substantial
16 interest in the proceedings, submits not later than
17 10 days after the date of the Secretary’s publication
18 under paragraph (3) a request for a hearing, the
19 Secretary shall provide for a public hearing and af-
20 ford such interested persons an opportunity to be
21 present, to produce evidence, and to be heard.

22 (b) ELIGIBILITY.—

23 (1) IN GENERAL.—A group of workers shall be
24 certified by the Secretary as eligible to apply for ad-

1 justment assistance under this part pursuant to a
2 petition filed under subsection (a) if—

3 (A) the group of workers is employed in—

4 (i) energy producing and transforming
5 industries;

6 (ii) industries dependent upon energy
7 industries;

8 (iii) energy-intensive manufacturing
9 industries;

10 (iv) consumer goods manufacturing;

11 or

12 (v) other industries whose employment
13 the Secretary determines has been ad-
14 versely affected by any requirement of title
15 VII of the Clean Air Act;

16 (B) the Secretary determines that a sig-
17 nificant number or proportion of the workers in
18 such workers' employment site have become to-
19 tally or partially separated, or are threatened to
20 become totally or partially separated from em-
21 ployment; and

22 (C) the sales, production, or delivery of
23 goods or services have decreased as a result of
24 any requirement of title VII of the Clean Air
25 Act, including—

1 (i) the shift from reliance upon fossil
2 fuels to other sources of energy, including
3 renewable energy, that results in the clos-
4 ing of a facility or layoff of employees at
5 a facility that mines, produces, processes,
6 or utilizes fossil fuels to generate elec-
7 tricity;

8 (ii) a substantial increase in the cost
9 of energy required for a manufacturing fa-
10 cility to produce items whose prices are
11 competitive in the marketplace, to the ex-
12 tent the cost is not offset by allowance al-
13 location to the facility pursuant to title VII
14 of the Clean Air Act; or

15 (iii) other documented occurrences
16 that the Secretary determines are indica-
17 tors of an adverse impact on an industry
18 described in subparagraph (A) as a result
19 of any requirement of title VII of the
20 Clean Air Act.

21 (2) WORKERS IN PUBLIC AGENCIES.—A group
22 of workers in a public agency shall be certified by
23 the Secretary as eligible to apply for climate change
24 adjustment assistance pursuant to a petition filed if
25 the Secretary determines that a significant number

1 or proportion of the workers in the public agency
2 have become totally or partially separated from em-
3 ployment, or are threatened to become totally or
4 partially separated as a result of any requirement of
5 title VII of the Clean Air Act.

6 (3) ADVERSELY AFFECTED SERVICE WORK-
7 ERS.—A group of workers shall be certified as eligi-
8 ble to apply for climate change adjustment assist-
9 ance pursuant to a petition filed if the Secretary de-
10 termines that—

11 (A) a significant number or proportion of
12 the service workers at an employment site
13 where a group of workers has been certified by
14 the Secretary as eligible to apply for adjustment
15 assistance under this part pursuant to para-
16 graph (1) have become totally or partially sepa-
17 rated from employment, or are threatened to
18 become totally or partially separated; and

19 (B) a loss of business in the firm providing
20 service workers to an employment site is di-
21 rectly attributable to one or more of the docu-
22 mented occurrences listed in paragraph (1)(C).

23 (c) AUTHORITY TO INVESTIGATE AND COLLECT IN-
24 FORMATION.—

1 (1) IN GENERAL.—The Secretary shall, in de-
2 termining whether to certify a group of workers
3 under subsection (d), obtain information the Sec-
4 retary determines to be necessary to make the cer-
5 tification, through questionnaires and in such other
6 manner as the Secretary determines appropriate
7 from—

8 (A) the workers' employer;

9 (B) officials of certified or recognized
10 unions or other duly authorized representatives
11 of the group of workers; or

12 (C) one-stop operators or one-stop partners
13 (as defined in section 101 of the Workforce In-
14 vestment Act of 1998 (29 U.S.C. 2801)); or

15 (2) VERIFICATION OF INFORMATION.—The Sec-
16 retary shall require an employer, union, or one-stop
17 operator or partner to certify all information ob-
18 tained under paragraph (1) from the employer,
19 union, or one-stop operator or partner (as the case
20 may be) on which the Secretary relies in making a
21 determination under subsection (d), unless the Sec-
22 retary has a reasonable basis for determining that
23 such information is accurate and complete without
24 being certified.

1 (3) PROTECTION OF CONFIDENTIAL INFORMA-
2 TION.—The Secretary may not release information
3 obtained under paragraph (1) that the Secretary
4 considers to be confidential business information un-
5 less the employer submitting the confidential busi-
6 ness information had notice, at the time of submis-
7 sion, that the information would be released by the
8 Secretary, or the employer subsequently consents to
9 the release of the information. Nothing in this para-
10 graph shall be construed to prohibit the Secretary
11 from providing such confidential business informa-
12 tion to a court in camera or to another party under
13 a protective order issued by a court.

14 (d) DETERMINATION BY THE SECRETARY OF
15 LABOR.—

16 (1) IN GENERAL.—As soon as possible after the
17 date on which a petition is filed under subsection
18 (a), but in any event not later than 40 days after
19 that date, the Secretary, in consultation with the
20 Secretary of Energy and the Administrator, as nec-
21 essary, shall determine whether the petitioning
22 group meets the requirements of subsection (b) and
23 shall issue a certification of eligibility to apply for
24 assistance under this part covering workers in any
25 group which meets such requirements. Each certifi-

1 cation shall specify the date on which the total or
2 partial separation began or threatened to begin.
3 Upon reaching a determination on a petition, the
4 Secretary shall promptly publish a summary of the
5 determination in the Federal Register and on the
6 website of the Department of Labor, together with
7 the Secretary's reasons for making such determina-
8 tion.

9 (2) ONE YEAR LIMITATION.—A certification
10 under this section shall not apply to any worker
11 whose last total or partial separation from the em-
12 ployment site before the worker's application under
13 section 426(a) occurred more than 1 year before the
14 date of the petition on which such certification was
15 granted.

16 (3) REVOCATION OF CERTIFICATION.—When-
17 ever the Secretary determines, with respect to any
18 certification of eligibility of the workers of an em-
19 ployment site, that total or partial separations from
20 such site are no longer a result of the factors speci-
21 fied in subsection (b)(1), the Secretary shall termi-
22 nate such certification and promptly have notice of
23 such termination published in the Federal Register
24 and on the website of the Department of Labor, to-
25 gether with the Secretary's reasons for making such

1 determination. Such termination shall apply only
2 with respect to total or partial separations occurring
3 after the termination date specified by the Secretary.

4 (e) INDUSTRY NOTIFICATION OF ASSISTANCE.—

5 Upon receiving a notification of a determination under
6 subsection (d) with respect to a domestic industry the Sec-
7 retary of Labor shall notify the representatives of the do-
8 mestic industry affected by the determination, employers
9 publicly identified by name during the course of the pro-
10 ceeding relating to the determination, and any certified
11 or recognized union or, to the extent practicable, other
12 duly authorized representative of workers employed by
13 such representatives of the domestic industry, of—

14 (1) the adjustment allowances, training, and
15 other benefits available under this part;

16 (2) the manner in which to file a petition and
17 apply for such benefits; and

18 (3) the availability of assistance in filing such
19 petitions;

20 (4) notify the Governor of each State in which
21 one or more employers in such industry are located
22 of the Secretary's determination and the identity of
23 the employers; and

24 (5) upon request, provide any assistance that is
25 necessary to file a petition under subsection (a).

1 (f) BENEFIT INFORMATION TO WORKERS, PRO-
2 VIDERS OF TRAINING.—

3 (1) IN GENERAL.—The Secretary shall provide
4 full information to workers about the adjustment al-
5 lowances, training, and other benefits available
6 under this part and about the petition and applica-
7 tion procedures, and the appropriate filing dates, for
8 such allowances, training and services. The Sec-
9 retary shall provide whatever assistance is necessary
10 to enable groups of workers to prepare petitions or
11 applications for program benefits. The Secretary
12 shall make every effort to insure that cooperating
13 State agencies fully comply with the agreements en-
14 tered into under section 426(a) and shall periodically
15 review such compliance. The Secretary shall inform
16 the State Board for Vocational Education or equiva-
17 lent agency, the one-stop operators or one-stop part-
18 ners (as defined in section 101 of the Workforce In-
19 vestment Act of 1998 (29 U.S.C. 2801), and other
20 public or private agencies, institutions, and employ-
21 ers, as appropriate, of each certification issued
22 under subsection (d) and of projections, if available,
23 of the needs for training under as a result of such
24 certification.

1 (2) NOTICE BY MAIL.—The Secretary shall pro-
2 vide written notice through the mail of the benefits
3 available under this part to each worker whom the
4 Secretary has reason to believe is covered by a cer-
5 tification made under subsection (d)—

6 (A) at the time such certification is made,
7 if the worker was partially or totally separated
8 from the adversely affected employment before
9 such certification, or—

10 (B) at the time of the total or partial sepa-
11 ration of the worker from the adversely affected
12 employment, if subparagraph (A) does not
13 apply.

14 (3) NEWSPAPERS; WEBSITE.—The Secretary
15 shall publish notice of the benefits available under
16 this part to workers covered by each certification
17 made under subsection (d) in newspapers of general
18 circulation in the areas in which such workers reside
19 and shall make such information available on the
20 website of the Department of Labor.

21 **SEC. 426. PROGRAM BENEFITS.**

22 (a) CLIMATE CHANGE ADJUSTMENT ALLOWANCE.—

23 (1) ELIGIBILITY.—Payment of a climate change
24 adjustment allowance shall be made to an adversely
25 affected worker covered by a certification under sec-

1 tion 425(b) who files an application for such allow-
2 ance for any week of unemployment which begins on
3 or after the date of such certification, if the fol-
4 lowing conditions are met:

5 (A) Such worker's total or partial separa-
6 tion before the worker's application under this
7 part occurred—

8 (i) on or after the date, as specified in
9 the certification under which the worker is
10 covered, on which total or partial separa-
11 tion began or threatened to begin in the
12 adversely affected employment;

13 (ii) before the expiration of the 2-year
14 period beginning on the date on which the
15 determination under section 425(d) was
16 made; and

17 (iii) before the termination date, if
18 any, determined pursuant to section
19 425(d)(3).

20 (B) Such worker had, in the 52-week pe-
21 riod ending with the week in which such total
22 or partial separation occurred, at least 26
23 weeks of full-time employment or 1,040 hours
24 of part time employment in adversely affected
25 employment, or, if data with respect to weeks of

1 employment are not available, equivalent
2 amounts of employment computed under regu-
3 lations prescribed by the Secretary. For the
4 purposes of this paragraph, any week in which
5 such worker—

6 (i) is on employer-authorized leave for
7 purposes of vacation, sickness, injury, ma-
8 ternity, or inactive duty or active duty
9 military service for training;

10 (ii) does not work because of a dis-
11 ability that is compensable under a work-
12 men's compensation law or plan of a State
13 or the United States;

14 (iii) had his employment interrupted
15 in order to serve as a full-time representa-
16 tive of a labor organization in such firm; or

17 (iv) is on call-up for purposes of active
18 duty in a reserve status in the Armed
19 Forces of the United States, provided such
20 active duty is "Federal service" as defined
21 in section 8521(a)(1) of title 5, United
22 States Code,

23 shall be treated as a week of employment.

1 (C) Such worker is enrolled in a training
2 program approved by the Secretary under sub-
3 section (b)(2).

4 (2) INELIGIBILITY FOR CERTAIN OTHER BENE-
5 FITS.—An adversely affected worker receiving a pay-
6 ment under this section shall be ineligible to receive
7 any other form of unemployment insurance for the
8 period in which such worker is receiving a climate
9 change adjustment allowance under this section.

10 (3) REVOCATION.—If—

11 (A) the Secretary determines that—

12 (i) the adversely affected worker—

13 (I) has failed to begin participa-
14 tion in the training program the en-
15 rollment in which meets the require-
16 ment of paragraph (1)(C); or

17 (II) has ceased to participate in
18 such training program before com-
19 pleting such training program; and

20 (ii) there is no justifiable cause for
21 such failure or cessation; or

22 (B) the certification made with respect to
23 such worker under section 425(d) is revoked
24 under paragraph (3) of such section,

1 no adjustment allowance may be paid to the ad-
2 versely affected worker under this part for the week
3 in which such failure, cessation, or revocation oc-
4 curred, or any succeeding week, until the adversely
5 affected worker begins or resumes participation in a
6 training program approved by the Secretary under
7 section (b)(2).

8 (4) WAIVERS OF TRAINING REQUIREMENTS.—

9 The Secretary may issue a written statement to an
10 adversely affected worker waiving the requirement to
11 be enrolled in training described in subsection (b)(2)
12 if the Secretary determines that it is not feasible or
13 appropriate for the worker, because of 1 or more of
14 the following reasons:

15 (A) RECALL.—The worker has been noti-
16 fied that the worker will be recalled by the em-
17 ployer from which the separation occurred.

18 (B) MARKETABLE SKILLS.—

19 (i) IN GENERAL.—The worker pos-
20 sesses marketable skills for suitable em-
21 ployment (as determined pursuant to an
22 assessment of the worker, which may in-
23 clude the profiling system under section
24 303(j) of the Social Security Act (42
25 U.S.C. 503(j)), carried out in accordance

1 with guidelines issued by the Secretary)
2 and there is a reasonable expectation of
3 employment at equivalent wages in the
4 foreseeable future.

5 (ii) MARKETABLE SKILLS DEFINED.—

6 For purposes of clause (i), the term “mar-
7 ketable skills” may include the possession
8 of a postgraduate degree from an institu-
9 tion of higher education (as defined in sec-
10 tion 102 of the Higher Education Act of
11 1965 (20 U.S.C. 1002)) or an equivalent
12 institution, or the possession of an equiva-
13 lent postgraduate certification in a special-
14 ized field.

15 (C) RETIREMENT.—The worker is within 2
16 years of meeting all requirements for entitle-
17 ment to either—

18 (i) old-age insurance benefits under
19 title II of the Social Security Act (42
20 U.S.C. 401 et seq.) (except for application
21 therefor); or

22 (ii) a private pension sponsored by an
23 employer or labor organization.

24 (D) HEALTH.—The worker is unable to
25 participate in training due to the health of the

1 worker, except that a waiver under this sub-
2 paragraph shall not be construed to exempt a
3 worker from requirements relating to the avail-
4 ability for work, active search for work, or re-
5 fusal to accept work under Federal or State un-
6 employment compensation laws.

7 (E) ENROLLMENT UNAVAILABLE.—The
8 first available enrollment date for the training
9 of the worker is within 60 days after the date
10 of the determination made under this para-
11 graph, or, if later, there are extenuating cir-
12 cumstances for the delay in enrollment, as de-
13 termined pursuant to guidelines issued by the
14 Secretary.

15 (F) TRAINING NOT AVAILABLE.—Training
16 described in subsection (b)(2) is not reasonably
17 available to the worker from either govern-
18 mental agencies or private sources (which may
19 include area career and technical education
20 schools, as defined in section 3 of the Carl D.
21 Perkins Career and Technical Education Act of
22 2006 (20 U.S.C. 2302), and employers), no
23 training that is suitable for the worker is avail-
24 able at a reasonable cost, or no training funds
25 are available.

1 (5) WEEKLY AMOUNTS.—The climate change
2 adjustment allowance payable to an adversely af-
3 fected worker for a week of unemployment shall be
4 an amount equal to 70 percent of the average weekly
5 wage of such worker, but in no case shall such
6 amount exceed the average weekly wage for all work-
7 ers in the State where the adversely affected worker
8 resides.

9 (6) MAXIMUM DURATION OF BENEFITS.—An el-
10 igible worker may receive a climate change adjust-
11 ment allowance under this subsection for a period of
12 not longer than 156 weeks.

13 (b) EMPLOYMENT SERVICES AND TRAINING.—

14 (1) INFORMATION AND EMPLOYMENT SERV-
15 ICES.—The Secretary shall make available, directly
16 or through agreements with the States under section
17 427(a) to adversely affected workers covered by a
18 certification under section 425(a) the following in-
19 formation and employment services:

20 (A) Comprehensive and specialized assess-
21 ment of skill levels and service needs, including
22 through—

23 (i) diagnostic testing and use of other
24 assessment tools; and

1 (ii) in-depth interviewing and evalua-
2 tion to identify employment barriers and
3 appropriate employment goals.

4 (B) Development of an individual employ-
5 ment plan to identify employment goals and ob-
6 jectives, and appropriate training to achieve
7 those goals and objectives.

8 (C) Information on training available in
9 local and regional areas, information on indi-
10 vidual counseling to determine which training is
11 suitable training, and information on how to
12 apply for such training.

13 (D) Information on training programs and
14 other services provided by a State pursuant to
15 title I of the Workforce Investment Act of 1998
16 and available in local and regional areas, infor-
17 mation on individual counseling to determine
18 which training is suitable training, and informa-
19 tion on how to apply for such training.

20 (E) Information on how to apply for finan-
21 cial aid, including referring workers to edu-
22 cational opportunity centers described in section
23 402F of the Higher Education Act of 1965 (20
24 U.S.C. 1070a–16), where applicable, and noti-
25 fying workers that the workers may request fi-

1 nancial aid administrators at institutions of
2 higher education (as defined in section 102 of
3 such Act (20 U.S.C. 1002)) to use the adminis-
4 trators' discretion under section 479A of such
5 Act (20 U.S.C. 1087tt) to use current year in-
6 come data, rather than preceding year income
7 data, for determining the amount of need of the
8 workers for Federal financial assistance under
9 title IV of such Act (20 U.S.C. 1070 et seq.).

10 (F) Short-term prevocational services, in-
11 cluding development of learning skills, commu-
12 nications skills, interviewing skills, punctuality,
13 personal maintenance skills, and professional
14 conduct to prepare individuals for employment
15 or training.

16 (G) Individual career counseling, including
17 job search and placement counseling, during the
18 period in which the individual is receiving a cli-
19 mate change adjustment allowance or training
20 under this part, and after receiving such train-
21 ing for purposes of job placement.

22 (H) Provision of employment statistics in-
23 formation, including the provision of accurate
24 information relating to local, regional, and na-
25 tional labor market areas, including—

1 (i) job vacancy listings in such labor
2 market areas;

3 (ii) information on jobs skills nec-
4 essary to obtain jobs identified in job va-
5 cancy listings described in subparagraph
6 (A);

7 (iii) information relating to local occu-
8 pations that are in demand and earnings
9 potential of such occupations; and

10 (iv) skills requirements for local occu-
11 pations described in subparagraph (C).

12 (I) Information relating to the availability
13 of supportive services, including services relat-
14 ing to child care, transportation, dependent
15 care, housing assistance, and need-related pay-
16 ments that are necessary to enable an indi-
17 vidual to participate in training.

18 (2) TRAINING.—

19 (A) APPROVAL OF AND PAYMENT FOR
20 TRAINING.—If the Secretary determines, with
21 respect to an adversely affected worker that—

22 (i) there is no suitable employment
23 (which may include technical and profes-
24 sional employment) available for an ad-
25 versely affected worker;

1 (ii) the worker would benefit from ap-
2 propriate training;

3 (iii) there is a reasonable expectation
4 of employment following completion of
5 such training;

6 (iv) training approved by the Sec-
7 retary is reasonably available to the worker
8 from either governmental agencies or pri-
9 vate sources (including area career and
10 technical education schools, as defined in
11 section 3 of the Carl D. Perkins Career
12 and Technical Education Act of 2006, and
13 employers);

14 (v) the worker is qualified to under-
15 take and complete such training; and

16 (vi) such training is suitable for the
17 worker and available at a reasonable cost,
18 the Secretary shall approve such training for
19 the worker. Upon such approval, the worker
20 shall be entitled to have payment of the costs
21 of such training (subject to the limitations im-
22 posed by this section) paid on the worker's be-
23 half by the Secretary directly or through a
24 voucher system.

1 (B) DISTRIBUTION.—The Secretary shall
2 establish procedures for the distribution of the
3 funds to States to carry out the training pro-
4 grams approved under this paragraph, and shall
5 make an initial distribution of the funds made
6 available as soon as practicable after the begin-
7 ning of each fiscal year.

8 (C) ADDITIONAL RULES REGARDING AP-
9 PROVAL OF AND PAYMENT FOR TRAINING.—

10 (i) For purposes of applying subpara-
11 graph (A)(iii), a reasonable expectation of
12 employment does not require that employ-
13 ment opportunities for a worker be avail-
14 able, or offered, immediately upon the
15 completion of training approved under
16 such subparagraph.

17 (ii) If the costs of training an ad-
18 versely affected worker are paid by the
19 Secretary under subparagraph (A), no
20 other payment for such costs may be made
21 under any other provision of Federal law.
22 No payment may be made under subpara-
23 graph (A) of the costs of training an ad-
24 versely affected worker or an adversely af-
25 fected incumbent worker if such costs—

1 (I) have already been paid under
2 any other provision of Federal law; or

3 (II) are reimbursable under any
4 other provision of Federal law and a
5 portion of such costs have already
6 been paid under such other provision
7 of Federal law.

8 The provisions of this clause shall not
9 apply to, or take into account, any funds
10 provided under any other provision of Fed-
11 eral law which are used for any purpose
12 other than the direct payment of the costs
13 incurred in training a particular adversely
14 affected worker, even if such use has the
15 effect of indirectly paying or reducing any
16 portion of the costs involved in training the
17 adversely affected worker.

18 (D) TRAINING PROGRAMS.—The training
19 programs that may be approved under subpara-
20 graph (A) include—

21 (i) employer-based training, includ-
22 ing—

23 (I) on-the-job training if ap-
24 proved by the Secretary under sub-
25 section (c); and

- 1 (II) joint labor-management ap-
2 prenticeship programs;
- 3 (ii) any training program provided by
4 a State pursuant to title I of the Work-
5 force Investment Act of 1998;
- 6 (iii) any training program approved
7 by a private industry council established
8 under section 102 of such Act;
- 9 (iv) any programs in career and tech-
10 nical education described in section 3(5) of
11 the Carl D. Perkins Career and Technical
12 Education Act of 2006;
- 13 (v) any program of remedial edu-
14 cation;
- 15 (vi) any program of prerequisite edu-
16 cation or coursework required to enroll in
17 training that may be approved under this
18 paragraph;
- 19 (vii) any training program for which
20 all, or any portion, of the costs of training
21 the worker are paid—
- 22 (I) under any Federal or State
23 program other than this part; or
- 24 (II) from any source other than
25 this part;

1 (viii) any training program or
2 coursework at an accredited institution of
3 higher education (described in section 102
4 of the Higher Education Act of 1965 (20
5 U.S.C. 1002)), including a training pro-
6 gram or coursework for the purpose of—

7 (I) obtaining a degree or certifi-
8 cation; or

9 (II) completing a degree or cer-
10 tification that the worker had pre-
11 viously begun at an accredited institu-
12 tion of higher education; and

13 (ix) any other training program ap-
14 proved by the Secretary.

15 (3) SUPPLEMENTAL ASSISTANCE.—The Secretary
16 may, as appropriate, authorize supplemental assistance
17 that is necessary to defray reasonable transportation and
18 subsistence expenses for separate maintenance in a case
19 in which training for a worker is provided in a facility that
20 is not within commuting distance of the regular place of
21 residence of the worker.

22 (c) ON-THE-JOB TRAINING REQUIREMENTS.—

23 (1) IN GENERAL.—The Secretary may approve
24 on-the-job training for any adversely affected worker
25 if—

1 (A) the Secretary determines that on-the-
2 job training—

3 (i) can reasonably be expected to lead
4 to suitable employment with the employer
5 offering the on-the-job training;

6 (ii) is compatible with the skills of the
7 worker;

8 (iii) includes a curriculum through
9 which the worker will gain the knowledge
10 or skills to become proficient in the job for
11 which the worker is being trained; and

12 (iv) can be measured by benchmarks
13 that indicate that the worker is gaining
14 such knowledge or skills; and

15 (B) the State determines that the on-the-
16 job training program meets the requirements of
17 clauses (iii) and (iv) of subparagraph (A).

18 (2) MONTHLY PAYMENTS.—The Secretary shall
19 pay the costs of on-the-job training approved under
20 paragraph (1) in monthly installments.

21 (3) CONTRACTS FOR ON-THE-JOB TRAINING.—

22 (A) IN GENERAL.—The Secretary shall en-
23 sure, in entering into a contract with an em-
24 ployer to provide on-the-job training to a work-
25 er under this subsection, that the skill require-

1 ments of the job for which the worker is being
2 trained, the academic and occupational skill
3 level of the worker, and the work experience of
4 the worker are taken into consideration.

5 (B) TERM OF CONTRACT.—Training under
6 any such contract shall be limited to the period
7 of time required for the worker receiving on-
8 the-job training to become proficient in the job
9 for which the worker is being trained, but may
10 not exceed 156 weeks in any case.

11 (4) EXCLUSION OF CERTAIN EMPLOYERS.—The
12 Secretary shall not enter into a contract for on-the-
13 job training with an employer that exhibits a pattern
14 of failing to provide workers receiving on-the-job
15 training from the employer with—

16 (A) continued, long-term employment as
17 regular employees; and

18 (B) wages, benefits, and working condi-
19 tions that are equivalent to the wages, benefits,
20 and working conditions provided to regular em-
21 ployees who have worked a similar period of
22 time and are doing the same type of work as
23 workers receiving on-the-job training from the
24 employer.

1 (d) ADMINISTRATIVE AND EMPLOYMENT SERVICES
2 FUNDING.—

3 (1) ADMINISTRATIVE FUNDING.—In addition to
4 any funds made available to a State to carry out this
5 section for a fiscal year, the State shall receive for
6 the fiscal year a payment in an amount that is equal
7 to 15 percent of the amount of such funds and
8 shall—

9 (A) use not more than $\frac{2}{3}$ of such payment
10 for the administration of the climate change ad-
11 justment assistance for workers program under
12 this part, including for—

13 (i) processing waivers of training re-
14 quirements under subsection (a)(4);

15 (ii) collecting, validating, and report-
16 ing data required under this part; and

17 (iii) administering the Climate Change
18 Adjustment Assistance Allowance pay-
19 ments; and

20 (B) use not less than $\frac{1}{3}$ of such payment
21 for information and employment services under
22 subsection (b)(1).

23 (2) EMPLOYMENT SERVICES FUNDING.—

24 (A) IN GENERAL.—In addition to any
25 funds made available to a State to carry out

1 subsection (b)(2) and the payment under para-
2 graph (1) for a fiscal year, the Secretary shall
3 provide to the State for the fiscal year a reason-
4 able payment for the purpose of providing em-
5 ployment and services under subsection (b)(1).

6 (B) VOLUNTARY RETURN OF FUNDS.—A
7 State that receives a payment under subpara-
8 graph (A) may decline or otherwise return such
9 payment to the Secretary.

10 (e) JOB SEARCH ALLOWANCES.—The Secretary of
11 Labor may provide adversely affected workers a one-time
12 job search allowance in accordance with regulations pre-
13 scribed by the Secretary. Any job search allowance pro-
14 vided shall be available only under the following cir-
15 cumstances and conditions:

16 (1) The worker is no longer eligible for the cli-
17 mate change adjustment allowance under subsection
18 (a) and has completed the training program required
19 by subsection (a)(1)(E).

20 (2) The Secretary determines that the worker
21 cannot reasonably be expected to secure suitable em-
22 ployment in the commuting area in which the worker
23 resides.

24 (3) An allowance granted shall provide reim-
25 bursement to the worker of all necessary job search

1 expenses as prescribed by the Secretary in regula-
2 tions. Such reimbursement under this subsection
3 may not exceed \$1,500 for any worker.

4 (f) RELOCATION ALLOWANCE AUTHORIZED.—

5 (1) IN GENERAL.—Any adversely affected work-
6 er covered by a certification issued under section
7 425 may file an application for a relocation allow-
8 ance with the Secretary, and the Secretary may
9 grant the relocation allowance, subject to the terms
10 and conditions of this subsection.

11 (2) CONDITIONS FOR GRANTING ALLOWANCE.—

12 A relocation allowance may be granted if all of the
13 following terms and conditions are met:

14 (A) ASSIST AN ADVERSELY AFFECTED
15 WORKER.—The relocation allowance will assist
16 an adversely affected worker in relocating with-
17 in the United States.

18 (B) LOCAL EMPLOYMENT NOT AVAIL-
19 ABLE.—The Secretary determines that the
20 worker cannot reasonably be expected to secure
21 suitable employment in the commuting area in
22 which the worker resides.

23 (C) TOTAL SEPARATION.—The worker is
24 totally separated from employment at the time
25 relocation commences.

1 (D) SUITABLE EMPLOYMENT OBTAINED.—

2 The worker—

3 (i) has obtained suitable employment
4 affording a reasonable expectation of long-
5 term duration in the area in which the
6 worker wishes to relocate; or

7 (ii) has obtained a bona fide offer of
8 such employment.

9 (E) APPLICATION.—The worker filed an
10 application with the Secretary at such time and
11 in such manner as the Secretary shall specify
12 by regulation.

13 (3) AMOUNT OF ALLOWANCE.—The relocation
14 allowance granted to a worker under paragraph (1)
15 includes—

16 (A) all reasonable and necessary expenses
17 (including, subsistence and transportation ex-
18 penses at levels not exceeding amounts pre-
19 scribed by the Secretary in regulations) in-
20 curred in transporting the worker, the worker's
21 family, and household effects; and

22 (B) a lump sum equivalent to 3 times the
23 worker's average weekly wage, up to a max-
24 imum payment of \$1,500.

1 (4) LIMITATIONS.—A relocation allowance may
2 not be granted to a worker unless—

3 (A) the relocation occurs within 182 days
4 after the filing of the application for relocation
5 assistance; or

6 (B) the relocation occurs within 182 days
7 after the conclusion of training, if the worker
8 entered a training program approved by the
9 Secretary under subsection (b)(2).

10 (g) HEALTH INSURANCE CONTINUATION.—Not later
11 than 1 year after the date of enactment of this part, the
12 Secretary of Labor shall prescribe regulations to provide,
13 for the period in which an adversely affected worker is
14 participating in a training program described in sub-
15 section (b)(2), 80 percent of the monthly premium of any
16 health insurance coverage that an adversely affected work-
17 er was receiving from such worker’s employer prior to the
18 separation from employment described in section 425(b),
19 to be paid to any health care insurance plan designated
20 by the adversely affected worker receiving an allowance
21 under this section.

22 **SEC. 427. GENERAL PROVISIONS.**

23 (a) AGREEMENTS WITH STATES.—

24 (1) IN GENERAL.—The Secretary is authorized
25 on behalf of the United States to enter into an

1 agreement with any State, or with any State agency
2 (referred to in this section as “cooperating States”
3 and “cooperating States agencies” respectively).
4 Under such an agreement, the cooperating State
5 agency—

6 (A) as agent of the United States, shall re-
7 ceive applications for, and shall provide, pay-
8 ments on the basis provided in this part;

9 (B) in accordance with paragraph (6),
10 shall make available to adversely affected work-
11 ers covered by a certification under section
12 425(d) the employment services described in
13 section 426(b)(1);

14 (C) shall make any certifications required
15 under section 425(d);

16 (D) shall otherwise cooperate with the Sec-
17 retary and with other State and Federal agen-
18 cies in providing payments and services under
19 this part.

20 Each agreement under this section shall provide the
21 terms and conditions upon which the agreement may
22 be amended, suspended, or terminated.

23 (2) FORM AND MANNER OF DATA.—Each
24 agreement under this section shall—

1 (A) provide the Secretary with the author-
2 ity to collect any data the Secretary determines
3 necessary to meet the requirements of this part;
4 and

5 (B) specify the form and manner in which
6 any such data requested by the Secretary shall
7 be reported.

8 (3) RELATIONSHIP TO UNEMPLOYMENT INSUR-
9 ANCE.—Each agreement under this section shall
10 provide that an adversely affected worker receiving
11 a climate change adjustment allowance under this
12 part shall not be eligible for unemployment insur-
13 ance otherwise payable to such worker under the
14 laws of the State.

15 (4) REVIEW.—A determination by a cooper-
16 ating State agency with respect to entitlement to
17 program benefits under an agreement is subject to
18 review in the same manner and to the same extent
19 as determinations under the applicable State law
20 and only in that manner and to that extent.

21 (5) COORDINATION.—Any agreement entered
22 into under this section shall provide for the coordi-
23 nation of the administration of the provisions for
24 employment services, training, and supplemental as-
25 sistance under section 426 and under title I of the

1 Workforce Investment Act of 1998 upon such terms
2 and conditions as are established by the Secretary in
3 consultation with the States and set forth in such
4 agreement. Any agency of the State jointly admin-
5 istering such provisions under such agreement shall
6 be considered to be a cooperating State agency for
7 purposes of this part.

8 (6) RESPONSIBILITIES OF COOPERATING AGEN-
9 CIES.—Each cooperating State agency shall, in car-
10 rying out paragraph (1)(B)—

11 (A) advise each worker who applies for un-
12 employment insurance of the benefits under this
13 part and the procedures and deadlines for ap-
14 plying for such benefits;

15 (B) facilitate the early filing of petitions
16 under section 425(a) for any workers that the
17 agency considers are likely to be eligible for
18 benefits under this part;

19 (C) advise each adversely affected worker
20 to apply for training under section 426(b) be-
21 fore, or at the same time, the worker applies for
22 climate change adjustment allowances under
23 section 426(a);

24 (D) perform outreach to, intake of, and
25 orientation for adversely affected workers and

1 adversely affected incumbent workers covered
2 by a certification under section 426(a) with re-
3 spect to assistance and benefits available under
4 this part;

5 (E) make employment services described in
6 section 426(b)(1) available to adversely affected
7 workers and adversely affected incumbent work-
8 ers covered by a certification under section
9 425(d) and, if funds provided to carry out this
10 part are insufficient to make such services
11 available, make arrangements to make such
12 services available through other Federal pro-
13 grams; and

14 (F) provide the benefits and reemployment
15 services under this part in a manner that is
16 necessary for the proper and efficient adminis-
17 tration of this part, including the use of state
18 agency personnel employed in accordance with a
19 merit system of personnel administration stand-
20 ards, including—

21 (i) making determinations of eligibility
22 for, and payment of, climate change read-
23 justment allowances and health care ben-
24 efit replacement amounts;

1 (ii) developing recommendations re-
2 garding payments as a bridge to retire-
3 ment and lump sum payments to pension
4 plans in accordance with this subsection;
5 and

6 (iii) the provision of reemployment
7 services to eligible workers, including refer-
8 ral to training services.

9 (7) In order to promote the coordination of
10 workforce investment activities in each State with
11 activities carried out under this part, any agreement
12 entered into under this section shall provide that the
13 State shall submit to the Secretary, in such form as
14 the Secretary may require, the description and infor-
15 mation described in paragraphs (8) and (14) of sec-
16 tion 112(b) of the Workforce Investment Act of
17 1998 (29 U.S.C. 2822(b)) and a description of the
18 State's rapid response activities under section
19 221(a)(2)(A).

20 (8) CONTROL MEASURES.—

21 (A) IN GENERAL.—The Secretary shall re-
22 quire each cooperating State and cooperating
23 State agency to implement effective control
24 measures and to effectively oversee the oper-
25 ation and administration of the climate change

1 adjustment assistance program under this part,
2 including by means of monitoring the operation
3 of control measures to improve the accuracy
4 and timeliness of the data being collected and
5 reported.

6 (B) DEFINITION.—For purposes of sub-
7 paragraph (A), the term “control measures”
8 means measures that—

9 (i) are internal to a system used by a
10 State to collect data; and

11 (ii) are designed to ensure the accu-
12 racy and verifiability of such data.

13 (9) DATA REPORTING.—

14 (A) IN GENERAL.—Any agreement entered
15 into under this section shall require the cooper-
16 ating State or cooperating State agency to re-
17 port to the Secretary on a quarterly basis com-
18 prehensive performance accountability data, to
19 consist of—

20 (i) the core indicators of performance
21 described in subparagraph (B)(i);

22 (ii) the additional indicators of per-
23 formance described in subparagraph
24 (B)(ii), if any; and

1 (iii) a description of efforts made to
2 improve outcomes for workers under the
3 climate change adjustment assistance pro-
4 gram.

5 (B) CORE INDICATORS DESCRIBED.—

6 (i) IN GENERAL.—The core indicators
7 of performance described in this subpara-
8 graph are—

9 (I) the percentage of workers re-
10 ceiving benefits under this part who
11 are employed during the second cal-
12 endar quarter following the calendar
13 quarter in which the workers cease re-
14 ceiving such benefits;

15 (II) the percentage of such work-
16 ers who are employed in each of the
17 third and fourth calendar quarters fol-
18 lowing the calendar quarter in which
19 the workers cease receiving such bene-
20 fits; and

21 (III) the earnings of such work-
22 ers in each of the third and fourth
23 calendar quarters following the cal-
24 endar quarter in which the workers
25 cease receiving such benefits.

1 (ii) ADDITIONAL INDICATORS.—The
2 Secretary and a cooperating State or co-
3 operating State agency may agree upon
4 additional indicators of performance for
5 the climate change adjustment assistance
6 program under this part, as appropriate.

7 (C) STANDARDS WITH RESPECT TO RELI-
8 ABILITY OF DATA.—In preparing the quarterly
9 report required by subparagraph (A), each co-
10 operating State or cooperating State agency
11 shall establish procedures that are consistent
12 with guidelines to be issued by the Secretary to
13 ensure that the data reported are valid and reli-
14 able.

15 (10) VERIFICATION OF ELIGIBILITY FOR PRO-
16 GRAM BENEFITS.—

17 (A) IN GENERAL.—An agreement under
18 this section shall provide that the State shall
19 periodically redetermine that a worker receiving
20 benefits under this part who is not a citizen or
21 national of the United States remains in a sat-
22 isfactory immigration status. Once satisfactory
23 immigration status has been initially verified
24 through the immigration status verification sys-
25 tem described in section 1137(d) of the Social

1 Security Act (42 U.S.C. 1320b-7(d)) for pur-
2 poses of establishing a worker's eligibility for
3 unemployment compensation, the State shall
4 reverify the worker's immigration status if the
5 documentation provided during initial
6 verification will expire during the period in
7 which that worker is potentially eligible to re-
8 ceive benefits under this part. The State shall
9 conduct such redetermination in a timely man-
10 ner, utilizing the immigration status verification
11 system described in section 1137(d) of the So-
12 cial Security Act (42 U.S.C. 1320b-7(d)).

13 (B) PROCEDURES.—The Secretary shall
14 establish procedures to ensure the uniform ap-
15 plication by the States of the requirements of
16 this paragraph.

17 (b) ADMINISTRATION ABSENT STATE AGREE-
18 MENT.—

19 (1) In any State where there is no agreement
20 in force between a State or its agency under sub-
21 section (a), the Secretary shall promulgate regula-
22 tions for the performance of all necessary functions
23 under section 426, including provision for a fair
24 hearing for any worker whose application for pay-
25 ments is denied.

1 (2) A final determination under paragraph (1)
2 with respect to entitlement to program benefits
3 under section 426 is subject to review by the courts
4 in the same manner and to the same extent as is
5 provided by section 205(g) of the Social Security Act
6 (42 U.S.C. 405(g)).

7 (c) PROHIBITION ON CONTRACTING WITH PRIVATE
8 ENTITIES.—Neither the Secretary nor a State may con-
9 tract with any private for-profit or nonprofit entity for the
10 administration of the climate change adjustment assist-
11 ance program under this part.

12 (d) PAYMENT TO THE STATES.—

13 (1) IN GENERAL.—The Secretary shall from
14 time to time certify to the Secretary of the Treasury
15 for payment to each cooperating State the sums nec-
16 essary to enable such State as agent of the United
17 States to make payments provided for by this part.

18 (2) RESTRICTION.—All money paid a State
19 under this subsection shall be used solely for the
20 purposes for which it is paid; and money so paid
21 which is not used for such purposes shall be re-
22 turned, at the time specified in the agreement under
23 this section, to the Secretary of the Treasury.

24 (3) BONDS.—Any agreement under this section
25 may require any officer or employee of the State cer-

1 tifying payments or disbursing funds under the
2 agreement or otherwise participating in the perform-
3 ance of the agreement, to give a surety bond to the
4 United States in such amount as the Secretary may
5 deem necessary, and may provide for the payment of
6 the cost of such bond from funds for carrying out
7 the purposes of this part.

8 (e) LABOR STANDARDS.—

9 (1) PROHIBITION ON DISPLACEMENT.—An indi-
10 vidual in an apprenticeship program or on-the-job
11 training program under this part shall not displace
12 (including a partial displacement, such as a reduc-
13 tion in the hours of non-overtime work, wages, or
14 employment benefits) any employed employee.

15 (2) PROHIBITION ON IMPAIRMENT OF CON-
16 TRACTS.—An apprenticeship program or on-the-job
17 training program under this Act shall not impair an
18 existing contract for services or collective bargaining
19 agreement, and no such activity that would be incon-
20 sistent with the terms of a collective bargaining
21 agreement shall be undertaken without the written
22 concurrence of the labor organization and employer
23 concerned.

24 (3) ADDITIONAL STANDARDS.—The Secretary,
25 or a State acting under an agreement described in

1 subsection (a) may pay the costs of on-the-job train-
2 ing, notwithstanding any other provision of this sec-
3 tion, only if—

4 (A) in the case of training which would be
5 inconsistent with the terms of a collective bar-
6 gaining agreement, the written concurrence of
7 the labor organization concerned has been ob-
8 tained;

9 (B) the job for which such adversely af-
10 fected worker is being trained is not being cre-
11 ated in a promotional line that will infringe in
12 any way upon the promotional opportunities of
13 currently employed individuals;

14 (C) such training is not for the same occu-
15 pation from which the worker was separated
16 and with respect to which such worker's group
17 was certified pursuant to section 425(d);

18 (D) the employer is provided reimburse-
19 ment of not more than 50 percent of the wage
20 rate of the participant, for the cost of providing
21 the training and additional supervision related
22 to the training; and

23 (E) the employer has not received payment
24 under with respect to any other on-the-job
25 training provided by such employer which failed

1 to meet the requirements of subparagraphs (A)
2 through (D).

3 (f) DEFINITIONS.—As used in this part the following
4 definitions apply:

5 (1) The term “adversely affected employment”
6 means employment at an employment site, if work-
7 ers at such site are eligible to apply for adjustment
8 assistance under this part.

9 (2) The term “adversely affected worker”
10 means an individual who has been totally or partially
11 separated from employment and is eligible to apply
12 for adjustment assistance under this part.

13 (3) The term “average weekly wage” means $\frac{1}{13}$
14 of the total wages paid to an individual in the quar-
15 ter in which the individual’s total wages were highest
16 among the first 4 of the last 5 completed calendar
17 quarters immediately before the quarter in which oc-
18 curs the week with respect to which the computation
19 is made. Such week shall be the week in which total
20 separation occurred, or, in cases where partial sepa-
21 ration is claimed, an appropriate week, as defined in
22 regulations prescribed by the Secretary.

23 (4) The term “average weekly hours” means
24 the average hours worked by the individual (exclud-
25 ing overtime) in the employment from which he has

1 been or claims to have been separated in the 52
2 weeks (excluding weeks during which the individual
3 was sick or on vacation) preceding the week speci-
4 fied in the last sentence of paragraph (4).

5 (5) The term “benefit period” means, with re-
6 spect to an individual—

7 (A) the benefit year and any ensuing pe-
8 riod, as determined under applicable State law,
9 during which the individual is eligible for reg-
10 ular compensation, additional compensation, or
11 extended compensation; or

12 (B) the equivalent to such a benefit year
13 or ensuing period provided for under the appli-
14 cable Federal unemployment insurance law.

15 (6) The term “consumer goods manufacturing”
16 means the electrical equipment, appliance, and com-
17 ponent manufacturing industry and transportation
18 equipment manufacturing.

19 (7) The term “employment site” means a single
20 facility or site of employment.

21 (8) The term “energy-intensive manufacturing
22 industries” means all industrial sectors, entities, or
23 groups of entities that meet the energy or green-
24 house gas intensity criteria in section

1 765(b)(2)(A)(i) of the Clean Air Act based on the
2 most recent data available.

3 (9) The term “energy producing and trans-
4 forming industries” means the coal mining industry,
5 oil and gas extraction, electricity power generation,
6 transmission and distribution, and natural gas dis-
7 tribution.

8 (10) The term “industries dependent on energy
9 industries” means rail transportation and pipeline
10 transportation.

11 (11) The term “on-the-job training” means
12 training provided by an employer to an individual
13 who is employed by the employer.

14 (12) The terms “partial separation” and “par-
15 tially separated” refer, with respect to an individual
16 who has not been totally separated, that such indi-
17 vidual has had—

18 (A) his or her hours of work reduced to 80
19 percent or less of his average weekly hours in
20 adversely affected employment; and

21 (B) his or her wages reduced to 80 percent
22 or less of his average weekly wage in such ad-
23 versely affected employment.

1 (13) The term “public agency” means a depart-
2 ment or agency of a State or political subdivision of
3 a State or of the Federal government.

4 (14) The term “Secretary” means the Secretary
5 of Labor.

6 (15) The term “service workers” means work-
7 ers supplying support or auxiliary services to an em-
8 ployment site.

9 (16) The term “State agency” means the agen-
10 cy of the State which administers the State law.

11 (17) The term “State law” means the unem-
12 ployment insurance law of the State approved by the
13 Secretary of Labor under section 3304 of the Inter-
14 nal Revenue Code of 1954.

15 (18) The terms “total separation” and “totally
16 separated” refer to the layoff or severance of an in-
17 dividual from employment with an employer in which
18 adversely affected employment exists.

19 (19) The term “unemployment insurance”
20 means the unemployment compensation payable to
21 an individual under any State law or Federal unem-
22 ployment compensation law, including chapter 85 of
23 title 5, United States Code, and the Railroad Unem-
24 ployment Insurance Act. The terms “regular com-
25 pensation”, “additional compensation”, and “ex-

1 tended compensation” have the same respective
2 meanings that are given them in section 205(2), (3),
3 and (4) of the Federal-State Extended Unemploy-
4 ment Compensation Act of 1970 (26 U.S.C. 3304
5 note.)

6 (20) The term “week” means a week as defined
7 in the applicable State law.

8 (21) The term “week of unemployment” means
9 a week of total, part-total, or partial unemployment
10 as determined under the applicable State law or
11 Federal unemployment insurance law.

12 (g) SPECIAL RULE WITH RESPECT TO MILITARY
13 SERVICE.—

14 (1) IN GENERAL.—Notwithstanding any other
15 provision of this part, the Secretary may waive any
16 requirement of this part that the Secretary deter-
17 mines is necessary to ensure that an adversely af-
18 fected worker who is a member of a reserve compo-
19 nent of the Armed Forces and serves a period of
20 duty described in paragraph (2) is eligible to receive
21 a climate change adjustment allowance, training,
22 and other benefits under this part in the same man-
23 ner and to the same extent as if the worker had not
24 served the period of duty.

1 (2) PERIOD OF DUTY DESCRIBED.—An ad-
2 versely affected worker serves a period of duty de-
3 scribed in this paragraph if, before completing train-
4 ing under this part, the worker—

5 (A) serves on active duty for a period of
6 more than 30 days under a call or order to ac-
7 tive duty of more than 30 days; or

8 (B) in the case of a member of the Army
9 National Guard of the United States or Air Na-
10 tional Guard of the United States, performs
11 full-time National Guard duty under section
12 502(f) of title 32, United States Code, for 30
13 consecutive days or more when authorized by
14 the President or the Secretary of Defense for
15 the purpose of responding to a national emer-
16 gency declared by the President and supported
17 by Federal funds.

18 (h) FRAUD AND RECOVERY OF OVERPAYMENTS.—

19 (1) RECOVERY OF PAYMENTS TO WHICH AN IN-
20 DIVIDUAL WAS NOT ENTITLED.—If the Secretary or
21 a court of competent jurisdiction determines that
22 any person has received any payment under this
23 part to which the individual was not entitled, such
24 individual shall be liable to repay such amount to
25 the Secretary, as the case may be, except that the

1 Secretary shall waive such repayment if such agency
2 or the Secretary determines that—

3 (A) the payment was made without fault
4 on the part of such individual; and

5 (B) requiring such repayment would cause
6 a financial hardship for the individual (or the
7 individual's household, if applicable) when tak-
8 ing into consideration the income and resources
9 reasonably available to the individual (or house-
10 hold) and other ordinary living expenses of the
11 individual (or household).

12 (2) MEANS OF RECOVERY.—Unless an overpay-
13 ment is otherwise recovered, or waived under para-
14 graph (1), the Secretary shall recover the overpay-
15 ment by deductions from any sums payable to such
16 person under this part, under any Federal unem-
17 ployment compensation law or other Federal law ad-
18 ministered by the Secretary which provides for the
19 payment of assistance or an allowance with respect
20 to unemployment. Any amount recovered under this
21 section shall be returned to the Treasury of the
22 United States.

23 (3) PENALTIES FOR FRAUD.—Any person
24 who—

1 (A) makes a false statement of a material
2 fact knowing it to be false, or knowingly fails
3 to disclose a material fact, for the purpose of
4 obtaining or increasing for that person or for
5 any other person any payment authorized to be
6 furnished under this part; or

7 (B) makes a false statement of a material
8 fact knowing it to be false, or knowingly fails
9 to disclose a material fact, when providing in-
10 formation to the Secretary during an investiga-
11 tion of a petition under section 425(c),

12 shall be imprisoned for not more than one year, or fined
13 under title 18, United States Code, or both, and be ineli-
14 gible for any further payments under this part.

15 (i) REGULATIONS.—The Secretary shall prescribe
16 such regulations as may be necessary to carry out the pro-
17 visions of this part.

18 (j) STUDY ON OLDER WORKERS.—The Secretary
19 shall conduct a study examine the circumstances of older
20 adversely affected workers and the ability of such workers
21 to access their retirement benefits. The Secretary shall
22 transmit a report to Congress not later than 2 years after
23 the date of enactment of this part on the findings of the
24 study and the Secretary's recommendations on how to en-

1 sure that adversely affected workers within 2 years of re-
2 tirement are able to access their retirement benefits.

3 **[(k) SPENDING LIMIT.—**For each fiscal year, the
4 total amount of funds disbursed for the purposes described
5 in section 426 shall not exceed the amount deposited in
6 that fiscal year into the Climate Change Worker Assist-
7 ance Fund established under section **[782(j)]** of the Clean
8 Air Act. The annual spending limit for any succeeding
9 year shall be increased by the difference, if any, between
10 the amount of the prior year’s disbursements and the
11 spending limitation for that year. The Secretary shall pro-
12 mulgate rules to ensure that this spending limit is not ex-
13 ceeded. Such rules shall provide that workers who receive
14 any of the benefits described in section 426 receive full
15 benefits, and shall include the establishment of a waiting
16 list for workers in the event that the requests for assist-
17 ance exceed the spending limit.]

18 **Subtitle C—Consumer Assistance**

19 **SEC. 431. ENERGY REFUND PROGRAM.**

20 The Social Security Act (42 U.S.C. 201 et seq.) is
21 amended by adding at the end the following:

1 **“TITLE XXII—ENERGY REFUND**
2 **PROGRAM**

3 **“SEC. 2201. ENERGY REFUND PROGRAM.**

4 “(a) IN GENERAL.—The Secretary shall formulate
5 and administer the program provided for in this section,
6 which shall be known as the ‘Energy Refund Program’,
7 and under which eligible low-income households are pro-
8 vided cash payments to reimburse the households for the
9 estimated loss in their purchasing power resulting from
10 the American Clean Energy and Security Act of 2009.

11 “(b) ENTITLEMENT OF ELIGIBLE HOUSEHOLDS TO
12 CASH PAYMENTS.—At the request of the State agency of
13 a State, each eligible low-income household in the State
14 shall be entitled to receive monthly cash payments under
15 this section in an amount equal to the monthly energy re-
16 fund amount determined under subsection (d).

17 “(c) ELIGIBILITY.—

18 “(1) ELIGIBLE HOUSEHOLDS.—A household
19 shall be considered to be an eligible low-income
20 household for purposes of this section if—

21 “(A) the gross income of the household
22 does not exceed the greater of—

23 “(i) 150 percent of the poverty line;

24 or

1 “(ii) the greatest amount of household
2 gross income in respect of which a benefit
3 could be payable under subsection
4 (d)(2)(B);

5 “(B) the State agency of the State in
6 which the household is located determines that
7 the household is participating in—

8 “(i) the Supplemental Nutrition As-
9 sistance Program authorized by the Food
10 and Nutrition Act of 2008 (7 U.S.C. 2011
11 et seq.);

12 “(ii) the Food Distribution Program
13 on Indian Reservations authorized by sec-
14 tion 4(b) of such Act (7 U.S.C. 2013(b));
15 or

16 “(iii) the program for nutrition assist-
17 ance in Puerto Rico or American Samoa
18 under section 19 of such Act (7 U.S.C.
19 2028);

20 “(C) the household consists of a single in-
21 dividual or a married couple, and—

22 “(i) receives the subsidy described in
23 section 1860D–14 of this Act (42 U.S.C.
24 1395w–114); or

1 “(ii)(I) participates in the program
2 under title XVIII of this Act; and

3 “(II) meets the income requirements
4 described in section 1860D–14(a)(1) or
5 (a)(2) of this Act (42 U.S.C. 1395w–
6 114(a)(1) or (a)(2)); or

7 “(D) the household consists of a single in-
8 dividual or a married couple, and receives bene-
9 fits under the supplemental security income
10 program under title XVI of this Act (42 U.S.C.
11 1381–1383f).

12 “(2) STREAMLINED PARTICIPATION FOR CER-
13 TAIN BENEFICIARIES.—The Secretary shall—

14 “(A) periodically estimate the number of
15 eligible beneficiaries and households, and the
16 number of participating beneficiaries and
17 households, for the Energy Refund Program;
18 and

19 “(B) develop procedures, in consultation
20 with the Commissioner of Social Security, the
21 Railroad Retirement Board, the Secretary of
22 Veterans Affairs, and the State agencies, to en-
23 sure that low-income beneficiaries of the benefit
24 programs administered by such entities receive

1 the energy refund for which the beneficiaries
2 are eligible under the Energy Refund Program.

3 “(3) LIMITATION.—Notwithstanding any other
4 provision of law, the Secretary shall provide refunds
5 to United States citizens, United States nationals,
6 and individuals lawfully residing in the United
7 States who qualify for a refund under paragraph
8 (1)(A), and shall establish procedures to ensure that
9 other individuals do not receive refunds.

10 “(4) NATIONAL STANDARDS.—The Secretary
11 shall consult with the Secretary of Agriculture and
12 establish uniform national standards of eligibility en-
13 suring that States may seamlessly co-administer the
14 energy refund program with the Supplemental Nu-
15 trition Assistance Program in accordance with the
16 provisions of this section. No State agency shall im-
17 pose any other standard or requirement as a condi-
18 tion of eligibility or refund receipt under the pro-
19 gram. Assistance in the Energy Refund Program
20 shall be furnished promptly to all eligible households
21 who make application for such participation or are
22 already enrolled in any program referred to in para-
23 graph (1).

24 “(d) MONTHLY ENERGY REFUND AMOUNT.—

1 “(1) ESTIMATED ANNUAL TOTAL LOSS IN PUR-
2 CHASING POWER.—Not later than August 31 of each
3 fiscal year, the Energy Information Administration
4 shall estimate the annual total loss in purchasing
5 power that will result from American Clean Energy
6 and Security Act of 2009 in the next fiscal year for
7 households of each size with gross income equal to
8 150 percent of the poverty line, based on the pro-
9 jected total market value of all compliance costs (in-
10 cluding, but not limited to, the emissions allowances
11 used to demonstrate compliance with title VII of the
12 Clean Air Act in the next fiscal year, and excluding
13 costs that are not projected to be incurred by house-
14 holds as a result of allowances freely allocated and
15 intended for residential consumer assistance pursu-
16 ant to sections 783 through 785 of the Clean Air
17 Act), in a way generally recognized as suitable by
18 experts.

19 “(2) MONTHLY ENERGY REFUND.—The month-
20 ly energy refund amount for an eligible household
21 under this section shall be—

22 “(A) if the gross income of the household
23 does not exceed 150 percent of the poverty line
24 applicable to the household—

1 “(i) if the household has 1, 2, 3, or 4
2 members, $\frac{1}{12}$ of the amount estimated
3 under paragraph (1) for a household of the
4 same size, rounded to the nearest whole
5 dollar amount; or

6 “(ii) if the household has 5 or more
7 members, $\frac{1}{12}$ of the arithmetic mean value
8 of the amounts estimated under paragraph
9 (1) for households with 5 or more mem-
10 bers, rounded to the nearest whole dollar
11 amount; or

12 “(B) if the gross income of the household
13 exceeds 150 percent of the poverty line applica-
14 ble to the household, $\frac{1}{12}$ of the amount (if any)
15 by which—

16 “(i) the amount estimated under
17 paragraph (1) for a household of the same
18 size; exceeds

19 “(ii) 20 percent of the amount by
20 which the gross income of the household
21 exceeds 150 percent of the poverty line.

22 “(e) DELIVERY MECHANISM.—

23 “(1) Subject to standards and an implementa-
24 tion schedule set by the Secretary, the energy refund
25 shall be provided in monthly installments via—

1 “(A) direct deposit into the eligible house-
2 hold’s designated bank account;

3 “(B) the State’s electronic benefit transfer
4 system; or

5 “(C) another Federal or State mechanism,
6 if such a mechanism is approved by the Sec-
7 retary.

8 “(2) Such standards shall include—

9 “(A)(i) defining the required level of recipi-
10 ent protection regarding privacy;

11 “(ii) guidance on how recipients are of-
12 fered choices, when relevant, about the delivery
13 mechanism;

14 “(iii) guidance on ease of use and access to
15 the refund, including the prohibition of fees
16 charged to recipients for withdrawals or other
17 services; and

18 “(iv) cost-effective protections against im-
19 proper accessing of the energy refund;

20 “(B) operating standards that provide for
21 interoperability between States and law enforce-
22 ment monitoring; and

23 “(C) other standards, as determined by the
24 Secretary or the Secretary’s designee.

25 “(f) ADMINISTRATION.—

1 “(1) IN GENERAL.—The State agency of each
2 participating State shall assume responsibility for
3 the certification of applicant households and for the
4 issuance of refunds and the control and account-
5 ability thereof.

6 “(2) PROCEDURES.—Under standards estab-
7 lished by the Secretary, the State agency shall estab-
8 lish procedures governing the administration of the
9 Energy Refund Program that the State agency de-
10 termines best serve households in the State, includ-
11 ing households with special needs, such as house-
12 holds with elderly or disabled members, households
13 in rural areas, homeless individuals, and households
14 residing on reservations as defined in the Indian
15 Child Welfare Act of 1978 and the Indian Financing
16 Act of 1974. In carrying out this paragraph, a State
17 agency—

18 “(A) shall provide timely, accurate, and
19 fair service to applicants for, and participants
20 in, the Energy Refund Program;

21 “(B) shall permit an applicant household
22 to apply to participate in the program at the
23 time that the household first contacts the State
24 agency, and shall consider an application that
25 contains the name, address, and signature of

1 the applicant to be sufficient to constitute an
2 application for participation;

3 “(C) shall screen any applicant household
4 for the Supplemental Nutrition Assistance Pro-
5 gram, the State’s medical assistance program
6 under section XIX of this Act, State Childrens
7 Health Insurance Program under section XXI
8 of this Act, and a State program that provides
9 basic assistance under a State program funded
10 under title IV of this Act or with qualified
11 State expenditures as defined in section
12 409(a)(7) of this Act for eligibility for the En-
13 ergy Refund Program and, if eligible, shall en-
14 roll such applicant household in the Energy Re-
15 fund Program;

16 “(D) shall complete certification of and
17 provide a refund to any eligible household not
18 later than 30 days following its filing of an ap-
19 plication;

20 “(E) shall use appropriate bilingual per-
21 sonnel and materials in the administration of
22 the program in those portions of the State in
23 which a substantial number of members of low-
24 income households speak a language other than
25 English; and

1 “(F) shall utilize State agency personnel
2 who are employed in accordance with the cur-
3 rent standards for a Merit System of Personnel
4 Administration or any standards later pre-
5 scribed by the Office of Personnel Management
6 pursuant to section 208 of the Intergovern-
7 mental Personnel Act of 1970 (42 U.S.C. 4728)
8 modifying or superseding such standards relat-
9 ing to the establishment and maintenance of
10 personnel standards on a merit basis to make
11 all tentative and final determinations of eligi-
12 bility and ineligibility.

13 “(3) REGULATIONS.—

14 “(A) Except as provided in subparagraph
15 (B), the Secretary shall issue such regulations
16 consistent with this section as the Secretary
17 deems necessary or appropriate for the effective
18 and efficient administration of the Energy Re-
19 fund Program, and shall promulgate all such
20 regulations in accordance with the procedures
21 set forth in section 553 of title 5, United States
22 Code.

23 “(B) Without regard to section 553 of title
24 5 of such Code, the Secretary may, during the
25 period beginning with the effective date of this

1 section and ending 2 years after such date, by
2 rule promulgate as final any procedures that
3 are substantially the same as the procedures
4 governing the Supplemental Nutrition Assist-
5 ance Program in section 273.2, 273.12, or
6 273.15 of title 7, Code of Federal Regulations.

7 “(C) Notwithstanding subsection (i)(4),
8 the Secretary may promulgate regulations al-
9 lowing for streamlined eligibility determinations
10 for some or all households which include indi-
11 viduals receiving assistance under a State plan
12 approved under title XIX or XXI of this Act.
13 The regulations may institute procedures
14 whereby the income and family size information
15 used for determining eligibility under such title
16 XIX or XXI may be the basis for determining
17 eligibility for the Energy Refund Program.

18 “(D) Notwithstanding any other provision
19 of this section, the Secretary may authorize
20 States to provide benefits under this section on
21 a quarterly basis if the Secretary determines
22 that the amount of the benefits that would be
23 provided on a monthly basis to households is in-
24 sufficient to be efficiently paid on a monthly

1 basis in light of the administrative expenses of
2 the Energy Refund Program.

3 “(g) TREATMENT.—The value of the refund provided
4 under this section shall not be considered income or re-
5 sources for any purpose under any Federal, State, or local
6 laws, including, but not limited to, laws relating to an in-
7 come tax, or public assistance programs (including, but
8 not limited to, health care, cash aid, child care, nutrition
9 programs, and housing assistance) and no participating
10 State or political subdivision thereof shall decrease any as-
11 sistance otherwise provided an individual or individuals be-
12 cause of the receipt of a refund under this section.

13 “(h) PROGRAM INTEGRITY.—For purposes of ensur-
14 ing program integrity and complying with the require-
15 ments of the Improper Payment Information Act of 2002,
16 the Secretary shall, to the maximum extent possible, rely
17 on and coordinate with the quality control sample and re-
18 view procedures of paragraphs (2), (3), (4), and (5) of
19 section 16(c) of the Food and Nutrition Act of 2008 (7
20 U.S.C. 2025(c)).

21 “(i) DEFINITIONS.—

22 “(1) SECRETARY.—The term ‘Secretary’ means
23 the Secretary of Health and Human Services or the
24 head of another agency designated by the Secretary
25 of Health and Human Services.

1 “(2) ELECTRONIC BENEFIT TRANSFER SYS-
2 TEM.—The term ‘electronic benefit transfer system’
3 means a system by which household benefits or re-
4 funds defined under subsection (e) are issued from
5 and stored in a central databank via electronic ben-
6 efit transfer cards.

7 “(3) GROSS INCOME.—The term ‘gross income’
8 means the gross income of a household that is deter-
9 mined in accordance with standards and procedures
10 established under section 5 of the Food and Nutri-
11 tion Act of 2008 (7 U.S.C. 2014) and its imple-
12 menting regulations.

13 “(4) HOUSEHOLD.—

14 “(A) The term ‘household’ means—

15 “(i) in subparagraphs (A) and (B) of
16 subsection (c)(1) of this section, except as
17 provided in subparagraph (C) of this para-
18 graph, an individual or a group of individ-
19 uals who are a household under section
20 3(n) of the Food and Nutrition Act of
21 2008 (7 U.S.C. 2012(n));

22 “(ii) in subsection (c)(1)(C) of this
23 section, a single individual or married cou-
24 ple that receives benefits under section

1 1860D–14 of this Act (42 U.S.C. 1395w–
2 114); and

3 “(iii) in subsection (c)(1)(D) of this
4 section, a single individual or married cou-
5 ple that receives benefits under the supple-
6 mental security income program under title
7 XVI of this Act (42 U.S.C. 1381–1383f).

8 “(B) The Secretary shall establish rules
9 for providing the energy refund in an equitable
10 and administratively simple manner to house-
11 holds where the group of individuals who live
12 together includes members not all of whom are
13 described in a single clause of subparagraph
14 (A), or includes additional members not de-
15 scribed in any such clause.

16 “(C) The Secretary shall establish rules re-
17 garding the eligibility and delivery of the energy
18 refund to groups of individuals described in sec-
19 tion 3(n)(4) or (5) of the Food and Nutrition
20 Act of 2008 (7 U.S.C. 2012(n)).

21 “(5) POVERTY LINE.—The term ‘poverty line’
22 has the meaning given the term in section 673(2) of
23 the Community Services Block Grant Act (42 U.S.C.
24 9902(2)), including any revision required by that
25 section.

1 “(6) STATE.—The term ‘State’ means the 50
2 States, the District of Columbia, the Commonwealth
3 of Puerto Rico, American Samoa, the United States
4 Virgin Islands, Guam, and the Commonwealth of the
5 Northern Mariana Islands.

6 “(7) STATE AGENCY.—The term ‘State agency’
7 means an agency of State government, including the
8 local offices thereof, that has responsibility for ad-
9 ministration of the 1 or more federally aided public
10 assistance programs within the State, and in those
11 States where such assistance programs are operated
12 on a decentralized basis, the term shall include the
13 counterpart local agencies administering such pro-
14 grams.

15 “(8) OTHER TERMS.—Other terms not defined
16 in this title shall have the same meaning applied in
17 the Supplemental Nutrition Assistance Program au-
18 thorized by the Food and Nutrition Act of 2008 (7
19 U.S.C. 2011 et seq.) unless the Secretary finds for
20 good cause that application of a particular definition
21 would be detrimental to the purposes of the Energy
22 Refund Program.”.

1 **SEC. 432. MODIFICATION OF EARNED INCOME CREDIT**
2 **AMOUNT FOR INDIVIDUALS WITH NO QUALI-**
3 **FYING CHILDREN.**

4 (a) INCREASE IN CREDIT PERCENTAGE AND PHASE-
5 OUT PERCENTAGE FOR INDIVIDUALS WITH NO CHIL-
6 DREN.—The table contained in subparagraph (A) of sec-
7 tion 32(b)(1) of the Internal Revenue Code of 1986 is
8 amended by striking “7.65” each place it appears and in-
9 serting “15.3”.

10 (b) INCREASE IN BEGINNING PHASEOUT AMOUNT.—

11 (1) IN GENERAL.—The table contained in sub-
12 paragraph (A) of section 32(b)(2) of such Code is
13 amended by striking “\$5,280” and inserting
14 “\$13,590”.

15 (2) INFLATION ADJUSTMENT.—

16 (A) IN GENERAL.—Subparagraph (B) of
17 section 32(j)(1) of such Code is amended by
18 striking “and” at the end of clause (i), by re-
19 designating clause (ii) as clause (iii), and by in-
20 serting after clause (i) the following new clause:

21 “(ii) in the case of the \$13,590
22 amount in subsection (b)(2)(A), by sub-
23 stituting ‘calendar year 2011’ for ‘calendar
24 year 1992’ in subparagraph (B) thereof,
25 and”.

26 (B) CONFORMING AMENDMENTS.—

1 (i) Clause (i) of section 32(j)(1)(B) of
2 such Code is amended by inserting “except
3 as provided in clause (ii),” before “in the
4 case of”.

5 (ii) Paragraph (1) of section 32(j) of
6 such Code is amended by inserting “(2012
7 in the case of the \$13,590 amount in sub-
8 section (b)(2)(A))” after “1996”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to taxable years beginning after
11 December 31, 2011.

12 **SEC. 433. PROTECTION OF SOCIAL SECURITY AND MEDI-**
13 **CARE TRUST FUNDS.**

14 (a) OASDI TRUST FUNDS.—Section 201 of the So-
15 cial Security Act (42 U.S.C. 401) is amended by adding
16 at the end the following new subsection:

17 “(o) The Secretary of the Treasury shall transfer
18 from time to time to the Federal Old-Age and Survivors
19 Insurance Trust Fund and the Federal Disability Insur-
20 ance Trust Fund, from amounts in the general fund of
21 the Treasury that are not otherwise appropriated, such
22 sums as the Chief Actuary of the Social Security Adminis-
23 tration calculates as necessary (and so certifies to such
24 Secretary) for any fiscal year, on account of changes in
25 benefit costs and changes in tax revenue attributable to

1 the provisions of the American Clean Energy and Security
2 Act of 2009 and the amendments made thereby, in order
3 to place each of such Trust Funds in the same position
4 at the end of such fiscal year as the position in which such
5 Trust Fund would have been if such changes had not oc-
6 curred.”.

7 (b) HI TRUST FUND.—Section 1817 of such Act (42
8 U.S.C. 1395i) is amended by adding at the end the fol-
9 lowing new subsection:

10 “(1) TRANSFERS TO ACCOUNT FOR CHANGES IN
11 BENEFIT COSTS AND CHANGES IN TAX REVENUE AT-
12 TRIBUTABLE TO THE AMERICAN CLEAN ENERGY AND SE-
13 CURITY ACT OF 2009.—The Secretary of the Treasury
14 shall transfer from time to time to the Trust Fund, from
15 amounts in the general fund of the Treasury that are not
16 otherwise appropriated, such sums as the Chief Actuary
17 of the Centers for Medicare & Medicaid Services calculates
18 as necessary (and so certifies to such Secretary) for any
19 fiscal year, on account of changes in benefit costs and
20 changes in tax revenue attributable to the provisions of
21 the American Clean Energy and Security Act of 2009 and
22 the amendments made thereby, in order to place the Trust
23 Fund in the same position at the end of such fiscal year
24 as the position in which it would have been if such changes
25 had not occurred.”.

1 **Subtitle D—Exporting Clean**
2 **Technology**

3 **SEC. 441. FINDINGS AND PURPOSES.**

4 (a) FINDINGS.—Congress finds the following:

5 (1) Protecting Americans from the impacts of
6 climate change requires global reductions in green-
7 house gas emissions.

8 (2) Although developing countries are histori-
9 cally least responsible for the cumulative greenhouse
10 gas emissions that are causing climate change and
11 continue to have very low per capita greenhouse gas
12 emissions, their overall greenhouse gas emissions are
13 increasing as they seek to grow their economies and
14 reduce energy poverty for their populations.

15 (3) Many developing countries lack the financial
16 and technical resources to adopt clean energy tech-
17 nologies and absent assistance their greenhouse gas
18 emissions will continue to increase.

19 (4) Investments in clean energy technology co-
20 operation can substantially reduce global greenhouse
21 gas emissions while providing developing countries
22 with incentives to adopt policies that will address
23 competitiveness concerns related to regulation of
24 United States greenhouse gas emissions.

1 (5) Investments in clean technology in devel-
2 oping countries will increase demand for clean en-
3 ergy products, open up new markets for United
4 States companies, spur innovation, and lower costs.

5 (6) Under Article 4 of the United Nations
6 Framework Convention on Climate Change, devel-
7 oped country parties, including the United States,
8 committed to “take all practicable steps to promote,
9 facilitate, and finance, as appropriate, the transfer
10 of, or access to, environmentally sound technologies
11 and know-how to other parties, particularly devel-
12 oping country parties, to enable them to implement
13 the provisions of the Convention”.

14 (7) Under the Bali Action Plan, developed
15 country parties to the United Nations Framework
16 Convention on Climate Change, including the United
17 States, committed to “enhanced action on the provi-
18 sion of financial resources and investment to support
19 action on mitigation and adaptation and technology
20 cooperation,” including, inter alia, consideration of
21 “improved access to adequate, predictable, and sus-
22 tainable financial resources and financial and tech-
23 nical support, and the provision of new and addi-
24 tional resources, including official and concessional
25 funding for developing country parties”.

1 (8) Intellectual property rights are a key driver
2 of investment and research and development in, and
3 the global deployment of, clean technologies.

4 (9) Innovative clean technologies, including
5 U.S. and multilateral financing mechanisms for their
6 deployment, are critical to mitigating global warming
7 pollution, preventing catastrophic changes to the cli-
8 mate, and developing robust economies around the
9 world.

10 (10) Any weakening of intellectual property
11 rights protection poses a substantial competitive risk
12 to U.S. companies and the creation of high-quality
13 U.S. jobs, inhibiting the creation of new “green”
14 employment and the transformational shift to the
15 “Green Economy” of the 21st Century.

16 (11) Any U.S. funding directed toward assist-
17 ing developing countries with regard to exporting
18 clean technology should promote the robust compli-
19 ance with and enforcement of existing international
20 legal requirements for the protection of intellectual
21 property rights as formulated in the Agreement on
22 Trade-Related Aspects of Intellectual Property
23 Rights, referred to in section 101(d)(15) of the Uru-
24 guay Round Agreements Act (19 U.S.C.3511(d)(15))

1 and in applicable intellectual property provisions of
2 bilateral trade agreements.

3 (b) PURPOSES.—The purposes of this subtitle are—

4 (1) to provide United States assistance and le-
5 verage private resources to encourage widespread
6 implementation, in developing countries, of activities
7 that reduce, sequester, or avoid greenhouse gas
8 emissions; and

9 (2) to provide such assistance in a manner
10 that—

11 (A) encourages such countries to adopt
12 policies and measures, including sector-based
13 and cross-sector policies and measures, that
14 substantially reduce, sequester, or avoid green-
15 house gas emissions;

16 (B) promotes the successful negotiation of
17 a global agreement to reduce greenhouse gas
18 emissions under the United Nations Framework
19 Convention on Climate Change; and

20 (C) promotes robust compliance with and
21 enforcement of existing international legal re-
22 quirements for the protection of intellectual
23 property rights, as formulated in the Agreement
24 on Trade-Related Aspects of Intellectual Prop-
25 erty Rights referred to in section 101(d)(15) of

1 the Uruguay Round Agreements Act (19 U.S.C.
2 3511(d)(15)) and in applicable intellectual
3 property provisions of bilateral trade agree-
4 ments.

5 **SEC. 442. DEFINITIONS.**

6 In this subtitle:

7 (1) ALLOWANCE.—The term “allowance”
8 means an emission allowance established under sec-
9 tion 721 of the Clean Air Act.

10 (2) APPROPRIATE CONGRESSIONAL COMMIT-
11 TEES.—The term “appropriate congressional com-
12 mittees” means—

13 (A) the Committees on Energy and Com-
14 merce, Foreign Affairs, and Financial Services
15 of the House of Representatives; and

16 (B) the Committees on Environment and
17 Public Works, Energy and Natural Resources,
18 and Foreign Relations of the Senate.

19 (3) CONVENTION.—The term “Convention”
20 means the United Nations Framework Convention
21 on Climate Change, done at New York on May 9,
22 1992, and entered into force on March 21, 1994.

23 (4) DEVELOPING COUNTRY.—The term “devel-
24 oping country” means a country eligible to receive
25 official development assistance according to the in-

1 come guidelines of the Development Assistance Com-
2 mittee of the Organization for Economic Coopera-
3 tion and Development.

4 (5) ELIGIBLE COUNTRY.—The term “eligible
5 country” means a developing country that is deter-
6 mined by the interagency group under section 444
7 to be eligible to receive assistance from the Inter-
8 national Clean Technology Account.

9 (6) INTERAGENCY GROUP.—The term “inter-
10 agency group” means the group established by the
11 President under section 443 to administer distribu-
12 tions from the International Clean Technology Ac-
13 count.

14 (7) INTERNATIONAL CLEAN TECHNOLOGY AC-
15 COUNT.—The term “International Clean Technology
16 Account” means the account to which the Adminis-
17 trator allocates allowances under section 782(o) of
18 the Clean Air Act.

19 (8) LEAST DEVELOPED COUNTRY.—The term
20 “least developed country” means a foreign country
21 the United Nations has identified as among the least
22 developed of developing countries.

23 (9) QUALIFYING ACTIVITY.—The term “quali-
24 fying activity” means an activity that meets the cri-
25 teria in section 445.

1 (10) QUALIFYING ENTITY.—The term “quali-
2 fying entity” means a national, regional, or local
3 government in, or a nongovernmental organization
4 or private entity located or operating in, an eligible
5 country.

6 **SEC. 443. GOVERNANCE.**

7 (a) OVERSIGHT.—The Secretary of State, or such
8 other Federal agency head as the President may des-
9 ignate, in consultation with the interagency group estab-
10 lished under subsection (b), shall oversee distributions of
11 allowances from the International Clean Technology Ac-
12 count.

13 (b) INTERAGENCY GROUP.—The President shall es-
14 tablish an interagency group to administer the Inter-
15 national Clean Technology Account. The Members of the
16 interagency group shall include—

17 (1) the Secretary of State;

18 (2) the Administrator of the Environmental
19 Protection Agency;

20 (3) the Secretary of Energy;

21 (4) the Secretary of the Treasury;

22 (5) the Secretary of Commerce;

23 (6) the Administrator of the United States
24 Agency for International Development; and

1 (7) any other head of a Federal agency or execu-
2 tive branch appointee that the President may des-
3 ignate.

4 (c) CHAIRPERSON.—The Secretary of State shall
5 serve as the chairperson of the interagency group.

6 (d) SUPPLEMENT NOT SUPPLANT.—Allowances dis-
7 tributed from the International Clean Technology Account
8 shall be used to supplement, and not to supplant, any
9 other Federal, State, or local resources available to carry
10 out activities that are qualifying activities under this sub-
11 title.

12 **SEC. 444. DETERMINATION OF ELIGIBLE COUNTRIES.**

13 (a) IN GENERAL.—The interagency group shall de-
14 termine a country to be an eligible country for the pur-
15 poses of this subtitle if a country meets the following cri-
16 teria:

17 (1) The country is a developing country that—

18 (A) has entered into an international
19 agreement to which the United States is a
20 party, under which such country agrees to take
21 actions to produce measurable, reportable, and
22 verifiable greenhouse gas emissions mitigation;
23 or

24 (B) is determined by the interagency group
25 to have in force national policies and measures

1 that are capable of producing measurable, re-
2 portable, and verifiable greenhouse gas emis-
3 sions mitigation.

4 (2) The country has developed a nationally ap-
5 propriate mitigation strategy that seeks to achieve
6 substantial reductions, sequestration, or avoidance of
7 greenhouse gas emissions, relative to business-as-
8 usual levels.

9 (3) Subject to subsection (b)(1), such other cri-
10 teria as the President determines will serve the pur-
11 poses of this subtitle or other United States national
12 security, foreign policy, environmental, or economic
13 objectives including robust compliance with and en-
14 forcement of existing international legal require-
15 ments for the protection of intellectual property
16 rights for clean technology, as formulated in the
17 Agreement on Trade-Related Aspects of Intellectual
18 Property Rights, referred to in section 101(d)(15) of
19 the Uruguay Round Agreements Act (19 U.S.C.
20 3511(d)(15)) and in applicable intellectual property
21 provisions of bilateral trade agreements.

22 (b) EXCEPTIONS.—

23 (1) Subsection (a)(3) applies only to bilateral
24 assistance under section 446(c)(4).

1 (2) The eligibility criteria in this section do not
2 apply in the case of least developed countries receiv-
3 ing assistance under section 445(7) for the purpose
4 of building capacity to meet such eligibility criteria.

5 **SEC. 445. QUALIFYING ACTIVITIES.**

6 Assistance under this subtitle may be provided only
7 to qualifying entities for clean technology activities (in-
8 cluding building relevant technical and institutional capac-
9 ity) that contribute to substantial, measurable, reportable,
10 and verifiable reductions, sequestration, or avoidance of
11 greenhouse gas emissions including—

12 (1) deployment of technologies to capture and
13 sequester carbon dioxide emissions from electric gen-
14 erating units or large industrial sources (except that
15 assistance under this subtitle for such deployment
16 shall be limited to the cost of retrofitting existing fa-
17 cilities with such technologies or the incremental
18 cost of purchasing and installing such technologies
19 at new facilities);

20 (2) deployment of renewable electricity genera-
21 tion from wind, solar, sustainably produced biomass,
22 geothermal, marine, or hydrokinetic sources;

23 (3) substantial increases in the efficiency of
24 electricity transmission, distribution, and consump-
25 tion;

1 (4) deployment of low- or zero emissions tech-
2 nologies that are facing financial or other barriers to
3 their widespread deployment which could be ad-
4 dressed through support under this subtitle in order
5 to reduce, sequester, or avoid emission;

6 (5) reduction in transportation sector emissions
7 through increased transportation system and vehicle
8 efficiency or use of transportation fuels that have
9 lifecycle greenhouse gas emissions that are substan-
10 tially lower than those attributable to fossil fuel-
11 based alternatives;

12 (6) reduction in black carbon emissions; or

13 (7) capacity building activities, including—

14 (A) developing and implementing meth-
15 odologies and programs for measuring and
16 quantifying greenhouse gas emissions and
17 verifying emissions mitigation;

18 (B) assessing, developing, and imple-
19 menting technology and policy options for
20 greenhouse gas emissions mitigation and avoid-
21 ance of future emissions, including sector and
22 cross-sector mitigation strategies; and

23 (C) providing other forms of technical as-
24 sistance to facilitate the qualification for, and
25 receipt of, assistance under this Act.

1 **SEC. 446. ASSISTANCE.**

2 (a) IN GENERAL.—The Secretary of State, or such
3 other Federal agency head as the President may des-
4 ignate, is authorized to provide assistance, through the
5 distribution of allowances, from the International Clean
6 Technology Account for qualifying activities that take
7 place in eligible countries.

8 (b) ANNUAL REPORTS.—Not later than March 1,
9 2012, and annually thereafter, the President shall submit
10 to the appropriate congressional committees a report on
11 the assistance provided under this subtitle during the prior
12 fiscal year. Such report shall include—

13 (1) a description of the amount and value of al-
14 lowances distributed during the prior fiscal year;

15 (2) a description of each activity that received
16 assistance during the prior fiscal year, and a de-
17 scription of the anticipated and actual outcomes;

18 (3) an assessment of any adverse effects to
19 human health, safety, or welfare, the environment,
20 or natural resources as a result of activities sup-
21 ported under this subtitle;

22 (4) an assessment of the success of the assist-
23 ance provided under this subtitle to improving the
24 technical and institutional capacity to implement
25 substantial emissions reductions;

1 (5) an estimate of the greenhouse gas emissions
2 reductions, sequestration, or avoidance achieved by
3 assistance provided under this subtitle during the
4 prior fiscal year; and

5 (6) an assessment whether any funds expended
6 for the benefit of any qualifying activity undermined
7 the protection of intellectual property rights for
8 clean technology, as formulated in the Agreement on
9 Trade-Related Aspects of Intellectual Property
10 Rights, referred to in section 101(d)(15) of the Uru-
11 guay Round Agreements Act (19 U.S.C.
12 3511(d)(15)) and applicable intellectual property
13 provisions of bilateral trade agreements.

14 (c) DISTRIBUTION OF ALLOWANCES.—

15 (1) IN GENERAL.—The Secretary of State, or
16 such other Federal agency head as the President
17 may designate, after consultation with the inter-
18 agency group, shall distribute allowances from the
19 International Clean Technology Account—

20 (A) in the form of bilateral assistance in
21 accordance with paragraph (4);

22 (B) to multilateral funds or institutions
23 pursuant to the Convention or an agreement
24 negotiated under the Convention; or

1 (C) through some combination of the
2 mechanisms identified in subparagraphs (A)
3 and (B).

4 (2) GLOBAL ENVIRONMENT FACILITY.—For any
5 allowances provided to the Global Environment Fa-
6 cility pursuant to paragraph (1)(B), the President
7 shall designate the Secretary of the Treasury to dis-
8 tribute those allowances to the Global Environment
9 Facility.

10 (3) DISTRIBUTION THROUGH INTERNATIONAL
11 FUND OR INSTITUTION.—If allowances are distrib-
12 uted to a multilateral fund or institution, as author-
13 ized in paragraph (1), the Secretary of State, or
14 such other Federal agency head as the President
15 may designate, shall seek to ensure the establish-
16 ment and implementation of adequate mechanisms
17 to—

18 (A) apply and enforce the criteria for de-
19 termination of eligible countries and qualifying
20 activities under sections 444 and 445, respec-
21 tively;

22 (B) require public reporting describing the
23 process and methodology for selecting the ulti-
24 mate recipients of assistance and a description
25 of each activity that received assistance, includ-

1 ing the amount of obligations and expenditures
2 for assistance; and

3 (C) require that no funds be expended for
4 the benefit of any qualifying activity where that
5 activity or any activity relating to a qualifying
6 activity under section 445 undermines the ro-
7 bust compliance with and enforcement of exist-
8 ing legal requirements for the protection of in-
9 tellectual property rights for clean technology,
10 as formulated in the Agreement on Trade-
11 related Aspects of Intellectual Property Rights,
12 referred to in section 101(d)(15) of the Uru-
13 guay Round Agreements Act (19 U.S.C.
14 3511(d)(15)).

15 (4) BILATERAL ASSISTANCE.—

16 (A) IN GENERAL.—Bilateral assistance
17 under paragraph (1) shall be carried out by the
18 Administrator of the United States Agency for
19 International Development, in consultation with
20 the interagency group.

21 (B) LIMITATIONS.—Not more than 15 per-
22 cent of allowances made available to carry out
23 bilateral assistance under this subtitle in any
24 year shall be distributed to support activities in
25 any single country.

1 (C) SELECTION CRITERIA.—Not later than
2 2 years after the date of enactment of this sub-
3 title, the Administrator of the United States
4 Agency for International Development, after
5 consultation with the interagency group, shall
6 develop and publish a set of criteria to be used
7 in evaluating activities within eligible countries
8 for bilateral assistance under this subtitle.

9 (D) CRITERIA REQUIREMENTS.—The cri-
10 teria under subparagraph (C) shall require
11 that—

12 (i) the activity is a qualifying activity;

13 (ii) the activity will be conducted as
14 part of an eligible country's nationally ap-
15 propriate mitigation strategy or as part of
16 an eligible country's actions towards pro-
17 viding a nationally appropriate mitigation
18 strategy to reduce, sequester, or avoid
19 emissions being implemented by the eligi-
20 ble country;

21 (iii) the activity will not have adverse
22 effects on human health, safety, or welfare,
23 the environment, or natural resources;

1 (iv) any technologies deployed through
2 bilateral assistance under this subtitle will
3 be properly implemented and maintained;

4 (v) the activity will not cause any net
5 loss of United States jobs or displacement
6 of United States production;

7 (vi) costs of the activity will be shared
8 by the host country government, private
9 sector parties, or a multinational develop-
10 ment bank, except that this clause does not
11 apply to least developed countries;

12 (vii) the activity would not undermine
13 the protection of intellectual property
14 rights for clean technology, as formulated
15 in the Agreement on Trade-Related As-
16 pects of Intellectual Property Rights, re-
17 ferred to in section 101(d)(15) of the Uru-
18 guay Round Agreements Act (19 U.S.C.
19 3511(d)(15)) and applicable intellectual
20 property provisions of bilateral trade
21 agreements; and

22 (viii) the activity meets such other re-
23 quirements as the interagency group deter-
24 mines appropriate to further the purposes
25 of this subtitle.

1 (E) CRITERIA PREFERENCES.—The cri-
2 teria under subparagraph (C) shall give pref-
3 erence to activities that—

4 (i) promise to achieve large-scale
5 greenhouse gas reductions, sequestration,
6 or avoidance at a national, sectoral or
7 cross-sectoral level;

8 (ii) have the potential to catalyze a
9 shift within the host country towards wide-
10 spread deployment of low- or zero-carbon
11 energy technologies;

12 (iii) build technical and institutional
13 capacity and other activities that are un-
14 likely to be attractive to private sector
15 funding; or

16 (iv) maximize opportunities to lever-
17 age other sources of assistance and cata-
18 lyze private-sector investment.

19 (d) MONITORING, EVALUATION, AND ENFORCE-
20 MENT.—The Secretary of State, or such other Federal
21 agency head as the President may designate, in consulta-
22 tion with the interagency group, shall establish and imple-
23 ment a system to monitor and evaluate the performance
24 of activities receiving assistance under this subtitle. The
25 Secretary of State, or such other Federal agency head as

1 the President may designate, shall have the authority to
 2 suspend or terminate assistance in whole or in part for
 3 an activity if it is determined that the activity is not oper-
 4 ating in compliance with the approved proposal.

5 (e) COORDINATION WITH U.S. FOREIGN ASSIST-
 6 ANCE.—Subject to the direction of the President, the Sec-
 7 retary of State shall, to the extent practicable, seek to
 8 align activities under this section with broader develop-
 9 ment, poverty alleviation, or natural resource management
 10 objectives and initiatives in the recipient country.

11 (f) DEFINITION.—For the purposes of this section
 12 the term “clean technology” means any technology or
 13 service related to the qualifying activities identified in sec-
 14 tion 445.

15 **Subtitle E—Adapting to Climate** 16 **Change**

17 **PART 1—DOMESTIC ADAPTATION**

18 **Subpart A—National Climate Change Adaptation** 19 **Program**

20 **SEC. 451. GLOBAL CHANGE RESEARCH AND DATA MANAGE-** 21 **MENT.**

22 (a) SHORT TITLE.—This section may be cited as the
 23 “Global Change Research and Data Management Act of
 24 2009”.

25 (b) GLOBAL CHANGE RESEARCH.—

1 (1) PURPOSE.—The purpose of this subsection
2 is to provide for the continuation and coordination
3 of a comprehensive and integrated United States ob-
4 servation, research, and outreach program which will
5 assist the Nation and the world to understand, as-
6 sess, predict, and respond to the effects of human-
7 induced and natural processes of global change.

8 (2) DEFINITIONS.—For purposes of this sub-
9 section—

10 (A) the term “global change” means
11 human-induced or natural changes in the global
12 environment (including alterations in climate,
13 land productivity, oceans or other water re-
14 sources, atmospheric chemistry, biodiversity,
15 and ecological systems) that may alter the ca-
16 pacity of the Earth to sustain life;

17 (B) the term “global change research”
18 means study, monitoring, assessment, pre-
19 diction, and information management activities
20 to describe and understand—

21 (i) the interactive physical, chemical,
22 and biological processes that regulate the
23 total Earth system;

24 (ii) the unique environment that the
25 Earth provides for life;

1 (iii) changes that are occurring in the
2 Earth system; and

3 (iv) the manner in which such system,
4 environment, and changes are influenced
5 by human actions;

6 (C) the term “interagency committee”
7 means the interagency committee established
8 under paragraph (3);

9 (D) the term “Plan” means the National
10 Global Change Research and Assessment Plan
11 developed under paragraph (5);

12 (E) the term “Program” means the United
13 States Global Change Research Program estab-
14 lished under paragraph (4); and

15 (F) the term “regional climate change”
16 means the natural or human-induced changes
17 manifested in the local or regional environment
18 (including alterations in weather patterns, land
19 productivity, water resources, sea level rise, at-
20 mospheric chemistry, biodiversity, and ecologi-
21 cal systems) that may alter the capacity of a
22 specific region to support current or future so-
23 cial and economic activity or natural eco-
24 systems.

1 (3) INTERAGENCY COOPERATION AND COORDI-
2 NATION.—

3 (A) ESTABLISHMENT.—The President
4 shall establish or designate an interagency com-
5 mittee to ensure cooperation and coordination
6 of all Federal research activities pertaining to
7 processes of global change for the purpose of
8 increasing the overall effectiveness and produc-
9 tivity of Federal global change research efforts.
10 The interagency committee shall include re-
11 search and program representatives of agencies
12 conducting global change research, agencies
13 with authority over resources likely to be af-
14 fected by global change, and agencies with au-
15 thority to mitigate human-induced global
16 change.

17 (B) FUNCTIONS OF THE INTERAGENCY
18 COMMITTEE.—The interagency committee
19 shall—

20 (i) serve as the forum for developing
21 the Plan and for overseeing its implemen-
22 tation;

23 (ii) serve as the forum for developing
24 the vulnerability assessment under para-
25 graph (7);

1 (iii) ensure cooperation among Fed-
2 eral agencies with respect to global change
3 research activities;

4 (iv) work with academic, State, indus-
5 try, and other groups conducting global
6 change research, to provide for periodic
7 public and peer review of the Program;

8 (v) cooperate with the Secretary of
9 State in—

10 (I) providing representation at
11 international meetings and con-
12 ferences on global change research in
13 which the United States participates;
14 and

15 (II) coordinating the Federal ac-
16 tivities of the United States with pro-
17 grams of other nations and with inter-
18 national global change research activi-
19 ties;

20 (vi) work with appropriate Federal,
21 State, regional, and local authorities to en-
22 sure that the Program is designed to
23 produce information needed to develop
24 policies to mitigate human-induced global
25 change and to reduce the vulnerability of

1 the United States and other regions to
2 global change;

3 (vii) facilitate ongoing dialog and in-
4 formation exchange with regional, State,
5 and local governments and other user com-
6 munities; and

7 (viii) identify additional decision-
8 making groups that may use information
9 generated through the Program.

10 (4) UNITED STATES GLOBAL CHANGE RE-
11 SEARCH PROGRAM.—

12 (A) ESTABLISHMENT.—The President
13 shall establish an interagency United States
14 Global Change Research Program to improve
15 understanding of global change, to respond to
16 the information needs of communities and deci-
17 sionmakers, and to provide periodic assessments
18 of the vulnerability of the United States and
19 other regions to global and regional climate
20 change. The Program shall be implemented in
21 accordance with the Plan.

22 (B) LEAD AGENCY.—The lead agency for
23 the United States Global Change Research Pro-
24 gram shall be the Office of Science and Tech-
25 nology Policy.

1 (C) INTERAGENCY PROGRAM ACTIVITIES.—
2 The Director of the Office of Science and Tech-
3 nology Policy, in consultation with the inter-
4 agency committee, shall identify activities in-
5 cluded in the Plan that involve participation by
6 2 or more agencies in the Program, and that do
7 not fall within the current fiscal year budget al-
8 locations of those participating agencies, to ful-
9 fill the requirements of this section. The Direc-
10 tor of the Office of Science and Technology Pol-
11 icy shall allocate funds to the agencies to con-
12 duct the identified interagency activities. Such
13 activities may include—

14 (i) development of scenarios for cli-
15 mate, land-cover change, population
16 growth, and socioeconomic development;

17 (ii) calibration and testing of alter-
18 native regional and global climate models;

19 (iii) identification of economic sectors
20 and regional climatic zones; and

21 (iv) convening regional workshops to
22 facilitate information exchange and in-
23 volvement of regional, State, and local de-
24 cisionmakers, non-Federal experts, and

1 other stakeholder groups in the activities
2 of the Program.

3 (D) WORKSHOPS.—The Director shall en-
4 sure that at least one workshop is held per year
5 in each region identified by the Plan under
6 paragraph (5)(B)(xi) to facilitate information
7 exchange and outreach to regional, State, and
8 local stakeholders as required by this section.

9 (E) AUTHORIZATION OF APPROPRIA-
10 TIONS.—There are authorized to be appro-
11 priated to the Office of Science and Technology
12 Policy for carrying out this paragraph
13 \$10,000,000 for each of the fiscal years 2009
14 through 2014.

15 (5) NATIONAL GLOBAL CHANGE RESEARCH AND
16 ASSESSMENT PLAN.—

17 (A) IN GENERAL.—The President shall de-
18 velop a National Global Change Research and
19 Assessment Plan for implementation of the Pro-
20 gram. The Plan shall contain recommendations
21 for global change research and assessment. The
22 President shall submit an outline for the devel-
23 opment of the Plan to the Congress within 1
24 year after the date of enactment of this Act,
25 and shall submit a completed Plan to the Con-

1 gress within 3 years after the date of enactment
2 of this Act. Revised Plans shall be submitted to
3 the Congress at least once every 5 years there-
4 after. In the development of each Plan, the
5 President shall conduct a formal assessment
6 process under this paragraph to determine the
7 needs of appropriate Federal, State, regional,
8 and local authorities and other interested par-
9 ties regarding the types of information needed
10 by them in developing policies to mitigate
11 human-induced global change and to reduce so-
12 ciety's vulnerability to global change and shall
13 utilize these assessments, including the reviews
14 by the National Academy of Sciences and the
15 National Governors Association under subpara-
16 graphs (E) and (F), in developing the Plan.

17 (B) CONTENTS OF THE PLAN.—The Plan
18 shall—

19 (i) establish, for the 10-year period
20 beginning in the year the Plan is sub-
21 mitted, the goals and priorities for Federal
22 global change research which most effec-
23 tively advance scientific understanding of
24 global change and provide information of
25 use to Federal, State, regional, and local

1 authorities in the development of policies
2 relating to global change;

3 (ii) describe specific activities, includ-
4 ing efforts to determine user information
5 needs, research activities, data collection,
6 database development, and data analysis
7 requirements, development of regional sce-
8 narios, assessment of model predictability,
9 assessment of climate change impacts, par-
10 ticipation in international research efforts,
11 and information management, required to
12 achieve such goals and priorities;

13 (iii) identify relevant programs and
14 activities of the Federal agencies that con-
15 tribute to the Program directly and indi-
16 rectly;

17 (iv) set forth the role of each Federal
18 agency in implementing the Plan;

19 (v) consider and utilize, as appro-
20 priate, reports and studies conducted by
21 Federal agencies, the National Research
22 Council, or other entities;

23 (vi) make recommendations for the
24 coordination of the global change research
25 and assessment activities of the United

1 States with such activities of other nations
2 and international organizations, includ-
3 ing—

4 (I) a description of the extent
5 and nature of international coopera-
6 tive activities;

7 (II) bilateral and multilateral ef-
8 forts to provide worldwide access to
9 scientific data and information; and

10 (III) improving participation by
11 developing nations in international
12 global change research and environ-
13 mental data collection;

14 (vii) detail budget requirements for
15 Federal global change research and assess-
16 ment activities to be conducted under the
17 Plan;

18 (viii) catalog the type of information
19 identified by appropriate Federal, State,
20 regional, and local decisionmakers needed
21 to develop policies to reduce society's vul-
22 nerability to global change and indicate
23 how the planned research will meet these
24 decisionmakers' information needs;

1 (ix) identify the observing systems
2 currently employed in collecting data rel-
3 evant to global and regional climate change
4 research and prioritize additional observa-
5 tion systems that may be needed to ensure
6 adequate data collection and monitoring of
7 global change;

8 (x) describe specific activities designed
9 to facilitate outreach and data and infor-
10 mation exchange with regional, State, and
11 local governments and other user commu-
12 nities; and

13 (xi) identify and describe regions of
14 the United States that are likely to experi-
15 ence similar impacts of global change or
16 are likely to share similar vulnerabilities to
17 global change.

18 (C) RESEARCH ELEMENTS.—The Plan
19 shall include at a minimum the following re-
20 search elements:

21 (i) Global measurements, establishing
22 worldwide to regional scale observations
23 prioritized to understand global change
24 and to meet the information needs of deci-

1 sionmakers on all relevant spatial and time
2 scales.

3 (ii) Information on economic, demo-
4 graphic, and technological trends that con-
5 tribute to changes in the Earth system and
6 that influence society's vulnerability to
7 global and regional climate change.

8 (iii) Development of indicators and
9 baseline databases to document global
10 change, including changes in species dis-
11 tribution and behavior, extent of glacia-
12 tions, and changes in sea level.

13 (iv) Studies of historical changes in
14 the Earth system, using evidence from the
15 geological and fossil record.

16 (v) Assessments of predictability using
17 quantitative models of the Earth system to
18 simulate global and regional environmental
19 processes and trends.

20 (vi) Focused research initiatives to
21 understand the nature of and interaction
22 among physical, chemical, biological, land
23 use, and social processes related to global
24 and regional climate change.

1 (vii) Focused research initiatives to
2 determine and then meet the information
3 needs of appropriate Federal, State, and
4 regional decisionmakers.

5 (D) INFORMATION MANAGEMENT.—The
6 Plan shall incorporate, to the extent practicable,
7 the recommendations relating to data acquisi-
8 tion, management, integration, and archiving
9 made by the interagency climate and other
10 global change data management working group
11 established under subsection (c)(3).

12 (E) NATIONAL ACADEMY OF SCIENCES
13 EVALUATION.—The President shall enter into
14 an agreement with the National Academy of
15 Sciences under which the Academy shall—

16 (i) evaluate the scientific content of
17 the Plan; and

18 (ii) recommend priorities for future
19 global and regional climate change re-
20 search and assessment.

21 (F) NATIONAL GOVERNORS ASSOCIATION
22 EVALUATION.—The President shall enter into
23 an agreement with the National Governors As-
24 sociation Center for Best Practices under which
25 that Center shall—

1 (i) evaluate the utility to State, local,
2 and regional decisionmakers of each Plan
3 and of the anticipated and actual informa-
4 tion outputs of the Program for develop-
5 ment of State, local, and regional policies
6 to reduce vulnerability to global change;
7 and

8 (ii) recommend priorities for future
9 global and regional climate change re-
10 search and assessment.

11 (G) PUBLIC PARTICIPATION.—In devel-
12 oping the Plan, the President shall consult with
13 representatives of academic, State, industry,
14 and environmental groups. Not later than 90
15 days before the President submits the Plan, or
16 any revision thereof, to the Congress, a sum-
17 mary of the proposed Plan shall be published in
18 the Federal Register for a public comment pe-
19 riod of not less than 60 days.

20 (6) BUDGET COORDINATION.—

21 (A) IN GENERAL.—The President shall
22 provide general guidance to each Federal agen-
23 cy participating in the Program with respect to
24 the preparation of requests for appropriations
25 for activities related to the Program.

1 (B) CONSIDERATION IN PRESIDENT'S
2 BUDGET.—The President shall submit, at the
3 time of his annual budget request to Congress,
4 a description of those items in each agency's
5 annual budget which are elements of the Pro-
6 gram.

7 (7) VULNERABILITY ASSESSMENT.—

8 (A) REQUIREMENT.—Within 1 year after
9 the date of enactment of this Act, and at least
10 once every 5 years thereafter, the President
11 shall submit to the Congress an assessment
12 which—

13 (i) integrates, evaluates, and inter-
14 prets the findings of the Program and dis-
15 cusses the scientific uncertainties associ-
16 ated with such findings;

17 (ii) analyzes current trends in global
18 change, both human-induced and natural,
19 and projects major trends for the subse-
20 quent 25 to 100 years;

21 (iii) based on indicators and baselines
22 developed under paragraph (5)(C)(iii), as
23 well as other measurements, analyzes
24 changes to the natural environment, land

1 and water resources, and biological diver-
2 sity in—

3 (I) major geographic regions of
4 the United States; and

5 (II) other continents;

6 (iv) analyzes the effects of global
7 change, including the changes described in
8 clause (iii), on food and fiber production,
9 energy production and use, transportation,
10 human health and welfare, water avail-
11 ability and coastal infrastructure, and
12 human social and economic systems, in-
13 cluding providing information about the
14 differential impacts on specific geographic
15 regions within the United States, on people
16 of different income levels within those re-
17 gions, and for rural and urban areas with-
18 in those regions; and

19 (v) summarizes the vulnerability of
20 different geographic regions of the world to
21 global change and analyzes the implica-
22 tions of global change for the United
23 States, including international assistance,
24 population displacement, food and resource
25 availability, and national security.

1 (B) USE OF RELATED REPORTS.—To the
2 extent appropriate, the assessment produced
3 pursuant to this paragraph may coordinate
4 with, consider, incorporate, or otherwise make
5 use of related reports, assessments, or informa-
6 tion produced by the United States Global
7 Change Research Program, regional, State, and
8 local entities, and international organizations,
9 including the World Meteorological Organiza-
10 tion and the Intergovernmental Panel on Cli-
11 mate Change.

12 (8) POLICY ASSESSMENT.—Not later than 1
13 year after the date of enactment of this Act, and at
14 least once every 4 years thereafter, the President
15 shall enter into a joint agreement with the National
16 Academy of Public Administration and the National
17 Academy of Sciences under which the Academies
18 shall—

19 (A) document current policy options being
20 implemented by Federal, State, and local gov-
21 ernments to mitigate or adapt to the effects of
22 global and regional climate change;

23 (B) evaluate the realized and anticipated
24 effectiveness of those current policy options in
25 meeting mitigation and adaptation goals;

1 (C) identify and evaluate a range of addi-
2 tional policy options and infrastructure for miti-
3 gating or adapting to the effects of global and
4 regional climate change;

5 (D) analyze the adoption rates of policies
6 and technologies available to reduce the vulner-
7 ability of society to global change with an eval-
8 uation of the market and policy obstacles to
9 their adoption in the United States; and

10 (E) evaluate the distribution of economic
11 costs and benefits of these policy options across
12 different United States economic sectors.

13 (9) ANNUAL REPORT.—Each year at the time
14 of submission to the Congress of the President’s
15 budget request, the President shall submit to the
16 Congress a report on the activities conducted pursu-
17 ant to this subsection, including—

18 (A) a description of the activities of the
19 Program during the past fiscal year;

20 (B) a description of the activities planned
21 in the next fiscal year toward achieving the
22 goals of the Plan; and

23 (C) a description of the groups or cat-
24 egories of State, local, and regional decision-
25 makers identified as potential users of the in-

1 formation generated through the Program and
2 a description of the activities used to facilitate
3 consultations with and outreach to these
4 groups, coordinated through the work of the
5 interagency committee.

6 (10) RELATION TO OTHER AUTHORITIES.—The
7 President shall—

8 (A) ensure that relevant research, assess-
9 ment, and outreach activities of the National
10 Climate Program, established by the National
11 Climate Program Act (15 U.S.C. 2901 et seq.),
12 are considered in developing national global and
13 regional climate change research and assess-
14 ment efforts; and

15 (B) facilitate ongoing dialog and informa-
16 tion exchange with regional, State, and local
17 governments and other user communities
18 through programs authorized in the National
19 Climate Program Act (15 U.S.C. 2901 et seq.).

20 (11) REPEAL.—The Global Change Research
21 Act of 1990 (15 U.S.C. 2921 et seq.) is amended by
22 striking titles I and III thereof.

23 (12) GLOBAL CHANGE RESEARCH INFORMA-
24 TION.—The President shall establish or designate a
25 Global Change Research Information Exchange to

1 make scientific research and other information pro-
2 duced through or utilized by the Program which
3 would be useful in preventing, mitigating, or adapt-
4 ing to the effects of global change accessible through
5 electronic means.

6 (13) ICE SHEET STUDY AND REPORT.—

7 (A) STUDY.—

8 (i) REQUIREMENT.—The Director of
9 the National Science Foundation and the
10 Administrator of National Oceanic and At-
11 mospheric Administration shall enter into
12 an arrangement with the National Acad-
13 emy of Sciences to complete a study of the
14 current status of ice sheet melt, as caused
15 by climate change, with implications for
16 global sea level rise.

17 (ii) CONTENTS.—The study shall take
18 into consideration—

19 (I) the past research completed
20 related to ice sheet melt as reviewed
21 by Working Group I of the Intergov-
22 ernmental Panel on Climate Change;

23 (II) additional research com-
24 pleted since the fall of 2005 that was

1 not included in the Working Group I
2 report due to time constraints; and

3 (III) the need for an accurate as-
4 sessment of changes in ice sheet
5 spreading, changes in ice sheet flow,
6 self-lubrication, the corresponding ef-
7 fect on ice sheets, and current mod-
8 eling capabilities.

9 (B) REPORT.—Not later than 18 months
10 after the date of enactment of this Act, the Na-
11 tional Academy of Sciences shall transmit to
12 the Committee on Science and Technology of
13 the House of Representatives and the Com-
14 mittee on Commerce, Science, and Transpor-
15 tation of the Senate a report on the key find-
16 ings of the study conducted under subpara-
17 graph (A), along with recommendations for ad-
18 ditional research related to ice sheet melt and
19 corresponding sea level rise.

20 (14) HURRICANE FREQUENCY AND INTENSITY
21 STUDY AND REPORT.—

22 (A) STUDY.—

23 (i) REQUIREMENT.—The Adminis-
24 trator of the National Oceanic and Atmos-
25 pheric Administration and the Director of

1 the National Science Foundation shall
2 enter into an arrangement with the Na-
3 tional Academy of Sciences to complete a
4 study of the current state of the science on
5 the potential impacts of climate change on
6 patterns of hurricane and typhoon develop-
7 ment, including storm intensity, track, and
8 frequency, and the implications for hurri-
9 cane-prone and typhoon-prone coastal re-
10 gions.

11 (ii) CONTENTS.—The study shall take
12 into consideration—

13 (I) the past research completed
14 related to hurricane and typhoon de-
15 velopment, track, and intensity as re-
16 viewed by Working Groups I and II of
17 the Intergovernmental Panel on Cli-
18 mate Change;

19 (II) additional research com-
20 pleted since the fall of 2005 that was
21 not included in the Working Group I
22 and II reports due to time con-
23 straints;

24 (III) the need for accurate as-
25 sessment of potential changes in hur-

1 ricane and typhoon intensity, track,
2 and frequency and of the current
3 modeling and forecasting capabilities
4 and the need for improvements in
5 forecasting of these parameters; and

6 (IV) the need for additional re-
7 search and monitoring to improve
8 forecasting of hurricanes and ty-
9 phoons and to understand the rela-
10 tionship between climate change and
11 hurricane and typhoon development.

12 (B) REPORT.—Not later than 18 months
13 after the date of enactment of this Act, the Na-
14 tional Academy of Sciences shall transmit to
15 the Committee on Science and Technology of
16 the House of Representatives and the Com-
17 mittee on Commerce, Science, and Transpor-
18 tation of the Senate a report on the key find-
19 ings of the study conducted under subpara-
20 graph (A).

21 (c) CLIMATE AND OTHER GLOBAL CHANGE DATA
22 MANAGEMENT.—

23 (1) PURPOSES.—The purposes of this sub-
24 section are to establish climate and other global
25 change data management and archiving as Federal

1 agency missions, and to establish Federal policies for
2 managing and archiving climate and other global
3 change data.

4 (2) DEFINITIONS.—For purposes of this sub-
5 section—

6 (A) the term “metadata” means informa-
7 tion describing the content, quality, condition,
8 and other characteristics of climate and other
9 global change data, compiled, to the maximum
10 extent possible, consistent with the require-
11 ments of the “Content Standard for Digital
12 Geospatial Metadata” (FGDC–STD–001–1998)
13 issued by the Federal Geographic Data Com-
14 mittee, or any successor standard approved by
15 the working group; and

16 (B) the term “working group” means the
17 interagency climate and other global change
18 data management working group established
19 under paragraph (3).

20 (3) INTERAGENCY CLIMATE AND OTHER GLOB-
21 AL CHANGE DATA MANAGEMENT WORKING GROUP.—

22 (A) ESTABLISHMENT.—The President
23 shall establish or designate an interagency cli-
24 mate and other global change data management
25 working group to make recommendations for

1 coordinating Federal climate and other global
2 change data management and archiving activi-
3 ties.

4 (B) MEMBERSHIP.—The working group
5 shall include the Administrator of the National
6 Aeronautics and Space Administration, the Ad-
7 ministrator of the National Oceanic and Atmos-
8 pheric Administration, the Secretary of Energy,
9 the Secretary of Defense, the Director of the
10 National Science Foundation, the Director of
11 the United States Geological Survey, the Archi-
12 vist of the United States, the Administrator of
13 the Environmental Protection Agency, the Sec-
14 retary of the Smithsonian Institution, or their
15 designees, and representatives of any other
16 Federal agencies the President considers appro-
17 priate.

18 (C) REPORTS.—Not later than 1 year after
19 the date of enactment of this Act, the working
20 group shall transmit a report to the Congress
21 containing the elements described in subpara-
22 graph (D). Not later than 4 years after the ini-
23 tial report under this subparagraph, and at
24 least once every 4 years thereafter, the working
25 group shall transmit reports updating the pre-

1 vious report. In preparing reports under this
2 subparagraph, the working group shall consult
3 with expected users of the data collected and
4 archived by the Program.

5 (D) CONTENTS.—The reports and updates
6 required under subparagraph (C) shall—

7 (i) include recommendations for the
8 establishment, maintenance, and accessi-
9 bility of a catalog identifying all available
10 climate and other global change data sets;

11 (ii) identify climate and other global
12 change data collections in danger of being
13 lost and recommend actions to prevent
14 such loss;

15 (iii) identify gaps in climate and other
16 global change data and recommend actions
17 to fill those gaps;

18 (iv) identify effective and compatible
19 procedures for climate and other global
20 change data collection, management, and
21 retention and make recommendations for
22 ensuring their use by Federal agencies and
23 other appropriate entities;

24 (v) develop and propose a coordinated
25 strategy for funding and allocating respon-

1 sibilities among Federal agencies for cli-
2 mate and other global change data collec-
3 tion, management, and retention;

4 (vi) make recommendations for ensur-
5 ing that particular attention is paid to the
6 collection, management, and archiving of
7 metadata;

8 (vii) make recommendations for en-
9 suring a unified and coordinated Federal
10 capital investment strategy with respect to
11 climate and other global change data col-
12 lection, management, and archiving;

13 (viii) evaluate the data record from
14 each observing system and make rec-
15 ommendations to ensure that delivered
16 data are free from time-dependent biases
17 and random errors before they are trans-
18 ferred to long-term archives; and

19 (ix) evaluate optimal design of obser-
20 vation system components to ensure a cost-
21 effective, adequate set of observations de-
22 tecting and tracking global change.

23 **SEC. 452. NATIONAL CLIMATE SERVICE.**

24 (a) **SHORT TITLE.**—This section may be cited as the
25 “National Climate Service Act of 2009”.

1 (b) PURPOSE.—The purpose of this section is to es-
2 tablish a National Climate Service and to define the activi-
3 ties to be undertaken within the National Oceanic and At-
4 mospheric Administration to—

5 (1) advance understanding of climate variability
6 and change at the global, national, regional, and
7 local levels;

8 (2) provide forecasts, warnings, and other infor-
9 mation to the public on variability and change in
10 weather and climate that affect geographic areas,
11 natural resources, infrastructure, economic sectors,
12 and communities; and

13 (3) support development of adaptation and re-
14 sponse plans by Federal agencies, State, local, and
15 tribal governments, the private sector, and the pub-
16 lic.

17 (c) DEFINITIONS.—In this section:

18 (1) ADVISORY COMMITTEE.—The term “Advi-
19 sory Committee” means the Climate Service Advi-
20 sory Committee established under subsection (f).

21 (2) DIRECTOR.—The term “Director” means
22 the Director of the Climate Service Office.

23 (3) REPRESENTATIVE.—The term “representa-
24 tive” means an individual who is not a full-time or
25 part-time employee of the Federal Government and

1 who is appointed to an advisory committee to rep-
2 resent the views of an entity or entities outside the
3 Federal Government.

4 (4) SPECIAL GOVERNMENT EMPLOYEE.—The
5 term “Special Government Employee” has the same
6 meaning as in section 202(a) of title 18, United
7 States Code.

8 (5) UNDER SECRETARY.—The term “Under
9 Secretary” means the Under Secretary of Commerce
10 for Oceans and Atmosphere.

11 (d) INTERAGENCY DEVELOPMENT OF A NATIONAL
12 CLIMATE SERVICE.—

13 (1) IN GENERAL.—The President shall—

14 (A) initiate a process within 30 days after
15 the date of enactment of this Act through the
16 Committee on Environment and Natural Re-
17 sources of the National Science and Technology
18 Council and led by the Director of the Office of
19 Science and Technology Policy, to evaluate al-
20 ternative structures to support a collaborative,
21 interagency research and operational program
22 that will achieve the goal of meeting the needs
23 of decisionmakers in—

24 (i) Federal agencies;

1 (ii) State, local, and tribal govern-
2 ments;

3 (iii) regional entities and other stake-
4 holders and users,
5 for reliable, timely, and relevant information re-
6 lated to climate variability and change;

7 (B) within 1 year after the date of enact-
8 ment of this Act complete pursuant to para-
9 graph (2) a survey of the needs of current and
10 future users of information related to climate
11 variability and change;

12 (C) within 2 years after the date of enact-
13 ment of this Act report to Congress under para-
14 graph (3) the results of the evaluation described
15 in subparagraph (A) and provide a plan to es-
16 tablish a collaborative, interagency research and
17 operational program to deliver information re-
18 lated to climate variability and change to all
19 users; and

20 (D) within 3 years after the date of enact-
21 ment of this Act, and after delivery of the re-
22 port to Congress required under subparagraph
23 (C), establish a National Climate Service, based
24 upon the information obtained through the

1 process described in subparagraph (A), that
2 meets the goal described in subparagraph (A).

3 (2) SURVEY OF NEED FOR CLIMATE SERV-
4 ICES.—

5 (A) IN GENERAL.—The Director of the Of-
6 fice of Science and Technology Policy, through
7 the Committee on Environment and Natural
8 Resources, shall provide a report to Congress
9 within 1 year after the date of enactment of
10 this Act that compiles information on the cur-
11 rent climate products being delivered by each
12 Federal agency and its partner organizations to
13 users and stakeholders, and on the needs of
14 users and stakeholders for new climate products
15 and services.

16 (B) CONTENTS OF THE REPORT.—The re-
17 port shall identify—

18 (i) specific user groups and stake-
19 holders that currently are served by each
20 Federal agency and its partner organiza-
21 tions;

22 (ii) the type of climate products and
23 services currently delivered to specific
24 users groups and stakeholders, and the
25 specific Federal agency office, program, or

1 partner organization that delivers these
2 products and services;

3 (iii) potential user groups and stake-
4 holders that may be served by expanding
5 climate products and services;

6 (iv) specific needs for new climate
7 products and services to be delivered by
8 each Federal agency and its partner orga-
9 nizations identified by user groups and
10 stakeholders;

11 (v) a characterization of the different
12 user and stakeholder groups that were sur-
13 veyed by each Federal agency; and

14 (vi) a list of non-Federal entities that
15 deliver climate products and services.

16 (3) REPORT TO CONGRESS.—

17 (A) IN GENERAL.—Within 2 years after
18 the date of enactment of this Act, the Director
19 of the Office of Science and Technology Policy
20 shall report to the President and the Congress
21 on a proposal, prepared through the Committee
22 on Environment and Natural Resources, to es-
23 tablish and operate a National Climate Service.
24 The report shall include—

- 1 (i) a description of the alternative
2 structures considered;
- 3 (ii) a description of the structure pro-
4 posed for a National Climate Service, in-
5 cluding a discussion of the benefits of this
6 structure as compared to the alternatives
7 considered;
- 8 (iii) designation of a specific office or
9 agency that will lead the National Climate
10 Service and that shall be accountable for
11 the daily operation of the National Climate
12 Service;
- 13 (iv) a description of the role and capa-
14 bility of each Federal agency, including a
15 list of all entities within each agency or
16 supported with agency funds that currently
17 provide or may provide climate products or
18 services;
- 19 (v) a description of the mechanisms
20 that will be used to ensure ongoing com-
21 munication and information exchange
22 among the Federal agencies and between
23 Federal agencies and their respective user
24 and stakeholder communities including—

- 1 (I) mechanisms to facilitate ongoing
2 dialogue with non-Federal organizations
3 providing climate services;
- 4 (II) mechanisms to facilitate ongoing
5 dialogue with regional, State,
6 local, and tribal governments, the private
7 sector, and other users and
8 stakeholders on the development and
9 delivery of climate services;
- 10 (III) mechanisms to collect information,
11 observations, and other data
12 relevant for improving climate products
13 and services; and
- 14 (IV) designation of points of contact
15 for each Federal agency with responsibilities
16 to deliver climate services;
- 17
18 (vi) a detailed description of the processes
19 and procedures that will be necessary
20 to coordinate observations and information
21 collection by different Federal agencies to
22 ensure the compatibility of information and
23 to facilitate data and information exchange
24 among Federal agencies and with non-Federal
25 entities, and a designation of the

1 agency or agencies that would be respon-
2 sible for ongoing oversight of these func-
3 tions;

4 (vii) a detailed description of how re-
5 search findings and climate impact assess-
6 ments produced through the United States
7 Global Change Research Program and the
8 other activities undertaken within the
9 United States Global Change Research
10 Program would be integrated with the ac-
11 tivities undertaken by a National Climate
12 Service;

13 (viii) a list of the existing observation
14 and monitoring systems or programs oper-
15 ated by each Federal agency that provide
16 data, observations, and other information
17 that may be used to develop or improve cli-
18 mate products and services;

19 (ix) a description of new infrastruc-
20 ture, equipment, personnel or other re-
21 sources, by agency, that may be needed to
22 achieve the goals of a National Climate
23 Service, and the time period over which
24 these new resources will be allocated;

1 (x) an identification of the activities
2 that may be undertaken in cooperation
3 with international partners;

4 (xi) the mechanisms established to
5 provide quality assurance and quality con-
6 trol of climate service products and serv-
7 ices, and the agency or agencies designated
8 to conduct and oversee these mechanisms;

9 (xii) an identification of non-Federal
10 entities that provide climate products and
11 services, and a description of the relation-
12 ship envisioned between a National Climate
13 Service and the non-Federal entities pro-
14 viding climate services; and

15 (xiii) responses to the comments re-
16 ceived during the public comment period.

17 (B) DRAFT REPORT.—Prior to the submis-
18 sion of the final report, the Director of the Of-
19 fice of Science and Technology Policy shall pub-
20 lish a draft report in the Federal Register with
21 a comment period of at least 30 days.

22 (C) CONSULTATION.—In developing the re-
23 port, the Director of the Office of Science and
24 Technology Policy shall consult with State,
25 local, and tribal governments, regional entities,

1 the private sector, and other users and stake-
2 holder groups, and Congress.

3 (4) ANNUAL REPORT.—The Director of the Of-
4 fice of Science and Technology Policy shall transmit
5 to the Congress at the time of the President’s fiscal
6 year 2013 budget request, and annually thereafter,
7 a report on the annual anticipated cost of carrying
8 out the research and operational activities of the Na-
9 tional Climate Service, with a description of the
10 budget for each Federal agency’s activities.

11 (e) CLIMATE SERVICE PROGRAM.—

12 (1) IN GENERAL.—The Under Secretary, build-
13 ing upon the resources of the National Weather
14 Service and other weather and climate programs in
15 the National Oceanic and Atmospheric Administra-
16 tion, shall establish a Climate Service Program.

17 (2) CLIMATE SERVICE OFFICE.—The Under
18 Secretary shall establish a Climate Service Office
19 and shall appoint a Director of the Office to collabo-
20 rate with the leadership of the National Oceanic and
21 Atmospheric Administration line offices to perform
22 the duties assigned to the Office. The Climate Serv-
23 ice Office shall—

24 (A) coordinate programs at the National
25 Oceanic and Atmospheric Administration to en-

1 sure the timely production and distribution of
2 data and information on global, national, re-
3 gional, and local climate variability and change
4 over all time scales relevant for planning and
5 response, including intraseasonal, interannual,
6 decadal, and multidecadal time periods;

7 (B) ensure exchange of information be-
8 tween the research and operational offices at
9 the National Oceanic and Atmospheric Admin-
10 istration to identify research needs for improv-
11 ing climate products and services and ensure
12 the timely and orderly transition of research
13 findings, improved technologies, models, and
14 other tools to the National Oceanic and Atmos-
15 pheric Administration's operations;

16 (C) ensure operational quality control of all
17 Climate Service Program products including a
18 transparent and open accounting of all the as-
19 sumptions built into the global, national, re-
20 gional, and local weather and climate computer
21 models upon which such products are based;

22 (D) ensure a continuous level of high-qual-
23 ity data collected through a national observa-
24 tion and monitoring infrastructure, including at

1 a minimum performing regular maintenance
2 and verification, and periodic upgrades;

3 (E) serve as liaison to and exchange infor-
4 mation with other Federal agencies that provide
5 climate services in order to—

6 (i) ensure the timely dissemination of
7 data and information on weather and cli-
8 mate produced by the National Oceanic
9 and Atmospheric Administration to other
10 Federal agencies;

11 (ii) ensure that data and information
12 collected by other Federal agencies rel-
13 evant to improving climate services are
14 made available to the National Oceanic
15 and Atmospheric Administration;

16 (iii) facilitate the development and de-
17 livery of climate products and services to
18 relevant stakeholders; and

19 (iv) obtain information from other
20 Federal agencies to improve the develop-
21 ment and dissemination by the National
22 Oceanic and Atmospheric Administration
23 of information on weather and climate to
24 other Federal agencies for the development

1 of climate service products by those agen-
2 cies;

3 (F) ensure cooperation and collaboration,
4 as appropriate, of the Climate Service Program
5 with State, local, and tribal governments, re-
6 gional entities, academic and nonprofit research
7 organizations, and private sector entities, in-
8 cluding weather information providers and
9 other stakeholders; and

10 (G) ensure exchange of data, information,
11 and research with the United States Global
12 Change Research Program to support the devel-
13 opment of assessments required under the Glob-
14 al Change Research Act of 1990 (15 U.S.C.
15 2921 et seq.).

16 (3) CLIMATE SERVICE PROGRAM.—

17 (A) IN GENERAL.—The Under Secretary
18 shall operate the Climate Service Program
19 through a national center, the Climate Service
20 Office, and a network of regional and local fa-
21 cilities, including the established regional and
22 local offices of the National Weather Service, 6
23 Regional Climate Centers, the offices of the Re-
24 gional Integrated Sciences and Assessments
25 program, the National Integrated Drought In-

1 formation System, and any other National Oce-
2 anic and Atmospheric Administration or Na-
3 tional Oceanic and Atmospheric Administration-
4 supported regional and local entities, as appro-
5 priate.

6 (B) REGIONAL CLIMATE CENTERS PRO-
7 GRAM.—The Under Secretary shall maintain a
8 network of 6 Regional Climate Centers to work
9 cooperatively with the State Climate Offices
10 to—

11 (i) collect and exchange data and in-
12 formation needed to characterize, under-
13 stand, and forecast regional and local
14 weather and climate;

15 (ii) facilitate collection and exchange
16 of data and information between the States
17 and Federal Government on weather and
18 climate in conjunction with the National
19 Climatic Data Center;

20 (iii) support research and observa-
21 tions;

22 (iv) obtain input on stakeholder needs
23 for weather and climate information and
24 products; and

1 (v) support State and local adaptation
2 and response planning.

3 (C) REGIONAL INTEGRATED SCIENCES AND
4 ASSESSMENTS PROGRAM.—The Under Secretary
5 shall maintain a network of offices as part of
6 the Regional Integrated Sciences and Assess-
7 ments Program. Such offices shall engage in co-
8 operative research, development, and dem-
9 onstration projects with the academic commu-
10 nity, State Climate Offices, Regional Climate
11 Offices, and other users and stakeholders on cli-
12 mate products, technologies, models, and other
13 tools to improve understanding and forecasting
14 of regional and local climate variability and
15 change and the effects on economic activities,
16 natural resources, and water availability, and
17 other effects on communities, to facilitate devel-
18 opment of regional and local adaptation plans
19 to respond to climate variability and change,
20 and any other needed research identified by the
21 Under Secretary or the Advisory Committee.

22 (D) OTHER OFFICES.—In carrying out the
23 functions of the Climate Service Program, the
24 Under Secretary shall utilize the assets and ex-
25 pertise of—

1 (i) the National Weather Service to—

2 (I) deliver operational weather
3 and climate forecasts, warnings, prod-
4 ucts, and information through the Cli-
5 mate Service Programs Division,
6 Local Weather Forecast Offices,
7 Weather Service Offices, and River
8 Forecast Centers; and

9 (II) develop climate forecast
10 models and tools through the National
11 Centers for Environmental Prediction;

12 (ii) the National Environmental Sat-
13 ellite, Data, and Information Service to
14 provide data services and support for prod-
15 uct development and operations through
16 the National Climatic Data Center and the
17 Regional Climate Centers;

18 (iii) the Office of Oceanic and Atmos-
19 pheric Research to—

20 (I) provide research on product
21 development;

22 (II) improve weather and climate
23 forecast models;

24 (III) provide new technologies
25 and methods of observation; and

1 (IV) oversee the National Ocea-
2 nic and Atmospheric Administration
3 supported research performed by the
4 Joint Cooperative Institutes, univer-
5 sities, and other non-Federal entities;
6 (iv) the National Integrated Drought

7 Information System to—

8 (I) provide an effective drought
9 warning system;

10 (II) coordinate and integrate
11 Federal research on droughts;

12 (III) collect and integrate infor-
13 mation on key indicators of drought;

14 (IV) make usable, reliable, and
15 timely forecasts and assessments of
16 drought, including assessments of the
17 severity of drought conditions and ef-
18 fects;

19 (V) communicate drought fore-
20 casts, conditions, and effects to Fed-
21 eral, State, tribal, and local govern-
22 ments, regional entities, the private
23 sector, and the public; and

24 (VI) coordinate with State Cli-
25 mate Offices and RISA teams to as-

1 sess management practices and tech-
2 nologies, and the effects of both, used
3 for drought mitigation at the local,
4 State, and regional levels; and

5 (v) any other National Oceanic and
6 Atmospheric Administration offices or pro-
7 grams, as appropriate.

8 (E) MISSION.—The Under Secretary shall
9 ensure that the core functions and missions of
10 the National Weather Service, the National In-
11 tegrated Drought Information System, and any
12 other programs within the National Oceanic
13 and Atmospheric Administration are not dimin-
14 ished or neglected by the establishment of the
15 Climate Service Program or the duties imposed
16 on such offices or programs under this para-
17 graph.

18 (F) PROGRAM ELEMENTS.—The Climate
19 Service Program shall—

20 (i) conduct analyses of and studies re-
21 lating to the effects of weather and climate
22 on communities, including effects on agri-
23 cultural production, natural resources, en-
24 ergy supply and demand, recreation, and
25 other sectors of the economy;

1 (ii) carry out observations, data collec-
2 tion, and monitoring of atmospheric and
3 oceanic conditions on a statewide, regional,
4 national, and global basis;

5 (iii) provide information and technical
6 support for Federal, regional, State, tribal,
7 and local government efforts to assess and
8 respond to climate variability and change;

9 (iv) develop systems for the manage-
10 ment and dissemination of data, informa-
11 tion, and assessments, including mecha-
12 nisms for consultation with current and
13 potential users and other stakeholders;

14 (v) conduct research to improve fore-
15 casting, characterization, and under-
16 standing of weather and climate variability
17 and change and its effects on communities,
18 including its effects on agricultural produc-
19 tion, natural resources, energy supply and
20 demand, recreation, and other sectors of
21 the economy; and

22 (vi) develop tools to facilitate the use
23 of climate information by local and re-
24 gional stakeholders.

25 (f) CLIMATE SERVICE ADVISORY COMMITTEE.—

1 (1) IN GENERAL.—The Under Secretary shall
2 establish a Climate Service Advisory Committee to
3 provide advice on—

4 (A) climate service product development;

5 (B) delivery of services to decisionmakers
6 and other stakeholders;

7 (C) infrastructure to support observations
8 and monitoring;

9 (D) computation and modeling needs, re-
10 search needs, and other resources needed to de-
11 velop, distribute, and ensure the utility of cli-
12 mate data, products, and services; and

13 (E) any other topics as may be requested
14 by the Under Secretary or Congress.

15 (2) MEMBERS.—

16 (A) IN GENERAL.—The Advisory Com-
17 mittee shall be composed of at least 25 mem-
18 bers appointed by the Under Secretary. Each
19 member of the Advisory Committee shall be
20 qualified either—

21 (i) by education, training, and experi-
22 ence to evaluate scientific and technical in-
23 formation on matters referred to the Advi-
24 sory Committee under this subsection; or

1 (ii) to evaluate the utility and need for
2 climate products by planners, decision-
3 makers, the private sector, and the public.

4 (B) TERMS OF SERVICE.—Members shall
5 be appointed for 3-year terms, renewable once,
6 and shall serve at the discretion of the Under
7 Secretary. Vacancy appointments shall be for
8 the remainder of the unexpired term of the va-
9 cancy, and an individual so appointed may sub-
10 sequently be appointed for 2 full 3-year terms
11 if the remainder of the unexpired term is less
12 than one year.

13 (C) CHAIRPERSON.—The Under Secretary
14 shall designate a chairperson from among the
15 members of the Advisory Committee. The des-
16 ignated Chairperson shall alternate between a
17 member who is appointed as a representative
18 and a member who is appointed as a Special
19 Government Employee.

20 (D) SUBCOMMITTEES.—

21 (i) ESTABLISHMENT.—The Advisory
22 Committee shall establish—

23 (I) a Subcommittee on Science
24 and Technology to advise the Climate
25 Service Program on needed research,

1 technology development, and addi-
2 tional observations, and on any other
3 scientific or technical issues as appro-
4 priate; and

5 (II) a Subcommittee on Product
6 Development and Delivery composed
7 primarily of representatives of the
8 community of potential users of the
9 products developed and delivered by
10 the Climate Service Program.

11 The Advisory Committee may establish
12 such additional subcommittees of its mem-
13 bers as may be necessary.

14 (ii) APPOINTMENT.—

15 (I) FULL ADVISORY COM-
16 MITTEE.—At least 50 percent of the
17 members of the Advisory Committee
18 shall be appointed as Special Govern-
19 ment Employees.

20 (II) SUBCOMMITTEES.—At least
21 75 percent of the members of the
22 Subcommittee on Science and Tech-
23 nology shall be appointed as Special
24 Government Employees. Not more
25 than 25 percent of the members of

1 the Subcommittee on Product Devel-
2 opment and Delivery shall be ap-
3 pointed as Special Government Em-
4 ployees.

5 (3) ADMINISTRATIVE PROVISIONS.—

6 (A) REPORTING.—The Advisory Com-
7 mittee shall report to the Under Secretary and
8 the appropriate requesting party.

9 (B) ADMINISTRATIVE SUPPORT.—The
10 Under Secretary shall provide administrative
11 support to the Advisory Committee.

12 (C) MEETINGS.—The Advisory Committee
13 shall meet at least twice each year and at other
14 times at the call of the Under Secretary or the
15 Chairperson.

16 (D) COMPENSATION AND EXPENSES.—A
17 member of the Advisory Committee shall not be
18 compensated for service on the Advisory Com-
19 mittee, but may be allowed travel expenses, in-
20 cluding per diem in lieu of subsistence, in ac-
21 cordance with subchapter I of chapter 57 of
22 title 5, United States Code.

23 (4) EXPIRATION.—Section 14 of the Federal
24 Advisory Committee Act (5 U.S.C. App.) shall not
25 apply to the Climate Service Advisory Committee.

1 (g) REPEAL.—The National Climate Program Act
2 (15 U.S.C. 2901 et seq.) is repealed.

3 (h) ESTABLISHMENT OF REGIONAL INTEGRATED
4 SCIENCES AND ASSESSMENTS TEAMS.—

5 (1) IN GENERAL.—In maintaining the network
6 of Regional Integrated Sciences and Assessments
7 (RISA) Teams under subsection (e)(3)(C), the
8 Under Secretary shall utilize a competitive, peer-re-
9 viewed selection process. Teams shall conduct ap-
10 plied regional climate research and projects to ad-
11 dress the needs of local and regional decisionmakers
12 for information and tools to develop adaptation and
13 response plans to climate variability and change.
14 The awards shall be administered through a cooper-
15 ative agreement between the National Oceanic and
16 Atmospheric Administration and the RISA Team.
17 Each award shall be for a period of five years.

18 (2) RISA TEAMS.—Teams shall be composed of
19 multi-institutional partnerships whose individual
20 members may include—

21 (A) institutions of higher education, as de-
22 fined in section 101(a) of the Higher Education
23 Act of 1965 (20 U.S.C. 1001(a));

1 (B) minority serving institutions, as de-
2 fined in section 371(a) of the Higher Education
3 Act of 1965; and

4 (C) nongovernmental research organiza-
5 tions, Federal agencies, State and local agen-
6 cies, tribal organizations, and for-profit entities.

7 (3) CONSIDERATIONS.—In making awards
8 under this subsection, the Under Secretary shall
9 consider—

10 (A) the overall geographic distribution of
11 RISA Teams and existing gaps in applied re-
12 search to support local and regional decision-
13 makers;

14 (B) the team’s ability to contribute to the
15 National Oceanic and Atmospheric Administra-
16 tion’s efforts to deliver climate services in the
17 region; and

18 (C) the team’s proposal to integrate social
19 and physical sciences research to address the
20 effects of climate variability and change on the
21 ecology, economy, infrastructure, and commu-
22 nities in the region.

23 (i) SURVEY OF NEED FOR CLIMATE SERVICES.—

24 (1) IN GENERAL.—The Under Secretary shall
25 provide a report to Congress within 9 months after

1 the date of enactment of this Act that compiles in-
2 formation on the current climate products being de-
3 livered by the National Oceanic and Atmospheric
4 Administration and its partner organizations to
5 users and stakeholders and on the needs of users
6 and stakeholders for new climate products and serv-
7 ices.

8 (2) CONTENTS OF REPORT.—The report shall
9 identify—

10 (A) specific user groups and stakeholders
11 that currently are served by the National Oee-
12 anic and Atmospheric Administration and its
13 partner organizations;

14 (B) the type of climate products and serv-
15 ices currently delivered to specific user groups
16 and stakeholders and the specific National Oee-
17 anic and Atmospheric Administration office or
18 partner organization that delivers these prod-
19 ucts and services;

20 (C) potential user groups and stakeholders
21 that may be served by expanding climate prod-
22 ucts and services; and

23 (D) specific needs for new climate products
24 and services identified by user groups and
25 stakeholders.

1 (3) CONSULTATION.—The Under Secretary
2 shall consult with the Climate Service Advisory Com-
3 mittee in the preparation of this report.

4 (j) IMPLEMENTATION PLAN.—

5 (1) IN GENERAL.—The Under Secretary shall
6 prepare a plan for creating a Climate Service Pro-
7 gram in the National Oceanic and Atmospheric Ad-
8 ministration and delivering climate products and
9 services to the National Oceanic and Atmospheric
10 Administration users and stakeholders. The plan
11 shall be submitted to the President and the Con-
12 gress within 1 year after the date of enactment of
13 this Act.

14 (2) DRAFT PLAN.—Prior to the submission of
15 the final plan, the Under Secretary shall publish a
16 draft plan in the Federal Register with a public
17 comment period of at least 30 days.

18 (3) CONTENTS.—The plan shall—

19 (A) identify the current gaps in climate
20 services and outline the process and resources
21 the National Oceanic and Atmospheric Admin-
22 istration will use to fill these gaps;

23 (B) describe the roles of the National Oee-
24 anic and Atmospheric Administration line of-
25 fices and the National Oceanic and Atmospheric

1 Administration partner organizations in the de-
2 velopment and delivery of climate products and
3 services;

4 (C) describe the development and imple-
5 mentation of quality assurance and control
6 mechanisms for climate products and services
7 delivered by the National Oceanic and Atmos-
8 pheric Administration and its partner organiza-
9 tions;

10 (D) identify the mechanisms and opportu-
11 nities for determining user needs and engaging
12 in a two-way dialogue with users that will in-
13 form climate product and service development
14 and delivery of authoritative, timely, and useful
15 information on climate variability and change
16 and the effects on local, State, regional, na-
17 tional, and global scales;

18 (E) identify new responsibilities or tasks to
19 be undertaken by existing National Oceanic and
20 Atmospheric Administration line offices and
21 partner organizations;

22 (F) identify new infrastructure, equipment,
23 personnel, or other resources needed to imple-
24 ment the proposed plan; and

1 (G) include responses to the comments re-
2 ceived during the public comment period.

3 (4) CONTINUITY OF SERVICE.—During the de-
4 velopment of the implementation plan, the public
5 comment period, and final plan, the National Oce-
6 anic and Atmospheric Administration shall continue
7 to provide climate services to the user community.

8 (5) CONSULTATION.—In developing the plan,
9 the Under Secretary shall consult with user groups
10 and stakeholders, State Climate Offices, Regional
11 Climate Centers, other Federal agencies, the Climate
12 Service Advisory Committee, and Congress.

13 (6) COORDINATION WITH INTERAGENCY DEVEL-
14 OPMENT OF A NATIONAL CLIMATE SERVICE.—In
15 preparing the plan required under this subsection,
16 the Under Secretary shall consult with the Director
17 of the Office of Science and Technology Policy to en-
18 sure that the program developed by the Agency will
19 serve the needs of a National Climate Service.

20 (k) SUMMER INSTITUTES PROGRAM AT THE RE-
21 GIONAL CLIMATE CENTERS.—

22 (1) DEFINITIONS.—In this subsection:

23 (A) SUMMER INSTITUTE.—The term
24 “summer institute” means an institute, oper-
25 ated during the summer, that—

1 (i) is hosted by a Regional Climate
2 Center or an eligible partner;

3 (ii) is operated for a period of not less
4 than 2 weeks; and

5 (iii) provides direct interaction of mid-
6 dle school and high school teacher and un-
7 dergraduate student participants with per-
8 sonnel of the Regional Climate Centers or
9 eligible partners who have scientific exper-
10 tise in weather and climate.

11 (B) ELIGIBLE PARTNER.—The term “eligi-
12 ble partner” means—

13 (i) the science, engineering, or mathe-
14 matics department at an institution of
15 higher education; or

16 (ii) a nonprofit entity with expertise
17 in providing educational enrichment experi-
18 ences for students.

19 (2) SUMMER INSTITUTES PROGRAM AUTHOR-
20 IZED.—

21 (A) IN GENERAL.—The Under Secretary
22 shall establish a summer institutes program, to
23 be conducted in cooperation with the Regional
24 Climate Centers, which may include an eligible
25 partner. The purpose of the program is to pro-

1 vide training and professional enrichment by
2 providing opportunities for interaction between
3 participants and climate scientists in a research
4 and operational setting to—

5 (i) enable middle school and high
6 school teachers to integrate weather and
7 climate sciences into their curricula; and

8 (ii) encourage undergraduate students
9 to pursue further study and careers in
10 weather and climate sciences.

11 (B) REQUIRED ACTIVITIES.—Funds au-
12 thorized under this subsection shall be used
13 for—

14 (i) providing educational opportunities
15 for middle school and high school teachers
16 and undergraduate students not achievable
17 inside the classroom;

18 (ii) exposing such teachers and stu-
19 dents to researchers, scientists, or engi-
20 neers who can demonstrate their daily ac-
21 tivities to the teachers and students;

22 (iii) exposing teachers and students to
23 scientific methods in a research discovery
24 setting; and

1 (iv) assisting teachers with curriculum
2 development in the areas of weather and
3 climate science.

4 (3) PRIORITY.—The Under Secretary shall en-
5 sure that each summer institute program authorized
6 under paragraph (2) includes students from groups
7 underrepresented in the fields of science, technology,
8 engineering, and mathematics teaching, including
9 women and members of minority groups.

10 (4) REPORT TO CONGRESS.—The Under Sec-
11 retary shall submit to Congress a biennial report on
12 the activities conducted under this subsection, in-
13 cluding the number of participants and the new cur-
14 ricula developed in atmospheric and climate sciences.

15 (I) CLEARINGHOUSE OF FEDERAL CLIMATE SERVICE
16 PRODUCTS AND LINKS TO FEDERAL AGENCIES PRO-
17 VIDING CLIMATE SERVICES.—

18 (1) IN GENERAL.—The Under Secretary shall
19 establish and maintain a clearinghouse to inform
20 State, local, and tribal governments and the public
21 about the information and services available to—

22 (A) assess the impacts of climate varia-
23 bility and change at different geographic scales;

1 (B) characterize and forecast climate vari-
2 ability and change for specific regions, re-
3 sources, and economic sectors; and

4 (C) develop and implement adaptation
5 strategies to reduce vulnerabilities to climate
6 variability and change.

7 (2) OTHER RESOURCES.—The clearinghouse
8 shall include hyperlinks to Internet sites that de-
9 scribe the activities, information, and resources of—

10 (A) the Federal Government;

11 (B) State and local governments;

12 (C) the private sector;

13 (D) nongovernmental and nonprofit enti-
14 ties and organizations; and

15 (E) international organizations.

16 (m) FINANCIAL BURDEN.—Nothing in this section
17 shall be construed as authorizing the National Climate
18 Service or the Climate Service Program at the National
19 Oceanic and Atmospheric Administration to require State,
20 tribal, or local governments to develop adaptation or re-
21 sponse plans or to take any other action in response to
22 variations in climate that may result in an increased finan-
23 cial burden to such governments.

1 **SEC. 453. STATE PROGRAMS TO BUILD RESILIENCE TO CLI-**
2 **MATE CHANGE IMPACTS.**

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

4 (1) ALLOWANCE.—The term “allowance”
5 means an emission allowance established under sec-
6 tion 721 of the Clean Air Act (as added by section
7 311 of this Act).

8 (2) INDIAN TRIBE.—The term “Indian tribe”
9 has the meaning given the term in section 4 of the
10 Indian Self-Determination and Education Assistance
11 Act (25 U.S.C. 450b).

12 (3) VINTAGE YEAR.—The term “vintage year”
13 has the meaning given that term under section 700
14 of the Clean Air Act (as added by section 312 of this
15 Act).

16 (b) REGULATIONS; COORDINATION.—Not later than
17 2 years after the date of enactment of this Act, the Admin-
18 istrator, or such Federal agency head or heads as the
19 President may designate, shall promulgate regulations to
20 implement the requirements of this section. If the Presi-
21 dent designates more than 1 Federal agency to implement
22 this section, the President shall require such agencies to
23 establish a memorandum of understanding providing for
24 coordination of rulemaking and other implementing activi-
25 ties, in accordance with the requirements of this section.

26 (c) DISTRIBUTION OF ALLOWANCES.—

1 (1) IN GENERAL.—Not later than September
2 30 of each of calendar years 2011 through 2049, the
3 Administrator shall distribute, in accordance with
4 this section, allowances allocated for the following
5 vintage year pursuant to section 782(l) of the Clean
6 Air Act (as added by section 321 of this Act). The
7 Administrator shall reserve 1 percent of such allow-
8 ances for distribution to Indian tribes in accordance
9 with subsection (d). The remainder of such allow-
10 ances shall be distributed ratably among the States
11 based on the product of—

12 (A) each State’s population; and

13 (B) each State’s allocation factor as deter-
14 mined under paragraph (2).

15 (2) STATE ALLOCATION FACTORS.—

16 (A) IN GENERAL.—Except as provided in
17 subparagraph (B), the allocation factor for a
18 State shall be the quotient of—

19 (i) the per capita income of all indi-
20 viduals in the United States, divided by

21 (ii) the per capita income of all indi-
22 viduals in such State.

23 (B) LIMITATION.—If the allocation factor
24 for a State as calculated under subparagraph

25 (A) would exceed 1.2, then the allocation factor

1 for such State shall be 1.2. If the allocation fac-
2 tor for a State as calculated under subpara-
3 graph (A) would be less than 0.8, then the allo-
4 cation factor for such State shall be 0.8.

5 (C) PER CAPITA INCOME.—For purposes
6 of this paragraph, per capita income shall be—

7 (i) determined at 2-year intervals; and

8 (ii) subject to subparagraph (D),

9 equal to the average of the annual per cap-
10 ita incomes for the most recent period of
11 3 consecutive years for which satisfactory
12 data are available from the Department of
13 Commerce at the time such determination
14 is made.

15 (D) REVENUE DIRECTLY RESULTING FROM
16 A PRESIDENTIALLY DECLARED MAJOR DIS-
17 ASTER.—For purposes of this paragraph, per
18 capita income from one or more of the following
19 sources shall be reduced or excluded if the Sec-
20 retary of Commerce (in consultation with the
21 Administrator and the secretaries or adminis-
22 trators of the departments or agencies involved)
23 determines that the income accrues to persons
24 as the result of a Major Disaster (as declared
25 by the President of the United States) and if

1 the Secretary finds that the inclusion of one or
2 more of these income sources, in whole or in
3 part, results in a transitory, rather than a sus-
4 tainable, increase in a State's per capita income
5 level relative to the national average:

6 (i) Property and casualty insurance
7 (including homeowners and renters insur-
8 ance).

9 (ii) The National Flood Insurance
10 Program of the Federal Emergency Man-
11 agement Agency.

12 (iii) The Individual and Family
13 Grants Program of the Federal Emergency
14 Management Agency.

15 (iv) The Disaster Housing Program of
16 the Federal Emergency Management
17 Agency.

18 (v) The Community Development
19 Block Grant Program of the Department
20 of Housing and Urban Development.

21 (vi) The Disaster Unemployment As-
22 sistance Program of the Department of
23 Labor.

24 (vii) Any other source determined ap-
25 propriate by the Administrator.

1 (d) DISTRIBUTION TO INDIAN TRIBES.—The Admin-
2 istrator, or such Federal agency head or heads as the
3 President may designate, shall promulgate regulations es-
4 tablishing a program to distribute allowances on a com-
5 petitive basis to Indian tribes, in accordance with the re-
6 quirements of this section. Such allowances shall be used
7 exclusively in accordance with the requirements of sub-
8 section (e). Beginning with vintage year 2015, Indian
9 tribes with a tribal adaptation plan approved pursuant to
10 subsection (f) shall be given priority in selection of pro-
11 grams or projects for receipt of emission allowances under
12 this subsection.

13 (e) USE OF ALLOWANCES.—

14 (1) IN GENERAL.—States and Indian tribes
15 shall use allowances distributed under this section
16 exclusively for the implementation of projects, pro-
17 grams, or measures to build resilience to the impacts
18 of climate change, including—

19 (A) extreme weather events such as flood-
20 ing and tropical cyclones;

21 (B) more frequent heavy precipitation
22 events;

23 (C) water scarcity and adverse impacts on
24 water quality;

25 (D) stronger and longer heat waves;

- 1 (E) more frequent and severe droughts;
- 2 (F) rises in sea level;
- 3 (G) ecosystem disruption;
- 4 (H) increased air pollution; and
- 5 (I) effects on public health.

6 (2) PRIORITY IN PROJECTS TO REDUCE FLOOD
7 EVENTS.—When implementing any project, program,
8 or measure supported under this section and de-
9 signed to reduce flood events, a State or Indian tribe
10 should consider prioritizing projects that seek to—

11 (A) mitigate the destructive impacts of cli-
12 mate-related increases in the duration, fre-
13 quency, or magnitude of rainfall or runoff, in-
14 cluding snowmelt runoff, as well as hurricanes;

15 (B) improve flood protection for densely
16 populated urban areas; and

17 (C) mitigate the destructive impact of
18 ocean-related climate change effects, including
19 effects on bays, estuaries, populated barrier is-
20 lands and other ocean-related features, through
21 a variety of means and measures, including the
22 construction of jetties, levies, and other coastal
23 structures in densely populated coastal areas
24 impacted by climate change.

1 (3) STATE AND TRIBAL ADAPTATION PLANS.—

2 Upon approval of a State or tribal climate adapta-
3 tion plan under subsection (f), allowances received
4 by a State under this section shall be used in ac-
5 cordance with such plan.

6 (4) SUPPLEMENT, NOT SUPPLANT.—It is the
7 intent of the Congress that allowances distributed to
8 carry out this section should be used to supplement,
9 and not replace, existing sources of funding used to
10 build resilience to the impacts of climate change
11 identified in paragraph (1).

12 (f) STATE AND TRIBAL CLIMATE ADAPTATION
13 PLANS.—

14 (1) IN GENERAL.—The regulations promulgated
15 pursuant to subsection (b) shall include require-
16 ments for submission and approval of State or tribal
17 climate adaptation plans under this section. Begin-
18 ning with vintage year 2015, distribution of allow-
19 ances to a State pursuant to this section shall be
20 contingent on approval of a State climate adaptation
21 plan for such State that meets the requirements of
22 such regulations. Requirements for tribal climate ad-
23 aptation plans may vary from those of State adapta-
24 tion plans to the extent necessary to account for the
25 special circumstances of Indian tribes.

1 (2) REQUIREMENTS.—Regulations promulgated
2 under this section shall require, at minimum, that
3 State and tribal climate adaptation plans—

4 (A) assess and prioritize the State’s or In-
5 dian tribe’s vulnerability to a broad range of
6 impacts of climate change, based on the best
7 available science;

8 (B) include an assessment of potential for
9 carbon reduction through changes to land man-
10 agement policies (including enhancement or
11 protection of forest carbon sinks);

12 (C) identify and prioritize specific cost-ef-
13 fective projects, programs, and measures to
14 build resilience to current and predicted im-
15 pacts of climate change;

16 (D) ensure that the State or Indian tribe
17 fully considers and undertakes, to the maximum
18 extent practicable, initiatives that—

19 (i) protect or enhance natural eco-
20 system functions, including protection,
21 maintenance, or restoration of natural in-
22 frastructure such as wetlands, reefs, and
23 barrier islands to buffer communities from
24 floodwaters or storms, watershed protec-
25 tion to maintain water quality and ground-

1 water recharge, or floodplain restoration to
2 improve natural flood control capacity; or

3 (ii) use non-structural approaches in-
4 cluding practices that utilize, enhance, or
5 mimic the natural hydrologic cycle pro-
6 cesses of infiltration, evapotranspiration,
7 and reuse;

8 (E) be revised and resubmitted for ap-
9 proval not less frequently than every 5 years;
10 and

11 (F) be consistent with Federal conserva-
12 tion and environmental laws and, to the max-
13 imum extent practicable, avoid environmental
14 degradation.

15 (3) COORDINATION WITH PRIOR PLANNING EF-
16 FORTS.—In implementing this subsection, the Ad-
17 ministrators, or such Federal agency head or heads
18 as the President may designate, shall—

19 (A) draw upon lessons learned and best
20 practices from preexisting State and tribal cli-
21 mate adaptation planning efforts;

22 (B) seek to avoid duplication of such ef-
23 forts; and

24 (C) ensure that the plans developed under
25 this section reflect and are fully consistent with

1 State natural resources adaptation plans devel-
2 oped under section 479 of this Act.

3 (g) REPORTING.—Each State or Indian tribe receiv-
4 ing allowances under this section shall submit to the Ad-
5 ministrator, or such Federal agency head or heads as the
6 President may designate, within 12 months after each re-
7 ceipt of such allowances and once every 2 years thereafter
8 until the value of any allowances received under this sec-
9 tion has been fully expended, a report that—

10 (1) provides a full accounting for the State's or
11 Indian tribe's use of allowances distributed under
12 this section, including a description of the projects,
13 programs, or measures supported using such allow-
14 ances;

15 (2) includes a report prepared by an inde-
16 pendent third party, in accordance with such regula-
17 tions as are promulgated by the Administrator or
18 such other Federal agency head or heads as the
19 President may designate, evaluating the performance
20 of the projects, programs, or measures supported
21 under this section; and

22 (3) identifies any use by the State or Indian
23 tribe of allowances distributed under this section for
24 the reduction of flood and storm damage and the ef-

1 nizations, and citizens, should use all practicable means
2 and measures—

3 (1) to assist the efforts of public health and
4 health care professionals, first responders, States,
5 tribes, municipalities, and local communities to in-
6 corporate measures to prepare health systems to re-
7 spond to the impacts of climate change;

8 (2) to ensure—

9 (A) that the Nation’s health professionals
10 have sufficient information to prepare for and
11 respond to the adverse health impacts of cli-
12 mate change;

13 (B) the utility and value of scientific re-
14 search in advancing understanding of—

15 (i) the health impacts of climate
16 change; and

17 (ii) strategies to prepare for and re-
18 spond to the health impacts of climate
19 change;

20 (C) the identification of communities vul-
21 nerable to the health effects of climate change
22 and the development of strategic response plans
23 to be carried out by health professionals for
24 those communities;

1 (D) the improvement of health status and
2 health equity through efforts to prepare for and
3 respond to climate change; and

4 (E) the inclusion of health policy in the de-
5 velopment of climate change responses;

6 (3) to encourage further research, interdiscipli-
7 nary partnership, and collaboration among stake-
8 holders in order to—

9 (A) understand and monitor the health im-
10 pacts of climate change; and

11 (B) improve public health knowledge and
12 response strategies to climate change;

13 (4) to enhance preparedness activities, and pub-
14 lic health infrastructure, relating to climate change
15 and health;

16 (5) to encourage each and every American to
17 learn about the impacts of climate change on health;
18 and

19 (6) to assist the efforts of developing nations to
20 incorporate measures to prepare health systems to
21 respond to the impacts of climate change.

22 **SEC. 462. RELATIONSHIP TO OTHER LAWS.**

23 Nothing in this subpart in any manner limits the au-
24 thority provided to or responsibility conferred on any Fed-
25 eral department or agency by any provision of any law

1 (including regulations) or authorizes any violation of any
2 provision of any law (including regulations), including any
3 health, energy, environmental, transportation, or any
4 other law or regulation.

5 **SEC. 463. NATIONAL STRATEGIC ACTION PLAN.**

6 (a) REQUIREMENT.—

7 (1) IN GENERAL.—The Secretary of Health and
8 Human Services, within 2 years after the date of the
9 enactment of this Act, on the basis of the best avail-
10 able science, and in consultation pursuant to para-
11 graph (2), shall publish a strategic action plan to as-
12 sist health professionals in preparing for and re-
13 sponding to the impacts of climate change on public
14 health in the United States and other nations, par-
15 ticularly developing nations.

16 (2) CONSULTATION.—In developing or making
17 any revision to the national strategic action plan, the
18 Secretary shall—

19 (A) consult with the Director of the Cen-
20 ters for Disease Control and Prevention, the
21 Administrator of the Environmental Protection
22 Agency, the Director of the National Institutes
23 of Health, the Secretary of Energy, other ap-
24 propriate Federal agencies, Indian tribes, State
25 and local governments, public health organiza-

1 tions, scientists, and other interested stake-
2 holders; and

3 (B) provide opportunity for public input.

4 (b) CONTENTS.—

5 (1) IN GENERAL.—The Secretary, acting
6 through the Director of the Centers for Disease
7 Control and Prevention and other appropriate Fed-
8 eral agencies, shall assist health professionals in pre-
9 paring for and responding effectively and efficiently
10 to the health effects of climate change through
11 measures including—

12 (A) developing, improving, integrating, and
13 maintaining domestic and international disease
14 surveillance systems and monitoring capacity to
15 respond to health-related effects of climate
16 change, including on topics addressing—

17 (i) water, food, and vector borne infec-
18 tious diseases and climate change;

19 (ii) pulmonary effects, including re-
20 sponses to aeroallergens;

21 (iii) cardiovascular effects, including
22 impacts of temperature extremes;

23 (iv) air pollution health effects, includ-
24 ing heightened sensitivity to air pollution;

25 (v) hazardous algal blooms;

1 (vi) mental and behavioral health im-
2 pacts of climate change;

3 (vii) the health of refugees, displaced
4 persons, and vulnerable communities;

5 (viii) the implications for communities
6 vulnerable to health effects of climate
7 change, as well as strategies for responding
8 to climate change within these commu-
9 nities; and

10 (ix) local and community-based health
11 interventions for climate-related health im-
12 pacts;

13 (B) creating tools for predicting and moni-
14 toring the public health effects of climate
15 change on the international, national, regional,
16 State, and local levels, and providing technical
17 support to assist in their implementation;

18 (C) developing public health communica-
19 tions strategies and interventions for extreme
20 weather events and disaster response situations;

21 (D) identifying and prioritizing commu-
22 nities and populations vulnerable to the health
23 effects of climate change, and determining ac-
24 tions and communication strategies that should
25 be taken to inform and protect these commu-

1 nities and populations from the health effects of
2 climate change;

3 (E) developing health communication, pub-
4 lic education, and outreach programs aimed at
5 public health and health care professionals, as
6 well as the general public, to promote prepared-
7 ness and response strategies relating to climate
8 change and public health, including the identi-
9 fication of greenhouse gas reduction behaviors
10 that are health-promoting; and

11 (F) developing academic and regional cen-
12 ters of excellence devoted to—

13 (i) researching relationships between
14 climate change and health;

15 (ii) expanding and training the public
16 health workforce to strengthen the capacity
17 of such workforce to respond to and pre-
18 pare for the health effects of climate
19 change;

20 (iii) creating and supporting academic
21 fellowships focusing on the health effects
22 of climate change; and

23 (iv) training senior health ministry of-
24 ficials from developing nations to strength-
25 en the capacity of such nations to—

1 (I) prepare for and respond to
2 the health effects of climate change;
3 and

4 (II) build an international net-
5 work of public health professionals
6 with the necessary climate change
7 knowledge base;

8 (G) using techniques, including health im-
9 pact assessments, to assess various climate
10 change public health preparedness and response
11 strategies on international, national, State, re-
12 gional, tribal, and local levels, and make rec-
13 ommendations as to those strategies that best
14 protect the public health;

15 (H)(i) assisting in the development, imple-
16 mentation, and support of State, regional, trib-
17 al, and local preparedness, communication, and
18 response plans (including with respect to the
19 health departments of such entities) to antici-
20 pate and reduce the health threats of climate
21 change; and

22 (ii) pursuing collaborative efforts to de-
23 velop, integrate, and implement such plans;

24 (I) creating a program to advance research
25 as it relates to the effects of climate change on

1 public health across Federal agencies, including
2 research to—

3 (i) identify and assess climate change
4 health effects preparedness and response
5 strategies;

6 (ii) prioritize critical public health in-
7 frastructure projects related to potential
8 climate change impacts that affect public
9 health; and

10 (iii) coordinate preparedness for cli-
11 mate change health impacts, including the
12 development of modeling and forecasting
13 tools;

14 (J) providing technical assistance for the
15 development, implementation, and support of
16 preparedness and response plans to anticipate
17 and reduce the health threats of climate change
18 in developing nations; and

19 (K) carrying out other activities deter-
20 mined appropriate by the Secretary to plan for
21 and respond to the impacts of climate change
22 on public health.

23 (c) REVISION.—The Secretary shall revise the na-
24 tional strategic action plan not later than July 1, 2014,
25 and every 4 years thereafter, to reflect new information

1 collected pursuant to implementation of the national stra-
2 tegic action plan and otherwise, including information
3 on—

4 (1) the status of critical environmental health
5 parameters and related human health impacts;

6 (2) the impacts of climate change on public
7 health; and

8 (3) advances in the development of strategies
9 for preparing for and responding to the impacts of
10 climate change on public health.

11 (d) IMPLEMENTATION.—

12 (1) IMPLEMENTATION THROUGH HHS.—The
13 Secretary shall exercise the Secretary’s authority
14 under this subpart and other provisions of Federal
15 law to achieve the goals and measures of the na-
16 tional strategic action plan.

17 (2) OTHER PUBLIC HEALTH PROGRAMS AND
18 INITIATIVES.—The Secretary and Federal officials of
19 other relevant Federal agencies shall administer
20 public health programs and initiatives authorized by
21 provisions of law other than this subpart, subject to
22 the requirements of such statutes, in a manner de-
23 signed to achieve the goals of the national strategic
24 action plan.

1 (3) CDC.—In furtherance of the national strategic action plan, the Secretary, acting through the
2 Director of the Centers for Disease Control and Prevention and the head of any other appropriate Federal agency, shall—

3 (A) conduct scientific research to assist
4 health professionals in preparing for and responding to the impacts of climate change on
5 public health; and

6 (B) provide funding for—

7 (i) research on the health effects of
8 climate change; and

9 (ii) preparedness planning on the
10 international, national, State, tribal, regional, and local levels to respond to or reduce the burden of health effects of climate
11 change; and

12 (C) carry out other activities determined
13 appropriate by the Director or the head of such
14 agency to prepare for and respond to the impacts of climate change on public health.

15 **SEC. 464. ADVISORY BOARD.**

16 (a) ESTABLISHMENT.—The Secretary shall establish
17 a permanent science advisory board comprised of not less
18 than 10 and not more than 20 members.

1 (b) APPOINTMENT OF MEMBERS.—The Secretary
2 shall appoint the members of the science advisory board
3 from among individuals—

4 (1) who have expertise in public health and
5 human services, climate change, and other relevant
6 disciplines; and

7 (2) at least ½ of whom are recommended by
8 the President of the National Academy of Sciences.

9 (c) FUNCTIONS.—The science advisory board shall—

10 (1) provide scientific and technical advice and
11 recommendations to the Secretary on the domestic
12 and international impacts of climate change on pub-
13 lic health, populations and regions particularly vul-
14 nerable to the effects of climate change, and strate-
15 gies and mechanisms to prepare for and respond to
16 the impacts of climate change on public health; and

17 (2) advise the Secretary regarding the best
18 science available for purposes of issuing the national
19 strategic action plan.

20 **SEC. 465. REPORTS.**

21 (a) NEEDS ASSESSMENT.—

22 (1) IN GENERAL.—The Secretary shall seek to
23 enter into, by not later than 6 months after the date
24 of the enactment of this Act, an agreement with the

1 National Research Council and the Institute of Med-
2 icine to complete a report that—

3 (A) assesses the needs for health profes-
4 sionals to prepare for and respond to climate
5 change impacts on public health; and

6 (B) recommends programs to meet those
7 needs.

8 (2) SUBMISSION.—The agreement under para-
9 graph (1) shall require the completed report to be
10 submitted to the Congress and the Secretary and
11 made publicly available not later than 1 year after
12 the date of the agreement.

13 (b) CLIMATE CHANGE HEALTH PROTECTION AND
14 PROMOTION REPORTS.—

15 (1) IN GENERAL.—The Secretary, in consulta-
16 tion with the advisory board established under sec-
17 tion 464, shall ensure the issuance of reports to aid
18 health professionals in preparing for and responding
19 to the adverse health effects of climate change
20 that—

21 (A) review scientific developments on
22 health impacts of climate change; and

23 (B) recommend changes to the national
24 strategic action plan.

1 (2) SUBMISSION.—The Secretary shall submit
2 the reports required by paragraph (1) to the Con-
3 gress and make such reports publicly available not
4 later than July 1, 2013, and every 4 years there-
5 after.

6 **SEC. 466. DEFINITIONS.**

7 In this subpart:

8 (1) HEALTH IMPACT ASSESSMENT.—The term
9 “health impact assessment” means a combination of
10 procedures, methods, and tools by which a policy,
11 program, or project may be judged as to its potential
12 effects on the health of a population, and the dis-
13 tribution of those effects within the population.

14 (2) NATIONAL STRATEGIC ACTION PLAN.—The
15 term “national strategic action plan” means the
16 plan issued and revised under section 463.

17 (3) SECRETARY.—Unless otherwise specified,
18 the term “Secretary” means the Secretary of Health
19 and Human Services.

20 **SEC. 467. CLIMATE CHANGE HEALTH PROTECTION AND**
21 **PROMOTION FUND.**

22 (a) ESTABLISHMENT OF FUND.—There is hereby es-
23 tablished in the Treasury a separate account that shall
24 be known as the Climate Change Health Protection and
25 Promotion Fund.

1 (b) AVAILABILITY OF AMOUNTS.—All amounts de-
2 posited into the Climate Change Health Protection and
3 Promotion Fund shall be available to the Secretary to
4 carry out this subpart subject to further appropriation.

5 (c) DISTRIBUTION OF FUNDS BY HHS.—In carrying
6 out this subpart, the Secretary may make funds deposited
7 in the Climate Change Health Protection and Promotion
8 Fund available to—

9 (1) other departments, agencies, and offices of
10 the Federal Government;

11 (2) foreign, State, tribal, and local govern-
12 ments; and

13 (3) such other entities as the Secretary deter-
14 mines appropriate.

15 (d) SUPPLEMENT, NOT REPLACE.—It is the intent
16 of Congress that funds made available to carry out this
17 subpart should be used to supplement, and not replace,
18 existing sources of funding for public health.

19 **Subpart C—Natural Resource Adaptation**

20 **SEC. 471. PURPOSES.**

21 The purposes of this subpart are to—

22 (1) establish an integrated Federal program to
23 protect, restore, and conserve the Nation’s natural
24 resources in response to the threats of climate
25 change and ocean acidification; and

1 life, or plants to move within a landscape as needed
2 for migration, gene flow, or dispersal, or in response
3 to the impacts of climate change and ocean acidifica-
4 tion or other impacts.

5 (3) ECOLOGICAL PROCESSES.—The term “eco-
6 logical processes” means biological, chemical, or
7 physical interaction between the biotic and abiotic
8 components of an ecosystem and includes—

- 9 (A) nutrient cycling;
- 10 (B) pollination;
- 11 (C) predator-prey relationships;
- 12 (D) soil formation;
- 13 (E) gene flow;
- 14 (F) disease epizootiology;
- 15 (G) larval dispersal and settlement;
- 16 (H) hydrological cycling;
- 17 (I) decomposition; and
- 18 (J) disturbance regimes such as fire and
19 flooding.

20 (4) HABITAT.—The term “habitat” means the
21 physical, chemical, and biological properties that are
22 used by fish, wildlife, or plants for growth, reproduc-
23 tion, survival, food, water, and cover, on a tract of
24 land, in a body of water, or in an area or region.

1 (5) INDIAN TRIBE.—The term “Indian tribe”
2 has the meaning given the term in section 4 of the
3 Indian Self-Determination and Education Assistance
4 Act (25 U.S.C. 450b).

5 (6) NATURAL RESOURCES.—The term “natural
6 resources” means the terrestrial, freshwater, estua-
7 rine, and marine fish, wildlife, plants, land, water,
8 habitats, and ecosystems of the United States.

9 (7) NATURAL RESOURCES ADAPTATION.—The
10 term “natural resources adaptation” means the pro-
11 tection, restoration, and conservation of natural re-
12 sources to enable them to become more resilient,
13 adapt to, and withstand the impacts of climate
14 change and ocean acidification.

15 (8) RESILIENCE.—Each of the terms “resil-
16 ience” and “resilient” means the ability to resist or
17 recover from disturbance and preserve diversity, pro-
18 ductivity, and sustainability.

19 (9) STATE.—The term “State” means—

20 (A) a State of the United States;

21 (B) the District of Columbia; and

22 (C) the Commonwealth of Puerto Rico,
23 Guam, the United States Virgin Islands, the
24 Northern Mariana Islands, and American
25 Samoa.

1 **SEC. 474. COUNCIL ON ENVIRONMENTAL QUALITY.**

2 The Chair of the Council on Environmental Quality
3 shall—

4 (1) advise the President on implementation and
5 development of—

6 (A) a Natural Resources Climate Change
7 Adaptation Strategy required under section
8 476; and

9 (B) Federal natural resource agency adap-
10 tation plans required under section 478;

11 (2) serve as the Chair of the Natural Resources
12 Climate Change Adaptation Panel established under
13 section 475; and

14 (3) coordinate Federal agency strategies, plans,
15 programs, and activities related to protecting, restor-
16 ing, and maintaining natural resources to become
17 more resilient, adapt to, and withstand the impacts
18 of climate change and ocean acidification.

19 **SEC. 475. NATURAL RESOURCES CLIMATE CHANGE ADAP-**
20 **TATION PANEL.**

21 (a) ESTABLISHMENT.—Not later than 90 days after
22 the date of the enactment of this subpart, the President
23 shall establish a Natural Resources Climate Change Adap-
24 tation Panel, consisting of—

25 (1) the head, or their designee, of each of—

1 (A) the National Oceanic and Atmospheric
2 Administration;

3 (B) the Forest Service;

4 (C) the National Park Service;

5 (D) the United States Fish and Wildlife
6 Service;

7 (E) the Bureau of Land Management;

8 (F) the United States Geological Survey;

9 (G) the Bureau of Reclamation;

10 (H) the Bureau of Indian Affairs;

11 (I) the Environmental Protection Agency;

12 and

13 (J) the Army Corps of Engineers;

14 (2) the Chair of the Council on Environmental
15 Quality; and

16 (3) the heads of such other Federal agencies or
17 departments with jurisdiction over natural resources
18 of the United States, as determined by the Presi-
19 dent.

20 (b) FUNCTIONS.—The Panel shall serve as a forum
21 for interagency consultation on and the coordination of the
22 development and implementation of a national Natural
23 Resources Climate Change Adaptation Strategy required
24 under section 476.

1 (c) CHAIR.—The Chair of the Council on Environ-
2 mental Quality shall serve as the Chair of the Panel.

3 **SEC. 476. NATURAL RESOURCES CLIMATE CHANGE ADAP-**
4 **TATION STRATEGY.**

5 (a) IN GENERAL.—Not later than one year after the
6 date of the enactment of this subpart, the President,
7 through the Natural Resources Climate Change Adapta-
8 tion Panel established under section 475, shall develop a
9 Natural Resources Climate Change Adaptation Strategy
10 to protect, restore, and conserve natural resources to en-
11 able them to become more resilient, adapt to, and with-
12 stand the impacts of climate change and ocean acidifica-
13 tion and to identify opportunities to mitigate those im-
14 pacts.

15 (b) DEVELOPMENT AND REVISION.—In developing
16 and revising the Strategy, the Panel shall—

17 (1) base the strategy on the best available
18 science;

19 (2) develop the strategy in close cooperation
20 with States and Indian tribes;

21 (3) coordinate with other Federal agencies as
22 appropriate;

23 (4) consult with local governments, conservation
24 organizations, scientists, and other interested stake-
25 holders;

1 (5) provide public notice and opportunity for
2 comment; and

3 (6) review and revise the Strategy every 5 years
4 to incorporate new information regarding the im-
5 pacts of climate change and ocean acidification on
6 natural resources and advances in the development
7 of strategies for becoming more resilient and adapt-
8 ing to those impacts.

9 (c) CONTENTS.—The National Resources Adaptation
10 Strategy shall include—

11 (1) an assessment of the vulnerability of nat-
12 ural resources to climate change and ocean acidifica-
13 tion, including the short-term, medium-term, long-
14 term, cumulative, and synergistic impacts;

15 (2) a description of current research, observa-
16 tion, and monitoring activities at the Federal, State,
17 tribal, and local level related to the impacts of cli-
18 mate change and ocean acidification on natural re-
19 sources, as well as identification of research and
20 data needs and priorities;

21 (3) identification of natural resources that are
22 likely to have the greatest need for protection, res-
23 toration, and conservation because of the adverse ef-
24 fects of climate change and ocean acidification;

1 (4) specific protocols for integrating climate
2 change and ocean acidification adaptation strategies
3 and activities into the conservation and management
4 of natural resources by Federal departments and
5 agencies to ensure consistency across agency juris-
6 dictions and resources;

7 (5) specific actions that Federal departments
8 and agencies shall take to protect, conserve, and re-
9 store natural resources to become more resilient,
10 adapt to, and withstand the impacts of climate
11 change and ocean acidification, including a timeline
12 to implement those actions;

13 (6) specific mechanisms for ensuring commu-
14 nication and coordination among Federal depart-
15 ments and agencies, and between Federal depart-
16 ments and agencies and State natural resource agen-
17 cies, United States territories, Indian tribes, private
18 landowners, conservation organizations, and other
19 nations that share jurisdiction over natural resources
20 with the United States;

21 (7) specific actions to develop and implement
22 consistent natural resources inventory and moni-
23 toring protocols through interagency coordination
24 and collaboration; and

1 information needed to assess and address the impacts of
2 climate change and ocean acidification on natural re-
3 sources. The process shall be led by the National Climate
4 Change and Wildlife Science Center established within the
5 United States Geological Survey under subsection (d) and
6 the National Climate Service of the National Oceanic and
7 Atmospheric Administration.

8 (b) FUNCTIONS.—The Secretaries shall ensure that
9 such process avoids duplication and that the National Oce-
10 anic and Atmospheric Administration and the United
11 States Geological Survey shall—

12 (1) provide technical assistance to Federal de-
13 partments and agencies, State and local govern-
14 ments, Indian tribes, and interested private land-
15 owners in their efforts to assess and address the im-
16 pacts of climate change and ocean acidification on
17 natural resources;

18 (2) conduct and sponsor research and provide
19 Federal departments and agencies, State and local
20 governments, Indian tribes, and interested private
21 landowners with research products, decision and
22 monitoring tools and information, to develop strate-
23 gies for assisting natural resources to become more
24 resilient, adapt to, and withstand the impacts of cli-
25 mate change and ocean acidification; and

1 (3) assist Federal departments and agencies in
2 the development of the adaptation plans required
3 under section 478.

4 (c) SURVEY.—Not later than one year after the date
5 of enactment of this subpart and every 5 years thereafter,
6 the Secretary of Commerce and the Secretary of the Inte-
7 rior shall undertake a climate change and ocean acidifica-
8 tion impact survey that—

9 (1) identifies natural resources considered likely
10 to be adversely affected by climate change and ocean
11 acidification;

12 (2) includes baseline monitoring and ongoing
13 trend analysis;

14 (3) uses a stakeholder process to identify and
15 prioritize needed monitoring and research that is of
16 greatest relevance to the ongoing needs of natural
17 resource managers to address the impacts of climate
18 change and ocean acidification; and

19 (4) identifies decision tools necessary to develop
20 strategies for assisting natural resources to become
21 more resilient and adapt to and withstand the im-
22 pacts of climate change and ocean acidification.

23 (d) NATIONAL CLIMATE CHANGE AND WILDLIFE
24 SCIENCE CENTER.—

1 (1) ESTABLISHMENT.—The Secretary of the In-
2 terior shall establish the National Climate Change
3 and Wildlife Science Center within the United States
4 Geological Survey.

5 (2) FUNCTIONS.—The Center shall, in collabo-
6 ration with Federal and State natural resources
7 agencies and departments, Indian tribes, univer-
8 sities, and other partner organizations—

9 (A) assess and synthesize current physical
10 and biological knowledge and prioritize sci-
11 entific gaps in such knowledge in order to fore-
12 cast the ecological impacts of climate change on
13 fish and wildlife at the ecosystem, habitat, com-
14 munity, population, and species levels;

15 (B) develop and improve tools to identify,
16 evaluate, and, where appropriate, link scientific
17 approaches and models for forecasting the im-
18 pacts of climate change and adaptation on fish,
19 wildlife, plants, and their habitats, including
20 monitoring, predictive models, vulnerability
21 analyses, risk assessments, and decision support
22 systems to help managers make informed deci-
23 sions;

24 (C) develop and evaluate tools to adapt-
25 ively manage and monitor the effects of climate

1 change on fish and wildlife at national, regional,
2 and local scales; and

3 (D) develop capacities for sharing stand-
4 ardized data and the synthesis of such data.

5 (e) SCIENCE ADVISORY BOARD.—

6 (1) ESTABLISHMENT.—Not later than 180 days
7 after the date of enactment of this subpart, the Sec-
8 retary of Commerce and the Secretary of the Inte-
9 rior shall establish and appoint the members of a
10 Science Advisory Board, to be comprised of not
11 fewer than 10 and not more than 20 members—

12 (A) who have expertise in fish, wildlife,
13 plant, aquatic, and coastal and marine biology,
14 ecology, climate change, ocean acidification, and
15 other relevant scientific disciplines;

16 (B) who represent a balanced membership
17 among Federal, State, Indian tribes, and local
18 representatives, universities, and conservation
19 organizations; and

20 (C) at least $\frac{1}{2}$ of whom are recommended
21 by the President of the National Academy of
22 Sciences.

23 (2) DUTIES.—The Science Advisory Board
24 shall—

1 (A) advise the Secretaries on the state-of-
2 the-science regarding the impacts of climate
3 change and ocean acidification on natural re-
4 sources and scientific strategies and mecha-
5 nisms for protecting, restoring, and conserving
6 natural resources to enable them to become
7 more resilient, adapt to, and withstand the im-
8 pacts of climate change and ocean acidification;
9 and

10 (B) identify and recommend priorities for
11 ongoing research needs on such issues.

12 (3) COLLABORATION.—The Science Advisory
13 Board shall collaborate with other climate change
14 and ecosystem research entities in other Federal
15 agencies and departments.

16 (4) AVAILABILITY TO THE PUBLIC.—The advice
17 and recommendations of the Science Advisory Board
18 shall be made available to the public.

19 **SEC. 478. FEDERAL NATURAL RESOURCE AGENCY ADAPTA-**
20 **TION PLANS.**

21 (a) DEVELOPMENT.—Not later than 1 year after the
22 date of the development of a Natural Resources Climate
23 Change Adaptation Strategy under section 476, each de-
24 partment or agency that has a representative on the Nat-

1 ural Resources Climate Change Adaptation Panel estab-
2 lished under section 475 shall—

3 (1) complete an adaptation plan for that de-
4 partment or agency, respectively, implementing the
5 Natural Resources Climate Change Adaptation
6 Strategy under section 476 and consistent with the
7 Natural Resources Climate Change Adaptation Pol-
8 icy under section 472, detailing the department’s or
9 agency’s current and projected efforts to address the
10 potential impacts of climate change and ocean acidi-
11 fication on natural resources within the depart-
12 ment’s or agency’s jurisdiction and necessary addi-
13 tional actions, including a timeline for implementa-
14 tion of those actions;

15 (2) provide opportunities for review and com-
16 ment on that adaptation plan by the public, includ-
17 ing in the case of a plan by the Bureau of Indian
18 Affairs, review by Indian tribes; and

19 (3) submit such plan to the President for ap-
20 proval.

21 (b) REVIEW BY PRESIDENT AND SUBMISSION TO
22 CONGRESS.—

23 (1) REVIEW BY PRESIDENT.—The President
24 shall—

1 (A) approve an adaptation plan submitted
2 under subsection (a)(3) if the plan meets the
3 requirements of subsection (c) and is consistent
4 with the strategy developed under section 476;

5 (B) decide whether to approve the plan
6 within 60 days after submission; and

7 (C) if the President disapproves a plan, di-
8 rect the department or agency to submit a re-
9 vised plan to the President under subsection
10 (a)(3) within 60 days after such disapproval.

11 (2) SUBMISSION TO CONGRESS.—Not later than
12 30 days after the date of approval of such adapta-
13 tion plan by the President, the department or agen-
14 cy shall submit the approved plan to the Committee
15 on Natural Resources of the House of Representa-
16 tives, the Committee on Energy and Natural Re-
17 sources of the Senate, and the committees of the
18 House of Representatives and the Senate with prin-
19 cipal jurisdiction over the department or agency.

20 (c) REQUIREMENTS.—Each adaptation plan shall—

21 (1) establish programs for assessing the current
22 and future impacts of climate change and ocean
23 acidification on natural resources within the depart-
24 ment's or agency's, respectively, jurisdiction, includ-
25 ing cumulative and synergistic effects, and for iden-

1 tifying and monitoring those natural resources that
2 are likely to be adversely affected and that have
3 need for conservation;

4 (2) identify and prioritize the department's or
5 agency's strategies and specific conservation actions
6 to address the current and future impacts of climate
7 change and ocean acidification on natural resources
8 within the scope of the department's or agency's ju-
9 risdiction and to develop and implement strategies to
10 protect, restore, and conserve such resources to be-
11 come more resilient, adapt to, and better withstand
12 those impacts, including—

13 (A) the protection, restoration, and con-
14 servation of terrestrial, marine, estuarine, and
15 freshwater habitats and ecosystems;

16 (B) the establishment of terrestrial, ma-
17 rine, estuarine, and freshwater habitat linkages
18 and corridors;

19 (C) the restoration and conservation of ec-
20 ological processes;

21 (D) the protection of a broad diversity of
22 native species of fish, wildlife, and plant popu-
23 lations across their range; and

24 (E) the protection of fish, wildlife, and
25 plant health, recognizing that climate can alter

1 the distribution and ecology of parasites, patho-
2 gens, and vectors;

3 (3) describe how the department or agency will
4 integrate such strategies and conservation activities
5 into plans, programs, activities, and actions of the
6 department or agency, related to the conservation
7 and management of natural resources and establish
8 new plans, programs, activities, and actions as nec-
9 essary;

10 (4) establish methods for assessing the effec-
11 tiveness of strategies and conservation actions taken
12 to protect, restore, and conserve natural resources to
13 enable them to become more resilient, adapt to, and
14 withstand the impacts of climate change and ocean
15 acidification, and for updating those strategies and
16 actions to respond to new information and changing
17 conditions;

18 (5) include a description of current and pro-
19 posed mechanisms to enhance cooperation and co-
20 ordination of natural resources adaptation efforts
21 with other Federal agencies, State and local govern-
22 ments, Indian tribes, and nongovernmental stake-
23 holders;

24 (6) include specific written guidance to resource
25 managers to—

1 (A) explain how managers are expected to
2 address the effects of climate change and ocean
3 acidification;

4 (B) identify how managers are to obtain
5 any site-specific information that may be nec-
6 essary; and

7 (C) reflect best practices shared among rel-
8 evant agencies, while also recognizing the
9 unique missions, objectives, and responsibilities
10 of each agency; and

11 (7) identify and assess data and information
12 gaps necessary to develop natural resources adapta-
13 tion plans and strategies.

14 (d) IMPLEMENTATION.—

15 (1) IN GENERAL.—Upon approval by the Presi-
16 dent, each department or agency that serves on the
17 Natural Resources Climate Change Adaptation
18 Panel shall implement its adaptation plan through
19 existing and new plans, policies, programs, activities,
20 and actions to the extent not inconsistent with exist-
21 ing authority.

22 (2) CONSIDERATION OF IMPACTS.—

23 (A) IN GENERAL.—To the maximum ex-
24 tent practicable and consistent with applicable
25 law, every natural resource management deci-

1 sion made by the department or agency shall
2 consider the impacts of climate change and
3 ocean acidification on those natural resources.

4 (B) GUIDANCE.—The Council on Environ-
5 mental Quality shall issue guidance for Federal
6 departments and agencies for considering those
7 impacts.

8 (e) REVISION AND REVIEW.—Not less than every 5
9 years, each adaptation plan under this section shall be re-
10 viewed and revised to incorporate the best available science
11 and other information regarding the impacts of climate
12 change and ocean acidification on natural resources.

13 **SEC. 479. STATE NATURAL RESOURCES ADAPTATION**
14 **PLANS.**

15 (a) REQUIREMENT.—In order to be eligible for funds
16 under section 480, not later than 1 year after the develop-
17 ment of a Natural Resources Climate Change Adaptation
18 Strategy required under section 476 each State shall pre-
19 pare a State natural resources adaptation plan detailing
20 the State's current and projected efforts to address the
21 potential impacts of climate change and ocean acidifica-
22 tion on natural resources and coastal areas within the
23 State's jurisdiction.

24 (b) REVIEW OR APPROVAL.—

1 (1) IN GENERAL.—Each State adaptation plan
2 shall be reviewed and approved or disapproved by
3 the Secretary of the Interior and, as applicable, the
4 Secretary of Commerce. Such approval shall be
5 granted if the plan meets the requirements of sub-
6 section (c) and is consistent with the Natural Re-
7 sources Climate Change Adaptation Strategy re-
8 quired under section 476.

9 (2) APPROVAL OR DISAPPROVAL.—Within 180
10 days after transmittal of such a plan, or a revision
11 to such a plan, the Secretary of the Interior and, as
12 applicable, the Secretary of Commerce shall approve
13 or disapprove the plan by written notice.

14 (3) RESUBMITTAL.—Within 90 days after
15 transmittal of a resubmitted adaptation plan as a re-
16 sult of disapproval under paragraph (3), the Sec-
17 retary of the Interior and, as applicable, the Sec-
18 retary of Commerce, shall approve or disapprove the
19 plan by written notice.

20 (c) CONTENTS.—A State natural resources adapta-
21 tion plan shall—

22 (1) include a strategy for addressing the im-
23 pacts of climate change and ocean acidification on
24 terrestrial, marine, estuarine, and freshwater fish,

1 wildlife, plants, habitats, ecosystems, wildlife health,
2 and ecological processes, that—

3 (A) describes the impacts of climate
4 change and ocean acidification on the diversity
5 and health of the fish, wildlife and plant popu-
6 lations, habitats, ecosystems, and associated ec-
7 ological processes;

8 (B) establishes programs for monitoring
9 the impacts of climate change and ocean acidifi-
10 cation on fish, wildlife, and plant populations,
11 habitats, ecosystems, and associated ecological
12 processes;

13 (C) describes and prioritizes proposed con-
14 servation actions to assist fish, wildlife, plant
15 populations, habitats, ecosystems, and associ-
16 ated ecological processes in becoming more re-
17 siliant, adapting to, and better withstanding
18 those impacts;

19 (D) includes strategies, specific conserva-
20 tion actions, and a time frame for implementing
21 conservation actions for fish, wildlife, and plant
22 populations, habitats, ecosystems, and associ-
23 ated ecological processes;

24 (E) establishes methods for assessing the
25 effectiveness of strategies and conservation ac-

1 tions taken to assist fish, wildlife, and plant
2 populations, habitats, ecosystems, and associ-
3 ated ecological processes in becoming more re-
4 siliant, adapt to, and better withstand the im-
5 pacts of climate changes and ocean acidification
6 and for updating those strategies and actions to
7 respond appropriately to new information or
8 changing conditions;

9 (F) is incorporated into a revision of the
10 State wildlife action plan (also known as the
11 State comprehensive wildlife strategy)—

12 (i) that has been submitted to the
13 United States Fish and Wildlife Service;
14 and

15 (ii) that has been approved by the
16 Service or on which a decision on approval
17 is pending; and

18 (G) is developed—

19 (i) with the participation of the State
20 fish and wildlife agency, the State coastal
21 agency, the State agency responsible for
22 administration of Land and Water Con-
23 servation Fund grants, the State Forest
24 Legacy program coordinator, and other

1 State agencies considered appropriate by
2 the Governor of such State; and

3 (ii) in coordination with the Secretary
4 of the Interior, and where applicable, the
5 Secretary of Commerce and other States
6 that share jurisdiction over natural re-
7 sources with the State; and

8 (2) include, in the case of a coastal State, a
9 strategy for addressing the impacts of climate
10 change and ocean acidification on the coastal zone
11 that—

12 (A) identifies natural resources that are
13 likely to be impacted by climate change and
14 ocean acidification and describes those impacts;

15 (B) identifies and prioritizes continuing re-
16 search and data collection needed to address
17 those impacts including—

18 (i) acquisition of high resolution
19 coastal elevation and nearshore bathymetry
20 data;

21 (ii) historic shoreline position maps,
22 erosion rates, and inventories of shoreline
23 features and structures;

24 (iii) measures and models of relative
25 rates of sea level rise or lake level changes,

1 including effects on flooding, storm surge,
2 inundation, and coastal geological pro-
3 cesses;

4 (iv) habitat loss, including projected
5 losses of coastal wetlands and potentials
6 for inland migration of natural shoreline
7 habitats;

8 (v) ocean and coastal species and eco-
9 system migrations, and changes in species
10 population dynamics;

11 (vi) changes in storm frequency, in-
12 tensity, or rainfall patterns;

13 (vii) saltwater intrusion into coastal
14 rivers and aquifers;

15 (viii) changes in chemical or physical
16 characteristics of marine and estuarine
17 systems;

18 (ix) increased harmful algal blooms;

19 and

20 (x) spread of invasive species;

21 (C) identifies and prioritizes adaptation
22 strategies to protect, restore, and conserve nat-
23 ural resources to enable them to become more
24 resilient, adapt to, and withstand the impacts of

1 climate change and ocean acidification, includ-
2 ing—

3 (i) protection, maintenance, and res-
4 toration of ecologically important coastal
5 lands, coastal and ocean ecosystems, and
6 species biodiversity and the establishment
7 of habitat buffer zones, migration cor-
8 ridors, and climate refugia; and

9 (ii) improved planning, siting policies,
10 and hazard mitigation strategies;

11 (D) establishes programs for the long-term
12 monitoring of the impacts of climate change
13 and ocean acidification on the ocean and coastal
14 zone and to assess and adjust, when necessary,
15 such adaptive management strategies;

16 (E) establishes performance measures for
17 assessing the effectiveness of adaptation strate-
18 gies intended to improve resilience and the abil-
19 ity of natural resources in the coastal zone to
20 adapt to and withstand the impacts of climate
21 change and ocean acidification and of adapta-
22 tion strategies intended to minimize those im-
23 pacts on the coastal zone and to update those
24 strategies to respond to new information or
25 changing conditions; and

1 (F) is developed with the participation of
2 the State coastal agency and other appropriate
3 State agencies and in coordination with the
4 Secretary of Commerce and other appropriate
5 Federal agencies.

6 (d) PUBLIC INPUT.—States shall provide for sollicita-
7 tion and consideration of public and independent scientific
8 input in the development of their plans.

9 (e) COORDINATION WITH OTHER PLANS.—The State
10 plan shall take into consideration research and informa-
11 tion contained in, and coordinate with and integrate the
12 goals and measures identified in, as appropriate, other
13 natural resources conservation strategies, including—

14 (1) the national fish habitat action plan;

15 (2) plans under the North American Wetlands
16 Conservation Act (16 U.S.C. 4401 et seq.);

17 (3) the Federal, State, and local partnership
18 known as “Partners in Flight”;

19 (4) federally approved coastal zone management
20 plans under the Coastal Zone Management Act of
21 1972 (16 U.S.C. 1451 et seq.);

22 (5) federally approved regional fishery manage-
23 ment plans and habitat conservation activities
24 under the Magnuson-Stevens Fishery Conservation
25 and Management Act (16 U.S.C. 1801 et seq.);

1 (6) the national coral reef action plan;

2 (7) recovery plans for threatened species and
3 endangered species under section 4(f) of the Endan-
4 gered Species Act of 1973 (16 U.S.C. 1533(f));

5 (8) habitat conservation plans under section 10
6 of that Act (16 U.S.C. 1539);

7 (9) other Federal, State, and tribal plans for
8 imperiled species;

9 (10) State or tribal hazard mitigation plans;

10 (11) State or tribal water management plans;

11 and

12 (12) other State-based strategies that com-
13 prehensively implement adaptation activities to re-
14 mediate the effects of climate change and ocean
15 acidification on terrestrial, marine, and freshwater
16 fish, wildlife, plants, and other natural resources.

17 (f) UPDATING.—Each State plan shall be updated
18 not less than every 5 years.

19 (g) FUNDING.—

20 (1) IN GENERAL.—Funds allocated to States
21 under section 480 shall be used only for activities
22 that are consistent with a State natural resources
23 adaptation plan that has been approved by the Sec-
24 retaries of Interior and Commerce.

1 (2) FUNDING PRIOR TO THE APPROVAL OF A
2 STATE PLAN.—Until the earlier of the date that is
3 3 years after the date of the enactment of this sub-
4 part or the date on which a State receives approval
5 for the State strategy, a State shall be eligible to re-
6 ceive funding under section 480 for adaptation ac-
7 tivities that are—

8 (A) consistent with the comprehensive
9 wildlife strategy of the State and, where appro-
10 priate, other natural resources conservation
11 strategies; and

12 (B) in accordance with a workplan devel-
13 oped in coordination with—

14 (i) the Secretary of the Interior; and

15 (ii) the Secretary of Commerce, for
16 any coastal State subject to the condition
17 that coordination with the Secretary of
18 Commerce shall be required only for those
19 portions of the strategy relating to activi-
20 ties affecting the coastal zone.

21 (3) PENDING APPROVAL.—During the period
22 for which approval by the applicable Secretary of a
23 State plan is pending, the State may continue receiv-
24 ing funds under section 480 pursuant to the
25 workplan described in paragraph (2)(B).

1 **SEC. 480. NATURAL RESOURCES CLIMATE CHANGE ADAP-**
2 **TATION FUND.**

3 (a) **ALLOCATIONS TO STATES.**—100 percent of the
4 emission allowances made available for each year to carry
5 out this subpart shall be provided to States to carry out
6 natural resources adaptation activities in accordance with
7 State natural resources adaptation plans approved under
8 section 479. Specifically—

9 (1) 84.4 percent shall be available to State
10 wildlife agencies in accordance with the apportion-
11 ment formula established under the second sub-
12 section (c) of section 4 of the Pittman-Robertson
13 Wildlife Restoration Act (16 U.S.C. 669c), as added
14 by section 902(e) of H.R. 5548 as introduced in the
15 106th Congress and enacted into law by section
16 1(a)(2) of Public Law 106–553 (114 Stat. 2762A–
17 119); and

18 (2) 15.6 percent shall be available to State
19 coastal agencies pursuant to the formula established
20 by the Secretary of Commerce under section 306(c)
21 of the Coastal Management Act of 1972 (16 U.S.C.
22 1455(c)).

23 (b) **ESTABLISHMENT OF FUND.**—

24 (1) **ESTABLISHMENT.**—There is hereby estab-
25 lished in the Treasury a separate account that shall

1 be known as the Natural Resources Climate Change
2 Adaptation Fund.

3 (2) AUTHORIZATION OF APPROPRIATIONS.—

4 There are authorized to be appropriated for sub-
5 section (c) such sums as are deposited in the Nat-
6 ural Resources Climate Change Fund, and the
7 amounts appropriated for subsection (c) shall be no
8 less than the total estimated annual deposits in the
9 Natural Resources Climate Change Adaptation
10 Fund. Such appropriations shall be offset by the
11 amounts deposited in such fund pursuant to section
12 782(m) of the Clean Air Act.

13 (c) ALLOCATIONS TO FEDERAL AGENCIES.—

14 (1) DEPARTMENT OF THE INTERIOR.—Of the
15 amounts made available for each fiscal year to carry
16 out this subpart—

17 (A) 27.6 percent shall be allocated to the

18 Secretary of the Interior for use in funding—

19 (i) natural resources adaptation activi-
20 ties carried out—

21 (I) under endangered species, mi-
22 gratory species, and other fish and
23 wildlife programs administered by the
24 National Park Service, the United
25 States Fish and Wildlife Service, the

1 Bureau of Indian Affairs, and the Bu-
2 reau of Land Management;

3 (II) on wildlife refuges, National
4 Park Service land, and other public
5 land under the jurisdiction of the
6 United States Fish and Wildlife Serv-
7 ice, the Bureau of Land Management,
8 the Bureau of Indian Affairs, or the
9 National Park Service; or

10 (III) within Federal water man-
11 aged by the Bureau of Reclamation
12 and the National Park Service; and

13 (ii) for the implementation of the Na-
14 tional Fish and Wildlife Habitat and Cor-
15 ridors Identification Program pursuant to
16 section 481;

17 (B) 8.1 percent shall be allocated to the
18 Secretary of the Interior for natural resources
19 adaptation activities carried out under coopera-
20 tive grant programs, including—

21 (i) the cooperative endangered species
22 conservation fund authorized under section
23 6 of the Endangered Species Act of 1973
24 (16 U.S.C. 1535);

- 1 (ii) programs under the North Amer-
2 ican Wetlands Conservation Act (16
3 U.S.C. 4401 et seq.);
- 4 (iii) the Neotropical Migratory Bird
5 Conservation Fund established by section
6 478(a) of the Neotropical Migratory Bird
7 Conservation Act (16 U.S.C. 6108(a));
- 8 (iv) the Coastal Program of the
9 United States Fish and Wildlife Service;
- 10 (v) the National Fish Habitat Action
11 Plan;
- 12 (vi) the Partners for Fish and Wildlife
13 Program;
- 14 (vii) the Landowner Incentive Pro-
15 gram;
- 16 (viii) the Wildlife Without Borders
17 Program of the United States Fish and
18 Wildlife Service; and
- 19 (ix) the Migratory Species Program
20 and Park Flight Migratory Bird Program
21 of the National Park Service; and
- 22 (C) 4.9 percent shall be allocated to the
23 Secretary of the Interior to provide financial as-
24 sistance to Indian tribes to carry out natural
25 resources adaptation activities through the

1 Tribal Wildlife Grants Program of the United
2 States Fish and Wildlife Service.

3 (2) LAND AND WATER CONSERVATION FUND.—

4 (A) DEPOSITS.—

5 (i) IN GENERAL.—Of the amounts
6 made available for each fiscal year to carry
7 out this subpart, 19.5 percent shall be de-
8 posited into the Land and Water Conserva-
9 tion Fund established under section 2 of
10 the Land and Water Conservation Fund
11 Act of 1965 (16 U.S.C. 4601–5).

12 (ii) USE OF DEPOSITS.— (I) Deposits
13 into the Land and Water Conservation
14 Fund under this paragraph shall be sup-
15 plemental to authorizations provided under
16 section 3 of the Land and Water Conserva-
17 tion Fund Act of 1965 (16 U.S.C. 4601–6),
18 which shall remain available for non-
19 adaptation needs.

20 (II) There are authorized to be appro-
21 priated for activities in this subpart such
22 sums as are deposited in the Land and
23 Water Conservation Fund pursuant to sec-
24 tion 480(c)(3)(A)(ii), and the amounts ap-
25 propriated for this paragraph shall be no

1 less than the total estimated annual depos-
2 its in the Land and Water Conservation
3 Fund. Such appropriations shall be offset
4 by the amounts deposited in such Fund
5 pursuant to section 782(m).

6 (B) ALLOCATIONS.—Of the amounts de-
7 posited under this paragraph into the Land and
8 Water Conservation Fund—

9 (i) $\frac{1}{6}$ shall be allocated to the Sec-
10 retary of the Interior and made available
11 on a competitive basis to carry out natural
12 resources adaptation activities through the
13 acquisition of land and interests in land
14 under section 6 of the Land and Water
15 Conservation Fund Act of 1965 (16 U.S.C.
16 4601–8)—

17 (I) to States in accordance with
18 their natural resources adaptation
19 plans, and to Indian tribes;

20 (II) notwithstanding section 5 of
21 that Act (16 U.S.C. 4601–7); and

22 (III) in addition to any funds
23 provided pursuant to annual appro-
24 priations Acts, the Energy Policy Act
25 of 2005 (42 U.S.C. 15801 et seq.), or

1 any other authorization for non-
2 adaptation needs;

3 (ii) $\frac{1}{3}$ shall be allocated to the Sec-
4 retary of the Interior to carry out natural
5 resources adaptation activities through the
6 acquisition of lands and interests in land
7 under section 7 of the Land and Water
8 Conservation Fund Act of 1965 (16 U.S.C.
9 4601–9);

10 (iii) $\frac{1}{6}$ shall be allocated to the Sec-
11 retary of Agriculture and made available to
12 the States and Indian tribes to carry out
13 natural resources adaptation activities
14 through the acquisition of land and inter-
15 ests in land under section 7 of the Forest
16 Legacy Program under the Cooperative
17 Forestry Assistance Act of 1978 (16
18 U.S.C. 2103c); and

19 (iv) $\frac{1}{3}$ shall be allocated to the Sec-
20 retary of Agriculture to carry out natural
21 resources adaptation activities through the
22 acquisition of land and interests in land
23 under section 7 of the Land and Water
24 Conservation Fund Act of 1965 (16 U.S.C.
25 4601–9).

1 (C) EXPENDITURE OF FUNDS.—In allo-
2 eating funds under subparagraph (B), the Sec-
3 retary of the Interior and the Secretary of Agri-
4 culture shall take into consideration factors in-
5 cluding—

6 (i) the availability of non-Federal con-
7 tributions from State, local, or private
8 sources;

9 (ii) opportunities to protect fish and
10 wildlife corridors or otherwise to link or
11 consolidate fragmented habitats;

12 (iii) opportunities to reduce the risk of
13 catastrophic wildfires, drought, extreme
14 flooding, or other climate-related events
15 that are harmful to fish and wildlife and
16 people; and

17 (iv) the potential for conservation of
18 species or habitat types at serious risk due
19 to climate change, ocean acidification, and
20 other stressors.

21 (3) FOREST SERVICE.—Of the amounts made
22 available for each fiscal year to carry out this sub-
23 part, 8.1 percent shall be allocated to the Secretary
24 of Agriculture for use in funding natural resources
25 adaptation activities carried out on national forests

1 and national grasslands under the jurisdiction of the
2 Forest Service.

3 (4) DEPARTMENT OF COMMERCE.—Of the
4 amounts made available for each fiscal year to carry
5 out this subpart, 11.5 percent shall be allocated to
6 the Secretary of Commerce for use in funding nat-
7 ural resources adaptation activities to protect, main-
8 tain, and restore coastal, estuarine, and marine re-
9 sources, habitats, and ecosystems, including such ac-
10 tivities carried out under—

11 (A) the coastal and estuarine land con-
12 servation program;

13 (B) the community-based restoration pro-
14 gram;

15 (C) the Coastal Zone Management Act of
16 1972 (16 U.S.C. 1451 et seq.), that are specifi-
17 cally designed to strengthen the ability of coast-
18 al, estuarine, and marine resources, habitats,
19 and ecosystems to adapt to and withstand the
20 impacts of climate change and ocean acidifica-
21 tion;

22 (D) the Open Rivers Initiative;

23 (E) the Magnuson-Stevens Fishery Con-
24 servation and Management Act (16 U.S.C.
25 1801 et seq.);

1 (F) the Marine Mammal Protection Act of
2 1972 (16 U.S.C. 1361 et seq.);

3 (G) the Endangered Species Act of 1973
4 (16 U.S.C. 1531 et seq.);

5 (H) the Marine Protection, Research, and
6 Sanctuaries Act of 1972 (33 U.S.C. 1401 et
7 seq.);

8 (I) the Coral Reef Conservation Act of
9 2000 (16 U.S.C. 6401 et seq.); and

10 (J) the Estuary Restoration Act of 2000
11 (33 U.S.C. 2901 et seq.).

12 (5) ENVIRONMENTAL PROTECTION AGENCY.—
13 Of the amounts made available each fiscal year to
14 carry out this section, 12.2 percent shall be allocated
15 to the Administrator for use in natural resources ad-
16 aptation activities restoring and protecting—

17 (A) large-scale freshwater aquatic eco-
18 systems, such as the Everglades, the Great
19 Lakes, Flathead Lake, the Missouri River, the
20 Mississippi River, the Colorado River, the Sac-
21 ramento-San Joaquin Rivers, the Ohio River,
22 the Columbia-Snake River System, the Apa-
23 lachicola, Chattahoochee, and Flint River Sys-
24 tem, the Connecticut River, and the Yellowstone
25 River;

1 (B) large-scale estuarine ecosystems, such
2 as Chesapeake Bay, Long Island Sound, Puget
3 Sound, the Mississippi River Delta, the San
4 Francisco Bay Delta, Narragansett Bay, and
5 Albemarle-Pamlico Sound; and

6 (C) freshwater and estuarine ecosystems,
7 watersheds, and basins identified as priorities
8 by the Administrator, working in cooperation
9 with other Federal agencies, States, Indian
10 tribes, local governments, scientists, and other
11 conservation partners.

12 (6) CORPS OF ENGINEERS.—Of the amounts
13 made available each fiscal year to carry out this sec-
14 tion, 8.1 percent shall be available to the Secretary
15 of the Army for use by the Corps of Engineers to
16 carry out natural resources adaptation activities re-
17 storing—

18 (A) large-scale freshwater aquatic eco-
19 systems, such as the ecosystems described in
20 paragraph (5)(A);

21 (B) large-scale estuarine ecosystems, such
22 as the ecosystems described in paragraph
23 (5)(B);

24 (C) freshwater and estuarine ecosystems,
25 watersheds, and basins identified as priorities

1 by the Corps of Engineers, working in coopera-
2 tion with other Federal agencies, States, Indian
3 tribes, local governments, scientists, and other
4 conservation partners; and

5 (D) habitats and ecosystems through the
6 implementation of estuary habitat restoration
7 projects authorized by the Estuary Restoration
8 Act of 2000 (33 U.S.C. 2901 et seq.), project
9 modifications for improvement of the environ-
10 ment, aquatic restoration and protection
11 projects authorized by section 206 of the Water
12 Resources Development Act of 1996 (33 U.S.C.
13 2330), and other appropriate programs and ac-
14 tivities.

15 (d) USE OF FUNDS BY FEDERAL DEPARTMENTS AND
16 AGENCIES.—Funds allocated to Federal departments and
17 agencies under this section shall only be used for natural
18 resources adaptation activities that are consistent with an
19 adaptation plan developed and approved by the President
20 under section 478.

21 (e) STATE COST SHARING.—Notwithstanding any
22 other provision of law, a State that receives a grant with
23 amounts allocated under this section shall use funds from
24 non-Federal sources to pay at least 10 percent of the costs

1 of each activity carried out using amounts provided under
2 the grant.

3 **SEC. 481. NATIONAL WILDLIFE HABITAT AND CORRIDORS**
4 **INFORMATION PROGRAM.**

5 (a) ESTABLISHMENT.—Within 6 months of the date
6 of enactment of this subpart, the Secretary of the Interior,
7 in cooperation with the States and Indian tribes, shall es-
8 tablish a National Fish and Wildlife Habitat and Cor-
9 ridors Information Program in accordance with the re-
10 quirements of this section.

11 (b) PURPOSE.—The purpose of this program is to—

12 (1) support States and Indian tribes in the de-
13 velopment of a geographic information system data-
14 base of fish and wildlife habitat and corridors that
15 would inform planning and development decisions
16 within each State and Indian tribe, enable each
17 State and Indian tribe to model climate impacts and
18 adaptation, and provide geographically specific en-
19 hancements of State and tribal wildlife action plans;

20 (2) ensure the collaborative development, with
21 the States and Indian tribes, of a comprehensive,
22 national geographic information system database of
23 maps, models, data, surveys, informational products,
24 and other geospatial information regarding fish and
25 wildlife habitat and corridors, that—

1 (A) is based on consistent protocols for
2 sampling and mapping across landscapes that
3 take into account regional differences; and

4 (B) that utilizes—

5 (i) existing and planned State- and
6 tribal-based geographic information system
7 databases; and

8 (ii) existing databases, analytical
9 tools, metadata activities, and other infor-
10 mation products available through the Na-
11 tional Biological Information Infrastruc-
12 ture maintained by the Secretary and non-
13 governmental organizations; and

14 (3) facilitate the use of such databases by Fed-
15 eral, State, local, and tribal decisionmakers to incor-
16 porate qualitative information on fish and wildlife
17 habitat and corridors at the earliest possible stage
18 to—

19 (A) prioritize and target natural resources
20 adaptation strategies and activities;

21 (B) avoid, minimize, and mitigate the im-
22 pacts on fish and wildlife habitat and corridors
23 in siting energy development, water, trans-
24 mission, transportation, and other land use
25 projects;

1 (C) assess the impacts of existing develop-
2 ment on habitats and corridors; and

3 (D) develop management strategies to en-
4 hance the ability of fish, wildlife, and plant spe-
5 cies to migrate or respond to shifting habitats
6 within existing habitats and corridors.

7 (c) HABITAT AND CORRIDORS INFORMATION SYS-
8 TEM.—

9 (1) IN GENERAL.—The Secretary, in coopera-
10 tion with the States and Indian tribes, shall develop
11 a Habitat and Corridors Information System.

12 (2) CONTENTS.—The System shall—

13 (A) include maps, data, and descriptions of
14 fish and wildlife habitat and corridors, that—

15 (i) have been developed by Federal
16 agencies, State wildlife agencies and nat-
17 ural heritage programs, Indian tribes, local
18 governments, nongovernmental organiza-
19 tions, and industry;

20 (ii) meet accepted Geospatial Inter-
21 operability Framework data and metadata
22 protocols and standards;

23 (B) include maps and descriptions of pro-
24 jected shifts in habitats and corridors of fish

1 and wildlife species in response to climate
2 change;

3 (C) assure data quality and make the data,
4 models, and analyses included in the System
5 available at scales useful to decisionmakers—

6 (i) to prioritize and target natural re-
7 sources adaptation strategies and activi-
8 ties;

9 (ii) to assess the impacts of proposed
10 energy development, water, transmission,
11 transportation, and other land use projects
12 and avoid, minimize, and mitigate those
13 impacts on habitats and corridors;

14 (iii) to assess the impacts of existing
15 development on habitats and corridors; and

16 (iv) to develop management strategies
17 to enhance the ability of fish, wildlife, and
18 plant species to migrate or respond to
19 shifting habitats within existing habitats
20 and corridors;

21 (D) establish a process for updating maps
22 and other information as landscapes, habitats,
23 corridors, and wildlife populations change or as
24 other information becomes available;

1 (E) encourage the development of collabo-
2 rative plans by Federal and State agencies and
3 Indian tribes to monitor and evaluate the effi-
4 cacy of the System to meet the needs of deci-
5 sionmakers;

6 (F) identify gaps in habitat and corridor
7 information, mapping, and research that should
8 be addressed to fully understand and assess
9 current data and metadata, and to prioritize re-
10 search and future data collection activities for
11 use in updating the System and provide support
12 for those activities;

13 (G) include mechanisms to support collabo-
14 rative research, mapping, and planning of habi-
15 tats and corridors by Federal and State agen-
16 cies, Indian tribes, and other interested stake-
17 holders;

18 (H) incorporate biological and geospatial
19 data on species and corridors found in energy
20 development and transmission plans, including
21 renewable energy initiatives, transportation, and
22 other land use plans;

23 (I) be based on the best scientific informa-
24 tion available; and

1 (J) identify, prioritize, and describe key
2 parcels of non-Federal land located within the
3 boundaries of units of the National Park Sys-
4 tem, National Wildlife Refuge System, National
5 Forest System, or National Grassland System
6 that are critical to maintenance of wildlife habi-
7 tat and migration corridors.

8 (d) FINANCIAL AND OTHER SUPPORT.—The Sec-
9 retary may provide support to the States and Indian
10 tribes, including financial and technical assistance, for ac-
11 tivities that support the development and implementation
12 of the System.

13 (e) COORDINATION.—The Secretary, in cooperation
14 with the States and Indian tribes, shall make rec-
15 ommendations on how the information developed in the
16 System may be incorporated into existing relevant State
17 and Federal plans affecting fish and wildlife, including
18 land management plans, the State Comprehensive Wildlife
19 Conservation Strategies, and appropriate tribal conserva-
20 tion plans, to ensure that they—

21 (1) prevent unnecessary habitat fragmentation
22 and disruption of corridors;

23 (2) promote the landscape connectivity nec-
24 essary to allow wildlife to move as necessary to meet

1 biological needs, adjust to shifts in habitat, and
2 adapt to climate change; and

3 (3) minimize the impacts of energy, develop-
4 ment, water, transportation, and transmission
5 projects and other activities expected to impact habi-
6 tat and corridors.

7 (f) DEFINITIONS.—In this section:

8 (1) GEOSPATIAL INTEROPERABILITY FRAME-
9 WORK.—The term “Geospatial Interoperability
10 Framework” means the strategy utilized by the Na-
11 tional Biological Information Infrastructure that is
12 based upon accepted standards, specifications, and
13 protocols adopted through the International Stand-
14 ards Organization, the Open Geospatial Consortium,
15 and the Federal Geographic Data Committee, to
16 manage, archive, integrate, analyze, and make acces-
17 sible geospatial and biological data and metadata.

18 (2) SECRETARY.—The term “Secretary” means
19 the Secretary of the Interior.

20 **SEC. 482. ADDITIONAL PROVISIONS REGARDING INDIAN**
21 **TRIBES.**

22 (a) FEDERAL TRUST RESPONSIBILITY.—Nothing in
23 this subpart is intended to amend, alter, or give priority
24 over the Federal trust responsibility to Indian tribes.

1 (b) EXEMPTION FROM FOIA.—Information received
2 by a Federal agency pursuant to this Act relating to the
3 location, character, or ownership of human remains of a
4 person of Indian ancestry; or resources, cultural items,
5 uses, or activities identified by an Indian tribe as tradi-
6 tional or cultural because of the long-established signifi-
7 cance or ceremonial nature to the Indian tribe; shall not
8 be subject to disclosure under section 552 of title 5,
9 United States Code, if the head of the agency, in consulta-
10 tion with the Secretary of the Interior and an affected In-
11 dian tribe, determines that disclosure may—

12 (1) cause a significant invasion of privacy;

13 (2) risk harm to the human remains or re-
14 sources, cultural items, uses, or activities; or

15 (3) impede the use of a traditional religious site
16 by practitioners.

17 (c) APPLICATION OF OTHER LAW.—The Secretary of
18 the Interior may apply the provisions of Public Law 93–
19 638 where appropriate in the implementation of this sub-
20 part.

21 **PART 2—INTERNATIONAL CLIMATE CHANGE**

22 **ADAPTATION PROGRAM**

23 **SEC. 491. FINDINGS AND PURPOSES.**

24 (a) FINDINGS.—Congress finds the following:

1 (1) Global climate change is a potentially sig-
2 nificant national and global security threat multi-
3 plier and is likely to exacerbate competition and con-
4 flict over agricultural, vegetative, marine, and water
5 resources and to result in increased displacement of
6 people, poverty, and hunger within developing coun-
7 tries.

8 (2) The strategic, social, political, economic,
9 cultural, and environmental consequences of global
10 climate change are likely to have disproportionate
11 adverse impacts on developing countries, which have
12 less economic capacity to respond to such impacts.

13 (3) The countries most vulnerable to climate
14 change, due both to greater exposure to harmful im-
15 pacts and to lower capacity to adapt, are developing
16 countries with very low industrial greenhouse gas
17 emissions that have contributed less to climate
18 change than more affluent countries.

19 (4) To a much greater degree than developed
20 countries, developing countries rely on the natural
21 and environmental systems likely to be affected by
22 climate change for sustenance, livelihoods, and eco-
23 nomic growth and stability.

24 (5) Within developing countries there may be
25 varying climate change adaptation and resilience

1 needs among different communities and populations,
2 including impoverished communities, children,
3 women, and indigenous peoples.

4 (6) The consequences of global climate change,
5 including increases in poverty and destabilization of
6 economies and societies, are likely to pose long-term
7 challenges to the national security, foreign policy,
8 and economic interests of the United States.

9 (7) It is in the national security, foreign policy,
10 and economic interests of the United States to rec-
11 ognize, plan for, and mitigate the international stra-
12 tegic, social, political, cultural, environmental,
13 health, and economic effects of climate change and
14 to assist developing countries to increase their resil-
15 ience to those effects.

16 (8) Under Article 4 of the United Nations
17 Framework Convention on Climate Change, devel-
18 oped country parties, including the United States,
19 committed to “assist the developing country parties
20 that are particularly vulnerable to the adverse effects
21 of climate change in meeting costs of adaptation to
22 those adverse effects”.

23 (9) Under the Bali Action Plan, developed
24 country parties to the United Nations Framework
25 Convention on Climate Change, including the United

1 States, committed to “enhanced action on the provi-
2 sion of financial resources and investment to support
3 action on mitigation and adaptation and technology
4 cooperation,” including, inter alia, consideration of
5 “improved access to adequate, predictable, and sus-
6 tainable financial resources and financial and tech-
7 nical support, and the provision of new and addi-
8 tional resources, including official and concessional
9 funding for developing country parties”.

10 (b) PURPOSES.—The purposes of this part are—

11 (1) to provide new and additional assistance
12 from the United States to the most vulnerable devel-
13 oping countries, including the most vulnerable com-
14 munities and populations therein, in order to sup-
15 port the development and implementation of climate
16 change adaptation programs and activities that re-
17 duce the vulnerability and increase the resilience of
18 communities to climate change impacts, including
19 impacts on water availability, agricultural produc-
20 tivity, flood risk, coastal resources, timing of sea-
21 sons, biodiversity, economic livelihoods, health and
22 diseases, and human migration; and

23 (2) to provide such assistance in a manner that
24 protects and promotes the national security, foreign
25 policy, environmental, and economic interests of the

1 United States to the extent such interests may be
2 advanced by minimizing, averting, or increasing re-
3 siliance to climate change impacts.

4 **SEC. 492. DEFINITIONS.**

5 In this part:

6 (1) ALLOWANCE.—The term “allowance”
7 means an emission allowance established under sec-
8 tion 721 of the Clean Air Act.

9 (2) APPROPRIATE CONGRESSIONAL COMMIT-
10 TEES.—The term “appropriate congressional com-
11 mittees” means—

12 (A) the Committees on Energy and Com-
13 merce, Financial Services, and Foreign Affairs
14 of the House of Representatives; and

15 (B) the Committees on Environment and
16 Public Works and Foreign Relations of the Sen-
17 ate.

18 (3) DEVELOPING COUNTRY.—The term “devel-
19 oping country” means a country eligible to receive
20 official development assistance according to the in-
21 come guidelines of the Development Assistance Com-
22 mittee of the Organization for Economic Coopera-
23 tion and Development.

24 (4) MOST VULNERABLE DEVELOPING COUN-
25 TRIES.—The term “most vulnerable developing

1 countries” means, as determined by the Adminis-
2 trator of USAID, developing countries that are at
3 risk of substantial adverse impacts of climate change
4 and have limited capacity to respond to such im-
5 pacts, considering the approaches included in any
6 international treaties and agreements.

7 (5) MOST VULNERABLE COMMUNITIES AND
8 POPULATIONS.—The term “most vulnerable commu-
9 nities and populations” means communities and pop-
10 ulations that are at risk of substantial adverse im-
11 pacts of climate change and have limited capacity to
12 respond to such impacts, including impoverished
13 communities, children, women, and indigenous peo-
14 ples.

15 (6) PROGRAM.—The term “Program” means
16 the International Climate Change Adaptation Pro-
17 gram established under section 493.

18 (7) USAID.—The term “USAID” means the
19 United States Agency for International Develop-
20 ment.

21 (8) UNITED NATIONS FRAMEWORK CONVEN-
22 TION ON CLIMATE CHANGE.—The term “United Na-
23 tions Framework Convention on Climate Change” or
24 “Convention” means the United Nations Framework
25 Convention on Climate Change done at New York on

1 May 9, 1992, and entered into force on March 21,
2 1994.

3 **SEC. 493. INTERNATIONAL CLIMATE CHANGE ADAPTATION**
4 **PROGRAM.**

5 (a) ESTABLISHMENT.—The Secretary of State, in
6 consultation with the Administrator of USAID, the Sec-
7 retary of the Treasury, and the Administrator of the Envi-
8 ronmental Protection Agency, shall establish an Inter-
9 national Climate Change Adaptation Program in accord-
10 ance with the requirements of this part.

11 (b) ALLOWANCE ACCOUNT.—Allowances allocated
12 pursuant to section 782(n) of the Clean Air Act shall be
13 available for distribution to carry out the Program estab-
14 lished under subsection (a).

15 (c) SUPPLEMENT NOT SUPPLANT.—Assistance pro-
16 vided under this part shall be used to supplement, and
17 not to supplant, any other Federal, State, or local re-
18 sources available to carry out activities of the type carried
19 out under the Program.

20 **SEC. 494. DISTRIBUTION OF ALLOWANCES.**

21 (a) IN GENERAL.—The Secretary of State, or such
22 other Federal agency head as the President may des-
23 ignate, after consultation with the Secretary of the Treas-
24 ury, the Administrator of USAID, and the Administrator

1 of the Environmental Protection Agency, shall direct the
2 distribution of allowances to carry out the Program—

3 (1) in the form of bilateral assistance pursuant
4 to the requirements under section 495;

5 (2) to multilateral funds or international insti-
6 tutions pursuant to the Convention or an agreement
7 negotiated under the Convention; or

8 (3) through a combination of the mechanisms
9 identified under paragraphs (1) and (2).

10 (b) LIMITATION.—

11 (1) CONDITIONAL DISTRIBUTION TO MULTILAT-
12 ERAL FUNDS OR INTERNATIONAL INSTITUTIONS.—

13 In any fiscal year, the Secretary of State, or such
14 other Federal agency head as the President may
15 designate, in consultation with the Administrator of
16 USAID, the Secretary of the Treasury, and the Ad-
17 ministrator of the Environmental Protection Agency,
18 shall distribute at least 40 percent and up to 60 per-
19 cent of the allowances available to carry out the Pro-
20 gram to one or more multilateral funds or inter-
21 national institutions that meet the requirements of
22 paragraph (2), if any such fund or institution exists,
23 and shall annually certify in a report to the appro-
24 priate congressional committees that any multilat-
25 eral fund or international institution receiving allow-

1 ances under this section meets the requirements of
2 paragraph (2) or that no multilateral fund or inter-
3 national institution that meets the requirements of
4 paragraph (2) exists, as the case may be. The Sec-
5 retary of State shall notify the appropriate congres-
6 sional committees not less than 15 days prior to any
7 transfer of allowances to a multilateral fund or
8 international institution pursuant to this section.

9 (2) MULTILATERAL FUND OR INTERNATIONAL
10 INSTITUTION ELIGIBILITY.—A multilateral fund or
11 international institution is eligible to receive allow-
12 ances available to carry out the Program—

13 (A) if—

14 (i) such fund or institution is estab-
15 lished pursuant to—

16 (I) the Convention; or

17 (II) an agreement negotiated
18 under the Convention; or

19 (ii) the allowances are directed to one
20 or more multilateral development banks or
21 international development institutions, pur-
22 suant to an agreement negotiated under
23 such Convention; and

24 (B) if such fund or institution—

1 (i) specifies the terms and conditions
2 under which the United States is to pro-
3 vide allowances to the fund or institution,
4 and under which the fund or institution is
5 to provide assistance to recipient countries;

6 (ii) ensures that assistance from the
7 United States to the fund or institution
8 and the principal and income of the fund
9 or institution are disbursed only for pur-
10 poses that are consistent with those de-
11 scribed in section 491(b)(1);

12 (iii) requires a regular meeting of a
13 governing body of the fund or institution
14 that includes representation from countries
15 among the most vulnerable developing
16 countries and provides public access;

17 (iv) requires that local communities
18 and indigenous peoples in areas where any
19 activities or programs are planned are en-
20 gaged through adequate disclosure of in-
21 formation, public participation, and con-
22 sultation; and

23 (v) prepares and makes public an an-
24 nual report that—

1 (I) describes the process and
2 methodology for selecting the recipi-
3 ents of assistance from the fund or in-
4 stitution, including assessments of
5 vulnerability;

6 (II) describes specific programs
7 and activities supported by the fund
8 or institution and the extent to which
9 the assistance is addressing the adap-
10 tation needs of the most vulnerable
11 developing countries, and the most
12 vulnerable communities and popu-
13 lations therein;

14 (III) describes the performance
15 goals for assistance authorized under
16 the fund or institution and expresses
17 such goals in an objective and quan-
18 tifiable form, to the extent practicable;

19 (IV) describes the performance
20 indicators to be used in measuring or
21 assessing the achievement of the per-
22 formance goals described in subclause
23 (III);

24 (V) provides a basis for rec-
25 ommendations for adjustments to as-

1 sistance authorized under this part to
2 enhance the impact of such assist-
3 ance; and

4 (VI) describes the participation
5 of other nations and international or-
6 ganizations in supporting and gov-
7 erning the fund or institution.

8 (c) OVERSIGHT.—

9 (1) DISTRIBUTION TO MULTILATERAL FUNDS
10 OR INTERNATIONAL INSTITUTIONS.—The Secretary
11 of State, or such other Federal agency head as the
12 President may designate, in consultation with the
13 Administrator of USAID, shall oversee the distribu-
14 tion of allowances available to carry out the Pro-
15 gram to a multilateral fund or international institu-
16 tion under subsection (b).

17 (2) BILATERAL ASSISTANCE.—The Adminis-
18 trator of USAID, in consultation with the Secretary
19 of State, shall oversee the distribution of allowances
20 available to carry out the Program for bilateral as-
21 sistance under section 495.

22 **SEC. 495. BILATERAL ASSISTANCE.**

23 (a) ACTIVITIES AND FOREIGN AID.—

24 (1) IN GENERAL.—In order to achieve the pur-
25 poses of this part, the Administrator of USAID may

1 carry out programs and activities and distribute al-
2 lowances to any private or public group (including
3 international organizations and faith-based organiza-
4 tions), association, or other entity engaged in peace-
5 ful activities to—

6 (A) provide assistance to the most vulner-
7 able developing countries for—

8 (i) the development of national or re-
9 gional climate change adaptation plans, in-
10 cluding a systematic assessment of socio-
11 economic vulnerabilities in order to identify
12 the most vulnerable communities and pop-
13 ulations;

14 (ii) associated national policies; and

15 (iii) planning, financing, and execu-
16 tion of adaptation programs and activities;

17 (B) support investments, capacity-building
18 activities, and other assistance, to reduce vul-
19 nerability and promote community-level resil-
20 ience related to climate change and its impacts
21 in the most vulnerable developing countries, in-
22 cluding impacts on water availability, agricul-
23 tural productivity, flood risk, coastal resources,
24 timing of seasons, biodiversity, economic liveli-
25 hoods, health, human migration, or other social,

1 economic, political, cultural, or environmental
2 matters;

3 (C) support climate change adaptation re-
4 search in or for the most vulnerable developing
5 countries;

6 (D) reduce vulnerability and provide in-
7 creased resilience to climate change for local
8 communities and livelihoods in the most vulner-
9 able developing countries by encouraging—

10 (i) the protection and rehabilitation of
11 natural systems;

12 (ii) the enhancement and diversifica-
13 tion of agricultural, fishery, and other live-
14 lihoods; and

15 (iii) the reduction of disaster risks;

16 (E) support the deployment of technologies
17 to help the most vulnerable developing countries
18 respond to the destabilizing impacts of climate
19 change and encourage the identification and
20 adoption of appropriate renewable and efficient
21 energy technologies that are beneficial in in-
22 creasing community-level resilience to the im-
23 pacts of global climate change in those coun-
24 tries; and

1 (F) encourage the engagement of local
2 communities through disclosure of information,
3 consultation, and the communities' informed
4 participation relating to the development of
5 plans, programs, and activities to increase com-
6 munity-level resilience to climate change im-
7 pacts.

8 (2) LIMITATIONS.—Not more than 10 percent
9 of the allowances made available to carry out bilat-
10 eral assistance under this part in any year shall be
11 distributed to support activities in any single coun-
12 try.

13 (3) PRIORITIZING ASSISTANCE.—In providing
14 assistance under this section, the Administrator of
15 USAID shall give priority to countries, including the
16 most vulnerable communities and populations there-
17 in, that are most vulnerable to the adverse impacts
18 of climate change, determined by the likelihood and
19 severity of such impacts and the country's capacity
20 to adapt to such impacts.

21 (b) COMMUNITY ENGAGEMENT.—

22 (1) IN GENERAL.—The Administrator of
23 USAID shall ensure that local communities, includ-
24 ing the most vulnerable communities and popu-
25 lations therein, in areas where any programs or ac-

1 activities are carried out pursuant to this section are
2 engaged in, through disclosure of information, public
3 participation, and consultation, the design, imple-
4 mentation, monitoring, and evaluation of such pro-
5 grams and activities.

6 (2) CONSULTATION AND DISCLOSURE.—For
7 each country receiving assistance under this section,
8 the Administrator of USAID shall establish a proc-
9 ess for consultation with, and disclosure of informa-
10 tion to, local, national, and international stake-
11 holders regarding any programs and activities car-
12 ried out pursuant to this section.

13 (c) COORDINATION.—

14 (1) ALIGNMENT OF ACTIVITIES.—Subject to the
15 direction of the President and the Secretary of
16 State, the Administrator of USAID shall, to the ex-
17 tent practicable, seek to align activities under this
18 section with broader development, poverty allevi-
19 ation, or natural resource management objectives
20 and initiatives in the recipient country.

21 (2) COORDINATION OF ACTIVITIES.—The Ad-
22 ministrator of USAID shall ensure that there is co-
23 ordination among the activities under this section,
24 subtitle D of this title, and part E of title VII of the

1 Clean Air Act, in order to maximize the effectiveness
2 of United States assistance to developing countries.

3 (d) REPORTING.—

4 (1) INITIAL REPORT.—Not later than 180 days
5 after the date of enactment of this part, the Admin-
6 istrator of USAID, in consultation with the Sec-
7 retary of State, shall submit to the President and
8 the appropriate congressional committees an initial
9 report that—

10 (A) based on the most recent information
11 available from reliable public sources or knowl-
12 edge obtained by USAID on a reliable basis, as
13 determined by the Administrator of USAID,
14 identifies the developing countries, including the
15 most vulnerable communities and populations
16 therein, that are most vulnerable to climate
17 change impacts and in which assistance may
18 have the greatest and most sustainable benefit
19 in reducing vulnerability to climate change; and

20 (B) describes the process and methodology
21 for selecting the recipients of assistance under
22 subsection (a)(1).

23 (2) ANNUAL REPORTS.—Not later than 18
24 months after the date on which the initial report is
25 submitted pursuant to paragraph (1), and annually

1 thereafter, the Administrator of USAID, in consulta-
2 tion with the Secretary of State, shall submit to the
3 President and the appropriate congressional commit-
4 tees a report that—

5 (A) describes the extent to which global cli-
6 mate change, through its potential negative im-
7 pacts on sensitive populations and natural re-
8 sources in the most vulnerable developing coun-
9 tries, may threaten, cause, or exacerbate polit-
10 ical, economic, environmental, cultural, or social
11 instability or international conflict in those re-
12 gions;

13 (B) describes the ramifications of any po-
14 tentially destabilizing impacts climate change
15 may have on the national security, foreign pol-
16 icy, and economic interests of the United
17 States, including—

18 (i) the creation of environmental mi-
19 grants and internally displaced peoples;

20 (ii) international or internal armed
21 conflicts over water, food, land, or other
22 resources;

23 (iii) loss of agricultural and other live-
24 lihoods, cultural stability, and other causes

1 of increased poverty and economic desta-
2 bilization;

3 (iv) decline in availability of resources
4 needed for survival, including water;

5 (v) increased impact of natural disas-
6 ters (including droughts, flooding, and
7 other severe weather events);

8 (vi) increased prevalence or virulence
9 of climate-related diseases; and

10 (vii) intensified urban migration;

11 (C) describes how allowances available
12 under this section were distributed during the
13 previous fiscal year to enhance the national se-
14 curity, foreign policy, and economic interests of
15 the United States and assist in avoiding the
16 economically, politically, environmentally, cul-
17 turally, and socially destabilizing impacts of cli-
18 mate change in most vulnerable developing
19 countries;

20 (D) identifies and recommends the devel-
21 oping countries, including the most vulnerable
22 communities and populations therein, that are
23 most vulnerable to climate change impacts and
24 in which assistance may have the greatest and
25 most sustainable benefit in reducing vulner-

1 ability to climate change, including in the form
2 of deploying technologies, investments, capacity-
3 building activities, and other types of assistance
4 for adaptation to climate change impacts and
5 approaches to reduce greenhouse gases in ways
6 that may also provide community-level resilience
7 to climate change impacts; and

8 (E) describes cooperation undertaken with
9 other nations and international organizations to
10 carry out this part.

11 (e) MONITORING AND EVALUATION.—

12 (1) IN GENERAL.—The Administrator of
13 USAID shall establish and implement a system to
14 monitor and evaluate the effectiveness and efficiency
15 of assistance provided under this section in order to
16 maximize the long-term sustainable development im-
17 pact of such assistance, including the extent to
18 which such assistance is meeting the purposes of
19 this part and addressing the adaptation needs of de-
20 veloping countries.

21 (2) REQUIREMENTS.—In carrying out para-
22 graph (1), the Administrator of USAID shall—

23 (A) in consultation with national govern-
24 ments in recipient countries, establish perform-
25 ance goals for assistance authorized under this

1 section and express such goals in an objective
2 and quantifiable form, to the extent practicable;

3 (B) establish performance indicators to be
4 used in measuring or assessing the achievement
5 of the performance goals described in subpara-
6 graph (A), including an evaluation of—

7 (i) the extent to which assistance
8 under this section provided for disclosure
9 of information to, consultation with, and
10 informed participation by local commu-
11 nities;

12 (ii) the extent to which local commu-
13 nities participated in the design, implemen-
14 tation, and evaluation of programs and ac-
15 tivities implemented pursuant to this sec-
16 tion; and

17 (iii) the impacts of such participation
18 on the goals and objectives of the pro-
19 grams and activities implemented under
20 this section;

21 (C) provide a basis for recommendations
22 for adjustments to assistance authorized under
23 this section to enhance the impact of such as-
24 sistance; and

1 (D) include, in the annual report to the
2 appropriate congressional committees and other
3 relevant agencies required under subsection
4 (d)(2), findings resulting from the monitoring
5 and evaluation of programs and activities under
6 this section.

○