

Calendar No. 97

111TH CONGRESS
1ST SESSION**H. R. 2454**

IN THE SENATE OF THE UNITED STATES

JULY 6, 2009

Received and read the first time

JULY 7, 2009

Read the second time and placed on the calendar

AN ACT

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.

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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) CENTRAL PROCUREMENT STATE.—The
2 term ‘central procurement State’ means a State
3 that, as of January 1, 2009, had adopted and imple-
4 mented a legally enforceable mandate that, in lieu of
5 requiring utilities to submit credits or certificates
6 issued based on generation of electricity from (or to
7 purchase or generate electricity from) resources de-
8 fined by the State as renewable, requires retail elec-
9 tric suppliers to collect payments from electricity
10 ratepayers within the State that are used for central
11 procurement, by a State agency or a public benefit
12 corporation established pursuant to State law, of
13 credits or certificates issued based on generation of
14 electricity from resources defined by the State as re-
15 newable.

16 “(8) FEDERAL RENEWABLE ELECTRICITY
17 CREDIT.—The term ‘Federal renewable electricity
18 credit’ means a credit, representing one megawatt
19 hour of renewable electricity, issued pursuant to sub-
20 section (e).

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

1 “(10) FUEL CELL SAVINGS.—The term ‘fuel
2 cell savings’ means the electricity saved by a fuel cell
3 that is installed after the date of enactment of this
4 section, or by upgrading a fuel cell that commenced
5 operation on or before the date of enactment of this
6 section, as a result of the greater efficiency with
7 which the fuel cell transforms fuel into electricity as
8 compared with sources of electricity delivered
9 through the grid, provided that—

10 “(A) the fuel cell meets such requirements
11 relating to efficiency and other operating char-
12 acteristics as the Commission may promulgate
13 by regulation; and

14 “(B) the net sales of electricity from the
15 fuel cell to customers not consuming the ther-
16 mal output from the fuel cell, if any, do not ex-
17 ceed 50 percent of the total annual electricity
18 generation by the fuel cell.

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

22 “(A) Landfill gas.

23 “(B) Wastewater treatment gas.

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

1 “(D) Qualified waste-to-energy.

2 “(12) QUALIFIED HYDROPOWER.—The term
3 ‘qualified hydropower’ means—

4 “(A) energy produced from increased effi-
5 ciency achieved, or additions of capacity made,
6 on or after January 1, 1988, at a hydroelectric
7 facility that was placed in service before that
8 date and does not include additional energy
9 generated as a result of operational changes not
10 directly associated with efficiency improvements
11 or capacity additions; or

12 “(B) energy produced from generating ca-
13 pacity added to a dam on or after January 1,
14 1988, provided that the Commission certifies
15 that—

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

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

1 of the license or exemption, and with other
2 applicable legal requirements for the pro-
3 tection of environmental quality, including
4 applicable fish passage requirements; and

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

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

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

1 “(B) the Commission determines, with the
2 concurrence of the Administrator of the Envi-
3 ronmental Protection Agency, that the total
4 lifecycle greenhouse gas emissions attributable
5 to the generation of electricity from such waste
6 or debris are lower than those attributable to
7 the likely alternative method of disposing of
8 such waste or debris; and

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

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

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

24 “(iii) in the case of the combustion,
25 pyrolization, or gasification of municipal

1 solid waste, a certification that each local
2 government unit from which such waste
3 originates operates, participates in the op-
4 eration of, contracts for, or otherwise pro-
5 vides for, recycling services for its resi-
6 dents.

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

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

17 “(A) Materials, pre-commercial thinnings,
18 or removed invasive species from National For-
19 est System land and public lands (as defined in
20 section 103 of the Federal Land Policy and
21 Management Act of 1976 (43 U.S.C. 1702)),
22 including those that are byproducts of preven-
23 tive treatments (such as trees, wood, brush,
24 thinnings, chips, and slash), that are removed
25 as part of a federally recognized timber sale, or

1 that are removed to reduce hazardous fuels, to
2 reduce or contain disease or insect infestation,
3 or to restore ecosystem health, and that are—

4 “(i) not from components of the Na-
5 tional Wilderness Preservation System,
6 Wilderness Study Areas, Inventoried
7 Roadless Areas, old growth stands, late-
8 successional stands (except for dead, se-
9 verely damaged, or badly infested trees),
10 components of the National Landscape
11 Conservation System, National Monu-
12 ments, National Conservation Areas, Des-
13 ignated Primitive Areas, or Wild and Sce-
14 nic Rivers corridors;

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

18 “(iii) harvested in accordance with
19 Federal and State law, and applicable land
20 management plans.

21 “(B) Any organic matter that is available
22 on a renewable or recurring basis from non-
23 Federal land or land belonging to an Indian or
24 Indian tribe that is held in trust by the United

1 States or subject to a restriction against alien-
2 ation imposed by the United States, including—

3 “(i) renewable plant material, includ-
4 ing—

5 “(I) feed grains;

6 “(II) other agricultural commod-
7 ities;

8 “(III) other plants and trees; and

9 “(IV) algae; and

10 “(ii) waste material, including—

11 “(I) crop residue;

12 “(II) other vegetative waste ma-
13 terial (including wood waste and wood
14 residues);

15 “(III) animal waste and byprod-
16 ucts (including fats, oils, greases, and
17 manure);

18 “(IV) construction waste; and

19 “(V) food waste and yard waste.

20 “(C) Residues and byproducts from wood,
21 pulp, or paper products facilities.

22 “(16) RENEWABLE ELECTRICITY.—The term
23 ‘renewable electricity’ means electricity generated
24 (including by means of a fuel cell) from a renewable
25 energy resource or other qualifying energy resources.

1 “(17) RENEWABLE ENERGY RESOURCE.—The
2 term ‘renewable energy resource’ means each of the
3 following:

4 “(A) Wind energy.

5 “(B) Solar energy.

6 “(C) Geothermal energy.

7 “(D) Renewable biomass.

8 “(E) Biogas derived exclusively from re-
9 newable biomass.

10 “(F) Biofuels derived exclusively from re-
11 newable biomass.

12 “(G) Qualified hydropower.

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

17 “(18) RETAIL ELECTRIC SUPPLIER.—

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

24 “(B) INCLUSIONS AND LIMITATIONS.—For
25 purposes of determining whether an electric

1 utility qualifies as a retail electric supplier
2 under subparagraph (A)—

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

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

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

21 “(19) RETAIL ELECTRIC SUPPLIER’S BASE
22 AMOUNT.—The term ‘retail electric supplier’s base
23 amount’ means the total amount of electric energy
24 sold by the retail electric supplier, expressed in
25 megawatt hours, to electric customers for purposes

1 other than resale during the relevant calendar year,
2 excluding—

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

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

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

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

20 “(21) THIRD-PARTY EFFICIENCY PROVIDER.—
21 The term ‘third-party efficiency provider’ means any
22 retailer, building owner, energy service company, fi-
23 nancial institution or other commercial, industrial or
24 nonprofit entity that is capable of providing elec-

1 tricity savings in accordance with the requirements
2 of this section.

3 “(22) TOTAL ANNUAL ELECTRICITY SAVINGS.—

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

12 “(b) ANNUAL COMPLIANCE OBLIGATION.—

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

22 “(2) DEMONSTRATION OF SAVINGS.—For pur-
23 poses of this subsection, submission of demonstrated
24 total annual electricity savings means submission of
25 a report that demonstrates, in accordance with the

1 requirements of subsection (f), the total annual elec-
2 tricity savings achieved by the retail electric supplier
3 within the relevant compliance year.

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

10 “(4) STATE PETITION.—

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

24 “(B) CONTENTS.—A Governor’s request
25 under this paragraph shall include an expla-

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

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

19 “(i) any revocation or revision shall
20 not apply to the combined annual target
21 for any year that is any earlier than 2 cal-
22 endar years after the calendar year in
23 which such request is submitted, so as to
24 provide retail electric suppliers with ade-
25 quate notice of such change; and

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

3 “(c) ESTABLISHMENT OF PROGRAM.—Not later than
4 1 year after the date of enactment of this section, the
5 Commission shall promulgate regulations to implement
6 and enforce the requirements of this section. In promul-
7 gating such regulations, the Commission shall, to the ex-
8 tent practicable—

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

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

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

20 “(d) ANNUAL COMPLIANCE REQUIREMENT.—

21 “(1) ANNUAL COMBINED TARGETS.—For each
22 of calendar years 2012 through 2039, a retail elec-
23 tric supplier’s annual combined target shall be the
24 product of—

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

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

5 “(2) REQUIRED ANNUAL PERCENTAGE.—For
6 each of calendar years 2012 through 2039, the re-
7 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

8 “(e) FEDERAL RENEWABLE ELECTRICITY CRED-
9 ITS.—

10 “(1) IN GENERAL.—The regulations promul-
11 gated under this section shall include provisions gov-
12 erning the issuance, tracking, and verification of
13 Federal renewable electricity credits. Except as pro-
14 vided in paragraphs (2), (3), and (4) of this sub-
15 section, the Commission shall issue to each gener-
16 ator of renewable electricity, 1 Federal renewable
17 electricity credit for each megawatt hour of renew-
18 able electricity generated by such generator after
19 December 31, 2011. The Commission shall assign a

1 unique serial number to each Federal renewable
2 electricity credit.

3 “(2) GENERATION FROM CERTAIN STATE RE-
4 NEWABLE ELECTRICITY PROGRAMS.—(A) Except as
5 provided in subparagraph (B), where renewable elec-
6 tricity is generated with the support of payments
7 from a retail electric supplier pursuant to a State re-
8 newable electricity program (whether through State
9 alternative compliance payments or through pay-
10 ments to a State renewable electricity procurement
11 fund or entity), the Commission shall issue Federal
12 renewable electricity credits to such retail electric
13 supplier for the proportion of the relevant renewable
14 electricity generation that is attributable to the retail
15 electric supplier’s payments, as determined pursuant
16 to regulations issued by the Commission. For any
17 remaining portion of the relevant renewable elec-
18 tricity generation, the Commission shall issue Fed-
19 eral renewable electricity credits to the generator, as
20 provided in paragraph (1), except that in no event
21 shall more than 1 Federal renewable electricity cred-
22 it be issued for the same megawatt hour of elec-
23 tricity. In determining how Federal renewable elec-
24 tricity credits will be apportioned among retail elec-
25 tric suppliers and generators in such circumstances,

1 the Commission shall consider information and guid-
2 ance furnished by the relevant State or States.

3 “(B) In the case of a central procurement State
4 that pursuant to subsection (g) has assumed respon-
5 sibility for compliance with the requirements of sub-
6 section (b), the Commission shall issue directly to
7 the State Federal renewable electricity credits for
8 any renewable electricity for which the State, pursu-
9 ant to a mandate described in subsection (a)(7), has
10 centrally procured credits or certificates issued based
11 on generation of such renewable electricity.

12 “(3) CERTAIN POWER SALES CONTRACTS.—Ex-
13 cept as otherwise provided in paragraph (2), when a
14 generator has sold renewable electricity to a retail
15 electric supplier under a contract for power from a
16 facility placed in service before the date of enact-
17 ment of this section, and the contract does not pro-
18 vide for the determination of ownership of the Fed-
19 eral renewable electricity credits associated with
20 such generation, the Commission shall issue such
21 Federal renewable electricity credits to the retail
22 electric supplier for the duration of the contract.

23 “(4) CREDIT MULTIPLIER FOR DISTRIBUTED
24 RENEWABLE GENERATION.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), the Commission shall issue 3
3 Federal renewable electricity credits for each
4 megawatt hour of renewable electricity gen-
5 erated by a distributed renewable generation fa-
6 cility.

7 “(B) ADJUSTMENT.—Except as provided
8 in subparagraph (C), not later than January 1,
9 2014, and not less frequently than every 4
10 years thereafter, the Commission shall review
11 the effect of this paragraph and shall, as nec-
12 essary, reduce the number of Federal renewable
13 electricity credits per megawatt hour issued
14 under this paragraph for any given energy
15 source or technology, but not below 1, to ensure
16 that such number is no higher than the Com-
17 mission determines is necessary to make dis-
18 tributed renewable generation facilities using
19 such source or technology cost competitive with
20 other sources of renewable electricity genera-
21 tion.

22 “(C) FACILITIES PLACED IN SERVICE
23 AFTER ENACTMENT.—For any distributed re-
24 newable generation facility placed in service
25 after the date of enactment of this section, sub-

1 paragraph (B) shall not apply for the first 10
2 years after the date on which the facility is
3 placed in service. For each year during such 10-
4 year period, the Commission shall issue to the
5 facility the same number of Federal renewable
6 electricity credits per megawatt hour as are
7 issued to that facility in the year in which such
8 facility is placed in service. After such 10-year
9 period, the Commission shall issue Federal re-
10 newable electricity credits to the facility in ac-
11 cordance with the current multiplier as deter-
12 mined pursuant to subparagraph (B).

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

17 “(A) based solely on the increase in aver-
18 age annual generation directly resulting from
19 the efficiency improvements or capacity addi-
20 tions described in subsection (a)(13)(A); and

21 “(B) using the same water flow informa-
22 tion used to determine a historic average an-
23 nual generation baseline for the hydroelectric
24 facility, as certified by the Commission.

1 “(6) GENERATION FROM QUALIFIED WASTE-TO-
2 ENERGY.—In the case of electricity generated from
3 the combustion of any municipal solid waste or con-
4 struction, demolition, or disaster debris that is in-
5 cluded in the definition of renewable biomass, or
6 from the gasification or pyrolysis of such waste or
7 debris and the combustion of the resulting gas at
8 the same facility, the Commission shall issue Federal
9 renewable electricity credits only for electricity gen-
10 erated from qualified waste-to-energy.

11 “(7) GENERATION FROM MIXED RENEWABLE
12 AND NONRENEWABLE RESOURCES.—If electricity is
13 generated using both a renewable energy resource or
14 other qualifying energy resource and an energy
15 source that is not a renewable energy resource or
16 other qualifying energy resource (as, for example, in
17 the case of co-firing of renewable biomass and fossil
18 fuel), the Commission shall issue Federal renewable
19 electricity credits based on the proportion of the
20 electricity that is attributable to the renewable en-
21 ergy resource or other qualifying energy resource.

22 “(8) PROHIBITION AGAINST DOUBLE-COUNT-
23 ING.—Except as provided in paragraph (4) of this
24 subsection, the Commission shall ensure that no
25 more than 1 Federal renewable electricity credit will

1 be issued for any megawatt hour of renewable elec-
2 tricity and that no Federal renewable electricity
3 credit will be used more than once for compliance
4 with this section.

5 “(9) TRADING.—The lawful holder of a Federal
6 renewable electricity credit may sell, exchange,
7 transfer, submit for compliance in accordance with
8 subsection (b), or submit such credit for retirement
9 by the Commission.

10 “(10) BANKING.—A Federal renewable elec-
11 tricity credit may be submitted in satisfaction of the
12 compliance obligation set forth in subsection (b) for
13 the compliance year in which the credit was issued
14 or for any of the 3 immediately subsequent compli-
15 ance years. The Commission shall retire any Federal
16 renewable electricity credit that has not been retired
17 by April 2 of the calendar year that is 3 years after
18 the calendar year in which the credit was issued.

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

24 “(f) ELECTRICITY SAVINGS.—

1 “(1) STANDARDS FOR MEASUREMENT OF SAV-
2 INGS.—As part of the regulations promulgated
3 under this section, the Commission shall prescribe
4 standards and protocols for defining and measuring
5 electricity savings and total annual electricity sav-
6 ings that can be counted towards the compliance ob-
7 ligation set forth in subsection (b). Such protocols
8 and standards shall, at minimum—

9 “(A) specify the types of energy efficiency
10 and energy conservation measures that can be
11 counted;

12 “(B) require that energy consumption esti-
13 mates for customer facilities or portions of fa-
14 cilities in the applicable base and current years
15 be adjusted, as appropriate, to account for
16 changes in weather, level of production, and
17 building area;

18 “(C) account for the useful life of meas-
19 ures;

20 “(D) include deemed savings values for
21 specific, commonly used measures;

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

1 “(F) include procedures for counting CHP
2 savings, recycled energy savings, and fuel cell
3 savings;

4 “(G) include procedures for documenting
5 measurable and verifiable electricity savings
6 achieved as a result of market transformation
7 efforts;

8 “(H) include procedures for counting elec-
9 tricity savings achieved by solar water heating
10 and solar light pipe technology that has the ca-
11 pability to provide measurable data on the
12 amount of megawatt-hours displaced;

13 “(I) avoid double-counting of savings used
14 for compliance with this section, including sav-
15 ings that are transferred pursuant to paragraph
16 (3);

17 “(J) ensure that, except as provided in
18 subparagraph (L), the retail electric supplier
19 claiming the savings played a significant role in
20 achieving the savings (including through the ac-
21 tivities of a designated agent of the supplier or
22 through the purchase of transferred savings);

23 “(K) include savings from programs ad-
24 ministered by a retail electric supplier (or a re-
25 tail electricity distributor that is not a retail

1 electric supplier) that are funded by State, Fed-
2 eral, or other sources;

3 “(L) in any State in which the State regu-
4 latory authority has designated 1 or more enti-
5 ties to administer electric ratepayer-funded effi-
6 ciency programs approved by such State regu-
7 latory authority, provide that electricity savings
8 achieved through such programs shall be dis-
9 tributed equitably among retail electric sup-
10 pliers in accordance with the direction of the
11 relevant State regulatory authority; and

12 “(M) exclude savings achieved as a result
13 of compliance with mandatory appliance and
14 equipment efficiency standards or building
15 codes.

16 “(2) STANDARDS FOR THIRD-PARTY
17 VERIFICATION OF SAVINGS.—The regulations pro-
18 mulgated under this section shall establish proce-
19 dures and standards requiring third-party
20 verification of all reported electricity savings, includ-
21 ing requirements for accreditation of third-party
22 verifiers to ensure that such verifiers are profes-
23 sionally qualified and have no conflicts of interest.

24 “(3) TRANSFERS OF SAVINGS.—

1 “(A) BILATERAL CONTRACTS FOR SAVINGS
2 TRANSFERS.—Subject to the limitations of this
3 paragraph, a retail electric supplier may use
4 electricity savings transferred, pursuant to a bi-
5 lateral contract, from another retail electric
6 supplier, an owner of an electric distribution fa-
7 cility that is not a retail electric supplier, a
8 State, or a third-party efficiency provider to
9 meet the applicable compliance obligation under
10 subsection (b).

11 “(B) REQUIREMENTS.—Electricity savings
12 transferred and used for compliance pursuant
13 to this paragraph shall be—

14 “(i) measured and verified in accord-
15 ance with the procedures specified under
16 this subsection;

17 “(ii) reported in accordance with
18 paragraph (4) of this subsection; and

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

21 “(C) REGULATORY APPROVAL.—Nothing
22 in this paragraph shall limit or affect the au-
23 thority of a State regulatory authority to re-
24 quire a retail electric supplier that is regulated
25 by such authority to obtain such authority’s au-

1 thorization or approval of a contract for trans-
2 fer of savings under this paragraph.

3 “(4) REPORTING SAVINGS.—

4 “(A) REQUIREMENTS.—The regulations
5 promulgated under this section shall establish
6 requirements governing the submission of re-
7 ports to demonstrate, in accordance with the
8 protocols and standards for measurement and
9 third-party verification established under this
10 subsection, the total annual electricity savings
11 achieved by a retail electric supplier within the
12 relevant year.

13 “(B) REVIEW AND APPROVAL.—The Com-
14 mission shall review each report submitted to
15 the Commission by a retail electric supplier and
16 shall exclude any electricity savings that have
17 not been adequately demonstrated in accord-
18 ance with the requirements of this subsection.

19 “(5) STATE ADMINISTRATION.—

20 “(A) DELEGATION OF AUTHORITY.—Upon
21 receipt of an application from the Governor of
22 a State (including, for purposes of this sub-
23 section, the Mayor of the District of Columbia),
24 the Commission may delegate to the State the
25 authority to review and verify reported elec-

1 tricity savings for purposes of determining dem-
2 onstrated total annual electricity savings that
3 may be counted towards a retail electric sup-
4 plier’s compliance obligation under subsection
5 (b). The Commission shall make a substantive
6 determination approving or disapproving a
7 State application under this subparagraph,
8 after notice and comment, within 180 days of
9 receipt of a complete application.

10 “(B) ALTERNATIVE MEASUREMENT AND
11 VERIFICATION PROCEDURES AND STAND-
12 ARDS.—As part of an application submitted
13 under subparagraph (A), a State may request
14 to use alternative measurement and verification
15 procedures and standards to those specified in
16 paragraphs (1) and (2), provided the State
17 demonstrates that such alternative procedures
18 and standards provide a level of accuracy of
19 measurement and verification at least equiva-
20 lent to the Federal procedures and standards
21 promulgated under paragraphs (1) and (2).

22 “(C) REVIEW OF STATE IMPLEMENTA-
23 TION.—The Commission shall, not less fre-
24 quently than once every 4 years, review each
25 State’s implementation of delegated authority

1 under this paragraph to ensure conformance
2 with the requirements of this section. The Com-
3 mission may, at any time, revoke the delegation
4 of authority under this section upon a finding
5 that the State is not implementing its delegated
6 responsibilities in conformity with this para-
7 graph. As a condition of maintaining its dele-
8 gated authority under this paragraph, the Com-
9 mission may require a State to submit a revised
10 application under subparagraph (A) if the Com-
11 mission has—

12 “(i) promulgated new or substantially
13 revised measurement and verification pro-
14 cedures and standards under this sub-
15 section; or

16 “(ii) otherwise substantially revised
17 the program established under this section.

18 “(g) ALTERNATIVE COMPLIANCE PAYMENTS.—

19 “(1) IN GENERAL.—A retail electric supplier, or
20 a central procurement State that, pursuant to sub-
21 section (g), has assumed responsibility for compli-
22 ance with the requirements of subsection (b), may
23 satisfy the requirements of subsection (b) in whole
24 or in part by submitting in accordance with this sub-
25 section, in lieu of each Federal renewable electricity

1 credit or megawatt hour of demonstrated total an-
2 nual electricity savings that would otherwise be due,
3 a payment equal to \$25, adjusted for inflation on
4 January 1 of each year following calendar year
5 2009, in accordance with such regulations as the
6 Commission may promulgate.

7 “(2) PAYMENT TO STATE FUNDS.—Except as
8 otherwise provided in this paragraph and paragraph
9 (4), payments made under this subsection shall be
10 made directly to the State or States in which the re-
11 tail electric supplier is located, in proportion to the
12 portion of the retail electric supplier’s base amount
13 that is sold within each relevant State, provided that
14 such payments are deposited directly into a fund in
15 the State treasury established for this purpose and
16 that the State uses such funds in accordance with
17 paragraphs (3) and (5) and with paragraph (4),
18 where applicable. If the Commission determines at
19 any time that a State is in substantial noncompli-
20 ance with paragraph (3) or (5), or with paragraph
21 (4), where applicable, the Commission shall direct
22 that any future alternative compliance payments
23 that would otherwise be paid to such State under
24 this subsection shall instead be paid to the Commis-
25 sion and deposited in the United States Treasury.

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

5 “(A) deploying technologies that generate
6 electricity from renewable energy resources; or

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

9 “(4) CENTRAL PROCUREMENT STATES.—

10 “(A) IN GENERAL.—A central procurement
11 State that, pursuant to subsection (g), has as-
12 sumed responsibility for compliance with the re-
13 quirements of subsection (b) shall deposit any
14 alternative compliance payments under this
15 subsection in a unique fund in the State treas-
16 ury created and used solely for this purpose.

17 “(B) REQUIREMENTS.—As a precondition
18 of making alternative compliance payments
19 under this subsection, a central procurement
20 State shall certify to the Commission, in ac-
21 cordance with such requirements as the Com-
22 mission may prescribe, that—

23 “(i) making such payments is the low-
24 est cost alternative to meet the require-
25 ments of subsection (b); and

1 “(ii) moneys used by the State to
2 make such payments are in addition to any
3 spending that the State, and any separate
4 entity charged with administering the
5 State central procurement requirement
6 identified under subsection (a)(7), other-
7 wise collectively would direct to the pur-
8 poses identified in paragraph (3).

9 “(C) USES.—A central procurement State
10 that makes alternative compliance payments
11 under this subsection shall certify to the Com-
12 mission that, in using such payments in accord-
13 ance with paragraph (3), it has, to the extent
14 practicable, maximized the level of deployment
15 of renewable electricity generation (measured in
16 megawatt hours) and electricity savings per dol-
17 lar that are achieved through such expendi-
18 tures.

19 “(5) REPORTING.—As a condition of continued
20 receipt of alternative compliance payments pursuant
21 to this subsection, a State shall, within 12 months
22 of receipt of any such payments and at 12-month in-
23 tervals thereafter until such payments are expended,
24 provide a report to the Commission, in accordance
25 with such regulations as the Commission may pre-

1 scribe, giving a full accounting of the use of such
2 payments, including a detailed description of the ac-
3 tivities funded thereby and demonstrating compli-
4 ance with the requirements of this subsection.

5 “(g) CENTRAL PROCUREMENT STATES.—

6 “(1) IN GENERAL.—A central procurement
7 State may, upon submission of a written request by
8 the Governor of such State to the Commission, as-
9 sume responsibility for compliance with the require-
10 ments of subsection (b) on behalf of retail electric
11 suppliers located in such State, exclusively with re-
12 gard to the portion of such retail electric suppliers’
13 base amount that is sold within the State.

14 “(2) DEMONSTRATION OF ELECTRICITY SAV-
15 INGS.—If a central procurement State opts to meet
16 any part of the requirements of subsection (b) based
17 on the achievement of demonstrated total annual
18 electricity savings, regardless of whether such State
19 has received delegated authority pursuant to sub-
20 section (f)(5), such State shall submit such dem-
21 onstrated total annual electricity savings to the
22 Commission through an annual report in accordance
23 with requirements prescribed by the Commission by
24 regulation, which shall be of equivalent stringency to

1 those applicable to retail electric suppliers under
2 subsection (f).

3 “(3) NONCOMPLIANCE.—If a central procure-
4 ment State that pursuant to this subsection has as-
5 sumed responsibility for compliance with the require-
6 ments of subsection (b), fails to satisfy the require-
7 ments of subsection (b) or (h) for any year, the
8 State’s assumption of responsibility under this sub-
9 section shall be discontinued immediately, and retail
10 electric suppliers located in such State henceforth
11 shall be directly subject to the requirements of this
12 section.

13 “(h) INFORMATION COLLECTION.—The Commission
14 may require any retail electric supplier, renewable elec-
15 tricity generator, or such other entities as the Commission
16 deems appropriate, to provide any information the Com-
17 mission determines appropriate to carry out this section.
18 Failure to submit such information or submission of false
19 or misleading information under this subsection shall be
20 a violation of this section.

21 “(i) ENFORCEMENT AND JUDICIAL REVIEW.—

22 “(1) FAILURE TO SUBMIT CREDITS OR DEM-
23 ONSTRATE SAVINGS.—If any person, other than any
24 central procurement State that pursuant to sub-
25 section (g) has assumed responsibility for compliance

1 with the requirements of subsection (b), fails to com-
2 ply with the requirements of subsection (b) or (h),
3 such person shall be liable to pay to the Commission
4 a civil penalty equal to the product of—

5 “(A) double the alternative compliance
6 payment calculated under subsection (h)(1),
7 and

8 “(B) the aggregate quantity of Federal re-
9 newable electricity credits, total annual elec-
10 tricity savings, or equivalent alternative compli-
11 ance payments that the person failed to submit
12 in violation of the requirements of subsections
13 (b) and (h).

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

18 “(3) VIOLATION OF REQUIREMENT OF REGULA-
19 TIONS OR ORDERS.—Any person, other than any
20 central procurement State that pursuant to sub-
21 section (g) has assumed responsibility for compliance
22 with the requirements of subsection (b), who vio-
23 lates, or fails or refuses to comply with, any require-
24 ment of a regulation promulgated or order issued
25 under this section shall be subject to a civil penalty

1 under section 316A(b) of the Federal Power Act (16
2 U.S.C. 825o-1). Such penalty shall be assessed by
3 the Commission in the same manner as in the case
4 of a violation referred to in section 316A(b) of such
5 Act.

6 “(j) JUDICIAL REVIEW.—Any person aggrieved by a
7 final action taken by the Commission under this section,
8 other than the assessment of a civil penalty under sub-
9 section (j), may use the procedures for review described
10 in section 313 of the Federal Power Act (16 U.S.C. 825l).
11 For purposes of this paragraph, references to an order in
12 section 313 of such Act shall be deemed to refer also to
13 all other final actions of the Commission under this section
14 other than the assessment of a civil penalty under sub-
15 section (i).

16 “(k) SAVINGS PROVISIONS.—Nothing in this section
17 shall—

18 “(1) diminish or qualify any authority of a
19 State, a political subdivision of a State, or an Indian
20 tribe to—

21 “(A) adopt or enforce any law or regula-
22 tion respecting renewable electricity or energy
23 efficiency, including any law or regulation es-
24 tablishing requirements more stringent than
25 those established by this section, provided that

1 no such law or regulation may relieve any per-
2 son of any requirement otherwise applicable
3 under this section; or

4 “(B) regulate the acquisition and dispo-
5 sition of Federal renewable electricity credits by
6 retail electric suppliers within the jurisdiction of
7 such State, political subdivision, or Indian tribe,
8 including the authority to require such retail
9 electric supplier to acquire and submit to the
10 Secretary for retirement Federal renewable
11 electricity credits in excess of those submitted
12 under this section; or

13 “(2) affect the application of, or the responsi-
14 bility for compliance with, any other provision of law
15 or regulation, including environmental and licensing
16 requirements.

17 “(1) SUNSET.—This section expires on December 31,
18 2040.”.

19 (b) CONFORMING AMENDMENT.—The table of con-
20 tents set forth in section 1(b) of the Public Utility Regu-
21 latory Policies Act of 1978 (16 U.S.C. 2601 and following)
22 is amended by inserting after the item relating to section
23 609 the following:

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

1 **SEC. 102. CLARIFYING STATE AUTHORITY TO ADOPT RE-**
2 **NEWABLE ENERGY INCENTIVES.**

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

5 “(o) CLARIFICATION OF STATE AUTHORITY TO
6 ADOPT RENEWABLE ENERGY INCENTIVES.—Notwith-
7 standing any other provision of this Act or the Federal
8 Power Act, a State legislature or regulatory authority may
9 set the rates for a sale of electric energy by a facility gen-
10 erating electric energy from renewable energy sources pur-
11 suant to a State-approved production incentive program
12 under which the facility voluntarily sells electric energy.
13 For purposes of this subsection, ‘State-approved produc-
14 tion incentive program’ means a requirement imposed pur-
15 suant to State law, or by a State regulatory authority act-
16 ing within its authority under State law, that an electric
17 utility purchase renewable energy (as defined in section
18 609 of this Act) at a specified rate.”.

19 **SEC. 103. FEDERAL RENEWABLE ENERGY PURCHASES.**

20 (a) REQUIREMENT.—For each of calendar years
21 2012 through 2039, the President shall ensure that, of
22 the total amount of electricity Federal agencies consume
23 in the United States during each calendar year, the fol-
24 lowing percentage shall be renewable electricity:

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

1 (b) DEFINITIONS.—For purposes of this section:

2 (1) RENEWABLE ELECTRICITY.—The term “re-
3 newable electricity” shall have the meaning given in
4 section 610 of the Public Utility Regulatory Policies
5 Act of 1978 (16 U.S.C. 2601 and following).

6 (2) RENEWABLE ENERGY RESOURCE.—The
7 term “renewable energy resource” shall have the
8 meaning given in section 610 of the Public Utility
9 Regulatory Policies Act of 1978 (16 U.S.C. 2601
10 and following).

11 (c) MODIFICATION OF REQUIREMENT.—If the Presi-
12 dent determines that the Federal Government cannot fea-
13 sibly meet the requirement established in subsection (a)
14 in a specific calendar year, the President may, by written
15 order, reduce such requirement for such calendar year to
16 a percentage the President determines the Federal Gov-
17 ernment can feasibly meet.

18 (d) REPORTS.—Not later than April 1, 2013, and
19 each year thereafter, the Secretary of Energy shall provide

1 a report to Congress on the percentage of each Federal
2 agency's electricity consumption in the United States that
3 was renewable electricity in the previous calendar year.

4 (e) **CONTRACTS FOR RENEWABLE ENERGY.**—(1)
5 Notwithstanding section 501(b)(1)(B) of title 40, United
6 States Code, a contract for the acquisition of electricity
7 generated from a renewable energy resource for the Fed-
8 eral Government may be made for a period of not more
9 than 20 years.

10 (2) Not later than 90 days after the date of enact-
11 ment of this subsection, the Secretary of Energy, through
12 the Federal Energy Management Program, shall publish
13 a standardized renewable energy purchase agreement, set-
14 ting forth commercial terms and conditions, that Federal
15 agencies may use to acquire electricity generated from a
16 renewable energy resource.

17 (3) The Secretary of Energy shall provide technical
18 assistance to assist Federal agencies in implementing this
19 subsection.

20 **Subtitle B—Carbon Capture and** 21 **Sequestration**

22 **SEC. 111. NATIONAL STRATEGY.**

23 (a) **IN GENERAL.**—Not later than 1 year after the
24 date of enactment of this Act, the Administrator, in con-
25 sultation with the Secretary of Energy, the Secretary of

1 the Interior, and the heads of such other relevant Federal
2 agencies as the President may designate, shall submit to
3 Congress a report setting forth a unified and comprehen-
4 sive strategy to address the key legal, regulatory and other
5 barriers to the commercial-scale deployment of carbon
6 capture and sequestration.

7 (b) BARRIERS.—The report under this section
8 shall—

9 (1) identify those regulatory, legal, and other
10 gaps and barriers that could be addressed by a Fed-
11 eral agency using existing statutory authority, those,
12 if any, that require Federal legislation, and those
13 that would be best addressed at the State, tribal, or
14 regional level;

15 (2) identify regulatory implementation chal-
16 lenges, including those related to approval of State
17 and tribal programs and delegation of authority for
18 permitting; and

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

22 **SEC. 112. REGULATIONS FOR GEOLOGIC SEQUESTRATION**
23 **SITES.**

24 (a) COORDINATED CERTIFICATION AND PERMITTING
25 PROCESS.—Title VIII of the Clean Air Act, as added by

1 section 331 of this Act, is amended by adding after section
2 812 (as added by section 116 of this Act) the following:

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

4 “(a) COORDINATED PROCESS.—The Administrator
5 shall establish a coordinated approach to certifying and
6 permitting geologic sequestration, taking into consider-
7 ation all relevant statutory authorities. In establishing
8 such approach, the Administrator shall—

9 “(1) take into account, and reduce redundancy
10 with, the requirements of section 1421 of the Safe
11 Drinking Water Act (42 U.S.C. 300h), as amended
12 by section 112(b) of the American Clean Energy and
13 Security Act of 2009, including the rulemaking for
14 geologic sequestration wells described at 73 Fed.
15 Reg. 43491–541 (July 25, 2008); and

16 “(2) to the extent practicable, reduce the bur-
17 den on certified entities and implementing authori-
18 ties.

19 “(b) REGULATIONS.—Not later than 2 years after
20 the date of enactment of this title, the Administrator shall
21 promulgate regulations to protect human health and the
22 environment by minimizing the risk of escape to the at-
23 mosphere of carbon dioxide injected for purposes of geo-
24 logic sequestration.

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

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

5 “(2) requirements for—

6 “(A) monitoring, record keeping, and re-
7 porting for emissions associated with injection
8 into, and escape from, geologic sequestration
9 sites, taking into account any requirements or
10 protocols developed under section 713;

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

13 “(C) the sharing of data between States,
14 Indian tribes, and the Environmental Protec-
15 tion Agency; and

16 “(D) other elements or safeguards nec-
17 essary to achieve the purpose set forth in sub-
18 section (b).

19 “(d) REPORT.—Not later than 2 years after the pro-
20 mulgation of regulations under subsection (b), and at 3-
21 year intervals thereafter, the Administrator shall deliver
22 to the Committee on Energy and Commerce of the House
23 of Representatives and the Committee on Environment
24 and Public Works of the Senate a report on geologic se-
25 questration in the United States, and, to the extent rel-

1 evant, other countries in North America. Such report shall
2 include—

3 “(1) data regarding injection, emissions to the
4 atmosphere, if any, and performance of active and
5 closed geologic sequestration sites, including those
6 where enhanced hydrocarbon recovery operations
7 occur;

8 “(2) an evaluation of the performance of rel-
9 evant Federal environmental regulations and pro-
10 grams in ensuring environmentally protective geo-
11 logic sequestration practices;

12 “(3) recommendations on how such programs
13 and regulations should be improved or made more
14 effective; and

15 “(4) other relevant information.”

16 (b) SAFE DRINKING WATER ACT STANDARDS.—Sec-
17 tion 1421 of the Safe Drinking Water Act (42 U.S.C.
18 300h) is amended by inserting after subsection (d) the fol-
19 lowing:

20 “(e) CARBON DIOXIDE GEOLOGIC SEQUESTRATION
21 WELLS.—

22 “(1) IN GENERAL.—Not later than 1 year after
23 the date of enactment of this subsection, the Admin-
24 istrator shall promulgate regulations under sub-

1 section (a) for carbon dioxide geologic sequestration
2 wells.

3 “(2) FINANCIAL RESPONSIBILITY.—The regula-
4 tions referred to in paragraph (1) shall include re-
5 quirements for maintaining evidence of financial re-
6 sponsibility, including financial responsibility for
7 emergency and remedial response, well plugging, site
8 closure, and post-injection site care. Financial re-
9 sponsibility may be established for carbon dioxide
10 geologic sequestration wells in accordance with regu-
11 lations promulgated by the Administrator by any
12 one, or any combination, of the following: insurance,
13 guarantee, trust, standby trust, surety bond, letter
14 of credit, qualification as a self-insurer, or any other
15 method satisfactory to the Administrator.”.

16 **SEC. 113. STUDIES AND REPORTS.**

17 (a) STUDY OF LEGAL FRAMEWORK FOR GEOLOGIC
18 SEQUESTRATION SITES.—

19 (1) ESTABLISHMENT OF TASK FORCE.—As
20 soon as practicable, but not later than 6 months
21 after the date of enactment of this Act, the Adminis-
22 trator shall establish a task force to be composed of
23 an equal number of subject matter experts, non-
24 governmental organizations with expertise in envi-
25 ronmental policy, academic experts with expertise in

1 environmental law, State and tribal officials with en-
2 vironmental expertise, representatives of State and
3 tribal Attorneys General, representatives from the
4 Environmental Protection Agency, the Department
5 of the Interior, the Department of Energy, the De-
6 partment of Transportation, and other relevant Fed-
7 eral agencies, and members of the private sector, to
8 conduct a study of—

9 (A) existing Federal environmental stat-
10 utes, State environmental statutes, and State
11 common law that apply to geologic sequestra-
12 tion sites for carbon dioxide, including the abil-
13 ity of such laws to serve as risk management
14 tools;

15 (B) the existing statutory framework, in-
16 cluding Federal and State laws, that apply to
17 harm and damage to the environment or public
18 health at closed sites where carbon dioxide in-
19 jection has been used for enhanced hydrocarbon
20 recovery;

21 (C) the statutory framework, environ-
22 mental health and safety considerations, imple-
23 mentation issues, and financial implications of
24 potential models for Federal, State, or private
25 sector assumption of liabilities and financial re-

1 responsibilities with respect to closed geologic se-
2 questration sites;

3 (D) private sector mechanisms, including
4 insurance and bonding, that may be available to
5 manage environmental, health and safety risk
6 from closed geologic sequestration sites; and

7 (E) the subsurface mineral rights, water
8 rights, or property rights issues associated with
9 geologic sequestration of carbon dioxide, includ-
10 ing issues specific to Federal lands.

11 (2) REPORT.—Not later than 18 months after
12 the date of enactment of this Act, the task force es-
13 tablished under paragraph (1) shall submit to Con-
14 gress a report describing the results of the study
15 conducted under that paragraph including any con-
16 sensus recommendations of the task force.

17 (b) ENVIRONMENTAL STATUTES.—

18 (1) STUDY.—The Administrator shall conduct a
19 study examining how, and under what cir-
20 cumstances, the environmental statutes for which
21 the Environmental Protection Agency has responsi-
22 bility would apply to carbon dioxide injection and
23 geologic sequestration activities.

24 (2) REPORT.—Not later than 1 year after the
25 date of enactment of this Act, the Administrator

1 shall submit to Congress a report describing the re-
2 sults of the study conducted under paragraph (1).

3 **SEC. 114. CARBON CAPTURE AND SEQUESTRATION DEM-**
4 **ONSTRATION AND EARLY DEPLOYMENT PRO-**
5 **GRAM.**

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

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

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

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

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

19 (5) FOSSIL FUEL.—The term “fossil fuel”
20 means coal, petroleum, natural gas or any derivative
21 of coal, petroleum, or natural gas.

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

1 (7) QUALIFIED INDUSTRY ORGANIZATION.—The
2 term “qualified industry organization” means the
3 Edison Electric Institute, the American Public
4 Power Association, the National Rural Electric Co-
5 operative Association, a successor organization of
6 such organizations, or a group of owners or opera-
7 tors of distribution utilities delivering fossil fuel-
8 based electricity who collectively represent at least
9 20 percent of the volume of fossil fuel-based elec-
10 tricity delivered by distribution utilities to consumers
11 in the United States.

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

14 (b) CARBON STORAGE RESEARCH CORPORATION.—

15 (1) ESTABLISHMENT.—

16 (A) REFERENDUM.—Qualified industry or-
17 ganizations may conduct, at their own expense,
18 a referendum among the owners or operators of
19 distribution utilities delivering fossil fuel-based
20 electricity for the creation of a Carbon Storage
21 Research Corporation. Such referendum shall
22 be conducted by an independent auditing firm
23 agreed to by the qualified industry organiza-
24 tions. Voting rights in such referendum shall be
25 based on the quantity of fossil fuel-based elec-

1 tricity delivered to consumers in the previous
2 calendar year or other representative period as
3 determined by the Secretary pursuant to sub-
4 section (f). Upon approval of those persons rep-
5 resenting two-thirds of the total quantity of fos-
6 sil fuel-based electricity delivered to retail con-
7 sumers, the Corporation shall be established un-
8 less opposed by the State regulatory authorities
9 pursuant to subparagraph (B). All distribution
10 utilities voting in the referendum shall certify to
11 the independent auditing firm the quantity of
12 fossil fuel-based electricity represented by their
13 vote.

14 (B) STATE REGULATORY AUTHORITIES.—
15 Upon its own motion or the petition of a quali-
16 fied industry organization, each State regu-
17 latory authority shall consider its support or op-
18 position to the creation of the Corporation
19 under subparagraph (A). State regulatory au-
20 thorities may notify the independent auditing
21 firm referred to in subparagraph (A) of their
22 views on the creation of the Corporation within
23 180 days after the date of enactment of this
24 Act. If 40 percent or more of the State regu-
25 latory authorities submit to the independent au-

1 diting firm written notices of opposition, the
2 Corporation shall not be established notwith-
3 standing the approval of the qualified industry
4 organizations as provided in subparagraph (A).

5 (2) TERMINATION.—The Corporation shall be
6 authorized to collect assessments and conduct oper-
7 ations pursuant to this section for a 10-year period
8 from the date 6 months after the date of enactment
9 of this Act. After such 10-year period, the Corpora-
10 tion is no longer authorized to collect assessments
11 and shall be dissolved on the date 15 years after
12 such date of enactment, unless the period is ex-
13 tended by an Act of Congress.

14 (3) GOVERNANCE.—The Corporation shall oper-
15 ate as a division or affiliate of the Electric Power
16 Research Institute (referred to in this section as
17 “EPRI”) and be managed by a Board of not more
18 than 15 voting members responsible for its oper-
19 ations, including compliance with this section. EPRI,
20 in consultation with the Edison Electric Institute,
21 the American Public Power Association and the Na-
22 tional Rural Electric Cooperative Association shall
23 appoint the Board members under clauses (i), (ii),
24 and (iii) of subparagraph (A) from among can-
25 didates recommended by those organizations. At

1 least a majority of the Board members appointed by
2 EPRI shall be representatives of distribution utilities
3 subject to assessments under subsection (d).

4 (A) MEMBERS.—The Board shall include
5 at least one representative of each of the fol-
6 lowing:

7 (i) Investor-owned utilities.

8 (ii) Utilities owned by a State agency,
9 a municipality, and an Indian tribe.

10 (iii) Rural electric cooperatives.

11 (iv) Fossil fuel producers.

12 (v) Nonprofit environmental organiza-
13 tions.

14 (vi) Independent generators or whole-
15 sale power providers.

16 (vii) Consumer groups.

17 (B) NONVOTING MEMBERS.—The Board
18 shall also include as additional nonvoting Mem-
19 bers the Secretary of Energy or his designee
20 and 2 representatives of State regulatory au-
21 thorities as defined in section 3(17) of the Pub-
22 lic Utility Regulatory Policies Act of 1978 (16
23 U.S.C. 2602(17)), each designated by the Na-
24 tional Association of State Regulatory Utility

1 Commissioners from States that are not within
2 the same transmission interconnection.

3 (4) COMPENSATION.—Corporation Board mem-
4 bers shall receive no compensation for their services,
5 nor shall Corporation Board members be reimbursed
6 for expenses relating to their service.

7 (5) TERMS.—Corporation Board members shall
8 serve terms of 4 years and may serve not more than
9 2 full consecutive terms. Members filling unexpired
10 terms may serve not more than a total of 8 consecu-
11 tive years. Former members of the Corporation
12 Board may be reappointed to the Corporation Board
13 if they have not been members for a period of 2
14 years. Initial appointments to the Corporation Board
15 shall be for terms of 1, 2, 3, and 4 years, staggered
16 to provide for the selection of 3 members each year.

17 (6) STATUS OF CORPORATION.—The Corpora-
18 tion shall not be considered to be an agency, depart-
19 ment, or instrumentality of the United States, and
20 no officer or director or employee of the Corporation
21 shall be considered to be an officer or employee of
22 the United States Government, for purposes of title
23 5 or title 31 of the United States Code, or for any
24 other purpose, and no funds of the Corporation shall
25 be treated as public money for purposes of chapter

1 33 of title 31, United States Code, or for any other
2 purpose.

3 (c) FUNCTIONS AND ADMINISTRATION OF THE COR-
4 PORATION.—

5 (1) IN GENERAL.—The Corporation shall estab-
6 lish and administer a program to accelerate the com-
7 mercial availability of carbon dioxide capture and
8 storage technologies and methods, including tech-
9 nologies which capture and store, or capture and
10 convert, carbon dioxide. Under such program com-
11 petitively awarded grants, contracts, and financial
12 assistance shall be provided and entered into with el-
13 igible entities. Except as provided in paragraph (8),
14 the Corporation shall use all funds derived from as-
15 sessments under subsection (d) to issue grants and
16 contracts to eligible entities.

17 (2) PURPOSE.—The purposes of the grants,
18 contracts, and assistance under this subsection shall
19 be to support commercial-scale demonstrations of
20 carbon capture or storage technology projects capa-
21 ble of advancing the technologies to commercial
22 readiness. Such projects should encompass a range
23 of different coal and other fossil fuel varieties, be
24 geographically diverse, involve diverse storage media,
25 and employ capture or storage, or capture and con-

1 version, technologies potentially suitable either for
2 new or for retrofit applications. The Corporation
3 shall seek, to the extent feasible, to support at least
4 5 commercial-scale demonstration projects inte-
5 grating carbon capture and sequestration or conver-
6 sion technologies.

7 (3) ELIGIBLE ENTITIES.—Entities eligible for
8 grants, contracts or assistance under this subsection
9 may include distribution utilities, electric utilities
10 and other private entities, academic institutions, na-
11 tional laboratories, Federal research agencies, State
12 and tribal research agencies, nonprofit organizations,
13 or consortiums of 2 or more entities. Pilot-scale and
14 similar small-scale projects are not eligible for sup-
15 port by the Corporation. Owners or developers of
16 projects supported by the Corporation shall, where
17 appropriate, share in the costs of such projects.

18 (4) GRANTS FOR EARLY MOVERS.—Fifty per-
19 cent of the funds raised under this section shall be
20 provided in the form of grants to electric utilities
21 that had, prior to the award of any grant under this
22 section, committed resources to deploy a large scale
23 electricity generation unit with integrated carbon
24 capture and sequestration or conversion applied to a
25 substantial portion of the unit’s carbon dioxide emis-

1 sions. Grant funds shall be provided to defray costs
2 incurred by such electricity utilities for at least 5
3 such electricity generation units.

4 (5) ADMINISTRATION.—The members of the
5 Board of Directors of the Corporation shall elect a
6 Chairman and other officers as necessary, may es-
7 tablish committees and subcommittees of the Cor-
8 poration, and shall adopt rules and bylaws for the
9 conduct of business and the implementation of this
10 section. The Board shall appoint an Executive Di-
11 rector and professional support staff who may be
12 employees of the Electric Power Research Institute
13 (EPRI). After consultation with the Technical Advi-
14 sory Committee established under subsection (j), the
15 Secretary, and the Director of the National Energy
16 Technology Laboratory to obtain advice and rec-
17 ommendations on plans, programs, and project selec-
18 tion criteria, the Board shall establish priorities for
19 grants, contracts, and assistance; publish requests
20 for proposals for grants, contracts, and assistance;
21 and award grants, contracts, and assistance competi-
22 tively, on the basis of merit, after the establishment
23 of procedures that provide for scientific peer review
24 by the Technical Advisory Committee. The Board
25 shall give preference to applications that reflect the

1 best overall value and prospect for achieving the
2 purposes of the section, such as those which dem-
3 onstrate an integrated approach for capture and
4 storage or capture and conversion technologies. The
5 Board members shall not participate in making
6 grants or awards to entities with whom they are af-
7 filiated.

8 (6) USES OF GRANTS, CONTRACTS, AND ASSIST-
9 ANCE.—A grant, contract, or other assistance pro-
10 vided under this subsection may be used to purchase
11 carbon dioxide when needed to conduct tests of car-
12 bon dioxide storage sites, in the case of established
13 projects that are storing carbon dioxide emissions, or
14 for other purposes consistent with the purposes of
15 this section. The Corporation shall make publicly
16 available at no cost information learned as a result
17 of projects which it supports financially.

18 (7) INTELLECTUAL PROPERTY.—The Board
19 shall establish policies regarding the ownership of in-
20 tellectual property developed as a result of Corpora-
21 tion grants and other forms of technology support.
22 Such policies shall encourage individual ingenuity
23 and invention.

24 (8) ADMINISTRATIVE EXPENSES.—Up to 5 per-
25 cent of the funds collected in any fiscal year under

1 subsection (d) may be used for the administrative
2 expenses of operating the Corporation (not including
3 costs incurred in the determination and collection of
4 the assessments pursuant to subsection (d)).

5 (9) PROGRAMS AND BUDGET.—Before August 1
6 each year, the Corporation, after consulting with the
7 Technical Advisory Committee and the Secretary
8 and the Director of the Department’s National En-
9 ergy Technology Laboratory and other interested
10 parties to obtain advice and recommendations, shall
11 publish for public review and comment its proposed
12 plans, programs, project selection criteria, and
13 projects to be funded by the Corporation for the
14 next calendar year. The Corporation shall also pub-
15 lish for public review and comment a budget plan for
16 the next calendar year, including the probable costs
17 of all programs, projects, and contracts and a rec-
18 ommended rate of assessment sufficient to cover
19 such costs. The Secretary may recommend programs
20 and activities the Secretary considers appropriate.
21 The Corporation shall include in the first publication
22 it issues under this paragraph a strategic plan or
23 roadmap for the achievement of the purposes of the
24 Corporation, as set forth in paragraph (2).

1 (10) RECORDS; AUDITS.—The Corporation shall
2 keep minutes, books, and records that clearly reflect
3 all of the acts and transactions of the Corporation
4 and make public such information. The books of the
5 Corporation shall be audited by a certified public ac-
6 countant at least once each fiscal year and at such
7 other times as the Corporation may designate. Cop-
8 ies of each audit shall be provided to the Congress,
9 all Corporation board members, all qualified indus-
10 try organizations, each State regulatory authority
11 and, upon request, to other members of the industry.
12 If the audit determines that the Corporation’s prac-
13 tices fail to meet generally accepted accounting prin-
14 ciples the assessment collection authority of the Cor-
15 poration under subsection (d) shall be suspended
16 until a certified public accountant renders a subse-
17 quent opinion that the failure has been corrected.
18 The Corporation shall make its books and records
19 available for review by the Secretary or the Comp-
20 troller General of the United States.

21 (11) PUBLIC ACCESS.—The Corporation
22 Board’s meetings shall be open to the public and
23 shall occur after at least 30 days advance public no-
24 tice. Meetings of the Board of Directors may be
25 closed to the public where the agenda of such meet-

1 ings includes only confidential matters pertaining to
2 project selection, the award of grants or contracts,
3 personnel matters, or the receipt of legal advice. The
4 minutes of all meetings of the Corporation shall be
5 made available to and readily accessible by the pub-
6 lic.

7 (12) ANNUAL REPORT.—Each year the Cor-
8 poration shall prepare and make publicly available a
9 report which includes an identification and descrip-
10 tion of all programs and projects undertaken by the
11 Corporation during the previous year. The report
12 shall also detail the allocation or planned allocation
13 of Corporation resources for each such program and
14 project. The Corporation shall provide its annual re-
15 port to the Congress, the Secretary, each State regu-
16 latory authority, and upon request to the public. The
17 Secretary shall, not less than 60 days after receiving
18 such report, provide to the President and Congress
19 a report assessing the progress of the Corporation in
20 meeting the objectives of this section.

21 (d) ASSESSMENTS.—

22 (1) AMOUNT.—(A) In all calendar years fol-
23 lowing its establishment, the Corporation shall col-
24 lect an assessment on distribution utilities for all
25 fossil fuel-based electricity delivered directly to retail

1 consumers (as determined under subsection (f)). The
 2 assessments shall reflect the relative carbon dioxide
 3 emission rates of different fossil fuel-based elec-
 4 tricity, and initially shall be not less than the fol-
 5 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.

6 (B) The Corporation is authorized to adjust the
 7 assessments on fossil fuel-based electricity to reflect
 8 changes in the expected quantities of such electricity
 9 from different fuel types, such that the assessments
 10 generate not less than \$1.0 billion and not more
 11 than \$1.1 billion annually. The Corporation is au-
 12 thorized to supplement assessments through addi-
 13 tional financial commitments.

14 (2) INVESTMENT OF FUNDS.—Pending dis-
 15 bursement pursuant to a program, plan, or project,
 16 the Corporation may invest funds collected through
 17 assessments under this subsection, and any other
 18 funds received by the Corporation, only in obliga-
 19 tions of the United States or any agency thereof, in
 20 general obligations of any State or any political sub-
 21 division thereof, in any interest-bearing account or
 22 certificate of deposit of a bank that is a member of

1 the Federal Reserve System, or in obligations fully
2 guaranteed as to principal and interest by the
3 United States.

4 (3) REVERSION OF UNUSED FUNDS.—If the
5 Corporation does not disburse, dedicate or assign 75
6 percent or more of the available proceeds of the as-
7 sessed fees in any calendar year 7 or more years fol-
8 lowing its establishment, due to an absence of quali-
9 fied projects or similar circumstances, it shall reim-
10 burse the remaining undedicated or unassigned bal-
11 ance of such fees, less administrative and other ex-
12 penses authorized by this section, to the distribution
13 utilities upon which such fees were assessed, in pro-
14 portion to their collected assessments.

15 (e) ERCOT.—

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

20 (i) levied directly on qualified scheduling
21 entities, or their successor entities;

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

1 (iii) collected and remitted by ERCOT to
2 the Corporation in the amounts and in the
3 same manner as set forth in subsection (d).

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

6 (i) determined by the amount and types of
7 fossil fuel-based electricity delivered directly to
8 all retail customers in the prior calendar year
9 beginning with the year ending immediately
10 prior to the period described in subsection
11 (b)(2); and

12 (ii) take into account the number of renew-
13 able energy credits retired by the load-serving
14 entities represented by a qualified scheduling
15 entity within the prior calendar year.

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

22 (3) AUDIT.—ERCOT shall provide a copy of its
23 annual audit pertaining to the administration of the
24 provisions of this subsection to the Corporation.

1 (4) DEFINITIONS.—For the purposes of this
2 subsection:

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

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

8 (C) The term “qualified scheduling enti-
9 ties” has the meaning adopted by ERCOT Pro-
10 tocols and in effect on the date of enactment of
11 this Act.

12 (D) The term “renewable energy credit”
13 has the meaning as promulgated and adopted
14 by the Public Utility Commission of Texas pur-
15 suant to section 39.904(b) of the Public Utility
16 Regulatory Act of 1999, and in effect on the
17 date of enactment of this Act.

18 (f) DETERMINATION OF FOSSIL FUEL-BASED ELEC-
19 TRICITY DELIVERIES.—

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

21 (A) The assessments under subsection (d)
22 are to be collected based on the amount of fossil
23 fuel-based electricity delivered by each distribu-
24 tion utility.

1 (B) Since many distribution utilities pur-
2 chase all or part of their retail consumer’s elec-
3 tricity needs from other entities, it may not be
4 practical to determine the precise fuel mix for
5 the power sold by each individual distribution
6 utility.

7 (C) It may be necessary to use average
8 data, often on a regional basis with reference to
9 Regional Transmission Organization (“RTO”)
10 or NERC regions, to make the determinations
11 necessary for making assessments.

12 (2) DOE PROPOSED RULE.—The Secretary,
13 acting in close consultation with the Energy Infor-
14 mation Administration, shall issue for notice and
15 comment a proposed rule to determine the level of
16 fossil fuel electricity delivered to retail customers by
17 each distribution utility in the United States during
18 the most recent calendar year or other period deter-
19 mined to be most appropriate. Such proposed rule
20 shall balance the need to be efficient, reasonably pre-
21 cise, and timely, taking into account the nature and
22 cost of data currently available and the nature of
23 markets and regulation in effect in various regions
24 of the country. Different methodologies may be ap-

1 plied in different regions if appropriate to obtain the
2 best balance of such factors.

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

18 (4) ANNUAL DETERMINATIONS.—Pursuant to
19 the final rule issued under paragraph (3), the Sec-
20 retary shall make annual determinations of the
21 amounts and types for each such utility and publish
22 such determinations in the Federal Register. Such
23 determinations shall be used to conduct the ref-
24 erendum under subsection (b) and by the Corpora-

1 tion in applying any assessment under this sub-
2 section.

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

16 (g) COMPLIANCE WITH CORPORATION ASSESS-
17 MENTS.—The Corporation may bring an action in the ap-
18 propriate court of the United States to compel compliance
19 with an assessment levied by the Corporation under this
20 section. A successful action for compliance under this sub-
21 section may also require payment by the defendant of the
22 costs incurred by the Corporation in bringing such action.

23 (h) MIDCOURSE REVIEW.—Not later than 5 years
24 following establishment of the Corporation, the Comp-
25 troller General of the United States shall prepare an anal-

1 ysis, and report to Congress, assessing the Corporation's
2 activities, including project selection and methods of dis-
3 bursement of assessed fees, impacts on the prospects for
4 commercialization of carbon capture and storage tech-
5 nologies, adequacy of funding, and administration of
6 funds. The report shall also make such recommendations
7 as may be appropriate in each of these areas. The Cor-
8 poration shall reimburse the Government Accountability
9 Office for the costs associated with performing this mid-
10 course review.

11 (i) RECOVERY OF COSTS.—

12 (1) IN GENERAL.—A distribution utility whose
13 transmission, delivery, or sales of electric energy are
14 subject to any form of rate regulation shall not be
15 denied the opportunity to recover the full amount of
16 the prudently incurred costs associated with com-
17 plying with this section, consistent with applicable
18 State or Federal law.

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

25 (j) TECHNICAL ADVISORY COMMITTEE.—

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

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

16 (3) CHAIRPERSON AND VICE CHAIRPERSON.—
17 The Board shall designate one member of the Tech-
18 nical Advisory Committee to serve as Chairperson of
19 the Committee and one to serve as Vice Chairperson
20 of the Committee.

21 (4) COMPENSATION.—The Board shall provide
22 compensation to members of the Technical Advisory
23 Committee for travel and other incidental expenses
24 and such other compensation as the Board deter-
25 mines to be necessary.

1 (5) PURPOSE.—The Technical Advisory Com-
2 mittee shall provide independent assessments and
3 technical evaluations, as well as make non-binding
4 recommendations to the Board, concerning Corpora-
5 tion activities, including but not limited to the fol-
6 lowing:

7 (A) Reviewing and evaluating the Corpora-
8 tion’s plans and budgets described in subsection
9 (c)(9), as well as any other appropriate areas,
10 which could include approaches to prioritizing
11 technologies, appropriateness of engineering
12 techniques, monitoring and verification tech-
13 nologies for storage, geological site selection,
14 and cost control measures.

15 (B) Making annual non-binding rec-
16 ommendations to the Board concerning any of
17 the matters referred to in subparagraph (A), as
18 well as what types of investments, scientific re-
19 search, or engineering practices would best fur-
20 ther the goals of the Corporation.

21 (6) PUBLIC AVAILABILITY.—All reports, evalua-
22 tions, and other materials of the Technical Advisory
23 Committee shall be made available to the public by
24 the Board, without charge, at time of receipt by the
25 Board.

1 (k) LOBBYING RESTRICTIONS.—No funds collected
2 by the Corporation shall be used in any manner for influ-
3 encing legislation or elections, except that the Corporation
4 may recommend to the Secretary and the Congress
5 changes in this section or other statutes that would fur-
6 ther the purposes of this section.

7 (l) DAVIS-BACON COMPLIANCE.—The Corporation
8 shall ensure that entities receiving grants, contracts, or
9 other financial support from the Corporation for the
10 project activities authorized by this section are in compli-
11 ance with the Davis-Bacon Act (40 U.S.C. 276a–276a–
12 5).

13 **SEC. 115. COMMERCIAL DEPLOYMENT OF CARBON CAP-**
14 **TURE AND SEQUESTRATION TECHNOLOGIES.**

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

18 **“SEC. 786. COMMERCIAL DEPLOYMENT OF CARBON CAP-**
19 **TURE AND SEQUESTRATION TECHNOLOGIES.**

20 “(a) REGULATIONS.—Not later than 2 years after
21 the date of enactment of this title, the Administrator shall
22 promulgate regulations providing for the distribution of
23 emission allowances allocated pursuant to section 782(f),
24 pursuant to the requirements of this section, to support
25 the commercial deployment of carbon capture and seques-

1 tration technologies in both electric power generation and
2 industrial operations.

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

6 “(1) implement carbon capture and sequestra-
7 tion technology—

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

9 “(i) has a nameplate capacity of 200
10 megawatts or more;

11 “(ii) in the case of a retrofit applica-
12 tion, applies the carbon capture and se-
13 questration technology to the flue gas from
14 at least 200 megawatts of the total name-
15 plate generating capacity of the unit, pro-
16 vided that clause (i) shall apply without ex-
17 ception;

18 “(iii) derives at least 50 percent of its
19 annual fuel input from coal, petroleum
20 coke, or any combination of these 2 fuels;
21 and

22 “(iv) upon implementation of capture
23 and sequestration technology, will achieve
24 an emission limit that is at least a 50 per-

1 cent reduction in emissions of the carbon
2 dioxide produced by—

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

6 “(II) in the case of retrofit appli-
7 cations under clause (ii), the treated
8 portion of flue gas from the unit,
9 measured on an annual basis, deter-
10 mined in accordance with section
11 812(b)(2); or

12 “(B) at an industrial source that—

13 “(i) absent carbon capture and se-
14 questration, would emit greater than
15 50,000 tons per year of carbon dioxide;

16 “(ii) upon implementation, will
17 achieve an emission limit that is at least a
18 50 percent reduction in emissions of the
19 carbon dioxide produced by the emission
20 point, measured on an annual basis, deter-
21 mined in accordance with section
22 812(b)(2); and

23 “(iii) does not produce a liquid trans-
24 portation fuel from a solid fossil-based
25 feedstock;

1 “(2) geologically sequester carbon dioxide at a
2 site that meets all applicable permitting and certifi-
3 cation requirements for geologic sequestration, or,
4 pursuant to such requirements as the Administrator
5 may prescribe by regulation, convert captured car-
6 bon dioxide to a stable form that will safely and per-
7 manently sequester such carbon dioxide;

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

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

11 “(c) PHASE I DISTRIBUTION TO ELECTRIC GENER-
12 ATING UNITS.—

13 “(1) APPLICATION.—This subsection shall
14 apply only to projects at the first 6 gigawatts of
15 electric generating units, measured in cumulative
16 generating capacity of such units, that receive allow-
17 ances under this section.

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

23 “(A) the product obtained by multi-
24 plying—

1 “(i) the number of metric tons of car-
2 bon dioxide emissions avoided through cap-
3 ture and sequestration of emissions by the
4 project, as determined pursuant to such
5 methodology as the Administrator shall
6 prescribe by regulation; and

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

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

11 “(3) BONUS ALLOWANCE VALUES.—

12 “(A) For a generating unit achieving the
13 capture and sequestration of 85 percent or
14 more of the carbon dioxide that otherwise would
15 be emitted by such unit, the bonus allowance
16 value shall be \$90 per ton.

17 “(B) The Administrator shall by regulation
18 establish a bonus allowance value for each rate
19 of lower capture and sequestration achieved by
20 a generating unit, from a minimum of \$50 per
21 ton for a 50 percent rate and varying directly
22 with increasing rates of capture and sequestra-
23 tion up to \$90 per ton for an 85 percent rate.

24 “(C) For a generating unit that achieves
25 the capture and sequestration of at least 50

1 percent of the carbon dioxide that otherwise
2 would be emitted by such unit by not later than
3 January 1, 2017, the otherwise applicable
4 bonus allowance value under this paragraph
5 shall be increased by \$10, provided that the
6 owner of such unit notifies the Administrator
7 by not later than January 1, 2012, of its intent
8 to achieve such rate of capture and sequestra-
9 tion.

10 “(D) For a carbon capture and sequestra-
11 tion project sequestering in a geological forma-
12 tion for purposes of enhanced hydrocarbon re-
13 covery, the Administrator shall, by regulation,
14 reduce the applicable bonus allowance value
15 under this paragraph to reflect the lower net
16 cost of the project when compared to sequestra-
17 tion into geological formations solely for pur-
18 poses of sequestration.

19 “(E) The Administrator shall annually ad-
20 just for inflation the bonus allowance values es-
21 tablished under this paragraph.

22 “(d) PHASE II DISTRIBUTION TO ELECTRIC GENER-
23 ATING UNITS.—

24 “(1) APPLICATION.—This subsection shall
25 apply only to the distribution of emission allowances

1 for carbon capture and sequestration projects at
2 electric generating units after the capacity threshold
3 identified in subsection (c)(1) is reached.

4 “(2) REGULATIONS.—Not later than 2 years
5 prior to the date on which the capacity threshold
6 identified in subsection (c)(1) is projected to be
7 reached, the Administrator shall promulgate regula-
8 tions to govern the distribution of emission allow-
9 ances to the owners or operators of eligible projects
10 under this subsection.

11 “(3) REVERSE AUCTIONS.—

12 “(A) IN GENERAL.—Except as provided in
13 paragraph (4), the regulations promulgated
14 under paragraph (2) shall provide for the dis-
15 tribution of emission allowances to the owners
16 or operators of eligible projects under this sub-
17 section through reverse auctions, which shall be
18 held no less frequently than once each calendar
19 year. The Administrator may establish a sepa-
20 rate auction for each of no more than 5 dif-
21 ferent project categories, defined on the basis of
22 coal type, capture technology, geological forma-
23 tion type, new unit versus retrofit application,
24 such other factors as the Administrator may
25 prescribe, or any combination thereof. The Ad-

1 administrator may establish appropriate minimum
2 rates of capture and sequestration in imple-
3 menting this paragraph.

4 “(B) AUCTION PROCESS.—At each reverse
5 auction—

6 “(i) the Administrator shall solicit
7 bids from eligible projects;

8 “(ii) eligible projects participating in
9 the auction shall submit a bid including
10 the desired level of carbon dioxide seques-
11 tration incentive per ton and the estimated
12 quantity of carbon dioxide that the project
13 will permanently sequester over 10 years;
14 and

15 “(iii) the Administrator shall select
16 bids, within each auction, for the seques-
17 tration amount submitted, beginning with
18 the eligible project submitting the bid for
19 the lowest level of sequestration incentive
20 on a per ton basis and meeting such other
21 requirements as the Administrator may
22 specify, until the amount of funds available
23 for the reverse auction is committed.

24 “(C) FORM OF DISTRIBUTION.—The Ad-
25 ministrator shall distribute emission allowances

1 to the owners or operators of eligible projects
2 selected through a reverse auction under this
3 paragraph pursuant to a formula equivalent to
4 that described in subsection (c)(2), except that
5 the bonus allowance value that is bid by the en-
6 tity shall be substituted for the bonus allowance
7 values set forth in subsection (c)(3).

8 “(4) ALTERNATIVE DISTRIBUTION METHOD.—

9 “(A) IN GENERAL.—If the Administrator
10 determines that reverse auctions would not pro-
11 vide for efficient and cost-effective commercial
12 deployment of carbon capture and sequestration
13 technologies, the Administrator may instead,
14 through regulations promulgated under para-
15 graph (2) or (5), prescribe a schedule for the
16 award of bonus allowances to the owners or op-
17 erators of eligible projects under this sub-
18 section, in accordance with the requirements of
19 this paragraph.

20 “(B) MULTIPLE TRANCHES.—The Admin-
21 istrator shall divide emission allowances avail-
22 able for distribution to the owners or operators
23 of eligible projects into a series of tranches,
24 each supporting the deployment of a specified
25 quantity of cumulative electric generating ca-

1 capacity utilizing carbon capture and sequestra-
2 tion technology, each of which shall not be
3 greater than 6 gigawatts.

4 “(C) METHOD OF DISTRIBUTION.—The
5 Administrator shall distribute emission allow-
6 ances within each tranche, on a first-come,
7 first-served basis—

8 “(i) based on the date of full-scale op-
9 eration of capture and sequestration tech-
10 nology; and

11 “(ii) pursuant to a formula, similar to
12 that set forth in subsection (c)(2) (except
13 that the Administrator shall prescribe
14 bonus allowance values different than those
15 set forth in subsection (c)(3)), establishing
16 the number of allowances to be distributed
17 per ton of carbon dioxide sequestered by
18 the project.

19 “(D) REQUIREMENTS.—For each tranche
20 established pursuant to subparagraph (B), the
21 Administrator shall establish a schedule for dis-
22 tributing emission allowances that—

23 “(i) is based on a sliding scale that
24 provides higher bonus allowance values for

1 projects achieving higher rates of capture
2 and sequestration;

3 “(ii) for each capture and sequestra-
4 tion rate, establishes a bonus allowance
5 value that is lower than that established
6 for such rate in the previous tranche (or,
7 in the case of the first tranche, than that
8 established for such rate under subsection
9 (c)(3)); and

10 “(iii) may establish different bonus al-
11 lowance levels for no more than 5 different
12 project categories, defined by coal type,
13 capture technology, geological formation
14 type, new unit versus retrofit application,
15 such other factors as the Administrator
16 may prescribe, or any combination thereof.

17 “(E) CRITERIA FOR ESTABLISHING BONUS
18 ALLOWANCE VALUES.—In setting bonus allow-
19 ance values under this paragraph, the Adminis-
20 trator shall seek to cover no more than the rea-
21 sonable incremental capital and operating costs
22 of a project that are attributable to implemen-
23 tation of carbon capture, transportation, and
24 sequestration technologies, taking into ac-
25 count—

1 “(i) the reduced cost of compliance
2 with section 722 of this Act;

3 “(ii) the reduced cost associated with
4 sequestering in a geological formation for
5 purposes of enhanced hydrocarbon recovery
6 when compared to sequestration into geo-
7 logical formations solely for purposes of se-
8 questration;

9 “(iii) the relevant factors defining the
10 project category; and

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

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

17 “(e) LIMITS FOR CERTAIN ELECTRIC GENERATING
18 UNITS.—

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

23 “(2) COVERED EGUS INITIALLY PERMITTED
24 FROM 2009 THROUGH 2014.—For a covered EGU
25 that is initially permitted on or after January 1,

1 2009, and before January 1, 2015, the Adminis-
2 trator shall reduce the quantity of emission allow-
3 ances that the owner or operator of such covered
4 EGU would otherwise be eligible to receive under
5 this section as follows:

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

10 “(i) 20 percent; and

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

13 “(I) the earlier of January 1,
14 2020, or the date that is 5 years after
15 the commencement of operation of
16 such covered EGU; and

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

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

4 “(i) 20 percent; and

5 “(ii) the number of years between—

6 “(I) the commencement of oper-
7 ation of such covered EGU; and

8 “(II) the first year that such cov-
9 ered EGU achieves (and thereafter
10 maintains) an emission limit that is at
11 least a 50 percent reduction in emis-
12 sions of the carbon dioxide produced
13 by the unit, measured on an annual
14 basis, as determined in accordance
15 with section 812(b)(2).

16 “(3) COVERED EGUS INITIALLY PERMITTED
17 FROM 2015 THROUGH 2019.—The owner or operator
18 of a covered EGU that is initially permitted on or
19 after January 1, 2015, and before January 1, 2020,
20 shall be ineligible to receive emission allowances pur-
21 suant to this section if such unit, upon commence-
22 ment of operations (and thereafter), does not achieve
23 and maintain an emission limit that is at least a 50
24 percent reduction in emissions of the carbon dioxide

1 produced by the unit, measured on an annual basis,
2 as determined in accordance with section 812(b)(2).

3 “(f) INDUSTRIAL SOURCES.—

4 “(1) ALLOWANCES.—The Administrator may
5 distribute not more than 15 percent of the allow-
6 ances allocated under section 782(f) for any vintage
7 year to the owners or operators of eligible industrial
8 sources to support the commercial-scale deployment
9 of carbon capture and sequestration technologies at
10 such sources.

11 “(2) DISTRIBUTION.—The Administrator shall,
12 by regulation, prescribe requirements for the dis-
13 tribution of emission allowances to the owners or op-
14 erators of industrial sources under this subsection,
15 based on a bonus allowance formula that awards al-
16 lowances to qualifying projects on the basis of tons
17 of carbon dioxide captured and permanently seques-
18 tered. The Administrator may provide for the dis-
19 tribution of emission allowances pursuant to—

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

24 “(B) an incentive schedule, similar to that
25 described under subsection (d)(4), which shall

1 ensure that incentives are set so as to satisfy
2 the requirement described in subsection
3 (d)(4)(E).

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

8 “(g) LIMITATIONS.—Allowances may be distributed
9 under this section only for tons of carbon dioxide emis-
10 sions that have already been captured and sequestered. A
11 qualifying project may receive annual emission allowances
12 under this section only for the first 10 years of operation.
13 No greater than 72 gigawatts of total cumulative gener-
14 ating capacity (including industrial applications, measured
15 by such equivalent metric as the Administrator may des-
16 ignate) may receive emission allowances under this sec-
17 tion. Upon reaching the limit described in the preceding
18 sentence, any emission allowances that are allocated for
19 carbon capture and sequestration deployment under sec-
20 tion 782(f) and are not yet obligated under this section
21 shall be treated as allowances not designated for distribu-
22 tion for purposes of section 782(r).

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

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

5 “(2) If the Administrator determines that the
6 emission allowances allocated under section 782(f)
7 with a vintage year that matches the year of dis-
8 tribution will be exhausted once the estimated full
9 10-year distributions will be provided to current eli-
10 gible participants, the Administrator shall provide to
11 new eligible projects allowances from vintage years
12 after the year of the distribution.

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

18 “(2) No additional projects shall be eligible for allow-
19 ances under subsection (b)(1)(A)(ii) and (iv)(II) as of such
20 time as the Administrator reports, pursuant to section
21 812(d), that carbon capture and sequestration retrofit
22 projects at electric generating units that are eligible for
23 allowances under this section have been applied, in the ag-
24 gregate, to the flue gas generated by 1 gigawatt of total
25 cumulative generating capacity. The limitation in the pre-

1 ceding sentence shall not apply to projects that meet the
2 eligibility criteria in subsection (b)(1)(A)(iv)(I).

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

16 **SEC. 116. PERFORMANCE STANDARDS FOR COAL-FUELED**
17 **POWER PLANTS.**

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

21 **“SEC. 812. PERFORMANCE STANDARDS FOR NEW COAL-**
22 **FIRED POWER PLANTS.**

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

24 “(1) COVERED EGU.—The term ‘covered EGU’
25 means a utility unit that is required to have a per-

1 mit under section 503(a) and is authorized under
2 state or federal law to derive at least 30 percent of
3 its annual heat input from coal, petroleum coke, or
4 any combination of these fuels.

5 “(2) INITIALLY PERMITTED.—The term ‘ini-
6 tially permitted’ means that the owner or operator
7 has received a Clean Air Act preconstruction ap-
8 proval or permit, for the covered EGU as a new (not
9 a modified) source, but administrative review or ap-
10 peal of such approval or permit has not been ex-
11 hausted. A subsequent modification of any such ap-
12 proval or permits, ongoing administrative or court
13 review, appeals, or challenges, or the existence or
14 tolling of any time to pursue further review, appeals,
15 or challenges shall not affect the date on which a
16 covered EGU is considered to be initially permitted
17 under this paragraph.

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

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

9 “(A) Four years after the date the Adminis-
10 trator has published pursuant to subsection (d) a re-
11 port that there are in commercial operation in the
12 United States electric generating units or other sta-
13 tionary sources equipped with carbon capture and
14 sequestration technology that, in the aggregate—

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

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

19 “(II) up to 1 gigawatt may be indus-
20 trial applications, for which capture and
21 sequestration of 3 million tons of carbon
22 dioxide per year on an aggregate
23 annualized basis shall be considered equiv-
24 alent to 1 gigawatt;

1 “(ii) include at least 2 electric generating
2 units, each with a nameplate generating capac-
3 ity of 250 megawatts or greater, that capture,
4 inject, and sequester carbon dioxide into geo-
5 logic formations other than oil and gas fields;
6 and

7 “(iii) are capturing and sequestering in the
8 aggregate at least 12 million tons of carbon di-
9 oxide per year, calculated on an aggregate
10 annualized basis.

11 “(B) January 1, 2025.

12 “(3) If the deadline for compliance with paragraph
13 (2) is January 1, 2025, the Administrator may extend the
14 deadline for compliance by a covered EGU by up to 18
15 months if the Administrator makes a determination, based
16 on a showing by the owner or operator of the unit, that
17 it will be technically infeasible for the unit to meet the
18 standard by the deadline. The owner or operator must
19 submit a request for such an extension by no later than
20 January 1, 2022, and the Administrator shall provide for
21 public notice and comment on the extension request.

22 “(c) REVIEW AND REVISION OF STANDARDS.—Not
23 later than 2025 and at 5-year intervals thereafter, the Ad-
24 ministrator shall review the standards for new covered
25 EGUs under this section and shall, by rule, reduce the

1 maximum carbon dioxide emission rate for new covered
2 EGUs to a rate which reflects the degree of emission limi-
3 tation achievable through the application of the best sys-
4 tem of emission reduction which (taking into account the
5 cost of achieving such reduction and any nonair quality
6 health and environmental impact and energy require-
7 ments) the Administrator determines has been adequately
8 demonstrated.

9 “(d) REPORTS.—Not later than the date 18 months
10 after the date of enactment of this title and semiannually
11 thereafter, the Administrator shall publish a report on the
12 nameplate capacity of units (determined pursuant to sub-
13 section (b)(2)(A)) in commercial operation in the United
14 States equipped with carbon capture and sequestration
15 technology, including the information described in sub-
16 section (b)(2)(A) (including the cumulative generating ca-
17 pacity to which carbon capture and sequestration retrofit
18 projects meeting the criteria described in section
19 786(b)(1)(A)(ii) and (b)(1)(A)(iv)(II) has been applied
20 and the quantities of carbon dioxide captured and seques-
21 tered by such projects).

22 “(e) REGULATIONS.—Not later than 2 years after the
23 date of enactment of this title, the Administrator shall
24 promulgate regulations to carry out the requirements of
25 this section.”.

1 **Subtitle C—Clean Transportation**

2 **SEC. 121. ELECTRIC VEHICLE INFRASTRUCTURE.**

3 (a) AMENDMENT OF PURPA.—Section 111(d) of the
4 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
5 2621(d)) is amended by adding at the end the following:

6 “(20) PLUG-IN ELECTRIC DRIVE VEHICLE IN-
7 FRASTRUCTURE.—

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

18 “(i) battery exchange, fast charging
19 infrastructure and other services;

20 “(ii) triggers for infrastructure de-
21 ployment based upon market penetration
22 of plug-in electric drive vehicles; and

23 “(iii) such other elements as the State
24 determines necessary to support plug-in
25 electric drive vehicles.

1 Each plan under this paragraph shall provide
2 for the deployment of the charging infrastruc-
3 ture or other infrastructure necessary to ade-
4 quately support the use of plug-in electric drive
5 vehicles.

6 “(B) SUPPORT REQUIREMENTS.—Each
7 State regulatory authority (in the case of each
8 electric utility for which it has ratemaking au-
9 thority) and each utility (in the case of a non-
10 regulated utility) shall—

11 “(i) require that charging infrastruc-
12 ture deployed is interoperable with prod-
13 ucts of all auto manufacturers to the ex-
14 tent possible; and

15 “(ii) consider adopting minimum re-
16 quirements for deployment of electrical
17 charging infrastructure and other appro-
18 priate requirements necessary to support
19 the use of plug-in electric drive vehicles.

20 “(C) COST RECOVERY.—Each State regu-
21 latory authority (in the case of each electric
22 utility for which it has ratemaking authority)
23 and each utility (in the case of a nonregulated
24 utility) shall consider whether, and to what ex-

1 tent, to allow cost recovery for plans and imple-
2 mentation of plans.

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

12 “(i) establish any appropriate proto-
13 cols and standards for integrating plug-in
14 electric drive vehicles into an electrical dis-
15 tribution system, including Smart Grid
16 systems and devices as described in title
17 XIII of the Energy Independence and Se-
18 curity Act of 2007;

19 “(ii) include, to the extent feasible,
20 the ability for each plug-in electric drive
21 vehicle to be identified individually and to
22 be associated with its owner’s electric util-
23 ity account, regardless of the location that
24 the vehicle is plugged in, for purposes of
25 appropriate billing for any electricity re-

1 required to charge the vehicle’s batteries as
2 well as any crediting for electricity pro-
3 vided to the electric utility from the vehi-
4 cle’s batteries; and

5 “(iii) review the determination made
6 in response to section 1252 of the Energy
7 Policy Act of 2005 in light of this section,
8 including whether time-of-use pricing
9 should be employed to enable the use of
10 plug-in electric drive vehicles to contribute
11 to meeting peak-load and ancillary service
12 power needs.”.

13 (b) COMPLIANCE.—

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

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

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

9 (2) FAILURE TO COMPLY.—Section 112(c) of
10 the Public Utility Regulatory Policies Act of 1978
11 (16 U.S.C. 2622(c)) is amended by adding the fol-
12 lowing at the end: “In the case of the standards es-
13 tablished by paragraph (20) of section 111(d), the
14 reference contained in this subsection to the date of
15 enactment of this Act shall be deemed to be a ref-
16 erence to the date of enactment of such paragraph.”.

17 (3) PRIOR STATE ACTIONS.—Section 112(d) of
18 the Public Utility Regulatory Policies Act of 1978
19 (16 U.S.C. 2622(d)) is amended by striking “(19)”
20 and inserting “(20)” before “of section 111(d)”.

21 **SEC. 122. LARGE-SCALE VEHICLE ELECTRIFICATION PRO-**
22 **GRAM.**

23 (a) DEPLOYMENT PROGRAM.—The Secretary of En-
24 ergy shall establish a program to deploy and integrate
25 plug-in electric drive vehicles into the electricity grid in

1 multiple regions. In carrying out the program, the Sec-
2 retary may provide financial assistance described under
3 subsection (d), consistent with the goals under subsection
4 (b). The Secretary shall select regions based upon applica-
5 tions for assistance received pursuant to subsection (c).

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

8 (1) to demonstrate the viability of a vehicle-
9 based transportation system that is not overly de-
10 pendent on petroleum as a fuel and contributes to
11 lower carbon emissions than a system based on con-
12 ventional vehicles;

13 (2) to facilitate the integration of advanced ve-
14 hicle technologies into electricity distribution areas
15 to improve system performance and reliability;

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

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

21 (5) to investigate differences in each region and
22 regulatory environment regarding best practices in
23 implementing vehicle electrification.

24 (c) APPLICATIONS.—Any State, Indian tribe, or local
25 government (or group of State, Indian tribe, or local gov-

1 ernments) may apply to the Secretary of Energy for finan-
2 cial assistance in furthering the regional deployment and
3 integration into the electricity grid of plug-in electric drive
4 vehicles. Such applications may be jointly sponsored by
5 electric utilities, automobile manufacturers, technology
6 providers, car sharing companies or organizations, or
7 other persons or entities.

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

12 (1) Assisting persons located in the regional de-
13 ployment area, including fleet owners, in the pur-
14 chase of new plug-in electric drive vehicles by offset-
15 ting in whole or in part the incremental cost of such
16 vehicles above the cost of comparable conventionally
17 fueled vehicles.

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

21 (A) Electrical charging infrastructure for
22 plug-in electric drive vehicles, including battery
23 exchange, fast charging infrastructure, and
24 other services, in public or private locations, in-
25 cluding street parking, parking garages, park-

1 ing lots, homes, gas stations, and highway rest
2 stops.

3 (B) Smart Grid equipment and infrastruc-
4 ture, as described in title XIII of the Energy
5 Independence and Security Act of 2007, to fa-
6 cilitate the charging and integration of plug-in
7 electric drive vehicles.

8 (3) Such other projects as the Secretary deter-
9 mines appropriate to support the large-scale deploy-
10 ment of plug-in electric drive vehicles in regional de-
11 ployment areas.

12 (e) PROGRAM REQUIREMENTS.—The Secretary, in
13 consultation with the Administrator and the Secretary of
14 Transportation, shall determine design elements and re-
15 quirements of the program established pursuant to sub-
16 section (a), including—

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

19 (2) criteria for evaluating applications sub-
20 mitted under subsection (e), including the antici-
21 pated ability to promote deployment and market
22 penetration of vehicles that are less dependent on
23 petroleum as a fuel source; and

24 (3) reporting requirements for entities that re-
25 ceive financial assistance under this section, includ-

1 ing a comprehensive set of performance data charac-
2 terizing the results of the deployment program.

3 (f) INFORMATION CLEARINGHOUSE.—The Secretary
4 shall, as part of the program established pursuant to sub-
5 section (a), collect and make available to the public infor-
6 mation regarding the cost, performance, and other tech-
7 nical data regarding the deployment and integration of
8 plug-in electric drive vehicles.

9 (g) AUTHORIZATION.—There are authorized to be ap-
10 propriated to carry out this section such sums as may be
11 necessary.

12 **SEC. 123. PLUG-IN ELECTRIC DRIVE VEHICLE MANUFAC-**
13 **TURING.**

14 (a) VEHICLE MANUFACTURING ASSISTANCE PRO-
15 GRAM.—The Secretary of Energy shall establish a pro-
16 gram to provide financial assistance to automobile manu-
17 facturers to facilitate the manufacture of plug-in electric
18 drive vehicles, as defined in section 131(a)(5) of the En-
19 ergy Independence and Security Act of 2007, that are de-
20 veloped and produced in the United States.

21 (b) FINANCIAL ASSISTANCE.—The Secretary of En-
22 ergy may provide financial assistance to an automobile
23 manufacturer under the program established pursuant to
24 subsection (a) for the reconstruction or retooling of facili-
25 ties for the manufacture of plug-in electric drive vehicles

1 or batteries for such vehicles that are developed and pro-
2 duced in the United States.

3 (c) COORDINATION WITH REGIONAL DEPLOY-
4 MENT.—The Secretary may provide financial assistance
5 under subsection (b) in conjunction with the award of fi-
6 nancial assistance under the large scale vehicle electrifica-
7 tion program established pursuant to section 122 of this
8 Act.

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

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

14 (2) criteria, in addition to the criteria described
15 under subsection (e), for evaluating applications for
16 financial assistance; and

17 (3) reporting requirements for automobile man-
18 ufacturers that receive financial assistance under
19 this section.

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

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

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

1 (f) REPORTS.—The Secretary shall annually submit
2 to Congress a report on the program established pursuant
3 to this section.

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

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

8 (a) DEFINITIONS.—In this section:

9 (1) ADVANCED TECHNOLOGY VEHICLES AND
10 QUALIFYING COMPONENTS.—The terms “advanced
11 technology vehicles” and “qualifying components”
12 shall have the definition of such terms in section 136
13 of the Energy Independence and Security Act of
14 2007, except that for purposes of this section, the
15 average base year as described in such section
16 136(a)(1)(C) shall be the following:

17 (A) In each of the years 2012 through
18 2016, model year 2009.

19 (B) In 2017, the Administrator shall, not-
20 withstanding such section 136(a)(1)(C), deter-
21 mine an appropriate baseline based on techno-
22 logical and economic feasibility.

23 (2) PLUG-IN ELECTRIC DRIVE VEHICLE.—The
24 term “plug-in electric drive vehicle” shall have the

1 definition of such term in section 131 of the Energy
2 Independence and Security Act of 2007.

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

8 (c) PLUG-IN ELECTRIC DRIVE VEHICLE MANUFAC-
9 TURING AND DEPLOYMENT.—

10 (1) IN GENERAL.—The Administrator shall, at
11 the direction of the Secretary of Energy, provide
12 emission allowances allocated pursuant to section
13 782(i) to applicants, joint sponsors and automobile
14 manufacturers pursuant to sections 122 and 123 of
15 this Act.

16 (2) ANNUAL AMOUNT.—In each of the years
17 2012 through 2017, one-quarter of the portion of
18 the emission allowances allocated pursuant to section
19 782(i) of the Clean Air Act shall be available to
20 carry out paragraph (1) such that—

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

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

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

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

10 (A) an application under section 122 or
11 123 of this Act requests a multi-year commit-
12 ment;

13 (B) such application meets the criteria for
14 support established by the Secretary of Energy
15 under section 122 or 123 of this Act;

16 (C) the Administrator confirms to the Sec-
17 retary that emission allowances will be available
18 for a multi-year commitment;

19 (D) the Secretary of Energy determines
20 that a multi-year commitment for such applica-
21 tion will advance the goals of section 122 or
22 123; and

23 (E) the Secretary of Energy directs the
24 Administrator to make a multi-year commit-
25 ment.

1 (5) INSUFFICIENT APPLICATIONS.—If, in any
2 year, emission allowances available under paragraph
3 (2) cannot be provided because of insufficient num-
4 bers of submitted applications that meet the criteria
5 for support established by the Secretary of Energy
6 under section 122 or 123 of this Act, the remaining
7 emission allowances shall be distributed according to
8 subsection (d).

9 (d) ADVANCED TECHNOLOGY VEHICLES.—

10 (1) IN GENERAL.—The Administrator shall, at
11 the direction of the Secretary of Energy, provide any
12 emission allowances allocated pursuant to section
13 782(i) of the Clean Air Act that are not provided
14 under subsection (c) to automobile manufacturers
15 and component suppliers to pay not more than 30
16 percent of the cost of—

17 (A) reequipping, expanding, or establishing
18 a manufacturing facility in the United States to
19 produce—

20 (i) qualifying advanced technology ve-
21 hicles; or

22 (ii) qualifying components; and

23 (B) engineering integration performed in
24 the United States of qualifying vehicles and
25 qualifying components.

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

6 **SEC. 125. ADVANCED TECHNOLOGY VEHICLE MANUFAC-**
7 **TURING INCENTIVE LOANS.**

8 Section 136(d)(1) of the Energy Independence and
9 Security Act of 2007 (42 U.S.C. 17013(d)(1)) is amended
10 by striking “\$25,000,000,000” and inserting
11 “\$50,000,000,000”.

12 **SEC. 126. DEFINITION OF RENEWABLE BIOMASS.**

13 (a) IN GENERAL.—Section 211(o)(1)(I) of the Clean
14 Air Act (42 U.S.C. 7545(o)(1)(I)) is amended to read as
15 follows:

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

18 “(i) Materials, pre-commercial
19 thinnings, or removed invasive species from
20 National Forest System land and public
21 lands (as defined in section 103 of the
22 Federal Land Policy and Management Act
23 of 1976 (43 U.S.C. 1702)), including those
24 that are byproducts of preventive treat-
25 ments (such as trees, wood, brush,

1 thinnings, chips, and slash), that are re-
2 moved as part of a federally recognized
3 timber sale, or that are removed to reduce
4 hazardous fuels, to reduce or contain dis-
5 ease or insect infestation, or to restore eco-
6 system health, and that are—

7 “(I) not from components of the
8 National Wilderness Preservation Sys-
9 tem, Wilderness Study Areas, Inven-
10 toried Roadless Areas, old growth
11 stands, late-successional stands (ex-
12 cept for dead, severely damaged, or
13 badly infested trees), 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 ap-
25 plicable land management plans.

1 “(ii) Any organic matter that is avail-
2 able on a renewable or recurring basis
3 from non-Federal land or land belonging to
4 an Indian or Indian tribe that is held in
5 trust by the United States or subject to a
6 restriction against alienation imposed by
7 the United States, including—

8 “(I) renewable plant material, in-
9 cluding—

10 “(aa) feed grains;

11 “(bb) other agricultural
12 commodities;

13 “(cc) other plants and trees;
14 and

15 “(dd) algae; and

16 “(II) waste material, including—

17 “(aa) crop residue;

18 “(bb) other vegetative waste
19 material (including wood waste
20 and wood residues);

21 “(cc) animal waste and by-
22 products (including fats, oils,
23 greases, and manure);

24 “(dd) construction waste;

1 “(ee) food waste and yard
2 waste; and

3 “(ff) the non-fossil biogenic
4 portion of municipal solid waste
5 and construction, demolition, and
6 disaster debris.

7 “(iii) Residues and byproducts from
8 wood, pulp, or paper products facilities.”.

9 (b) REDUCTION.—The last sentence of section
10 211(o)(7)(D) of the Clean Air Act (42 U.S.C.
11 7545(o)(7)(D)) is amended to read as follows: “For any
12 calendar year in which the Administrator makes such a
13 reduction, the Administrator shall also reduce the applica-
14 ble volume of renewable fuel and advanced biofuels re-
15 quirement established under paragraph (2)(B) by the
16 same volume.”.

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.”;

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.”; and

18 (4) in section 797, by striking “2011” and in-
19 sserting “2016”.

20 **SEC. 129. LOAN GUARANTEES FOR PROJECTS TO CON-**
21 **STRUCT RENEWABLE FUEL PIPELINES.**

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

1 “(6) RENEWABLE FUEL.—The term ‘renewable
2 fuel’ has the meaning given the term in section
3 211(o)(1) of the Clean Air Act (42 U.S.C.
4 7545(o)(1)), except that the term shall include all
5 ethanol and biodiesel.

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

9 (b) RENEWABLE FUEL PIPELINE ELIGIBILITY.—
10 Section 1703(b) the Energy Policy Act of 2005 (42 U.S.C.
11 16513) is amended by adding at the end the following:

12 “(11) Renewable fuel pipelines.”.

13 **SEC. 130. FLEET VEHICLES.**

14 Section 508 of the Energy Policy Act of 1992 (42
15 U.S.C. 13258) is amended as follows:

16 (1) By adding the following new paragraph at
17 the end of subsection (a):

18 “(6) REPOWERED OR CONVERTED ALTERNATIVE
19 FUELED VEHICLES.—As used in this para-
20 graph, the term ‘repowered or converted alternative
21 fueled vehicle’ includes light-, medium- or heavy-duty
22 motor vehicles that have been modified with an EPA
23 or CARB compliant engine or vehicle or aftermarket
24 system so that the vehicle or engine is capable of op-
25 erating on an alternative fuel.”.

1 (2) By adding the following new paragraph at
2 the end of subsection (b):

3 “(3) Repowered or converted vehicles. Not later
4 than January 1, 2010, the Secretary shall allocate
5 credits to fleets that repower or convert an existing
6 vehicle so that it is capable of operating on an alter-
7 native fuel. In the case of any medium- or heavy-
8 duty vehicle that is repowered or converted so that
9 it is capable of operating on an alternative fuel, the
10 Secretary shall allocate additional credits for such
11 vehicles if he determines that such vehicles displace
12 more petroleum than light duty alternative fueled ve-
13 hicles. Such rules shall also include a requirement
14 that such vehicles remain in the fleet for a period of
15 no less than 2 years in order to continue to qualify
16 for credit. The Secretary also shall extend the flexi-
17 bility afforded in this paragraph to Federal fleets
18 subject to the purchase provisions contained in sec-
19 tion 303 of this Act.”.

20 **SEC. 130A. REPORT ON NATURAL GAS VEHICLE EMISSIONS**
21 **REDUCTIONS.**

22 Within 360 days after the date of enactment of this
23 Act, the Administrator, in consultation with the Secre-
24 taries of Energy and Transportation, and the Adminis-
25 trator of the General Services Administration, and after

1 an examination of available scientific studies or analysis,
2 shall submit to the Congress a report on—

3 (1) the contribution that light and heavy duty
4 natural gas vehicles, by category and State, have
5 made during the last decade to the reduction of
6 greenhouse gases and criteria pollutants under the
7 Clean Air Act, and the reduced consumption of pe-
8 troleum-based fuels;

9 (2) the contribution that light and heavy duty
10 natural gas vehicles are expected to make from 2010
11 to 2020 in reducing greenhouse gas and criteria pol-
12 lutants under the Clean Air Act based, among other
13 things, on additional Federal incentives for the man-
14 ufacture and deployment of natural gas vehicles pro-
15 vided in this Act, and other Federal legislation; and

16 (3) additional Federal measures, including leg-
17 islation, that could, if implemented, maximize the
18 potential for natural gas used in both stationary and
19 mobile sources to contribute to the reduction of
20 greenhouse gases and criteria pollutants under the
21 Clean Air Act.

22 **Subtitle D—State Energy and Envi-** 23 **ronment Development Accounts**

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

25 (a) DEFINITIONS.—In this section:

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

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

9 (b) ESTABLISHMENT OF PROGRAM.—The Adminis-
10 trator shall establish a program under which a State,
11 through its State Energy Office or other State agency des-
12 ignated by the State, may operate a State Energy and En-
13 vironment Development Account.

14 (c) PURPOSE.—The purpose of each SEED Account
15 is to serve as a common State-level repository for man-
16 aging and accounting for emission allowances provided to
17 States designated for renewable energy and energy effi-
18 ciency purposes.

19 (d) REGULATIONS.—Not later than 1 year after the
20 date of enactment of this Act, the Administrator shall pro-
21 mulgate regulations to carry out this section, including
22 regulations—

23 (1) to ensure that each State operates its
24 SEED Account and any subaccounts thereof effi-

1 ciently and in accordance with this Act and applica-
2 ble State and Federal laws;

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

4 (3) to indicate the emission allowances that
5 may be deposited in a State's SEED Account pend-
6 ing distribution or use;

7 (4) to indicate the programs and objectives au-
8 thorized by Federal law for which emission allow-
9 ances in a SEED Account may be distributed or
10 used;

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

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

17 (e) OPERATION.—

18 (1) DEPOSITS.—

19 (A) IN GENERAL.—In the allowance track-
20 ing system established pursuant to section
21 724(d) of the Clean Air Act, the Administrator
22 shall establish a SEED Account for each State
23 and place in it the allowances allocated pursu-
24 ant to section 782(g) of the Clean Air Act to

1 be distributed to States pursuant to sections
2 132 and 201 of this Act.

3 (B) FINANCIAL ACCOUNT.—A State may
4 create a financial account associated with its
5 SEED Account to deposit, retain, and manage
6 any proceeds of any sale of any allowance pro-
7 vided pursuant to this Act pending expenditure
8 or disbursement of those proceeds for purposes
9 permitted under this section. The funds in such
10 an account shall not be commingled with other
11 funds not derived from the sale of allowances
12 provided to the State; however, loans made by
13 the State from such funds pursuant to para-
14 graph (2)(C)(i) may be repaid into such a fi-
15 nancial account, including any interest charged.

16 (2) WITHDRAWALS.—

17 (A) IN GENERAL.—All allowances distrib-
18 uted pursuant to sections 132 and 201, includ-
19 ing the proceeds of any sale of such allowances,
20 shall support renewable energy and energy effi-
21 ciency programs authorized or approved by the
22 Federal Government.

23 (B) DEDICATED ALLOWANCES.—Allow-
24 ances distributed pursuant to sections 132 and
25 201 that are required by law to be used for spe-

1 cific purposes for a specified period shall be
2 used according to those requirements during
3 that period.

4 (C) UNDEDICATED ALLOWANCES.—To the
5 extent that allowances distributed pursuant to
6 sections 132 and 201 are not required by law
7 to be used for specific purposes for a specified
8 period as described in subparagraph (B), such
9 allowances or the proceeds of their sale may be
10 used for any of the following purposes:

11 (i) LOANS.—Loans of allowances, or
12 the proceeds from the sale of allowances,
13 may be provided, interest on commercial
14 loans may be subsidized at an interest rate
15 as low as zero, and other credit support
16 may be provided to support programs au-
17 thorized to use SEED Account allowance
18 value or any other renewable energy or en-
19 ergy efficiency purpose authorized or ap-
20 proved by the Federal Government.

21 (ii) GRANTS.—Grants of allowances or
22 the proceeds of their sale may be provided
23 to support programs authorized to use
24 SEED Account allowance value or any
25 other renewable energy or energy efficiency

1 purpose authorized or approved by the
2 Federal Government.

3 (iii) OTHER FORMS OF SUPPORT.—Al-
4 lowances or the proceeds of the sale of al-
5 lowances may be provided for other forms
6 of support for programs authorized to use
7 SEED Account allowance value or any
8 other renewable energy or energy efficiency
9 purpose authorized or approved by the
10 Federal Government.

11 (iv) ADMINISTRATIVE COSTS.—Except
12 to the extent provided in Federal law au-
13 thORIZING or allocating allowances deposited
14 in a SEED Account, not more than 5 per-
15 cent of the allowance value in a SEED Ac-
16 count in any year may be used to cover ad-
17 ministrative expenses of the SEED Ac-
18 count.

19 (D) SUBACCOUNTS.—A State may request
20 that the Administrator establish accounts for
21 local governments that request such sub-
22 accounts to hold allowances distributed to local
23 governments for renewable energy or energy ef-
24 ficiency programs authorized or approved by
25 the Federal Government.

1 (E) INTENDED USE PLANS.—

2 (i) IN GENERAL.—After providing for
3 public review and comment, each State ad-
4 ministering a SEED Account shall annu-
5 ally prepare a plan that identifies the in-
6 tended uses of the allowances or proceeds
7 from the sale of allowances in its SEED
8 Account.

9 (ii) CONTENTS.—An intended use
10 plan shall include—

11 (I) a list of the projects or pro-
12 grams for which withdrawals from the
13 SEED Account are intended in the
14 next fiscal year that begins after the
15 date of the plan, including a descrip-
16 tion of each project;

17 (II) the relationship of each of
18 the projects or programs to an identi-
19 fied Federal purpose authorized by
20 this Act, or any other Federal statute;

21 (III) the expected terms of use of
22 allowance value to provide assistance;

23 (IV) the criteria and methods es-
24 tablished for the distribution of allow-
25 ances or allowance value;

1 (V) a description of the equiva-
2 lent financial value and status of the
3 SEED Account; and

4 (VI) a statement of the mid-term
5 and long-term goals of the State for
6 use of its SEED Account.

7 (3) ACCOUNTABILITY AND TRANSPARENCY.—

8 (A) CONTROLS AND PROCEDURES.—Any
9 State that has a SEED Account shall establish
10 fiscal controls and recordkeeping and account-
11 ing procedures for the SEED Account sufficient
12 to ensure proper accounting during appropriate
13 accounting periods for distributions into the
14 SEED Account, transfers from the SEED Ac-
15 count, and SEED Account balances, including
16 any related financial accounts. Such controls
17 and procedures shall conform to generally ac-
18 cepted government accounting principles. Any
19 State that has a SEED Account shall retain
20 records for a period of at least 5 years.

21 (B) AUDITS.—Any State that has a SEED
22 Account shall have an annual audit conducted
23 of the SEED Account by an independent public
24 accountant in accordance with generally accept-

1 ed auditing standards, and shall transmit the
2 results of that audit to the Administrator.

3 (C) STATE REPORT.—Each State admin-
4 istering a SEED Account shall make publicly
5 available and submit to the Administrator a re-
6 port every 2 years on its activities related to its
7 SEED Account.

8 (D) PUBLIC INFORMATION.—Any—

9 (i) controls and procedures established
10 under subparagraph (A); and

11 (ii) information obtained through au-
12 dits conducted under subparagraph (B),
13 except to the extent that it would be pro-
14 tected from disclosure, if it were informa-
15 tion held by the Federal Government,
16 under section 552(b) of title 5, United
17 States Code,

18 shall be made publicly available.

19 (E) OTHER PROTECTIONS.—The Adminis-
20 trator shall require such additional procedures
21 and protections as are necessary to ensure that
22 any State that has a SEED Account will oper-
23 ate the SEED Account in an accountable and
24 transparent manner.

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

5 (g) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated to the Administrator
7 such sums as may be necessary for SEED Account oper-
8 ations.

9 **SEC. 132. SUPPORT OF STATE RENEWABLE ENERGY AND**
10 **ENERGY EFFICIENCY PROGRAMS.**

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

12 (1) ALLOWANCE.—The term “allowance”
13 means an emission allowance established under sec-
14 tion 721 of the Clean Air Act (as added by section
15 311 of this Act).

16 (2) COST-EFFECTIVE.—The term “cost-effec-
17 tive”, with respect to an energy efficiency program,
18 means that the program meets the Total Resource
19 Cost Test, which requires that the net present value
20 of economic benefits over the life of the program or
21 measure, including avoided supply and delivery costs
22 and deferred or avoided investments, is greater than
23 the net present value of the economic costs over the
24 life of the program, including program costs and in-
25 cremental costs borne by the energy consumer.

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

6 (4) VINTAGE YEAR.—The term “vintage year”
7 shall have the meaning given that term in section 700 of
8 the Clean Air Act (as added by section 311 of this
9 Act).

10 (b) DISTRIBUTION AMONG STATES.—Not later than
11 September 30 of each calendar year from 2011 through
12 2049, the Administrator shall, in accordance with this sec-
13 tion, distribute allowances allocated pursuant to section
14 782(g)(1) of the Clean Air Act (as added by section 311
15 of this Act) for the following vintage year. The Adminis-
16 trator shall distribute 0.5 percent of such allowances pur-
17 suant to section 133 of this Act. The Administrator shall
18 distribute the remaining allowances to States for renew-
19 able energy and energy efficiency programs to be deposited
20 in and administered through the State Energy and Envi-
21 ronment Development (SEED) Accounts established pur-
22 suant to section 131. The Administrator shall distribute
23 allowances among the States under this section each year
24 in accordance with the following formula:

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

3 (2) One third of the allowances shall be distrib-
4 uted ratably among the States based on the popu-
5 lation of each State, as contained in the most recent
6 reliable census data available from the Bureau of the
7 Census, Department of Commerce, for all States at
8 the time the Administrator calculates the formula
9 for distribution.

10 (3) One third of the allowances for shall be dis-
11 tributed ratably among the States on the basis of
12 the energy consumption of each State as contained
13 in the most recent State Energy Data Report avail-
14 able from the Energy Information Administration
15 (or such alternative reliable source as the Adminis-
16 trator may designate).

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

20 (1) Not less than 12.5 percent shall be distrib-
21 uted by the State to units of local government within
22 such State to be used exclusively to support the en-
23 ergy efficiency and renewable energy purposes listed
24 in paragraphs (2) and (3).

1 (2) Not less than 20 percent shall be used ex-
2 clusively for the following energy efficiency purposes,
3 provided that not less than 1 percent shall be used
4 for the purpose described in subparagraph (D) and
5 not less than 5.5 percent shall be used for the pur-
6 pose described in subparagraph (E):

7 (A) Implementation and enforcement of
8 building codes adopted in compliance with sec-
9 tion 201.

10 (B) Implementation of the energy efficient
11 manufactured homes program established pur-
12 suant to section 203.

13 (C) Implementation of the building energy
14 performance labeling program established pur-
15 suant to section 204.

16 (D) Low-income community energy effi-
17 ciency programs that are consistent with the
18 grant program established under section 264 of
19 this Act.

20 (E) Implementation of the Retrofit for En-
21 ergy and Environmental Performance (REEP)
22 program established pursuant to section 202.

23 (3) Not less than 20 percent shall be used ex-
24 clusively for capital grants, tax credits, production
25 incentives, loans, loan guarantees, forgivable loans,

1 direct provision of allowances, and interest rate buy-
2 downs for—

3 (A) re-equipping, expanding, or estab-
4 lishing a manufacturing facility that receives
5 certification from the Secretary of Energy pur-
6 suant to section 1302 of the American Recovery
7 and Reinvestment Act of 2009 for the produc-
8 tion of—

9 (i) property designed to be used to
10 produce energy from renewable energy
11 sources; and

12 (ii) electricity storage systems;

13 (B) deployment of technologies to generate
14 electricity from renewable energy sources; and

15 (C) deployment of facilities or equipment,
16 such as solar panels, to generate electricity or
17 thermal energy from renewable energy re-
18 sources in and on buildings in an urban envi-
19 ronment.

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

22 (A) Energy efficiency purposes described
23 in paragraph (2).

24 (B) Renewable energy purposes described
25 in paragraph (3)(B) and (C).

1 (C) Cost-effective energy efficiency pro-
2 grams for end-use consumers of electricity, nat-
3 ural gas, home heating oil, or propane, includ-
4 ing, where appropriate, programs or mecha-
5 nisms administered by local governments and
6 entities other than the State.

7 (D) Enabling the development of a Smart
8 Grid (as described in section 1301 of the En-
9 ergy Independence and Security Act of 2007
10 (42 U.S.C. 17381)) for State, local government,
11 and other public buildings and facilities, includ-
12 ing integration of renewable energy resources
13 and distributed generation, demand response,
14 demand side management, and systems anal-
15 ysis.

16 (E) Providing the non-Federal share of
17 support for surface transportation capital
18 projects under—

19 (i) sections 5307, 5308, 5309, 5310,
20 5311 and 5319 of title 49, United States
21 Code; and

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

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

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

6 (A) prioritize expansion of existing energy
7 efficiency programs approved and overseen by
8 the State or the appropriate State regulatory
9 authority; and

10 (B) demonstrate that such allowances have
11 been used to supplement, and not to supplant,
12 existing and otherwise available State, local,
13 and ratepayer funding for such purpose.

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

18 (1) a list of entities receiving allowances or al-
19 lowance value under this section, including entities
20 receiving such allowances or allowance value from
21 units of local government pursuant to subsection
22 (c)(1);

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

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

4 (4) documentation of the amount of energy sav-
5 ings, emission reductions, renewable energy deploy-
6 ment, and new or retooled manufacturing capacity
7 resulting from the use of such allowances or allow-
8 ance value; and

9 (5) for any energy efficiency program supported
10 under subsection (c)(4)(C)—

11 (A) an assessment demonstrating the cost-
12 effectiveness of such program; and

13 (B) a demonstration that the requirements
14 set forth in subsection (c)(5) have been satis-
15 fied.

16 (e) ENFORCEMENT.—If the Administrator deter-
17 mines that a State is not in compliance with this section,
18 the Administrator may withhold up to twice the number
19 of allowances that the State failed to use in accordance
20 with the requirements of this section, that such State
21 would otherwise be eligible to receive under this section
22 in later years. Allowances withheld pursuant to this sub-
23 section shall be distributed among the remaining States
24 in accordance with the requirements of subsection (b).

1 **SEC. 133. SUPPORT OF INDIAN RENEWABLE ENERGY AND**
2 **ENERGY EFFICIENCY PROGRAMS.**

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

4 (1) ALLOWANCE; COST-EFFECTIVE; RENEW-
5 ABLE ENERGY RESOURCE.—The terms “allowance”,
6 “cost-effective”, and “renewable energy resource”
7 have the meaning given those terms in section 132
8 of this Act.

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

13 (3) SECRETARY.—The term “Secretary” means
14 the Secretary of Energy.

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

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

24 (2) RENEWABLE ENERGY.—Deployment of
25 technologies to generate electricity from renewable
26 energy resources.

1 (c) REQUIREMENTS.—The regulations promulgated
2 pursuant to subsection (b) shall prescribe design elements
3 and requirements of the program established under this
4 section, including—

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

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

10 (3) other appropriate elements and require-
11 ments.

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

16 **Subtitle E—Smart Grid** 17 **Advancement**

18 **SEC. 141. DEFINITIONS.**

19 For purposes of this subtitle:

20 (1) The term “applicable baseline” means the
21 average of the highest three annual peak demands a
22 load-serving entity has experienced during the 5
23 years immediately prior to the date of enactment of
24 this Act.

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

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

9 (4) The term “peak demand” means the high-
10 est point of electricity demand, net of any distrib-
11 uted electricity generation or storage from sources
12 on the load-serving entity’s customers’ premises,
13 during any hour on the system of a load serving en-
14 tity during a calendar year, expressed in Megawatts
15 (MW), or more than one such high point as a func-
16 tion of seasonal demand changes.

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

21 (A) diminishing the end-use requirements
22 for electricity;

23 (B) use of locally stored energy or gen-
24 erated electricity to meet those requirements
25 from distributed resources on the load-serving

1 entity’s customers’ premises and without use of
2 high-voltage transmission; or

3 (C) energy savings from efficient operation
4 of the distribution grid resulting from the use
5 of a Smart Grid.

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

10 (7) The term “peak period” means the time pe-
11 riod on the system of a load-serving entity relative
12 to peak demand that may warrant special measures
13 or electricity resources to maintain system reliability
14 while meeting peak demand.

15 (8) The term “Secretary” means the Secretary
16 of Energy.

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

20 **SEC. 142. ASSESSMENT OF SMART GRID COST EFFECTIVE-**
21 **NESS IN PRODUCTS.**

22 (a) ASSESSMENT.—Within 1 year after the date of
23 enactment of this Act, the Secretary and the Adminis-
24 trator shall each assess the potential for cost-effective in-
25 tegration of Smart Grid technologies and capabilities in

1 all products that are reviewed by the Department of En-
2 ergy and the Environmental Protection Agency, respec-
3 tively, for potential designation as Energy Star products.

4 (b) ANALYSIS.—(1) Within 2 years after the date of
5 enactment of this Act, the Secretary and the Adminis-
6 trator shall each prepare an analysis of the potential en-
7 ergy savings, greenhouse gas emission reductions, and
8 electricity cost savings that could accrue for each of the
9 products identified by the assessment in subsection (a) in
10 the following optimal circumstances:

11 (A) The products possessed Smart Grid capa-
12 bility and interoperability that is tested and proven
13 reliable.

14 (B) The products were utilized in an electricity
15 utility service area which had Smart Grid capability
16 and offered customers rate or program incentives to
17 use the products.

18 (C) The utility's rates reflected national average
19 costs, including average peak and valley seasonal
20 and daily electricity costs.

21 (D) Consumers using such products took full
22 advantage of such capability.

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

1 (2) The analysis under paragraph (1) shall be consid-
2 ered the “best case” Smart Grid analysis. On the basis
3 of such an analysis for each product, the Secretary and
4 the Administrator shall determine whether the installation
5 of Smart Grid capability for such a product would be cost
6 effective. For purposes of this paragraph, the term “cost
7 effective” means that the cumulative savings from using
8 the product under the best case Smart Grid circumstances
9 for a period of one-half of the product’s expected useful
10 life will be greater than the incremental cost of the Smart
11 Grid features included in the product.

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

18 (A) Inform the manufacturer of such product of
19 such finding of cost effectiveness.

20 (B) Assess the potential contributions the devel-
21 opment and use of products with Smart Grid tech-
22 nologies bring to reducing peak demand and pro-
23 moting grid stability.

24 (C) Assess the potential national energy savings
25 and electricity cost savings that could be realized if

1 Smart Grid potential were installed in the relevant
2 products reviewed by the Energy Star program.

3 (D) Assess and identify options for providing
4 consumers information on products with Smart Grid
5 capabilities, including the necessary conditions for
6 cost-effective savings.

7 (E) Submit a report to Congress summarizing
8 the results of the assessment for each class of prod-
9 ucts, and presenting the potential energy and green-
10 house gas savings that could result if Smart Grid
11 capability were installed and utilized on such prod-
12 ucts.

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

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

18 “(J)(i) Not later than 1 year after the date
19 of enactment of this subparagraph, the Federal
20 Trade Commission shall initiate a rulemaking
21 to consider making a special note in a promi-
22 nent manner on any ENERGY GUIDE label
23 for any product actually including Smart Grid
24 capability that—

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

3 “(II) the use and value of that feature
4 depended on the Smart Grid capability of
5 the utility system in which the product was
6 installed and the active utilization of that
7 feature by the customer; and

8 “(III) on a utility system with Smart
9 Grid capability, the use of the product’s
10 Smart Grid capability could reduce the
11 customer’s cost of the product’s annual op-
12 eration by an estimated dollar amount
13 range representing the result of incre-
14 mental energy and electricity cost savings
15 that would result from the customer taking
16 full advantage of such Smart Grid capa-
17 bility.

18 “(ii) Not later than 3 years after the date
19 of enactment of this subparagraph, the Com-
20 mission shall complete the rulemaking initiated
21 under clause (i).”.

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

23 (a) GOALS.—Not later than 1 year after the date of
24 enactment of this section, each load-serving entity, or, at
25 the option of the State, each State with respect to load-

1 serving entities that the State regulates, shall determine
2 and publish peak demand reduction goals for any load-
3 serving entities that have an applicable baseline in excess
4 of 250 megawatts.

5 (b) BASELINES.—(1) The Commission, in consulta-
6 tion with the Secretary and the Administrator, shall de-
7 velop and publish, after an opportunity for public com-
8 ment, but not later than 180 days after enactment of this
9 section, a methodology to provide for adjustments or nor-
10 malization to a load-serving entity’s applicable baseline
11 over time to reflect changes in the number of customers
12 served, weather conditions, general economic conditions,
13 and any other appropriate factors external to peak de-
14 mand management, as determined by the Commission.

15 (2) The Commission shall support load-serving enti-
16 ties (including any load-serving entities with an applicable
17 baseline of less than 250 megawatts that volunteer to par-
18 ticipate in achieving the purposes of this section) in deter-
19 mining their applicable baselines, and in developing their
20 peak demand reduction goals.

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

1 (c) PEAK DEMAND REDUCTION GOALS.—(1) Peak
2 demand reduction goals may be established for an indi-
3 vidual load-serving entity, or, at the determination of a
4 State, tribal, or regional entity, by that State, tribal, or
5 regional entity for a larger region that shares a common
6 system peak demand and for which peak demand reduc-
7 tion measures would offer regional benefit.

8 (2) A State or regional entity establishing peak de-
9 mand reduction goals shall cooperate, as necessary and
10 appropriate, with the Commission, the Secretary, State
11 regulatory commissions, State energy offices, the North
12 American Electric Reliability Corporation, and other rel-
13 evant authorities.

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

16 (A) States and other jurisdictional entities may
17 utilize the results of the 2009 National Demand Re-
18 sponse Potential Assessment, as authorized by sec-
19 tion 571 of the National Energy Conservation Policy
20 Act (42 U.S.C. 8279); and

21 (B) the relative economics of peak demand re-
22 duction and generation required to meet peak de-
23 mand shall be evaluated in a neutral and objective
24 manner.

1 (4) The applicable peak demand reduction goals shall
2 provide that—

3 (A) load-serving entities will reduce or mitigate
4 peak demand by a minimum percentage amount
5 from the applicable baseline to a lower peak demand
6 during calendar year 2012;

7 (B) load-serving entities will reduce or mitigate
8 peak demand by a minimum percentage greater
9 amount from the applicable baseline to a lower peak
10 demand during calendar year 2015; and

11 (C) the minimum percentage reductions estab-
12 lished as peak demand reduction goals shall be the
13 maximum reductions that are realistically achievable
14 with an aggressive effort to deploy Smart Grid and
15 peak demand reduction technologies and methods,
16 including but not limited to those listed in sub-
17 section (d).

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

22 (1) Direct reduction in megawatts of peak de-
23 mand through—

24 (A) energy efficiency measures (including
25 efficient transmission wire technologies which

1 significantly reduce line loss compared to tradi-
2 tional wire technology) with reliable and contin-
3 ued application during peak demand periods; or

4 (B) use of a Smart Grid.

5 (2) Demonstration that an amount of
6 megawatts equal to a stated portion of the applicable
7 goal is contractually committed to be available for
8 peak reduction through one or more of the following:

9 (A) Megawatts enrolled in demand re-
10 sponse programs.

11 (B) Megawatts subject to the ability of a
12 load-serving entity to call on demand response
13 programs, smart appliances, smart electricity or
14 energy storage devices, distributed generation
15 resources on the entity's customers' premises,
16 or other measures directly capable of actively,
17 controllably, reliably, and dynamically reducing
18 peak demand ("dynamic peak management con-
19 trol").

20 (C) Megawatts available from distributed
21 dynamic electricity or energy storage under
22 agreement with the owner of that storage.

23 (D) Megawatts committed from
24 dispatchable distributed generation dem-
25 onstrated to be reliable under peak period con-

1 conditions and in compliance with air quality regu-
2 lations.

3 (E) Megawatts available from smart appli-
4 ances and equipment with Smart Grid capa-
5 bility available for direct control by the utility
6 through agreement with the customer owning
7 the appliances or equipment or with a third
8 party pursuant to such agreements.

9 (F) Megawatts from a demonstrated and
10 assured minimum of distributed solar electric
11 generation capacity in instances where peak pe-
12 riod and peak demand conditions are directly
13 related to solar radiation and accompanying
14 heat.

15 (3) If any of the methods listed in subpara-
16 graph (C), (D), or (E) of paragraph (2) are relied
17 upon to meet its peak demand reduction goals, the
18 load-serving entity must demonstrate this capability
19 by operating a test during the applicable calendar
20 year.

21 (4) Nothing in this section shall require the
22 publication in peak demand reduction goals or in
23 any peak demand reduction plan of any information
24 that is confidential for competitive or other reasons
25 or that identifies individual customers.

1 (e) EXISTING AUTHORITY AND REQUIREMENTS.—

2 Nothing in this section diminishes or supersedes any au-
3 thority of a State or political subdivision of a State to
4 adopt or enforce any law or regulation respecting peak de-
5 mand management, demand response, distributed energy
6 storage, use of distributed generation, or the regulation
7 of load-serving entities. The Commission, in consultation
8 with States and Indian tribes having such peak manage-
9 ment, demand response and distributed energy storage
10 programs, shall to the maximum extent practicable, facili-
11 tate coordination between the Federal program and such
12 State and tribal programs.

13 (f) RELIEF.—The Commission may, for good cause,
14 grant relief to load-serving entities from the requirements
15 of this section.

16 (g) OTHER LAWS.—Except as provided in sub-
17 sections (e) and (f), no law or regulation shall relieve any
18 person of any requirement otherwise applicable under this
19 section.

20 (h) COMPLIANCE.—(1) The Commission shall within
21 1 year after the date of enactment of this Act establish
22 a public website where the Commission will provide infor-
23 mation and data demonstrating compliance by States, In-
24 dian tribes regional entities, and load-serving entities with

1 this section, including the success of load-serving entities
2 in meeting applicable peak demand reduction goals.

3 (2) The Commission shall, by April 1 of each year
4 beginning in 2012, provide a report to Congress on com-
5 pliance with this section and success in meeting applicable
6 peak demand reduction goals and, as appropriate, shall
7 make recommendations as to how to increase peak de-
8 mand reduction efforts.

9 (3) The Commission shall note in each such report
10 any State, political subdivision of a State, or load-serving
11 entity that has failed to comply with this section, or is
12 not a part of any region or group of load-serving entities
13 serving a region that has complied with this section.

14 (4) The Commission shall have and exercise the au-
15 thority to take reasonable steps to modify the process of
16 establishing peak demand reduction goals and to accept
17 adjustments to them as appropriate when sought by load-
18 serving entities.

19 (i) ASSISTANCE AND FUNDING.—

20 (1) ASSISTANCE TO STATES AND TRIBES.—Any
21 costs incurred by States for activities undertaken
22 pursuant to this section shall be supported by the
23 use of emission allowances allocated to the States'
24 SEED Accounts or to the tribes pursuant to section
25 132 of this Act. To the extent that a State provides

1 allowances to local governments within the State to
2 implement this program, that shall be deemed a dis-
3 tribution of such allowances to units of local govern-
4 ment pursuant to subsection (c)(1) of that section.

5 (2) FUNDING.—There are authorized to be ap-
6 propriated such sums as may be necessary to the
7 Commission, the Secretary, and the Administrator to
8 carry out the provisions of this section.

9 **SEC. 145. REAUTHORIZATION OF ENERGY EFFICIENCY PUB-**
10 **LIC INFORMATION PROGRAM TO INCLUDE**
11 **SMART GRID INFORMATION.**

12 (a) IN GENERAL.—Section 134 of the Energy Policy
13 Act of 2005 (42 U.S.C. 15832) is amended as follows:

14 (1) By amending the section heading to read as
15 follows: “**ENERGY EFFICIENCY AND SMART GRID**
16 **PUBLIC INFORMATION INITIATIVE**”.

17 (2) In paragraph (1) of subsection (a) by strik-
18 ing “reduce energy consumption during the 4-year
19 period beginning on the date of enactment of this
20 Act” and inserting “increase energy efficiency and
21 to adopt Smart Grid technology and practices”.

22 (3) In paragraph (2) of subsection (a) by strik-
23 ing “benefits to consumers of reducing” and insert-
24 ing “economic and environmental benefits to con-
25 sumers and the United States of optimizing”.

1 (4) In subsection (a) by inserting at the begin-
2 ning of paragraph (3) “the effect of energy effi-
3 ciency and Smart Grid capability in reducing energy
4 and electricity prices throughout the economy, to-
5 gether with”.

6 (5) In subsection (a)(4) by redesignating sub-
7 paragraph (D) as (E), by striking “and” at the end
8 of subparagraph (C), and by inserting after subpara-
9 graph (C) the following:

10 “(D) purchasing and utilizing equipment
11 that includes Smart Grid features and capa-
12 bility; and”.

13 (6) In subsection (c), by striking “Not later
14 than July 1, 2009,” and inserting, “For each year
15 when appropriations pursuant to the authorization
16 in this section exceed \$10,000,000,”.

17 (7) In subsection (d) by striking “2010” and
18 inserting “2020”.

19 (8) In subsection (e) by striking “2010” and in-
20 serting “2020”.

21 (b) TABLE OF CONTENTS.—The item relating to sec-
22 tion 134 in the table of contents for the Energy Policy
23 Act of 2005 (42 U.S.C. 15801 and following) is amended
24 to read as follows:

“Sec. 134. Energy efficiency and Smart Grid public information initiative.”.

1 **SEC. 146. INCLUSION OF SMART GRID FEATURES IN APPLI-**
2 **ANCE REBATE PROGRAM.**

3 (a) AMENDMENTS.—Section 124 of the Energy Pol-
4 icy Act of 2005 (42 U.S.C. 15821) is amended as follows:

5 (1) By amending the section heading to read as
6 follows: “**ENERGY EFFICIENT AND SMART AP-**
7 **PLIANCE REBATE PROGRAM.**”.

8 (2) By redesignating paragraphs (4) and (5) of
9 subsection (a) as paragraphs (5) and (6), respec-
10 tively, and inserting after paragraph (3) the fol-
11 lowing:

12 “(4) SMART APPLIANCE.—The term ‘smart ap-
13 pliance’ means a product that the Administrator of
14 the Environmental Protection Agency or the Sec-
15 retary of Energy has determined qualifies for such
16 a designation in the Energy Star program pursuant
17 to section 142 of the American Clean Energy and
18 Security Act of 2009, or that the Secretary or the
19 Administrator has separately determined includes
20 the relevant Smart Grid capabilities listed in section
21 1301 of the Energy Independence and Security Act
22 of 2007 (15 U.S.C. 17381).”.

23 (3) In subsection (b)(1) by inserting “and
24 smart” after “efficient” and by inserting after
25 “products” the first place it appears “, including
26 products designated as being smart appliances”.

1 (4) In subsection (b)(3), by inserting “the ad-
2 ministration of” after “carry out”.

3 (5) In subsection (d), by inserting “the admin-
4 istration of” after “carrying out” and by inserting
5 “, and up to 100 percent of the value of the rebates
6 provided pursuant to this section” before the period
7 at the end.

8 (6) In subsection (e)(3), by inserting “, with
9 separate consideration as applicable if the product is
10 also a smart appliance,” after “Energy Star prod-
11 uct” the first place it appears and by inserting “or
12 smart appliance” before the period at the end.

13 (7) In subsection (f), by striking
14 “\$50,000,000” through the period at the end and
15 inserting “\$100,000,000 for each fiscal year from
16 2010 through 2015.”.

17 (b) TABLE OF CONTENTS.—The item relating to sec-
18 tion 124 in the table of contents for the Energy Policy
19 Act of 2005 (42 U.S.C. 15801 and following) is amended
20 to read as follows:

“Sec. 124. Energy efficient and smart appliance rebate program.”.

21 **Subtitle F—Transmission Planning**

22 **SEC. 151. TRANSMISSION PLANNING AND SITING.**

23 (a) IN GENERAL.—Section 216 of the Federal Power
24 Act (16 U.S.C. 824p) is amended as follows:

1 (1) In subsection (b), in paragraph (5), by
2 striking “; and” and inserting a semicolon, in para-
3 graph (6) by striking the period and inserting “;
4 and” and by adding the following at the end thereof:

5 “(7) the facility is interstate in nature or is an
6 intrastate segment integral to a proposed interstate
7 facility;”.

8 (2) In subsection (k), by inserting at the end
9 the following: “Subsections (a), (b), (c), and (h) of
10 this section shall not apply in the Western inter-
11 connection.”.

12 (3) In subsections (d) and (e), by striking “sub-
13 section (b)” in each place and inserting “subsection
14 (b) or section 216B”, and by striking “permit” and
15 inserting “permit or certificate” in each place it ap-
16 pears.

17 (b) NEW SECTIONS.—The Federal Power Act (16
18 U.S.C. 824p) is amended by inserting the following new
19 sections after section 216:

20 **“SEC. 216A. TRANSMISSION PLANNING.**

21 “(a) FEDERAL POLICY FOR TRANSMISSION PLAN-
22 NING.—

23 “(1) OBJECTIVES.—It is the policy of the
24 United States that regional electric grid planning
25 should facilitate the deployment of renewable and

1 other zero-carbon and low-carbon energy sources for
2 generating electricity to reduce greenhouse gas emis-
3 sions while ensuring reliability, reducing congestion,
4 ensuring cyber-security, minimizing environmental
5 harm, and providing for cost-effective electricity
6 services throughout the United States, in addition to
7 serving the objectives stated in section 217(b)(4).

8 “(2) OPTIONS.—In addition to the policy under
9 paragraph (1), it is the policy of the United States
10 that regional electric grid planning to meet these ob-
11 jectives should result from an open, inclusive and
12 transparent process, taking into account all signifi-
13 cant demand-side and supply-side options, including
14 energy efficiency, distributed generation, renewable
15 energy and zero-carbon electricity generation tech-
16 nologies, smart-grid technologies and practices, de-
17 mand response, electricity storage, voltage regulation
18 technologies, high capacity conductors with at least
19 25 percent greater efficiency than traditional ACSR
20 (aluminum stranded conductors steel reinforced)
21 conductors, superconductor technologies, under-
22 ground transmission technologies, and new conven-
23 tional electric transmission capacity and corridors.

24 “(b) PLANNING.—

1 “(1) PLANNING PRINCIPLES.—Not later than 1
2 year after the date of enactment of this section, the
3 Commission shall adopt, after notice and oppor-
4 tunity for comment, national electricity grid plan-
5 ning principles derived from the Federal policy es-
6 tablished under subsection (a) to be applied in ongo-
7 ing and future transmission planning that may im-
8 plicate interstate transmission of electricity.

9 “(2) REGIONAL PLANNING ENTITIES.—Not
10 later than 3 months after the date of adoption by
11 the Commission of national electricity grid planning
12 principles pursuant to paragraph (1), entities that
13 conduct or may conduct transmission planning pur-
14 suant to State, tribal, or Federal law or regulation,
15 including States, Indian tribes, entities designated
16 by States and Indian tribes, Federal Power Mar-
17 keting Administrations, transmission providers, op-
18 erators and owners, regional organizations, and elec-
19 tric utilities, and that are willing to incorporate the
20 national electricity grid planning principles adopted
21 by the Commission in their electric grid planning,
22 shall identify themselves and the regions for which
23 they propose to develop plans to the Commission.

24 “(3) COORDINATION OF REGIONAL PLANNING
25 ENTITIES.—The Commission shall encourage re-

1 regional planning entities described under paragraph
2 (2) to cooperate and coordinate across regions and
3 to harmonize regional electric grid planning with
4 planning in adjacent or overlapping jurisdictions to
5 the maximum extent feasible. The Commission shall
6 work with States, Indian tribes, Federal land man-
7 agement agencies, State energy, environment, nat-
8 ural resources, and land management agencies and
9 commissions, Federal power marketing administra-
10 tions, electric utilities, transmission providers, load-
11 serving entities, transmission operators, regional
12 transmission organizations, independent system op-
13 erators, and other organizations to resolve any con-
14 flict or competition among proposed planning enti-
15 ties in order to build consensus and promote the
16 Federal policy established under subsection (a). The
17 Commission shall seek to ensure that planning that
18 is consistent with the national electricity grid plan-
19 ning principles adopted pursuant to paragraph (1) is
20 conducted in all regions of the United States and
21 the territories, but in a manner that, to the extent
22 feasible, avoids uncoordinated planning by more
23 than one planning entity for the same area.

1 “(4) RELATION TO EXISTING PLANNING POL-
2 ICY.—In implementing the Federal policy established
3 under subsection (a), the Commission shall—

4 “(A) incorporate and coordinate with any
5 ongoing planning efforts undertaken pursuant
6 to section 217 and Commission Order No. 890;

7 “(B) coordinate with the Secretary of En-
8 ergy in providing to the regional planning enti-
9 ties an annual summary of national energy pol-
10 icy priorities and goals;

11 “(C) coordinate with corridor designation
12 and planning functions carried out pursuant to
13 section 216 by the Secretary of Energy, who
14 shall provide financial support from available
15 funds to support the purposes of this section;
16 and

17 “(D) coordinate with the Secretaries of the
18 Interior and Agriculture and Indian tribes in
19 carrying out the Secretaries’ or tribal govern-
20 ments’ existing responsibilities for the planning
21 or siting of transmission facilities on Federal or
22 tribal lands, consistent with law, policy, and
23 regulations relating to the management of fed-
24 eral public lands.

25 “(5) ASSISTANCE.—

1 “(A) IN GENERAL.—The Commission shall
2 provide support to and may participate if in-
3 vited to do so in the regional grid planning
4 processes conducted by regional planning enti-
5 ties. The Secretary of Energy and the Commis-
6 sion may provide planning resources and assist-
7 ance as required or as requested by regional
8 planning entities, including system data, cost
9 information, system analysis, technical exper-
10 tise, modeling support, dispute resolution serv-
11 ices, and other assistance to regional planning
12 entities, as appropriate.

13 “(B) AUTHORIZATION.—There are author-
14 ized to be appropriated such sums as may be
15 necessary to carry out this paragraph.

16 “(6) CONFLICT RESOLUTION.—In the event
17 that regional grid plans conflict, the Commission
18 shall assist the regional planning entities in resolving
19 such conflicts in order to achieve the objectives of
20 the Federal policy established under subsection (a).

21 “(7) SUBMISSION OF PLANS.—The Commission
22 shall require regional planning entities to submit ini-
23 tial regional electric grid plans to the Commission
24 not later than 18 months after the date the Commis-
25 sion promulgates national electricity grid planning

1 principles pursuant to paragraph (1), with updates
2 to such plans not less than every 3 years thereafter.
3 The Commission shall review such plans for consist-
4 ency with the national grid planning principles and
5 may return a plan to one or more planning entities
6 for further consideration, along with the Commis-
7 sion's own recommendations for resolution of any
8 conflict or for improvement.

9 “(8) INTEGRATION OF PLANS.—Regional elec-
10 tric grid plans should, in general, be developed from
11 sub-regional requirements and plans, including plan-
12 ning input reflecting individual utility service areas.
13 Regional plans may then in turn be combined into
14 larger regional plans, up to interconnection-wide and
15 national plans, as appropriate and necessary as de-
16 termined by the Commission. In no case shall a
17 multi-regional plan impose inclusion of a facility on
18 a region that has submitted a valid plan that, after
19 efforts to resolve the conflict, does not include such
20 facility. To the extent practicable, all plans sub-
21 mitted to the Commission shall be public documents
22 and available on the Commission's Web site.

23 “(9) MULTI-REGIONAL MEETINGS.—As regional
24 grid plans are submitted to the Commission, the
25 Commission may convene multi-regional meetings to

1 discuss regional grid plan consistency and integra-
2 tion, including requirements for multi-regional
3 projects, and to resolve any conflicts that emerge
4 from such multi-regional projects. The Commission
5 shall provide its recommendations for eliminating
6 any inter-regional conflicts.

7 “(10) REPORT TO CONGRESS.—Not later than
8 3 years after the date of enactment of this section
9 and each 3 years thereafter, the Commission shall
10 provide a report to Congress containing the results
11 of the regional grid planning process, including sum-
12 maries of the adopted regional plans and the extent
13 to which the Federal policy objectives in subsection
14 (a) have been successfully achieved. The Commission
15 shall provide an electronic version of its report on its
16 website with links to all regional and sub-regional
17 plans taken into account. The Commission shall note
18 and provide its recommended resolution for any con-
19 flicts not resolved during the planning process. The
20 Commission shall make any recommendations to
21 Congress on the appropriate Federal role or support
22 required to address the needs of the electric grid, in-
23 cluding recommendations for addressing any needs
24 that are beyond the reach of existing State, tribal,
25 and Federal authority.

1 **“SEC. 216B. SITING AND CONSTRUCTION IN THE WESTERN**
2 **INTERCONNECTION.**

3 “(a) **APPLICABILITY.**—This section applies only to
4 States located in the Western Interconnection and does
5 not apply to States located in the Eastern Interconnection,
6 to the States of Alaska or Hawaii, or to ERCOT.

7 “(b) **CERTIFICATE OF PUBLIC CONVENIENCE AND**
8 **NECESSITY.**—The Commission may, after notice and op-
9 portunity for hearing, issue a certificate of public conven-
10 ience and necessity for the construction or modification
11 of a transmission facility if the Commission finds that—

12 “(1) the facility was identified and included in
13 one or more relevant and final regional or inter-
14 connection-wide electric grid plans submitted to the
15 Commission pursuant to subsection (b) of 216A;

16 “(2) any conflict among regional electric grid
17 plans concerning the need for the facility was re-
18 solved;

19 “(3) such relevant regional electric grid plans
20 are consistent with the national grid planning prin-
21 ciples adopted by the Commission pursuant to sub-
22 section (b);

23 “(4) the facility was identified as needed in sig-
24 nificant measure to meet demand for renewable en-
25 ergy in such plans;

26 “(5) the facility is a multistate facility;

1 “(6) the developer of such facility filed a com-
2 plete application seeking approval for the siting of
3 the facility with a state commission or other entity
4 that has authority to approve the siting of the facil-
5 ity;

6 “(7) a State commission or other entity that
7 has authority to approve the siting of the facility—

8 “(A) did not issue a decision on an appli-
9 cation seeking approval for the siting of the fa-
10 cility within 1 year after the date the applicant
11 submitted a completed application to the State;

12 “(B) denied a complete application seeking
13 approval for the siting of the facility; or

14 “(C) authorized the siting of the facility
15 subject to conditions that unreasonably inter-
16 fere with the development of the facility; and

17 “(8) the siting of the facility can be accom-
18 plished in a manner consistent with the Federal pol-
19 icy established in subsection (a) of section 216A and
20 the national grid planning principles adopted by the
21 Commission pursuant to subsection (b) of section
22 216A.

23 “(c) STATE RECOMMENDATIONS ON RESOURCE PRO-
24 TECTION.—In issuing a final certificate of public conven-

1 ience and necessity pursuant to subsection (b), the Com-
2 mission shall—

3 “(1) consider any siting constraints and mitiga-
4 tion measures based on habitat protection, health
5 and safety considerations, environmental consider-
6 ations, or cultural site protection identified by rel-
7 evant State or local authorities; and

8 “(2) incorporate those identified siting con-
9 straints or mitigation measures, including rec-
10 ommendations related to project routing, as condi-
11 tions in the final certificate of public convenience
12 and necessity, or if the Commission determines that
13 a recommended siting constraint or mitigation meas-
14 ure is infeasible, excessively costly, or inconsistent
15 with the Federal policy established in subsection (a)
16 of section 216A or the national grid planning prin-
17 ciples adopted by the Commission pursuant to sub-
18 section (b) of section 216A—

19 “(A) consult with State regulatory agencies
20 to seek to resolve the issue;

21 “(B) incorporate as conditions on the cer-
22 tificate such recommended siting constraints or
23 mitigation measures as are determined to be
24 appropriate by the Commission, based on con-
25 sultation by the Commission with State regu-

1 latory agencies, the Federal policy established
2 in subsection (a) of section 216A and the na-
3 tional grid planning principles adopted by the
4 Commission pursuant to subsection (b) of sec-
5 tion 216A, and the record before the Commis-
6 sion; and

7 “(C) if, after consultation, the Commission
8 does not adopt in whole or in part a rec-
9 ommendation of an agency, publish a finding
10 that the adoption of the recommendation is in-
11 feasible, not cost effective, or inconsistent with
12 this section or other applicable provisions of
13 law.

14 “(d) CERTIFICATE APPLICATIONS.—(1) An applica-
15 tion for a preliminary or final certificate of public conven-
16 ience and necessity under this subsection shall be made
17 in writing to the Commission.

18 “(2) The Commission shall issue rules specifying—

19 “(A) the form of the application;

20 “(B) the information to be contained in the ap-
21 plication; and

22 “(C) the manner of service of notice of the ap-
23 plication on interested persons.

24 “(e) COORDINATION OF FEDERAL AUTHORIZATIONS
25 FOR TRANSMISSION FACILITIES.—

1 “(1) In this subsection, the term ‘Federal au-
2 thorization’ shall have the same meaning and include
3 the same actions as in section 216(h).

4 “(2) The Federal Energy Regulatory Commis-
5 sion shall act as the lead agency for purposes of co-
6 ordinating all applicable Federal authorizations and
7 related environmental reviews of the facility, pro-
8 vided, however, that to the extent the facility is pro-
9 posed to be sited on Federal lands, the Department
10 of the Interior will assume such lead-agency duties
11 as agreed between the Commission and the Depart-
12 ment of Interior.

13 “(3) To the maximum extent practicable under
14 applicable Federal law, the Commission, and to the
15 extent agreed, the Secretary of Interior, shall coordi-
16 nate the Federal authorization and review process
17 under this subsection with any Indian tribes,
18 multistate entities, and State agencies that are re-
19 sponsible for conducting any separate permitting
20 and environmental reviews of the facility, to ensure
21 timely and efficient review and permit decisions.

22 “(4)(A) As head of the lead agency, the Chair-
23 man of the Commission, in consultation with the
24 Secretary of Interior and with those entities referred
25 to in paragraph (3) that are willing to coordinate

1 their own separate permitting and environmental re-
2 views with the Federal authorization and environ-
3 mental reviews, shall establish prompt and binding
4 intermediate milestones and ultimate deadlines for
5 the review of, and Federal authorization decisions
6 relating to, the proposed facility.

7 “(B) The Chairman of the Commission, or the
8 Secretary of Interior, as agreed under paragraph
9 (2), shall ensure that, once an application has been
10 submitted with such data as the lead agency con-
11 siders necessary, all permit decisions and related en-
12 vironmental reviews under all applicable Federal
13 laws shall be completed—

14 “(i) within 1 year; or

15 “(ii) if a requirement of another provision
16 of Federal law does not permit compliance with
17 clause (i), as soon thereafter as is practicable.

18 “(C) The Commission shall provide an expedi-
19 tious pre-application mechanism for prospective ap-
20 plicants to confer with the agencies involved to have
21 each such agency determine and communicate to the
22 prospective applicant not later than 60 days after
23 the prospective applicant submits a request for such
24 information concerning—

1 “(i) the likelihood of approval for a poten-
2 tial facility; and

3 “(ii) key issues of concern to the agencies
4 and public.

5 “(5)(A) As lead agency head, the Chairman of
6 the Commission, in consultation with the affected
7 agencies, shall prepare a single environmental review
8 document, which shall be used as the basis for all
9 decisions on the proposed project under Federal law.

10 “(B) The Chairman of the Commission and the
11 heads of other agencies shall streamline the review
12 and permitting of transmission within corridors des-
13 ignated under section 503 of the Federal Land Pol-
14 icy and Management Act (43 U.S.C. 1763) by fully
15 taking into account prior analyses and decisions re-
16 lating to the corridors.

17 “(C) The document shall include consideration
18 by the relevant agencies of any applicable criteria or
19 other matters as required under applicable law.

20 “(6)(A) If any agency has denied a Federal au-
21 thorization required for a transmission facility, or
22 has failed to act by the deadline established by the
23 Commission pursuant to this section for deciding
24 whether to issue the authorization, the applicant or
25 any State in which the facility would be located may

1 file an appeal with the President, who shall, in con-
2 sultation with the affected agency, review the denial
3 or failure to take action on the pending application.

4 “(B) Based on the overall record and in con-
5 sultation with the affected agency, the President
6 may—

7 “(i) issue the necessary authorization with
8 any appropriate conditions; or

9 “(ii) deny the application.

10 “(C) The President shall issue a decision not
11 later than 90 days after the date of the filing of the
12 appeal.

13 “(D) In making a decision under this para-
14 graph, the President shall comply with applicable re-
15 quirements of Federal law, including any require-
16 ments of—

17 “(i) the National Forest Management Act
18 of 1976 (16 U.S.C. 472a et seq.);

19 “(ii) the Endangered Species Act of 1973
20 (16 U.S.C. 1531 et seq.);

21 “(iii) the Federal Water Pollution Control
22 Act (33 U.S.C. 1251 et seq.);

23 “(iv) the National Environmental Policy
24 Act of 1969 (42 U.S.C. 4321 et seq.); and

1 “(v) the Federal Land Policy and Manage-
2 ment Act of 1976 (43 U.S.C. 1701 et seq.).

3 “(7)(A) Not later than 18 months after August
4 8, 2005, the Commission or, as requested, the Sec-
5 retary or Interior, shall issue any regulations nec-
6 essary to implement this subsection.

7 “(B)(i) Not later than 1 year after August 8,
8 2005, the Commission, the Secretary of Interior,
9 and the heads of all Federal agencies with authority
10 to issue Federal authorizations shall enter into a
11 memorandum of understanding to ensure the timely
12 and coordinated review and permitting of electricity
13 transmission facilities.

14 “(ii) Interested Indian tribes, multistate enti-
15 ties, and State agencies may enter the memorandum
16 of understanding.

17 “(C) The head of each Federal agency with au-
18 thority to issue a Federal authorization shall des-
19 ignate a senior official responsible for, and dedicate
20 sufficient other staff and resources to ensure, full
21 implementation of the regulations and memorandum
22 required under this paragraph.

23 “(8)(A) Each Federal land use authorization
24 for an electricity transmission facility shall be
25 issued—

1 “(i) for a duration, as determined by the
2 Secretary of Interior, commensurate with the
3 anticipated use of the facility; and

4 “(ii) with appropriate authority to manage
5 the right-of-way for reliability and environ-
6 mental protection.

7 “(B) On the expiration of the authorization (in-
8 cluding an authorization issued before August 8,
9 2005), the authorization shall be reviewed for re-
10 newal taking fully into account reliance on such elec-
11 tricity infrastructure, recognizing the importance of
12 the authorization for public health, safety, and eco-
13 nomic welfare and as a legitimate use of Federal
14 land.

15 “(9) In exercising the responsibilities under this
16 section, the Commission shall consult regularly
17 with—

18 “(A) electric reliability organizations (in-
19 cluding related regional entities) approved by
20 the Commission; and

21 “(B) Transmission Organizations approved
22 by the Commission.”.

23 **SEC. 152. NET METERING FOR FEDERAL AGENCIES.**

24 (a) STANDARD.—Subsection (b) of section 113 of the
25 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.

1 2623) is amended by adding the following new paragraph
2 at the end thereof:

3 “(6) NET METERING FOR FEDERAL AGEN-
4 CIES.—Each electric utility shall offer to arrange
5 (either directly or through a third party) to make
6 interconnection and net metering available to Fed-
7 eral Government agencies, offices, or facilities in ac-
8 cordance with the requirements of section 115(j).
9 The standard under this paragraph shall apply only
10 to electric utilities that sold over 4,000,000 mega-
11 watt hours of electricity in the preceding year to the
12 ultimate consumers thereof. In the case of a stand-
13 ard under this paragraph, a period of 1 year after
14 the date of the enactment of this section shall be
15 substituted for the 2-year period referred to in other
16 provisions of this section.”.

17 (b) SPECIAL RULES.—Section 115 of the Public Util-
18 ity Regulatory Policies Act of 1978 (16 U.S.C. 2625) is
19 amended by adding the following new subsection at the
20 end thereof:

21 “(j) NET METERING FOR FEDERAL AGENCIES.—(1)
22 The standard under paragraph (6) of section 113(b) shall
23 require that rates and charges and contract terms and
24 conditions for the sale of electric energy to the Federal
25 Government or agency shall be the same as the rates and

1 charges and contract terms and conditions that would be
2 applicable if the agency did not own or operate a qualified
3 generation unit and use a net metering system.

4 “(2)(A) The standard under paragraph (6) of section
5 113(b) shall require that each electric utility shall arrange
6 to provide to the Government office or agency that quali-
7 fies for net metering an electrical energy meter capable
8 of net metering and measuring, to the maximum extent
9 practicable, the flow of electricity to or from the customer,
10 using a single meter and single register, the cost of which
11 shall be recovered from the customer.

12 “(B) In a case in which it is not practicable to provide
13 a meter under subparagraph (A), the utility (either di-
14 rectly or through a third party) shall, at the expense of
15 the utility install 1 or more of those electric energy meters.

16 “(3)(A) The standard under paragraph (6) of section
17 113(b) shall require that each electric utility shall cal-
18 culate the electric energy consumption for the Government
19 office or agency using a net metering system that meets
20 the requirements of this subsection and paragraph (6) of
21 section 113(b) and shall measure the net electricity pro-
22 duced or consumed during the billing period using the me-
23 tering installed in accordance with this paragraph.

24 “(B) If the electricity supplied by the retail electric
25 supplier exceeds the electricity generated by the Govern-

1 ment office or agency during the billing period, the Gov-
2 ernment office or agency shall be billed for the net electric
3 energy supplied by the retail electric supplier in accord-
4 ance with normal billing practices.

5 “(C) If electric energy generated by the Government
6 office or agency exceeds the electric energy supplied by
7 the retail electric supplier during the billing period, the
8 Government office or agency shall be billed for the appro-
9 priate customer charges for that billing period and cred-
10 ited for the excess electric energy generated during the
11 billing period, with the credit appearing as a kilowatt-hour
12 credit on the bill for the following billing period.

13 “(D) Any kilowatt-hour credits provided to the Gov-
14 ernment office or agency as provided in this subsection
15 shall be applied to the Government office or agency elec-
16 tric energy consumption on the following billing period bill
17 (except for a billing period that ends in the next calendar
18 year). At the beginning of each calendar year, any unused
19 kilowatt-hour credits remaining from the preceding year
20 will carry over to the new year.

21 “(4) The standard under paragraph (6) of section
22 113(b) shall require that each electric utility shall offer
23 a meter and retail billing arrangement that has time-dif-
24 ferentiated rates. The kilowatt-hour credit shall be based
25 on the ratio representing the difference in retail rates for

1 each time-of-use rate, or the credits shall be reflected on
2 the bill of the Government office or agency as a monetary
3 credit reflecting retail rates at the time of generation of
4 the electric energy by the customer-generator.

5 “(5) The standard under paragraph (6) of section
6 113(b) shall require that the qualified generation unit,
7 interconnection standards, and net metering system used
8 by the Government office or agency shall meet all applica-
9 ble safety and performance and reliability standards estab-
10 lished by the National Electrical Code, the Institute of
11 Electrical and Electronics Engineers, Underwriters Lab-
12 oratories, and the American National Standards Institute.

13 “(6) The standard under paragraph (6) of section
14 113(b) shall require that electric utilities shall not make
15 additional charges, including standby charges, for equip-
16 ment or services for safety or performance that are in ad-
17 dition to those necessary to meet the other standards and
18 requirements of this subsection and paragraph (6) of sec-
19 tion 113(b).

20 “(7) For purposes of this subsection and paragraph
21 (6) of section 113(b):

22 “(A) The term ‘Government’ means any office,
23 facility, or agency of the Federal Government.

24 “(B) The term ‘customer-generator’ means the
25 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 network of entities directly involved in the research,
13 development, finance, and commercialization of clean
14 energy technologies whose geographic proximity fa-
15 cilitates utilization and sharing of skilled human re-
16 sources, infrastructure, research facilities, edu-
17 cational and training institutions, venture capital,
18 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 **SEC. 175. HIGH EFFICIENCY GAS TURBINE RESEARCH, DE-**
4 **VELOPMENT, AND DEMONSTRATION.**

5 (a) IN GENERAL.—The Secretary of Energy shall
6 carry out a multiyear, multiphase program of research, de-
7 velopment, and technology demonstration to improve the
8 efficiency of gas turbines used in combined cycle power
9 generation systems and to identify the technologies that
10 ultimately will lead to gas turbine combined cycle effi-
11 ciency of 65 percent.

12 (b) PROGRAM ELEMENTS.—The program under this
13 section shall—

14 (1) support first-of-a-kind engineering and de-
15 tailed gas turbine design for utility-scale electric
16 power generation, including—

17 (A) high temperature materials, including
18 superalloys, coatings, and ceramics;

19 (B) improved heat transfer capability;

20 (C) manufacturing technology required to
21 construct complex three-dimensional geometry
22 parts with improved aerodynamic capability;

23 (D) combustion technology to produce
24 higher firing temperature while lowering nitro-

1 gen oxide and carbon monoxide emissions per
2 unit of output;

3 (E) advanced controls and systems integra-
4 tion;

5 (F) advanced high performance compressor
6 technology; and

7 (G) validation facilities for the testing of
8 components and subsystems;

9 (2) include technology demonstration through
10 component testing, subscale testing, and full scale
11 testing in existing fleets;

12 (3) include field demonstrations of the devel-
13 oped technology elements so as to demonstrate tech-
14 nical and economic feasibility; and

15 (4) assess overall combined cycle system per-
16 formance.

17 (c) PROGRAM GOALS.—The goals of the multiphase
18 program established under subsection (a) shall be—

19 (1) in phase I—

20 (A) to develop the conceptual design of ad-
21 vanced high efficiency gas turbines that can
22 achieve at least 62 percent combined cycle effi-
23 ciency on a lower heating value basis; and

24 (B) to develop and demonstrate the tech-
25 nology required for advanced high efficiency gas

1 turbines that can achieve at least 62 percent
2 combined cycle efficiency on a lower heating
3 value basis; and

4 (2) in phase II, to develop the conceptual de-
5 sign for advanced high efficiency gas turbines that
6 can achieve at least 65 percent combined cycle effi-
7 ciency on a lower heating value basis.

8 (d) PROPOSALS.—Within 180 days after the date of
9 enactment of this section, the Secretary shall solicit pro-
10 posals for conducting activities under this section. In se-
11 lecting proposals, the Secretary shall emphasize—

12 (1) the extent to which the proposal will stimu-
13 late the creation or increased retention of jobs in the
14 United States; and

15 (2) the extent to which the proposal will pro-
16 mote and enhance United States technology leader-
17 ship.

18 (e) COST SHARING.—Section 988 of the Energy Pol-
19 icy Act of 2005 (42 U.S.C. 16352) shall apply to an award
20 of financial assistance made under this section.

21 (f) LIMITS ON PARTICIPATION.—The limits on par-
22 ticipation applicable under section 999E of the Energy
23 Policy Act of 2005 (42 U.S.C. 16375) shall apply to finan-
24 cial assistance awarded under this section.

1 (g) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Secretary for car-
3 rying out this section \$65,000,000 for each of fiscal years
4 2011 through 2014.

5 **Subtitle I—Nuclear and Advanced**
6 **Technologies**

7 **SEC. 181. REVISIONS TO LOAN GUARANTEE PROGRAM AU-**
8 **THORITY.**

9 (a) DEFINITION OF CONDITIONAL COMMITMENT.—
10 Section 1701 of the Energy Policy Act of 2005 (42 U.S.C.
11 16511), as amended by section 130(a) of this Act, is
12 amended by adding after paragraph (7) the following:

13 “(8) CONDITIONAL COMMITMENT.—The term
14 ‘conditional commitment’ means a final term sheet
15 negotiated between the Secretary and a project
16 sponsor or sponsors, which term sheet shall be bind-
17 ing on both parties and become a final loan guar-
18 antee agreement if all conditions precedent estab-
19 lished in the term sheet, which shall include the ac-
20 quisition of all necessary permits and licenses, are
21 satisfied.”.

22 (b) SPECIFIC APPROPRIATION OR CONTRIBUTION.—
23 Section 1702 of the Energy Policy Act of 2005 (42 U.S.C.
24 16512) is amended by striking subsection (b) and insert-
25 ing the following:

1 “(b) SPECIFIC APPROPRIATION OR CONTRIBU-
2 TION.—

3 “(1) IN GENERAL.—No guarantee shall be
4 made unless—

5 “(A) an appropriation for the cost has
6 been made;

7 “(B) the Secretary has received from the
8 borrower a payment in full for the cost of the
9 obligation and deposited the payment into the
10 Treasury; or

11 “(C) a combination of appropriations or
12 payments from the borrower has been made
13 sufficient to cover the cost of the obligation.

14 “(2) LIMITATION.—The source of payments re-
15 ceived from a borrower under paragraph (1)(B) shall
16 not be a loan or other debt obligation that is made
17 or guaranteed by the Federal Government.”.

18 (c) FEES.—Section 1702(h) of the Energy Policy Act
19 of 2005 (42 U.S.C. 16512(h)) is amended by striking
20 paragraph (2) and inserting the following:

21 “(2) AVAILABILITY.—Fees collected under this
22 subsection shall—

23 “(A) be deposited by the Secretary into a
24 special fund in the Treasury to be known as the

1 ‘Incentives For Innovative Technologies Fund’;
2 and

3 “(B) remain available to the Secretary for
4 expenditure, without further appropriation or
5 fiscal year limitation, for administrative ex-
6 penses incurred in carrying out this title.”.

7 (d) WAGE RATE REQUIREMENTS.—Section 1702 of
8 the Energy Policy Act of 2005 (42 U.S.C. 16512) is
9 amended by adding at the end the following new sub-
10 section:

11 “(k) WAGE RATE REQUIREMENTS.—No loan guar-
12 antee shall be made under this title unless the borrower
13 has provided to the Secretary reasonable assurances that
14 all laborers and mechanics employed by contractors and
15 subcontractors in the performance of construction work fi-
16 nanced in whole or in part by the guaranteed loan will
17 be paid wages at rates not less than those prevailing on
18 projects of a character similar to the contract work in the
19 civil subdivision of the State in which the contract work
20 is to be performed as determined by the Secretary of
21 Labor in accordance with subchapter IV of chapter 31 of
22 part A of subtitle II of title 40, United States Code. With
23 respect to the labor standards specified in this subsection,
24 the Secretary of Labor shall have the authority and func-
25 tions set forth in Reorganization Plan Numbered 14 of

1 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145
2 of title 40, United States Code.”.

3 (e) SUBROGATION.—Section 1702(g)(2) of the En-
4 ergy Policy Act of 2005 (42 U.S.C. 16512(g)(2)) is
5 amended by striking subparagraphs (B) and (C) and in-
6 serting the following:

7 “(B) SUPERIORITY OF RIGHTS.—Except as
8 provided in subparagraph (C), the rights of the
9 Secretary, with respect to any property ac-
10 quired pursuant to a guarantee or related
11 agreements, shall be superior to the rights of
12 any other person with respect to the property.

13 “(C) TERMS AND CONDITIONS.—A guar-
14 antee agreement shall include such detailed
15 terms and conditions as the Secretary deter-
16 mines appropriate to—

17 “(i) protect the financial interests of
18 the United States in the case of default;

19 “(ii) have available all the patents and
20 technology necessary for any person se-
21 lected, including the Secretary, to complete
22 and operate the project;

23 “(iii) provide for sharing the proceeds
24 received from the sale of project assets
25 with other creditors or control the disposi-

1 tion of project assets if necessary to pro-
2 tect the financial interests of the United
3 States in the case of default; and

4 “(iv) provide such lien priority in
5 project assets as necessary to protect the
6 financial interests of the United States in
7 the case of a default.”.

8 **SEC. 182. PURPOSE.**

9 The purpose of sections 183 through 189 of this sub-
10 title is to promote the domestic development and deploy-
11 ment of clean energy technologies required for the 21st
12 century through the establishment of a self-sustaining
13 Clean Energy Deployment Administration that will pro-
14 vide for an attractive investment environment through
15 partnership with and support of the private capital market
16 in order to promote access to affordable financing for ac-
17 celerated and widespread deployment of—

18 (1) clean energy technologies;

19 (2) advanced or enabling energy infrastructure
20 technologies;

21 (3) energy efficiency technologies in residential,
22 commercial, and industrial applications, including
23 end-use efficiency in buildings; and

24 (4) manufacturing technologies for any of the
25 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;

3 (11) sufficient availability of financial services
4 and support to small businesses developing and de-
5 ploying clean energy technologies through partner-
6 ships with private entities that have relevant credit
7 expertise; and

8 (12) such other goals as the Secretary, in con-
9 sultation with the Advisory Council, determines to be
10 consistent with the purpose stated in section 182.

11 (b) REVISIONS.—The Secretary shall revise the goals
12 established under subsection (a), from time to time as ap-
13 propriate, to account for advances in technology and
14 changes in energy policy.

15 **SEC. 186. CLEAN ENERGY DEPLOYMENT ADMINISTRATION.**

16 (a) ESTABLISHMENT.—

17 (1) ESTABLISHMENT OF CORPORATION.—There
18 is established a corporation to be known as the
19 Clean Energy Deployment Administration that shall
20 be wholly owned by the United States.

21 (2) INDEPENDENT CORPORATION.—The Admin-
22 istration shall be an independent corporation. Nei-
23 ther the Administration nor any of its functions,
24 powers, or duties shall be transferred to or consoli-
25 dated with any other department, agency, or cor-

1 poration of the Government unless the Congress pro-
2 vides otherwise.

3 (3) CHARTER.—The Administration shall be
4 chartered for 20 years from the date of enactment
5 of this section.

6 (4) STATUS.—

7 (A) INSPECTOR GENERAL.—Section 12 of
8 the Inspector General Act of 1978 (5 U.S.C.
9 App.) is amended—

10 (i) in paragraph (1), by inserting “the
11 Administrator of the Clean Energy Deploy-
12 ment Administration;” after “Export-Im-
13 port Bank;”; and

14 (ii) in paragraph (2), by inserting
15 “the Clean Energy Deployment Adminis-
16 tration,” after “Export-Import Bank,”.

17 (3) OFFICES.—

18 (A) PRINCIPAL OFFICE.—The Administra-
19 tion shall—

20 (i) maintain the principal office of the
21 Administration in the national capital re-
22 gion; and

23 (ii) for purposes of venue in civil ac-
24 tions, be considered to be a resident of the
25 District of Columbia.

1 (B) OTHER OFFICES.—The Administration
2 may establish other offices in such other places
3 as the Administration considers necessary or
4 appropriate for the conduct of the business of
5 the Administration.

6 (b) ADMINISTRATOR.—

7 (1) IN GENERAL.—The Administrator of the
8 Administration shall be—

9 (A) appointed by the President, with the
10 advice and consent of the Senate, for a 5-year
11 term; and

12 (B) compensated at the prevailing rate for
13 compensation for similar positions in industry.

14 (2) DUTIES.—The Administrator of the Admin-
15 istration shall—

16 (A) serve as the Chief Executive Officer of
17 the Administration and Chairman of the Board;

18 (B) ensure that—

19 (i) the Administration operates in a
20 safe and sound manner, including mainte-
21 nance of adequate capital and internal con-
22 trols (consistent with section 404 of the
23 Sarbanes-Oxley Act of 2002 (15 U.S.C.
24 7262));

1 (ii) the operations and activities of the
2 Administration foster liquid, efficient, com-
3 petitive, and resilient energy and energy ef-
4 ficiency finance markets;

5 (iii) the Administration carries out the
6 purpose stated in section 182 only through
7 activities that are authorized under and
8 consistent with sections 182 through 189;
9 and

10 (iv) the activities of the Administra-
11 tion and the manner in which the Adminis-
12 tration is operated are consistent with the
13 public interest;

14 (C) develop policies and procedures for the
15 Administration that will—

16 (i) promote a self-sustaining portfolio
17 of investments that will maximize the value
18 of investments to effectively promote clean
19 energy technologies;

20 (ii) promote transparency and open-
21 ness in Administration operations;

22 (iii) afford the Administration with
23 sufficient flexibility to meet the purpose
24 stated in section 182; and

1 (iv) provide for the efficient proc-
2 essing of applications; and

3 (D) with the concurrence of the Board, set
4 expected loss reserves for the support provided
5 by the Administration consistent with section
6 187(c).

7 (c) BOARD OF DIRECTORS.—

8 (1) IN GENERAL.—The Board of Directors of
9 the Administration shall consist of—

10 (A) the Secretary or the designee of the
11 Secretary, who shall serve as an ex-officio mem-
12 ber of the Board of Directors;

13 (B) the Secretary of the Treasury or the
14 designee of the Secretary, who shall serve as an
15 ex-officio member of the Board of Directors;

16 (C) the Secretary of the Interior or the
17 designee of the Secretary, who shall serve as an
18 ex-officio member of the Board of Directors;

19 (D) the Secretary of Agriculture or the
20 designee of the Secretary, who shall serve as an
21 ex officio member of the Board of Directors;

22 (E) the Administrator of the Administra-
23 tion, who shall serve as the Chairman of the
24 Board of Directors; and

25 (F) 4 additional members who shall—

1 (i) be appointed by the President,
2 with the advice and consent of the Senate,
3 for staggered 5-year terms; and

4 (ii) have experience in banking, finan-
5 cial services, technology assessment, energy
6 regulation, or risk management, including
7 individuals with substantial experience in
8 the development of energy projects, the
9 electricity generation sector, the transpor-
10 tation sector, the manufacturing sector,
11 and the energy efficiency sector.

12 (2) DUTIES.—The Board of Directors shall—

13 (A) oversee the operations of the Adminis-
14 tration and ensure industry best practices are
15 followed in all financial transactions involving
16 the Administration;

17 (B) consult with the Administrator of the
18 Administration on the general policies and pro-
19 cedures of the Administration to ensure the in-
20 terests of the taxpayers are protected;

21 (C) ensure the portfolio of investments are
22 consistent with purpose stated in section 182
23 and with the long-term financial stability of the
24 Administration;

1 (D) ensure that the operations and activi-
2 ties of the Administration are consistent with
3 the development of a robust private sector that
4 can provide commercial loans or financing prod-
5 ucts; and

6 (E) not serve on a full-time basis, except
7 that the Board of Directors shall meet at least
8 quarterly to review, as appropriate, applications
9 for credit support and set policies and proce-
10 dures as necessary.

11 (3) REMOVAL.—An appointed member of the
12 Board of Directors may be removed from office by
13 the President for good cause.

14 (4) VACANCIES.—An appointed seat on the
15 Board of Directors that becomes vacant shall be
16 filled by appointment by the President, but only for
17 the unexpired portion of the term of the vacating
18 member.

19 (5) COMPENSATION OF MEMBERS.—An ap-
20 pointed member of the Board of Directors shall be
21 compensated at the prevailing rate for compensation
22 for similar positions in industry.

23 (d) ENERGY TECHNOLOGY ADVISORY COUNCIL.—

24 (1) IN GENERAL.—The Administration shall
25 have an Energy Technology Advisory Council con-

1 sisting of 8 members selected by the Board of Direc-
2 tors of the Administration.

3 (2) QUALIFICATIONS.—The members of the Ad-
4 visory Council shall—

5 (A) have clean energy project development,
6 clean energy finance, commercial, and/or rel-
7 evant scientific expertise; and

8 (B) include representatives of—

9 (i) the academic community;

10 (ii) the private research community;

11 (iii) National Laboratories;

12 (iv) the technology or project develop-
13 ment community; and

14 (v) the commercial energy financing
15 and operations sector.

16 (3) DUTIES.—The Advisory Council shall—

17 (A) develop and publish for comment in
18 the Federal Register a methodology for assess-
19 ment of clean energy technologies that will
20 allow the Administration to evaluate projects
21 based on the progress likely to be achieved per-
22 dollar invested in maximizing the attributes of
23 the definition of clean energy technology, taking
24 into account the extent to which support for a
25 clean energy technology is likely to accrue sub-

1 sequent benefits that are attributable to a com-
2 mercial scale deployment taking place earlier
3 than that which otherwise would have occurred
4 without the support; and

5 (B) advise on the technological approaches
6 that should be supported by the Administration
7 to meet the technology deployment goals estab-
8 lished by the Secretary pursuant to section 185.

9 (4) TERM.—

10 (A) IN GENERAL.—Members of the Advi-
11 sory Council shall have 5-year staggered terms,
12 as determined by the Administrator of the Ad-
13 ministration.

14 (B) REAPPOINTMENT.—A member of the
15 Advisory Council may be reappointed.

16 (5) COMPENSATION.—A member of the Advi-
17 sory Council, who is not otherwise compensated as
18 a Federal employee, shall be compensated at a rate
19 equal to the daily equivalent of the annual rate of
20 basic pay prescribed for level IV of the Executive
21 Schedule under section 5315 of title 5, United
22 States Code, for each day (including travel time)
23 during which the member is engaged in the perform-
24 ance of the duties of the Advisory Council.

25 (e) STAFF.—

1 (1) IN GENERAL.—The Administrator of the
2 Administration, in consultation with the Board of
3 Directors, may—

4 (A) appoint and terminate such officers,
5 attorneys, employees, and agents as are nec-
6 essary to carry out this subtitle; and

7 (B) vest those personnel with such powers
8 and duties as the Administrator of the Adminis-
9 tration may determine.

10 (f) CONFLICTS OF INTEREST.—No director, officer,
11 attorney, agent, or employee of the Administration shall
12 in any manner, directly or indirectly, participate in the
13 deliberation upon, or the determination of, any question
14 affecting such individual's personal interests, or the inter-
15 ests of any corporation, partnership, or association in
16 which such individual is directly or indirectly personally
17 interested.

18 (g) SUNSET.—

19 (1) EXPIRATION OF CHARTER.—The Adminis-
20 tration shall continue to exercise its functions until
21 all obligations and commitments of the Administra-
22 tion are discharged, even after its charter has ex-
23 pired.

1 (2) PRIOR OBLIGATIONS.—No provisions of this
2 subsection shall be construed as preventing the Ad-
3 ministration from—

4 (A) undertaking obligations prior to the
5 date of the expiration of its charter which ma-
6 ture subsequent to such date;

7 (B) assuming, prior to the date of the ex-
8 piration of its charter, liability as guarantor,
9 endorser, or acceptor of obligations which ma-
10 ture subsequent to such date; or

11 (C) continuing as a corporation and exer-
12 cising any of its functions subsequent to the
13 date of the expiration of its charter for pur-
14 poses of orderly liquidation, including the ad-
15 ministration of its assets and the collection of
16 any obligations held by the Administration.

17 **SEC. 187. DIRECT SUPPORT.**

18 (a) IN GENERAL.—The Administration may issue di-
19 rect loans, letters of credit, and loan guarantees to deploy
20 clean energy technologies if the Administrator of the Ad-
21 ministration has determined that deployment of the tech-
22 nologies would benefit or be accelerated by the support.

23 (b) ELIGIBILITY CRITERIA.—In carrying out this sec-
24 tion and awarding credit support to projects, the Adminis-
25 trator of the Administration shall account for—

1 (1) how the technology rates based on an eval-
2 uation methodology established by the Advisory
3 Council;

4 (2) how the project fits with the goals estab-
5 lished under section 185; and

6 (3) the potential for the applicant to success-
7 fully complete the project.

8 (c) RISK.—

9 (1) EXPECTED LOAN LOSS RESERVE.—The Ad-
10 ministrator of the Administration shall establish an
11 expected loan loss reserve to account for estimated
12 losses attributable to activities under this section
13 that is consistent with the purposes of—

14 (A) developing breakthrough technologies
15 to the point at which technology risk is largely
16 mitigated;

17 (B) achieving widespread deployment and
18 advancing the commercial viability of clean en-
19 ergy technologies; and

20 (C) advancing the goals established under
21 section 185.

22 (2) INITIAL EXPECTED LOAN LOSS RESERVE.—
23 Until such time as the Administrator of the Admin-
24 istration determines sufficient data exist to establish
25 an expected loan loss reserve that is appropriate, the

1 Administrator of the Administration shall consider
2 establishing an initial rate of 10 percent for the
3 portfolio of investments under this subtitle.

4 (3) PORTFOLIO INVESTMENT APPROACH.—The
5 Administration shall—

6 (A) use a portfolio investment approach to
7 mitigate risk and diversify investments across
8 technologies and ensure that no particular tech-
9 nology is provided more than 30 percent of the
10 financial support available;

11 (B) to the maximum extent practicable and
12 consistent with long-term self-sufficiency, weigh
13 the portfolio of investments in projects to ad-
14 vance the goals established under section 185;

15 (C) consistent with the expected loan loss
16 reserve established under this subsection, the
17 purpose stated in section 182, and section
18 186(b)(2)(B), provide the maximum practicable
19 percentage of support to promote breakthrough
20 technologies; and

21 (D) give the highest priority to investments
22 that promote technologies that will achieve the
23 maximum greenhouse gas emission reductions
24 within a reasonable period of time per dollar in-

1 vested and the earliest reductions in greenhouse
2 gas emissions.

3 (4) LOSS RATE REVIEW.—

4 (A) IN GENERAL.—The Board of Directors
5 shall review on an annual basis the loss rates
6 of the portfolio to determine the adequacy of
7 the reserves.

8 (B) REPORT.—Not later than 90 days
9 after the date of the initiation of the review, the
10 Administrator of the Administration shall sub-
11 mit to the Committee on Energy and Natural
12 Resources and the Committee on Finance of the
13 Senate, and the Committee on Energy and
14 Commerce and the Committee on Ways and
15 Means of the House of Representatives a report
16 describing the results of the review and any rec-
17 ommended policy changes.

18 (5) FEDERAL COST SHARE.—Direct loans, let-
19 ters of credit and loan guarantees by the Adminis-
20 tration shall not exceed an amount equal to 80 per-
21 cent of the project cost of the facility that is the
22 subject of the loan, letter of credit or loan guar-
23 antee, as estimated at the time at which the loan,
24 letter of credit or loan guarantee is issued.

25 (d) APPLICATION REVIEW.—

1 (1) IN GENERAL.—To the maximum extent
2 practicable and consistent with sound business prac-
3 tices, the Administration shall seek to consolidate re-
4 views of applications for credit support under this
5 subtitle such that final decisions on applications can
6 generally be issued not later than 180 days after the
7 date of submission of a completed application.

8 (2) ENVIRONMENTAL REVIEW.—In carrying out
9 this subtitle, the Administration shall, to the max-
10 imum extent practicable—

11 (A) avoid duplicating efforts that have al-
12 ready been undertaken by other agencies (in-
13 cluding State agencies acting under Federal
14 programs); and

15 (B) with the advice of the Council on Envi-
16 ronmental Quality and any other applicable
17 agencies, use the administrative records of simi-
18 lar reviews conducted throughout the executive
19 branch to develop the most expeditious review
20 process practicable.

21 (e) WAGE RATE REQUIREMENTS.—

22 (1) IN GENERAL.—No credit support shall be
23 issued under this section unless the borrower has
24 provided to the Administrator of the Administration
25 reasonable assurances that all laborers and mechan-

1 ics employed by contractors and subcontractors in
2 the performance of construction work financed in
3 whole or in part by the Administration will be paid
4 wages at rates not less than those prevailing on
5 projects of a character similar to the contract work
6 in the civil subdivision of the State in which the con-
7 tract work is to be performed as determined by the
8 Secretary of Labor in accordance with subchapter
9 IV of chapter 31 of part A of subtitle II of title 40,
10 United States Code.

11 (2) LABOR STANDARDS.—With respect to the
12 labor standards specified in this subsection, the Sec-
13 retary of Labor shall have the authority and func-
14 tions set forth in Reorganization Plan Numbered 14
15 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section
16 3145 of title 40, United States Code.

17 (f) LIMITATIONS.—(1) The Administration shall not
18 provide direct support as defined under this section or in-
19 direct support as defined under section 188 to an indi-
20 vidual clean energy technology project that obtained a loan
21 guarantee under title XVII of the Energy Policy Act of
22 2005.

23 (2) No direct or indirect support provided by the Ad-
24 ministration may be used to pay any part of the cost of

1 an obligation or a loan guarantee under title XVII of the
2 Energy Policy Act of 2005.

3 **SEC. 188. INDIRECT SUPPORT.**

4 (a) IN GENERAL.—For the purpose of enhancing the
5 availability of private financing for clean energy tech-
6 nology deployment, the Administration may—

7 (1) provide credit support to portfolios of tax-
8 able debt obligations originated by state, local, and
9 private sector entities that enable owners and users
10 of buildings and industrial facilities to—

11 (A) significantly increase the energy effi-
12 ciency of such buildings or facilities; or

13 (B) install systems that individually gen-
14 erate electricity from renewable energy re-
15 sources and have a capacity of no more than 2
16 megawatts;

17 (2) facilitate financing transactions in tax eq-
18 uity markets and long-term purchasing of clean en-
19 ergy by state, local, and non-governmental not-for-
20 profit entities, to the degree and extent that the Ad-
21 ministration determines such financing activity is
22 appropriate and consistent with carrying out the
23 purposes described in Section 182 of this Act; and

24 (3) provide credit support to portfolios of tax-
25 able debt obligations originated by state, local, and

1 private sector entities that enable the deployment of
2 energy storage applications for electric drive vehi-
3 cles, stationary applications, and electricity trans-
4 mission and distribution.

5 (b) DEFINITIONS.—For purposes of the section:

6 (1) CREDIT SUPPORT.—The term “credit sup-
7 port” means—

8 (A) direct loans, letters of credit, loan
9 guarantees, and insurance products; and

10 (B) the purchase or commitment to pur-
11 chase, or the sale or commitment to sell, debt
12 instruments (including subordinated securities).

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

18 (c) TRANSPARENCY.—The Administration shall seek
19 to foster through its credit support activities—

20 (1) the development and consistent application
21 of standard contractual terms, transparent under-
22 writing standards and consistent measurement and
23 verification protocols, as applicable; and

24 (2) the creation of performance data that pro-
25 motes effective underwriting and risk management

1 to support lending markets and stimulate the devel-
2 opment of private investment markets.

3 (d) EXEMPT SECURITIES.—All securities insured or
4 guaranteed by the Administration shall, to the same ex-
5 tent as securities that are direct obligations of or obliga-
6 tions guaranteed as to the principal or interest by the
7 United States, be considered to be exempt securities with-
8 in the meaning of the laws administered by the Securities
9 and Exchange Commission.

10 **SEC. 189. FEDERAL CREDIT AUTHORITY.**

11 (a) PAYMENTS OF LIABILITIES.—

12 (1) IN GENERAL.—Any payment made to dis-
13 charge liabilities arising from agreements under this
14 subtitle shall be paid exclusively out of the Fund or
15 the associated credit account, as appropriate.

16 (2) SECURITY.—Subject to paragraph (1), the
17 full faith and credit of the United States is pledged
18 to the payment of all obligations entered into by the
19 Administration pursuant to this subtitle.

20 (b) FEES.—

21 (1) IN GENERAL.—Consistent with achieving
22 the purpose stated in section 182, the Administrator
23 of the Administration shall charge fees or collect
24 compensation generally in accordance with commer-
25 cial rates.

1 (2) AVAILABILITY OF FEES.—All fees collected
2 by the Administration may be retained by the Ad-
3 ministration and placed in the Fund and may re-
4 main available to the Administration, without fur-
5 ther appropriation or fiscal year limitation, for use
6 in carrying out the purpose stated in section 182.

7 (3) BREAKTHROUGH TECHNOLOGIES.—The Ad-
8 ministration shall charge the minimum amount in
9 fees or compensation practicable for breakthrough
10 technologies, consistent with the long-term viability
11 of the Administration, unless the Administration
12 first determines that a higher charge will not impede
13 the development of the technology.

14 (4) ALTERNATIVE FEE ARRANGEMENTS.—The
15 Administration may use such alternative arrange-
16 ments (such as profit participation, contingent fees,
17 and other valuable contingent interests) as the Ad-
18 ministration considers appropriate to compensate the
19 Administration for the expenses of the Administra-
20 tion and the risk inherent in the support of the Ad-
21 ministration.

22 (c) COST TRANSFER AUTHORITY.—Amounts col-
23 lected by the Administration for the cost of a loan or loan
24 guarantee shall be transferred by the Administration to
25 the respective credit accounts.

1 **SEC. 190. GENERAL PROVISIONS.**

2 (a) IMMUNITY FROM IMPAIRMENT, LIMITATION, OR
3 RESTRICTION.—

4 (1) IN GENERAL.—All rights and remedies of
5 the Administration (including any rights and rem-
6 edies of the Administration on, under, or with re-
7 spect to any mortgage or any obligation secured by
8 a mortgage) shall be immune from impairment, limi-
9 tation, or restriction by or under—

10 (A) any law (other than a law enacted by
11 Congress expressly in limitation of this para-
12 graph) that becomes effective after the acquisi-
13 tion by the Administration of the subject or
14 property on, under, or with respect to which the
15 right or remedy arises or exists or would so
16 arise or exist in the absence of the law; or

17 (B) any administrative or other action that
18 becomes effective after the acquisition.

19 (2) STATE LAW.—The Administrator of the Ad-
20 ministration may conduct the business of the Ad-
21 ministration without regard to any qualification or
22 law of any State relating to incorporation.

23 (b) USE OF OTHER AGENCIES.—With the consent of
24 a department, establishment, or instrumentality (including
25 any field office), the Administration may—

1 (1) use and act through any department, estab-
2 lishment, or instrumentality; and

3 (2) use, and pay compensation for, information,
4 services, facilities, and personnel of the department,
5 establishment, or instrumentality.

6 (c) FINANCIAL MATTERS.—

7 (1) INVESTMENTS.—Funds of the Administra-
8 tion may be invested in such investments as the
9 Board of Directors may prescribe. Earnings from
10 such funds, other than fees collected under section
11 189, may be spent by the Administration only to
12 such extent or in such amounts as are provided in
13 advance by appropriation Acts.

14 (2) FISCAL AGENTS.—Any Federal Reserve
15 bank or any bank as to which at the time of the des-
16 ignation of the bank by the Administrator of the Ad-
17 ministration there is outstanding a designation by
18 the Secretary of the Treasury as a general or other
19 depository of public money, may be designated by
20 the Administrator of the Administration as a deposi-
21 tary or custodian or as a fiscal or other agent of the
22 Administration.

23 (d) PERIODIC REPORTS.—Not later than 1 year after
24 commencement of operation of the Administration and at
25 least biannually thereafter, the Administrator of the Ad-

1 ministration shall submit to the Committee on Energy and
2 Natural Resources and the Committee on Finance of the
3 Senate and the Committee on Energy and Commerce and
4 the Committee on Ways and Means of the House of Rep-
5 resentatives a report that includes a description of—

6 (1) the technologies supported by activities of
7 the Administration and how the activities advance
8 the purpose stated in section 182; and

9 (2) the performance of the Administration on
10 meeting the goals established under section 185.

11 (g) AUDITS BY THE COMPTROLLER GENERAL.—

12 (1) IN GENERAL.—The programs, activities, re-
13 ceipts, expenditures, and financial transactions of
14 the Administration shall be subject to audit by the
15 Comptroller General of the United States under
16 such rules and regulations as may be prescribed by
17 the Comptroller General.

18 (2) ACCESS.—The representatives of the Gov-
19 ernment Accountability Office shall—

20 (A) have access to the personnel and to all
21 books, accounts, documents, records (including
22 electronic records), reports, files, and all other
23 papers, automated data, things, or property be-
24 longing to, under the control of, or in use by
25 the Administration, or any agent, representa-

1 tive, attorney, advisor, or consultant retained by
2 the Administration, and necessary to facilitate
3 the audit;

4 (B) be afforded full facilities for verifying
5 transactions with the balances or securities held
6 by depositories, fiscal agents, and custodians;

7 (C) be authorized to obtain and duplicate
8 any such books, accounts, documents, records,
9 working papers, automated data and files, or
10 other information relevant to the audit without
11 cost to the Comptroller General; and

12 (D) have the right of access of the Comp-
13 troller General to such information pursuant to
14 section 716(e) of title 31, United States Code.

15 (3) ASSISTANCE AND COST.—

16 (A) IN GENERAL.—For the purpose of con-
17 ducting an audit under this subsection, the
18 Comptroller General may, in the discretion of
19 the Comptroller General, employ by contract,
20 without regard to section 3709 of the Revised
21 Statutes (41 U.S.C. 5), professional services of
22 firms and organizations of certified public ac-
23 countants for temporary periods or for special
24 purposes.

25 (B) REIMBURSEMENT.—

1 (i) IN GENERAL.—On the request of
2 the Comptroller General, the Administra-
3 tion shall reimburse the Government Ac-
4 countability Office for the full cost of any
5 audit conducted by the Comptroller Gen-
6 eral under this subsection.

7 (ii) CREDITING.—Such reimburse-
8 ments shall—

9 (I) be credited to the appropria-
10 tion account entitled “Salaries and
11 Expenses, Government Accountability
12 Office” at the time at which the pay-
13 ment is received; and

14 (II) remain available until ex-
15 pended.

16 (h) ANNUAL INDEPENDENT AUDITS.—

17 (1) IN GENERAL.—The Administrator of the
18 Administration shall—

19 (A) have an annual independent audit
20 made of the financial statements of the Admin-
21 istration by an independent public accountant
22 in accordance with generally accepted auditing
23 standards; and

24 (B) submit to the Secretary and to the
25 Committee on Energy and Natural Resources

1 and the Committee on Finance of the Senate
2 and the Committee on Energy and Commerce
3 and the Committee on Ways and Means of the
4 House the results of the audit.

5 (2) CONTENT.—In conducting an audit under
6 this subsection, the independent public accountant
7 shall determine and report on whether the financial
8 statements of the Administration—

9 (A) are presented fairly in accordance with
10 generally accepted accounting principles; and

11 (B) comply with any disclosure require-
12 ments imposed under this subtitle.

13 (i) FINANCIAL REPORTS.—

14 (1) IN GENERAL.—The Administrator of the
15 Administration shall submit to the Secretary and to
16 the Committee on Energy and Natural Resources
17 and the Committee on Finance of the Senate and
18 the Committee on Energy and Commerce and the
19 Committee on Ways and Means of the House annual
20 and quarterly reports of the financial condition and
21 operations of the Administration, which shall be in
22 such form, contain such information, and be sub-
23 mitted on such dates as the Secretary shall require.

24 (2) CONTENTS OF ANNUAL REPORTS.—Each
25 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 186 of the Amer-
15 ican Clean Energy and Security Act of 2009.”.

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 Admin-
21 istration.”.

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, including minority-
16 owned and woman-owned, and early stage start-up compa-
17 nies throughout the United States to meet high priority
18 economic, environmental, and energy security goals in
19 areas to include energy efficiency, renewable energy, air
20 quality, water quality and conservation, transportation,
21 smart grid, green building, and waste management. Such
22 competitions shall have the purpose of accelerating the de-
23 velopment and deployment of clean technology businesses
24 and green jobs; stimulating green economic development;
25 providing business training and mentoring to early stage

1 clean technology companies; and strengthening the com-
2 petitiveness of United States clean technology industry in
3 world trade markets. Priority shall be given to business
4 competitions that are private sector led, encourage re-
5 gional and interregional cooperation, and can demonstrate
6 market-driven practices and show the creation of cost-ef-
7 fective green jobs through an annual publication of com-
8 petition activities and directory of companies.

9 (b) ELIGIBILITY.—An organization eligible for a
10 grant under subsection (a) is—

11 (1) any organization described in section
12 501(c)(3) of the Internal Revenue Code of 1986 and
13 exempt from tax under section 501(a) of such Code;
14 and

15 (2) any sponsored entity of an organization de-
16 scribed in paragraph (1) that is operated as a non-
17 profit entity.

18 (c) PRIORITY.—In making grants under this section,
19 the Secretary shall give priority to those organizations
20 that can demonstrate broad funding support from private
21 and other non-Federal funding sources to leverage Federal
22 investment.

23 (d) AUTHORIZATION OF APPROPRIATIONS.—For the
24 purpose of carrying out this section, there are authorized
25 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 **SEC. 199. DEVELOPMENT CORPORATION FOR RENEWABLE**
8 **POWER BORROWING AUTHORITY.**

9 (a) DETERMINATION.—No later than 6 months after
10 the date of enactment of this Act, the Secretary of Energy,
11 in coordination with the Secretary of Commerce, shall—

12 (1) determine any geographic area within the
13 contiguous United States that lacks a Federal power
14 marketing agency;

15 (2) develop a plan or criteria for the geographic
16 areas identified in paragraph (1) regarding invest-
17 ment in renewable energy and associated infrastruc-
18 ture within an area identified in paragraph (1); and

19 (3) identify any Federal agency within an area
20 in paragraph (1) that has, or could develop, the abil-
21 ity to facilitate the investment in paragraph (2).

22 (b) REPORT.—The Secretary of Energy, in coordina-
23 tion with the Secretary of Commerce, shall provide the de-
24 terminations made under subsection (a) to the Committee

1 on Energy and Commerce of the House of Representa-
2 tives.

3 (c) ESTABLISHMENT.—Based upon the determina-
4 tions made pursuant to subsection (a), the Secretary of
5 Energy, in coordination with the Secretary of Commerce,
6 shall recommend to the Committee on Energy and Com-
7 merce of the House of Representatives the establishment
8 of any new Federal lending authority, including authoriza-
9 tion of additional lending authority for existing Federal
10 agencies, not to exceed \$3,500,000,000 per geographic
11 area identified in subsection (a)(1).

12 (d) AUTHORIZATION.—\$25,000,000 is authorized to
13 be appropriated for fiscal year 2010 to carry out the provi-
14 sions of this section.

15 **SEC. 199A. STUDY.**

16 Not later than February 1, 2011, the Secretary of
17 Energy shall transmit to the Congress a report showing
18 the results of a study on the use of thorium-fueled nuclear
19 reactors for national energy needs. Such report shall in-
20 clude a response to the International Atomic Energy
21 Agency study entitled “Thorium fuel cycle - Potential ben-
22 efits and challenges” (IAEA-TECDOC-1450).

1 **TITLE II—ENERGY EFFICIENCY**
2 **Subtitle A—Building Energy**
3 **Efficiency Programs**

4 **SEC. 201. GREATER ENERGY EFFICIENCY IN BUILDING**
5 **CODES.**

6 Section 304 of the Energy Conservation and Produc-
7 tion Act (42 U.S.C. 6833) is amended to read as follows:

8 **“SEC. 304. GREATER ENERGY EFFICIENCY IN BUILDING**
9 **CODES.**

10 **“(a) ENERGY EFFICIENCY TARGETS.—**

11 **“(1) IN GENERAL.—**Except as provided in para-
12 graph (2) or (3), the national building code energy
13 efficiency target for the national average percentage
14 improvement of a building’s energy performance
15 when built to a code meeting the target shall be—

16 **“(A)** effective on the date of enactment of
17 the American Clean Energy and Security Act of
18 2009, 30 percent reduction in energy use rel-
19 ative to a comparable building constructed in
20 compliance with the baseline code;

21 **“(B)** effective January 1, 2014, for resi-
22 dential buildings, and January 1, 2015, for
23 commercial buildings, 50 percent reduction in
24 energy use relative to the baseline code; and

1 “(C) effective January 1, 2017, for resi-
2 dential buildings, and January 1, 2018, for
3 commercial buildings, and every 3 years there-
4 after, respectively, through January 1, 2029,
5 and January 1, 2030, 5 percent additional re-
6 duction in energy use relative to the baseline
7 code.

8 “(2) CONSENSUS-BASED CODES.—If on any ef-
9 fective date specified in paragraph (1)(A), (B), or
10 (C) a successor code to the baseline codes provides
11 for greater reduction in energy use than is required
12 under paragraph (1), the overall percentage reduc-
13 tion in energy use provided by that successor code
14 shall be the national building code energy efficiency
15 target.

16 “(3) TARGETS ESTABLISHED BY SECRETARY.—
17 The Secretary may by rule establish a national
18 building code energy efficiency target for residential
19 or commercial buildings achieving greater reductions
20 in energy use than the targets prescribed in para-
21 graph (1) or (2) if the Secretary determines that
22 such greater reductions in energy use can be
23 achieved with a code that is life cycle cost-justified
24 and technically feasible. The Secretary may by rule
25 establish a national building code energy efficiency

1 target for residential or commercial buildings achiev-
2 ing a reduction in energy use that is greater than
3 zero but less than the targets prescribed in para-
4 graph (1) or (2) if the Secretary determines that
5 such lesser target is the maximum reduction in en-
6 ergy use that can be achieved through a code that
7 is life cycle cost-justified and technically feasible.

8 “(4) ADDITIONAL REDUCTIONS IN ENERGY
9 USE.—Effective on January 1, 2033, and once every
10 3 years thereafter, the Secretary shall determine,
11 after notice and opportunity for comment, whether
12 further energy efficiency building code improvements
13 for residential or commercial buildings, respectively,
14 are life cycle cost-justified and technically feasible,
15 and shall establish updated national building code
16 energy efficiency targets that meet such criteria.

17 “(5) ZERO-NET-ENERGY BUILDINGS.—In set-
18 ting targets under this subsection, the Secretary
19 shall consider ways to support the deployment of
20 distributed renewable energy technology, and shall
21 seek to achieve the goal of zero-net-energy commer-
22 cial buildings established in section 422 of the En-
23 ergy Independence and Security Act of 2007 (42
24 U.S.C. 17082).

1 “(6) BASELINE CODE.—For purposes of this
2 section, the term ‘baseline code’ means—

3 “(A) for residential buildings, the 2006
4 International Energy Conservation Code
5 (IECC) published by the International Code
6 Council (ICC); and

7 “(B) for commercial buildings, the code
8 published in ASHRAE Standard 90.1–2004.

9 “(7) CONSULTATION.—In establishing the tar-
10 gets required by this section, the Secretary shall
11 consult with the Director of the National Institute of
12 Standards and Technology.

13 “(b) NATIONAL ENERGY EFFICIENCY BUILDING
14 CODES.—

15 “(1) REQUIREMENT.—

16 “(A) IN GENERAL.—There shall be estab-
17 lished national energy efficiency building codes
18 under this subsection, for residential and com-
19 mercial buildings, sufficient to meet each of the
20 national building code energy efficiency targets
21 established under subsection (a), not later than
22 the date that is 1 year after the deadline for es-
23 tablishment of each such target, except that the
24 national energy efficiency building code estab-
25 lished to meet the target described in subsection

1 (a)(1)(A) shall be established by not later than
2 15 months after the effective date of that tar-
3 get.

4 “(B) EXISTING CODE.—If the Secretary
5 finds prior to the date provided in subpara-
6 graph (A) for establishing a national code for
7 any target that one or more energy efficiency
8 building codes published by a recognized devel-
9 oper of national energy codes and standards
10 meet or exceed the established target, the Sec-
11 retary shall select the code that meets the tar-
12 get with the highest efficiency in the most cost-
13 effective manner, and such code shall be the na-
14 tional energy efficiency building code.

15 “(C) REQUIREMENT TO ESTABLISH
16 CODE.—If the Secretary does not make a find-
17 ing under subparagraph (B), the national en-
18 ergy efficiency building code shall be established
19 by rule by the Secretary under paragraph (2).

20 “(2) ESTABLISHMENT BY SECRETARY.—

21 “(A) PROCEDURE.—In order to establish a
22 national energy efficiency building code as re-
23 quired under paragraph (1)(C), the Secretary
24 shall—

1 “(i) not later than 6 months prior to
2 the effective date for each target, review
3 existing and proposed codes published or
4 under review by recognized developers of
5 national energy codes and standards;

6 “(ii) determine the percentage of en-
7 ergy efficiency improvements that are or
8 would be achieved in such published or
9 proposed code versions relative to the tar-
10 get;

11 “(iii) propose improvements to such
12 published or proposed code versions suffi-
13 cient to meet or exceed the target; and

14 “(iv) unless a finding is made under
15 paragraph (1)(B) with respect to a code
16 published by a recognized developer of na-
17 tional energy codes and standards, adopt a
18 code that meets or exceeds the relevant na-
19 tional building code energy efficiency tar-
20 get by not later than 1 year after the effec-
21 tive date of each such target, and by not
22 later than 15 months after the target is es-
23 tablished under subsection (a)(1)(A).

24 “(B) CALCULATIONS.—Each national en-
25 ergy efficiency building code established by the

1 Secretary under this paragraph shall be set at
2 the maximum level the Secretary determines is
3 life cycle cost-justified and technically feasible,
4 in accordance with the following:

5 “(i) SAVINGS CALCULATIONS.—Cal-
6 culations of energy savings shall take into
7 account the typical lifetimes of different
8 products, measures, and system configura-
9 tions.

10 “(ii) COST-EFFECTIVENESS CALCULA-
11 TIONS.—Calculations of life cycle cost-ef-
12 fectiveness shall be based on life cycle cost
13 methods and procedures under section 544
14 of the National Energy Conservation Pol-
15 icy Act (42 U.S.C. 8254), but shall incor-
16 porate to the extent feasible externalities
17 such as impacts on climate change and on
18 peak energy demand that are not already
19 incorporated in assumed energy costs.

20 “(C) CONSIDERATIONS.—In developing a
21 national energy efficiency building code under
22 this paragraph, the Secretary shall consider—

23 “(i) for residential national energy ef-
24 ficiency building codes—

1 “(I) residential building stand-
2 ards published or proposed by
3 ASHRAE;

4 “(II) building codes published or
5 proposed by the International Code
6 Council (ICC);

7 “(III) data from the Residential
8 Energy Services Network (RESNET)
9 on compliance measures utilized by
10 consumers to qualify for the residen-
11 tial energy efficiency tax credits estab-
12 lished under the Energy Policy Act of
13 2005;

14 “(IV) data and information from
15 the Department of Energy’s Building
16 America Program;

17 “(V) data and information from
18 the Energy Star New Homes pro-
19 gram;

20 “(VI) data and information from
21 the New Building Institute and simi-
22 lar organizations; and

23 “(VII) standards for practices
24 and materials to achieve cool roofs in
25 residential buildings, taking into con-

1 sideration reduced air conditioning en-
2 ergy use as a function of cool roofs,
3 the potential reduction in global
4 warming from increased solar reflec-
5 tance from buildings, and cool roofs
6 criteria in State and local building
7 codes and in national and local vol-
8 untary programs, without reduction of
9 otherwise applicable ceiling insulation
10 standards; and

11 “(ii) for commercial national energy
12 efficiency building codes—

13 “(I) commercial building stand-
14 ards proposed by ASHRAE;

15 “(II) building codes proposed by
16 the International Code Council (ICC);

17 “(III) the Core Performance Cri-
18 teria published by the New Buildings
19 Institute;

20 “(IV) data and information de-
21 veloped by the Director of the Com-
22 mercial High-Performance Green
23 Building Office of the Department of
24 Energy and any public-private part-
25 nerships established under that Office;

1 “(V) data and information from
2 the Energy Star for Buildings pro-
3 gram;

4 “(VI) data and information from
5 the New Building Institute,
6 RESNET, and similar organizations;
7 and

8 “(VII) standards for practices
9 and materials to achieve cool roofs in
10 commercial buildings, taking into con-
11 sideration reduced air conditioning en-
12 ergy use as a function of cool roofs,
13 the potential reduction in global
14 warming from increased solar reflec-
15 tance from buildings, and cool roofs
16 criteria in State and local building
17 codes and in national and local vol-
18 untary programs, without reduction of
19 otherwise applicable ceiling insulation
20 standards.

21 “(D) CONSULTATION.—In establishing any
22 national energy efficiency building code re-
23 quired by this section, the Secretary shall con-
24 sult with the Director of the National Institute
25 of Standards and Technology.

1 “(3) CONSENSUS STANDARD ASSISTANCE.—(A)
2 To support the development of consensus standards
3 that may provide the basis for national energy effi-
4 ciency building codes, minimize duplication of effort,
5 encourage progress through consensus, and facilitate
6 the development of greater building efficiency, the
7 Secretary shall provide assistance to recognized de-
8 velopers of national energy codes and standards to
9 develop, and where the relevant code has been adopt-
10 ed as the national code, disseminate consensus based
11 energy efficiency building codes as provided in this
12 paragraph.

13 “(B) Upon a finding by the Secretary that a
14 code developed by such a developer meets a target
15 established under subsection (a), the Secretary
16 shall—

17 “(i) send notice of the Secretary’s finding
18 to all duly authorized or appointed State, tribal,
19 and local code agencies; and

20 “(ii) provide sufficient support to such a
21 developer to make the code available on the
22 Internet, or to accomplish distribution of such
23 code to all such State, tribal, and local code
24 agencies at no cost to the State, tribal, and
25 local code agencies.

1 “(C) The Secretary may contract with such a
2 developer and with other organizations with exper-
3 tise on codes to provide training for State, tribal,
4 and local code officials and building inspectors in the
5 implementation and enforcement of such code.

6 “(D) The Secretary may provide grants and
7 other support to such a developer to—

8 “(i) develop appropriate refinements to
9 such code; and

10 “(ii) support analysis of options for im-
11 provements in the code to meet the next sched-
12 uled target.

13 “(4) CODE DEVELOPED BY SECRETARY.—If the
14 Secretary establishes a national energy efficiency
15 building code under paragraph (2), the Secretary
16 shall—

17 “(A) to the extent that such code is based
18 on a prior code developed by a recognized devel-
19 oper of national energy codes and standards,
20 negotiate and provide appropriate compensation
21 to such developer for the use of the code mate-
22 rials that remain in the code established by the
23 Secretary; and

24 “(B) disseminate the national energy effi-
25 ciency building codes to State, tribal, and local

1 code officials, and support training and provide
2 guidance and technical assistance to such offi-
3 cials as appropriate.

4 “(c) STATE ADOPTION OF ENERGY EFFICIENCY
5 BUILDING CODES.—

6 “(1) REQUIREMENT.—Not later than 1 year
7 after a national energy efficiency building code for
8 residential or commercial buildings is established or
9 revised under subsection (b), each State—

10 “(A) shall—

11 “(i) review and update the provisions
12 of its building code regarding energy effi-
13 ciency to meet or exceed the target met in
14 the new national energy efficiency building
15 code, to achieve equivalent or greater en-
16 ergy savings;

17 “(ii) document, where local govern-
18 ments establish building codes, that local
19 governments representing not less than 80
20 percent of the State’s urban population
21 have adopted the new national code, or
22 have adopted local codes that meet or ex-
23 ceed the target met in the new national
24 code to achieve equivalent or greater en-
25 ergy savings; or

1 “(iii) adopt the new national code;
2 and

3 “(B) shall provide a certification to the
4 Secretary demonstrating that energy efficiency
5 building code provisions that apply pursuant to
6 subparagraph (A) in that State meet or exceed
7 the target met by the new national code, to
8 achieve equivalent or greater energy savings.

9 “(2) CONFIRMATION.—

10 “(A) REQUIREMENT.—Not later than 90
11 days after a State certification is provided
12 under paragraph (1)(B), the Secretary shall de-
13 termine whether the State’s energy efficiency
14 building code provisions meet the requirements
15 of this subsection.

16 “(B) ACCEPTANCE BY SECRETARY.—If the
17 Secretary determines under subparagraph (A)
18 that the State’s energy efficiency building code
19 or codes meet the requirements of this sub-
20 section, the Secretary shall accept the certifi-
21 cation.

22 “(C) DEFICIENCY NOTICE.—If the Sec-
23 retary determines under subparagraph (A) that
24 the State’s building code or codes do not meet
25 the requirements of this subsection, the Sec-

1 retary shall identify the deficiency in meeting
2 the national building code energy efficiency tar-
3 get, and, to the extent possible, indicate areas
4 where further improvement in the State’s code
5 provisions would allow the deficiency to be
6 eliminated.

7 “(D) REVISION OF CODE AND RECERTIFI-
8 CATION.—A State may revise its code or codes
9 and submit a recertification under paragraph
10 (1)(B) to the Secretary at any time.

11 “(3) COMPLIANT CODE.—For the purposes of
12 meeting the target described in subsection (a)(1)(A)
13 for residential buildings, a State that adopts the
14 code represented in California’s Title 24-2009 by the
15 date 27 months after the date of enactment of the
16 American Clean Energy and Security Act of 2009
17 shall be considered to have met the requirements of
18 this subsection for the applicable period.

19 “(d) APPLICATION OF NATIONAL CODE TO STATE
20 AND LOCAL JURISDICTIONS.—

21 “(1) IN GENERAL.—Upon the expiration of 18
22 months after a national energy efficiency building
23 code is established under subsection (b), in any ju-
24 risdiction where the State has not had a certification
25 relating to that code accepted by the Secretary

1 under subsection (c)(2)(B), and the local govern-
2 ment has not had a certification relating to that
3 code accepted by the Secretary under subsection
4 (e)(5), the national energy efficiency building code
5 shall become the applicable energy efficiency build-
6 ing code for such jurisdiction.

7 “(2) CONFLICTS.—In the event of a conflict be-
8 tween a provision of the national energy efficiency
9 building code and a provision of other applicable en-
10 ergy codes, the national energy efficiency building
11 code shall apply. If there is a conflict between a pro-
12 vision of the national energy efficiency building code
13 and a provision of any applicable fire code, life safe-
14 ty code, egress code, or accessibility code, the Sec-
15 retary shall take appropriate actions to resolve such
16 conflict in a manner that does not compromise the
17 objectives of such codes.

18 “(3) STATE LEGISLATIVE ADOPTION.—In a
19 State in which the relevant building energy code is
20 adopted legislatively, the deadline in paragraph (1)
21 shall not be earlier than 1 year after the first day
22 that the legislature meets following establishment of
23 a national energy efficiency building code.

24 “(4) NOTICE OF INTENT TO ENFORCE.—A
25 State or locality that enforces building codes may as-

1 sume responsibility for enforcing the national energy
2 efficiency building code by notifying the Secretary to
3 that effect not later than three months after the
4 date established under paragraph (1).

5 “(5) VIOLATIONS.—Violations of this section
6 shall be defined as follows:

7 “(A) If the building is subject to the re-
8 quirements of a State energy efficiency building
9 code with respect to which a certification has
10 been accepted by the Secretary under sub-
11 section (e)(2)(B) or a local energy efficiency
12 building code with respect to which a certifi-
13 cation has been accepted by the Secretary pur-
14 suant to subsection (e)(5), or the requirements
15 of the national energy efficiency building code
16 in a State where the State or locality has noti-
17 fied the Secretary of its intent to enforce the
18 provisions of the national energy efficiency
19 building code, a violation shall be determined
20 pursuant to the relevant provisions of State or
21 local law.

22 “(B) If the building is subject to the re-
23 quirements of a national energy efficiency build-
24 ing code made applicable under paragraph (1)
25 of this subsection, except as provided in sub-

1 paragraph (A), a violation shall be defined by
2 the Secretary pursuant to subsection (g).

3 “(e) STATE ENFORCEMENT OF ENERGY EFFICIENCY
4 BUILDING CODES.—

5 “(1) IN GENERAL.—Each State, or where appli-
6 cable under State law each local government, shall
7 implement and enforce applicable State or local
8 codes with respect to which a certification was ac-
9 cepted by the Secretary under subsection (c)(2)(B)
10 or paragraph (5) of this subsection, or the national
11 energy efficiency building codes, as provided in this
12 subsection.

13 “(2) STATE CERTIFICATION.—Not later than 2
14 years after the date of a certification under sub-
15 section (c)(1) or the application of a national energy
16 efficiency building code under subsection (d)(1),
17 each State shall certify that it has—

18 “(A) achieved compliance with—

19 “(i) State codes, or, as provided under
20 State law, local codes, with respect to
21 which a certification was accepted by the
22 Secretary under subsection (c)(2)(B); or

23 “(ii) the national energy efficiency
24 building code, as applicable; or

1 “(B) for any certification submitted within
2 7 years after the date of enactment of the
3 American Clean Energy and Security Act of
4 2009, made significant progress toward achiev-
5 ing such compliance.

6 “(3) ACHIEVING COMPLIANCE.—A State shall
7 be considered to achieve compliance with a code de-
8 scribed in paragraph (2)(A) if at least 90 percent of
9 new and substantially renovated building space in
10 that State in the preceding year upon inspection
11 meets the requirements of the code. A certification
12 under paragraph (2) shall include documentation of
13 the rate of compliance based on—

14 “(A) independent inspections of a random
15 sample of the new and substantially renovated
16 buildings covered by the code in the preceding
17 year; or

18 “(B) an alternative method that yields an
19 accurate measure of compliance as determined
20 by the Secretary.

21 “(4) SIGNIFICANT PROGRESS.—A State shall be
22 considered to have made significant progress toward
23 achieving compliance with a code described in para-
24 graph (2)(A) if—

1 “(A) the State has developed a plan, in-
2 cluding for hiring enforcement staff, providing
3 training, providing manuals and checklists, and
4 instituting enforcement programs, designed to
5 achieve full compliance within 5 years after the
6 date of the adoption of the code;

7 “(B) the State is taking significant, timely,
8 and measurable action to implement that plan;

9 “(C) the State has not reduced its expendi-
10 tures for code enforcement; and

11 “(D) at least 50 percent of new and sub-
12 stantially renovated building space in the State
13 in the preceding year upon inspection meets the
14 requirements of the code.

15 “(5) SECRETARY’S DETERMINATION.—Not later
16 than 90 days after a State certification under para-
17 graph (2), the Secretary shall determine whether the
18 State has demonstrated that it has complied with
19 the requirements of this subsection, including accu-
20 rate measurement of compliance, or that it has made
21 significant progress toward compliance. If such de-
22 termination is positive, the Secretary shall accept
23 the certification. If the determination is negative,
24 the Secretary shall identify the areas of deficiency.

25 “(6) OUT OF COMPLIANCE.—

1 “(A) IN GENERAL.—Any State for which
2 the Secretary has not accepted a certification
3 under paragraph (5) by the dates specified in
4 paragraph (2) is out of compliance with this
5 section.

6 “(B) LOCAL COMPLIANCE.—In any State
7 that is out of compliance with this section as
8 provided in subparagraph (A), a local govern-
9 ment may be in compliance with this section by
10 meeting all certification requirements of this
11 subsection.

12 “(C) NONCOMPLIANCE.—Any State that is
13 not in compliance with this section, as provided
14 in subparagraph (A), shall, until the State re-
15 gains such compliance, be ineligible to receive—

16 “(i) emission allowances pursuant to
17 subsection (h)(1);

18 “(ii) Federal funding in excess of that
19 State’s share (calculated according to the
20 allocation formula in section 363 of the
21 Energy Policy and Conservation Act (42
22 U.S.C. 6323)) of \$125,000,000 each year;
23 and

24 “(iii) for—

1 “(I) the first year for which the
2 State is out of compliance, 25 percent
3 of any additional funding or other
4 items of monetary value otherwise
5 provided under the American Clean
6 Energy and Security Act of 2009;

7 “(II) the second year for which
8 the State is out of compliance, 50 per-
9 cent of any additional funding or
10 other items of monetary value other-
11 wise provided under the American
12 Clean Energy and Security Act of
13 2009;

14 “(III) the third year for which
15 the State is out of compliance, 75 per-
16 cent of any additional funding or
17 other items of monetary value other-
18 wise provided under the American
19 Clean Energy and Security Act of
20 2009; and

21 “(IV) the fourth and subsequent
22 years for which the State is out of
23 compliance, 100 percent of any addi-
24 tional funding or other items of mone-
25 tary value otherwise provided under

1 the American Clean Energy and Secu-
2 rity Act of 2009.

3 “(f) FEDERAL ENFORCEMENT AND TRAINING.—

4 Where a State fails and local governments in that State
5 also fail to enforce the applicable State or national energy
6 efficiency building codes, the Secretary shall enforce such
7 codes, as follows:

8 “(1) The Secretary shall establish, by rule,
9 within 2 years after the date of enactment of the
10 American Clean Energy and Security Act of 2009,
11 an energy efficiency building code enforcement capa-
12 bility.

13 “(2) Such enforcement capability shall be de-
14 signed to achieve 90 percent compliance with such
15 code in any State within 1 year after the date of the
16 Secretary’s determination that such State is out of
17 compliance with this section.

18 “(3) The Secretary may set and collect reason-
19 able inspection fees to cover the costs of inspections
20 required for such enforcement. Revenue from fees
21 collected shall be available to the Secretary to carry
22 out the requirements of this section upon appropria-
23 tion.

24 “(4) In any jurisdiction to which this subsection
25 applies, the Secretary shall coordinate enforcement

1 of the national energy efficiency building code with
2 State and local code enforcement of other building
3 codes.

4 “(5) In any jurisdiction to which this subsection
5 applies, the Secretary shall enhance compliance by
6 conducting training and education of builders and
7 other professionals in the jurisdiction concerning the
8 national energy efficiency building code.

9 “(6) The Secretary shall coordinate with profes-
10 sional organizations representing code officials, ar-
11 chitects, engineers, builders, and other experts to de-
12 velop training curricula concerning the national en-
13 ergy efficiency building code.

14 “(7) If the Secretary enforces such codes under
15 this subsection, the Secretary may, as appropriate,
16 redefine violations of such codes.

17 “(g) ENFORCEMENT PROCEDURES.—The Secretary
18 shall propose and, not later than 3 years after the date
19 of enactment of the American Clean Energy and Security
20 Act of 2009, shall define by rule violations of the energy
21 efficiency building codes to be enforced by the Secretary
22 pursuant to this section, and the penalties that shall apply
23 to violators, in any jurisdiction in which the national en-
24 ergy efficiency building code has been made applicable
25 under subsection (d)(1). To the extent that the Secretary

1 determines that the authority to adopt and impose such
2 violations and penalties by rule requires further statutory
3 authority, the Secretary shall report such determination
4 to Congress as soon as such determination is made, but
5 not later than 1 year after the enactment of the American
6 Clean Energy and Security Act of 2009.

7 “(h) FEDERAL SUPPORT.—

8 “(1) ALLOWANCE ALLOCATION FOR STATE
9 COMPLIANCE.—For each vintage year from 2012
10 through 2050, the Administrator shall distribute al-
11 lowances allocated pursuant to section 782(g)(2) of
12 the Clean Air Act to the SEED Account for each
13 State. Such allowances shall be distributed according
14 to a formula established by the Secretary as follows:

15 “(A) One-fifth in an equal amount to each
16 of the 50 States and United States territories.

17 “(B) Two-fifths as a function of the rel-
18 ative energy use in all buildings in each State
19 in the most recent year for which data is avail-
20 able.

21 “(C) Two-fifths based on the number of
22 building construction starts recorded in each
23 State, the number of new building permits ap-
24 plied for in each State, or other relevant avail-
25 able data indicating building activity in each

1 State, in the judgment of the Secretary, for the
2 year prior to the year of the distribution.

3 “(2) ALLOWANCE ALLOCATION TO LOCAL GOV-
4 ERNMENTS.—In the instance that the Secretary cer-
5 tifies that one or more local governments are in com-
6 pliance with this section pursuant to subsection
7 (e)(6)(B), the Administrator shall provide to each
8 such local government the portion of the emission al-
9 lowances that would have been provided to that
10 State as a function of the population of that locality
11 as a proportion of the population of that State as a
12 whole.

13 “(3) UNALLOCATED ALLOWANCES.—To the ex-
14 tent that allowances are not provided to State or
15 local governments for lack of certification in any
16 year, those allowances shall be added to the amount
17 provided to those States and local governments that
18 are certified as eligible in that year.

19 “(4) USE OF ALLOWANCES.—Each State or
20 each local government shall use such emission allow-
21 ances as it receives pursuant to this section exclu-
22 sively for the purposes of this section, including cov-
23 ering a reasonable portion of the costs of the devel-
24 opment, adoption, implementation, and enforcement
25 of a State or local energy efficiency building code

1 that meets the national building code energy effi-
2 ciency targets, or the national energy efficiency
3 building code. In a State where local governments
4 provide substantially all building code enforcement,
5 a minimum of 50 percent of the allowance value re-
6 ceived pursuant to this section shall be distributed to
7 local governments as a function of the relative popu-
8 lations of such localities. In a State where local and
9 State governments share building code enforcement
10 duties, the State and local shares of allowance value
11 required for enforcement shall be allocated in pro-
12 portion to the number of building inspections per-
13 formed by each level of government, and the share
14 for local governments shall be distributed as a func-
15 tion of the relative populations of such localities.
16 States shall further ensure that the allowance value
17 made available pursuant to section 782 of the Clean
18 Air Act and section 132 of the American Clean En-
19 ergy and Security Act of 2009 is provided to the ap-
20 plicable State or local governmental entities as nec-
21 essary to adopt and implement energy efficiency
22 building codes, provide training for inspectors, en-
23 sure compliance, and provide such other functions as
24 necessary. Actions taken by local authorities pursu-
25 ant to this section shall constitute an acceptable use

1 of funds authorized pursuant to the Energy Effi-
2 ciency and Conservation Block Grant program under
3 section 544 of the Energy Independence and Secu-
4 rity Act of 2007 (42 U.S.C. 17154).

5 “(i) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated to the Secretary of En-
7 ergy \$25,000,000, and such additional sums as may be
8 necessary to provide enforcement of a national energy effi-
9 ciency building code, for each of fiscal years 2010 through
10 2020, and such sums thereafter as may be necessary to
11 support the purposes of this section.

12 “(j) ANNUAL REPORTS BY SECRETARY.—The Sec-
13 retary shall annually submit to Congress, and publish in
14 the Federal Register, a report on—

15 “(1) the status of national energy efficiency
16 building codes;

17 “(2) the status of energy efficiency building
18 code adoption and compliance in the States;

19 “(3) the implementation of this section;

20 “(4) the status of Federal enforcement of build-
21 ing codes, including coordination with State and
22 local enforcement, and the extent and resolution of
23 any conflicts between the national energy efficiency
24 building code and other residential and commercial
25 building codes in force in the same jurisdictions; and

1 “(5) impacts of past action under this section,
2 and potential impacts of further action, on lifetime
3 energy use by buildings, including resulting energy
4 and cost savings.”.

5 **SEC. 202. BUILDING RETROFIT PROGRAM.**

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

7 (1) ASSISTED HOUSING.—The term “assisted
8 housing” means those properties receiving project-
9 based assistance pursuant to section 202 of the
10 Housing Act of 1959 (12 U.S.C. 1701q), section
11 811 of the Cranston-Gonzalez National Affordable
12 Housing Act (42 U.S.C. 8013), section 8 of the
13 United States Housing Act of 1937 (42 U.S.C.
14 1437f), or similar programs.

15 (2) NONRESIDENTIAL BUILDING.—The term
16 “nonresidential building” means a building with a
17 primary use or purpose other than residential hous-
18 ing, including any building used for commercial of-
19 fices, schools, academic and other public and private
20 institutions, nonprofit organizations including faith-
21 based organizations, hospitals, hotels, and other non-
22 residential purposes. Such buildings shall include
23 mixed-use properties used for both residential and
24 nonresidential purposes in which more than half of
25 building floor space is nonresidential.

1 gle-family homes (both attached and detached),
2 owner-occupied units in larger buildings with their
3 own dedicated space-conditioning systems, apart-
4 ment buildings, multi-unit condominium buildings,
5 public housing, assisted housing, and buildings used
6 for both residential and nonresidential purposes in
7 which more than half of building floor space is resi-
8 dential.

9 (8) STATE ENERGY PROGRAM.—The term
10 “State Energy Program” means the program under
11 part D of title III of the Energy Policy and Con-
12 servation Act (42 U.S.C. 6321 et seq.).

13 (b) ESTABLISHMENT.—The Administrator shall de-
14 velop and implement, in consultation with the Secretary
15 of Energy, standards for a national energy and environ-
16 mental building retrofit policy for single-family and multi-
17 family residences. The Administrator shall develop and
18 implement, in consultation with the Secretary of Energy
19 and the Director of Commercial High-Performance Green
20 Buildings, standards for a national energy and environ-
21 mental building retrofit policy for nonresidential buildings.
22 The programs to implement the residential and nonresi-
23 dential policies based on the standards developed under
24 this section shall together be known as the Retrofit for

1 Energy and Environmental Performance (REEP) pro-
2 gram.

3 (c) PURPOSE.—The purpose of the REEP program
4 is to facilitate the retrofitting of existing buildings across
5 the United States to achieve maximum cost-effective en-
6 ergy efficiency improvements and significant improve-
7 ments in water use and other environmental attributes.

8 (d) FEDERAL ADMINISTRATION.—

9 (1) EXISTING PROGRAMS.—In creating and op-
10 erating the REEP program—

11 (A) the Administrator shall make appro-
12 priate use of existing programs, including the
13 Energy Star program and in particular the En-
14 vironmental Protection Agency Energy Star for
15 Buildings program; and

16 (B) the Secretary of Energy shall make
17 appropriate use of existing programs, including
18 delegating authority to the Director of Commer-
19 cial High-Performance Green Buildings ap-
20 pointed under section 421 of the Energy Inde-
21 pendence and Security Act of 2007 (42 U.S.C.
22 17081), who shall designate and provide fund-
23 ing to support a high-performance green build-
24 ing partnership consortium pursuant to sub-

1 section (f) of such section to support efforts
2 under this section.

3 (2) CONSULTATION AND COORDINATION.—The
4 Administrator and the Secretary of Energy shall
5 consult with and coordinate with the Secretary of
6 Housing and Urban Development in carrying out the
7 REEP program with regard to retrofitting of public
8 housing and assisted housing. As a result of such
9 consultation, the Administrator shall establish stand-
10 ards to ensure that retrofits of public housing and
11 assisted housing funded pursuant to this section are
12 cost-effective, including opportunities to address the
13 potential co-performance of repair and replacement
14 needs that may be supported with other forms of
15 Federal assistance. Owners of public housing or as-
16 sisted housing receiving funding through the REEP
17 program shall agree to continue to provide afford-
18 able housing consistent with the provisions of the
19 authorizing legislation governing each program for
20 an additional period commensurate with the funding
21 received, as determined in accordance with guide-
22 lines established by the Secretary of Housing and
23 Urban Development.

24 (3) ASSISTANCE.—The Administrator and the
25 Secretary of Energy shall provide consultation and

1 assistance to State and local agencies for the estab-
2 lishment of revolving loan funds, loan guarantees, or
3 other forms of financial assistance under this sec-
4 tion.

5 (e) STATE AND LOCAL ADMINISTRATION.—

6 (1) DESIGNATION AND DELEGATION.—A State
7 may designate one or more agencies or entities, in-
8 cluding those regulated by the State, to carry out
9 the purposes of this section, but shall designate one
10 entity or individual as the principal point of contact
11 for the Administrator regarding the REEP Pro-
12 gram. The designated State agency, agencies, or en-
13 tities may delegate performance of appropriate ele-
14 ments of the REEP program, upon their request
15 and subject to State law, to counties, municipalities,
16 appropriate public agencies, and other divisions of
17 local government, as well as to entities regulated by
18 the State. In making any such designation or delega-
19 tion, a State shall give priority to entities that ad-
20 minister existing comprehensive retrofit programs,
21 including those under the supervision of State utility
22 regulators. States shall maintain responsibility for
23 meeting the standards and requirements of the
24 REEP program. In any State that elects not to ad-
25 minister the REEP program, a unit of local govern-

1 ment may propose to do so within its jurisdiction,
2 and if the Administrator finds that such local gov-
3 ernment is capable of administering the program,
4 the Administrator may provide allowances to that
5 local government, prorated according to the popu-
6 lation of the local jurisdiction relative to the popu-
7 lation of the State, for purposes of the REEP pro-
8 gram.

9 (2) EMPLOYMENT.—States and local govern-
10 ment entities may administer a REEP program in
11 a manner that authorizes public or regulated inves-
12 tor-owned utilities, building auditors and inspectors,
13 contractors, nonprofit organizations, for-profit com-
14 panies, and other entities to perform audits and ret-
15 rofit services under this section. A State may pro-
16 vide incentives for retrofits without direct participa-
17 tion by the State or its agents, so long as the result-
18 ing savings are measured and verified. A State or
19 local administrator of a REEP program shall seek
20 to ensure that sufficient qualified entities are avail-
21 able to support retrofit activities so that building
22 owners have a competitive choice among qualified
23 auditors, raters, contractors, and providers of serv-
24 ices related to retrofits. Nothing in this section is in-
25 tended to deny the right of a building owner to

1 choose the specific providers of retrofit services to
2 engage for a retrofit project in that owner's building.

3 (3) EQUAL INCENTIVES FOR EQUAL IMPROVE-
4 MENT.—In general, the States should strive to offer
5 the same levels of incentives for retrofits that meet
6 the same efficiency improvement goals, regardless of
7 whether the State, its agency or entity, or the build-
8 ing owner has conducted the retrofit achieving the
9 improvement, provided the improvement is measured
10 and verified.

11 (f) ELEMENTS OF REEP PROGRAM.—The Adminis-
12 trator, in consultation with the Secretary of Energy, shall
13 establish goals, guidelines, practices, and standards for ac-
14 complishing the purpose stated in subsection (c), and shall
15 annually review and, as appropriate, revise such goals,
16 guidelines, practices, and standards. The program under
17 this section shall include the following:

18 (1) Residential Energy Services Network
19 (RESNET) or Building Performance Institute
20 (BPI) analyst certification of residential building en-
21 ergy and environment auditors, inspectors, and rat-
22 ers, or an equivalent certification system as deter-
23 mined by the Administrator.

24 (2) BPI certification or licensing by States of
25 residential building energy and environmental ret-

1 retrofit contractors, or an equivalent certification or li-
2 censing system as determined by the Administrator.

3 (3) Provision of BPI, RESNET, or other ap-
4 propriate information on equipment and procedures,
5 as determined by the Administrator, that contractors
6 can use to test the energy and environmental effi-
7 ciency of buildings effectively (such as infrared pho-
8 tography and pressurized testing, and tests for water
9 use and indoor air quality).

10 (4) Provision of clear and effective materials to
11 describe the testing and retrofit processes for typical
12 buildings.

13 (5) Guidelines for offering and managing pre-
14 scriptive building retrofit programs and perform-
15 ance-based building retrofit programs for residential
16 and nonresidential buildings.

17 (6) Guidelines for applying recommissioning
18 and retrocommissioning principles to improve a
19 building's operations and maintenance procedures.

20 (7) A requirement that building retrofits con-
21 ducted pursuant to a REEP program utilize, espe-
22 cially in all air-conditioned buildings, roofing mate-
23 rials with high solar energy reflectance, unless inap-
24 propriate due to green roof management, solar en-
25 ergy production, or for other reasons identified by

1 the Administrator, in order to reduce energy con-
2 sumption within the building, increase the albedo of
3 the building's roof, and decrease the heat island ef-
4 fect in the area of the building, without reduction of
5 otherwise applicable ceiling insulation standards.

6 (8) Determination of energy savings in a per-
7 formance-based building retrofit program through—

8 (A) for residential buildings, comparison of
9 before and after retrofit scores on the Home
10 Energy Rating System (HERS) Index, where
11 the final score is produced by an objective third
12 party;

13 (B) for nonresidential buildings, Environ-
14 mental Protection Agency Portfolio Manager
15 benchmarks; or

16 (C) for either residential or nonresidential
17 buildings, use of an Administrator-approved
18 simulation program by a contractor with the
19 appropriate certification, subject to appropriate
20 software standards and verification of at least
21 15 percent of all work done, or such other per-
22 centage as the Administrator may determine.

23 (9) Guidelines for utilizing the Energy Star
24 Portfolio Manager, the Home Energy Rating System
25 (HERS) rating system, Home Performance with En-

1 energy Star program approvals, and any other tools
2 associated with the retrofit program.

3 (10) Requirements and guidelines for post-ret-
4 retrofit inspection and confirmation of work and energy
5 savings.

6 (11) Detailed descriptions of funding options
7 for the benefit of State and local governments, along
8 with model forms, accounting aids, agreements, and
9 guides to best practices.

10 (12) Guidance on opportunities for—

11 (A) rating or certifying retrofitted build-
12 ings as Energy Star buildings, or as green
13 buildings under a recognized green building rat-
14 ing system;

15 (B) assigning Home Energy Rating Sys-
16 tem (HERS) or similar ratings; and

17 (C) completing any applicable building per-
18 formance labels.

19 (13) Sample materials for publicizing the pro-
20 gram to building owners, including public service an-
21 nouncements and advertisements.

22 (14) Processes for tracking the numbers and lo-
23 cations of buildings retrofitted under the REEP pro-
24 gram, with information on projected and actual sav-
25 ings of energy and its value over time.

1 (g) REQUIREMENTS.—As a condition of receiving al-
2 lowances for the REEP program pursuant to this Act, a
3 State or qualifying local government shall—

4 (1) adopt the standards for training, certifi-
5 cation of contractors, certification of buildings, and
6 post-retrofit inspection as developed by the Adminis-
7 trator for residential and nonresidential buildings,
8 respectively, except as necessary to match local con-
9 ditions, needs, efficiency opportunities, or other local
10 factors, or to accord with State laws or regulations,
11 and then only after the Administrator approves such
12 a variance;

13 (2) establish fiscal controls and accounting pro-
14 cedures (which conform to generally accepted gov-
15 ernment accounting principles) sufficient to ensure
16 proper accounting during appropriate accounting pe-
17 riods for payments received and disbursements, and
18 for fund balances; and

19 (3) agree to make not less than 10 percent of
20 allowance value received pursuant to section
21 132(c)(2) for dedicated funding of its REEP pro-
22 gram available on a preferential basis for retrofit
23 projects proposed for public housing and assisted
24 housing, provided that—

1 (A) none of such funds shall be used for
2 demolition of such housing;

3 (B) such retrofits not shall not be used to
4 justify any increase in rents charged to resi-
5 dents of such housing; and

6 (C) owners of such housing shall agree to
7 continue to provide affordable housing con-
8 sistent with the provisions of the authorizing
9 legislation governing each program for an addi-
10 tional period commensurate with the funding
11 received.

12 The Administrator shall conduct or require each State to
13 have such independent financial audits of REEP-related
14 funding as the Administrator considers necessary or ap-
15 propriate to carry out the purposes of this section.

16 (h) OPTIONS TO SUPPORT REEP PROGRAM.—The
17 emission allowances provided pursuant to this Act to the
18 States SEED Accounts shall support the implementation
19 through State REEP programs of alternate means of cre-
20 ating incentives for, or reducing financial barriers to, im-
21 proved energy and environmental performance in build-
22 ings, consistent with this section, including—

23 (1) implementing prescriptive building retrofit
24 programs and performance-based building retrofit
25 programs;

1 (2) providing credit enhancement, interest rate
2 subsidies, loan guarantees, or other credit support;

3 (3) providing initial capital for public revolving
4 fund financing of retrofits, with repayments by bene-
5 ficiary building owners over time through their tax
6 payments, calibrated to create net positive cash flow
7 to the building owner;

8 (4) providing funds to support utility-operated
9 retrofit programs with repayments over time
10 through utility rates, calibrated to create net positive
11 cash flow to the building owner, and transferable
12 from one building owner to the next with the build-
13 ing's utility services;

14 (5) providing funds to local government pro-
15 grams to provide REEP services and financial as-
16 sistance; and

17 (6) other means proposed by State and local
18 agencies, subject to the approval of the Adminis-
19 trator.

20 (i) SUPPORT FOR PROGRAM.—

21 (1) USE OF ALLOWANCES.—Direct Federal sup-
22 port for the REEP program is provided through the
23 emission allowances allocated to the States' SEED
24 Accounts pursuant to section 132 of this Act. To the
25 extent that a State provides allowances to local gov-

1 ernments within the State to implement elements of
2 the REEP Program, that shall be deemed a dis-
3 tribution of such allowances to units of local govern-
4 ment pursuant to subsection (c)(1) of that section.

5 (2) INITIAL AWARD LIMITS.—Except as pro-
6 vided in paragraph (3), State and local REEP pro-
7 grams may make per-building direct expenditures
8 for retrofit improvements, or their equivalent in indi-
9 rect or other forms of financial support, from funds
10 derived from the sale of allowances received directly
11 from the Administrator in amounts not to exceed the
12 following amounts per unit:

13 (A) RESIDENTIAL BUILDING PROGRAM.—

14 (i) AWARDS.—For residential build-
15 ings—

16 (I) support for a free or low-cost
17 detailed building energy audit that
18 prescribes measures sufficient to
19 achieve at least a 20 percent reduc-
20 tion in energy use, by providing an in-
21 centive equal to the documented cost
22 of such audit, but not more than
23 \$200, in addition to any earned by
24 achieving a 20 percent or greater effi-
25 ciency improvement;

1 (II) a total of \$1,000 for a com-
2 bination of measures, prescribed in an
3 audit conducted under subclause (I),
4 designed to reduce energy consump-
5 tion by more than 10 percent, and
6 \$2,000 for a combination of measures
7 prescribed in such an audit, designed
8 to reduce energy consumption by more
9 than 20 percent;

10 (III) \$3,000 for demonstrated
11 savings of 20 percent, pursuant to a
12 performance-based building retrofit
13 program; and

14 (IV) \$1,000 for each additional 5
15 percentage points of energy savings
16 achieved beyond savings for which
17 funding is provided under subclause
18 (II) or (III).

19 Funding shall not be provided under
20 clauses (II) and (III) for the same energy
21 savings.

22 (ii) MAXIMUM PERCENTAGE.—Awards
23 under clause (i) shall not exceed 50 per-
24 cent of retrofit costs for each building. For
25 buildings with multiple residential units,

1 awards under clause (i) shall not be great-
2 er than 50 percent of the total cost of ret-
3 rofitting the building, prorated among indi-
4 vidual residential units on the basis of rel-
5 ative costs of the retrofit. In the case of
6 public housing and assisted housing, the
7 50 percent contribution matching the con-
8 tribution from REEP program funds may
9 come from any other source, including
10 other Federal funds.

11 (iii) ADDITIONAL AWARDS.—Addi-
12 tional awards may be provided for pur-
13 poses of increasing energy efficiency, for
14 buildings achieving at least 20 percent en-
15 ergy savings using funding provided under
16 clause (i), in the form of grants of not
17 more than \$600 for measures projected or
18 measured (using an appropriate method
19 approved by the Administrator) to achieve
20 at least 35 percent potable water savings
21 through equipment or systems with an es-
22 timated service life of not less than 7
23 years, and not more than an additional
24 \$20 may be provided for each additional

1 one percent of such savings, up to a max-
2 imum total grant of \$1,200.

3 (B) NONRESIDENTIAL BUILDING PRO-
4 GRAM.—

5 (i) AWARDS.—For nonresidential
6 buildings—

7 (I) support for a free or low-cost
8 detailed building energy audit that
9 prescribes, as part of a energy-reduc-
10 ing measures sufficient to achieve at
11 least a 20 percent reduction in energy
12 use, by providing an incentive equal to
13 the documented cost of such audit,
14 but not more than \$500, in addition
15 to any award earned by achieving a
16 20 percent or greater efficiency im-
17 provement;

18 (II) \$0.15 per square foot of ret-
19 rofit area for demonstrated energy use
20 reductions from 20 percent to 30 per-
21 cent;

22 (III) \$0.75 per square foot for
23 demonstrated energy use reductions
24 from 30 percent to 40 percent;

1 (IV) \$1.60 per square foot for
2 demonstrated energy use reductions
3 from 40 percent to 50 percent; and

4 (V) \$2.50 per square foot for
5 demonstrated energy use reductions
6 exceeding 50 percent.

7 (ii) MAXIMUM PERCENTAGE.—
8 Amounts provided under subclauses (II)
9 through (V) of clause (i) combined shall
10 not exceed 50 percent of the total retrofit
11 cost of a building. In nonresidential build-
12 ings with multiple units, such awards shall
13 be prorated among individual units on the
14 basis of relative costs of the retrofit.

15 (iii) ADDITIONAL AWARDS.—Addi-
16 tional awards may be provided, for build-
17 ings achieving at least 20 percent energy
18 savings using funding provided under
19 clause (i), as follows:

20 (I) WATER.—For purposes of in-
21 creasing energy efficiency, grants may
22 be made for whole building potable
23 water use reduction (using an appro-
24 priate method approved by the Ad-
25 ministrator) for up to 50 percent of

1 the total retrofit cost, including
2 amounts up to—

3 (aa) \$24.00 per thousand
4 gallons per year of potable water
5 savings of 40 percent or more;

6 (bb) \$27.00 per thousand
7 gallons per year of potable water
8 savings of 50 percent or more;
9 and

10 (cc) \$30.00 per thousand
11 gallons per year of potable water
12 savings of 60 percent or more.

13 (II) ENVIRONMENTAL IMPROVE-
14 MENTS.—Additional awards of up to
15 \$1,000 may be granted for the inclu-
16 sion of other environmental attributes
17 that the Administrator, in consulta-
18 tion with the Secretary, identifies as
19 contributing to energy efficiency. Such
20 attributes may include, but are not
21 limited to waste diversion and the use
22 of environmentally preferable mate-
23 rials (including salvaged, renewable,
24 or recycled materials, and materials
25 with no or low-VOC content). The Ad-

1 administrator may recommend that
2 States develop such standards as are
3 necessary to account for local or re-
4 gional conditions that may affect the
5 feasibility or availability of identified
6 resources and attributes.

7 (iv) INDOOR AIR QUALITY MINIMUM.—

8 Nonresidential buildings receiving incen-
9 tives under this section must satisfy at a
10 minimum the most recent version of
11 ASHRAE Standard 62.1 for ventilation, or
12 the equivalent as determined by the Ad-
13 ministrator. A State may issue a waiver
14 from this requirement to a building project
15 on a showing that such compliance is in-
16 feasible due to the physical constraints of
17 the building's existing ventilation system,
18 or such other limitations as may be speci-
19 fied by the Administrator.

20 (C) DISASTER DAMAGED BUILDINGS.—Any

21 source of funds, including Federal funds pro-
22 vided through the Robert T. Stafford Disaster
23 Relief and Emergency Assistance Act, shall
24 qualify as the building owner's 50 percent con-
25 tribution, in order to match the contribution of

1 REEP funds, so long as the REEP funds are
2 only used to improve the energy efficiency of
3 the buildings being reconstructed. In addition,
4 the appropriate Federal agencies providing as-
5 sistance to building owners through the Robert
6 T. Stafford Disaster Relief and Emergency As-
7 sistance Act shall make information available,
8 following a disaster, to building owners rebuild-
9 ing disaster damaged buildings with assistance
10 from the Act, that REEP funds may be used
11 for energy efficiency improvements.

12 (D) HISTORIC BUILDINGS.—Notwith-
13 standing subparagraphs (A) and (B), a building
14 in or eligible for the National Register of His-
15 toric Places shall be eligible for awards under
16 this paragraph in amounts up to 120 percent of
17 the amounts set forth in subparagraphs (A) and
18 (B).

19 (E) SUPPLEMENTAL SUPPORT.—State and
20 local governments may supplement the per-
21 building expenditures under this paragraph
22 with funding from other sources.

23 (3) ADJUSTMENT.—The Administrator may ad-
24 just the specific dollar limits funded by the sale of
25 allowances pursuant to paragraph (2) in years sub-

1 sequent to the second year after the date of enact-
2 ment of this Act, and every 2 years thereafter, as
3 the Administrator determines necessary to achieve
4 optimum cost-effectiveness and to maximize incen-
5 tives to achieve energy efficiency within the total
6 building award amounts provided in that paragraph,
7 and shall publish and hold constant such revised lim-
8 its for at least 2 years.

9 (j) REPORT TO CONGRESS.—The Administrator shall
10 conduct an annual assessment of the achievements of the
11 REEP program in each State, shall prepare an annual re-
12 port of such achievements and any recommendations for
13 program modifications, and shall provide such report to
14 Congress at the end of each fiscal year during which fund-
15 ing or other resources were made available to the States
16 for the REEP Program.

17 (k) OTHER SOURCES OF FEDERAL SUPPORT.—

18 (1) ADDITIONAL STATE ENERGY PROGRAM
19 FUNDS.—Any Federal funding provided to a State
20 Energy Program that is not required to be expended
21 for a different federally designated purpose may be
22 used to support a REEP program.

23 (2) PROGRAM ADMINISTRATION.—State Energy
24 Offices or designated State agencies may expend up

1 to 10 percent of available allowance value provided
2 under this section for program administration.

3 (3) AUTHORIZATION OF APPROPRIATIONS.—

4 There are authorized to be appropriated for the pur-
5 poses of this section, for each of fiscal years 2010,
6 2011, 2012, and 2013—

7 (A) \$50,000,000 to the Administrator for
8 program administration costs; and

9 (B) \$20,000,000 to the Secretary of En-
10 ergy for program administration costs.

11 **SEC. 203. ENERGY EFFICIENT MANUFACTURED HOMES.**

12 (a) DEFINITIONS.—In this section:

13 (1) MANUFACTURED HOME.—The term “manu-
14 factured home” has the meaning given such term in
15 section 603 of the National Manufactured Housing
16 Construction and Safety Standards Act of 1974 (42
17 U.S.C. 5402).

18 (2) ENERGY STAR QUALIFIED MANUFACTURED
19 HOME.—The term “Energy Star qualified manufac-
20 tured home” means a manufactured home that has
21 been designed, produced, and installed in accordance
22 with Energy Star’s guidelines by an Energy Star
23 certified plant.

24 (b) PURPOSE.—The purpose of this section is to as-
25 sist low-income households residing in manufactured

1 homes constructed prior to 1976 to save energy and en-
2 ergy expenditures by providing support toward the pur-
3 chase of new Energy Star qualified manufactured homes.

4 (c) STATE IMPLEMENTATION OF PROGRAM.—

5 (1) MANUFACTURED HOME REPLACEMENT PRO-
6 GRAM.—Any State may provide to the owner of a
7 manufactured home constructed prior to 1976 a re-
8 bate to use toward the purchase of a new Energy
9 Star qualified manufactured home pursuant to this
10 section.

11 (2) USE OF ALLOWANCES.—Direct Federal sup-
12 port for the program established in this section is
13 provided through the emission allowances allocated
14 to the States' SEED Accounts pursuant to section
15 132 of this Act. To the extent that a State provides
16 allowances to local governments within the State to
17 implement this program, that shall be deemed a dis-
18 tribution of such allowances to units of local govern-
19 ment pursuant to subsection (c)(1) of that section.

20 (3) REBATES.—

21 (A) PRIMARY RESIDENCE REQUIRE-
22 MENT.—A rebate described under paragraph
23 (1) may only be made to an owner of a manu-
24 factured home constructed prior to 1976 that is

1 used on a year-round basis as a primary resi-
2 dence.

3 (B) DISMANTLING AND REPLACEMENT.—A
4 rebate described under paragraph (1) may be
5 made only if the manufactured home con-
6 structed prior to 1976 will be—

7 (i) rendered unusable for human habi-
8 tation (including appropriate recycling);
9 and

10 (ii) replaced, in the same general loca-
11 tion, as determined by the applicable State
12 agency, with an Energy Star qualified
13 manufactured home.

14 (C) SINGLE REBATE.—A rebate described
15 under paragraph (1) may not be provided to
16 any owner of a manufactured home constructed
17 prior to 1976 that was or is a member of a
18 household for which any other member of the
19 household was provided a rebate pursuant to
20 this section.

21 (D) ELIGIBLE HOUSEHOLDS.—To be eligi-
22 ble to receive a rebate described under para-
23 graph (1), an owner of a manufactured home
24 constructed prior to 1976 shall demonstrate to
25 the applicable State agency that the total in-

1 come of all members the owner's household does
2 not exceed 200 percent of the Federal poverty
3 level for income in the applicable area.

4 (E) ADVANCE AVAILABILITY.—A rebate
5 may be provided under this section in a manner
6 to facilitate the purchase of a new Energy Star
7 qualified manufactured home.

8 (4) REBATE LIMITATION.—Rebates provided by
9 States under this section shall not exceed \$7,500 per
10 manufactured home from any value derived from the
11 use of emission allowances provided to the State
12 pursuant to section 132.

13 (5) USE OF STATE FUNDS.—A State providing
14 rebates under this section may supplement the
15 amount of such rebates under paragraph (4) by any
16 additional amount is from State funds and other
17 sources, including private donations or grants from
18 charitable organizations.

19 (6) COORDINATION WITH SIMILAR PRO-
20 GRAMS.—

21 (A) STATE PROGRAMS.—A State con-
22 ducting an existing program that has the pur-
23 pose of replacing manufactured homes con-
24 structed prior to 1976 with Energy Star quali-
25 fied manufactured homes, may use allowance

1 value provided under section 782 of the Clean
2 Air Act to support such a program, provided
3 such funding does not exceed the rebate limita-
4 tion amount under paragraph (4).

5 (B) FEDERAL PROGRAMS.—The Secretary
6 of Energy shall coordinate with and seek to
7 achieve the purpose of this section through
8 similar Federal programs including—

9 (i) the Weatherization Assistance Pro-
10 gram under part A of title IV of the En-
11 ergy Conservation and Production Act (42
12 U.S.C. 6861 et seq.); and

13 (ii) the program under part D of title
14 III of the Energy Policy and Conservation
15 Act (42 U.S.C. 6321 et seq.).

16 (C) COORDINATION WITH OTHER STATE
17 AGENCIES.—A State agency using allowance
18 value to administer the program under this sec-
19 tion may coordinate its efforts, and share funds
20 for administration, with other State agencies in-
21 volved in low-income housing programs.

22 (7) ADMINISTRATIVE EXPENSES.—A State
23 using allowance value under this section may expend
24 not more than 10 percent of such value for adminis-
25 trative expenses related to this program.

1 **SEC. 204. BUILDING ENERGY PERFORMANCE LABELING**
2 **PROGRAM.**

3 (a) ESTABLISHMENT.—

4 (1) PURPOSE.—The Administrator shall estab-
5 lish a building energy performance labeling program
6 with broad applicability to the residential and com-
7 mercial markets to enable and encourage knowledge
8 about building energy performance by owners and
9 occupants and to inform efforts to reduce energy
10 consumption nationwide.

11 (2) COMPONENTS.—In developing such pro-
12 gram, the Administrator shall—

13 (A) consider existing programs, such as
14 Environmental Protection Agency’s Energy
15 Star program, the Home Energy Rating System
16 (HERS) Index, and programs at the Depart-
17 ment of Energy;

18 (B) support the development of model per-
19 formance labels for residential and commercial
20 buildings; and

21 (C) utilize incentives and other means to
22 spur use of energy performance labeling of pub-
23 lic and private sector buildings nationwide.

24 (b) DATA ASSESSMENT FOR BUILDING ENERGY PER-
25 FORMANCE.—

1 (1) INITIAL REPORT.—Not later than 90 days
2 after the date of enactment of this Act, the Adminis-
3 trator shall provide to Congress, as well as to the
4 Secretary of Energy and the Office of Management
5 and Budget, a report identifying—

6 (A) all principal building types for which
7 statistically significant energy performance data
8 exists to serve as the basis of measurement pro-
9 tocols and labeling requirements for achieved
10 building energy performance; and

11 (B) those building types for which addi-
12 tional data are required to enable the develop-
13 ment of such protocols and requirements.

14 (2) ADDITIONAL REPORTS.—Additional updated
15 reports shall be provided under this subsection as
16 often as The Administrator considers practicable,
17 but not less than every 2 years.

18 (c) BUILDING DATA ACQUISITION.—

19 (1) RESOURCE REQUIREMENTS.—For all prin-
20 cipal building types identified under subsection (b),
21 the Secretary of Energy, not later than 90 days
22 after a report by the Administrator under subsection
23 (b), shall provide to Congress, the Administrator,
24 and the Office of Management and Budget a state-
25 ment of additional resources needed, if any, to fully

1 develop the relevant data, as well as the anticipated
2 timeline for data development.

3 (2) CONSULTATION.—The Secretary of Energy
4 shall consult with the Administrator concerning the
5 Administrator’s ability to use data series for these
6 additional building types to support the achieved
7 performance component in the labeling program.

8 (3) IMPROVEMENTS TO BUILDING ENERGY CON-
9 SUMPTION DATABASES.—

10 (A) COMMERCIAL DATABASE.—The Sec-
11 retary of Energy shall support improvements to
12 the Commercial Buildings Energy Consumption
13 Survey (CBECS) as authorized by section
14 205(k) of the Department of Energy Organiza-
15 tion Act (42 U.S.C. 7135(k))—

16 (i) to enable complete and robust data
17 for the actual energy performance of prin-
18 cipal building types currently covered by
19 survey;

20 (ii) to cover additional building types
21 as identified by the Administrator under
22 subsection (b)(1)(B), to enable the develop-
23 ment of achieved performance measure-
24 ment protocols are developed for at least
25 90 percent of all major commercial build-

1 ing types within 5 years after the date of
2 enactment of this Act; and

3 (iii) to include third-party audits of
4 random data samplings to ensure the qual-
5 ity and accuracy of survey information.

6 (B) RESIDENTIAL DATABASES.—The Ad-
7 ministrator, in consultation with the Energy In-
8 formation Administration and the Secretary of
9 Energy, shall support improvements to the Res-
10 idential Energy Consumption Survey (RECS)
11 as authorized by section 205(k) of the Depart-
12 ment of Energy Organization Act (42 U.S.C.
13 7135(k)), or such other residential energy per-
14 formance databases as the Administrator con-
15 siders appropriate, to aid the development of
16 achieved performance measurement protocols
17 for residential building energy use for at least
18 90 percent of the residential market within 5
19 years after the date of enactment of this Act.

20 (C) CONSULTATION.—The Secretary of
21 Energy and the Administrator shall consult
22 with public, private, and nonprofit sector rep-
23 resentatives from the building industry and real
24 estate industry to assist in the evaluation and

1 improvement of building energy performance
2 databases and labeling programs.

3 (d) IDENTIFICATION OF MEASUREMENT PROTOCOLS
4 FOR ACHIEVED PERFORMANCE.—

5 (1) PROPOSED PROTOCOLS AND REQUIRE-
6 MENTS.—At the earliest practicable date, but not
7 later than 1 year after identifying a building type
8 under subsection (b)(1)(A), the Administrator shall
9 propose a measurement protocol for that building
10 type and a requirement detailing how to use that
11 protocol in completing applicable commercial or resi-
12 dential performance labels created pursuant to this
13 section.

14 (2) FINAL RULE.—After providing for notice
15 and comment, the Administrator shall publish a
16 final rule containing a measurement protocol and
17 the corresponding requirements for applying that
18 protocol. Such a rule—

19 (A) shall define the minimum period for
20 measurement of energy use by buildings of that
21 type and other details for determining achieved
22 performance, to include leased buildings or
23 parts thereof;

24 (B) shall identify necessary data collection
25 and record retention requirements; and

1 (C) may specify transition rules and ex-
2 emptions for classes of buildings within the
3 building type.

4 (e) PROCEDURES FOR EVALUATING DESIGNED PER-
5 FORMANCE.—The Administrator shall develop protocols
6 for evaluating the designed performance of individual
7 building types. The Administrator may conduct such feasi-
8 bility studies and demonstration projects as are necessary
9 to evaluate the sufficiency of proposed protocols for de-
10 signed performance.

11 (f) CREATION OF BUILDING ENERGY PERFORMANCE
12 LABELING PROGRAM.—

13 (1) MODEL LABEL.—Not later than 1 year
14 after the date of enactment of this Act, the Adminis-
15 trator shall propose a model building energy label
16 that provides a format—

17 (A) to display achieved performance and
18 designed performance data;

19 (B) that may be tailored for residential
20 and commercial buildings, and for single-occu-
21 pancy and multitenanted buildings; and

22 (C) to display other appropriate elements
23 identified during the development of measure-
24 ment protocols under subsections (d) and (e).

1 (2) INCLUSIONS.—Nothing in this section shall
2 require the inclusion on such a label of designed per-
3 formance data where impracticable or not cost effec-
4 tive, or to preclude the display of both achieved per-
5 formance and designed performance data for a par-
6 ticular building where both such measures are avail-
7 able, practicable, and cost effective.

8 (3) EXISTING PROGRAMS.—In developing the
9 model label, the Administrator shall consider exist-
10 ing programs, including—

11 (A) the Environmental Protection Agency’s
12 Energy Star Portfolio Manager program and
13 the California HERS II Program Custom Ap-
14 proach for the achieved performance component
15 of the label;

16 (B) the Home Energy Rating System
17 (HERS) Index system for the designed per-
18 formance component of the label; and

19 (C) other Federal and State programs, in-
20 cluding the Department of Energy’s related
21 programs on building technologies and those of
22 the Federal Energy Management Program.

23 (4) FINAL RULE.—After providing for notice
24 and comment, the Administrator shall publish a

1 final rule containing the label applicable to covered
2 building types.

3 (g) DEMONSTRATION PROJECTS FOR LABELING
4 PROGRAM.—

5 (1) IN GENERAL.—The Administrator shall con-
6 duct building energy performance labeling dem-
7 onstration projects for different building types—

8 (A) to ensure the sufficiency of the current
9 Commercial Buildings Energy Consumption
10 Survey and other data to serve as the basis for
11 new measurement protocols for the achieved
12 performance component of the building energy
13 performance labeling program;

14 (B) to inform the development of measure-
15 ment protocols for building types not currently
16 covered by the Commercial Buildings Energy
17 Consumption Survey; and

18 (C) to identify any additional information
19 that needs to be developed to ensure effective
20 use of the model label.

21 (2) PARTICIPATION.—Such demonstration
22 projects shall include participation of—

23 (A) buildings from diverse geographical
24 and climate regions;

1 (B) buildings in both urban and rural
2 areas;

3 (C) single-family residential buildings;

4 (D) multihousing residential buildings with
5 more than 50 units, including at least one
6 project that provides affordable housing to indi-
7 viduals of diverse incomes;

8 (E) single-occupant commercial buildings
9 larger than 30,000 square feet;

10 (F) multitenanted commercial buildings
11 larger than 50,000 square feet; and

12 (G) buildings from both the public and pri-
13 vate sectors.

14 (3) PRIORITY.—Priority in the selection of dem-
15 onstration projects shall be given to projects that fa-
16 cilitate large-scale implementation of the labeling
17 program for samples of buildings across neighbor-
18 hoods, geographic regions, cities, or States.

19 (4) FINDINGS.—The Administrator shall report
20 any findings from demonstration projects under this
21 subsection, including an identification of any areas
22 of needed data improvement, to the Department of
23 Energy’s Energy Information Administration and
24 Building Technologies Program.

1 (5) COORDINATION.—The Administrator and
2 the Secretary of Energy shall coordinate demonstra-
3 tion projects undertaken pursuant to this subsection
4 with those undertaken as part of the Zero-Net-En-
5 ergy Commercial Buildings Initiative adopted under
6 section 422 of the Energy Independence and Secu-
7 rity Act of 2007 (42 U.S.C. 17082).

8 (h) IMPLEMENTATION OF LABELING PROGRAM.—

9 (1) IN GENERAL.—The Administrator, in con-
10 sultation with the Secretary of Energy, shall work
11 with all State Energy Offices established pursuant
12 to part D of title III of the Energy Policy and Con-
13 servation Act (42 U.S.C. 6321 et seq.) or other
14 State authorities as necessary for the purpose of im-
15 plementing the labeling program established under
16 this section for commercial and residential buildings.

17 (2) OUTREACH TO LOCAL AUTHORITIES.—The
18 Administrator shall, acting in consultation and co-
19 ordination with the respective States, encourage use
20 of the labeling program by counties and other local-
21 ities to broaden access to information about building
22 energy use, for example, through disclosure of build-
23 ing label contents in tax, title, and other records
24 those localities maintain. For this purpose, the Ad-
25 ministrator shall develop an electronic version of the

1 label and information that can be readily trans-
2 mitted and read in widely-available computer pro-
3 grams but is protected from unauthorized manipula-
4 tion.

5 (3) MEANS OF IMPLEMENTATION.—In adopting
6 the model labeling program established under this
7 section, a State shall seek to ensure that labeled in-
8 formation be made accessible to the public in a man-
9 ner so that owners, lenders, tenants, occupants, or
10 other relevant parties can utilize it. Such accessi-
11 bility may be accomplished through—

12 (A) preparation, and public disclosure of
13 the label through filing with tax and title
14 records at the time of—

15 (i) a building audit conducted with
16 support from Federal or State funds;

17 (ii) a building energy-efficiency ret-
18 rofit conducted in response to such an
19 audit;

20 (iii) a final inspection of major ren-
21 ovations or additions made to a building in
22 accordance with a building permit issued
23 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 1 year of enactment of

1 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 (m) NEW CONSTRUCTION.—This section shall apply
9 only to construction beginning after the date of enactment
10 of this Act.

11 **SEC. 205. TREE PLANTING PROGRAMS.**

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

13 (1) the utility sector is the largest single source
14 of greenhouse gas emissions in the United States
15 today, producing approximately one-third of the
16 country’s emissions;

17 (2) heating and cooling homes accounts for
18 nearly 60 percent of residential electricity usage in
19 the United States;

20 (3) shade trees planted in strategic locations
21 can reduce residential cooling costs by as much as
22 30 percent;

23 (4) shade trees have significant clean-air bene-
24 fits associated with them;

1 (5) every 100 healthy large trees removes about
2 300 pounds of air pollution (including particulate
3 matter and ozone) and about 15 tons of carbon diox-
4 ide from the air each year;

5 (6) tree cover on private property and on newly-
6 developed land has declined since the 1970s, even
7 while emissions from transportation and industry
8 have been rising; and

9 (7) in over a dozen test cities across the United
10 States, increasing urban tree cover has generated
11 between two and five dollars in savings for every dol-
12 lar invested in such tree planting.

13 (b) DEFINITIONS.—As used in this section:

14 (1) The term “Secretary” refers to the Sec-
15 retary of Energy.

16 (2) The term “retail power provider” means
17 any entity authorized under applicable State or Fed-
18 eral law to generate, distribute, or provide retail
19 electricity, natural gas, or fuel oil service.

20 (3) The term “tree-planting organization”
21 means any nonprofit or not-for-profit group which
22 exists, in whole or in part, to—

23 (A) expand urban and residential tree
24 cover;

25 (B) distribute trees for planting;

1 (C) increase awareness of the environ-
2 mental and energy-related benefits of trees;

3 (D) educate the public about proper tree
4 planting, care, and maintenance strategies; or

5 (E) carry out any combination of the fore-
6 going activities.

7 (4) The term “tree-siting guidelines” means a
8 comprehensive list of science-based measurements
9 outlining the species and minimum distance required
10 between trees planted pursuant to this section, in
11 addition to the minimum required distance to be
12 maintained between such trees and—

13 (A) building foundations;

14 (B) air conditioning units;

15 (C) driveways and walkways;

16 (D) property fences;

17 (E) preexisting utility infrastructure;

18 (F) septic systems;

19 (G) swimming pools; and

20 (H) other infrastructure as deemed appro-
21 priate.

22 (5) The terms “small office”, “small office
23 buildings”, and “small office settings” means non-
24 residential buildings or structures zoned for business

1 purposes that are 20,000 square feet or less in total
2 area.

3 (c) PURPOSES.—The purpose of this section is to es-
4 tablish a grant program to assist retail power providers
5 with the establishment and operation of targeted tree-
6 planting programs in residential and small office settings,
7 for the following purposes:

8 (1) Reducing the peak-load demand for elec-
9 tricity from residences and small office buildings
10 during the summer months through direct shading
11 of buildings provided by strategically planted trees.

12 (2) Reducing wintertime demand for energy
13 from residences and small office buildings by block-
14 ing cold winds from reaching such structures, which
15 lowers interior temperatures and drives heating de-
16 mand.

17 (3) Protecting public health by removing harm-
18 ful pollution from the air.

19 (4) Utilizing the natural photosynthetic and
20 transpiration process of trees to lower ambient tem-
21 peratures and absorb carbon dioxide, thus mitigating
22 the effects of climate change.

23 (5) Lowering electric bills for residential and
24 small office ratepayers by limiting electricity con-
25 sumption without reducing benefits.

1 (6) Relieving financial and demand pressure on
2 retail power providers that stems from large peak-
3 load energy demand.

4 (7) Protecting water quality and public health
5 by reducing stormwater runoff and keeping harmful
6 pollutants from entering waterways.

7 (8) Ensuring that trees are planted in locations
8 that limit the amount of public money needed to
9 maintain public and electric infrastructure.

10 (d) GENERAL AUTHORITY.—

11 (1) ASSISTANCE.—The Secretary is authorized
12 to provide financial, technical, and related assistance
13 to retail power providers to assist with the establish-
14 ment of new, or continued operation of existing, tar-
15 geted tree-planting programs for residences and
16 small office buildings.

17 (2) PUBLIC RECOGNITION INITIATIVE.—In car-
18 rying out the authority provided under this section,
19 the Secretary shall also create a national public rec-
20 ognition initiative to encourage participation in tree-
21 planting programs by retail power providers.

22 (3) ELIGIBILITY.—Only those programs which
23 utilize targeted, strategic tree-siting guidelines to
24 plant trees in relation to building location, sunlight,

1 and prevailing wind direction shall be eligible for as-
2 sistance under this section.

3 (4) REQUIREMENTS.—In order to qualify for
4 assistance under this section, a tree-planting pro-
5 gram shall meet each of the following requirements:

6 (A) The program shall provide free or dis-
7 counted shade-providing or wind-reducing trees
8 to residential and small office consumers inter-
9 ested in lowering their home energy costs.

10 (B) The program shall optimize the elec-
11 tricity-consumption reduction benefit of each
12 tree by planting in strategic locations around a
13 given residence or small office.

14 (C) The program shall either—

15 (i) provide maximum amounts of
16 shade during summer intervals when resi-
17 dences and small offices are exposed to the
18 most sun intensity; or

19 (ii) provide maximum amounts of
20 wind protection during fall and winter in-
21 tervals when residences and small offices
22 are exposed to the most wind intensity.

23 (D) The program shall use the best avail-
24 able science to create tree siting guidelines
25 which dictate where the optimum tree species

1 are best planted in locations that achieve max-
2 imum reductions in consumer energy demand
3 while causing the least disruption to public in-
4 frastructure, considering overhead and under-
5 ground facilities.

6 (E) The program shall receive certification
7 from the Secretary that it is designed to achieve
8 the goals set forth in subparagraphs (A)
9 through (D). In designating criteria for such
10 certification, the Secretary shall collaborate
11 with the United States Forest Service's Urban
12 and Community Forestry Program to ensure
13 that certification requirements are consistent
14 with such above goals.

15 (5) NEW PROGRAM FUNDING SHARE.—The Sec-
16 retary shall ensure that no less than 30 percent of
17 the funds made available under this section are dis-
18 tributed to retail power providers which—

19 (A) have not previously established or op-
20 erated qualified tree-planting programs; or

21 (B) are operating qualified tree-planting
22 programs which were established no more than
23 3 years prior to the date of enactment of this
24 section.

1 (e) AGREEMENTS BETWEEN ELECTRICITY PRO-
2 VIDERS AND TREE-PLANTING ORGANIZATIONS.—

3 (1) GRANT AUTHORIZATION.—In providing as-
4 sistance under this section, the Secretary is author-
5 ized to award grants only to retail power providers
6 that have entered into binding legal agreements with
7 nonprofit tree-planting organizations.

8 (2) CONDITIONS OF AGREEMENT.—Those
9 agreements between retail power providers and tree-
10 planting organizations shall set forth conditions
11 under which nonprofit tree-planting organizations
12 shall provide targeted tree-planting programs which
13 may require these organizations to—

14 (A) participate in local technical advisory
15 committees responsible for drafting general
16 tree-siting guidelines and choosing the most ef-
17 fective species of trees to plant in given loca-
18 tions;

19 (B) coordinate volunteer recruitment to as-
20 sist with the physical act of planting trees in
21 residential locations;

22 (C) undertake public awareness campaigns
23 to educate local residents about the benefits,
24 cost savings, and availability of free shade
25 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 5 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 **SEC. 207. COMMUNITY BUILDING CODE ADMINISTRATION**
12 **GRANTS.**

13 (a) GRANT PROGRAM AUTHORIZED.—

14 (1) GRANT AUTHORIZATION.—The Secretary of
15 Housing and Urban Development shall to the extent
16 amounts are made available for grants under this
17 section provide grants to local building code enforce-
18 ment departments.

19 (2) COMPETITIVE AWARDS.—The Secretary
20 shall award grants under paragraph (1) on a com-
21 petitive basis taking into consideration the following:

22 (A) The financial need of each building
23 code enforcement department.

1 (B) The benefit to the jurisdiction of hav-
2 ing an adequately funded building code enforce-
3 ment department.

4 (C) The demonstrated ability of each build-
5 ing code enforcement department to work coop-
6 eratively with other local code enforcement of-
7 fices, health departments, and local prosecu-
8 torial agencies.

9 (3) MAXIMUM AMOUNT.—The maximum
10 amount of any grant awarded under this subsection
11 shall not exceed \$1,000,000.

12 (4) COORDINATION.—The Secretary of Housing
13 and Urban Development shall coordinate with the
14 Secretary of Energy to ensure that any unneces-
15 sarily duplicative funding through grants under this
16 section of activities otherwise funded through the
17 Department of Energy is minimized or eliminated.

18 (b) REQUIRED ELEMENTS IN GRANT PROPOSALS.—
19 In order to be eligible for a grant under subsection (a),
20 a building code enforcement department of a jurisdiction
21 shall submit to the Secretary the following:

22 (1) A demonstration of the jurisdiction's needs
23 in executing building code enforcement administra-
24 tion.

1 (2) A plan for the use of any funds received
2 from a grant under this section that addresses the
3 needs discussed in paragraph (1) and that is con-
4 sistent with the authorized uses established in sub-
5 section (c).

6 (3) A plan for local governmental actions to be
7 taken to establish and sustain local building code en-
8 forcement administration functions, without con-
9 tinuing Federal support, at a level at least equiva-
10 lent to that proposed in the grant application.

11 (4) A plan to create and maintain a program of
12 public outreach that includes a regularly updated
13 and readily accessible means of public communica-
14 tion, interaction, and reporting regarding the serv-
15 ices and work of the building code enforcement de-
16 partment to be supported by the grant.

17 (5) A plan for ensuring the timely and effective
18 administrative enforcement of building safety and
19 fire prevention violations.

20 (c) USE OF FUNDS; MATCHING FUNDS.—

21 (1) AUTHORIZED USES.—Amounts from grants
22 awarded under subsection (a) may be used by the
23 grant recipient to supplement existing State or local
24 funding for administration of building code enforce-
25 ment, or to supplement allowance value received pur-

1 suant to this Act for implementation and enforce-
2 ment of energy efficiency building codes. Such
3 amounts may be used to increase staffing, provide
4 staff training, increase staff competence and profes-
5 sional qualifications, or support individual certifi-
6 cation or departmental accreditation, or for capital
7 expenditures specifically dedicated to the administra-
8 tion of the building code enforcement department.

9 (2) ADDITIONAL REQUIREMENT.—Each build-
10 ing code enforcement department receiving a grant
11 under subsection (a) shall empanel a code adminis-
12 tration and enforcement team consisting of at least
13 1 full-time building code enforcement officer, a city
14 planner, and a health planner or similar officer.

15 (3) MATCHING FUNDS REQUIRED.—

16 (A) IN GENERAL.—To be eligible to receive
17 a grant under this section, a building code en-
18 forcement department shall provide matching,
19 non-Federal funds in the following amount:

20 (i) In the case of a building code en-
21 forcement department serving an area with
22 a population of more than 50,000, an
23 amount equal to not less than 50 percent
24 of the total amount of any grant to be
25 awarded under this section.

1 (ii) In the case of a building code en-
2 forcement department serving an area with
3 a population of between 20,001 and
4 50,000, an amount equal to not less than
5 25 percent of the total amount of any
6 grant to be awarded under this section.

7 (iii) In the case of a building code en-
8 forcement department serving an area with
9 a population of less than 20,000, an
10 amount equal to not less than 12.5 percent
11 of the total amount of any grant to be
12 awarded under this section.

13 (B) ECONOMIC DISTRESS.—

14 (i) IN GENERAL.—The Secretary may
15 waive the matching fund requirements
16 under subparagraph (A), and institute, by
17 regulation, new matching fund require-
18 ments based upon the level of economic
19 distress of the jurisdiction in which the
20 local building code enforcement department
21 seeking such grant is located.

22 (ii) CONTENT OF REGULATIONS.—Any
23 regulations instituted under clause (i) shall
24 include—

1 (I) a method that allows for a
2 comparison of the degree of economic
3 distress among the local jurisdictions
4 of grant applicants, as measured by
5 the differences in the extent of growth
6 lag, the extent of poverty, and the ad-
7 justed age of housing in such jurisdic-
8 tion; and

9 (II) any other factor determined
10 to be relevant by the Secretary in as-
11 sessing the comparative degree of eco-
12 nomic distress among such jurisdic-
13 tions.

14 (4) IN-KIND CONTRIBUTIONS.—In determining
15 the non-Federal share required to be provided under
16 paragraph (3), the Secretary shall consider in-kind
17 contributions, not to exceed 50 percent of the
18 amount that the department contributes in non-Fed-
19 eral funds.

20 (5) WAIVER OF MATCHING REQUIREMENT.—
21 The Secretary shall waive the matching fund re-
22 quirements under paragraph (3) for any recipient ju-
23 risdiction that has dedicated all building code per-
24 mitting fees to the conduct of local building code en-
25 forcement.

1 (d) EVALUATION AND REPORT.—

2 (1) IN GENERAL.—Grant recipients under this
3 section shall—

4 (A) be obligated to fully account and re-
5 port for the use of all grants funds; and

6 (B) provide a report to the Secretary on
7 the effectiveness of the program undertaken by
8 the grantee and any other criteria requested by
9 the Secretary for the purpose of indicating the
10 effectiveness of, and ideas for, refinement of the
11 grant program.

12 (2) REPORT.—The report required under para-
13 graph (1)(B) shall include a discussion of—

14 (A) the specific capabilities and functions
15 in local building code enforcement administra-
16 tion that were addressed using funds received
17 under this section;

18 (B) the lessons learned in carrying out the
19 plans supported by the grant; and

20 (C) the manner in which the programs
21 supported by the grant are to be maintained by
22 the grantee.

23 (3) CONTENT OF REPORTS.—The Secretary
24 shall—

1 (A) require each recipient of a grant under
2 this section to file interim and final reports
3 under paragraph (2) to ensure that grant funds
4 are being used as intended and to measure the
5 effectiveness and benefits of the grant program;
6 and

7 (B) develop and maintain a means whereby
8 the public can access such reports, at no cost,
9 via the Internet.

10 (e) DEFINITIONS.—For purposes of this section, the
11 following definitions shall apply:

12 (1) BUILDING CODE ENFORCEMENT.—The term
13 “building code enforcement” means the enforcement
14 of any code, adopted by a State or local government,
15 that regulates the construction of buildings and fa-
16 cilities to mitigate hazards to life or property. Such
17 term includes building codes, electrical codes, energy
18 codes, fire codes, fuel gas codes, mechanical codes,
19 and plumbing codes.

20 (2) BUILDING CODE ENFORCEMENT DEPART-
21 MENT.—The term “building code enforcement de-
22 partment” means an inspection or enforcement
23 agency of a jurisdiction that is responsible for con-
24 ducting building code enforcement.

1 (3) JURISDICTION.—The term “jurisdiction”
2 means a city, county, parish, city and county author-
3 ity, or city and parish authority having local author-
4 ity to enforce building codes and regulations and to
5 collect fees for building permits.

6 (4) SECRETARY.—The term “Secretary” means
7 the Secretary of Housing and Urban Development.

8 (f) AUTHORIZATION OF APPROPRIATIONS.—

9 (1) IN GENERAL.—There are authorized to be
10 appropriated \$20,000,000 for each of fiscal years
11 2010 through 2014 to the Secretary of Housing and
12 Urban Development to carry out the provisions of
13 this section.

14 (2) RESERVATION.—From the amount made
15 available under paragraph (1), the Secretary may re-
16 serve not more than 5 percent for administrative
17 costs.

18 (3) AVAILABILITY.—Any funds appropriated
19 pursuant to paragraph (1) shall remain available
20 until expended.

1 **SEC. 208. SOLAR ENERGY SYSTEMS BUILDING PERMIT RE-**
2 **QUIREMENTS FOR RECEIPT OF COMMUNITY**
3 **DEVELOPMENT BLOCK GRANT FUNDS.**

4 Section 104 of the Housing and Community Develop-
5 ment Act of 1974 (42 U.S.C. 5304) is amended by adding
6 at the end the following new subsection:

7 “(n) REQUIREMENTS FOR BUILDING PERMITS RE-
8 GARDING SOLAR ENERGY SYSTEMS.—

9 “(1) IN GENERAL.—A grant under section 106
10 for a fiscal year may be made only if the grantee
11 certifies to the Secretary that—

12 “(A) in the case of a grant under section
13 106(a) for any Indian tribe or insular area,
14 during such fiscal year the cost of any permit
15 or license, for construction or installation of any
16 solar energy system for any structure, that is
17 required by the tribe or insular area or by any
18 other unit of general local government or other
19 political subdivision of such tribe or insular
20 area, complies with paragraph (2);

21 “(B) in the case of a grant under section
22 106(b) for any metropolitan city or urban coun-
23 ty, during such fiscal year the cost of any per-
24 mit or license, for construction or installation of
25 any solar energy system for any structure, that
26 is required by the metropolitan city or urban

1 county, or by any other political subdivision of
2 such city or county, complies with paragraph
3 (2); and

4 “(C) in the case of a grant under section
5 106(d) for any State, during such fiscal year
6 the cost of any permit or license, for construc-
7 tion or installation of any solar energy system
8 for any structure, that is required by the State,
9 or by any other unit of general local govern-
10 ment within any nonentitlement area of such
11 State, or other political subdivision within any
12 nonentitlement area of such State or such a
13 unit of general local government, complies with
14 paragraph (2).

15 “(2) LIMITATION ON COST.—The cost of permit
16 or license for construction or installation of any
17 solar energy system complies with this paragraph
18 only if such cost does not exceed the following
19 amount:

20 “(A) RESIDENTIAL STRUCTURES.—In the
21 case of a structure primarily for residential use,
22 \$500.

23 “(B) NONRESIDENTIAL STRUCTURES.—In
24 the case of a structure primarily for nonresiden-
25 tial use, 1.0 percent of the total cost of the in-

1 stallation or construction of the solar energy
2 system, but not in excess of \$10,000.

3 “(3) NONCOMPLIANCE.—If the Secretary deter-
4 mines that a grantee of a grant made under section
5 106 is not in compliance with a certification under
6 paragraph (1)—

7 “(A) the Secretary shall notify the grantee
8 of such determination; and

9 “(B) if the grantee has not corrected such
10 noncompliance before the expiration of the 6-
11 month period beginning upon notification under
12 subparagraph (A), such grantee shall not be eli-
13 gible for 5 percent of any amounts awarded
14 under a grant under section 106 for the first
15 fiscal year that commences after the expiration
16 of such 6-month period.

17 “(4) SOLAR ENERGY SYSTEM.—For purposes of
18 this subsection, the term ‘solar energy system’
19 means, with respect to a structure, equipment that
20 uses solar energy to generate electricity for, or to
21 heat or cool (or provide hot water for use in), such
22 structure.”.

1 **SEC. 209. PROHIBITION OF RESTRICTIONS ON RESIDEN-**
2 **TIAL INSTALLATION OF SOLAR ENERGY SYS-**
3 **TEM.**

4 (a) REGULATIONS.—Within 180 days after the enact-
5 ment of this Act, the Secretary of Housing and Urban
6 Development, in consultation with the Secretary of En-
7 ergy, shall issue regulations—

8 (1) to prohibit any private covenant, contract
9 provision, lease provision, homeowners' association
10 rule or bylaw, or similar restriction, that impairs the
11 ability of the owner or lessee of any residential
12 structure designed for occupancy by 1 family to in-
13 stall, construct, maintain, or use a solar energy sys-
14 tem on such residential property; and

15 (2) to require that whenever any such covenant,
16 provision, rule or bylaw, or restriction requires ap-
17 proval for the installation or use of a solar energy
18 system, the application for approval shall be proc-
19 essed and approved by the appropriate approving en-
20 tity in the same manner as an application for ap-
21 proval of an architectural modification to the prop-
22 erty, and shall not be willfully avoided or delayed.

23 (b) CONTENTS.—The regulations required under sub-
24 section (a) shall provide that—

1 (1) such a covenant, provision, rule or bylaw, or
2 restriction impairs the installation, construction,
3 maintenance, or use of a solar energy system if it—

4 (A) unreasonably delays or prevents instal-
5 lation, maintenance, or use;

6 (B) unreasonably increases the cost of in-
7 stallation, maintenance, or use; or

8 (C) precludes use of such a system; and

9 (2) any fee or cost imposed on the owner or les-
10 see of such a residential structure by such a cov-
11 enant, provision, rule or bylaw, or restriction shall
12 be considered unreasonable if—

13 (A) such fee or cost is not reasonable in
14 comparison to the cost of the solar energy sys-
15 tem or the value of its use; or

16 (B) treatment of solar energy systems by
17 the covenant, provision, rule or bylaw, or re-
18 striction is not reasonable in comparison with
19 treatment of comparable systems by the same
20 covenant, provision, rule or bylaw, or restric-
21 tion.

22 (c) SOLAR ENERGY SYSTEM.—For purposes of this
23 section, the term “solar energy system” means, with re-
24 spect to a structure, equipment that uses solar energy to

1 generate electricity for, or to heat or cool (or provide hot
2 water for use in), such structure.

3 **Subtitle B—Lighting and Appliance**
4 **Energy Efficiency Programs**

5 **SEC. 211. LIGHTING EFFICIENCY STANDARDS.**

6 (a) OUTDOOR LIGHTING.—

7 (1) DEFINITIONS.—

8 (A) Section 340(1) of the Energy Policy
9 and Conservation Act (42 U.S.C. 6311(1)) is
10 amended by striking subparagraph (L) and in-
11 sserting the following:

12 “(L) Outdoor luminaires.

13 “(M) Outdoor high light output lamps.

14 “(N) Any other type of industrial equip-
15 ment which the Secretary classifies as covered
16 equipment under section 341(b).”.

17 (B) Section 340 of the Energy Policy and
18 Conservation Act (42 U.S.C. 6311) is amended
19 as adding at the end the following:

20 “(25) The term ‘luminaire’ means a complete
21 lighting unit consisting of one or more light sources
22 and ballast(s), together with parts designed to dis-
23 tribute the light, to position and protect such lamps,
24 and to connect such light sources to the power sup-
25 ply.

1 “(26) The term ‘outdoor luminaire’ means a lu-
2 minaire that is listed as suitable for wet locations
3 pursuant to Underwriters Laboratories Inc. stand-
4 ard UL 1598 and is labeled as ‘Suitable for Wet Lo-
5 cations’ consistent with section 410.4(A) of the Na-
6 tional Electrical Code 2005, or is designed for road-
7 way illumination and meets the requirements of Ad-
8 dendum A for IESNA TM-15-07: Backlight,
9 Uplight, and Glare (BUG) Ratings, except for—

10 “(A) luminaires designed for outdoor video
11 display images that cannot be used in general
12 lighting applications;

13 “(B) portable luminaires designed for use
14 at construction sites;

15 “(C) luminaires designed for continuous
16 immersion in swimming pools and other water
17 features;

18 “(D) seasonal luminaires incorporating
19 solely individual lamps rated at 10 watts or
20 less;

21 “(E) luminaires designed to be used in
22 emergency conditions that incorporate a means
23 of charging a battery and a device to switch the
24 power supply to emergency lighting loads auto-

1 matically upon failure of the normal power sup-
2 ply;

3 “(F) components used for repair of in-
4 stalled luminaries and that meet the require-
5 ments of section 342(h);

6 “(G) a luminaire utilizing an electrode-less
7 fluorescent lamp as the light source;

8 “(H) decorative gas lighting systems;

9 “(I) luminaires designed explicitly for
10 lighting for theatrical purposes, including per-
11 formance, stage, film production, and video pro-
12 duction;

13 “(J) luminaires designed as theme ele-
14 ments in theme/amusement parks and that can-
15 not be used in most general lighting applica-
16 tions;

17 “(K) luminaires designed explicitly for ve-
18 hicular roadway tunnels designed to comply
19 with ANSI/IESNA RP-22-05;

20 “(L) luminaires designed explicitly for haz-
21 ardous locations meeting UL Standard 844;

22 “(M) searchlights;

23 “(N) luminaires that are designed to be re-
24 cessed into a building, and that cannot be used
25 in most general lighting applications;

1 “(O) a luminaire rated only for residential
2 applications utilizing a light source or sources
3 regulated under the amendments made by sec-
4 tion 321 of the Energy Independence and Secu-
5 rity Act of 2007 and with a light output no
6 greater than 2,600 lumens;

7 “(P) a residential pole-mounted luminaire
8 that is not rated for commercial use utilizing a
9 light source or sources meeting the efficiency
10 requirements of section 231 of the Energy
11 Independence and Security Act of 2007 and
12 mounted on a post or pole not taller than 10.5
13 feet above ground and with a light output not
14 greater than 2,600 lumens;

15 “(Q) a residential fixture with E12 (Can-
16 delabra) bases that is rated for not more than
17 300 watts total; or

18 “(R) a residential fixture with medium
19 screw bases that is rated for not more than 145
20 watts.

21 “(27) The term ‘outdoor high light outputlamp’
22 means a lamp that—

23 “(A) has a rated lumen output not less
24 than 2601 lumens;

1 “(B) is capable of being operated at a volt-
2 age not less than 110 volts and not greater
3 than 300 volts, or driven at a constant current
4 of 6.6 amperes;

5 “(C) is not a Parabolic Aluminized Reflec-
6 tor lamp; and

7 “(D) is not a J-type double-ended (T-3)
8 halogen quartz lamp, utilizing R-7S bases, that
9 is manufactured before January 1, 2015.

10 “(28) The term ‘outdoor lighting control’ means
11 a device incorporated in a luminaire that receives a
12 signal, from either a sensor (such as an occupancy
13 sensor, motion sensor, or daylight sensor) or an
14 input signal (including analog or digital signals com-
15 municated through wired or wireless technology),
16 and can adjust the light level according to the sig-
17 nal.”.

18 (2) STANDARDS.—Section 342 of the Energy
19 Policy and Conservation Act (42 U.S.C. 6313) is
20 amended by adding at the end the following:

21 “(g) OUTDOOR LUMINAIRES.—

22 “(1) Each outdoor luminaire manufactured on
23 or after January 1, 2016, shall—

24 “(A) have an initial luminaire efficacy of
25 at least 50 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 0.6.

4 “(2) Each outdoor luminaire manufactured on
5 or after January 1, 2018, shall—

6 “(A) have an initial luminaire efficacy of
7 at least 70 lumens per watt; and

8 “(B) be designed to use a light source with
9 a lumen maintenance, calculated as mean rated
10 lumens divided by initial lumens, of at least 0.6.

11 “(3) In addition to the requirements of para-
12 graphs (1) through (3), each outdoor luminaire man-
13 ufactured on or after January 1, 2016, shall have
14 the capability of producing at least two different
15 light levels, including 100 percent and 60 percent of
16 full lamp output as tested with the maximum rated
17 lamp per UL1598 or the manufacturer’s maximum
18 specified for the luminaire under test. Outdoor lumi-
19 naires used for roadway lighting applications shall
20 be exempt the 2 light level requirement.

21 “(4)(A) Not later than January 1, 2022, the
22 Secretary shall issue a final rule amending the appli-
23 cable standards established in paragraph (3) if tech-
24 nologically feasible and economically justified.

1 “(B) A final rule issued under subparagraph
2 (A) shall establish efficiency standards at the max-
3 imum level that is technically feasible and economi-
4 cally justified, as provided in subsections (o) and (p)
5 of section 325. The Secretary may also, in such rule-
6 making, amend or discontinue the product exclusions
7 listed in section 340(26)(A) through (P), or amend
8 the lumen maintenance requirements in paragraph
9 (2) if the Secretary determines that such amend-
10 ments are consistent with the purposes of this Act.

11 “(C) If the Secretary issues a final rule under
12 subparagraph (A) establishing amended standards,
13 the final rule shall provide that the amended stand-
14 ards apply to products manufactured on or after
15 January 1, 2025, or 1 year after the date on which
16 the final amended standard is published, whichever
17 is later.

18 “(h) OUTDOOR HIGH LIGHT OUTPUT LAMPS.—Each
19 outdoor high light output lamp manufactured on or after
20 January 1, 2017, shall have a lighting efficiency of at least
21 45 lumens per watt.”.

22 (3) TEST PROCEDURES.—Section 343(a) of the
23 Energy Policy and Conservation Act (42 U.S.C.
24 6314(a)) is amended by adding at the end the fol-
25 lowing:

1 “(10) OUTDOOR LIGHTING.—

2 “(A) With respect to outdoor luminaires
3 and outdoor high light output lamps, the test
4 procedures shall be based upon the test proce-
5 dures specified in illuminating engineering soci-
6 ety procedures LM-79 as of March 1, 2009,
7 and LM-31, and/or other appropriate con-
8 sensus test procedures developed by the Illu-
9 minating Engineering Society or other appro-
10 priate consensus standards bodies.

11 “(B) If illuminating engineering society
12 procedure LM-79 is amended, the Secretary
13 shall amend the test procedures established in
14 subparagraph (A) as necessary to be consistent
15 with the amended LM-79 test procedure, unless
16 the Secretary determines, by rule, published in
17 the Federal Register and supported by clear
18 and convincing evidence, that to do so would
19 not meet the requirements for test procedures
20 under paragraph (2).

21 “(C) The Secretary may revise the test
22 procedures for outdoor luminaires or outdoor
23 high light output lamps by rule consistent with
24 paragraph (2), and may incorporate as appro-
25 priate consensus test procedures developed by

1 the Illuminating Engineering Society or other
2 appropriate consensus standards bodies.”.

3 (4) PREEMPTION.—Section 345 of the Energy
4 Policy and Conservation Act (42 U.S.C. 6316) is
5 amended by adding at the end the following:

6 “(i)(1) Except as provided in paragraph (2), section
7 327 shall apply to outdoor luminaires to the same extent
8 and in the same manner as the section applies under part
9 B.

10 “(2) Any State standard that is adopted on or before
11 January 1, 2015, pursuant to a statutory requirement to
12 adopt efficiency standards for reducing outdoor lighting
13 energy use enacted prior to January 31, 2008, shall not
14 be preempted.”.

15 (5) ENERGY EFFICIENCY STANDARDS FOR CER-
16 TAIN LUMINAIRES.—Not later than 1 year after the
17 date of enactment of this Act, the Secretary of En-
18 ergy shall, in consultation with the National Elec-
19 trical Manufacturers Association, collect data for
20 United States sales of luminaires described in sec-
21 tion 340(26)(H) and (M) of the Energy Policy and
22 Conservation Act, to determine the historical growth
23 rate. If the Secretary finds that the growth in mar-
24 ket share of such luminaires exceeds twice the year-
25 to-year rate of the average of the previous 3 years,

1 then the Secretary shall within 12 months initiate a
2 rulemaking to determine if such exclusion should be
3 eliminated, if substitute products exist that perform
4 more efficiently and fulfill the performance functions
5 of these luminaires.

6 (b) PORTABLE LIGHTING.—

7 (1) PORTABLE LIGHT FIXTURES.—

8 (A) DEFINITIONS.—Section 321 of the En-
9 ergy Policy and Conservation Act (42 U.S.C.
10 6291) is amended by adding at the end the fol-
11 lowing:

12 “(67) ART WORK LIGHT FIXTURE.—The term
13 ‘art work light fixture’ means a light fixture de-
14 signed only to be mounted directly to an art work
15 and for the purpose of illuminating that art work.

16 “(68) LED LIGHT ENGINE.—The term ‘LED
17 light engine’ or ‘LED light engine with integral heat
18 sink’ means a subsystem of an LED light fixture
19 that—

20 “(A) includes 1 or more LED components,
21 including—

22 “(i) an LED driver power source with
23 electrical and mechanical interfaces; and

24 “(ii) an integral heat sink to provide
25 thermal dissipation; and

1 “(B) may be designed to accept additional
2 components that provide aesthetic, optical, and
3 environmental control.

4 “(69) LED LIGHT FIXTURE.—The term ‘LED
5 light fixture’ means a complete lighting unit con-
6 sisting of—

7 “(A) an LED light source with 1 or more
8 LED lamps or LED light engines; and

9 “(B) parts—

10 “(i) to distribute the light;

11 “(ii) to position and protect the light
12 source; and

13 “(iii) to connect the light source to
14 electrical power.

15 “(70) LIGHT FIXTURE.—The term ‘light fix-
16 ture’ means a product designed to provide light that
17 includes—

18 “(A) at least 1 lamp socket; and

19 “(B) parts—

20 “(i) to distribute the light;

21 “(ii) position and protect 1 or more
22 lamps; and

23 “(iii) to connect 1 or more lamps to a
24 power supply.

25 “(71) PORTABLE LIGHT FIXTURE.—

1 “(A) IN GENERAL.—The term ‘portable
2 light fixture’ means a light fixture that has a
3 flexible cord and an attachment plug for con-
4 nection to a nominal 120-volt circuit that—

5 “(i) allows the user to relocate the
6 product without any rewiring; and

7 “(ii) typically can be controlled with a
8 switch located on the product or the power
9 cord of the product.

10 “(B) EXCLUSIONS.—The term ‘portable
11 light fixture’ does not include—

12 “(i) direct plug-in night lights, sun or
13 heat lamps, medical or dental lights, port-
14 able electric hand lamps, signs or commer-
15 cial advertising displays, photographic
16 lamps, germicidal lamps, or light fixtures
17 for marine use or for use in hazardous lo-
18 cations (as those terms are defined in
19 ANSI/NFPA 70 of the National Electrical
20 Code); or

21 “(ii) decorative lighting strings, deco-
22 rative lighting outfits, or electric candles or
23 candelabra without lamp shades that are
24 covered by Underwriter Laboratories (UL)

1 standard 588, ‘Seasonal and Holiday Dec-
2 orative Products’.”.

3 (B) COVERAGE.—

4 (i) IN GENERAL.—Section 322(a) of
5 the Energy Policy and Conservation Act
6 (42 U.S.C. 6292(a)) is amended—

7 (I) by redesignating paragraph
8 (20) as paragraph (24); and

9 (II) by inserting after paragraph
10 (19) the following:

11 “(20) Portable light fixtures.”.

12 (ii) CONFORMING AMENDMENTS.—

13 Section 325(l) of the Energy Policy and
14 Conservation Act (42 U.S.C. 6295(l)) is
15 amended by striking “paragraph (19)”
16 each place it appears in paragraphs (1)
17 and (2) and inserting “paragraph (24)”.

18 (C) TEST PROCEDURES.—Section 323(b)
19 of the Energy Policy and Conservation Act (42
20 U.S.C. 6293(b)) is amended by adding at the
21 end the following:

22 “(19) LED FIXTURES AND LED LIGHT EN-
23 GINES.—Test procedures for LED fixtures and LED
24 light engines shall be based on Illuminating Engi-
25 neering Society of North America (IESNA) test pro-

1 cedure LM-79, Approved Method for Electrical and
2 Photometric Testing of Solid-State Lighting Devices,
3 and IESNA-approved test procedure for testing
4 LED light engines.”.

5 (D) STANDARDS.—Section 325 of the En-
6 ergy Policy and Conservation Act (42 U.S.C.
7 6295) is amended—

8 (i) by redesignating subsection (ii) as
9 subsection (oo);

10 (ii) in subsection (oo)(2), as redesign-
11 nated in clause (i) of this subparagraph, by
12 striking “(hh)” each place it appears and
13 inserting “(mm)”; and

14 (iii) by inserting after subsection (hh)
15 the following:

16 “(ii) PORTABLE LIGHT FIXTURES.—

17 “(1) IN GENERAL.—Subject to paragraphs (2)
18 and (3), portable light fixtures manufactured on or
19 after January 1, 2012, shall meet 1 or more of the
20 following requirements:

21 “(A) Be a fluorescent light fixture that
22 meets the requirements of the Energy Star Pro-
23 gram for Residential Light Fixtures, Version
24 4.2.

1 “(B) Be equipped with only 1 or more
2 GU-24 line-voltage sockets, not be rated for
3 use with incandescent lamps of any type (as de-
4 fined in ANSI standards), and meet the re-
5 quirements of version 4.2 of the Energy Star
6 program for residential light fixtures.

7 “(C) Be an LED light fixture or a light
8 fixture with an LED light engine and comply
9 with the following minimum requirements:

10 “(i) Minimum light output: 200
11 lumens (initial).

12 “(ii) Minimum LED light engine effi-
13 cacy: 40 lumens/watt installed in fixtures
14 that meet the minimum light fixture effi-
15 cacy of 29 lumens/watt or, alternatively, a
16 minimum LED light engine efficacy of 60
17 lumens/watt for fixtures that do not meet
18 the minimum light fixture efficacy of 29
19 lumens/watt.

20 “(iii) All portable fixtures shall have a
21 minimum LED light fixture efficacy of 29
22 lumens/watt and a minimum LED light
23 engine efficacy of 60 lumens/watt by Janu-
24 ary 1, 2016.

1 “(iv) Color Correlated Temperature
2 (CCT): 2700K through 4000K.

3 “(v) Minimum Color Rendering Index
4 (CRI): 75.

5 “(vi) Power factor equal to or greater
6 than 0.70.

7 “(vii) Portable luminaries that have
8 internal power supplies shall have zero
9 standby power when the luminaire is
10 turned off.

11 “(viii) LED light sources shall deliver
12 at least 70 percent of initial lumens for at
13 least 25,000 hours.

14 “(D)(i) Be equipped with an ANSI-des-
15 ignated E12, E17, or E26 screw-based socket
16 and be prepackaged and sold together with 1
17 screw-based compact fluorescent lamp or screw-
18 based LED lamp for each screw-based socket
19 on the portable light fixture.

20 “(ii) The compact fluorescent or LED
21 lamps prepackaged with the light fixture shall
22 be fully compatible with any light fixture con-
23 trols incorporated into the light fixture (for ex-
24 ample, light fixtures with dimmers shall be
25 packed with dimmable lamps).

1 “(iii) Compact fluorescent lamps pre-
2 packaged with light fixtures shall meet the re-
3 quirements of the Energy Star Program for
4 CFLs Version 4.0.

5 “(iv) Screw-based LED lamps shall comply
6 with the minimum requirements described in
7 subparagraph (C).

8 “(E) Be equipped with 1 or more single-
9 ended, non-screw based halogen lamp sockets
10 (line or low voltage), a dimmer control or high-
11 low control, and be rated for a maximum of 100
12 watts.

13 “(2) REVIEW.—

14 “(A) REVIEW.—The Secretary shall review
15 the criteria and standards established under
16 paragraph (1) to determine if revised standards
17 are technologically feasible and economically
18 justified.

19 “(B) COMPONENTS.—The review shall in-
20 clude consideration of—

21 “(i) whether a separate compliance
22 procedure is still needed for halogen fix-
23 tures described in subparagraph (E) and,
24 if necessary, what an appropriate standard
25 for halogen fixtures shall be;

1 “(ii) whether the specific technical cri-
2 teria described in subparagraphs (A), (C),
3 and (D)(iii) should be modified; and

4 “(iii) which fixtures should be exempt-
5 ed from the light fixture efficacy standard
6 as of January 1, 2016, because the fix-
7 tures are primarily decorative in nature (as
8 defined by the Secretary) and, even if ex-
9 empted, are likely to be sold in limited
10 quantities.

11 “(C) TIMING.—

12 “(i) DETERMINATION.—Not later
13 than January 1, 2014, the Secretary shall
14 publish amended standards, or a deter-
15 mination that no amended standards are
16 justified, under this subsection.

17 “(ii) STANDARDS.—Any standards
18 under this paragraph shall take effect on
19 January 1, 2016.

20 “(3) ART WORK LIGHT FIXTURES.—Art work
21 light fixtures manufactured on or after January 1,
22 2012, shall—

23 “(A) comply with paragraph (1); or

24 “(B)(i) contain only ANSI-designated E12
25 screw-based line-voltage sockets;

1 “(ii) have not more than 3 sockets;

2 “(iii) be controlled with an integral high/
3 low switch;

4 “(iv) be rated for not more than 25 watts
5 if fitted with 1 socket; and

6 “(v) be rated for not more than 15 watts
7 per socket if fitted with 2 or 3 sockets.

8 “(4) EXCEPTION FROM PREEMPTION.—Not-
9 withstanding section 327, Federal preemption shall
10 not apply to a regulation concerning portable light
11 fixtures adopted by the California Energy Commis-
12 sion on or before January 1, 2014.”.

13 (2) GU-24 BASE LAMPS.—

14 (A) DEFINITIONS.—Section 321 of the En-
15 ergy Policy and Conservation Act (42 U.S.C.
16 6291) (as amended by paragraph (1)(A)) is
17 amended by adding at the end the following:

18 “(72) GU-24.—The term ‘GU-24’ means the
19 designation of a lamp socket, based on a coding sys-
20 tem by the International Electrotechnical Commis-
21 sion, under which—

22 “(A) ‘G’ indicates a holder and socket type
23 with 2 or more projecting contacts, such as pins
24 or posts;

1 “(B) ‘U’ distinguishes between lamp and
2 holder designs of similar type that are not
3 interchangeable due to electrical or mechanical
4 requirements; and

5 “(C) 24 indicates the distance in millime-
6 ters between the electrical contact posts.

7 “(73) GU-24 ADAPTOR.—

8 “(A) IN GENERAL.—The term ‘GU-24
9 Adaptor’ means a 1-piece device, pig-tail, wiring
10 harness, or other such socket or base attach-
11 ment that—

12 “(i) connects to a GU-24 socket on 1
13 end and provides a different type of socket
14 or connection on the other end; and

15 “(ii) does not alter the voltage.

16 “(B) EXCLUSION.—The term ‘GU-24
17 Adaptor’ does not include a fluorescent ballast
18 with a GU-24 base.

19 “(74) GU-24 BASE LAMP.—‘GU-24 base lamp’
20 means a light bulb designed to fit in a GU-24 sock-
21 et.”.

22 (B) STANDARDS.—Section 325 of the En-
23 ergy Policy and Conservation Act (42 U.S.C.
24 6295) (as amended by paragraph (1)(D)) is

1 amended by inserting after subsection (ii) the
2 following:

3 “(jj) GU-24 BASE LAMPS.—

4 “(1) IN GENERAL.—A GU-24 base lamp shall
5 not be an incandescent lamp as defined by ANSI.

6 “(2) GU-24 ADAPTORS.—GU-24 adaptors shall
7 not adapt a GU-24 socket to any other line voltage
8 socket.”.

9 “(3) STANDARDS FOR CERTAIN INCANDESCENT
10 REFLECTOR LAMPS.—Section 325(i) of the Energy
11 Policy and Conservation Act (42 U.S.C. 6295(i)), as
12 amended by section 161(a)(12) of this Act, is
13 amended by adding at the end the following:

14 “(9) CERTAIN INCANDESCENT REFLECTOR
15 LAMPS.—(A) No later than 12 months after enact-
16 ment of this paragraph, the Secretary shall publish
17 a final rule establishing standards for incandescent
18 reflector lamp types described in paragraph (1)(D).
19 Such standards shall be effective on July 1, 2013.

20 “(B) Any rulemaking for incandescent reflector
21 lamps completed after enactment of this section
22 shall consider standards for all incandescent reflec-
23 tor lamps, inclusive of those specified in paragraph
24 (1)(C).

1 “(10) REFLECTOR LAMPS.—No later than Jan-
2 uary 1, 2015, the Secretary shall publish a final rule
3 establishing and amending standards for reflector
4 lamps, including incandescent reflector lamps. Such
5 standards shall be effective no sooner than 3 years
6 after publication of the final rule. Such rulemaking
7 shall consider incandescent and nonincandescent
8 technologies. Such rulemaking shall consider a new
9 metric other than lumens-per-watt based on the pho-
10 tometric distribution of light from such lamps.”.

11 **SEC. 212. OTHER APPLIANCE EFFICIENCY STANDARDS.**

12 (a) STANDARDS FOR WATER DISPENSERS, HOT
13 FOOD HOLDING CABINETS, AND PORTABLE ELECTRIC
14 SPAS.—

15 (1) DEFINITIONS.—Section 321 of the Energy
16 Policy and Conservation Act (42 U.S.C. 6291), as
17 amended by section 211 of this Act, is further
18 amended by adding at the end the following:

19 “(75) The term ‘water dispenser’ means a fac-
20 tory-made assembly that mechanically cools and
21 heats potable water and that dispenses the cooled or
22 heated water by integral or remote means.

23 “(76) The term ‘bottle-type water dispenser’
24 means a drinking water dispenser designed for dis-
25 pensing both hot and cold water that uses a remov-

1 able bottle or container as the source of potable
2 water.

3 “(77) The term ‘commercial hot food holding
4 cabinet’ means a heated, fully-enclosed compartment
5 with one or more solid or glass doors that is de-
6 signed to maintain the temperature of hot food that
7 has been cooked in a separate appliance. Such term
8 does not include heated glass merchandising cabi-
9 nets, drawer warmers, commercial hot food holding
10 cabinets with interior volumes of less than 8 cubic
11 feet, or cook-and-hold appliances.

12 “(78) The term ‘portable electric spa’ means a
13 factory-built electric spa or hot tub, supplied with
14 equipment for heating and circulating water.”.

15 (2) COVERAGE.—Section 322(a) of the Energy
16 Policy and Conservation Act (42 U.S.C. 6292(a)), as
17 amended by section 211(b)(1)(B) of this Act, is fur-
18 ther amended by inserting after paragraph (20) the
19 following new paragraphs:

20 “(21) Bottle type water dispensers.

21 “(22) Commercial hot food holding cabinets.

22 “(23) Portable electric spas.”.

23 (3) TEST PROCEDURES.—Section 323(b) of the
24 Energy Policy and Conservation Act (42 U.S.C.
25 6293(b)), as amended by section 211(b)(1)(C) of

1 this Act, is further amended by adding at the end
2 the following:

3 “(20) BOTTLE TYPE WATER DISPENSERS.—
4 Test procedures for bottle type water dispensers
5 shall be based on ‘Energy Star Program Require-
6 ments for Bottled Water Coolers version 1.1’ pub-
7 lished by the Environmental Protection Agency.
8 Units with an integral, automatic timer shall not be
9 tested using section 4D, ‘Timer Usage,’ of the test
10 criteria.

11 “(21) COMMERCIAL HOT FOOD HOLDING CABI-
12 NETS.—Test procedures for commercial hot food
13 holding cabinets shall be based on the test proce-
14 dures described in ANSI/ASTM F2140–01 (Test for
15 idle energy rate-dry test). Interior volume shall be
16 based on the method shown in the Environmental
17 Protection Agency’s ‘Energy Star Program Require-
18 ments for Commercial Hot Food Holding Cabinets’
19 as in effect on August 15, 2003.

20 “(22) PORTABLE ELECTRIC SPAS.—Test proce-
21 dures for portable electric spas shall be based on the
22 test method for portable electric spas contained in
23 section 1604, title 20, California Code of Regula-
24 tions as amended on December 3, 2008. When the
25 American National Standards Institute publishes a

1 test procedure for portable electric spas, the Sec-
2 retary shall revise the Department of Energy's pro-
3 cedure.”.

4 (4) STANDARDS.—Section 325 of the Energy
5 Policy and Conservation Act (42 U.S.C. 6295), as
6 amended by section 211 of this Act, is further
7 amended by adding after subsection (jj) the fol-
8 lowing:

9 “(kk) BOTTLE TYPE WATER DISPENSERS.—Effec-
10 tive January 1, 2012, bottle-type water dispensers de-
11 signed for dispensing both hot and cold water shall not
12 have standby energy consumption greater than 1.2 kilo-
13 watt-hours per day.

14 “(ll) COMMERCIAL HOT FOOD HOLDING CABI-
15 NETS.—Effective January 1, 2012, commercial hot food
16 holding cabinets with interior volumes of 8 cubic feet or
17 greater shall have a maximum idle energy rate of 40 watts
18 per cubic foot of interior volume.

19 “(mm) PORTABLE ELECTRIC SPAS.—Effective Janu-
20 ary 1, 2012, portable electric spas shall not have a normal-
21 ized standby power greater than $5(V^{2/3})$ Watts where
22 V =the fill volume in gallons.

23 “(nn) REVISIONS.—The Secretary of Energy shall
24 consider revisions to the standards in subsections (kk),
25 (ll), and (mm) in accordance with subsection (o) and pub-

1 lish a final rule no later than January 1, 2013 establishing
2 such revised standards, or make a finding that no revi-
3 sions are technically feasible and economically justified.
4 Any such revised standards shall take effect January 1,
5 2016.”.

6 (b) COMMERCIAL FURNACE EFFICIENCY STAND-
7 ARDS.—Section 342(a) of the Energy Policy and Con-
8 servation Act (42 U.S.C. 6312(a)) is amended by inserting
9 after paragraph (10) the following new paragraph:

10 “(11) WARM AIR FURNACES.—Each warm air
11 furnace with an input rating of 225,000 Btu per
12 hour or more and manufactured after January 1,
13 2011, shall meet the following standard levels:

14 “(A) GAS-FIRED UNITS.—

15 “(i) Minimum thermal efficiency of 80
16 percent.

17 “(ii) Include an interrupted or inter-
18 mittent ignition device.

19 “(iii) Have jacket losses not exceeding
20 0.75 percent of the input rating.

21 “(iv) Have either power venting or a
22 flue damper.

23 “(B) OIL-FIRED UNITS.—

24 “(i) Minimum thermal efficiency of 81
25 percent.

1 “(ii) Have jacket losses not exceeding
2 0.75 percent of the input rating.

3 “(iii) Have either power venting or a
4 flue damper.”.

5 **SEC. 213. APPLIANCE EFFICIENCY DETERMINATIONS AND**
6 **PROCEDURES.**

7 (a) DEFINITION OF ENERGY CONSERVATION STAND-
8 ARD.—Section 321(6) of the Energy Policy and Conserva-
9 tion Act (42 U.S.C. 6291(6)) is amended to read as fol-
10 lows:

11 “(6) ENERGY CONSERVATION STANDARD.—

12 “(A) IN GENERAL.—The term ‘energy con-
13 servation standard’ means 1 or more perform-
14 ance standards that—

15 “(i) for covered products (excluding
16 clothes washers, dishwashers, showerheads,
17 faucets, water closets, and urinals), pre-
18 scribe a minimum level of energy efficiency
19 or a maximum quantity of energy use, de-
20 termined in accordance with test proce-
21 dures prescribed under section 323;

22 “(ii) for showerheads, faucets, water
23 closets, and urinals, prescribe a minimum
24 level of water efficiency or a maximum
25 quantity of water use, determined in ac-

1 cordance with test procedures prescribed
2 under section 323; and

3 “(iii) for clothes washers and dish-
4 washers—

5 “(I) prescribe a minimum level of
6 energy efficiency or a maximum quan-
7 tity of energy use, determined in ac-
8 cordance with test procedures pre-
9 scribed under section 323; and

10 “(II) may include a minimum
11 level of water efficiency or a maximum
12 quantity of water use, determined in
13 accordance with those test procedures.

14 “(B) INCLUSIONS.—The term ‘energy con-
15 servation standard’ includes—

16 “(i) 1 or more design requirements, if
17 the requirements were established—

18 “(I) on or before the date of en-
19 actment of this subclause;

20 “(II) as part of a direct final rule
21 under section 325(p)(4); or

22 “(III) as part of a final rule pub-
23 lished on or after January 1, 2012,
24 and

1 “(ii) any other requirements that the
2 Secretary may prescribe under section
3 325(r).

4 “(C) EXCLUSION.—The term ‘energy con-
5 servation standard’ does not include a perform-
6 ance standard for a component of a finished
7 covered product, unless regulation of the com-
8 ponent is specifically authorized or established
9 pursuant to this title.”.

10 (b) ADOPTING CONSENSUS TEST PROCEDURES AND
11 TEST PROCEDURES IN USE ELSEWHERE.—Section
12 323(b) of the Energy Policy and Conservation Act (42
13 U.S.C. 6293(b)), as amended by sections 211 and 212 of
14 this Act, is further amended by adding the following new
15 paragraph after paragraph (22):

16 “(23) CONSENSUS AND ALTERNATE TEST PRO-
17 CEDURES.—

18 “(A) RECEIPT OF JOINT RECOMMENDA-
19 TION OR ALTERNATE TESTING PROCEDURE.—

20 On receipt of—

21 “(i) a statement that is submitted
22 jointly by interested persons that are fairly
23 representative of relevant points of view
24 (including representatives of manufactur-
25 ers of covered products, States, and effi-

1 ciency advocates), as determined by the
2 Secretary, and contains recommendations
3 with respect to the testing procedure for a
4 covered product; or

5 “(ii) a submission of a testing proce-
6 dure currently in use for a covered product
7 by a State, nation, or group of nations—

8 “(I) if the Secretary determines
9 that the recommended testing proce-
10 dure contained in the statement or
11 submission is in accordance with sub-
12 section (b)(3), the Secretary may
13 issue a final rule that establishes an
14 energy or water conservation testing
15 procedure that is published simulta-
16 neously with a notice of proposed rule-
17 making that proposes a new or
18 amended energy or water conservation
19 testing procedure that is identical to
20 the testing procedure established in
21 the final rule to establish the rec-
22 ommended testing procedure (referred
23 to in this paragraph as a ‘direct final
24 rule’); or

1 “(II) if the Secretary determines
2 that a direct final rule cannot be
3 issued based on the statement or sub-
4 mission, the Secretary shall publish a
5 notice of the determination, together
6 with an explanation of the reasons for
7 the determination.

8 “(B) PUBLIC COMMENT.—The Secretary
9 shall solicit public comment for a period of at
10 least 110 days with respect to each direct final
11 rule issued by the Secretary under subpara-
12 graph (A)(ii)(I).

13 “(C) WITHDRAWAL OF DIRECT FINAL
14 RULES.—

15 “(i) IN GENERAL.—Not later than
16 120 days after the date on which a direct
17 final rule issued under subparagraph
18 (A)(ii)(I) is published in the Federal Reg-
19 ister, the Secretary shall withdraw the di-
20 rect final rule if—

21 “(I) the Secretary receives 1 or
22 more adverse public comments relat-
23 ing to the direct final rule under sub-
24 paragraph (B) or any alternative joint
25 recommendation; and

1 “(II) based on the rulemaking
2 record relating to the direct final rule,
3 the Secretary determines that such
4 adverse public comments or alter-
5 native joint recommendation may pro-
6 vide a reasonable basis for with-
7 drawing the direct final rule under
8 paragraph (3) or any other applicable
9 law.

10 “(ii) ACTION ON WITHDRAWAL.—On
11 withdrawal of a direct final rule under
12 clause (i), the Secretary shall—

13 “(I) proceed with the notice of
14 proposed rulemaking published simul-
15 taneously with the direct final rule as
16 described in subparagraph (A)(ii)(I);
17 and

18 “(II) publish in the Federal Reg-
19 ister the reasons why the direct final
20 rule was withdrawn.

21 “(iii) TREATMENT OF WITHDRAWN DI-
22 RECT FINAL RULES.—A direct final rule
23 that is withdrawn under clause (i) shall
24 not be considered to be a final rule for
25 purposes of subsection (b).

1 “(D) EFFECT OF PARAGRAPH.—Nothing
2 in this paragraph authorizes the Secretary to
3 issue a direct final rule based solely on receipt
4 of more than 1 statement containing rec-
5 ommended test procedures relating to the direct
6 final rule.”.

7 (c) UPDATING TELEVISION TEST METHODS.—Sec-
8 tion 323(b) of the Energy Policy and Conservation Act
9 (42 U.S.C. 6293(b)), as amended by sections 211 and 212
10 of this Act, and subsection (b) of this section, is further
11 amended by adding at the end the following new para-
12 graph:

13 “(24) TELEVISIONS.—(A) On the date of enact-
14 ment of this paragraph, Appendix H to Subpart B
15 of Part 430 of the United States Code of Federal
16 Regulations, ‘Uniform Test Method for Measuring
17 the Energy Consumption of Television Sets’, is re-
18 pealed.

19 “(B) No later than 12 months after the date of
20 enactment of this paragraph the Secretary shall pub-
21 lish in the Federal Register a final rule prescribing
22 a new test method for televisions.”.

23 (d) CRITERIA FOR PRESCRIBING NEW OR AMENDED
24 STANDARDS.—(1) Section 325(o)(2)(B)(i) of the Energy

1 Policy and Conservation Act (42 U.S.C. 6295(o)(2)(B)(i))
2 is amended as follows:

3 (A) By striking “and” at the end of subclause
4 (VI).

5 (B) By redesignating subclause (VII) as sub-
6 clause (XI).

7 (C) By inserting the following new subclauses
8 after subclause (VI):

9 “(VII) the estimated value of the carbon dioxide
10 and other emission reductions that will be achieved
11 by virtue of the higher energy efficiency of the cov-
12 ered products resulting from the imposition of the
13 standard;

14 “(VIII) the estimated impact of standards for a
15 particular product on average consumer energy
16 prices;

17 “(IX) the increased energy efficiency that may
18 be attributable to the installation of Smart Grid
19 technologies or capabilities in the covered products,
20 if applicable in the determination of the Secretary;

21 “(X) the availability in the United States or in
22 other nations of examples or prototypes of covered
23 products that achieve significantly higher efficiency
24 standards for energy or for water; and”.

1 (2) Section 325(o)(2)(B)(iii) of such Act is amended
2 as follows:

3 (A) By striking “three” and inserting “5”.

4 (B) By inserting after the first sentence the fol-
5 lowing “For products with an average expected use-
6 ful life of less than 5 years, such rebuttable pre-
7 sumption shall be determined utilizing 75 percent of
8 the product’s average expected useful life as a multi-
9 plier instead of 5.”.

10 (C) By striking the last sentence and inserting
11 the following: “Such a presumption may be rebutted
12 only if the Secretary finds, based on clear, con-
13 vincing, and reliable evidence, that—

14 “(I) such standard level would cause serious
15 and unavoidable hardship to the average consumer
16 of the product, or to manufacturers supplying a sig-
17 nificant portion of the market for the product, that
18 substantially outweighs the standard level’s benefits;

19 “(II) the standard and implementing regula-
20 tions cannot be designed to avoid or mitigate the
21 hardship identified under subclause (I), through the
22 adoption of regional standards consistent with para-
23 graph (6) of this subsection, or other reasonable
24 means consistent with this part;

1 “(III) the same or substantially similar hard-
2 ship would not occur under a standard adopted in
3 the absence of the presumption, but that otherwise
4 meets the requirements of this section; and

5 “(IV) the hardship cannot be avoided or miti-
6 gated pursuant the procedures specified in section
7 504 of the Department of Energy Organization Act
8 (42 U.S.C. 7194).

9 A determination by the Secretary that the criteria trig-
10 gering such presumption are not met, or that the criterion
11 for rebutting the presumption are met shall not be taken
12 into consideration in the Secretary’s determination of
13 whether a standard is economically justified.”.

14 (e) OBTAINING APPLIANCE INFORMATION FROM
15 MANUFACTURERS.—Section 326(d) of the Energy Policy
16 and Conservation Act (42 U.S.C. 6295(d)) is amended to
17 read as follows:

18 “(d) INFORMATION REQUIREMENTS.—(1) For pur-
19 poses of carrying out this part, the Secretary shall publish
20 proposed regulations not later than 1 year after the date
21 of enactment of the American Clean Energy and Security
22 Act of 2009, and after receiving public comment, final reg-
23 ulations not later than 18 months from such date of enact-
24 ment under this part or other provision of law adminis-
25 tered by the Secretary, which shall require each manufac-

1 turer of a covered product to submit information or re-
2 ports to the Secretary on an annual basis in a form adopt-
3 ed by the Secretary. Such reports shall include informa-
4 tion or data with respect to—

5 “(A) the manufacturers’ compliance with all re-
6 quirements applicable pursuant to this part;

7 “(B) the economic impact of any proposed en-
8 ergy conservation standard;

9 “(C) the manufacturers’ annual shipments of
10 each class or category of covered products, orga-
11 nized, to the maximum extent practicable, by—

12 “(i) energy efficiency, energy use, and, if
13 applicable, water use;

14 “(ii) the presence or absence of such effi-
15 ciency related or energy consuming operational
16 characteristics or components as the Secretary
17 determines are relevant for the purposes of car-
18 rying out this part; and

19 “(iii) the State or regional location of sale,
20 for covered products for which the Secretary
21 may adopt regional standards; and

22 “(D) such other categories of information as
23 the Secretary deems relevant to carry out this part,
24 including such other information as may be nec-
25 essary to establish and revise test procedures, label-

1 ing rules, and energy conservation standards and to
2 insure compliance with the requirements of this
3 part.

4 “(2) In adopting regulations under this subsection,
5 the Secretary shall consider existing public sources of in-
6 formation, including nationally recognized certification
7 programs of trade associations.

8 “(3) The Secretary shall exercise authority under this
9 section in a manner designed to minimize unnecessary
10 burdens on manufacturers of covered products.

11 “(4) To the extent that they do not conflict with the
12 duties of the Secretary in carrying out this part, the provi-
13 sions of section 11(d) of the Energy Supply and Environ-
14 mental Coordination Act of 1974 (15 U.S.C. 796(d)) shall
15 apply with respect to information obtained under this sub-
16 section to the same extent and in the same manner as
17 they apply with respect to other energy information ob-
18 tained under such section.”.

19 (f) STATE WAIVER.—Section 327(c) of the Energy
20 Policy and Conservation Act (42 U.S.C. 6297(c)), as
21 amended by section 161(a)(19) of this Act, is further
22 amended by adding at the end the following:

23 “(12) is a regulation concerning standards for
24 hot food holding cabinets, drinking water dispensers

1 and portable electric spas adopted by the California
2 Energy Commission on or before January 1, 2013.”.

3 (g) WAIVER OF FEDERAL PREEMPTION.—Paragraph
4 (1) of section 327(d) of the Energy Policy and Conserva-
5 tion Act (42 U.S.C. 6297(d)) is amended as follows:

6 (1) In subparagraph (A) by striking “State reg-
7 ulation” each place it appears and inserting “State
8 statute or regulation”.

9 (2) In subparagraph (B) by adding at the end
10 the following new sentence: “In making such a find-
11 ing, the Secretary may not reject a petition for fail-
12 ure of the petitioning State or river basin commis-
13 sion to produce confidential information maintained
14 by any manufacturer or distributor, or group or as-
15 sociation of manufacturers or distributors, and
16 which the petitioning party does not have the legal
17 right to obtain.”.

18 (3) In clause (ii) of subparagraph (C) by strik-
19 ing “costs” each place it appears and inserting “es-
20 timated costs”.

21 (4) In subparagraph (C) by striking “within the
22 context of the State’s energy plan and forecast,
23 and,”.

24 (h) INCLUSION OF CARBON OUTPUT ON APPLIANCE
25 “ENERGYGUIDE” LABELS.—(1) Section 324(a)(2) of the

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

4 “(I)(i) Not later than 90 days after the date of enact-
5 ment of this subparagraph, the Commission shall initiate
6 a rulemaking to implement the additional labeling require-
7 ments specified in subsection (c)(1)(C) of this section with
8 an effective date for the revised labeling requirement not
9 later than 12 months from issuance of the final rule.

10 “(ii) Not later than 24 months after the date of en-
11 actment of this subparagraph, the Commission shall com-
12 plete the rulemaking initiated under clause (i).

13 “(iii) Not later than 90 days after issuance of the
14 final rule as provided in this subparagraph, the Secretary
15 shall issue calculation methods required to effectuate the
16 labeling requirements specified in subsection (c)(1)(C) of
17 this section.”.

18 (2) Section 324(c)(1) of the Energy Policy and Con-
19 servation Act (42 U.S.C. 6294(c)(1)) is amended—

20 (A) by striking “and” at the end of subpara-
21 graph (A);

22 (B) by striking the period at the end of sub-
23 paragraph (B) and inserting a semicolon; and

24 (C) by adding at the end the following new sub-
25 paragraphs:

1 “(C) for products or groups of products pro-
2 viding a comparable function (including the group of
3 products comprising the heating function of heat
4 pumps and furnaces) among covered products listed
5 in paragraphs (3), (4), (5), (8), (9), (10), and (11)
6 of section 322(a) of this part, and others designated
7 by the Secretary, the estimated total annual atmos-
8 pheric carbon dioxide emissions (or their equivalent
9 in other greenhouse gases) associated with, or
10 caused by, the product, calculated utilizing—

11 “(i) national average energy use for the
12 product including energy consumed at the point
13 of end use based on test procedures developed
14 under section 323 of this part;

15 “(ii) national average energy consumed or
16 lost in the production, generation, transpor-
17 tation, storage, and distribution of energy to
18 the point of end use; and

19 “(iii) any direct emissions of greenhouse
20 gases from the product during normal use;

21 “(D) in determining the national average
22 energy consumption and total annual atmos-
23 pheric carbon dioxide emissions, the Secretary
24 shall utilize Federal Government sources, in-
25 cluding the Energy Information Administration

1 Annual Energy Review, the Environmental Pro-
2 tection Agency eGRID database, Environmental
3 Protection Agency AP-42 Emission Factors as
4 amended, and other sources determined to be
5 appropriate by the Secretary; and

6 “(E) information presenting, for each
7 product (or group of products providing the
8 comparable function) identified in section
9 (c)(1)(C) of this section, the estimated annual
10 carbon dioxide emissions calculated within the
11 range of emissions calculated for all models of
12 the product or group according to its function,
13 including those models consuming fuels and
14 those models not consuming fuels.”.

15 (i) PERMITTING STATES TO SEEK INJUNCTIVE EN-
16 FORCEMENT.—(1) Section 334 of the Energy Policy and
17 Conservation Act (42 U.S.C. 6304) is amended to read
18 as follows:

19 **“SEC. 334. JURISDICTION AND VENUE.**

20 “(a) JURISDICTION.—The United States district
21 courts shall have jurisdiction to restrain—

22 “(1) any violation of section 332; and

23 “(2) any person from distributing in commerce
24 any covered product which does not comply with an
25 applicable rule under section 324 or 325.

1 “(b) AUTHORITY.—Any action referred to in sub-
2 section (a) shall be brought by the Commission or by the
3 attorney general of a State in the name of the State, ex-
4 cept that—

5 “(1) any such action to restrain any violation of
6 section 332(a)(3) which relates to requirements pre-
7 scribed by the Secretary or any violation of section
8 332(a)(4) which relates to request of the Secretary
9 under section 326(b)(2) shall be brought by the Sec-
10 retary; and

11 “(2) any violation of section 332(a)(5) or
12 332(a)(7) shall be brought by the Secretary or by
13 the attorney general of a State in the name of the
14 State.

15 “(c) VENUE AND SERVICE OF PROCESS.—Any such
16 action may be brought in the United States district court
17 for a district wherein any act, omission, or transaction
18 constituting the violation occurred, or in such court of the
19 district wherein the defendant is found or transacts busi-
20 ness. In any action under this section, process may be
21 served on a defendant in any other district in which the
22 defendant resides or may be found.”.

23 (2) The item relating to section 334 in the table of
24 contents for such Act is amended to read as follows:

“Sec. 334. Jurisdiction and venue.”.

1 (j) TREATMENT OF APPLIANCES WITHIN BUILDING
2 CODES.—(1) Section 327(f)(3) of the Energy Policy and
3 Conservation Act (42 U.S.C. 6297(f)(3)) is amended by
4 striking subparagraphs (B) through (G) and inserting the
5 following:

6 “(B) The code meets at least one of the fol-
7 lowing requirements:

8 “(i) The code does not require that the
9 covered product have an energy efficiency ex-
10 ceeding—

11 “(I) the applicable energy conserva-
12 tion standard established in or prescribed
13 under section 325;

14 “(II) the level required by a regula-
15 tion of that State for which the Secretary
16 has issued a rule granting a waiver under
17 subsection (d) of this section; or

18 “(III) the required level established in
19 the International Energy Conservation
20 Code or in a standard of the American So-
21 ciety of Heating, Refrigerating and Air-
22 Conditioning Engineers, or by the Sec-
23 retary pursuant to section 304 of the En-
24 ergy Conservation and Production Act.

1 “(ii) If the code uses one or more baseline
2 building designs against which all submitted
3 building designs are to be evaluated and such
4 baseline building designs contain a covered
5 product subject to an energy conservation
6 standard established in or prescribed under sec-
7 tion 325, the baseline building designs are
8 based on an efficiency level for such covered
9 product which meets but does not exceed one of
10 the levels specified in clause (i).

11 “(iii) If the code sets forth one or more op-
12 tional combinations of items which meet the en-
13 ergy consumption or conservation objective, in
14 at least one combination that the State has
15 found to be reasonably achievable using com-
16 mercially available technologies the efficiency of
17 the covered product meets but does not exceed
18 one of the levels specified in clause (i).

19 “(C) The credit to the energy consumption or
20 conservation objective allowed by the code for install-
21 ing covered products having energy efficiencies ex-
22 ceeding one of the levels specified in subparagraph
23 (B)(i) is on a one-for-one equivalent energy use or
24 equivalent energy cost basis, taking into account the
25 typical lifetime of the product.

1 “(D) The energy consumption or conservation
2 objective is specified in terms of an estimated total
3 consumption of energy (which may be calculated
4 from energy loss- or gain-based codes) utilizing an
5 equivalent amount of energy (which may be specified
6 in units of energy or its equivalent cost) and equiva-
7 lent lifetimes.

8 “(E) The estimated energy use of any covered
9 product permitted or required in the code, or used
10 in calculating the objective, is determined using the
11 applicable test procedures prescribed under section
12 323, except that the State may permit the estimated
13 energy use calculation to be adjusted to reflect the
14 conditions of the areas where the code is being ap-
15 plied if such adjustment is based on the use of the
16 applicable test procedures prescribed under section
17 323 or other technically accurate documented proce-
18 dure.”.

19 (2) Section 327(f)(4)(B) of the Energy Policy
20 and Conservation Act (42 U.S.C. 6297(f)(4)(B)) is
21 amended to read as follows:

22 “(B) If a building code requires the installation of
23 covered products with efficiencies exceeding the levels and
24 requirements specified in paragraph (3)(B), such require-
25 ment of the building code shall not be applicable unless

1 the Secretary has granted a waiver for such requirement
2 under subsection (d) of this section.”.

3 **SEC. 214. BEST-IN-CLASS APPLIANCES DEPLOYMENT PRO-**
4 **GRAM.**

5 (a) IN GENERAL.—Not later than 1 year after the
6 date of enactment of this Act, the Secretary of Energy,
7 in consultation with the Administrator, shall establish a
8 program to be known as the “Best-in-Class Appliances
9 Deployment Program” to—

10 (1) provide bonus payments to retailers or dis-
11 tributors under subsection (c) for sales of best-in-
12 class high-efficiency household appliance models,
13 high-efficiency installed building equipment, and
14 high-efficiency consumer electronics, with the goal of
15 reducing life-cycle costs for consumers, encouraging
16 innovation, and maximizing energy savings and pub-
17 lic benefit;

18 (2) provide bounties under subsection (d) to re-
19 tailers and manufacturers for the replacement, re-
20 tirement, and recycling of old, inefficient, and envi-
21 ronmentally harmful products; and

22 (3) provide premium awards under subsection
23 (e) to manufacturers for developing and producing
24 new Superefficient Best-in-Class Products.

1 (b) DESIGNATION OF BEST-IN-CLASS PRODUCT
2 MODELS.—

3 (1) IN GENERAL.—The Secretary of Energy
4 shall designate product models of appliances, equip-
5 ment, or electronics as Best-in-Class Product mod-
6 els. The Secretary shall publicly announce the Best-
7 in-Class Product models designated under this sub-
8 section. The Secretary shall define product classes
9 broadly and, except as provided in paragraph (2),
10 shall designate as Best-in-Class Product models no
11 more than the most efficient 10 percent of the com-
12 mercially available product models in a class that
13 demonstrate, as a group, a distinctly greater energy
14 efficiency than the average energy efficiency of that
15 class of appliances, equipment, or electronics. In des-
16 ignating models, the Secretary shall—

17 (A) identify commercially available models
18 in the relevant class of products;

19 (B) identify the subgroup of those models
20 that share the distinctly higher energy-effi-
21 ciency characteristics that warrant designation
22 as best-in-class; and

23 (C) add other models in that class to the
24 list of Best-in-Class Product models as they
25 demonstrate their ability to meet the higher-ef-

1 efficiency characteristics on which the designation
2 was made.

3 (2) PERCENTAGE EXCEPTION.—If there are
4 fewer than 10 product models in a class of products,
5 the Secretary may designate one or more of such
6 models as Best-in-Class Products.

7 (3) REVIEW OF BEST-IN-CLASS STANDARDS.—
8 The Secretary shall review annually the product-spe-
9 cific criteria for designating, and the product models
10 that qualify as, Best-in-Class Products and, after
11 notice and a 30-day comment period, make upwards
12 adjustments in the efficiency criteria as necessary to
13 maintain an appropriate ratio of such product mod-
14 els to the total number of product models in the
15 product class.

16 (4) SMART GRID ENERGY EFFICIENCY SAV-
17 INGS.—The Secretary shall include energy efficiency
18 savings achieved by a commercially available product
19 having smart grid capability in determining the effi-
20 ciency level of a product for purposes of a Best-In-
21 Class Product designation pursuant to this sub-
22 section. In measuring energy efficiency savings
23 achieved by smart grid capability, the Secretary
24 shall use a metric that—

1 (A) is based on the time-differentiated
2 value and amount of energy consumption;

3 (B) accounts for the capability of the prod-
4 uct to respond to a smart grid in which the
5 physical capability of the product to save or
6 delay energy because of a smart grid feature is
7 weighted by the likelihood that the feature will
8 be used;

9 (C) is based on the value of a unit of elec-
10 tric or gas consumption as a function of time
11 of day and season; and

12 (D) includes a test method by which the
13 manufacturer shall determine the energy effi-
14 ciency of smart grid capable products.

15 (c) BONUSSES FOR SALES OF BEST-IN-CLASS PROD-
16 UCTS.—

17 (1) IN GENERAL.—The Secretary of Energy
18 shall make bonus payments to retailers or, as pro-
19 vided in paragraph (5)(B), distributors for the sale
20 of Best-in-Class Products.

21 (2) BONUS PROGRAM.—The Secretary shall—

22 (A) publicly announce the availability and
23 amount of the bonus to be paid for each sale
24 of a Best-in-Class Product of a model des-
25 ignated under subsection (b); and

1 (B) make bonus payments in at least that
2 amount for each Best-in-Class Product of that
3 model sold during the 3-year period beginning
4 on the date the model is designated under sub-
5 section (b).

6 (3) UPGRADE OF BEST-IN-CLASS PRODUCT ELI-
7 GIBILITY.—In conducting a review under subsection
8 (b)(3), the Secretary shall—

9 (A) consider designating as a Best-in-Class
10 Product model a Superefficient Best-in-Class
11 Product model that has been designated pursu-
12 ant to subsection (e);

13 (B) announce any change in the bonus
14 payment as necessary to increase the market
15 share of Best-in-Class Product models;

16 (C) list models that will be eligible for bo-
17 nuses in the new amount; and

18 (D) continue paying bonus payments at
19 the original level, for the sale of any models
20 that previously qualified as Best-in-Class Prod-
21 ucts but do not qualify at the new level, for the
22 remainder of the 3-year period announced with
23 the original designation.

1 (4) SIZE OF INDIVIDUAL BONUS PAYMENTS.—

2 (A) The size of each bonus payment under this sub-
3 section shall be the product of—

4 (i) an amount determined by the Sec-
5 retary; and

6 (ii) the difference in energy consumption
7 between the Best-in-Class Product and the av-
8 erage product in the product class.

9 (B) The Secretary shall determine the amount
10 under subparagraph (A)(i) for each product type, in
11 consultation with State and utility efficiency pro-
12 gram administrators as well as the Administrator,
13 based on estimates of the amount of bonus payment
14 that would provide significant incentive to increase
15 the market share of Best-in-Class Products.

16 (5) ELIGIBLE BONUS RECIPIENT.—(A) The
17 Secretary shall ensure that not more than 1 bonus
18 payment is provided under this subsection for each
19 Best-in-Class Product.

20 (B) The Secretary may make distributors eligi-
21 ble to receive bonus payments under this subsection
22 for sales that are not to the final end-user, to the
23 extent that the Secretary determines that for a par-
24 ticular product category distributors are well situ-
25 ated to increase sales of Best-in-Class Products.

1 (d) BOUNTIES FOR REPLACEMENT, RETIREMENT,
2 AND RECYCLING OF EXISTING LOW-EFFICIENCY PROD-
3 UCTS.—

4 (1) IN GENERAL.—The Secretary of Energy
5 shall make bounty payments to—

6 (A) retailers for the replacement, retire-
7 ment, and recycling of older operating low-effi-
8 ciency products that might otherwise continue
9 in operation; and

10 (B) manufacturers of Superefficient Best-
11 in-Class Products for the retirement and recy-
12 cling of older operating low-efficiency products
13 that perform the same function and which
14 might otherwise continue in operation.

15 (2) BOUNTIES.—Bounties shall be payable—

16 (A) to a retailer upon documentation that
17 the sale of a Best-in-Class Product was accom-
18 panied by the replacement, retirement, and re-
19 cycling of—

20 (i) an inefficient but still-functioning
21 product; or

22 (ii) a nonfunctioning product con-
23 taining a refrigerant, by the consumer to
24 whom the Best-in-Class Product was sold;
25 and

1 (B) to a manufacturer upon documentation
2 of the retirement and recycling of—

3 (i) an inefficient but still-functioning
4 product from a consumer to whom a
5 Superefficient Best-in-Class Product was
6 delivered; or

7 (ii) a nonfunctioning product con-
8 taining a refrigerant from a consumer to
9 whom a Superefficient Best-in-Class Prod-
10 uct was delivered.

11 (3) AMOUNT.—

12 (A) FUNCTIONING PRODUCTS.—The boun-
13 ty payment payable under this subsection for a
14 product described in paragraphs (2)(A)(i) and
15 (2)(B)(i) shall be based on the difference be-
16 tween the estimated energy use of the product
17 replaced and the energy use of an average new
18 product in the product class, over the estimated
19 remaining lifetime of the product that was re-
20 placed.

21 (B) NONFUNCTIONING PRODUCTS CON-
22 TAINING REFRIGERANTS.—The bounty payment
23 payable under this subsection for a product de-
24 scribed in paragraphs (2)(A)(ii) and (2)(B)(ii)
25 shall be in the amount that the Secretary of

1 Energy, in consultation with the Administrator,
2 determines is sufficient to promote the recycling
3 of such products, up to the amount of bounty
4 for a comparable product described in para-
5 graphs (2)(A) and (2)(B).

6 (4) RETIREMENT.—The Secretary shall ensure
7 that no product for which a bounty is paid under
8 this subsection is returned to active service, but that
9 it is instead destroyed, and recycled to the extent
10 feasible.

11 (5) RECYCLING APPLIANCES CONTAINING RE-
12 FRIGERANTS.—Exclusively for the purpose of imple-
13 menting the bounty payment program for products
14 containing a refrigerant under this section, the Ad-
15 ministrator shall establish standards for environ-
16 mentally responsible methods of recycling and dis-
17 posal of refrigerant-containing appliances that, at a
18 minimum, meet the requirements set by the Respon-
19 sible Appliance Disposal (RAD) Program for refrig-
20 erant disposal. The Secretary shall ensure that such
21 standards are met before a bounty payment is made
22 under this subsection for a product containing a re-
23 frigerant. Nothing in this section shall be interpreted
24 to alter the requirements of section 608 of the Clean

1 Air Act or to relieve any person from complying with
2 those requirements.

3 (e) PREMIUM AWARDS FOR DEVELOPMENT AND
4 PRODUCTION OF SUPEREFFICIENT BEST-IN-CLASS PROD-
5 UCTS.—

6 (1) IN GENERAL.—(A) The Secretary of Energy
7 shall provide premium awards to manufacturers for
8 the development and production of Superefficient
9 Best-in-Class Products. The Secretary shall set and
10 periodically revise standards for eligibility of prod-
11 ucts for designation as a Superefficient Best-in-
12 Class Product.

13 (B) The Secretary may establish a standard for
14 a Superefficient Best-in-Class Product even if no
15 product meeting that standard exists, if the Sec-
16 retary has reasonable grounds to conclude that a
17 mass-producible product could be made to meet that
18 standard.

19 (C) The Secretary may also establish a Super-
20 efficient Best-in-Class Product standard that is met
21 by one or more existing Best-in-Class Product mod-
22 els, if those product models have distinct energy effi-
23 ciency attributes and performance characteristics
24 that make them significantly better than other prod-
25 uct models qualifying as best-in-class. The Secretary

1 may not designate as Superefficient Best-in-Class
2 Products under this subparagraph models that rep-
3 resent more than 10 percent of the currently quali-
4 fying Best-in-Class Product models. This subpara-
5 graph shall not apply to products designated pursu-
6 ant to paragraph (4)(A).

7 (D) In making its finding on the efficiency level
8 a product can achieve for purposes of a Supereffi-
9 cient Best-In-Class Product designation pursuant to
10 this paragraph, the Secretary shall include energy
11 efficiency savings that would be achieved by a prod-
12 uct as a result of smart grid capability when a prod-
13 uct having such capability can be produced and sold
14 commercially to mass market consumers. In meas-
15 uring energy efficiency savings achieved by smart
16 grid capability, the Secretary shall use a metric
17 that—

18 (i) is based on the time-differentiated value
19 and amount of energy consumption;

20 (ii) accounts for the capability of the prod-
21 uct to respond to a smart grid in which the
22 physical capability of the product to save or
23 delay energy because of a smart grid feature is
24 weighted by the likelihood that the feature will
25 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 1 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 4 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. EARLY ADOPTER WATER EFFICIENT PRODUCT IN-**
20 **CENTIVE PROGRAMS.**

21 (a) DEFINITIONS.—In this section:

22 (1) ELIGIBLE ENTITY.—The term “eligible enti-
23 ty” means a State government, local or county gov-
24 ernment, tribal government, wastewater or sewerage
25 utility, municipal water authority, energy utility,

1 water utility, or nonprofit organization that meets
2 the requirements of subsection (b).

3 (2) INCENTIVE PROGRAM.—The term “incentive
4 program” means a program for administering finan-
5 cial incentives for consumer purchase and installa-
6 tion of residential water efficient products and serv-
7 ices as described in subsection (b)(1).

8 (3) RESIDENTIAL WATER EFFICIENT PRODUCT
9 OR SERVICE.—The term “residential water efficient
10 product or service” means a product or service for
11 a single-family or multifamily residence or its land-
12 scape that is rated for water efficiency and perform-
13 ance—

14 (A) by the WaterSense program; or

15 (B) where a WaterSense specification does
16 not exist, by an incentive program.

17 Categories of water efficient products and services
18 may include faucets, irrigation technologies and
19 services, point-of-use water treatment devices, reuse
20 and recycling technologies, toilets, and showerheads.

21 (4) WATERSENSE PROGRAM.—The term
22 “WaterSense program” means the program estab-
23 lished by section 215 of this Act.

24 (b) ELIGIBLE ENTITIES.—An entity shall be eligible
25 to receive an allocation under subsection (c) if the entity—

1 (1) establishes (or has established) an incentive
2 program to provide rebates, vouchers, other financial
3 incentives, or direct installs to consumers for the
4 purchase of residential water efficient products or
5 services;

6 (2) submits an application for the allocation at
7 such time, in such form, and containing such infor-
8 mation as the Administrator may require; and

9 (3) provides assurances satisfactory to the Ad-
10 ministrator that the entity will use the allocation to
11 supplement, but not supplant, funds made available
12 to carry out the incentive program.

13 (c) AMOUNT OF ALLOCATIONS.—For each fiscal year,
14 the Administrator shall determine the amount to allocate
15 to each eligible entity to carry out subsection (d) taking
16 into consideration—

17 (1) the population served by the eligible entity
18 in the most recent calendar year for which data are
19 available;

20 (2) the targeted population of the eligible enti-
21 ty's incentive program, such as general households,
22 low-income households, or first-time homeowners,
23 and the probable effectiveness of the incentive pro-
24 gram for that population;

1 (3) for existing programs, the effectiveness of
2 the incentive program in encouraging the adoption
3 of water efficient products and services; and

4 (4) any prior year's allocation to the eligible en-
5 tity that remains unused.

6 (d) USE OF ALLOCATED FUNDS.—Funds allocated to
7 an entity under subsection (c) may be used to pay up to
8 50 percent of the cost of establishing and carrying out
9 an incentive program.

10 (e) FIXTURE RECYCLING.—Entities are encouraged
11 to promote or implement fixture recycling programs to
12 manage the disposal of older fixtures replaced due to the
13 incentive program under this section.

14 (f) ISSUANCE OF INCENTIVES.—Financial incentives
15 may be provided to consumers that meet the requirements
16 of the incentive program. The entity may issue all finan-
17 cial incentives directly to consumers or, with approval of
18 the Administrator, delegate some or all financial incentives
19 administration to other organizations including, but not
20 limited to, local governments, municipal water authorities,
21 and water utilities. The amount of a financial incentives
22 shall be determined by the entity, taking into consider-
23 ation—

24 (1) the amount of the allocation to the entity
25 under subsection (c);

1 (2) the amount of any Federal, State, or other
2 organization's tax or financial incentive available for
3 the purchase of the residential water efficient prod-
4 uct or service;

5 (3) the amount necessary to change consumer
6 behavior to purchase water efficient products and
7 services; and

8 (4) the consumer expenditures for onsite prepa-
9 ration, assembly, and original installation of the
10 product.

11 (g) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to the Administrator to
13 carry out this section \$50,000,000 for fiscal year 2010,
14 \$100,000,000 for fiscal year 2011, \$150,000,000 for fis-
15 cal year 2012, \$100,000,000 for fiscal year 2013, and
16 \$50,000,000 for fiscal year 2014.

17 **SEC. 218. CERTIFIED STOVES PROGRAM.**

18 (a) DEFINITIONS.—In this section:

19 (1) AGENCY.—The term “Agency” means the
20 Environmental Protection Agency.

21 (2) WOOD STOVE OR PELLET STOVE.—The
22 term “wood stove or pellet stove” means a wood
23 stove, pellet stove, or fireplace insert that uses wood
24 or pellets for fuel.

1 (3) CERTIFIED STOVE.—The term “certified
2 stove” means a wood stove or pellet stove that meets
3 the standards of performance for new residential
4 wood heaters under subpart AAA of part 60 of sub-
5 chapter C of chapter I of title 40, Code of Federal
6 Regulations (or successor regulations), as certified
7 by the Administrator. Pellet stoves and fireplace in-
8 serts using pellets for fuel that are exempt from
9 testing by the Administrator but meet the same
10 standards of performance as wood stoves are consid-
11 ered certified for the purposes of this section.

12 (4) ELIGIBLE ENTITY.—The term “eligible enti-
13 ty” means—

14 (A) a State, a local government, or a feder-
15 ally recognized Indian tribe;

16 (B) Alaskan Native villages or regional or
17 village corporations (as defined in, or estab-
18 lished under, the Alaskan Native Claims Settle-
19 ment Act (43 U.S.C. 1601 et seq.)); and

20 (C) a nonprofit organization or institution
21 that—

22 (i) represents or provides pollution re-
23 duction or educational services relating to
24 wood smoke minimization to persons, orga-
25 nizations, or communities; or

1 (ii) has, as its principal purpose, the
2 promotion of air quality or energy effi-
3 ciency.

4 (b) ESTABLISHMENT.—The Administrator shall es-
5 tablish and carry out a program to assist in the replace-
6 ment of wood stoves or pellet stoves that do not meet the
7 standards of performance referred to in subsection (a)(4)
8 by—

9 (1) requiring that each wood stove or pellet
10 stove sold in the United States on and after the date
11 of enactment of this Act meet the standards of per-
12 formance referred to in subsection (a)(4);

13 (2) requiring that no wood stove or pellet stove
14 replaced under this program is sold or returned to
15 active service, but that it is instead destroyed and
16 recycled to the maximum extent feasible;

17 (3) providing funds to an eligible entity to re-
18 place a wood stove or pellet stove that does not meet
19 the standards of performance in subsection (a)(4)
20 with a certified stove, including funds to pay for—

21 (A) installation of a replacement certified
22 stove; and

23 (B) necessary replacement of or repairs to
24 ventilation, flues, chimneys, or other relevant

1 items necessary for safe installation of a re-
2 placement certified stove;

3 (4) in addition to any funds that may be appro-
4 priated for the program under this subsection, using
5 existing Federal, State, and local programs and in-
6 centives, to the greatest extent practicable;

7 (5) prioritizing the replacement of wood stoves
8 or pellet stoves manufactured before July 1, 1990;
9 and

10 (6) carrying out such other activities as the Ad-
11 ministrator determines appropriate to facilitate the
12 replacement of wood stoves or pellet stoves that do
13 not meet the standards of performance referred to in
14 subsection (a)(3).

15 (c) REGULATIONS.—The Administrator may promul-
16 gate such regulations as are necessary to carry out the
17 program established under subsection (b).

18 (d) FUNDING.—

19 (1) AUTHORIZATION OF APPROPRIATIONS.—
20 There are authorized to be appropriated to carry out
21 the program under this section \$20,000,000 for the
22 period of fiscal years 2010 through 2014.

23 (2) DESIGNATED USE.—Of amounts appro-
24 priated pursuant to this subsection—

1 (A) 25 percent shall be designated for use
2 to carry out the program under this section on
3 lands held in trust for the benefit of a federally
4 recognized Indian tribe;

5 (B) 3 percent shall be designated for use
6 to carry out the program under this section in
7 Alaskan Native villages or regional or village
8 corporations (as defined in, or established
9 under, the Alaskan Native Claims Settlement
10 Act (43 U.S.C. 1601 et seq.)); and

11 (C) 72 percent shall be designated for use
12 to carry out the program under this section na-
13 tionwide.

14 (3) REGULATORY PROGRAMS.—

15 (A) IN GENERAL.—No grant or loan pro-
16 vided under this section shall be used to fund
17 the costs of emissions reductions that are man-
18 dated under Federal, State, or local law.

19 (B) MANDATED.—For purposes of sub-
20 paragraph (A), voluntary or elective emission
21 reduction measures shall not be considered
22 “mandated”, regardless of whether the reduc-
23 tions are included in the implementation plan of
24 a State.

1 (e) EPA AUTHORITY TO ACCEPT WOOD STOVE OR
2 PELLET STOVE REPLACEMENT SUPPLEMENTAL ENVI-
3 RONMENTAL PROJECTS.—

4 (1) IN GENERAL.—The Administrator may ac-
5 cept (notwithstanding sections 3302 and 1301 of
6 title 31, United States Code) wood stove or pellet
7 stove replacement Supplemental Environmental
8 Projects if such projects, as part of a settlement of
9 any alleged violation of environmental law—

10 (A) protect human health or the environ-
11 ment;

12 (B) are related to the underlying alleged
13 violation;

14 (C) do not constitute activities that the de-
15 fendant would otherwise be legally required to
16 perform; and

17 (D) do not provide funds for the staff of
18 the Agency or for contractors to carry out the
19 Agency's internal operations.

20 (2) CERTIFICATION.—In any settlement agree-
21 ment regarding an alleged violation of environmental
22 law in which a defendant agrees to perform a wood
23 stove or pellet stove replacement Supplemental Envi-
24 ronmental Project, the Administrator shall require
25 the defendant to include in the settlement docu-

1 ments a certification under penalty of law that the
2 defendant would have agreed to perform a com-
3 parably valued, alternative project other than a wood
4 stove or pellet stove replacement Supplemental Envi-
5 ronmental Project if the Administrator were pre-
6 cluded by law from accepting a wood stove or pellet
7 stove replacement Supplemental Environmental
8 Project. A failure by the Administrator to include
9 this language in such a settlement agreement shall
10 not create a cause of action against the United
11 States under the Clean Air Act or any other law or
12 create a basis for overturning a settlement agree-
13 ment entered into by the United States.

14 **SEC. 219. ENERGY STAR STANDARDS.**

15 (a) ENERGY STAR.—Section 324A(c) of the Energy
16 Policy and Conservation Act is amended—

17 (1) in paragraph (6)(B), by striking “and”
18 after the semicolon at the end;

19 (2) in paragraph (7), by striking the period at
20 the end and inserting a semicolon; and

21 (3) by adding at the end the following:

22 “(8) not later than 18 months after the date of
23 enactment of this paragraph, establish and imple-
24 ment a rating system for products identified as En-
25 ergy Star products pursuant to this section to pro-

1 vide consumers with the most helpful information on
2 the relative energy efficiency, including cost effec-
3 tiveness from the consumer’s perspective, and rel-
4 ative length of time for consumers to recover costs
5 attributable to the energy efficient features, of those
6 products, unless the Administrator and the Sec-
7 retary communicate to Congress that establishing
8 such a system would diminish the value of the En-
9 ergy Star brand to consumers;

10 “(9)(A) review the Energy Star product criteria
11 for the 10 product models in each product category
12 with the greatest energy consumption at least once
13 every 3 years; and

14 “(B) based on the review, update and publish
15 the Energy Star product criteria for each such cat-
16 egory, as necessary; and

17 “(10) require periodic verification of compliance
18 with the Energy Star product criteria by products
19 identified as Energy Star products pursuant to this
20 section, including—

21 “(A) purchase and testing of products
22 from the market; or

23 “(B) other appropriate testing and compli-
24 ance approaches.”.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to carry out the amend-
3 ments made by this section \$5,000,000 for fiscal year
4 2010 and for each fiscal year thereafter.

5 **Subtitle C—Transportation**
6 **Efficiency**

7 **SEC. 221. EMISSIONS STANDARDS.**

8 Title VIII of the Clean Air Act, as added by section
9 331 of this Act, is amended by inserting after part A the
10 following new part:

11 **“PART B—MOBILE SOURCES**

12 **“SEC. 821. GREENHOUSE GAS EMISSION STANDARDS FOR**
13 **MOBILE SOURCES.**

14 “(a) NEW MOTOR VEHICLES AND NEW MOTOR VE-
15 HICLE ENGINES.—(1) Pursuant to section 202(a)(1), by
16 December 31, 2010, the Administrator shall promulgate
17 standards applicable to emissions of greenhouse gases
18 from new heavy-duty motor vehicles or new heavy-duty
19 motor vehicle engines, excluding such motor vehicles cov-
20 ered by the Tier II standards (as established by the Ad-
21 ministrator as of the date of the enactment of this sec-
22 tion). The Administrator may revise these standards from
23 time to time.

24 “(2) Regulations issued under section 202(a)(1) ap-
25 plicable to emissions of greenhouse gases from new heavy-

1 duty motor vehicles or new heavy-duty motor vehicle en-
2 gines, excluding such motor vehicles covered by the Tier
3 II standards (as established by the Administrator as of
4 the date of the enactment of this section), shall contain
5 standards that reflect the greatest degree of emissions re-
6 duction achievable through the application of technology
7 which the Administrator determines will be available for
8 the model year to which such standards apply, giving ap-
9 propriate consideration to cost, energy, and safety factors
10 associated with the application of such technology. Any
11 such regulations shall take effect after such period as the
12 Administrator finds necessary to permit the development
13 and application of the requisite technology, and, at a min-
14 imum, shall apply for a period no less than 3 model years
15 beginning no earlier than the model year commencing 4
16 years after such regulations are promulgated.

17 “(3) Regulations issued under section 202(a)(1) ap-
18 plicable to emissions of greenhouse gases from new heavy-
19 duty motor vehicles or new heavy-duty motor vehicle en-
20 gines, excluding such motor vehicles covered by the Tier
21 II standards (as established by the Administrator as of
22 the date of the enactment of this section), shall supersede
23 and satisfy any and all of the rulemaking and compliance
24 requirements of section 32902(k) of title 49, United
25 States Code.

1 “(4) Other than as specifically set forth in paragraph
2 (3) of this subsection, nothing in this section shall affect
3 or otherwise increase or diminish the authority of the Sec-
4 retary of Transportation to adopt regulations to improve
5 the overall fuel efficiency of the commercial goods move-
6 ment system.

7 “(b) NONROAD VEHICLES AND ENGINES.—(1) Pur-
8 suant to section 213(a)(4) and (5), the Administrator
9 shall identify those classes or categories of new nonroad
10 vehicles or engines, or combinations of such classes or cat-
11 egories, that, in the judgment of the Administrator, both
12 contribute significantly to the total emissions of green-
13 house gases from nonroad engines and vehicles, and pro-
14 vide the greatest potential for significant and cost-effective
15 reductions in emissions of greenhouse gases. The Adminis-
16 trator shall promulgate standards applicable to emissions
17 of greenhouse gases from these new nonroad engines or
18 vehicles by December 31, 2012. The Administrator shall
19 also promulgate standards applicable to emissions of
20 greenhouse gases for such other classes and categories of
21 new nonroad vehicles and engines as the Administrator de-
22 termines appropriate and in the timeframe the Adminis-
23 trator determines appropriate. The Administrator shall
24 base such determination, among other factors, on the rel-
25 ative contribution of greenhouse gas emissions, and the

1 costs for achieving reductions, from such classes or cat-
2 egories of new nonroad engines and vehicles. The Adminis-
3 trator may revise these standards from time to time.

4 “(2) Standards under section 213(a)(4) and (5) ap-
5 plicable to emissions of greenhouse gases from those class-
6 es or categories of new nonroad engines or vehicles identi-
7 fied in the first sentence of paragraph (1) of this sub-
8 section, shall achieve the greatest degree of emissions re-
9 duction achievable based on the application of technology
10 which the Administrator determines will be available at
11 the time such standards take effect, taking into consider-
12 ation cost, energy, and safety factors associated with the
13 application of such technology. Any such regulations shall
14 take effect at the earliest possible date after such period
15 as the Administrator finds necessary to permit the devel-
16 opment and application of the requisite technology, giving
17 appropriate consideration to the cost of compliance within
18 such period, the applicable compliance dates for other
19 standards, and other appropriate factors, including the pe-
20 riod of time appropriate for the transfer of applicable tech-
21 nology from other applications, including motor vehicles,
22 and the period of time in which previously promulgated
23 regulations have been in effect.

24 “(3) For purposes of this section and standards
25 under section 213(a)(4) or (5) applicable to emissions of

1 greenhouse gases, the term ‘nonroad engines and vehicles’
2 shall include non-internal combustion engines and the ve-
3 hicles these engines power (such as electric engines and
4 electric vehicles), for those non-internal combustion en-
5 gines and vehicles which would be in the same category
6 and have the same uses as nonroad engines and vehicles
7 that are powered by internal combustion engines.

8 “(c) AVERAGING, BANKING, AND TRADING OF EMIS-
9 SIONS CREDITS.—In establishing standards applicable to
10 emissions of greenhouse gases pursuant to this section and
11 sections 202(a), 213(a)(4) and (5), and 231(a), the Ad-
12 ministrator may establish provisions for averaging, bank-
13 ing, and trading of greenhouse gas emissions credits with-
14 in or across classes or categories of motor vehicles and
15 motor vehicle engines, nonroad vehicles and engines (in-
16 cluding marine vessels), and aircraft and aircraft engines,
17 to the extent the Administrator determines appropriate
18 and considering the factors appropriate in setting stand-
19 ards under those sections. Such provisions may include
20 reasonable and appropriate provisions concerning genera-
21 tion, banking, trading, duration, and use of credits.

22 “(d) REPORTS.—The Administrator shall, from time
23 to time, submit a report to Congress that projects the
24 amount of greenhouse gas emissions from the transpor-
25 tation sector, including transportation fuels, for the years

1 2030 and 2050, based on the standards adopted under
2 this section.

3 “(e) GREENHOUSE GASES.—Notwithstanding the
4 provisions of section 711, hydrofluorocarbons shall be con-
5 sidered a greenhouse gas for purposes of this section.”.

6 **SEC. 222. GREENHOUSE GAS EMISSIONS REDUCTIONS**
7 **THROUGH TRANSPORTATION EFFICIENCY.**

8 (a) ENVIRONMENTAL PROTECTION AGENCY.—Title
9 VIII of the Clean Air Act, as added by section 331 of this
10 Act, is further amended by inserting after part C the fol-
11 lowing new part:

12 **“PART D—TRANSPORTATION EMISSIONS**
13 **“SEC. 841. GREENHOUSE GAS EMISSIONS REDUCTIONS**
14 **THROUGH TRANSPORTATION EFFICIENCY.**

15 “(a) IN GENERAL.—The Administrator, in consulta-
16 tion with the Secretary of Transportation, shall promul-
17 gate, and update from time to time, regulations to estab-
18 lish national transportation-related greenhouse gas emis-
19 sions reduction goals, standardized models and methodolo-
20 gies for use in developing surface transportation-related
21 greenhouse gas emissions reduction targets pursuant to
22 sections 134 and 135 of title 23 of the United States Code
23 and methods for collection of data on transportation-re-
24 lated greenhouse gas emissions. Such goals shall be com-
25 mensurate with the emissions reductions goals established

1 under the American Clean Energy and Security Act of
2 2009. In establishing such goals, models, and methodolo-
3 gies, the Administrator shall consult with States and met-
4 ropolitan planning organizations and may utilize existing
5 models and methodologies.

6 “(b) TIMING.—The Administrator shall—

7 “(1) publish proposed regulations under sub-
8 section (a) not later than 12 months after the date
9 of enactment of this section; and

10 “(2) promulgate final regulations under sub-
11 section (a) not later than 18 months after the date
12 of enactment of this section.

13 “(c) ASSESSMENT.—At least every 6 years after pro-
14 mulgating final regulations under subsection (a), the Ad-
15 ministrator, jointly with the Secretary of Transportation,
16 shall assess current and projected progress in reducing na-
17 tional transportation-related greenhouse gas emissions.
18 The assessment shall examine the contributions to emis-
19 sions reductions attributable to improvements in vehicle
20 efficiency, greenhouse gas performance of transportation
21 fuels, increased efficiency in utilizing transportation sys-
22 tems and the effects of local and State planning.”.

23 (b) METROPOLITAN PLANNING ORGANIZATIONS.—
24 Section 134 of title 23 of the United States Code is
25 amended as follows:

1 (1) In subsection (a)(1)—

2 (A) by striking “minimizing” and inserting
3 “reducing”; and

4 (B) by inserting “, reliance on oil, impacts
5 on the environment, transportation-related
6 greenhouse gas emissions” after “consump-
7 tion”.

8 (2) In subsection (h)(1)(E)—

9 (A) by inserting “sustainability and liv-
10 ability, reduce surface transportation-related
11 greenhouse gas emissions and reliance on oil,
12 adapt to the effects of climate change,” after
13 “energy conservation”;

14 (B) by inserting “and public health” after
15 “quality of life”; and

16 (C) by inserting “, including housing and
17 land use patterns” after “development pat-
18 terns”.

19 (3) In subsection (i)(4)(A) by inserting “air
20 quality, public health, housing, transportation,”
21 after “conservation,”.

22 (4) In subsection (k) by inserting at the end the
23 following new paragraph:

24 “(6) EMISSIONS REDUCTION PROCESS.—

1 “(A) IN GENERAL.—Within a metropolitan
2 planning area serving a transportation manage-
3 ment area, the transportation planning process
4 under this section shall address transportation-
5 related greenhouse gas emissions by including
6 emission reduction targets and strategies.

7 “(B) ESTABLISHMENT OF EMISSIONS RE-
8 DUCTION TARGETS AND STRATEGIES.—

9 “(i) IN GENERAL.—Not later than 1
10 year after the promulgation of the final
11 regulations required under section 841 of
12 the Clean Air Act, each metropolitan plan-
13 ning organization shall develop surface
14 transportation-related greenhouse gas
15 emission reduction targets, as well as
16 strategies to meet such targets, as part of
17 the transportation planning process under
18 this section. If more than one metropolitan
19 planning organization has been designated
20 within a metropolitan planning area serv-
21 ing a transportation management area,
22 each such metropolitan planning organiza-
23 tion shall work cooperatively with other
24 such organization to develop the surface
25 transportation-related greenhouse gas

1 emission reduction targets required under
2 this subparagraph.

3 “(ii) MINIMUM REQUIREMENTS.—

4 Each metropolitan planning organization
5 that develops targets and strategies re-
6 quired under clause (i) shall demonstrate
7 progress in stabilizing and reducing trans-
8 portation-related greenhouse gas emissions
9 in each metropolitan planning area serving
10 a surface transportation management area.
11 The targets and strategies shall, at a min-
12 imum—

13 “(I) be based on the models and
14 methodologies established in the final
15 regulations required under section
16 841 of the Clean Air Act;

17 “(II) address sources of surface
18 transportation-related greenhouse gas
19 emissions and contribute to achieve-
20 ment of the national transportation-
21 related greenhouse gas emissions re-
22 duction goals;

23 “(III) include efforts to increase
24 public transportation ridership; and

1 “(IV) include efforts to increase
2 walking, bicycling, and other forms of
3 nonmotorized transportation.

4 “(C) PUBLIC NOTICE.—Each metropolitan
5 planning organization shall make its emission
6 reduction targets and strategies, and an anal-
7 ysis of the anticipated effects thereof, available
8 to the public through its Web site.

9 “(D) ENFORCEMENT.—If the Secretary
10 finds that a metropolitan planning organization
11 has failed to develop, submit or publish its
12 emission reduction targets and strategies, the
13 Secretary shall not certify that the require-
14 ments of this section are met with respect to
15 the metropolitan planning process of such orga-
16 nization.”.

17 (c) STATES.—Section 135 of title 23 of the United
18 States Code is amended as follows:

19 (1) In subsection (d)(1)(E)—

20 (A) by inserting “sustainability and liv-
21 ability, reduce surface transportation-related
22 greenhouse gas emissions and reliance on oil,
23 adapt to the effects of climate change,” after
24 “energy conservation”;

1 (B) by inserting “and public health” after
2 “quality of life”; and

3 (C) by inserting “, including housing and
4 land use patterns” after “development pat-
5 terns”.

6 (2) In subsection (f)(2)(D)(i) by inserting “air
7 quality, public health, housing, transportation,”
8 after “conservation,”.

9 (3) In subsection (f) by inserting at the end the
10 following new paragraph:

11 “(9) EMISSIONS REDUCTION PROCESS.—

12 “(A) IN GENERAL.—Within a State, the
13 transportation planning process under this sec-
14 tion shall address transportation-related green-
15 house gas emissions by including emission re-
16 duction targets and strategies.

17 “(B) ESTABLISHMENT OF EMISSIONS RE-
18 Duction TARGETS AND STRATEGIES.—

19 “(i) IN GENERAL.—Not later than 1
20 year after the promulgation of the final
21 regulations required under section 841 of
22 the Clean Air Act, each State shall develop
23 surface transportation-related greenhouse
24 gas emission reduction targets, as well as
25 strategies to meet such targets, as part of

1 the transportation planning process under
2 this section.

3 “(ii) MINIMUM REQUIREMENTS.—
4 Each State that develops targets and strat-
5 egies required under clause (i) shall dem-
6 onstrate progress in stabilizing and reduc-
7 ing transportation-related greenhouse gas
8 emissions in such State. The targets and
9 strategies shall, at a minimum—

10 “(I) be based on the models and
11 methodologies established in the final
12 regulations required under section
13 841 of the Clean Air Act;

14 “(II) address sources of surface
15 transportation-related greenhouse gas
16 emissions and contribute to achieve-
17 ment of the national transportation-
18 related greenhouse gas emissions re-
19 duction goals;

20 “(III) include efforts to increase
21 public transportation ridership; and

22 “(IV) include efforts to increase
23 walking, bicycling, and other forms of
24 nonmotorized transportation.

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 **SEC. 246. CLEAN ENERGY MANUFACTURING REVOLVING**
14 **LOAN FUND PROGRAM.**

15 The National Institute of Standards and Technology
16 Act (15 U.S.C. 271 et seq.) is amended by inserting after
17 section 26 the following:

18 **“SEC. 27. CLEAN ENERGY MANUFACTURING REVOLVING**
19 **LOAN FUND PROGRAM.**

20 “(a) PURPOSES.—The purposes of this section are as
21 follows:

22 “(1) To develop the long-term manufacturing
23 capacity of the United States.

24 “(2) To create jobs through the retooling and
25 expansion of manufacturing facilities to produce

1 clean energy technology products and energy effi-
2 cient products.

3 “(3) To improve the long-term competitiveness
4 of domestic manufacturing by increasing the energy
5 efficiency of manufacturing facilities.

6 “(4) To assist small and medium-sized manu-
7 facturers diversify operations to respond to emerging
8 clean energy technology product markets.

9 “(b) DEFINITIONS.—In this section:

10 “(1) CLEAN ENERGY TECHNOLOGY PRODUCT.—
11 The term ‘clean energy technology product’ means
12 technology products relating to the following:

13 “(A) Wind turbines.

14 “(B) Solar energy.

15 “(C) Fuel cells.

16 “(D) Advanced batteries, battery systems,
17 or storage devices.

18 “(E) Biomass equipment.

19 “(F) Geothermal equipment.

20 “(G) Advanced biofuels.

21 “(H) Ocean energy equipment.

22 “(I) Carbon capture and storage.

23 “(J) Such other products as the Secretary
24 determines—

1 “(i) relate to the production, use,
2 transmission, storage, control, or conserva-
3 tion of energy;

4 “(ii) reduce greenhouse gas concentra-
5 tions;

6 “(iii) achieve the earliest and max-
7 imum emission reductions within a reason-
8 able period per dollar invested;

9 “(iv) result in the fewest non-green-
10 house gas environmental impacts; and

11 “(v) either—

12 “(I) reduce the need for addi-
13 tional energy supplies by—

14 “(aa) using existing energy
15 supplies with greater efficiency;

16 or

17 “(bb) by transmitting, dis-
18 tributing, or transporting energy
19 with greater effectiveness
20 through the infrastructure of the
21 United States; or

22 “(II) diversity the sources of en-
23 ergy supply of the United States—

24 “(aa) to strengthen energy
25 security; and

1 “(bb) to increase supplies
2 with a favorable balance of envi-
3 ronmental effects if the entire
4 technology system is considered.

5 “(2) ENERGY EFFICIENT PRODUCT.—The term
6 ‘energy efficient product’ means a product that, as
7 determined by the Secretary in consultation with the
8 Secretary of Energy—

9 “(A) consumes significantly less energy
10 than the average amount that all similar prod-
11 ucts consumed on the day before the date of the
12 enactment of this Act; or

13 “(B) is a component, system, or group of
14 subsystems that is designed, developed, and
15 validated to optimize the energy efficiency of a
16 product.

17 “(3) HOLLINGS MANUFACTURING EXTENSION
18 CENTER.—The term ‘Hollings Manufacturing Exten-
19 sion Center’ means a center established under sec-
20 tion 25.

21 “(4) HOLLINGS MANUFACTURING PARTNERSHIP
22 PROGRAM.—The term ‘Hollings Manufacturing Part-
23 nership Program’ means the program established
24 under sections 25 and 26.

1 “(5) PROGRAM.—The term ‘Program’ means
2 the grant program established pursuant to sub-
3 section (c)(1).

4 “(6) REVOLVING LOAN FUND.—The term ‘re-
5 volving loan fund’ means a revolving loan fund de-
6 scribed in subsection (d).

7 “(7) SECRETARY.—Except as otherwise pro-
8 vided, the term ‘Secretary’ means the Secretary of
9 Commerce.

10 “(8) SMALL OR MEDIUM-SIZED MANUFAC-
11 Turer.—The term ‘small or medium-sized manufac-
12 turer’ means a manufacturer that employs fewer
13 than 500 full-time equivalent employees at a manu-
14 facturing facility that is not owned or controlled by
15 an automobile manufacturer.

16 “(c) GRANT PROGRAM.—

17 “(1) ESTABLISHMENT.—Not later than 120
18 days after the date of the enactment of this section,
19 the Secretary shall establish a program under which
20 the Secretary shall award grants to States to estab-
21 lish revolving loan funds to provide loans to small
22 and medium-sized manufacturers to finance the cost
23 of—

24 “(A) reequipping, expanding, or estab-
25 lishing (including applicable engineering costs)

1 a manufacturing facility in the United States to
2 produce—

3 “(i) clean energy technology products;

4 “(ii) energy efficient products; or

5 “(iii) integral component parts of
6 clean energy technology products or energy
7 efficient products; or

8 “(B) reducing the energy intensity or
9 greenhouse gas production of a manufacturing
10 facility in the United States, including using
11 energy intensive feedstocks.

12 “(2) MAXIMUM AMOUNT.—The Secretary may
13 not award a grant under the Program in an amount
14 that exceeds \$500,000,000 in any fiscal year.

15 “(d) CRITERIA FOR AWARDING GRANTS.—

16 “(1) MATCHING FUNDS.—The Secretary may
17 make a grant to a State under the Program only if
18 the State agrees to ensure that for each loan pro-
19 vided by the State under the Program, not less than
20 20 percent of the amount of each loan will come
21 from a non-Federal source.

22 “(2) ADMINISTRATIVE COSTS.—A State receiv-
23 ing a grant under the Program may only use such
24 amount of the grant for the costs of administering

1 the revolving loan fund as the Secretary shall pro-
2 vide in regulations.

3 “(3) APPLICATION.—Each State seeking a
4 grant under the Program shall submit to the Sec-
5 retary an application therefor in such form and in
6 such manner as the Secretary considers appropriate.

7 “(4) EVALUATION.—The Secretary shall evalu-
8 ate and prioritize an application submitted by a
9 State for a grant under the Program on the basis
10 of—

11 “(A) the description of the revolving loan
12 fund to be established with the grant and how
13 such revolving loan fund will achieve the pur-
14 poses described in subsection (a);

15 “(B) whether the State will be able to pro-
16 vide loans from the revolving loan fund to small
17 or medium-sized manufacturers before the date
18 that is 120 days after the date on which the
19 State receives the grant;

20 “(C) a description of how the State will
21 administer the revolving loan fund in coordina-
22 tion with other State and Federal programs, in-
23 cluding programs administered by the Assistant
24 Secretary for Economic Development;

1 “(D) a description of the actual or poten-
2 tial clean energy manufacturing supply chains,
3 including significant component parts, in the re-
4 gion served by the revolving loan fund;

5 “(E) how the State will target the provi-
6 sion of loans under the Program to manufactur-
7 ers located in regions characterized by high un-
8 employment and sudden and severe economic
9 dislocation, in particular where mass layoffs
10 have resulted in a precipitous increase in unem-
11 ployment;

12 “(F) the availability of a skilled manufac-
13 turing workforce in the region served by the re-
14 volving loan fund and the capacity of the re-
15 gion’s workforce and education systems to pro-
16 vide pathways for unemployed or low-income
17 workers into skilled manufacturing employment;

18 “(G) a description of how the State will
19 target loans to small or medium-sized manufac-
20 turers who are—

21 “(i) manufacturers of automobile com-
22 ponents; and

23 “(ii) either—

1 “(I) increasing the energy effi-
2 ciency of their manufacturing facili-
3 ties; or

4 “(II) retooling to manufacture
5 clean energy products or energy effi-
6 cient products, including manufac-
7 turing components to improve the
8 compliance of an automobile with fuel
9 economy standards prescribed under
10 section 32902 of title 49, United
11 States Code;

12 “(H) a description of how the State will
13 use the loan fund to achieve the earliest and
14 maximum greenhouse gas emission reductions
15 within a reasonable period of time per dollar in-
16 vested and with the fewest non-greenhouse gas
17 environmental impacts; and

18 “(I) such other factors as the Secretary
19 considers appropriate to ensure that grants
20 awarded under the Program effectively and effi-
21 ciently achieve the purposes described in sub-
22 section (a).

23 “(e) REVOLVING LOAN FUNDS.—

24 “(1) IN GENERAL.—A State receiving a grant
25 under the Program shall establish, maintain, and

1 administer a revolving loan fund in accordance with
2 this subsection.

3 “(2) DEPOSITS.—A revolving loan fund shall
4 consist of the following:

5 “(A) Amounts from grants awarded under
6 this section.

7 “(B) All amounts held or received by the
8 State incident to the provision of loans de-
9 scribed in subsection (f), including all collec-
10 tions of principal and interest.

11 “(3) EXPENDITURES.—Amounts in the revolv-
12 ing loan fund shall be available for the provision and
13 administration of loans in accordance with sub-
14 section (f).

15 “(4) LIMITATION.—No funds provided pursuant
16 to this section may be leveraged through use of tax-
17 exempt bonding authority by a State or a political
18 subdivision of a State.

19 “(f) LOANS.—

20 “(1) IN GENERAL.—A State receiving a grant
21 under this section shall use the amount in the re-
22 volving loan fund to provide loans to small and me-
23 dium-sized manufacturers as described in subsection
24 (c)(1).

1 “(2) LOAN TERMS AND CONDITIONS.—The fol-
2 lowing shall apply with respect to loans provided
3 under paragraph (1):

4 “(A) TERMS.—Loans shall have a term de-
5 termined by the State receiving the grant as
6 follows:

7 “(i) For fixed assets, the term of the
8 loan shall not exceed the useful life of the
9 asset and shall be less than 15 years.

10 “(ii) For working capital, the term of
11 the loan shall not exceed 36 months.

12 “(B) INTEREST RATES.—Loans shall bear
13 an interest rate determined by the State receiv-
14 ing the grant as follows:

15 “(i) The interest rate shall enable the
16 loan recipient to accomplish the activities
17 described in subparagraphs (A) and (B) of
18 subsection (c)(1).

19 “(ii) The interest rate may be set
20 below-market interest rates.

21 “(iii) The interest rate may not be
22 less than zero percent.

23 “(iv) The interest rate may not exceed
24 the current prime rate plus 500 basis
25 points.

1 “(C) DESCRIPTION AND BUDGET FOR USE
2 OF LOAN FUNDS.—Each recipient of a loan
3 from a State under the Program shall develop
4 and submit to the State and the Secretary a de-
5 scription and budget for the use of loan
6 amounts, including a description of the fol-
7 lowing:

8 “(i) Any new business expected to be
9 developed with the loan.

10 “(ii) Any improvements to manufac-
11 turing operations to be developed with the
12 loan.

13 “(iii) Any technology expected to be
14 commercialized with the loan.

15 “(D) PRIORITY IN REVIEW AND PREF-
16 ERENCE IN SELECTION FOR CERTAIN LOAN AP-
17 PPLICANTS.—

18 “(i) REVIEW.—In reviewing applica-
19 tions submitted by small or medium-sized
20 manufacturers for a loan, a recipient of a
21 grant under the Program shall give pri-
22 ority to small or medium-sized manufac-
23 turers described in clause (iii).

24 “(ii) SELECTION.—In selecting small
25 or medium-sized manufacturers to receive

1 a loan, a recipient of a grant under the
2 Program shall give preference to small or
3 medium-sized manufacturers described in
4 clause (iii).

5 “(iii) PRIORITY AND PREFERRED
6 SMALL OR MEDIUM-SIZED MANUFACTUR-
7 ERS.—A small or medium-sized manufac-
8 turer described in this clause is a manufac-
9 turer that—

10 “(I) is certified by a Hollings
11 Manufacturing Extension Center or a
12 manufacturing-related local inter-
13 mediary designated by the Secretary
14 for purposes of providing such certifi-
15 cation; or

16 “(II) provides individuals em-
17 ployed at the manufacturing facilities
18 of the manufacturer—

19 “(aa) pay in amounts that
20 are, on average, equal to or more
21 than the average wage of an indi-
22 vidual working in a manufac-
23 turing facility in the State; and

24 “(bb) health benefits.

1 “(iv) CERTIFICATION BY HOLLINGS
2 MANUFACTURING EXTENSION CENTER.—A
3 Hollings Manufacturing Extension Center
4 or other entity designated by the Secretary
5 for purposes of providing certification
6 under clause (iii)(I) shall only certify appli-
7 cations for a loan after carrying out a
8 qualitative and quantitative review of the
9 applicant’s business strategy, manufac-
10 turing operations, and technological ability
11 to contribute to the purposes described in
12 subsection (a).

13 “(E) REPAYMENT UPON RELOCATION OUT-
14 SIDE UNITED STATES.—

15 “(i) IN GENERAL.—If a person re-
16 ceives a loan under paragraph (1) to fi-
17 nance the cost of reequipping, expanding,
18 or establishing a manufacturing facility as
19 described in subsection (c)(1)(A) or to re-
20 duce the energy intensity of a manufac-
21 turing facility and such person relocates
22 the production activities of such manufac-
23 turing facility outside the United States
24 during the term of the loan, the recipient
25 shall repay such loan in full with interest

1 as described in clause (ii) and for a dura-
2 tion described in clause (iii).

3 “(ii) PAYMENT OF INTEREST.—Any
4 amount owed by the recipient of a loan
5 under paragraph (1) who is required to
6 repay the loan under clause (i) shall bear
7 interest at a penalty rate determined by
8 the Secretary to deter recipients of loans
9 under paragraph (1) from relocating pro-
10 duction activities as described in clause (i).

11 “(iii) PERIOD OF REPAYMENT.—Re-
12 payment of a loan under clause (i) shall be
13 for a duration determined by the Sec-
14 retary.

15 “(F) COMPLIANCE WITH WAGE RATE RE-
16 QUIREMENTS.—Each recipient of a loan shall
17 undertake and agree to incorporate or cause to
18 be incorporated into all contracts for construc-
19 tion, alteration or repair, which are paid for in
20 whole or in part with funds obtained pursuant
21 to such loan, a requirement that all laborers
22 and mechanics employed by contractors and
23 subcontractors performing construction, alter-
24 ation or repair shall be paid wages at rates not
25 less than those determined by the Secretary of

1 Labor, in accordance with subchapter IV of
2 chapter 31 of title 40, United States Code
3 (known as the ‘Davis-Bacon Act’), to be pre-
4 vailing for the corresponding classes of laborers
5 and mechanics employed on projects of a char-
6 acter similar to the contract work in the same
7 locality in which the work is to be performed.
8 The Secretary of Labor shall have, with respect
9 to the labor standards specified in this subpara-
10 graph, the authority and functions set forth in
11 Reorganization Plan Numbered 14 of 1950 (15
12 Fed. Reg. 3176; 64 Stat. 1267) and section
13 3145 of title 40, United States Code.

14 “(G) ANNUAL REPORTS BY LOAN RECIPI-
15 ENTS.—Each recipient of a loan issued by a
16 State under paragraph (1) shall, not less fre-
17 quently than once each year during the term of
18 the loan, submit to such State a report con-
19 taining such information as the Secretary may
20 specify for purposes of the Program, including
21 information that the Secretary can use to deter-
22 mine whether a recipient of a loan is required
23 to repay the loan under subparagraph (E).

24 “(3) ANNUAL REPORTS BY GRANT RECIPI-
25 ENTS.—Each recipient of a grant under the Pro-

1 gram shall, not less frequently than once each year,
2 submit to the Secretary a report on the impact of
3 each loan issued by the State under the Program
4 and the aggregate impact of all loans so issued, in-
5 cluding the following:

6 “(A) The sales increased or retained.

7 “(B) Cost savings or costs avoided.

8 “(C) Additional investment encouraged.

9 “(D) Jobs created or retained.

10 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
11 is authorized to be appropriated to carry out this section
12 \$15,000,000,000 for each of fiscal years 2010 and 2011.”.

13 **SEC. 247. CLEAN ENERGY AND EFFICIENCY MANUFAC-**
14 **TURING PARTNERSHIPS.**

15 (a) HOLLINGS MANUFACTURING PARTNERSHIP PRO-
16 GRAM.—Section 25(b) of the National Institute of Stand-
17 ards and Technology Act (15 U.S.C. 278k(b)) is amend-
18 ed—

19 (1) in paragraph (2), by striking “and” at the
20 end;

21 (2) in paragraph (3), by striking the period at
22 the end and inserting “; and”; and

23 (3) by adding at the end the following:

24 “(4) the establishment of a clean energy manu-
25 facturing supply chain initiative—

1 “(A) to support manufacturers in their
2 identification of and diversification to new mar-
3 kets, including support for manufacturers
4 transitioning to the use of clean energy supply
5 chains;

6 “(B) to assist manufacturers improve their
7 competitiveness by reducing energy intensity
8 and greenhouse gas production, including the
9 use of energy intensive feedstocks;

10 “(C) to increase adoption and implementa-
11 tion of innovative manufacturing technologies;

12 “(D) to coordinate and leverage the exper-
13 tise of the National Laboratories and Tech-
14 nology Centers and the Industrial Assessment
15 Centers of the Department of Energy to meet
16 the needs of manufacturers; and

17 “(E) to identify, assist, and certify manu-
18 facturers seeking loans under section
19 27(e)(1).”.

20 (b) REDUCTION IN COST SHARE REQUIREMENTS.—
21 Section 25(c) of such Act (15 U.S.C. 278k(c)) is amend-
22 ed—

23 (1) in paragraph (1), by inserting “or as pro-
24 vided in paragraph (5)” after “not to exceed six
25 years”;

1 (2) in paragraph (3)(B), by striking “not less
2 than 50 percent of the costs incurred for the first
3 3 years and an increasing share for each of the last
4 3 years” and inserting “50 percent of the costs in-
5 curred or such lesser percentage of the costs in-
6 curred as determined appropriate by the Secretary
7 by rule”; and

8 (3) in paragraph (5)—

9 (A) by striking “at declining levels”;

10 (B) by striking “one third” and inserting
11 “50 percent”; and

12 (C) by inserting “, or such lesser percent-
13 age as determined appropriate by the Secretary
14 by rule,” after “maintenance costs”.

15 (c) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated to the Secretary of Com-
17 merce for the Hollings Manufacturing Partnership Pro-
18 gram authorized under sections 25 of the National Insti-
19 tute of Standards and Technology Act (15 U.S.C. 278k)
20 and for the provision of assistance under section 26 of
21 such Act (15 U.S.C. 278l)—

22 (1) \$200,000,000 for fiscal year 2010;

23 (2) \$250,000,000 for fiscal year 2011;

24 (3) \$300,000,000 for fiscal year 2012;

25 (4) \$350,000,000 for fiscal year 2013; and

1 (5) \$400,000,000 for fiscal year 2014.

2 **SEC. 248. TECHNICAL AMENDMENTS.**

3 (a) AMENDMENT TO NATIONAL INSTITUTE OF
4 STANDARDS AND TECHNOLOGY ACT.—Section 25 of the
5 National Institute of Standards and Technology Act (15
6 U.S.C. 278k(b)) is amended—

7 (1) in subsection (a), by striking “(hereafter in
8 this Act referred to as the ‘Centers’)”; and

9 (2) by adding at the end the following:

10 “(g) DESIGNATION.—

11 “(1) HOLLINGS MANUFACTURING PARTNERSHIP
12 PROGRAM.—The program under this section shall be
13 known as the ‘Hollings Manufacturing Partnership
14 Program’.

15 “(2) HOLLINGS MANUFACTURING EXTENSION
16 CENTERS.—The Regional Centers for the Transfer
17 of Manufacturing Technology created and supported
18 under subsection (a) shall be known as the ‘Hollings
19 Manufacturing Extension Centers’ (in this Act re-
20 ferred to as the ‘Centers’).”.

21 (b) AMENDMENT TO CONSOLIDATED APPROPRIA-
22 TIONS ACT, 2005.—Division B of title II of the Consoli-
23 dated Appropriations Act, 2005 (Public Law 108–447;
24 118 Stat. 2879; 15 U.S.C. 278k note) is amended under
25 the heading “INDUSTRIAL TECHNOLOGY SERVICES” by

1 striking “2007: *Provided further, That*” and all that fol-
2 lows through “Extension Centers.” and inserting “2007.”.

3 **Subtitle E—Improvements in En-**
4 **ergy Savings Performance Con-**
5 **tracting**

6 **SEC. 251. ENERGY SAVINGS PERFORMANCE CONTRACTS.**

7 (a) COMPETITION REQUIREMENTS FOR TASK OR DE-
8 LIVERY ORDERS UNDER ENERGY SAVINGS PERFORM-
9 ANCE CONTRACTS.—

10 (1) COMPETITION REQUIREMENTS.—Subsection

11 (a) of section 801 of the National Energy Conserva-
12 tion Policy Act (42 U.S.C. 8287(a)) is amended by
13 adding at the end the following paragraph:

14 “(3)(A) The head of a Federal agency may issue a
15 task or delivery order under an energy savings perform-
16 ance contract by—

17 “(i) notifying all contractors that have received
18 an award under such contract that the agency pro-
19 poses to discuss energy savings performance services
20 for some or all of its facilities and, following a rea-
21 sonable period of time to provide a proposal in re-
22 sponse to the notice, soliciting an expression of in-
23 terest in performing site surveys or investigations
24 and feasibility designs and studies and the submis-
25 sion of qualifications from such contractors, and in-

1 including in such notice summary information con-
2 cerning energy use for any facilities that the agency
3 has specific interest in including in such contract;

4 “(ii) reviewing all expressions of interest and
5 qualifications submitted pursuant to the notice
6 under clause (i);

7 “(iii) selecting two or more contractors (from
8 among those reviewed under clause (ii)) to conduct
9 discussions concerning the contractors’ respective
10 qualifications to implement potential energy con-
11 servation measures, including requesting references
12 demonstrating experience on similar efforts and the
13 resulting energy savings of such similar efforts, and
14 providing an opportunity for a post-award debriefing
15 to all contractors that submitted expressions of in-
16 terest and qualifications under clause (ii) pursuant
17 to the notice;

18 “(iv) selecting and authorizing—

19 “(I) more than one contractor (from
20 among those selected under clause (iii)) to con-
21 duct site surveys, investigations, feasibility de-
22 signs and studies or similar assessments for the
23 energy savings performance contract services
24 (or for discrete portions of such services), for
25 the purpose of allowing each such contractor to

1 submit a firm, fixed-price proposal to imple-
2 ment specific energy conservation measures; or

3 “(II) one contractor (from among those se-
4 lected under clause (iii)) to conduct a site sur-
5 vey, investigation, a feasibility design and study
6 or similar for the purpose of allowing the con-
7 tractor to submit a firm, fixed-price proposal to
8 implement specific energy conservation meas-
9 ures;

10 “(v) negotiating a task or delivery order for en-
11 ergy savings performance contracting services with
12 the contractor or contractors selected under clause
13 (iv) based on the energy conservation measures iden-
14 tified; and

15 “(vi) issuing a task or delivery order for energy
16 savings performance contracting services to such
17 contractor or contractors.

18 “(B) The issuance of a task or delivery order for en-
19 ergy savings performance contracting services pursuant to
20 subparagraph (A) is deemed to satisfy the task and deliv-
21 ery order competition requirements in section 2304e(d) of
22 title 10, United States Code, and section 303J(d) of the
23 Federal Property and Administrative Services Act of 1949
24 (41 U.S.C. 253j(d)).

1 “(C) The Secretary may issue guidance as necessary
2 to agencies issuing task or delivery orders pursuant to
3 subparagraph (A).”.

4 (2) EFFECTIVE DATE.—The amendment made
5 by paragraph (1) is inapplicable to task or delivery
6 orders issued before the date of enactment of this
7 section.

8 (b) INCLUSION OF THERMAL RENEWABLE EN-
9 ERGY.—Section 203 of the Energy Policy Act of 2005 (42
10 U.S.C. 15852) is amended—

11 (1) in subsection (a), by striking “electric”; and

12 (2) in subsection (b)(2), by inserting “or ther-
13 mal” after “means electric”.

14 (c) CREDIT FOR RENEWABLE ENERGY PRODUCED
15 AND USED ON SITE.—Subsection (c) of section 203 of the
16 Energy Policy Act of 2005 (42 U.S.C. 15852) is amended
17 to read as follows:

18 “(c) CALCULATION.—Renewable energy produced at
19 a Federal facility, on Federal lands, or on Indian lands
20 (as defined in title XXVI of the Energy Policy Act of 1992
21 (25 U.S.C. 3501 et seq.)) shall be calculated separately
22 from renewable energy consumed at a Federal facility, and
23 each may be used to comply with the consumption require-
24 ment under subsection (a).”.

1 (d) FINANCING FLEXIBILITY.—Section 801(a)(2)(E)
2 of the National Energy Conservation Policy Act (42
3 U.S.C. 8287(a)(2)(E)) is amended by striking “In” and
4 inserting “Notwithstanding any other provision of law,
5 in”.

6 **Subtitle F—Public Institutions**

7 **SEC. 261. PUBLIC INSTITUTIONS.**

8 Section 399A of the Energy Policy and Conservation
9 Act (42 U.S.C. 6371h–1) is amended—

10 (1) in subsection (a)(5), by striking “or a des-
11 ignee” and inserting “an Indian tribe, a not-for-
12 profit hospital or not-for-profit inpatient health care
13 facility, or a designated agent”;

14 (2) in subsection (c)(1), by striking subpara-
15 graph (C);

16 (3) in subsection (f)(3)(A), by striking
17 “\$1,000,000” and inserting “\$2,500,000”; and

18 (4) in subsection (i)(1), by striking
19 “\$250,000,000 for each of fiscal years 2009 through
20 2013” and inserting “\$250,000,000 for each of fis-
21 cal years 2010 through 2015”.

22 **SEC. 262. COMMUNITY ENERGY EFFICIENCY FLEXIBILITY.**

23 Section 545(b)(3) of the Energy Independence and
24 Security Act of 2007 (42 U.S.C. 17155(b)(3)) is amend-
25 ed—

1 (1) by striking “Indian tribe may use” and all
2 that follows through “for administrative expenses”
3 and inserting “Indian tribe may use for administra-
4 tive expenses”;

5 (2) by striking subparagraphs (B) and (C);

6 (3) by redesignating the remaining clauses (i)
7 and (ii) as subparagraphs (A) and (B), respectively
8 and adjusting the margin of those subparagraphs ac-
9 cordingly; and

10 (4) by striking the semicolon at the end and in-
11 serting a period.

12 **SEC. 263. SMALL COMMUNITY JOINT PARTICIPATION.**

13 (a) Section 541(3)(A) of the Energy Independence
14 and Security Act of 2007 is amended in clause (i) by strik-
15 ing “and” at the end of subclause (II), in clause (ii) by
16 striking the period at the end of subclause (II) and insert-
17 ing “; or”, and by inserting the following new clause (iii):

18 “(iii) a group of adjacent, contiguous, or
19 geographically proximate units of local govern-
20 ment that reach agreement to act jointly for
21 purposes of this section and that represent a
22 combined population of not less than 35,000.”.

23 (b) Section 541(3)(B) of the Energy Independence
24 and Security Act of 2007 is amended in clause (i) by strik-
25 ing “or”, in clause (ii) by striking the period at the end

1 and inserting “; or”, and by inserting the following new
2 clause (iii):

3 “(iii) a group of adjacent, contiguous, or
4 geographically proximate units of local govern-
5 ment that reach agreement to act jointly for
6 purposes of this section and that represent a
7 combined population of not less than 50,000.”.

8 **SEC. 264. LOW INCOME COMMUNITY ENERGY EFFICIENCY**
9 **PROGRAM.**

10 (a) IN GENERAL.—The Secretary of Energy is au-
11 thorized to make grants to private, nonprofit, mission-
12 driven community development organizations including
13 community development corporations and community de-
14 velopment financial institutions to provide financing to
15 businesses and projects that improve energy efficiency;
16 identify and develop alternative, renewable, and distrib-
17 uted energy supplies; provide technical assistance and pro-
18 mote job and business opportunities for low-income resi-
19 dents; and increase energy conservation in low income
20 rural and urban communities.

21 (b) GRANTS.—The purpose of such grants is to in-
22 crease the flow of capital and benefits to low income com-
23 munities, minority-owned and woman-owned businesses
24 and entrepreneurs and other projects and activities located
25 in low income communities in order to reduce environ-

1 mental degradation, foster energy conservation and effi-
2 ciency and create job and business opportunities for local
3 residents. The Secretary may make grants on a competi-
4 tive basis for—

5 (1) investments that develop alternative, renew-
6 able, and distributed energy supplies;

7 (2) capitalizing loan funds that lend to energy
8 efficiency projects and energy conservation pro-
9 grams;

10 (3) technical assistance to plan, develop, and
11 manage an energy efficiency financing program; and

12 (4) technical and financial assistance to assist
13 small-scale businesses and private entities develop
14 new renewable and distributed sources of power or
15 combined heat and power generation.

16 (c) **AUTHORIZATION OF APPROPRIATIONS.**—For the
17 purposes of this section there is authorized to be appro-
18 priated \$50,000,000 for each of the fiscal years 2010
19 through 2015.

20 **SEC. 265. CONSUMER BEHAVIOR RESEARCH.**

21 (a) **IN GENERAL.**—The Secretary of Energy is au-
22 thorized to establish a research program to identify the
23 factors affecting consumer actions to conserve energy and
24 make improvements in energy efficiency. Through the pro-
25 gram the Secretary will make grants to public and private

1 institutions of higher education to study the effects of con-
2 sumer behavior on total energy use; potential energy sav-
3 ings from changes in consumption habits; the ability to
4 reduce greenhouse gas emissions through changes in en-
5 ergy consumption habits; increase public awareness of
6 Federal climate adaptation and mitigation programs; and
7 the potential for alterations in consumer behavior to fur-
8 ther American energy independence. Grants may also fund
9 projects that evaluate or inform public knowledge of the
10 effects of energy consumption habits on these topics.

11 (b) GRANTS.—The purpose of the program is to pro-
12 vide grants to public and private institutions of higher
13 education to carry out projects which will improve under-
14 standing of the effects of consumer behavior on energy
15 consumption and conservation. The Secretary shall make
16 grants on a competitive basis for—

17 (1) studies of the effects of consumer habits on
18 energy consumption and conservation;

19 (2) development of strategies that communicate
20 the importance of energy efficiency and conservation
21 to consumers;

22 (3) identification of best practices to improve
23 consumer energy use habits;

1 (4) education programs that inform consumers
2 about the implications of consumption habits on en-
3 ergy use and climate change;

4 (5) evaluation of the effectiveness of programs
5 designed to promote public awareness of Federal
6 Government climate adaptation and mitigation ac-
7 tivities; and

8 (6) other projects that advance the mission of
9 the program.

10 (c) REPORT.—The Secretary of Energy shall provide
11 Congress with a report on progress towards establishing
12 the program within 120 days after the date of enactment
13 of this Act.

14 (d) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated such sums as may be
16 necessary to carry out this section.

17 **Subtitle G—Miscellaneous**

18 **SEC. 271. ENERGY EFFICIENT INFORMATION AND COMMU-** 19 **NICATIONS TECHNOLOGIES.**

20 Section 543 of the National Energy Conservation
21 Policy Act (42 U.S.C. 8253) is amended to read as follows:

22 **“SEC. 543. ENERGY EFFICIENT INFORMATION AND COMMU-** 23 **NICATIONS TECHNOLOGIES.**

24 “(a) IN GENERAL.—Not later than 1 year after the
25 date of enactment of the American Clean Energy and Se-

1 curity Act of 2009, each Federal agency shall collaborate
2 with the Director of the Office of Management and Budget
3 (referred to in this section as the ‘Director’) to create an
4 implementation strategy, including best practices and
5 measurement and verification techniques, for the purchase
6 and use of energy efficient information and communica-
7 tions technologies and practices. Wherever possible, exist-
8 ing standards, specifications, performance metrics, and
9 best management practices that have been or are being
10 developed in open collaboration and with broad stake-
11 holder input and review should be incorporated. In addi-
12 tion, agency strategies shall be flexible, cost-effective, and
13 based on the specific operating requirements and statutory
14 mission of each agency.

15 “(b) ENERGY EFFICIENT INFORMATION AND COM-
16 MUNICATIONS TECHNOLOGIES.—In developing an imple-
17 mentation strategy, each agency shall—

18 “(1) consider information and communications
19 technologies and infrastructure, including, but not
20 limited to, advanced metering infrastructure, infor-
21 mation and communications technology services and
22 products, efficient data center strategies, applica-
23 tions modernization and rationalization, building
24 systems energy efficiency, and telework; and

1 “(2) ensure that agencies are eligible to realize
2 the savings and rewards brought about through in-
3 creased efficiencies.

4 “(c) PERFORMANCE GOALS.—Not later than 6
5 months after the date of enactment of the American Clean
6 Energy and Security Act of 2009, the Director shall estab-
7 lish performance goals for evaluating the efforts of the
8 agencies in improving the maintenance, purchase and use
9 of energy efficiency of information and communications
10 technology systems. These performance goals should
11 measure information technology costs over a specific time
12 horizon (3 to 5 years), providing a complete picture of all
13 costs, including energy.

14 “(d) REPORT.—Not later than 18 months after the
15 date of enactment of the American Clean Energy and Se-
16 curity Act of 2009, and annually thereafter, the Director
17 shall submit a report to Congress on—

18 “(1) the progress of each agency in reducing
19 energy use through its implementation strategy; and

20 “(2) new and emerging technologies that would
21 help achieve increased energy efficiency.”.

22 **SEC. 272. NATIONAL ENERGY EFFICIENCY GOALS.**

23 (a) GOALS.—The energy efficiency goals of the
24 United States are—

1 (1) to achieve an improvement in the overall en-
2 ergy productivity of the United States (measured in
3 gross domestic product per unit of energy input) of
4 at least 2.5 percent per year by the year 2012; and

5 (2) to maintain that annual rate of improve-
6 ment each year through 2030.

7 (b) STRATEGIC PLAN.—

8 (1) IN GENERAL.—Not later than 1 year after
9 the date of enactment of this Act, the Secretary of
10 Energy (referred to in this section as the “Sec-
11 retary”), in cooperation with the Administrator and
12 the heads of other appropriate Federal agencies,
13 shall develop a strategic plan to achieve the national
14 goals for improvement in energy productivity estab-
15 lished under subsection (a).

16 (2) PUBLIC INPUT AND COMMENT.—The Sec-
17 retary shall develop the plan in a manner that pro-
18 vides appropriate opportunities for public input and
19 comment.

20 (c) PLAN CONTENTS.—The strategic plan shall—

21 (1) identify future regulatory, funding, and pol-
22 icy priorities that would assist the United States in
23 meeting the national goals;

24 (2) include energy savings estimates for each
25 sector; and

1 (3) include data collection methodologies and
2 compilations used to establish baseline and energy
3 savings data.

4 (d) PLAN UPDATES.—

5 (1) IN GENERAL.—The Secretary shall—

6 (A) update the strategic plan biennially;

7 and

8 (B) include the updated strategic plan in
9 the national energy policy plan required by sec-
10 tion 801 of the Department of Energy Organi-
11 zation Act (42 U.S.C. 7321).

12 (2) CONTENTS.—In updating the plan, the Sec-
13 retary shall—

14 (A) report on progress made toward imple-
15 menting efficiency policies to achieve the na-
16 tional goals established under subsection (a);

17 and

18 (B) verify, to the maximum extent prac-
19 ticable, energy savings resulting from the poli-
20 cies.

21 (e) REPORT TO CONGRESS AND THE PUBLIC.—The
22 Secretary shall submit to Congress, and make available
23 to the public, the initial strategic plan developed under
24 subsection (b) and each updated plan.

1 **SEC. 273. AFFILIATED ISLAND ENERGY INDEPENDENCE**

2 **TEAM.**

3 (a) DEFINITIONS.—In this section:

4 (1) AFFILIATED ISLAND.—The term “affiliated
5 island” means—

6 (A) the Commonwealth of Puerto Rico;

7 (B) Guam;

8 (C) American Samoa;

9 (D) the Commonwealth of the Northern
10 Mariana Islands;

11 (E) the Federated States of Micronesia;

12 (F) the Republic of the Marshall Islands;

13 (G) the Republic of Palau; and

14 (H) the United States Virgin Islands.

15 (2) SECRETARY.—The term “Secretary” means
16 the Secretary of Energy (acting through the Assist-
17 ant Secretary of Energy Efficiency and Renewable
18 Energy), in consultation with the Secretary of the
19 Interior and the Secretary of State.

20 (3) TEAM.—The term “team” means the team
21 established by the Secretary under subsection (b).

22 (b) ESTABLISHMENT.—As soon as practicable after
23 the date of enactment of this Act, the Secretary shall as-
24 semble a team of technical, policy, and financial experts
25 to address the energy needs of each affiliated island—

1 (1) to reduce the reliance and expenditure of
2 each affiliated island on imported fossil fuels;

3 (2) to increase the use by each affiliated island
4 of indigenous, nonfossil fuel energy sources;

5 (3) to improve the performance of the energy
6 infrastructure of the affiliated island through
7 projects—

8 (A) to improve the energy efficiency of
9 power generation, transmission, and distribu-
10 tion; and

11 (B) to increase consumer energy efficiency;

12 (4) to improve the performance of the energy
13 infrastructure of each affiliated island through en-
14 hanced planning, education, and training;

15 (5) to adopt research-based and public-private
16 partnership-based approaches as appropriate;

17 (6) to stimulate economic development and job
18 creation; and

19 (7) to enhance the engagement by the Federal
20 Government in international efforts to address island
21 energy needs.

22 (c) DUTIES OF TEAM.—

23 (1) ENERGY ACTION PLANS.—

24 (A) IN GENERAL.—In accordance with
25 subparagraph (B), the team shall provide tech-

1 nical, programmatic, and financial assistance to
2 each utility of each affiliated island, and the
3 government of each affiliated island, as appro-
4 priate, to develop and implement an energy Ac-
5 tion Plan for each affiliated island to reduce the
6 reliance of each affiliated island on imported
7 fossil fuels through increased efficiency and use
8 of indigenous clean-energy resources.

9 (B) REQUIREMENTS.—Each Action Plan
10 described in subparagraph (A) for each affili-
11 ated island shall require and provide for—

12 (i) the conduct of 1 or more studies to
13 assess opportunities to reduce fossil fuel
14 use through—

15 (I) the improvement of the en-
16 ergy efficiency of the affiliated island;
17 and

18 (II) the increased use by the af-
19 filiated island of indigenous clean-en-
20 ergy resources;

21 (ii) the identification and implementa-
22 tion of the most cost-effective strategies
23 and projects to reduce the dependence of
24 the affiliated island on fossil fuels;

1 (iii) the promotion of education and
2 training activities to improve the capacity
3 of the local utilities of the affiliated island,
4 and the government of the affiliated island,
5 as appropriate, to plan for, maintain, and
6 operate the energy infrastructure of the af-
7 filiated island through the use of local or
8 regional institutions, as appropriate;

9 (iv) the coordination of the activities
10 described in clause (iii) to leverage the ex-
11 pertise and resources of international enti-
12 ties, the Department of Energy, the De-
13 partment of the Interior, and the regional
14 utilities of the affiliated island;

15 (v) the identification, and develop-
16 ment, as appropriate, of research-based
17 and private-public, partnership approaches
18 to implement the Action Plan; and

19 (vi) any other component that the
20 Secretary determines to be necessary to re-
21 duce successfully the use by each affiliated
22 island of fossil fuels.

23 (2) REPORTS TO SECRETARY.—Not later than
24 1 year after the date on which the Secretary estab-
25 lishes the team and biennially thereafter, the team

1 shall submit to the Secretary a report that contains
2 a description of the progress of each affiliated island
3 in—

4 (A) implementing the Action Plan of the
5 affiliated island developed under paragraph
6 (1)(A); and

7 (B) reducing the reliance of the affiliated
8 island on fossil fuels.

9 (d) USE OF REGIONAL UTILITY ORGANIZATIONS.—

10 To provide expertise to affiliated islands to assist the af-
11 filiated islands in meeting the purposes of this section, the
12 Secretary shall consider—

13 (1) including regional utility organizations in
14 the establishment of the team; and

15 (2) providing assistance through regional utility
16 organizations.

17 (e) ANNUAL REPORTS TO CONGRESS.—Not later
18 than 30 days after the date on which the Secretary re-
19 ceives a report submitted by the team under subsection
20 (c)(2), the Secretary shall submit to the appropriate com-
21 mittees of Congress a report that contains a summary of
22 the report of the team.

23 (f) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated such sums as are nec-
25 essary to carry out this section.

1 **SEC. 274. PRODUCT CARBON DISCLOSURE PROGRAM.**

2 (a) EPA STUDY.—The Administrator shall conduct
3 a study to determine the feasibility of establishing a na-
4 tional program for measuring, reporting, publicly dis-
5 closing, and labeling products or materials sold in the
6 United States for their carbon content, and shall, not later
7 than 18 months after the date of enactment of this Act,
8 transmit a report to Congress which shall include the fol-
9 lowing:

10 (1) A determination of whether a national prod-
11 uct carbon disclosure program and labeling program
12 would be effective in achieving the intended goals of
13 achieving greenhouse gas reductions and an exam-
14 ination of existing programs globally and their
15 strengths and weaknesses.

16 (2) Criteria for identifying and prioritizing sec-
17 tors and products and processes that should be cov-
18 ered in such program or programs.

19 (3) An identification of products, processes, or
20 sectors whose inclusion could have a substantial car-
21 bon impact (prioritizing industrial products such as
22 iron and steel, aluminum, cement, chemicals, and
23 paper products, and also including food, beverage,
24 hygiene, cleaning, household cleaners, construction,
25 metals, clothing, semiconductor, and consumer elec-
26 tronics).

1 (4) Suggested methodology and protocols for
2 measuring the carbon content of the products across
3 the entire carbon lifecycle of such products for use
4 in a carbon disclosure program and labeling pro-
5 gram.

6 (5) A review of existing greenhouse gas product
7 accounting standards, methodologies, and practices
8 including the Greenhouse Gas Protocol, ISO 14040/
9 44, ISO 14067, and Publically Available Specifica-
10 tion 2050, and including a review of the strengths
11 and weaknesses of each.

12 (6) A survey of secondary databases including
13 the Manufacturing Energy Consumption Survey and
14 evaluate the quality of data for use in a product car-
15 bon disclosure program and product carbon labeling
16 program and an identification of gaps in the data
17 relative to the potential purposes of a national prod-
18 uct carbon disclosure program and product carbon
19 labeling program and development of recommenda-
20 tions for addressing these data gaps.

21 (7) An assessment of the utility of comparing
22 products and the appropriateness of product carbon
23 standards.

24 (8) An evaluation of the information needed on
25 a label for clear and accurate communication, in-

1 including what pieces of quantitative and qualitative
2 information needs to be disclosed.

3 (9) An evaluation of the appropriate boundaries
4 of the carbon lifecycle analysis for different sectors
5 and products.

6 (10) An analysis of whether default values
7 should be developed for products whose producer
8 does not participate in the program or does not have
9 data to support a disclosure or label and determine
10 best ways to develop such default values.

11 (11) A recommendation of certification and
12 verification options necessary to assure the quality
13 of the information and avoid greenwashing or the
14 use of insubstantial or meaningless environmental
15 claims to promote a product.

16 (12) An assessment of options for educating
17 consumers about product carbon content and the
18 product carbon disclosure program and product car-
19 bon labeling program.

20 (13) An analysis of the costs and timelines as-
21 sociated with establishing a national product carbon
22 disclosure program and product carbon labeling pro-
23 gram, including options for a phased approach.
24 Costs should include those for businesses associated
25 with the measurement of carbon footprints and

1 those associated with creating a product carbon label
2 and managing and operating a product carbon label-
3 ing program, and options for minimizing these costs.

4 (14) An evaluation of incentives (such as finan-
5 cial incentives, brand reputation, and brand loyalty)
6 to determine whether reductions in emissions can be
7 accelerated through encouraging more efficient man-
8 ufacturing or by encouraging preferences for lower-
9 emissions products to substitute for higher-emissions
10 products whose level of performance is no better.

11 (b) DEVELOPMENT OF NATIONAL CARBON DISCLO-
12 SURE PROGRAM.—Upon conclusion of the study, and not
13 more than 36 months after the date of enactment of this
14 Act, the Administrator shall establish a national product
15 carbon disclosure program, participation in which shall be
16 voluntary, and which may involve a product carbon label
17 with broad applicability to the wholesale and consumer
18 markets to enable and encourage knowledge about carbon
19 content by producers and consumers and to inform efforts
20 to reduce energy consumption (carbon dioxide equivalent
21 emissions) nationwide. In developing such a program, the
22 Administrator shall—

23 (1) consider the results of the study conducted
24 under subsection (a);

1 (2) consider existing and planned programs and
2 proposals and measurement standards (including the
3 Publicly Available Specification 2050, standards to
4 be developed by the World Resource Institute/World
5 Business Council for Sustainable Development, the
6 International Standards Organization, and the bill
7 AB19 pending in the California legislature);

8 (3) consider the compatibility of a national
9 product carbon disclosure program with existing pro-
10 grams;

11 (4) utilize incentives and other means to spur
12 the adoption of product carbon disclosure and prod-
13 uct carbon labeling;

14 (5) develop protocols and parameters for a
15 product carbon disclosure program, including a
16 methodology and formula for assessing, verifying,
17 and potentially labeling a product's greenhouse gas
18 content, and for data quality requirements to allow
19 for product comparison;

20 (6) create a means to—

21 (A) document best practices;

22 (B) ensure clarity and consistency;

23 (C) work with suppliers, manufacturers,
24 and retailers to encourage participation;

1 (D) ensure that protocols are consistent
2 and comparable across like products; and

3 (E) evaluate the effectiveness of the pro-
4 gram;

5 (7) make publicly available information on
6 product carbon content to ensure transparency;

7 (8) provide for public outreach, including a con-
8 sumer education program to increase awareness;

9 (9) develop training and education programs to
10 help businesses learn how to measure and commu-
11 nicate their carbon footprint and easy tools and tem-
12 plates for businesses to use to reduce cost and time
13 to measure their products' carbon lifecycle;

14 (10) consult with the Secretary of Energy, the
15 Secretary of Commerce, the Federal Trade Commis-
16 sion, and other Federal agencies, as necessary;

17 (11) gather input from stakeholders through
18 consultations, public workshops or hearings with
19 representatives of consumer product manufacturers,
20 consumer groups, and environmental groups;

21 (12) utilize systems for verification and product
22 certification that will ensure that claims manufactur-
23 ers make about their products are valid;

24 (13) create a process for reviewing the accuracy
25 of product carbon label information and protecting

1 the product carbon label in the case of a change in
2 the product's energy source, supply chain, ingredi-
3 ents, or other factors, and specify the frequency to
4 which data should be updated; and

5 (14) develop a standardized, easily understand-
6 able carbon label, if appropriate, and create a proc-
7 ess for responding to inaccuracies and misuses of
8 such a label.

9 (c) REPORT TO CONGRESS.—Not later than 5 years
10 after the program is established pursuant to subsection
11 (b), the Administrator shall report to Congress on the ef-
12 fectiveness and impact of the program, the level of vol-
13 untary participation, and any recommendations for addi-
14 tional measures.

15 (d) DEFINITIONS.—As used in this section—

16 (1) the term “carbon content” means the
17 amount of greenhouse gas emissions and their
18 warming impact on the atmosphere expressed in car-
19 bon dioxide equivalent associated with a product's
20 value chain;

21 (2) the term “carbon footprint” means the level
22 of greenhouse gas emissions produced by a par-
23 ticular activity, service, or entity; and

24 (3) the term “carbon lifecycle” means the
25 greenhouse gas emissions that are released as part

1 of the processes of creating, producing, processing or
2 manufacturing, modifying, transporting, distrib-
3 uting, storing, using, recycling, or disposing of goods
4 and services.

5 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
6 authorized to be appropriated to the Administrator
7 \$5,000,000 for the study required by subsection (a) and
8 \$25,000,000 for each of fiscal years 2010 through 2025
9 for the program required under subsection (b).

10 **SEC. 275. INDUSTRIAL ENERGY EFFICIENCY EDUCATION**
11 **AND TRAINING INITIATIVE.**

12 (a) IN GENERAL.—The Secretary of Energy shall
13 carry out a national education and awareness program for
14 the purpose of informing building, facility, and industrial
15 plant owners and managers and decisionmakers, govern-
16 ment leaders, and industry leaders about the large energy-
17 saving potential of greater use of mechanical insulation,
18 and other benefits.

19 (b) PURPOSE AND GOALS.—

20 (1) PURPOSE.—The purpose of the initiative
21 shall be to increase the energy efficiency of the com-
22 mercial and industrial sectors through an ongoing
23 program that will include—

24 (A) education and training sessions;

25 (B) Web-based information; and

1 (C) advertising.

2 (2) GOALS.—The goals of the initiative shall be
3 to—

4 (A) educate and motivate commercial
5 building owners and industrial facility managers
6 to utilize mechanical insulation in new and ex-
7 isting facilities;

8 (B) preserve and create jobs while reduc-
9 ing energy and greenhouse gas emissions;

10 (C) create a safer working environment
11 and make businesses more competitive in a
12 global economy; and

13 (D) motivate and empower the industry to
14 make better use of mechanical insulation
15 through awareness, education, and training.

16 (c) REPORT.—Not later than July 1, 2013, the Sec-
17 retary shall submit to Congress a report describing the
18 extent by which the initiative has been enacted and the
19 actual and projected effectiveness of the program under
20 this section, including the energy efficiency, greenhouse
21 gas emissions reductions, cost savings, and safety benefits
22 at manufacturing facilities, power plants, refineries, hos-
23 pitals, universities, government buildings, and other com-
24 mercial and industrial locations.

1 (d) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated \$3,500,000 for each of
3 fiscal years 2010 through 2014 to carry out this section.
4 The Secretary may enter into a cooperative agreement, in-
5 cluding grant funding, with an industry association and
6 union working collaboratively and having expertise on the
7 installation, maintenance, measure of efficiencies and
8 standards, and certification of mechanical insulation in
9 buildings and facilities.

10 (e) TERMINATION OF AUTHORITY.—The program
11 carried out under this section shall terminate on December
12 31, 2014.

13 **SEC. 276. SENSE OF CONGRESS.**

14 It is the sense of Congress that the United States
15 should—

16 (1) continue to actively promote, within the
17 International Civil Aviation Organization, the devel-
18 opment of a global framework for the regulation of
19 greenhouse gas emissions from civil aircraft that rec-
20 ognizes the uniquely international nature of the in-
21 dustry and treats commercial aviation industries in
22 all countries fairly; and

23 (2) work with foreign governments towards a
24 global agreement that reconciles foreign carbon
25 emissions reduction programs to minimize duplica-

1 tive requirements and avoids unnecessary complica-
2 tion for the aviation industry, while still achieving
3 the environmental goals.

4 **Subtitle H—Green Resources for** 5 **Energy Efficient Neighborhoods**

6 **SEC. 281. SHORT TITLE.**

7 This subtitle may be cited as the “Green Resources
8 for Energy Efficient Neighborhoods Act of 2009” or the
9 “GREEN Act of 2009”.

10 **SEC. 282. DEFINITIONS.**

11 For purposes of this subtitle, the following definitions
12 shall apply:

13 (1) GREEN BUILDING STANDARDS.—The term
14 “green building standards” means standards to re-
15 quire use of sustainable design principles to reduce
16 the use of nonrenewable resources, encourage en-
17 ergy-efficient construction and rehabilitation and the
18 use of renewable energy resources, minimize the im-
19 pact of development on the environment, and im-
20 prove indoor air quality.

21 (2) HUD.—The term “HUD” means the De-
22 partment of Housing and Urban Development.

23 (3) HUD ASSISTANCE.—The term “HUD as-
24 sistance” means financial assistance that is awarded,
25 competitively or noncompetitively, allocated by for-

1 mula, or provided by HUD through loan insurance
2 or guarantee.

3 (4) NONRESIDENTIAL STRUCTURE.—The term
4 “nonresidential structures” means only nonresiden-
5 tial structures that are appurtenant to single-family
6 or multifamily housing residential structures, or
7 those that are funded by the Secretary of Housing
8 and Urban Development through the HUD Commu-
9 nity Development Block Grant program.

10 (5) SECRETARY.—The term “Secretary”, unless
11 otherwise specified, means the Secretary of Housing
12 and Urban Development.

13 **SEC. 283. IMPLEMENTATION OF ENERGY EFFICIENCY PAR-**
14 **TICIPATION INCENTIVES FOR HUD PRO-**
15 **GRAMS.**

16 (a) IN GENERAL.—Not later than 180 days after the
17 date of the enactment of this Act, the Secretary shall issue
18 such regulations as may be necessary to establish annual
19 energy efficiency participation incentives to encourage par-
20 ticipants in programs administered by the Secretary, in-
21 cluding recipients under programs for which HUD assist-
22 ance is provided, to achieve substantial improvements in
23 energy efficiency.

24 (b) REQUIREMENT FOR APPROPRIATION OF
25 FUNDS.—The requirement under subsection (a) for the

1 Secretary to provide annual energy efficiency participation
2 incentives pursuant to the provisions of this subtitle shall
3 be subject to the annual appropriation of necessary funds.

4 **SEC. 284. BASIC HUD ENERGY EFFICIENCY STANDARDS**
5 **AND STANDARDS FOR ADDITIONAL CREDIT.**

6 (a) BASIC HUD STANDARD.—

7 (1) RESIDENTIAL STRUCTURES.—A residential
8 single-family or multifamily structure shall be con-
9 sidered to comply with the energy efficiency stand-
10 ards under this subsection if—

11 (A) the structure complies with an energy
12 efficiency building code that has been certified
13 as in compliance with section 304 of the Energy
14 Conservation and Production Act (42 U.S.C.
15 6833) as amended by section 201 of this Act,
16 or a national energy efficiency building code
17 adopted pursuant to that section;

18 (B) the structure complies with the appli-
19 cable provisions of the American Society of
20 Heating, Refrigerating, and Air-Conditioning
21 Engineers Standard 90.1–2007, as such stand-
22 ard or successor standard is in effect for pur-
23 poses of this section pursuant subsection (c);

24 (C) the structure complies with the appli-
25 cable provisions of the 2009 International En-

1 energy Conservation Code, as such standard or
2 successor standard is in effect for purposes of
3 this section pursuant subsection (c);

4 (D) in the case only of an existing struc-
5 ture, where determined cost effective, the struc-
6 ture has undergone rehabilitation or improve-
7 ments, completed after the date of the enact-
8 ment of this Act, and the energy consumption
9 for the structure has been reduced by at least
10 20 percent from the previous level of consump-
11 tion, as determined in accordance with energy
12 audits performed both before and after any re-
13 habilitation or improvements undertaken to re-
14 duce such consumption; or

15 (E) the structure complies with the appli-
16 cable provisions of such other energy efficiency
17 requirements, standards, checklists, or ratings
18 systems as the Secretary may adopt and apply
19 by regulation, as may be necessary, for pur-
20 poses of this section for specific types of resi-
21 dential single-family or multifamily structures
22 or otherwise, except that the Secretary shall
23 make a determination regarding whether to
24 adopt and apply any such requirements, stand-
25 ards, checklists, or rating system for purposes

1 of this section not later than the expiration of
2 the 180-day period beginning upon the date of
3 receipt of any written request, made in such
4 form as the Secretary shall provide, for such
5 adoption and application.

6 In addition to compliance with any of subparagraphs
7 (A) through (E), the Secretary shall by regulation
8 require, for any newly constructed residential single-
9 family or multifamily structure to be considered to
10 comply with the energy efficiency standards under
11 this subsection, that the structure have appropriate
12 electrical outlets with the facility and capacity to re-
13 charge a standard electric passenger vehicle, includ-
14 ing an electric hybrid vehicle, where such vehicle
15 would normally be parked.

16 (2) NONRESIDENTIAL STRUCTURES.—For pur-
17 poses of this section, the Secretary shall identify and
18 adopt by regulation, as may be necessary, energy ef-
19 ficiency requirements, standards, checklists, or rat-
20 ing systems applicable to nonresidential structures
21 that are constructed or rehabilitated with HUD as-
22 sistance. A nonresidential structure shall be consid-
23 ered to comply with the energy efficiency standards
24 under this subsection if the structure complies with
25 the applicable provisions of any such energy effi-

1 ciency requirements, standards, checklist, or rating
2 systems identified and adopted by the Secretary pur-
3 suant to this paragraph, as such standards are in ef-
4 fect for purposes of this section pursuant to sub-
5 section (c).

6 (3) EFFECT.—Nothing in this subsection may
7 be construed to require any structure to comply with
8 any standard established or adopted pursuant to this
9 subsection, or identified in this subsection, or to pro-
10 vide any benefit or credit under any Federal pro-
11 gram for any structure that complies with any such
12 standard, except to the extent that—

13 (A) any provision of law other than this
14 subsection provides a benefit or credit under a
15 Federal program for compliance with a stand-
16 ard established or adopted pursuant to this sub-
17 section, or identified in this subsection; or

18 (B) the Secretary specifically provides pur-
19 suant to subsection (c) for the applicability of
20 such standard.

21 (b) ENHANCED ENERGY EFFICIENCY STANDARDS
22 FOR PURPOSES OF PROVIDING ADDITIONAL CREDIT
23 UNDER CERTAIN FEDERALLY ASSISTED HOUSING PRO-
24 GRAMS.—

25 (1) PURPOSE AND EFFECT.—

1 (A) PURPOSE.—The purpose of this sub-
2 section is to establish energy efficiency and con-
3 servation standards and green building stand-
4 ards that—

5 (i) provide for greater energy effi-
6 ciency and conservation in structures than
7 is required for compliance with the energy
8 efficiency standards under subsection (a)
9 and then in effect;

10 (ii) provide for green and sustainable
11 building standards not required by such
12 standards; and

13 (iii) can be used in connection with
14 Federal housing, housing finance, and de-
15 velopment programs to provide incentives
16 for greater energy efficiency and conserva-
17 tion and for green and sustainable building
18 methods, elements, practices, and mate-
19 rials.

20 (B) EFFECT.—Nothing in this subsection
21 may be construed to require any structure to
22 comply with any standard established pursuant
23 to this subsection or to provide any benefit or
24 credit under any Federal program for any
25 structure, except to the extent that any provi-

1 sion of law other than this subsection provides
2 a benefit or credit under a Federal program for
3 compliance with a standard established pursu-
4 ant to this subsection.

5 (2) COMPLIANCE.—A residential or nonresiden-
6 tial structure shall be considered to comply with the
7 enhanced energy efficiency and conservation stand-
8 ards or the green building standards under this sub-
9 section, to the extent that such structure complies
10 with the applicable provisions of the standards under
11 paragraph (3) or (4), respectively (as such standards
12 are in effect for purposes of this section, pursuant
13 to paragraph (7)), in a manner that is not required
14 for compliance with the energy efficiency standards
15 under subsection (a) then in effect and subject to
16 the Secretary’s determination of which standards are
17 applicable to which structures.

18 (3) ENERGY EFFICIENCY AND CONSERVATION
19 STANDARDS.—The energy efficiency and conserva-
20 tion standards under this paragraph are as follows:

21 (A) RESIDENTIAL STRUCTURES.—With re-
22 spect to residential structures:

23 (i) NEW CONSTRUCTION.—For new
24 construction, the Energy Star standards
25 established by the Environmental Protec-

1 tion Agency, as such standards are in ef-
2 fect for purposes of this subsection pursu-
3 ant to paragraph (7);

4 (ii) EXISTING STRUCTURES.—For ex-
5 isting structures, a reduction in energy
6 consumption from the previous level of
7 consumption for the structure, as deter-
8 mined in accordance with energy audits
9 performed both before and after any reha-
10 bilitation or improvements undertaken to
11 reduce such consumption, that exceeds the
12 reduction necessary for compliance with
13 the energy efficiency standards under sub-
14 section (a) then in effect and applicable to
15 existing structures.

16 (B) NONRESIDENTIAL STRUCTURES.—

17 With respect to nonresidential structures, such
18 energy efficiency and conservation require-
19 ments, standards, checklists, or rating systems
20 for nonresidential structures as the Secretary
21 shall identify and adopt by regulation, as may
22 be necessary, for purposes of this paragraph.

23 (4) GREEN BUILDING STANDARDS.—The green
24 building standards under this paragraph are as fol-
25 lows:

1 (A) The national Green Communities cri-
2 teria checklist for residential construction that
3 provides criteria for the design, development,
4 and operation of affordable housing, as such
5 checklist or successor checklist is in effect for
6 purposes of this section pursuant to paragraph
7 (7).

8 (B) The gold certification level for the
9 LEED for New Construction rating system, the
10 LEED for Homes rating system, the LEED for
11 Core and Shell rating system, as applicable, as
12 such systems or successor systems are in effect
13 for purposes of this section pursuant to para-
14 graph (7).

15 (C) The Green Globes assessment and rat-
16 ing system of the Green Buildings Initiative.

17 (D) For manufactured housing, energy
18 star rating with respect to fixtures, appliances,
19 and equipment in such housing, as such stand-
20 ard or successor standard is in effect for pur-
21 poses of this section pursuant to paragraph (7).

22 (E) The National Green Building Stand-
23 ard.

24 (F) Any other requirements, standards,
25 checklists, or rating systems for green building

1 or sustainability as the Secretary may identify
2 and adopt by regulation, as may be necessary
3 for purposes of this paragraph, except that the
4 Secretary shall make a determination regarding
5 whether to adopt and apply any such require-
6 ments, standards, checklist, or rating system
7 for purposes of this section not later than the
8 expiration of the 180-day period beginning upon
9 date of receipt of any written request, made in
10 such form as the Secretary shall provide, for
11 such adoption and application.

12 (5) GREEN BUILDING.—For purposes of this
13 subsection, the term “green building” means, with
14 respect to standards for structures, standards to re-
15 quire use of sustainable design principles to reduce
16 the use of nonrenewable resources, minimize the im-
17 pact of development on the environment, and to im-
18 prove indoor air quality.

19 (6) ENERGY AUDITS.—The Secretary shall es-
20 tablish standards and requirements for energy au-
21 dits for purposes of paragraph (3)(A)(ii) and, in es-
22 tablishing such standards, may consult with any ad-
23 visory committees established pursuant to section
24 285(c)(2) of this subtitle.

1 (7) APPLICABILITY AND UPDATING OF STAND-
2 ARDS.—

3 (A) APPLICABILITY.—Except as provided
4 in subparagraph (B), the requirements, stand-
5 ards, checklists, and rating systems referred to
6 in this subsection that are in effect for purposes
7 of this subsection are such requirements, stand-
8 ards, checklists, and systems are as in existence
9 upon the date of the enactment of this Act.

10 (B) UPDATING.—For purposes of this sec-
11 tion, the Secretary may adopt and apply by reg-
12 ulation, as may be necessary, future amend-
13 ments and supplements to, and editions of, the
14 requirements, standards, checklists, and rating
15 systems referred to in this subsection, including
16 applicable energy efficiency building codes that
17 are certified as in compliance with section 304
18 of the Energy Conservation and Production Act
19 (42 U.S.C. 6833) as amended by section 201 of
20 this Act, or national energy efficiency building
21 codes adopted pursuant to that section.

22 (c) AUTHORITY OF SECRETARY TO APPLY STAND-
23 ARDS TO FEDERALLY ASSISTED HOUSING AND PRO-
24 GRAMS.—

1 (1) HUD HOUSING AND PROGRAMS.—The Sec-
2 retary of Housing and Urban Development may, by
3 regulation, provide for the applicability of the energy
4 efficiency standards under subsection (a) or the en-
5 hanced energy efficiency and conservation standards
6 and green building standards under subsection (b),
7 or both, with respect to any covered federally as-
8 sisted housing described in paragraph (3)(A) or any
9 HUD assistance, subject to minimum Federal codes
10 or standards then in effect.

11 (2) RURAL HOUSING.—The Secretary of Agri-
12 culture may, by regulation, provide for the applica-
13 bility of the energy efficiency standards under sub-
14 section (a) or the enhanced energy efficiency and
15 conservation standards and green building standards
16 under subsection (b), or both, with respect to any
17 covered federally assisted housing described in para-
18 graph (3)(B) or any assistance provided with respect
19 to rural housing by the Rural Housing Service of the
20 Department of Agriculture, subject to minimum
21 Federal codes or standards then in effect.

22 (3) COVERED FEDERALLY ASSISTED HOUS-
23 ING.—For purposes of this subsection, the term
24 “covered federally assisted housing” means—

1 (A) any residential or nonresidential struc-
2 ture for which any HUD assistance is provided;
3 and

4 (B) any new construction of single-family
5 housing (other than manufactured homes) sub-
6 ject to mortgages insured, guaranteed, or made
7 by the Secretary of Agriculture under title V of
8 the Housing Act of 1949 (42 U.S.C. 1471 et
9 seq.).

10 **SEC. 285. ENERGY EFFICIENCY AND CONSERVATION DEM-**
11 **ONSTRATION PROGRAM FOR MULTIFAMILY**
12 **HOUSING PROJECTS ASSISTED WITH**
13 **PROJECT-BASED RENTAL ASSISTANCE.**

14 (a) **AUTHORITY.**—For multifamily housing projects
15 for which project-based rental assistance is provided under
16 a covered multifamily assistance program, the Secretary
17 shall, subject to the availability of amounts provided in
18 advance in appropriation Acts, carry out a program to
19 demonstrate the effectiveness of funding a portion of the
20 costs of meeting the enhanced energy efficiency standards
21 under section 284(b). At the discretion of the Secretary,
22 the demonstration program may include incentives for
23 housing that is assisted with Indian housing block grants
24 provided pursuant to the Native American Housing Assist-
25 ance and Self-Determination Act of 1996, but only to the

1 extent that such inclusion does not violate such Act, its
2 regulations, and the goal of such Act of tribal self-deter-
3 mination.

4 (b) GOALS.—The demonstration program under this
5 section shall be carried out in a manner that—

6 (1) protects the financial interests of the Fed-
7 eral Government;

8 (2) reduces the proportion of funds provided by
9 the Federal Government and by owners and resi-
10 dents of multifamily housing projects that are used
11 for costs of utilities for the projects;

12 (3) encourages energy efficiency and conserva-
13 tion by owners and residents of multifamily housing
14 projects and installation of renewable energy im-
15 provements, such as improvements providing for use
16 of solar, wind, geothermal, or biomass energy
17 sources;

18 (4) creates incentives for project owners to
19 carry out such energy efficiency renovations and im-
20 provements by allowing a portion of the savings in
21 operating costs resulting from such renovations and
22 improvements to be retained by the project owner,
23 notwithstanding otherwise applicable limitations on
24 dividends;

1 (5) promotes the installation, in existing resi-
2 dential buildings, of energy-efficient and cost-effec-
3 tive improvements and renewable energy improve-
4 ments, such as improvements providing for use of
5 solar, wind, geothermal, or biomass energy sources;

6 (6) tests the efficacy of a variety of energy effi-
7 ciency measures for multifamily housing projects of
8 various sizes and in various geographic locations;

9 (7) tests methods for addressing the various,
10 and often competing, incentives that impede owners
11 and residents of multifamily housing projects from
12 working together to achieve energy efficiency or con-
13 servation; and

14 (8) creates a database of energy efficiency and
15 conservation, and renewable energy, techniques, en-
16 ergy-savings management practices, and energy effi-
17 ciency and conservation financing vehicles.

18 (c) APPROACHES.—In carrying out the demonstra-
19 tion program under this section, the Secretary may—

20 (1) enter into agreements with the Building
21 America Program of the Department of Energy and
22 other consensus committees under which such pro-
23 grams, partnerships, or committees assume some or
24 all of the functions, obligations, and benefits of the
25 Secretary with respect to energy savings;

1 (2) establish advisory committees to advise the
2 Secretary and any such third-party partners on tech-
3 nological and other developments in the area of en-
4 ergy efficiency and the creation of an energy effi-
5 ciency and conservation credit facility and other fi-
6 nancing opportunities, which committees shall in-
7 clude representatives of homebuilders, realtors, ar-
8 chitects, nonprofit housing organizations, environ-
9 mental protection organizations, renewable energy
10 organizations, and advocacy organizations for the el-
11 derly and persons with disabilities; any advisory
12 committees established pursuant to this paragraph
13 shall not be subject to the Federal Advisory Com-
14 mittee Act (5 U.S.C. App.);

15 (3) approve, for a period not to exceed 10
16 years, additional adjustments in the maximum
17 monthly rents or additional project rental assistance,
18 or additional Indian housing block grant funds
19 under the Native American Housing Assistance and
20 Self-Determination Act of 1996, as applicable, for
21 dwelling units in multifamily housing projects that
22 are provided project-based rental assistance under a
23 covered multifamily assistance program, in such
24 amounts as may be necessary to amortize a portion

1 of the cost of energy efficiency and conservation
2 measures for such projects;

3 (4) develop a competitive process for the award
4 of such additional assistance for multifamily housing
5 projects seeking to implement energy efficiency, re-
6 newable energy sources, or conservation measures;
7 and

8 (5) waive or modify any existing statutory or
9 regulatory provision that would otherwise impair the
10 implementation or effectiveness of the demonstration
11 program under this section, including provisions re-
12 lating to methods for rent adjustments, com-
13 parability standards, maximum rent schedules, and
14 utility allowances; notwithstanding the preceding
15 provisions of this paragraph, the Secretary may not
16 waive any statutory requirement relating to fair
17 housing, nondiscrimination, labor standards, or the
18 environment, except pursuant to existing authority
19 to waive nonstatutory environmental and other ap-
20 plicable requirements.

21 (d) REQUIREMENT.—During the 4-year period begin-
22 ning 12 months after the date of the enactment of this
23 Act, the Secretary shall carry out demonstration programs
24 under this section with respect to not fewer than 50,000
25 dwelling units.

1 (e) SELECTION.—

2 (1) SCOPE.—In order to provide a broad and
3 representative profile for use in designing a program
4 which can become operational and effective nation-
5 wide, the Secretary shall carry out the demonstra-
6 tion program under this section with respect to
7 dwelling units located in a wide variety of geographic
8 areas and project types assisted by the various cov-
9 ered multifamily assistance programs and using a
10 variety of energy efficiency and conservation and
11 funding techniques to reflect differences in climate,
12 types of dwelling units and technical and scientific
13 methodologies, and financing options. The Secretary
14 shall ensure that the geographic areas included in
15 the demonstration program include dwelling units on
16 Indian lands (as such term is defined in section
17 2601 of the Energy Policy Act of 1992 (25 U.S.C.
18 3501), to the extent that dwelling units on Indian
19 land have the type of residential structures that are
20 the focus of the demonstration program.

21 (2) PRIORITY.—The Secretary shall provide pri-
22 ority for selection for participation in the program
23 under this section based on the extent to which, as
24 a result of assistance provided, the project will com-

1 ply with the energy efficiency standards under sub-
2 section (a), (b), or (c) of section 284 of this subtitle.

3 (f) USE OF EXISTING PARTNERSHIPS.—To the ex-
4 tent feasible, the Secretary shall—

5 (1) utilize the Partnership for Advancing Tech-
6 nology in Housing of the Department of Housing
7 and Urban Development to assist in carrying out the
8 requirements of this section and to provide education
9 and outreach regarding the demonstration program
10 authorized under this section; and

11 (2) consult with the Secretary of Energy, the
12 Administrator of the Environmental Protection
13 Agency, and the Secretary of the Army regarding
14 utilizing the Building America Program of the De-
15 partment of Energy, the Energy Star Program, and
16 the Army Corps of Engineers, respectively, to deter-
17 mine the manner in which they might assist in car-
18 rying out the goals of this section and providing edu-
19 cation and outreach regarding the demonstration
20 program authorized under this section.

21 (g) LIMITATION.—No amounts made available under
22 the American Recovery and Reinvestment Act of 2009
23 (Public Law 111–5) may be used to carry out the dem-
24 onstration program under this section.

25 (h) REPORTS.—

1 (1) ANNUAL.—Not later than the expiration of
2 the 2-year beginning upon the date of the enactment
3 of this Act, and for each year thereafter during the
4 term of the demonstration program, the Secretary
5 shall submit a report to the Congress annually that
6 describes and assesses the demonstration program
7 under this section.

8 (2) FINAL.—Not later than 6 months after the
9 expiration of the 4-year period described in sub-
10 section (d), the Secretary shall submit a final report
11 to the Congress assessing the demonstration pro-
12 gram, which—

13 (A) shall assess the potential for expanding
14 the demonstration program on a nationwide
15 basis; and

16 (B) shall include descriptions of—

17 (i) the size of each multifamily hous-
18 ing project for which assistance was pro-
19 vided under the program;

20 (ii) the geographic location of each
21 project assisted, by State and region;

22 (iii) the criteria used to select the
23 projects for which assistance is provided
24 under the program;

1 (iv) the energy efficiency and con-
2 servation measures and financing sources
3 used for each project that is assisted under
4 the program;

5 (v) the difference, before and during
6 participation in the demonstration pro-
7 gram, in the amount of the monthly assist-
8 ance payments under the covered multi-
9 family assistance program for each project
10 assisted under the program;

11 (vi) the average length of the term of
12 the such assistance provided under the
13 program for a project;

14 (vii) the aggregate amount of savings
15 generated by the demonstration program
16 and the amount of savings expected to be
17 generated by the program over time on a
18 per-unit and aggregate program basis;

19 (viii) the functions performed in con-
20 nection with the implementation of the
21 demonstration program that were trans-
22 ferred or contracted out to any third par-
23 ties;

1 (ix) an evaluation of the overall suc-
2 cesses and failures of the demonstration
3 program; and

4 (x) recommendations for any actions
5 to be taken as a result of the such suc-
6 cesses and failures.

7 (3) CONTENTS.—Each annual report pursuant
8 to paragraph (1) and the final report pursuant to
9 paragraph (2) shall include—

10 (A) a description of the status of each mul-
11 tifamily housing project selected for partici-
12 pation in the demonstration program under this
13 section; and

14 (B) findings from the program and rec-
15 ommendations for any legislative actions.

16 (i) COVERED MULTIFAMILY ASSISTANCE PRO-
17 GRAM.—For purposes of this section, the term “covered
18 multifamily assistance program” means—

19 (1) the program under section 8 of the United
20 States Housing Act of 1937 (42 U.S.C. 1437f) for
21 project-based rental assistance;

22 (2) the program under section 202 of the Hous-
23 ing Act of 1959 (12 U.S.C. 1701q) for assistance
24 for supportive housing for the elderly;

1 (3) the program under section 811 of the Cran-
2 ston-Gonzalez National Affordable Housing Act (42
3 U.S.C. 8013) for supportive housing for persons
4 with disabilities;

5 (4) the program under section 236 of the Na-
6 tional Housing Act (12 U.S.C. 1715z-1 for assist-
7 ance for rental housing projects;

8 (5) the program under section 515 of the Hous-
9 ing Act of 1949 (42 U.S.C. 1485) for rural rental
10 housing; and

11 (6) the program for assistance under the Native
12 American Housing Assistance and Self-Determina-
13 tion Act of 1996 (25 U.S.C. 4111).

14 (j) AUTHORIZATION OF APPROPRIATIONS.—There is
15 authorized to be appropriated to carry out this section,
16 including providing rent adjustments, additional project
17 rental assistance, and incentives, \$50,000,000 for each fis-
18 cal year in which the demonstration program under this
19 section is carried out.

20 (k) REGULATIONS.—Not later than the expiration of
21 the 180-day period beginning on the date of the enactment
22 of this Act, the Secretary shall issue any regulations nec-
23 essary to carry out this section.

1 **SEC. 286. ADDITIONAL CREDIT FOR FANNIE MAE AND**
2 **FREDDIE MAC HOUSING GOALS FOR ENERGY-**
3 **EFFICIENT AND LOCATION-EFFICIENT MORT-**
4 **GAGES.**

5 Section 1336(a) of the Housing and Community De-
6 velopment Act of 1992 (12 U.S.C. 4566(a)), as amended
7 by the Federal Housing Finance Regulatory Reform Act
8 of 2008 (Public Law 110–289; 122 Stat. 2654), is amend-
9 ed—

10 (1) in paragraph (2), by striking “paragraph
11 (5)” and inserting “paragraphs (5) and (6)”; and

12 (2) by adding at the end the following new
13 paragraph:

14 “(6) ADDITIONAL CREDIT.—

15 “(A) IN GENERAL.—In assigning credit to-
16 ward achievement under this section of the
17 housing goals for mortgage purchase activities
18 of the enterprises, the Director shall assign—

19 “(i) more than 125 percent credit, for
20 any such purchase that both—

21 “(I) complies with the require-
22 ments of such goals; and

23 “(II)(aa) supports housing that
24 meets the energy efficiency standards
25 under section 284(a) of the Green Re-

1 sources for Energy Efficient Neigh-
2 borhoods Act of 2009; or

3 “(bb) is a location-efficient mort-
4 gage, as such term is defined in sec-
5 tion 1335(e); and

6 “(ii) credit in addition to credit under
7 clause (i), for any such purchase that
8 both—

9 “(I) complies with the require-
10 ments of such goals, and

11 “(II) supports housing that com-
12 plies with the enhanced energy effi-
13 ciency and conservation standards, or
14 the green building standards, under
15 section 284(b) of such Act, or both,

16 and such additional credit shall be given
17 based on the extent to which the housing
18 supported with such purchases complies
19 with such standards.

20 “(B) TREATMENT OF ADDITIONAL CRED-
21 IT.—The availability of additional credit under
22 this paragraph shall not be used to increase any
23 housing goal, subgoal, or target established
24 under this subpart.”.

1 **SEC. 287. DUTY TO SERVE UNDERSERVED MARKETS FOR**
2 **ENERGY-EFFICIENT AND LOCATION-EFFI-**
3 **CIENT MORTGAGES.**

4 Section 1335 of Federal Housing Enterprises Finan-
5 cial Safety and Soundness Act of 1992 (12 U.S.C. 4565),
6 as amended by the Federal Housing Finance Regulatory
7 Reform Act of 2008 (Public Law 110–289; 122 Stat.
8 2654), is amended—

9 (1) in subsection (a)(1), by adding at the end
10 the following new subparagraph:

11 “(D) **MARKETS FOR ENERGY-EFFICIENT**
12 **AND LOCATION-EFFICIENT MORTGAGES.—**

13 “(i) **DUTY.**—Subject to clause (ii), the
14 enterprise shall develop loan products and
15 flexible underwriting guidelines to facilitate
16 a secondary market for energy-efficient
17 and location-efficient mortgages on hous-
18 ing for very low-, low-, and moderate-in-
19 come families, and for second and junior
20 mortgages made for purposes of energy ef-
21 ficiency or renewable energy improvements,
22 or both.

23 “(ii) **AUTHORITY TO SUSPEND.**—Not-
24 withstanding any other provision of this
25 section, the Director may suspend the ap-
26 plicability of the requirement under clause

1 (i) with respect to an enterprise, for such
2 period as is necessary, if the Director de-
3 termines that exigent circumstances exist
4 and such suspension is appropriate to en-
5 sure the safety and soundness of the port-
6 folio holdings of the enterprise.”;

7 (2) by adding at the end the following new sub-
8 section:

9 “(e) DEFINITIONS.—For purposes of this section, the
10 following definitions shall apply:

11 “(1) ENERGY-EFFICIENT MORTGAGE.—The
12 term ‘energy-efficient mortgage’ means a mortgage
13 loan under which the income of the borrower, for
14 purposes of qualification for such loan, is considered
15 to be increased by not less than \$1 for each \$1 of
16 savings projected to be realized by the borrower as
17 a result of cost-effective energy-saving design, con-
18 struction or improvements (including use of renew-
19 able energy sources, such as solar, geothermal, bio-
20 mass, and wind, super-insulation, energy-saving win-
21 dows, insulating glass and film, and radiant barrier)
22 for the home for which the loan is made.

23 “(2) LOCATION-EFFICIENT MORTGAGE.—The
24 term ‘location-efficient mortgage’ means a mortgage
25 loan under which—

1 “(A) the income of the borrower, for pur-
2 poses of qualification for such loan, is consid-
3 ered to be increased by not less than \$1 for
4 each \$1 of savings projected to be realized by
5 the borrower because the location of the home
6 for which loan is made will result in decreased
7 transportation costs for the household of the
8 borrower; or

9 “(B) the sum of the principal, interest,
10 taxes, and insurance due under the mortgage
11 loan is decreased by not less than \$1 for each
12 \$1 of savings projected to be realized by the
13 borrower because the location of the home for
14 which loan is made will result in decreased
15 transportation costs for the household of the
16 borrower.”.

17 **SEC. 288. CONSIDERATION OF ENERGY EFFICIENCY UNDER**
18 **FHA MORTGAGE INSURANCE PROGRAMS AND**
19 **NATIVE AMERICAN AND NATIVE HAWAIIAN**
20 **LOAN GUARANTEE PROGRAMS.**

21 (a) **FHA MORTGAGE INSURANCE.—**

22 (1) **REQUIREMENT.—**Title V of the National
23 Housing Act is amended by adding after section 542
24 (12 U.S.C. 1735f–20) the following new section:

1 **“SEC. 543. CONSIDERATION OF ENERGY EFFICIENCY.**

2 “(a) UNDERWRITING STANDARDS.—The Secretary
3 shall establish a method to consider, in its underwriting
4 standards for mortgages on single-family housing meeting
5 the energy efficiency standards under section 284(a) of
6 the Green Resources for Energy Efficient Neighborhoods
7 Act of 2009 that are insured under this Act, the impact
8 that savings on utility costs has on the income of the mort-
9 gator.

10 “(b) GOAL.—It is the sense of the Congress that, in
11 carrying out this Act, the Secretary should endeavor to
12 insure mortgages on single-family housing meeting the en-
13 ergy efficiency standards under section 284(a) of the
14 Green Resources for Energy Efficient Neighborhoods Act
15 of 2009 such that at least 50,000 such mortgages are in-
16 sured during the period beginning upon the date of the
17 enactment of such Act and ending on December 31,
18 2012.”.

19 (2) REPORTING ON DEFAULTS.—Section 540(b)
20 of the National Housing Act (12 U.S.C. 1735f–
21 18(b)) is amended by adding at the end the fol-
22 lowing new paragraph:

23 “(3) With respect to each collection period that
24 commences after December 31, 2011, the total num-
25 ber of mortgages on single-family housing meeting
26 the energy efficiency standards under section 284(a)

1 of the Green Resources for Energy Efficient Neigh-
2 borhoods Act of 2009 that are insured by the Sec-
3 retary during the applicable collection period, the
4 number of defaults and foreclosures occurring on
5 such mortgages during such period, the percentage
6 of the total of such mortgages insured during such
7 period on which defaults and foreclosure occurred,
8 and the rate for such period of defaults and fore-
9 closures on such mortgages compared to the overall
10 rate for such period of defaults and foreclosures on
11 mortgages for single-family housing insured under
12 this Act by the Secretary.”.

13 (b) INDIAN HOUSING LOAN GUARANTEES.—

14 (1) REQUIREMENT.—Section 184 of the Hous-
15 ing and Community Development Act of 1992 (12
16 U.S.C. 1715z–13a) is amended—

17 (A) by redesignating subsection (l) as sub-
18 section (m); and

19 (B) by inserting after subsection (k) the
20 following new subsection:

21 “(l) CONSIDERATION OF ENERGY EFFICIENCY.—The
22 Secretary shall establish a method to consider, in its un-
23 derwriting standards for loans for single-family housing
24 meeting the energy efficiency standards under section
25 284(a) of the Green Resources for Energy Efficient

1 Neighborhoods Act of 2009 that are guaranteed under
2 this section, the impact that savings on utility costs has
3 on the income of the borrower.”.

4 (2) REPORTING ON DEFAULTS.—Section 540(b)
5 of the National Housing Act (12 U.S.C. 1735f–
6 18(b)), as amended by subsection (a)(2) of this sec-
7 tion, is further amended by adding at the end the
8 following new paragraph:

9 “(4) With respect to each collection period that
10 commences after December 31, 2011, the total num-
11 ber of loans guaranteed under section 184 of the
12 Housing and Community Development Act of 1992
13 (12 U.S.C. 1715z–13a) on single-family housing
14 meeting the energy efficiency standards under sec-
15 tion 284(a) of the Green Resources for Energy Effi-
16 cient Neighborhoods Act of 2009 that are guaran-
17 teed by the Secretary during the applicable collection
18 period, the number of defaults and foreclosures oc-
19 ccurring on such loans during such period, the per-
20 centage of the total of such loans guaranteed during
21 such period on which defaults and foreclosure oc-
22 curred, and the rate for such period of defaults and
23 foreclosures on such loans compared to the overall
24 rate for such period of defaults and foreclosures on

1 loans for single-family housing guaranteed under
2 such section 184 by the Secretary.”.

3 (c) NATIVE HAWAIIAN HOUSING LOAN GUARAN-
4 TEES.—

5 (1) REQUIREMENT.—Section 184A of the
6 Housing and Community Development Act of 1992
7 (12 U.S.C. 1715z–13b) is amended by inserting
8 after subsection (l) the following new subsection:

9 “(m) ENERGY-EFFICIENT HOUSING REQUIRE-
10 MENT.—The Secretary shall establish a method to con-
11 sider, in its underwriting standards for loans for single-
12 family housing meeting the energy efficiency standards
13 under section 284(a) of the Green Resources for Energy
14 Efficient Neighborhoods Act of 2009 that are guaranteed
15 under this section, the impact that savings on utility costs
16 has on the income of the borrower.”.

17 (2) REPORTING ON DEFAULTS.—Section 540(b)
18 of the National Housing Act (12 U.S.C. 1735f–
19 18(b)), as amended by the preceding provisions of
20 this section, is further amended by adding at the
21 end the following new paragraph:

22 “(5) With respect to each collection period that
23 commences after December 31, 2011, the total num-
24 ber of loans guaranteed under section 184A of the
25 Housing and Community Development Act of 1992

1 (12 U.S.C. 1715z–13b) on single-family housing
2 meeting the energy efficiency standards under sec-
3 tion 284(a) of the Green Resources for Energy Effi-
4 cient Neighborhoods Act of 2009 that are guaran-
5 teed by the Secretary during the applicable collection
6 period, the number of defaults and foreclosures oc-
7 ccurring on such loans during such period, the per-
8 centage of the total of such loans guaranteed during
9 such period on which defaults and foreclosure oc-
10 curred, and the rate for such period of defaults and
11 foreclosures on such loans compared to the overall
12 rate for such period of defaults and foreclosures on
13 loans for single-family housing guaranteed under
14 such section 184A by the Secretary.”.

15 **SEC. 289. ENERGY-EFFICIENT MORTGAGES AND LOCATION-**
16 **EFFICIENT MORTGAGES EDUCATION AND**
17 **OUTREACH CAMPAIGN.**

18 Section 106 of the Energy Policy Act of 1992 (12
19 U.S.C. 1701z–16) is amended by adding at the end the
20 following new subsection:

21 “(g) EDUCATION AND OUTREACH CAMPAIGN.—

22 “(1) DEVELOPMENT OF ENERGY- AND LOCA-
23 TION-EFFICIENT MORTGAGES OUTREACH PRO-
24 GRAM.—

1 “(A) COMMISSION.—The Secretary, in con-
2 sultation and coordination with the Secretary of
3 Energy, the Secretary of Education, the Sec-
4 retary of Agriculture, and the Administrator of
5 the Environmental Protection Agency, shall es-
6 tablish a commission to develop and recommend
7 model mortgage products and underwriting
8 guidelines that provide market-based incentives
9 to prospective home buyers, lenders, and sellers
10 to incorporate energy efficiency upgrades and
11 location efficiencies in new mortgage loan trans-
12 actions.

13 “(B) REPORT.—Not later than 24 months
14 after the date of the enactment of this Act, the
15 Secretary shall provide a written report to the
16 Congress on the results of work of the commis-
17 sion established pursuant to subparagraph (A)
18 and that identifies model mortgage products
19 and underwriting guidelines that may encour-
20 age energy and location efficiency.

21 “(2) IMPLEMENTATION.—After submission of
22 the report under paragraph (1)(B), the Secretary, in
23 consultation and coordination with the Secretary of
24 Energy, the Secretary of Education, and the Admin-
25 istrator of the Environmental Protection Agency,

1 shall carry out a public awareness, education, and
2 outreach campaign based on the findings of the com-
3 mission established pursuant to paragraph (1) to in-
4 form and educate residential lenders and prospective
5 borrowers regarding the availability, benefits, advan-
6 tages, and terms of energy-efficient mortgages and
7 location-efficient mortgages made available pursuant
8 to this section, energy-efficient and location-efficient
9 mortgages that meet the requirements of section
10 1335 of the Housing and Community Development
11 Act of 1992 (42 U.S.C. 4565), and other mortgages,
12 including mortgages for multifamily housing, that
13 have energy improvement features or location effi-
14 ciency features and to publicize such availability,
15 benefits, advantages, and terms. Such actions may
16 include entering into a contract with an appropriate
17 entity to publicize and market such mortgages
18 through appropriate media.

19 “(3) RENEWABLE ENERGY HOME PRODUCT
20 EXPOS.—The Congress hereby encourages the Sec-
21 retary of Housing and Urban Development to work
22 with appropriate entities to organize and hold renew-
23 able energy expositions that provide an opportunity
24 for the public to view and learn about renewable en-

1 energy products for the home that are currently on the
2 market.

3 “(4) AUTHORIZATION OF APPROPRIATIONS.—
4 There is authorized to be appropriated to the Sec-
5 retary to carry out this subsection \$5,000,000 for
6 each of fiscal years 2010 through 2014.”.

7 **SEC. 290. COLLECTION OF INFORMATION ON ENERGY-EFFI-**
8 **CIENT AND LOCATION-EFFICIENT MORT-**
9 **GAGES THROUGH HOME MORTGAGE DISCLO-**
10 **SURE ACT.**

11 (a) IN GENERAL.—Section 304(b) of the Home Mort-
12 gage Disclosure Act of 1975 (12 U.S.C. 2803(b)) is
13 amended—

14 (1) in paragraph (3), by striking “and” at the
15 end;

16 (2) in paragraph (4), by striking the period at
17 the end and inserting a semicolon; and

18 (3) by adding at the end the following new
19 paragraphs:

20 “(5) the number and dollar amount of mort-
21 gage loans for single-family housing and for multi-
22 family housing that are energy-efficient mortgages
23 (as such term is defined in section 1335 of Housing
24 and Community Development Act of 1992); and

1 “(6) the number and dollar amount of mort-
2 gage loans for single-family housing and for multi-
3 family housing that are location-efficient mortgages
4 (as such term is defined in section 1335 of Housing
5 and Community Development Act of 1992).”.

6 (b) **APPLICABILITY.**—The amendment made by sub-
7 section (a) shall apply with respect to the first calendar
8 year that begins after the expiration of the 30-day period
9 beginning on the date of the enactment of this Act.

10 **SEC. 291. ENSURING AVAILABILITY OF HOMEOWNERS IN-**
11 **SURANCE FOR HOMES NOT CONNECTED TO**
12 **ELECTRICITY GRID.**

13 (a) **CONGRESSIONAL INTENT.**—The Congress intends
14 that—

15 (1) consumers shall not be denied homeowners
16 insurance for a dwelling (as such term is defined in
17 subsection (c)) based solely on the fact that the
18 dwelling is not connected to or able to receive elec-
19 tricity service from any wholesale or retail electric
20 power provider;

21 (2) States should ensure that consumers are
22 able to obtain homeowners insurance for such dwell-
23 ings;

24 (3) States should support insurers that develop
25 voluntary incentives to provide such insurance; and

1 (4) States may not prohibit insurers from offer-
2 ing a homeowners insurance product specifically de-
3 signed for such dwellings.

4 (b) INSURING HOMES AND RELATED PROPERTY IN
5 INDIAN AREAS.—Notwithstanding any other provision of
6 law, dwellings located in Indian areas (as such term is de-
7 fined in section 4 of the Native American Housing Assist-
8 ance and Self-Determination Act of 1996 (25 U.S.C.
9 4103)) and constructed or maintained using assistance,
10 loan guarantees, or other authority under the Native
11 American Housing Assistance and Self-Determination Act
12 of 1996 may be insured by any tribally owned self-insur-
13 ance risk pool approved by the Secretary of Housing and
14 Urban Development.

15 (c) DWELLING.—For purposes of this section, the
16 term “dwelling” means a residential structure that—

17 (1) consists of one to four dwelling units;

18 (2) is provided electricity from renewable en-
19 ergy sources; and

20 (3) is not connected to any wholesale or retail
21 electrical power grid.

22 **SEC. 292. MORTGAGE INCENTIVES FOR ENERGY-EFFICIENT**
23 **MULTIFAMILY HOUSING.**

24 (a) IN GENERAL.—The Secretary of Housing and
25 Urban Development shall establish incentives for increas-

1 ing the energy efficiency of multifamily housing that is
2 subject to a mortgage to be insured under title II of the
3 National Housing Act (12 U.S.C. 1707 et seq.) so that
4 the housing meets the energy efficiency standards under
5 section 284(a) of this subtitle and incentives to encourage
6 compliance of such housing with the energy efficiency and
7 conservation standards, and the green building standards,
8 under section 284(b) of this subtitle, to the extent that
9 such incentives are based on the impact that savings on
10 utility costs has on the operating costs of the housing, as
11 determined by the Secretary.

12 (b) INCENTIVES.—Such incentives may include, for
13 any such multifamily housing that complies with the en-
14 ergy efficiency standards under section 284(a)—

15 (1) providing a discount on the chargeable pre-
16 miums for the mortgage insurance for such housing
17 from the amount otherwise chargeable for such
18 mortgage insurance;

19 (2) allowing mortgages to exceed the dollar
20 amount limits otherwise applicable under law to the
21 extent such additional amounts are used to finance
22 improvements or measures designed to meet the
23 standards referred to in subsection (a); and

1 (3) reducing the amount that the owner of such
2 multifamily housing meeting the standards referred
3 to in subsection (a) is required to contribute.

4 **SEC. 293. ENERGY-EFFICIENT CERTIFICATIONS FOR MANU-**
5 **FACTURED HOUSING WITH MORTGAGES.**

6 Section 526 of the National Housing Act (12 U.S.C.
7 1735f-4(a)) is amended—

8 (1) in subsection (a)—

9 (A) by striking “, other than manufactured
10 homes,” each place such term appears;

11 (B) by inserting after the period at the end
12 the following: “The energy performance require-
13 ments developed and established by the Sec-
14 retary under this section for manufactured
15 homes shall require energy star rating for wall
16 fixtures, appliances, and equipment in such
17 housing.”;

18 (C) by inserting “(1)” after “(a)”; and

19 (D) by adding at the end the following new
20 paragraphs:

21 “(2) The Secretary shall require, with respect to any
22 single- or multi-family residential housing subject to a
23 mortgage insured under this Act, that any approval or cer-
24 tification of the housing for meeting any energy efficiency
25 or conservation criteria, standards, or requirements pursu-

1 ant to this title and any approval or certification required
2 pursuant to this title with respect to energy-conserving im-
3 provements or any renewable energy sources, such as
4 wind, solar energy geothermal, or biomass, shall be con-
5 ducted only by an individual certified by a home energy
6 rating system provider who has been accredited to conduct
7 such ratings by the Home Energy Ratings System Coun-
8 cil, the Residential Energy Services Network, or such
9 other appropriate national organization, as the Secretary
10 may provide, or by licensed professional architect or engi-
11 neer. If any organization makes a request to the Secretary
12 for approval to accredit individuals to conduct energy effi-
13 ciency or conservation ratings, the Secretary shall review
14 and approve or disapprove such request not later than the
15 expiration of the 6-month period beginning upon receipt
16 of such request.

17 “(3) The Secretary shall periodically examine the
18 method used to conduct inspections for compliance with
19 the requirements under this section, analyze various other
20 approaches for conducting such inspections, and review
21 the costs and benefits of the current method compared
22 with other methods.”; and

23 (2) in subsection (b), by striking “, other than
24 a manufactured home,”.

1 **SEC. 294. ASSISTED HOUSING ENERGY LOAN PILOT PRO-**
2 **GRAM.**

3 (a) **AUTHORITY.**—Not later than the expiration of
4 the 12-month period beginning on the date of the enact-
5 ment of this Act, the Secretary shall develop and imple-
6 ment a pilot program under this section to facilitate the
7 financing of cost-effective capital improvements for cov-
8 ered assisted housing projects to improve the energy effi-
9 ciency and conservation of such projects.

10 (b) **LOANS.**—The pilot program under this section
11 shall involve not less than three and not more than five
12 lenders, and shall provide for a privately financed loan to
13 be made for a covered assisted housing project, which
14 shall—

15 (1) finance capital improvements for the project
16 that meet such requirements as the Secretary shall
17 establish, and may involve contracts with third par-
18 ties to perform such capital improvements, including
19 the design of such improvements by licensed profes-
20 sional architects or engineers;

21 (2) have a term to maturity of not more than
22 20 years, which shall be based upon the duration
23 necessary to realize cost savings sufficient to repay
24 the loan;

1 (3) be secured by a mortgage subordinate to the
2 mortgage for the project that is insured under the
3 National Housing Act; and

4 (4) provide for a reduction in the remaining
5 principal obligation under the loan based on the ac-
6 tual resulting cost savings realized from the capital
7 improvements financed with the loan.

8 (c) UNDERWRITING STANDARDS.—The Secretary
9 shall establish underwriting requirements for loans made
10 under the pilot program under this section, which shall—

11 (1) require the cost savings projected to be real-
12 ized from the capital improvements financed with
13 the loan, during the term of the loan, to exceed the
14 costs of repaying the loan;

15 (2) allow the designer or contractor involved in
16 designing capital improvements to be financed with
17 a loan under the program to carry out such capital
18 improvements; and

19 (3) include such energy, audit, property, finan-
20 cial, ownership, and approval requirements as the
21 Secretary considers appropriate.

22 (d) TREATMENT OF SAVINGS.—The pilot program
23 under this section shall provide that the project owner
24 shall receive the full financial benefit from any reduction

1 in the cost of utilities resulting from capital improvements
2 financed with a loan made under the program.

3 (e) COVERED ASSISTED HOUSING PROJECTS.—For
4 purposes of this section, the term “covered assisted hous-
5 ing project” means a housing project that—

6 (1) is financed by a loan or mortgage that is—

7 (A) insured by the Secretary under—

8 (i) subsection (d)(3) of section 221 of
9 the National Housing Act (12 U.S.C.
10 1715l), and bears interest at a rate deter-
11 mined under the proviso of section
12 221(d)(5) of such Act; or

13 (ii) subsection (d)(4) of such section
14 221.

15 (B) insured or assisted under section 236
16 of the National Housing Act (12 U.S.C. 1715z-
17 1);

18 (2) at the time a loan under this section is
19 made, is provided project-based rental assistance
20 under section 8 of the United States Housing Act of
21 1937 (42 U.S.C. 1437f) for 50 percent or more of
22 the dwelling units in the project; and

23 (3) is not a housing project owned or held by
24 the Secretary, or subject to a mortgage held by the
25 Secretary.

1 **SEC. 295. MAKING IT GREEN.**

2 (a) PARTNERSHIPS WITH TREE-PLANTING ORGANI-
3 ZATIONS.—The Secretary shall establish and provide in-
4 centives for developers of housing for which any HUD fi-
5 nancial assistance, as determined by the Secretary, is pro-
6 vided for development, maintenance, operation, or other
7 costs, to enter into agreements and partnerships with tree-
8 planting organizations, nurseries, and landscapers to cer-
9 tify that trees, shrubs, grasses, and other plants are plant-
10 ed in the proper manner, are provided adequate mainte-
11 nance, and survive for at least 3 years after planting or
12 are replaced. The financial assistance determined by the
13 Secretary as eligible under this section shall take into con-
14 sideration such factors as cost effectiveness and afford-
15 ability.

16 (b) MAKING IT GREEN PLAN.—In the case of any
17 new or substantially rehabilitated housing for which HUD
18 financial assistance, as determined in accordance with
19 subsection (a), is provided by the Secretary for the devel-
20 opment, construction, maintenance, rehabilitation, im-
21 provement, operation, or costs of the housing, including
22 financial assistance provided through the Community De-
23 velopment Block Grant program under title I of the Hous-
24 ing and Community Development Act of 1974 (42 U.S.C.
25 5301 et seq.), the Secretary shall require the development
26 of a plan that provides for—

1 (1) in the case of new construction and im-
2 provements, siting of such housing and improve-
3 ments in a manner that provides for energy effi-
4 ciency and conservation to the extent feasible, taking
5 into consideration location and project type;

6 (2) minimization of the effects of construction,
7 rehabilitation, or other development on the condition
8 of existing trees;

9 (3) selection and installation of indigenous
10 trees, shrubs, grasses, and other plants based upon
11 applicable design guidelines and standards of the
12 International Society for Arboriculture;

13 (4) post-planting care and maintenance of the
14 landscaping relating to or affected by the housing in
15 accordance with best management practices; and

16 (5) establishment of a goal for minimum
17 greenspace or tree canopy cover for the housing site
18 for which such financial assistance is provided, in-
19 cluding guidelines and timetables within which to
20 achieve compliance with such minimum require-
21 ments.

22 (c) PARTNERSHIPS.—In carrying out this section, the
23 Secretary is encouraged to consult, as appropriate, with
24 national organizations dedicated to providing housing as-
25 sistance and related services to low-income families, such

1 as the Alliance for Community Trees and its affiliates, the
2 American Nursery and Landscape Association, the Amer-
3 ican Society of Landscape Architects, and the National
4 Arbor Day Foundation.

5 **SEC. 296. RESIDENTIAL ENERGY EFFICIENCY BLOCK**
6 **GRANT PROGRAM.**

7 Title I of the Housing and Community Development
8 Act of 1974 (42 U.S.C. 5301 et seq.) is amended by add-
9 ing at the end the following new section:

10 **“SEC. 123. RESIDENTIAL ENERGY EFFICIENCY BLOCK**
11 **GRANT PROGRAM.**

12 “(a) IN GENERAL.—To the extent amounts are made
13 available for grants under this section, the Secretary shall
14 make grants under this section to States, metropolitan cit-
15 ies and urban counties, Indian tribes, and insular areas
16 to carry out energy efficiency improvements in new and
17 existing single-family and multifamily housing.

18 “(b) ALLOCATIONS.—

19 “(1) IN GENERAL.—Of the total amount made
20 available for each fiscal year for grants under this
21 section that remains after reserving amounts pursu-
22 ant to paragraph (2), the Secretary shall allocate for
23 insular areas, for metropolitan cities and urban
24 counties, and for States, an amount that bears the
25 same ratio to such total amount as the amount allo-

1 cated for such fiscal year under section 106 for In-
2 dian tribes, for insular areas, for metropolitan cities
3 and urban counties, and for States, respectively,
4 bears to the total amount made available for such
5 fiscal year for grants under section 106.

6 “(2) SET ASIDE FOR INDIAN TRIBES.—Of the
7 total amount made available for each fiscal year for
8 grants under this section, the Secretary shall allo-
9 cate not less than 1 percent to Indian tribes.

10 “(c) GRANT AMOUNTS.—

11 “(1) ENTITLEMENT COMMUNITIES.—From the
12 amounts allocated pursuant to subsection (b) for
13 metropolitan cities and urban counties for each fiscal
14 year, the Secretary shall make a grant for such fis-
15 cal year to each metropolitan city and urban county
16 that complies with the requirement under subsection
17 (d), in the amount that bears the same ratio such
18 total amount so allocated as the amount of the grant
19 for such fiscal year under section 106 for such met-
20 ropolitan city or urban county bears to the aggre-
21 gate amount of all grants for such fiscal year under
22 section 106 for all metropolitan cities and urban
23 counties.

24 “(2) STATES.—From the amounts allocated
25 pursuant to subsection (b) for States for each fiscal

1 year, the Secretary shall make a grant for such fis-
2 cal year to each State that complies with the re-
3 quirement under subsection (d), in the amount that
4 bears the same ratio such total amount so allocated
5 as the amount of the grant for such fiscal year
6 under section 106 for such State bears to the aggre-
7 gate amount of all grants for such fiscal year under
8 section 106 for all States. Grant amounts received
9 by a State shall be used only for eligible activities
10 under subsection (e) carried out in nonentitlement
11 areas of the State.

12 “(3) INDIAN TRIBES.—From the amounts allo-
13 cated pursuant to subsection (b) for Indian tribes,
14 the Secretary shall make grants to Indian tribes that
15 comply with the requirement under subsection (d) on
16 the basis of a competition conducted pursuant to
17 specific criteria, as the Secretary shall establish by
18 regulation, for the selection of Indian tribes to re-
19 ceive such amount.

20 “(4) INSULAR AREAS.—From the amounts allo-
21 cated pursuant to subsection (b) for insular areas,
22 the Secretary shall make a grant to each insular
23 area that complies with the requirement under sub-
24 section (d) on the basis of the ratio of the population
25 of the insular area to the aggregate population of all

1 insular areas. In determining the distribution of
2 amounts to insular areas, the Secretary may also in-
3 clude other statistical criteria as data become avail-
4 able from the Bureau of Census of the Department
5 of Labor, but only if such criteria are set forth by
6 regulation issued after notice and an opportunity for
7 comment.

8 “(d) STATEMENT OF ACTIVITIES.—

9 “(1) REQUIREMENT.—Before receipt the re-
10 ceipt in any fiscal year of a grant under subsection
11 (c) by any grantee, the grantee shall have prepared
12 a final statement of housing energy efficiency objec-
13 tives and projected use of funds as the Secretary
14 shall require and shall have provided the Secretary
15 with such certifications regarding such objectives
16 and use as the Secretary may require. In the case
17 of metropolitan cities, urban counties, units of gen-
18 eral local government, and insular areas receiving
19 grants, the statement of projected use of funds shall
20 consist of proposed housing energy efficiency activi-
21 ties. In the case of States receiving grants, the state-
22 ment of projected use of funds shall consist of the
23 method by which the States will distribute funds to
24 units of general local government.

1 “(2) PUBLIC PARTICIPATION.—The Secretary
2 may establish requirements to ensure the public
3 availability of information regarding projected use of
4 grant amounts and public participation in deter-
5 mining such projected use.

6 “(e) ELIGIBLE ACTIVITIES.—

7 “(1) REQUIREMENT.—Amounts from a grant
8 under this section may be used only to carry out ac-
9 tivities for single-family or multifamily housing that
10 are designed to improve the energy efficiency of the
11 housing so that the housing complies with the en-
12 ergy efficiency standards under section 284(a) of the
13 Green Resources for Energy Efficient Neighbor-
14 hoods Act of 2009, including such activities to pro-
15 vide energy for such housing from renewable
16 sources, such as wind, waves, solar, biomass, and
17 geothermal sources.

18 “(2) PREFERENCE FOR COMPLIANCE BEYOND
19 BASIC REQUIREMENTS.—In selecting activities to be
20 funded with amounts from a grant under this sec-
21 tion, a grantee shall give more preference to activi-
22 ties based on the extent to which the activities will
23 result in compliance by the housing with the en-
24 hanced energy efficiency and conservation standards,

1 and the green building standards, under section
2 284(b) of such Act.

3 “(f) REPORTS.—Each grantee of a grant under this
4 section for a fiscal year shall submit to the Secretary, at
5 a time determined by the Secretary, a performance and
6 evaluation report concerning the use of grant amounts,
7 which shall contain an assessment by the grantee of the
8 relationship of such use to the objectives identified in the
9 grantees statement under subsection (d).

10 “(g) APPLICABILITY OF CDBG PROVISIONS.—Sec-
11 tions 109, 110, and 111 of the Housing and Community
12 Development Act of 1974 (42 U.S.C. 5309, 5310, 5311)
13 shall apply to assistance received under this section to the
14 same extent and in the same manner that such sections
15 apply to assistance received under title I of such Act.

16 “(h) AUTHORIZATION OF APPROPRIATIONS.—There
17 is authorized to be appropriated for grants under this sec-
18 tion \$2,500,000,000 for fiscal year 2010 and such sums
19 as may be necessary for each fiscal year thereafter.”.

1 **SEC. 297. INCLUDING SUSTAINABLE DEVELOPMENT AND**
2 **TRANSPORTATION STRATEGIES IN COM-**
3 **PREHENSIVE HOUSING AFFORDABILITY**
4 **STRATEGIES.**

5 Section 105(b) of the Cranston-Gonzalez National
6 Affordable Housing Act (42 U.S.C. 12705(b)) is amend-
7 ed—

8 (1) by striking “and” at the end of paragraph
9 (19);

10 (2) by striking the period at the end of para-
11 graph (20) and inserting “; and”;

12 (3) and by inserting after paragraph (20) the
13 following new paragraphs:

14 “(21) describe the jurisdiction’s strategies to
15 encourage sustainable development for affordable
16 housing, including single-family and multifamily
17 housing, as measured by—

18 “(A) greater energy efficiency and use of
19 renewable energy sources, including any strate-
20 gies regarding compliance with the energy effi-
21 ciency standards under section 284(a) of the
22 Green Resources for Energy Efficient Neigh-
23 borhoods Act of 2009 and with the enhanced
24 energy efficiency and conservation standards,
25 and the green building standards, under section
26 284(b) of such Act;

1 “(B) increased conservation, recycling, and
2 reuse of resources;

3 “(C) more effective use of existing infra-
4 structure;

5 “(D) use of building materials and meth-
6 ods that are healthier for residents of the hous-
7 ing, including use of building materials that are
8 free of added known carcinogens that are classi-
9 fied as Group 1 Known Carcinogens by the
10 International Agency for Research on Cancer;
11 and

12 “(E) such other criteria as the Secretary
13 determines, in consultation with the Secretary
14 of Energy, the Secretary of Agriculture, and the
15 Administrator of the Environmental Protection
16 Agency, are in accordance with the purposes of
17 this paragraph; and

18 “(22) describe the jurisdiction’s efforts to co-
19 ordinate its housing strategy with its transportation
20 planning strategies to ensure to the extent prac-
21 ticable that residents of affordable housing have ac-
22 cess to public transportation.”.

1 **SEC. 298. GRANT PROGRAM TO INCREASE SUSTAINABLE**
2 **LOW-INCOME COMMUNITY DEVELOPMENT**
3 **CAPACITY.**

4 (a) IN GENERAL.—The Secretary may make grants
5 to nonprofit organizations to use for any of the following
6 purposes:

7 (1) Training, educating, supporting, or advising
8 an eligible community development organization or
9 qualified youth service and conservation corps in im-
10 proving energy efficiency, resource conservation and
11 reuse, design strategies to maximize energy effi-
12 ciency, installing or constructing renewable energy
13 improvements (such as wind, wave, solar, biomass,
14 and geothermal energy sources), and effective use of
15 existing infrastructure in affordable housing and
16 economic development activities in low-income com-
17 munities, taking into consideration energy efficiency
18 standards under section 284(a) of this subtitle and
19 with the enhanced energy efficiency and conservation
20 standards, and the green building standards, under
21 section 284(b) of this subtitle.

22 (2) Providing loans, grants, or predevelopment
23 assistance to eligible community development organi-
24 zations or qualified youth service and conservation
25 corps to carry out energy efficiency improvements
26 that comply with the energy efficiency standards

1 under section 284(a) of this subtitle, resource con-
2 servation and reuse, and effective use of existing in-
3 frastructure in affordable housing and economic de-
4 velopment activities in low-income communities. In
5 providing assistance under this paragraph, the Sec-
6 retary shall give more preference to activities based
7 on the extent to which the activities will result in
8 compliance with the enhanced energy efficiency and
9 conservation standards, and the green building
10 standards, under section 284(b) of this subtitle.

11 (3) Such other purposes as the Secretary deter-
12 mines are in accordance with the purposes of this
13 subsection.

14 (b) APPLICATION REQUIREMENT.—To be eligible for
15 a grant under this section, a nonprofit organization shall
16 prepare and submit to the Secretary an application at
17 such time, in such manner, and containing such informa-
18 tion as the Secretary may require.

19 (c) AWARD OF CONTRACTS.—Contracts for architec-
20 tural or engineering services funded with amounts from
21 grants made under this section shall be awarded in accord-
22 ance with chapter 11 of title 40, United States Code (re-
23 lating to selection of architects and engineers).

24 (d) MATCHING REQUIREMENT.—A grant made under
25 this section may not exceed the amount that the nonprofit

1 organization receiving the grant certifies, to the Secretary,
2 will be provided (in cash or in-kind) from nongovernmental
3 sources to carry out the purposes for which the grant is
4 made.

5 (e) DEFINITIONS.—For purposes of this section, the
6 following definitions shall apply:

7 (1) The term “nonprofit organization” has the
8 meaning given such term in section 104 of the Cran-
9 ston-Gonzalez National Affordable Housing Act (42
10 U.S.C. 12704).

11 (2) The term “eligible community development
12 organization” means—

13 (A) a unit of general local government (as
14 defined in section 104 of the Cranston-Gonzalez
15 National Affordable Housing Act (42 U.S.C.
16 12704));

17 (B) a community housing development or-
18 ganization (as defined in section 104 of the
19 Cranston-Gonzalez National Affordable Hous-
20 ing Act (42 U.S.C. 12704));

21 (C) an Indian tribe or tribally designated
22 housing entity (as such terms are defined in
23 section 4 of the Native American Housing As-
24 sistance and Self-Determination Act of 1996
25 (25 U.S.C. 4103)); or

1 (D) a public housing agency, as such term
2 is defined in section 3(b) of the United States
3 Housing Act of 1937 (42 U.S.C. 1437(b)).

4 (3) The term “low-income community” means a
5 census tract in which 50 percent or more of the
6 households have an income which is less than 80
7 percent of the greater of—

8 (A) the median gross income for such year
9 for the area in which such census tract is lo-
10 cated; or

11 (B) the median gross income for such year
12 for the State in which such census tract is lo-
13 cated.

14 (f) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated to the Secretary to carry
16 out this section \$10,000,000 for each of fiscal years 2010
17 through 2014.

18 **SEC. 299. HOPE VI GREEN DEVELOPMENTS REQUIREMENT.**

19 (a) MANDATORY COMPONENT.—Section 24(e) of the
20 United States Housing Act of 1937 (42 U.S.C. 1437v(e))
21 is amended by adding at the end the following new para-
22 graph:

23 “(4) GREEN DEVELOPMENTS REQUIREMENT.—

24 “(A) REQUIREMENT.—The Secretary may
25 not make a grant under this section to an appli-

1 cant unless the proposed revitalization plan of
2 the applicant to be carried out with such grant
3 amounts meets the following requirements:

4 “(i) GREEN COMMUNITIES CRITERIA
5 CHECKLIST.—All residential construction
6 under the proposed plan complies with the
7 national Green Communities criteria
8 checklist for residential construction that
9 provides criteria for the design, develop-
10 ment, and operation of affordable housing,
11 as such checklist is in effect for purposes
12 of this paragraph pursuant to subpara-
13 graph (D) at the date of the application
14 for the grant, or any substantially equiva-
15 lent standard or standards as determined
16 by the Secretary, as follows:

17 “(I) The proposed plan shall
18 comply with all items of the national
19 Green Communities criteria checklist
20 for residential construction that are
21 identified as mandatory.

22 “(II) The proposed plan shall
23 comply with such other nonmandatory
24 items of such national Green Commu-
25 nities criteria checklist so as to result

1 in a cumulative number of points at-
2 tributable to such nonmandatory
3 items under such checklist of not less
4 than—

5 “(aa) 25 points, in the case
6 of any proposed plan (or portion
7 thereof) consisting of new con-
8 struction; and

9 “(bb) 20 points, in the case
10 of any proposed plan (or portion
11 thereof) consisting of rehabilita-
12 tion.

13 “(ii) GREEN BUILDINGS CERTIFI-
14 CATION SYSTEM.—All nonresidential con-
15 struction under the proposed plan complies
16 with all minimum required levels of the
17 green building rating systems and levels
18 identified by the Secretary pursuant to
19 subparagraph (C), as such systems and
20 levels are in effect for purposes of this
21 paragraph pursuant to subparagraph (D)
22 at the time of the application for the
23 grant.

24 “(B) VERIFICATION.—

1 “(i) IN GENERAL.—The Secretary
2 shall verify, or provide for verification, suf-
3 ficient to ensure that each proposed re-
4 vitalization plan carried out with amounts
5 from a grant under this section complies
6 with the requirements under subparagraph
7 (A) and that the revitalization plan is car-
8 ried out in accordance with such require-
9 ments and plan.

10 “(ii) TIMING.—In providing for such
11 verification, the Secretary shall establish
12 procedures to ensure such compliance with
13 respect to each grantee, and shall report to
14 the Congress with respect to the compli-
15 ance of each grantee, at each of the fol-
16 lowing times:

17 “(I) Not later than 6 months
18 after execution of the grant agreement
19 under this section for the grantee.

20 “(II) Upon completion of the re-
21 vitalization plan of the grantee.

22 “(C) IDENTIFICATION OF GREEN BUILD-
23 INGS RATING SYSTEMS AND LEVELS.—

24 “(i) IN GENERAL.—For purposes of
25 this paragraph, the Secretary shall identify

1 rating systems and levels for green build-
2 ings that the Secretary determines to be
3 the most likely to encourage a comprehen-
4 sive and environmentally sound approach
5 to ratings and standards for green build-
6 ings. The identification of the ratings sys-
7 tems and levels shall be based on the cri-
8 teria specified in clause (ii), shall identify
9 the highest levels the Secretary determines
10 are appropriate above the minimum levels
11 required under the systems selected. With-
12 in 90 days of the completion of each study
13 required by clause (iii), the Secretary shall
14 review and update the rating systems and
15 levels, or identify alternative systems and
16 levels for purposes of this paragraph, tak-
17 ing into account the conclusions of such
18 study.

19 “(ii) CRITERIA.—In identifying the
20 green rating systems and levels, the Sec-
21 retary shall take into consideration—

22 “(I) the ability and availability of
23 assessors and auditors to independ-
24 ently verify the criteria and measure-

1 ment of metrics at the scale necessary
2 to implement this paragraph;

3 “(II) the ability of the applicable
4 ratings system organizations to collect
5 and reflect public comment;

6 “(III) the ability of the standards
7 to be developed and revised through a
8 consensus-based process;

9 “(IV) An evaluation of the
10 robustness of the criteria for a high-
11 performance green building, which
12 shall give credit for promoting—

13 “(aa) efficient and sustain-
14 able use of water, energy, and
15 other natural resources;

16 “(bb) use of renewable en-
17 ergy sources;

18 “(cc) improved indoor and
19 outdoor environmental quality
20 through enhanced indoor and
21 outdoor air quality, thermal com-
22 fort, acoustics, outdoor noise pol-
23 lution, day lighting, pollutant
24 source control, sustainable land-
25 scaping, and use of building sys-

1 tem controls and low- or no-emis-
2 sion materials, including pref-
3 erence for materials with no
4 added carcinogens that are classi-
5 fied as Group 1 Known Carcino-
6 gens by the International Agency
7 for Research on Cancer; and

8 “(dd) such other criteria as
9 the Secretary determines to be
10 appropriate; and

11 “(V) national recognition within
12 the building industry.

13 “(iii) 5-YEAR EVALUATION.—At least
14 once every 5 years, the Secretary shall con-
15 duct a study to evaluate and compare
16 available third-party green building rating
17 systems and levels, taking into account the
18 criteria listed in clause (ii).

19 “(D) APPLICABILITY AND UPDATING OF
20 STANDARDS.—

21 “(i) APPLICABILITY.—Except as pro-
22 vided in clause (ii) of this subparagraph,
23 the national Green Communities criteria
24 checklist and green building rating systems
25 and levels referred to in clauses (i) and (ii)

1 of subparagraph (A) that are in effect for
2 purposes of this paragraph are such check-
3 list systems, and levels as in existence
4 upon the date of the enactment of the
5 Green Resources for Energy Efficient
6 Neighborhoods Act of 2009.

7 “(ii) UPDATING.—The Secretary may,
8 by regulation, adopt and apply, for pur-
9 poses of this paragraph, future amend-
10 ments and supplements to, and editions of,
11 the national Green Communities criteria
12 checklist, any standard or standards that
13 the Secretary has determined to be sub-
14 stantially equivalent to such checklist, and
15 the green building ratings systems and lev-
16 els identified by the Secretary pursuant to
17 subparagraph (C).”.

18 (b) SELECTION CRITERIA; GRADED COMPONENT.—
19 Section 24(e)(2) of the United States Housing Act of
20 1937 (42 U.S.C. 1437v(e)(2)) is amended—

21 (1) in subparagraph (K), by striking “and” at
22 the end;

23 (2) by redesignating subparagraph (L) as sub-
24 paragraph (M); and

1 (3) by inserting after subparagraph (K) the fol-
2 lowing new subparagraph:

3 “(L) the extent to which the proposed re-
4 talization plan—

5 “(i) in the case of residential con-
6 struction, complies with the nonmandatory
7 items of the national Green Communities
8 criteria checklist identified in paragraph
9 (4)(A)(i), or any substantially equivalent
10 standard or standards as determined by
11 the Secretary, but only to the extent such
12 compliance exceeds the compliance nec-
13 essary to accumulate the number of points
14 required under such paragraph; and

15 “(ii) in the case of nonresidential con-
16 struction, complies with the components of
17 the green building rating systems and lev-
18 els identified by the Secretary pursuant to
19 paragraph (4)(C), but only to the extent
20 such compliance exceeds the minimum level
21 required under such systems and levels;
22 and”.

1 **SEC. 299A. CONSIDERATION OF ENERGY EFFICIENCY IM-**
2 **PROVEMENTS IN APPRAISALS.**

3 (a) APPRAISALS IN CONNECTION WITH FEDERALLY
4 RELATED TRANSACTIONS.—

5 (1) REQUIREMENT.—Section 1110 of the Fi-
6 nancial Institutions Reform, Recovery, and Enforce-
7 ment Act of 1989 (12 U.S.C. 3339) is amended—

8 (A) in paragraph (1), by striking “and” at
9 the end;

10 (B) by redesignating paragraph (2) as
11 paragraph (3); and

12 (C) by inserting after paragraph (1) the
13 following new paragraph:

14 “(2) that such appraisals be performed in ac-
15 cordance with appraisal standards that require, in
16 determining the value of a property, consideration of
17 any renewable energy sources for, or energy effi-
18 ciency or energy-conserving improvements or fea-
19 tures of, the property; and”.

20 (2) REVISION OF APPRAISAL STANDARDS.—

21 Each Federal financial institutions regulatory agen-
22 cy shall, not later than 6 months after the date of
23 the enactment of this Act, revise its standards for
24 the performance of real estate appraisals in connec-
25 tion with federally related transactions under the ju-
26 risdiction of the agency to comply with the require-

1 ment under the amendments made by paragraph (1)
2 of this subsection.

3 (b) APPRAISER CERTIFICATION AND LICENSING RE-
4 QUIREMENTS.—Section 1116 of the Financial Institutions
5 Reform, Recovery, and Enforcement Act of 1989 (12
6 U.S.C. 3345) is amended—

7 (1) in subsection (a), by inserting before the pe-
8 riod at the end the following: “, and meets the re-
9 quirements established pursuant to subsection (f) for
10 qualifications regarding consideration of any renew-
11 able energy sources for, or energy efficiency or en-
12 ergy-conserving improvements or features of, the
13 property”;

14 (2) in subsection (c), by inserting before the pe-
15 riod at the end the following: “, which shall include
16 compliance with the requirements established pursu-
17 ant to subsection (f) regarding consideration of any
18 renewable energy sources for, or energy efficiency or
19 energy-conserving improvements or features of, the
20 property”;

21 (3) in subsection (e), by striking “The” and in-
22 serting “Except as provided in subsection (f), the”;
23 and

24 (4) by adding at the end the following new sub-
25 section:

1 “(f) REQUIREMENTS FOR APPRAISERS REGARDING
2 ENERGY EFFICIENCY FEATURES.—The Appraisal Sub-
3 committee shall establish requirements for State certifi-
4 cation of State certified real estate appraisers and for
5 State licensing of State licensed appraisers, to ensure that
6 appraisers consider and are qualified to consider, in deter-
7 mining the value of a property, any renewable energy
8 sources for, or energy efficiency or energy-conserving im-
9 provements or features of, the property.”.

10 (c) GUIDELINES FOR APPRAISING PHOTOVOLTAIC
11 MEASURES AND TRAINING OF APPRAISERS.—Section
12 1122 of the Financial Institutions Reform, Recovery, and
13 Enforcement Act of 1989 (12 U.S.C. 3351) is amended
14 by adding at the end the following new subsection:

15 “(g) GUIDELINES FOR APPRAISING PHOTOVOLTAIC
16 MEASURES AND TRAINING OF APPRAISERS.—The Ap-
17 praisal Subcommittee shall, in consultation with the Sec-
18 retary of Housing and Urban Development, the Federal
19 National Mortgage Association, and the Federal Home
20 Loan Mortgage Corporation, establish specific guidelines
21 for—

22 “(1) appraising off- and on-grid photovoltaic
23 measures for compliance with the appraisal stand-
24 ards prescribed pursuant to section 1110(2);

1 “(2) requirements under section 1116(f) for
2 certification of State certified real estate appraisers
3 and for State licensing of State licensed appraisers,
4 to ensure that appraisers consider, and are qualified
5 to consider, such photovoltaic measures in deter-
6 mining the value of a property; and

7 “(3) training of appraisers to meet the require-
8 ments established pursuant to paragraph (2) of this
9 subsection.”.

10 **SEC. 299B. HOUSING ASSISTANCE COUNCIL.**

11 The Secretary shall require the Housing Assistance
12 Council—

13 (1) to encourage each organization that receives
14 assistance from the Council with any amounts made
15 available from the Secretary to provide that any
16 structures and buildings developed or assisted under
17 projects, programs, and activities funded with such
18 amounts complies with the energy efficiency stand-
19 ards under section 284(a) of this subtitle; and

20 (2) to establish incentives to encourage each
21 such organization to provide that any such struc-
22 tures and buildings comply with the energy effi-
23 ciency and conservation standards, and the green
24 building standards, under section 284(b) of such
25 Act.

1 **SEC. 299C. RURAL HOUSING AND ECONOMIC DEVELOP-**
2 **MENT ASSISTANCE.**

3 The Secretary shall—

4 (1) require each tribe, agency, organization,
5 corporation, and other entity that receives any as-
6 sistance from the Office of Rural Housing and Eco-
7 nomic Development of the Department of Housing
8 and Urban Development to provide that any struc-
9 tures and buildings developed or assisted under ac-
10 tivities funded with such amounts complies with the
11 energy efficiency standards under section 284(a) of
12 this subtitle; and

13 (2) establish incentives to encourage each such
14 tribe, agency, organization, corporation, and other
15 entity to provide that any such structures and build-
16 ings comply with the enhanced energy efficiency and
17 conservation standards, and the green building
18 standards, under section 284(b) of such Act.

19 **SEC. 299D. LOANS TO STATES AND INDIAN TRIBES TO**
20 **CARRY OUT RENEWABLE ENERGY SOURCES**
21 **ACTIVITIES.**

22 (a) ESTABLISHMENT OF FUND.—There is estab-
23 lished in the Treasury of the United States a fund, to be
24 known as the “Alternative Energy Sources State Loan
25 Fund”.

26 (b) EXPENDITURES.—

1 (1) IN GENERAL.—Subject to paragraph (2), on
2 request by the Secretary, the Secretary of the Treas-
3 ury shall transfer from the Fund to the Secretary
4 such amounts as the Secretary determines are nec-
5 essary to provide loans under subsection (c)(1).

6 (2) ADMINISTRATIVE EXPENSES.—Of the
7 amounts in the Fund, not more than 5 percent shall
8 be available for each fiscal year to pay the adminis-
9 trative expenses of the Department of Housing and
10 Urban Development to carry out this section.

11 (c) LOANS TO STATES AND INDIAN TRIBES.—

12 (1) IN GENERAL.—The Secretary shall use
13 amounts in the Fund to provide loans to States and
14 Indian tribes to provide incentives to owners of sin-
15 gles-family and multifamily housing, commercial
16 properties, and public buildings to provide—

17 (A) renewable energy sources for such
18 structures, such as wind, wave, solar, biomass,
19 or geothermal energy sources, including incen-
20 tives to companies and business to change their
21 source of energy to such renewable energy
22 sources and for changing the sources of energy
23 for public buildings to such renewable energy
24 sources;

1 (B) energy efficiency and energy con-
2 serving improvements and features for such
3 structures; or

4 (C) infrastructure related to the delivery of
5 electricity and hot water for structures lacking
6 such amenities.

7 (2) ELIGIBILITY.—To be eligible to receive a
8 loan under this subsection, a State or Indian tribe,
9 directly or through an appropriate State or tribal
10 agency, shall submit to the Secretary an application
11 at such time, in such manner, and containing such
12 information as the Secretary may require.

13 (3) CRITERIA FOR APPROVAL.—The Secretary
14 may approve an application of a State or Indian
15 tribe under paragraph (2) only if the Secretary de-
16 termines that the State or tribe will use the funds
17 from the loan under this subsection to carry out a
18 program to provide incentives described in para-
19 graph (1) that—

20 (A) requires that any such renewable en-
21 ergy sources, and energy efficiency and energy
22 conserving improvements and features, devel-
23 oped pursuant to assistance under the program
24 result in compliance of the structure so im-

1 proved with energy efficiency requirements de-
2 termined by the Secretary; and

3 (B) includes such compliance and audit re-
4 quirements as the Secretary determines are nec-
5 essary to ensure that the program is operated
6 in a sound and effective manner.

7 (4) PREFERENCE.—In making loans during
8 each fiscal year, the Secretary shall give preference
9 to States and Indian tribes that have not previously
10 received a loan under this subsection.

11 (5) MAXIMUM AMOUNT.—The aggregate out-
12 standing principal amount from loans under this
13 subsection to any single State or Indian tribe may
14 not exceed \$500,000,000.

15 (6) LOAN TERMS.—Each loan under this sub-
16 section shall have a term to maturity of not more
17 than 10 years and shall bear interest at annual rate,
18 determined by the Secretary, that shall not exceed
19 interest rate charged by the Federal Reserve Bank
20 of New York to commercial banks and other deposi-
21 tory institutions for very short-term loans under the
22 primary credit program, as most recently published
23 in the Federal Reserve Statistical Release on se-
24 lected interest rates (daily or weekly), and commonly
25 referred to as the H.15 release, preceding the date

1 of a determination for purposes of applying this
2 paragraph.

3 (7) LOAN REPAYMENT.—The Secretary shall
4 require full repayment of each loan made under this
5 section.

6 (d) INVESTMENT OF AMOUNTS.—

7 (1) IN GENERAL.—The Secretary of the Treas-
8 ury shall invest such amounts in the Fund that are
9 not, in the judgment of the Secretary of the Treas-
10 ury, required to meet needs for current withdrawals.

11 (2) OBLIGATIONS OF UNITED STATES.—Invest-
12 ments may be made only in interest-bearing obliga-
13 tions of the United States.

14 (e) REPORTS.—

15 (1) REPORTS TO SECRETARY.—For each year
16 during the term of a loan made under subsection
17 (c), the State or Indian tribe that received the loan
18 shall submit to the Secretary a report describing the
19 State or tribal alternative energy sources program
20 for which the loan was made and the activities con-
21 ducted under the program using the loan funds dur-
22 ing that year.

23 (2) REPORT TO CONGRESS.—Not later than
24 September 30 of each year that loans made under
25 subsection (c) are outstanding, the Secretary shall

1 submit a report to the Congress describing the total
2 amount of such loans provided under subsection (c)
3 to each eligible State and Indian tribe during the fis-
4 cal year ending on such date, and an evaluation on
5 effectiveness of the Fund.

6 (f) AUTHORIZATION OF APPROPRIATIONS.—There is
7 authorized to be appropriated to the Fund
8 \$5,000,000,000.

9 (g) DEFINITIONS.—For purposes of this section, the
10 following definitions shall apply:

11 (1) INDIAN TRIBE.—The term “Indian tribe”
12 has the meaning given such term in section 4 of the
13 Native American Housing Assistance and Self-De-
14 termination Act of 1996 (25 U.S.C. 4103).

15 (2) STATE.—The term “State” means each of
16 the several States, the Commonwealth of Puerto
17 Rico, the District of Columbia, the Commonwealth
18 of the Northern Mariana Islands, Guam, the Virgin
19 Islands, American Samoa, the Trust Territories of
20 the Pacific, or any other possession of the United
21 States.

22 **SEC. 299E. GREEN BANKING CENTERS.**

23 (a) INSURED DEPOSITORY INSTITUTIONS.—Section 8
24 of the Federal Deposit Insurance Act (12 U.S.C. 1818)

1 is amended by adding at the end the following new sub-
2 section:

3 “(x) ‘GREEN BANKING’ CENTERS.—

4 “(1) IN GENERAL.—The Federal banking agen-
5 cies shall prescribe guidelines encouraging the estab-
6 lishment and maintenance of ‘green banking’ centers
7 by insured depository institutions to provide any
8 consumer who seeks information on obtaining a
9 mortgage, home improvement loan, home equity
10 loan, or renewable energy lease with additional infor-
11 mation on—

12 “(A) obtaining an home energy rating or
13 audit for the residence for which such mortgage
14 or loan is sought;

15 “(B) obtaining financing for cost-effective
16 energy-saving improvements to such property;
17 and

18 “(C) obtaining beneficial terms for any
19 mortgage or loan, or qualifying for a larger
20 mortgage or loan, secured by a residence which
21 meets or will meet energy efficiency standards.

22 “(2) INFORMATION AND REFERRALS.—The in-
23 formation made available to consumers under para-
24 graph (1) may include—

1 “(A) information on obtaining a home en-
2 ergy rating and contact information on quali-
3 fied energy raters in the area of the residence;

4 “(B) information on the secondary market
5 guidelines that permit lenders to provide more
6 favorable terms by allowing lenders to increase
7 the ratio on debt-to-income requirements or to
8 use the projected utility savings as a compen-
9 sating factor;

10 “(C) information including eligibility infor-
11 mation about, and contact information for, any
12 conservation or renewable energy programs,
13 grants, or loans offered by the Secretary of
14 Housing and Urban Development, including the
15 Energy Efficient Mortgage Program;

16 “(D) information including eligibility infor-
17 mation about, and contact information for, any
18 conservation or renewable energy programs,
19 grants, or loans offered for qualified military
20 personal, reservists, and veterans by the Sec-
21 retary of Veterans Affairs;

22 “(E) information about, and contact infor-
23 mation for, the Office of Efficiency and Renew-
24 able Energy at the Department of Energy, in-
25 cluding the weatherization assistance program;

1 “(F) information about, and contact infor-
2 mation for, the Energy Star Program of the
3 Environmental Protection Agency;

4 “(G) information from, and contact infor-
5 mation for, the Federal Citizen Information
6 Center of the General Services Administration
7 on energy-efficient mortgages and loans, home
8 energy rating systems, and the availability of
9 energy-efficient mortgage information from a
10 variety of Federal agencies; and

11 “(H) such other information as the agen-
12 cies or the insured depository institution may
13 determine to be appropriate or useful.”.

14 (b) INSURED CREDIT UNIONS.—Section 206 of the
15 Federal Credit Union Act (12 U.S.C. 1786) is amended
16 by adding at the end the following new subsection:

17 “(x) ‘GREEN BANKING’ CENTERS.—

18 “(1) IN GENERAL.—The Board shall prescribe
19 guidelines encouraging the establishment and main-
20 tenance of ‘green banking’ centers by insured credit
21 unions to provide any member who seeks informa-
22 tion on obtaining a mortgage, home improvement
23 loan, home equity loan, or renewable energy lease
24 with additional information on—

1 “(A) obtaining an home energy rating or
2 audit for the residence for which such mortgage
3 or loan is sought;

4 “(B) obtaining financing for cost-effective
5 energy-saving improvements to such property;
6 and

7 “(C) obtaining beneficial terms for any
8 mortgage or loan, or qualifying for a larger
9 mortgage or loan, secured by a residence which
10 meets or will meet energy efficiency standards.

11 “(2) INFORMATION AND REFERRALS.—The in-
12 formation made available to members under para-
13 graph (1) may include—

14 “(A) information on obtaining a home en-
15 ergy rating and contact information on quali-
16 fied energy raters in the area of the residence;

17 “(B) information on the secondary market
18 guidelines that permit lenders to provide more
19 favorable terms by allowing lenders to increase
20 the ratio on debt-to-income requirements or to
21 use the projected utility savings as a compen-
22 sating factor;

23 “(C) information including eligibility infor-
24 mation about, and contact information for, any
25 conservation or renewable energy programs,

1 grants, or loans offered by the Secretary of
2 Housing and Urban Development, including the
3 Energy Efficient Mortgage Program;

4 “(D) information including eligibility infor-
5 mation about, and contact information for, any
6 conservation or renewable energy programs,
7 grants, or loans offered for qualified military
8 personal, reservists, and veterans by the Sec-
9 retary of Veterans Affairs;

10 “(E) information about, and contact infor-
11 mation for, the Office of Efficiency and Renew-
12 able Energy at the Department of Energy, in-
13 cluding the weatherization assistance program;

14 “(F) information from, and contact infor-
15 mation for, the Federal Citizen Information
16 Center of the General Services Administration
17 on energy-efficient mortgages and loans, home
18 energy rating systems, and the availability of
19 energy-efficient mortgage information from a
20 variety of Federal agencies; and

21 “(G) such other information as the Board
22 or the insured credit union may determine to be
23 appropriate or useful.”.

1 **SEC. 299F. GAO REPORTS ON AVAILABILITY OF AFFORD-**
2 **ABLE MORTGAGES.**

3 (a) STUDY.—The Comptroller General of the United
4 States shall periodically, as necessary to comply with sub-
5 section (b), examine the impact of this subtitle and the
6 amendments made by this subtitle on the availability of
7 affordable mortgages in various areas throughout the
8 United States, including cities having older infrastructure
9 and limited space for the development of new housing.

10 (b) TRIENNIAL REPORTS.—The Comptroller General
11 shall submit a report once every 3 years to the Committee
12 on Financial Services of the House of Representatives and
13 the Committee on Banking, Housing, and Urban Affairs
14 of the Senate that shall include—

15 (1) a detailed statement of the most recent
16 findings pursuant to subsection (a); and

17 (2) if the Comptroller General finds that this
18 subtitle or the amendments made by this subtitle
19 have directly or indirectly resulted in consequences
20 that limit the availability or affordability of mort-
21 gages in any area or areas within the United States,
22 including any city having older infrastructure and
23 limited space for the development of new housing,
24 any recommendations for any additional actions at
25 the Federal, State, or local levels that the Comp-

1 troller General considers necessary or appropriate to
2 mitigate such effects.

3 The first report under this subsection shall be submitted
4 not later than the expiration of the 3-year period begin-
5 ning on the date of the enactment of this Act.

6 **SEC. 299G. PUBLIC HOUSING ENERGY COST REPORT.**

7 (a) COLLECTION OF INFORMATION BY HUD.—The
8 Secretary of Housing and Urban Development shall obtain
9 from each public housing agency, by such time as may
10 be necessary to comply with the reporting requirement
11 under subsection (b), information regarding the energy
12 costs for public housing administered or operated by the
13 agency. For each public housing agency, such information
14 shall include the monthly energy costs associated with
15 each separate building and development of the agency, for
16 the most recently completed 12-month period for which
17 such information is available, and such other information
18 as the Secretary determines is appropriate in determining
19 which public housing buildings and developments are most
20 in need of repairs and improvements to reduce energy
21 needs and costs and become more energy efficient.

22 (b) REPORT.—Not later than the expiration of the
23 12-month period beginning on the date of the enactment
24 of this Act, the Secretary of Housing and Urban Develop-

1 ment shall submit a report to the Congress setting forth
2 the information collected pursuant to subsection (a).

3 **SEC. 299H. SECONDARY MARKET FOR RESIDENTIAL RE-**
4 **NEWABLE ENERGY LEASE INSTRUMENTS.**

5 (a) PURPOSES.—The purposes of this section are—

6 (1) to encourage residential use of renewable
7 energy systems by minimizing up-front costs and
8 providing immediate utility cost savings to con-
9 sumers through leasing of such systems to home-
10 owners;

11 (2) to reduce carbon emissions and the use of
12 nonrenewable resources;

13 (3) to encourage energy-efficient residential
14 construction and rehabilitation;

15 (4) to encourage the use of renewable resources
16 by homeowners;

17 (5) to minimize the impact of development on
18 the environment;

19 (6) to reduce consumer utility costs; and

20 (7) to encourage private investment in the
21 green economy.

22 (b) RESIDUAL VALUE OF RENEWABLE ENERGY
23 ASSET.—The Secretary of Housing and Urban Develop-
24 ment shall establish a means of determining the residual
25 value of a renewable energy asset such that a secondary

1 market for residential renewable energy lease instruments
2 may be facilitated. Such means may include, without limi-
3 tation, the calculation of residual value based on the net
4 present value of projected future energy production of the
5 renewable energy asset.

6 **SEC. 299I. GREEN GUARANTEES.**

7 (a) **AUTHORITY TO GUARANTEE “GREEN PORTION”**
8 **OF ELIGIBLE MORTGAGES.—**

9 (1) **IN GENERAL.—**The Secretary of Housing
10 and Urban Development may make commitments to
11 guarantee under this section and may guarantee, the
12 repayment of the portions of the principal obliga-
13 tions of eligible mortgages that are used to finance
14 eligible sustainable building elements for the housing
15 that is subject to the mortgage.

16 (2) **AMOUNT OF GUARANTEE.—**A guarantee
17 under this section by the Secretary in connection
18 with an eligible mortgage shall not exceed a percent-
19 age of the green portion (as such term is defined in
20 subsection (g)) of the mortgage, as shall be estab-
21 lished by the Secretary and may be established on
22 a regional basis as the Secretary determines appro-
23 priate.

1 (b) ELIGIBLE MORTGAGES.—To be considered an eli-
2 gible mortgage for purposes of this section, a mortgage
3 shall comply with all of the following requirements:

4 (1) ACQUISITION OR CONSTRUCTION OF HOUS-
5 ING.—The mortgage shall be made for the acquisi-
6 tion or construction of single- or multifamily housing
7 and repayment of the mortgage shall be secured by
8 an interest in such housing.

9 (2) FINANCING OF ELIGIBLE SUSTAINABLE
10 BUILDING ELEMENTS THROUGH GREEN PORTION OF
11 MORTGAGE.—A portion of the principal obligation of
12 the mortgage, which meets the requirements under
13 subsection (c), shall be used only for financing the
14 provision of eligible sustainable building elements for
15 the housing for which the mortgage was made.

16 (3) MAXIMUM MORTGAGE AMOUNT.—The prin-
17 cipal obligation of the mortgage (including the eligi-
18 ble portion of such mortgage, and such initial service
19 charges, appraisal, inspection, and other fees as the
20 Secretary shall approve) may not exceed the fol-
21 lowing amounts:

22 (A) SINGLE-FAMILY HOUSING.—Such dol-
23 lar amounts for single-family housing as the
24 Secretary shall establish, which may be estab-
25 lished on the basis of the number of dwelling

1 units in the housing, as the Secretary considers
2 appropriate.

3 (B) MULTIFAMILY HOUSING.—Such dollar
4 amounts for multifamily housing as the Sec-
5 retary shall establish, which may be established
6 on the basis of the number of dwelling units in
7 the housing and the number of bedrooms in
8 such dwelling units, as the Secretary considers
9 appropriate.

10 (4) REPAYMENT.—The mortgage meets such
11 requirements as the Secretary shall establish to en-
12 sure that there is a reasonable prospect of repay-
13 ment of the principal and interest on the obligation
14 by the mortgagor.

15 (5) MORTGAGE TERMS.—The mortgage shall
16 meet such requirements with respect to loan-to-value
17 ratio, mortgagor credit scores, debt-to-income ratio,
18 and other underwriting standards, term to maturity,
19 interest rates and amortization, including amortiza-
20 tion of the green portion of the mortgage, and other
21 mortgage terms as the Secretary shall establish.

22 (c) LIMITATIONS ON GREEN PORTION OF MORT-
23 GAGE.—The requirements under this subsection with re-
24 spect to the green portion of an eligible mortgage are as
25 follows:

1 (1) PERCENTAGE LIMITATION.—Such portion
2 shall not exceed, in the case of single-family or mul-
3 tifamily housing, 10 percent of the total principal
4 obligation of the mortgage.

5 (2) DOLLAR AMOUNT LIMITATION.—Such por-
6 tion shall not exceed—

7 (A) in the case of single-family housing,
8 such maximum dollar amount limitation as the
9 Secretary shall establish, which may be estab-
10 lished on the basis of the number of dwelling
11 units in the housing, as the Secretary considers
12 appropriate; and

13 (B) in the case of multifamily housing,
14 such maximum dollar amount limitation as the
15 Secretary shall establish, which limitation may
16 be established on the basis of the number of
17 dwelling units in the housing and the number
18 of bedrooms in such dwelling units, as the Sec-
19 retary considers appropriate.

20 (3) COST-EFFECTIVENESS LIMITATION.—Such
21 portion shall not exceed the total present value of
22 the savings (as determined in accordance with sub-
23 section (d)) attributable to the incorporation of the
24 eligible sustainable building elements to be financed

1 with the green portion of the mortgage that are to
2 be realized over the useful life of such elements.

3 (d) ELIGIBLE SUSTAINABLE BUILDING ELE-
4 MENTS.—The Secretary may not guarantee any eligible
5 mortgage under this section unless the mortgagor has
6 demonstrated, in accordance with such requirements as
7 the Secretary shall establish, the amount of savings attrib-
8 utable to incorporation of the sustainable building ele-
9 ments to be financed with the green portion of the mort-
10 gage, as measured by the National Green Building Stand-
11 ard for all residential construction developed by the Na-
12 tional Association of Home Builders and the U.S. Green
13 Building Council, and approved by the American National
14 Standards Institute, as updated and in effect at the time
15 of such demonstration.

16 (e) GUARANTEE FEE.—

17 (1) ASSESSMENT AND COLLECTION.—The Sec-
18 retary shall assess and collect fees for guarantees
19 under this section in amounts that the Secretary de-
20 termines are sufficient to cover the costs (as such
21 term is defined in section 502 of the Federal Credit
22 Reform Act of 1990 (2 U.S.C. 661a)) of such guar-
23 antees.

24 (2) AVAILABILITY.—Fees collected under this
25 subsection shall be deposited by the Secretary in the

1 Treasury of the United States and shall remain
2 available until expended, subject to such other condi-
3 tions as are contained in annual appropriations Acts.

4 (f) PAYMENT OF GUARANTEE.—

5 (1) DEFAULT.—

6 (A) RIGHT TO PAYMENT.—If a mortgagor
7 under a mortgage guaranteed under this section
8 defaults (as defined in regulations issued by the
9 Secretary and specified in the guarantee con-
10 tract) on the obligation under the mortgage—

11 (i) the holder of the guarantee shall
12 have the right to demand payment of the
13 unpaid amount of the guaranteed portion
14 of the mortgage, to the extent provided
15 under subsection (a)(2), from the Sec-
16 retary; and

17 (ii) within such period as may be
18 specified in the guarantee or related agree-
19 ments, the Secretary shall pay to the hold-
20 er of the guarantee, to the extent provided
21 under subsection (a)(2), the unpaid inter-
22 est on, and unpaid principal of the portion
23 of guaranteed portion of the mortgage with
24 respect to which the borrower has de-
25 faulted, unless the Secretary finds that

1 there was no default by the borrower in
2 the payment of interest or principal or that
3 the default has been remedied.

4 (B) FORBEARANCE.—Nothing in this para-
5 graph precludes any forbearance by the holder
6 of an eligible mortgage for the benefit of the
7 mortgagor which may be agreed upon by the
8 parties to the mortgage and approved by the
9 Secretary.

10 (2) SUBROGATION.—

11 (A) IN GENERAL.—If the Secretary makes
12 a payment under paragraph (1), the Secretary
13 shall be subrogated to the rights of the recipi-
14 ent of the payment as specified in the guar-
15 antee or related agreements including, if appro-
16 priate, the authority (notwithstanding any other
17 provision of law)—

18 (i) to complete, maintain, operate,
19 lease, or otherwise dispose of any property
20 acquired pursuant to such guarantee or re-
21 lated agreements; or

22 (ii) to permit the mortgagor, pursuant
23 to an agreement with the Secretary, to
24 continue to occupy the property subject to

1 the mortgage, if the Secretary determines
2 such occupancy to be appropriate.

3 (B) SUPERIORITY OF RIGHTS.—The rights
4 of the Secretary, with respect to any property
5 acquired pursuant to a guarantee or related
6 agreements, shall be superior to the rights of
7 any other person with respect to the property.

8 (C) TERMS AND CONDITIONS.—A guar-
9 antee agreement shall include such detailed
10 terms and conditions as the Secretary deter-
11 mines appropriate to protect the interests of the
12 United States in the case of default.

13 (3) FULL FAITH AND CREDIT.—The full faith
14 and credit of the United States is pledged to the
15 payment of all guarantees issued under this section
16 with respect to principal and interest.

17 (g) DEFINITIONS.—For purposes of this section, the
18 following definitions shall apply:

19 (1) ELIGIBLE MORTGAGE.—The term “eligible
20 mortgage” means a mortgage that meets the re-
21 quirements under subsection (b).

22 (2) GREEN PORTION.—The term “green por-
23 tion” means, with respect to an eligible mortgage,
24 the portion of the mortgage principal referred to in
25 subsection (b)(2) that is attributable, as determined

1 in accordance with regulations issued by the Sec-
2 retary, to the increased costs incurred in financing
3 provision of sustainable building elements for the
4 housing for which the mortgage was made, as com-
5 pared to the costs that would have been incurred in
6 financing the provision of other building elements
7 for the housing for the same purposes that are com-
8 monly or conventionally used but are not sustainable
9 building elements.

10 (3) GUARANTEED PORTION.—The term “guar-
11 anteed portion” means, with respect to an eligible
12 mortgage guaranteed under this section, the green
13 portion of the mortgage that is so guaranteed.

14 (4) MORTGAGE.—The term “mortgage” has the
15 meaning given such term in section 201 of the Na-
16 tional Housing Act (12 U.S.C. 1707).

17 (5) MULTIFAMILY HOUSING.—The term “multi-
18 family housing” means a residential property con-
19 sisting of five or more dwelling units.

20 (6) SECRETARY.—The term “Secretary” means
21 the Secretary of Housing and Urban Development.

22 (7) SINGLE-FAMILY HOUSING.—The term “sin-
23 gle-family housing” means a residential property
24 consisting of one to four dwelling units.

1 (8) SUSTAINABLE BUILDING ELEMENT.—The
2 term “sustainable building element” means such
3 building elements, as the Secretary shall define, that
4 have energy efficiency or environmental sustain-
5 ability qualities that are superior to such qualities
6 for other building elements for the same purposes
7 that are commonly or conventionally used.

8 (h) AUTHORIZATION OF APPROPRIATIONS.—There is
9 authorized to be appropriated for costs (as such term is
10 defined in section 502 of the Federal Credit Reform Act
11 of 1990 (2 U.S.C. 661a) of guarantees under this section
12 \$500,000,000 for each of fiscal years 2010 through 2014.

13 (i) REGULATIONS.—The Secretary shall issue any
14 regulations necessary to carry out this section.

15 **TITLE III—REDUCING GLOBAL**
16 **WARMING POLLUTION**

17 **SEC. 301. SHORT TITLE.**

18 This title, and sections 112, 116, 221, 222, 223, and
19 401 of this Act, and the amendments made by this title
20 and those sections, may be cited as the “Safe Climate
21 Act”.

1 **Subtitle A—Reducing Global**
2 **Warming Pollution**

3 **SEC. 311. REDUCING GLOBAL WARMING POLLUTION.**

4 The Clean Air Act (42 U.S.C. and following) is
5 amended by adding after title VI the following new title:

6 **“TITLE VII—GLOBAL WARMING**
7 **POLLUTION REDUCTION PRO-**
8 **GRAM**

9 **“PART A—GLOBAL WARMING POLLUTION**
10 **REDUCTION GOALS AND TARGETS**

11 **“SEC. 701. FINDINGS AND PURPOSE.**

12 “(a) FINDINGS.—The Congress finds as follows:

13 “(1) Global warming poses a significant threat
14 to the national security, economy, public health and
15 welfare, and environment of the United States, as
16 well as of other nations.

17 “(2) Reviews of scientific studies, including by
18 the Intergovernmental Panel on Climate Change and
19 the National Academy of Sciences, demonstrate that
20 global warming is the result of the combined anthro-
21 pogenic greenhouse gas emissions from numerous
22 sources of all types and sizes. Each increment of
23 emission, when combined with other emissions,
24 causes or contributes materially to the acceleration
25 and extent of global warming and its adverse effects

1 for the lifetime of such gas in the atmosphere. Ac-
2 cordingly, controlling emissions in small as well as
3 large amounts is essential to prevent, slow the pace
4 of, reduce the threats from, and mitigate global
5 warming and its adverse effects.

6 “(3) Because they induce global warming,
7 greenhouse gas emissions cause or contribute to in-
8 juries to persons in the United States, including—

9 “(A) adverse health effects such as disease
10 and loss of life;

11 “(B) displacement of human populations;

12 “(C) damage to property and other inter-
13 ests related to ocean levels, acidification, and
14 ice changes;

15 “(D) severe weather and seasonal changes;

16 “(E) disruption, costs, and losses to busi-
17 ness, trade, employment, farms, subsistence,
18 aesthetic enjoyment of the environment, recre-
19 ation, culture, and tourism;

20 “(F) damage to plants, forests, lands, and
21 waters;

22 “(G) harm to wildlife and habitat;

23 “(H) scarcity of water and the decreased
24 abundance of other natural resources;

1 “(I) worsening of tropospheric air pollu-
2 tion;

3 “(J) substantial threats of similar damage;
4 and

5 “(K) other harm.

6 “(4) That many of these effects and risks of fu-
7 ture effects of global warming are widely shared
8 does not minimize the adverse effects individual per-
9 sons have suffered, will suffer, and are at risk of
10 suffering because of global warming.

11 “(5) That some of the adverse and potentially
12 catastrophic effects of global warming are at risk of
13 occurring and not a certainty does not negate the
14 harm persons suffer from actions that increase the
15 likelihood, extent, and severity of such future im-
16 pacts.

17 “(6) Nations of the world look to the United
18 States for leadership in addressing the threat of and
19 harm from global warming. Full implementation of
20 the Safe Climate Act is critical to engage other na-
21 tions in an international effort to mitigate the threat
22 of and harm from global warming.

23 “(7) Global warming and its adverse effects are
24 occurring and are likely to continue and increase in
25 magnitude, and to do so at a greater and more

1 harmful rate, unless the Safe Climate Act is fully
2 implemented and enforced in an expeditious manner.

3 “(b) PURPOSE.—It is the general purpose of the Safe
4 Climate Act to help prevent, reduce the pace of, mitigate,
5 and remedy global warming and its adverse effects. To ful-
6 fill such purpose, it is necessary to—

7 “(1) require the timely fulfillment of all govern-
8 mental acts and duties, both substantive and proce-
9 dural, and the prompt compliance of covered entities
10 with the requirements of the Safe Climate Act;

11 “(2) establish and maintain an effective, trans-
12 parent, and fair market for emission allowances and
13 preserve the integrity of the cap on emissions and of
14 offset credits;

15 “(3) advance the production and deployment of
16 clean energy and energy efficiency technologies; and

17 “(4) ensure effective enforcement of the Safe
18 Climate Act by citizens, States, Indian tribes, and
19 all levels of government because each violation of the
20 Safe Climate Act is likely to result in an additional
21 increment of greenhouse gas emission and will slow
22 the pace of implementation of the Safe Climate Act
23 and delay the achievement of the goals set forth in
24 section 702, and cause or contribute to global warm-
25 ing and its adverse effects.

1 **“SEC. 702. ECONOMY-WIDE REDUCTION GOALS.**

2 “The goals of the Safe Climate Act are to reduce
3 steadily the quantity of United States greenhouse gas
4 emissions such that—

5 “(1) in 2012, the quantity of United States
6 greenhouse gas emissions does not exceed 97 percent
7 of the quantity of United States greenhouse gas
8 emissions in 2005;

9 “(2) in 2020, the quantity of United States
10 greenhouse gas emissions does not exceed 80 percent
11 of the quantity of United States greenhouse gas
12 emissions in 2005;

13 “(3) in 2030, the quantity of United States
14 greenhouse gas emissions does not exceed 58 percent
15 of the quantity of United States greenhouse gas
16 emissions in 2005; and

17 “(4) in 2050, the quantity of United States
18 greenhouse gas emissions does not exceed 17 percent
19 of the quantity of United States greenhouse gas
20 emissions in 2005.

21 **“SEC. 703. REDUCTION TARGETS FOR SPECIFIED SOURCES.**

22 “(a) IN GENERAL.—The regulations issued under
23 section 721 shall cap and reduce annually the greenhouse
24 gas emissions of capped sources each calendar year begin-
25 ning in 2012 such that—

1 “(1) in 2012, the quantity of greenhouse gas
2 emissions from capped sources does not exceed 97
3 percent of the quantity of greenhouse gas emissions
4 from such sources in 2005;

5 “(2) in 2020, the quantity of greenhouse gas
6 emissions from capped sources does not exceed 83
7 percent of the quantity of greenhouse gas emissions
8 from such sources in 2005;

9 “(3) in 2030, the quantity of greenhouse gas
10 emissions from capped sources does not exceed 58
11 percent of the quantity of greenhouse gas emissions
12 from such sources in 2005; and

13 “(4) in 2050, the quantity of greenhouse gas
14 emissions from capped sources does not exceed 17
15 percent of the quantity of greenhouse gas emissions
16 from such sources in 2005.

17 “(b) DEFINITION.—For purposes of this section, the
18 term ‘greenhouse gas emissions from such sources in
19 2005’ means emissions to which section 722 would have
20 applied if the requirements of this title for the specified
21 year had been in effect for 2005.

22 **“SEC. 704. SUPPLEMENTAL POLLUTION REDUCTIONS.**

23 “For the purposes of decreasing the likelihood of cat-
24 astrophic climate change, preserving tropical forests,
25 building capacity to generate offset credits, and facili-

1 tating international action on global warming, the Admin-
2 istrator shall set aside the percentage specified in section
3 781 of the quantity of emission allowances established
4 under section 721(a) for each year, to be used to achieve
5 a reduction of greenhouse gas emissions from deforest-
6 ation in developing countries in accordance with part E.
7 In 2020, activities supported under part E shall provide
8 greenhouse gas reductions in an amount equal to an addi-
9 tional 10 percentage points of reductions from United
10 States greenhouse gas emissions in 2005. The Adminis-
11 trator shall distribute these allowances with respect to ac-
12 tivities in countries that enter into and implement agree-
13 ments or arrangements relating to reduced deforestation
14 as described in section 754(a)(2).

15 **“SEC. 705. REVIEW AND PROGRAM RECOMMENDATIONS.**

16 “(a) IN GENERAL.—The Administrator shall, in con-
17 sultation with appropriate Federal agencies, submit to
18 Congress a report not later than July 1, 2013, and every
19 4 years thereafter, that includes—

20 “(1) an analysis of key findings based on the
21 latest scientific information and data relevant to
22 global climate change;

23 “(2) an analysis of capabilities to monitor and
24 verify greenhouse gas reductions on a worldwide

1 basis, including for the United States, as required
2 under the Safe Climate Act; and

3 “(3) an analysis of the status of worldwide
4 greenhouse gas reduction efforts, including imple-
5 mentation of the Safe Climate Act and other poli-
6 cies, both domestic and international, for reducing
7 greenhouse gas emissions, preventing dangerous at-
8 mospheric concentrations of greenhouse gases, pre-
9 venting significant irreversible consequences of cli-
10 mate change, and reducing vulnerability to the im-
11 pacts of climate change.

12 “(b) EXCEPTION.—Paragraph (3) of subsection (a)
13 shall not apply to the first report submitted under such
14 subsection.

15 “(c) LATEST SCIENTIFIC INFORMATION.—The anal-
16 ysis required under subsection (a)(1) shall—

17 “(1) address existing scientific information and
18 reports, considering, to the greatest extent possible,
19 the most recent assessment report of the Intergov-
20 ernmental Panel on Climate Change, reports by the
21 United States Global Change Research Program, the
22 Natural Resources Climate Change Adaptation
23 Panel established under section 475 of the American
24 Clean Energy and Security Act of 2009, and Fed-

1 eral agencies, and the European Union’s global tem-
2 perature data assessment; and

3 “(2) review trends and projections for—

4 “(A) global and country-specific annual
5 emissions of greenhouse gases, and cumulative
6 greenhouse gas emissions produced between
7 1850 and the present, including—

8 “(i) global cumulative emissions of an-
9 thropogenic greenhouse gases;

10 “(ii) global annual emissions of an-
11 thropogenic greenhouse gases; and

12 “(iii) by country, annual total, annual
13 per capita, and cumulative anthropogenic
14 emissions of greenhouse gases for the top
15 50 emitting nations;

16 “(B) significant changes, both globally and
17 by region, in annual net non-anthropogenic
18 greenhouse gas emissions from natural sources,
19 including permafrost, forests, or oceans;

20 “(C) global atmospheric concentrations of
21 greenhouse gases, expressed in annual con-
22 centration units as well as carbon dioxide
23 equivalents based on 100-year global warming
24 potentials;

1 “(D) major climate forcing factors, such as
2 aerosols;

3 “(E) global average temperature, expressed
4 as seasonal and annual averages in land, ocean,
5 and land-plus-ocean averages; and

6 “(F) sea level rise;

7 “(3) assess the current and potential impacts of
8 global climate change on—

9 “(A) human populations, including impacts
10 on public health, economic livelihoods, subsist-
11 ence, human infrastructure, and displacement
12 or permanent relocation due to flooding, severe
13 weather, extended drought, erosion, or other
14 ecosystem changes;

15 “(B) freshwater systems, including water
16 resources for human consumption and agri-
17 culture and natural and managed ecosystems,
18 flood and drought risks, and relative humidity;

19 “(C) the carbon cycle, including impacts
20 related to the thawing of permafrost, the fre-
21 quency and intensity of wildfire, and terrestrial
22 and ocean carbon sinks;

23 “(D) ecosystems and animal and plant
24 populations, including impacts on species abun-
25 dance, phenology, and distribution;

1 “(E) oceans and ocean ecosystems, includ-
2 ing effects on sea level, ocean acidity, ocean
3 temperatures, coral reefs, ocean circulation,
4 fisheries, and other indicators of ocean eco-
5 system health;

6 “(F) the cryosphere, including effects on
7 ice sheet mass balance, mountain glacier mass
8 balance, and sea-ice extent and volume;

9 “(G) changes in the intensity, frequency,
10 or distribution of severe weather events, includ-
11 ing precipitation, tropical cyclones, tornadoes,
12 and severe heat waves;

13 “(H) agriculture and forest systems; and

14 “(I) any other indicators the Administrator
15 deems appropriate;

16 “(4) summarize any significant socio-economic
17 impacts of climate change in the United States, in-
18 cluding the territories of the United States, drawing
19 on work by Federal agencies and the academic lit-
20 erature, including impacts on—

21 “(A) public health;

22 “(B) economic livelihoods and subsistence;

23 “(C) displacement or permanent relocation
24 due to flooding, severe weather, extended
25 drought, erosion, or other ecosystem changes;

1 “(D) human infrastructure, including
2 coastal infrastructure vulnerability to extreme
3 events and sea level rise, river floodplain infra-
4 structure, and sewer and water management
5 systems;

6 “(E) agriculture and forests, including ef-
7 fects on potential growing season, distribution,
8 and yield;

9 “(F) water resources for human consump-
10 tion, agriculture and natural and managed eco-
11 systems, flood and drought risks, and relative
12 humidity;

13 “(G) energy supply and use; and

14 “(H) transportation;

15 “(5) in assessing risks and impacts, use a risk
16 management framework, including both qualitative
17 and quantitative measures, to assess the observed
18 and projected impacts of current and future climate
19 change, accounting for—

20 “(A) both monetized and non-monetized
21 losses;

22 “(B) potential nonlinear, abrupt, or essen-
23 tially irreversible changes in the climate system;

24 “(C) potential nonlinear increases in the
25 cost of impacts;

1 “(D) potential low-probability, high impact
2 events; and

3 “(E) whether impacts are transitory or es-
4 sentially permanent; and

5 “(6) based on the findings of the Administrator
6 under this section, as well as assessments produced
7 by the Intergovernmental Panel on Climate Change,
8 the United States Global Change Research program,
9 and other relevant scientific entities—

10 “(A) describe increased risks to natural
11 systems and society that would result from an
12 increase in global average temperature 3.6 de-
13 grees Fahrenheit (2 degrees Celsius) above the
14 pre-industrial average or an increase in atmos-
15 pheric greenhouse gas concentrations above 450
16 parts per million carbon dioxide equivalent; and

17 “(B) identify and assess—

18 “(i) significant residual risks not
19 avoided by the thresholds described in sub-
20 paragraph (A);

21 “(ii) alternative thresholds or targets
22 that may more effectively limit the risks
23 identified pursuant to clause (i); and

24 “(iii) thresholds above those described
25 in subparagraph (A) which significantly in-

1 crease the risk of certain impacts or render
2 them essentially permanent.

3 “(d) STATUS OF MONITORING AND VERIFICATION
4 CAPABILITIES TO EVALUATE GREENHOUSE GAS REDUC-
5 TION EFFORTS.—The analysis required under subsection
6 (a)(2) shall evaluate the capabilities of the monitoring, re-
7 porting, and verification systems used to quantify progress
8 in achieving reductions in greenhouse gas emissions both
9 globally and in the United States (as described in section
10 702), including—

11 “(1) quantification of emissions and emission
12 reductions by entities participating in the cap and
13 trade program under this title;

14 “(2) quantification of emissions and emission
15 reductions by entities participating in the offset pro-
16 gram under this title;

17 “(3) quantification of emission and emissions
18 reductions by entities regulated by performance
19 standards;

20 “(4) quantification of aggregate net emissions
21 and emissions reductions by the United States; and

22 “(5) quantification of global changes in net
23 emissions and in sources and sinks of greenhouse
24 gases.

1 “(e) STATUS OF GREENHOUSE GAS REDUCTION EF-
2 FORTS.—The analysis required under subsection (a)(3)
3 shall address—

4 “(1) whether the programs under Safe Climate
5 Act and other Federal statutes are resulting in suffi-
6 cient United States greenhouse gas emissions reduc-
7 tions to meet the emissions reduction goals described
8 in section 702, taking into account the use of off-
9 sets; and

10 “(2) whether United States actions, taking into
11 account international actions, commitments, and
12 trends, and considering the range of plausible emis-
13 sions scenarios, are sufficient to avoid—

14 “(A) atmospheric greenhouse gas con-
15 centrations above 450 parts per million carbon
16 dioxide equivalent;

17 “(B) global average surface temperature
18 3.6 degrees Fahrenheit (2 degrees Celsius)
19 above the pre-industrial average, or such other
20 temperature thresholds as the Administrator
21 deems appropriate; and

22 “(C) other temperature or greenhouse gas
23 thresholds identified pursuant to subsection
24 (c)(6)(B).

25 “(f) RECOMMENDATIONS.—

1 “(1) LATEST SCIENTIFIC INFORMATION.—
2 Based on the analysis described in subsection (a)(1),
3 each report under subsection (a) shall identify ac-
4 tions that could be taken to—

5 “(A) improve the characterization of
6 changes in the earth-climate system and im-
7 pacts of global climate change;

8 “(B) better inform decision making and
9 actions related to global climate change;

10 “(C) mitigate risks to natural and social
11 systems; and

12 “(D) design policies to better account for
13 climate risks.

14 “(2) MONITORING, REPORTING AND
15 VERIFICATION.—Based on the analysis described in
16 subsection (a)(2), each report under subsection (a)
17 shall identify key gaps in measurement, reporting,
18 and verification capabilities and make recommenda-
19 tions to improve the accuracy and reliability of those
20 capabilities.

21 “(3) STATUS OF GREENHOUSE GAS REDUCTION
22 EFFORTS.—Based on the analysis described in sub-
23 section (a)(3), taking into account international ac-
24 tions, commitments, and trends, and considering the

1 range of plausible emissions scenarios, each report
2 under subsection (a) shall identify—

3 “(A) the quantity of additional reductions
4 required to meet the emissions reduction goals
5 in section 702;

6 “(B) the quantity of additional reductions
7 in global greenhouse gas emissions needed to
8 avoid the concentration and temperature
9 thresholds identified in subsection (e); and

10 “(C) possible strategies and approaches for
11 achieving additional reductions.

12 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated to carry out this section
14 such sums as may be necessary.

15 **“SEC. 706. NATIONAL ACADEMY REVIEW.**

16 “(a) IN GENERAL.—Not later than 1 year after the
17 date of enactment of this title, the Administrator shall
18 offer to enter into a contract with the National Academy
19 of Sciences (in this section referred to as the ‘Academy’)
20 under which the Academy shall, not later than July 1,
21 2014, and every 4 years thereafter, submit to Congress
22 and the Administrator a report that includes—

23 “(1) a review of the most recent report and rec-
24 ommendations issued under section 705; and

1 “(2) an analysis of technologies to achieve re-
2 ductions in greenhouse gas emissions.

3 “(b) FAILURE TO ISSUE A REPORT.—In the event
4 that the Administrator has not issued all or part of the
5 most recent report required under section 705, the Acad-
6 emy shall conduct its own review and analysis of the re-
7 quired information.

8 “(c) TECHNOLOGICAL INFORMATION.—The analysis
9 required under subsection (a)(2) shall—

10 “(1) review existing technological information
11 and reports, including the most recent reports by the
12 Department of Energy, the United States Global
13 Change Research Program, the Intergovernmental
14 Panel on Climate Change, and the International En-
15 ergy Agency and any other relevant information on
16 technologies or practices that reduce or limit green-
17 house gas emissions;

18 “(2) include the participation of technical ex-
19 perts from relevant private industry sectors;

20 “(3) review the current and future projected de-
21 ployment of technologies and practices in the United
22 States that reduce or limit greenhouse gas emis-
23 sions, including—

24 “(A) technologies for capture and seques-
25 tration of greenhouse gases;

1 “(B) technologies to improve energy effi-
2 ciency;

3 “(C) low- or zero-greenhouse gas emitting
4 energy technologies;

5 “(D) low- or zero-greenhouse gas emitting
6 fuels;

7 “(E) biological sequestration practices and
8 technologies; and

9 “(F) any other technologies the Academy
10 deems relevant; and

11 “(4) review and compare the emissions reduc-
12 tion potential, commercial viability, market penetra-
13 tion, investment trends, and deployment of the tech-
14 nologies described in paragraph (3), including—

15 “(A) the need for additional research and
16 development, including publicly funded research
17 and development;

18 “(B) the extent of commercial deployment,
19 including, where appropriate, a comparison to
20 the cost and level of deployment of conventional
21 fossil fuel-fired energy technologies and devices;
22 and

23 “(C) an evaluation of any substantial tech-
24 nological, legal, or market-based barriers to
25 commercial deployment.

1 “(d) RECOMMENDATIONS.—

2 “(1) LATEST SCIENTIFIC INFORMATION.—

3 Based on the review described in subsection (a)(1),
4 the Academy shall identify actions that could be
5 taken to—

6 “(A) improve the characterization of
7 changes in the earth-climate system and im-
8 pacts of global climate change;

9 “(B) better inform decision making and
10 actions related to global climate change;

11 “(C) mitigate risks to natural and social
12 systems;

13 “(D) design policies to better account for
14 climate risks; and

15 “(E) improve the accuracy and reliability
16 of capabilities to monitor, report, and verify
17 greenhouse gas emissions reduction efforts.

18 “(2) TECHNOLOGICAL INFORMATION.—Based
19 on the analysis described in subsection (a)(2), the
20 Academy shall identify—

21 “(A) additional emissions reductions that
22 may be possible as a result of technologies de-
23 scribed in the analysis;

24 “(B) barriers to the deployment of such
25 technologies; and

1 “(C) actions that could be taken to speed
2 deployment of such technologies.

3 “(3) STATUS OF GREENHOUSE GAS REDUCTION
4 EFFORTS.—Based on the review described in sub-
5 section (a)(1), the Academy shall identify—

6 “(A) the quantity of additional reductions
7 required to meet the emissions reduction goals
8 described in section 702; and

9 “(B) the quantity of additional reductions
10 in global greenhouse gas emissions needed to
11 avoid the concentration and temperature
12 thresholds described in section 705(c)(6)(A) or
13 identified pursuant to section 705(c)(6)(B).

14 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated to carry out this section
16 such sums as may be necessary.

17 **“SEC. 707. PRESIDENTIAL RESPONSE AND RECOMMENDA-**
18 **TIONS.**

19 “(a) AGENCY ACTIONS.—The President shall direct
20 relevant Federal agencies to use existing statutory author-
21 ity to take appropriate actions identified in the reports
22 submitted under sections 705 and 706, and to address any
23 shortfalls identified in such reports, not later than July
24 1, 2015, and every 4 years thereafter.

1 “(6) Any perfluorocarbon.

2 “(7) Nitrogen trifluoride.

3 “(8) Any other anthropogenic gas designated as
4 a greenhouse gas by the Administrator under this
5 section.

6 “(b) DETERMINATION ON ADMINISTRATOR’S INITIA-
7 TIVE.—The Administrator shall, by rule—

8 “(1) determine whether 1 metric ton of another
9 anthropogenic gas makes the same or greater con-
10 tribution to global warming over 100 years as 1 met-
11 ric ton of carbon dioxide;

12 “(2) determine the carbon dioxide equivalent
13 value for each gas with respect to which the Admin-
14 istrator makes an affirmative determination under
15 paragraph (1);

16 “(3) for each gas with respect to which the Ad-
17 ministrator makes an affirmative determination
18 under paragraph (1) and that is used as a substitute
19 for a class I or class II substance under title VI, de-
20 termine the extent to which to regulate that gas
21 under section 619 and specify appropriate compli-
22 ance obligations under section 619;

23 “(4) designate as a greenhouse gas for purposes
24 of this title each gas for which the Administrator
25 makes an affirmative determination under para-

1 graph (1), to the extent that it is not regulated
2 under section 619; and

3 “(5) specify the appropriate compliance obliga-
4 tions under this title for each gas designated as a
5 greenhouse gas under paragraph (4).

6 “(c) PETITIONS TO DESIGNATE A GREENHOUSE
7 GAS.—

8 “(1) IN GENERAL.—Any person may petition
9 the Administrator to designate as a greenhouse gas
10 any anthropogenic gas 1 metric ton of which makes
11 the same or greater contribution to global warming
12 over 100 years as 1 metric ton of carbon dioxide.

13 “(2) CONTENTS OF PETITION.—The petitioner
14 shall provide sufficient data, as specified by rule by
15 the Administrator, to demonstrate that the gas is
16 likely to be designated as a greenhouse gas and is
17 likely to be produced, imported, used, or emitted in
18 the United States. To the extent practicable, the pe-
19 titioner shall also identify producers, importers, dis-
20 tributors, users, and emitters of the gas in the
21 United States.

22 “(3) REVIEW AND ACTION BY THE ADMINIS-
23 TRATOR.—Not later than 90 days after receipt of a
24 petition under paragraph (2), the Administrator

1 shall determine whether the petition is complete and
2 notify the petitioner and the public of the decision.

3 “(4) ADDITIONAL INFORMATION.—The Admin-
4 istrator may require producers, importers, distribu-
5 tors, users, or emitters of the gas to provide infor-
6 mation on the contribution of the gas to global
7 warming over 100 years compared to carbon dioxide.

8 “(5) TREATMENT OF PETITION.—For any sub-
9 stance used as a substitute for a class I or class II
10 substance under title VI, the Administrator may
11 elect to treat a petition under this subsection as a
12 petition to list the substance as a class II, group II
13 substance under section 619, and may require the
14 petition to be amended to address listing criteria
15 promulgated under that section.

16 “(6) DETERMINATION.—Not later than 2 years
17 after receipt of a complete petition, the Adminis-
18 trator shall, after notice and an opportunity for com-
19 ment—

20 “(A) issue and publish in the Federal Reg-
21 ister—

22 “(i) a determination that 1 metric ton
23 of the gas does not make a contribution to
24 global warming over 100 years that is

1 equal to or greater than that made by 1
2 metric ton of carbon dioxide; and

3 “(ii) an explanation of the decision; or

4 “(B) determine that 1 metric ton of the
5 gas makes a contribution to global warming
6 over 100 years that is equal to or greater than
7 that made by 1 metric ton of carbon dioxide,
8 and take the actions described in subsection (b)
9 with respect to such gas.

10 “(7) GROUNDS FOR DENIAL.—The Adminis-
11 trator may not deny a petition under this subsection
12 solely on the basis of inadequate Environmental Pro-
13 tection Agency resources or time for review.

14 “(d) SCIENCE ADVISORY BOARD CONSULTATION.—

15 “(1) CONSULTATION.—The Administrator
16 shall—

17 “(A) give notice to the Science Advisory
18 Board prior to making a determination under
19 subsection (b)(1), (c)(6), or (e)(2)(B);

20 “(B) consider the written recommendations
21 of the Science Advisory Board under paragraph
22 (2) regarding the determination; and

23 “(C) consult with the Science Advisory
24 Board regarding such determination, including

1 consultation subsequent to receipt of such writ-
2 ten recommendations.

3 “(2) FORMULATION OF RECOMMENDATIONS.—

4 Upon receipt of notice under paragraph (1)(A) re-
5 garding a pending determination under subsection
6 (b)(1), (c)(6), or (e)(2)(B), the Science Advisory
7 Board shall—

8 “(A) formulate recommendations regarding
9 such determination, subject to a peer review
10 process; and

11 “(B) submit such recommendations in
12 writing to the Administrator.

13 “(e) MANUFACTURING AND EMISSION NOTICES.—

14 “(1) NOTICE REQUIREMENT.—

15 “(A) IN GENERAL.—Effective 24 months
16 after the date of enactment of this title, no per-
17 son may manufacture or introduce into inter-
18 state commerce a fluorinated gas, or emit a sig-
19 nificant quantity, as determined by the Admin-
20 istrator, of any fluorinated gas that is gen-
21 erated as a byproduct during the production or
22 use of another fluorinated gas, unless—

23 “(i) the gas is designated as a green-
24 house gas under this section or is an

1 ozone-depleting substance listed as a class
2 I or class II substance under title VI;

3 “(ii) the Administrator has deter-
4 mined that 1 metric ton of such gas does
5 not make a contribution to global warming
6 over 100 years that is equal to or greater
7 than that made by 1 metric ton of carbon
8 dioxide; or

9 “(iii) the person manufacturing or im-
10 porting the gas for distribution into inter-
11 state commerce, or emitting the gas, has
12 submitted to the Administrator, at least 90
13 days before the start of such manufacture,
14 introduction into commerce, or emission, a
15 notice of such person’s manufacture, intro-
16 duction into commerce, or emission of such
17 gas, and the Administrator has not deter-
18 mined that that notice or a substantially
19 similar notice submitted by that person is
20 incomplete.

21 “(B) ALTERNATIVE COMPLIANCE.—For a
22 gas that is a substitute for a class I or class II
23 substance under title VI and either has been
24 listed as acceptable for use under section 612
25 or is currently subject to evaluation under sec-

1 tion 612, the Administrator may accept the no-
2 tice and information provided pursuant to that
3 section as fulfilling the obligation under clause
4 (iii) of subparagraph (A).

5 “(2) REVIEW AND ACTION BY THE ADMINIS-
6 TRATOR.—

7 “(A) COMPLETENESS.—Not later than 90
8 days after receipt of notice under paragraph
9 (1)(A)(iii) or (B), the Administrator shall deter-
10 mine whether the notice is complete.

11 “(B) DETERMINATION.—If the Adminis-
12 trator determines that the notice is complete,
13 the Administrator shall, after notice and an op-
14 portunity for comment, not later than 12
15 months after receipt of the notice—

16 “(i) issue and publish in the Federal
17 Register—

18 “(I) a determination that 1 met-
19 ric ton of the gas does not make a
20 contribution to global warming over
21 100 years that is equal to or greater
22 than that made by 1 metric ton of
23 carbon dioxide; and

24 “(II) an explanation of the deci-
25 sion; or

1 “(ii) determine that 1 metric ton of
2 the gas makes a contribution to global
3 warming over 100 years that is equal to or
4 greater than that made by 1 metric ton of
5 carbon dioxide, and take the actions de-
6 scribed in subsection (b) with respect to
7 such gas.

8 “(f) REGULATIONS.—Not later than 1 year after the
9 date of enactment of this title, the Administrator shall
10 promulgate regulations to carry out this section. Such reg-
11 ulations shall include—

12 “(1) requirements for the contents of a petition
13 submitted under subsection (c);

14 “(2) requirements for the contents of a notice
15 required under subsection (e); and

16 “(3) methods and standards for evaluating the
17 carbon dioxide equivalent value of a gas.

18 “(g) GASES REGULATED UNDER TITLE VI.—The
19 Administrator shall not designate a gas as a greenhouse
20 gas under this section to the extent that the gas is regu-
21 lated under title VI.

22 “(h) SAVINGS CLAUSE.—Nothing in this section shall
23 be interpreted to relieve any person from complying with
24 the requirements of section 612.

1 **“SEC. 712. CARBON DIOXIDE EQUIVALENT VALUE OF**
 2 **GREENHOUSE GASES.**

3 “(a) MEASURE OF QUANTITY OF GREENHOUSE
 4 GASES.—Any provision of this title or title VIII that refers
 5 to a quantity or percentage of a quantity of greenhouse
 6 gases shall mean the quantity or percentage of the green-
 7 house gases expressed in carbon dioxide equivalents.

8 “(b) INITIAL VALUE.—Except as provided by the Ad-
 9 ministrator under this section or section 711—

10 “(1) the carbon dioxide equivalent value of
 11 greenhouse gases for purposes of this Act shall be as
 12 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
HFC-143a	4,470
HFC-152a	124
HFC-227ea	3,220
HFC-236fa	9,810
HFC-4310mcc	1,640
CF ₄	7,390

**“CARBON DIOXIDE EQUIVALENT OF 1 TON OF LISTED
GREENHOUSE GASES—Continued**

Greenhouse gas (1 metric ton)	Carbon dioxide equivalent (metric tons)
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
14 under this section or section 711(b)(2), based
15 on a determination of the number of metric
16 tons of carbon dioxide that makes the same
17 contribution to global warming over 100 years
18 as 1 metric ton of each greenhouse gas; and

1 “(B) publish in the Federal Register the
2 results of that review and any revisions.

3 “(2) A revised determination published in the
4 Federal Register under paragraph (1)(B) shall take
5 effect for greenhouse gas emissions starting on Jan-
6 uary 1 of the first calendar year starting at least 9
7 months after the date on which the revised deter-
8 mination was published.

9 “(3) The Administrator may decrease the fre-
10 quency of review and revision under paragraph (1)
11 if the Administrator determines that such decrease
12 is appropriate in order to synchronize such review
13 and revision with any similar review process carried
14 out pursuant to the United Nations Framework
15 Convention on Climate Change, done at New York
16 on May 9, 1992, or to an agreement negotiated
17 under that convention, except that in no event shall
18 the Administrator carry out such review and revision
19 any less frequently than every 10 years.

20 “(d) METHODOLOGY.—In setting carbon dioxide
21 equivalent values, for purposes of this section or section
22 711, the Administrator shall take into account publica-
23 tions by the Intergovernmental Panel on Climate Change
24 or a successor organization under the auspices of the

1 United Nations Environmental Programme and the World
2 Meteorological Organization.

3 **“SEC. 713. GREENHOUSE GAS REGISTRY.**

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

5 “(1) CLIMATE REGISTRY.—The term ‘Climate
6 Registry’ means the greenhouse gas emissions reg-
7 istry jointly established and managed by more than
8 40 States and Indian tribes in 2007 to collect high-
9 quality greenhouse gas emission data from facilities,
10 corporations, and other organizations to support var-
11 ious greenhouse gas emission reporting and reduc-
12 tion policies for the member States and Indian
13 tribes.

14 “(2) REPORTING ENTITY.—The term ‘reporting
15 entity’ means—

16 “(A) a covered entity;

17 “(B) an entity that—

18 “(i) would be a covered entity if it had
19 emitted, produced, imported, manufac-
20 tured, or delivered in 2008 or any subse-
21 quent year more than the applicable
22 threshold level in the definition of covered
23 entity in paragraph (13) of section 700;
24 and

1 “(ii) has emitted, produced, imported,
2 manufactured, or delivered in 2008 or any
3 subsequent year more than the applicable
4 threshold level in the definition of covered
5 entity in paragraph (13) of section 700,
6 provided that the figure of 25,000 tons of
7 carbon dioxide equivalent is read instead
8 as 10,000 tons of carbon dioxide equivalent
9 and the figure of 460,000,000 cubic feet is
10 read instead as 184,000,000 cubic feet;

11 “(C) any other entity that emits a green-
12 house gas, or produces, imports, manufactures,
13 or delivers material whose use results or may
14 result in greenhouse gas emissions if the Ad-
15 ministrator determines that reporting under
16 this section by such entity will help achieve the
17 purposes of this title or title VIII;

18 “(D) any vehicle fleet with emissions of
19 more than 25,000 tons of carbon dioxide equiv-
20 alent on an annual basis, if the Administrator
21 determines that the inclusion of such fleet will
22 help achieve the purposes of this title or title
23 VIII; or

24 “(E) any entity that delivers electricity to
25 a facility in an energy-intensive industrial sec-

1 tor that meets the energy or greenhouse gas in-
2 tensity criteria in section 764(b)(2)(A)(i).

3 “(b) REGULATIONS.—

4 “(1) IN GENERAL.—Not later than 6 months
5 after the date of enactment of this title, the Admin-
6 istrator shall issue regulations establishing a Federal
7 greenhouse gas registry. Such regulations shall—

8 “(A) require reporting entities to submit to
9 the Administrator data on—

10 “(i) greenhouse gas emissions in the
11 United States;

12 “(ii) the production and manufacture
13 in the United States, importation into the
14 United States, and, at the discretion of the
15 Administrator, exportation from the
16 United States, of fuels and industrial gases
17 the uses of which result or may result in
18 greenhouse gas emissions;

19 “(iii) deliveries in the United States of
20 natural gas, and any other gas meeting the
21 specifications for commingling with natural
22 gas for purposes of delivery, the combus-
23 tion of which result or may result in green-
24 house gas emissions; and

1 “(iv) the capture and sequestration of
2 greenhouse gases;

3 “(B) require covered entities and, where
4 appropriate, other reporting entities to submit
5 to the Administrator data sufficient to ensure
6 compliance with or implementation of the re-
7 quirements of this title;

8 “(C) require reporting of electricity deliv-
9 ered to facilities in an energy-intensive indus-
10 trial sector that meets the energy or greenhouse
11 gas intensity criteria in section 764(b)(2)(A)(i);

12 “(D) ensure the completeness, consistency,
13 transparency, accuracy, precision, and reliability
14 of such data;

15 “(E) take into account the best practices
16 from the most recent Federal, State, tribal, and
17 international protocols for the measurement, ac-
18 counting, reporting, and verification of green-
19 house gas emissions, including protocols from
20 the Climate Registry and other mandatory
21 State or multistate authorized programs;

22 “(F) take into account the latest scientific
23 research;

24 “(G) require that, for covered entities with
25 respect to greenhouse gases to which section

1 722 applies, and, to the extent determined to be
2 appropriate by the Administrator, for covered
3 entities with respect to other greenhouse gases
4 and for other reporting entities, submitted data
5 are based on—

6 “(i) continuous monitoring systems
7 for fuel flow or emissions, such as contin-
8 uous emission monitoring systems;

9 “(ii) alternative systems that are dem-
10 onstrated as providing data with the same
11 precision, reliability, accessibility, and
12 timeliness, or, to the extent the Adminis-
13 trator determines is appropriate for report-
14 ing small amounts of emissions, the same
15 precision, reliability, and accessibility and
16 similar timeliness, as data provided by con-
17 tinuous monitoring systems for fuel flow or
18 emissions; or

19 “(iii) alternative methodologies that
20 are demonstrated to provide data with pre-
21 cision, reliability, accessibility, and timeli-
22 ness, or, to the extent the Administrator
23 determines is appropriate for reporting
24 small amounts of emissions, precision, reli-
25 ability, and accessibility, as similar as is

1 technically feasible to that of data gen-
2 erally provided by continuous monitoring
3 systems for fuel flow or emissions, if the
4 Administrator determines that, with re-
5 spect to a reporting entity, there is no con-
6 tinuous monitoring system or alternative
7 system described in clause (i) or (ii) that
8 is technically feasible;

9 “(H) require that the Administrator, in de-
10 termining the extent to which the requirement
11 to use systems or methodologies in accordance
12 with subparagraph (G) is appropriate for re-
13 porting entities other than covered entities or
14 for greenhouse gases to which section 722 does
15 not apply, consider the cost of using such sys-
16 tems and methodologies, and of using other sys-
17 tems and methodologies that are available and
18 suitable, for quantifying the emissions involved
19 in light of the purposes of this title, including
20 the goal of collecting consistent entity-wide
21 data;

22 “(I) include methods for minimizing double
23 reporting and avoiding irreconcilable double re-
24 porting of greenhouse gas emissions;

1 “(J) establish measurement protocols for
2 carbon capture and sequestration systems, tak-
3 ing into consideration the regulations promul-
4 gated under section 813;

5 “(K) require that reporting entities provide
6 the data required under this paragraph in re-
7 ports submitted electronically to the Adminis-
8 trator, in such form and containing such infor-
9 mation as may be required by the Adminis-
10 trator;

11 “(L) include requirements for keeping
12 records supporting or related to, and protocols
13 for auditing, submitted data;

14 “(M) establish consistent policies for calcu-
15 lating carbon content and greenhouse gas emis-
16 sions for each type of fossil fuel with respect to
17 which reporting is required;

18 “(N) subsequent to implementation of poli-
19 cies developed under subparagraph (M), provide
20 for immediate dissemination, to States, Indian
21 tribes, and on the Internet, of all data reported
22 under this section as soon as practicable after
23 electronic audit by the Administrator and any
24 resulting correction of data, except that data

1 shall not be disseminated under this subpara-
2 graph if—

3 “(i) its nondissemination is vital to
4 the national security of the United States,
5 as determined by the President; or

6 “(ii) it is confidential business infor-
7 mation that cannot be derived from infor-
8 mation that is otherwise publicly available
9 and that would cause significant calculable
10 competitive harm if published, except
11 that—

12 “(I) data relating to greenhouse
13 gas emissions, including any upstream
14 or verification data from reporting en-
15 tities, shall not be considered to be
16 confidential business information; and

17 “(II) data that is confidential
18 business information shall be provided
19 to a State or Indian tribe within
20 whose jurisdiction the reporting entity
21 is located, if the Administrator deter-
22 mines that such State or Indian tribe
23 has in effect protections for confiden-
24 tial business information that are at

1 least as protective as protections ap-
2 plicable to the Federal Government;

3 “(O) prescribe methods by which the Ad-
4 ministrator shall, in cases in which satisfactory
5 data are not submitted to the Administrator for
6 any period of time, estimate emission, produc-
7 tion, importation, manufacture, or delivery lev-
8 els—

9 “(i) for covered entities with respect
10 to greenhouse gas emissions, production,
11 importation, manufacture, or delivery regu-
12 lated under this title to ensure that emis-
13 sions, production, importation, manufac-
14 ture, or deliveries are not underreported,
15 and to create a strong incentive for meet-
16 ing data monitoring and reporting require-
17 ments—

18 “(I) with a conservative estimate
19 of the highest emission, production,
20 importation, manufacture, or delivery
21 levels that may have occurred during
22 the period for which data are missing;
23 or

24 “(II) to the extent the Adminis-
25 trator considers appropriate, with an

1 estimate of such levels assuming the
2 unit is emitting, producing, importing,
3 manufacturing, or delivering at a
4 maximum potential level during the
5 period, in order to ensure that such
6 levels are not underreported and to
7 create a strong incentive for meeting
8 data monitoring and reporting re-
9 quirements; and

10 “(ii) for covered entities with respect
11 to greenhouse gas emissions to which sec-
12 tion 722 does not apply and for other re-
13 porting entities, with a reasonable estimate
14 of the emission, production, importation,
15 manufacture, or delivery levels that may
16 have occurred during the period for which
17 data are missing;

18 “(P) require the designation of a des-
19 ignated representative for each reporting entity;

20 “(Q) require an appropriate certification,
21 by the designated representative for the report-
22 ing entity, of accurate and complete accounting
23 of greenhouse gas emissions, as determined by
24 the Administrator; and

1 “(R) include requirements for other data
2 necessary for accurate and complete accounting
3 of greenhouse gas emissions, as determined by
4 the Administrator, including data for quality
5 assurance of monitoring systems, monitors and
6 other measurement devices, and other data
7 needed to verify reported emissions, production,
8 importation, manufacture, or delivery.

9 “(2) TIMING.—

10 “(A) CALENDAR YEARS 2007 THROUGH
11 2010.—For a base period of calendar years
12 2007 through 2010, each reporting entity shall
13 submit annual data required under this section
14 to the Administrator not later than March 31,
15 2011. The Administrator may waive or modify
16 reporting requirements for calendar years 2007
17 through 2010 for categories of reporting enti-
18 ties to the extent that the Administrator deter-
19 mines that the reporting entities did not keep
20 data or records necessary to meet reporting re-
21 quirements. The Administrator may, in addition
22 to or in lieu of such requirements, collect infor-
23 mation on energy consumption and production.

24 “(B) SUBSEQUENT CALENDAR YEARS.—
25 For calendar year 2011 and each subsequent

1 calendar year, each reporting entity shall sub-
2 mit quarterly data required under this section
3 to the Administrator not later than 60 days
4 after the end of the applicable quarter, except
5 when the data is already being reported to the
6 Administrator on an earlier timeframe for an-
7 other program.

8 “(3) WAIVER OF REPORTING REQUIREMENTS.—
9 The Administrator may waive reporting require-
10 ments under this section for specific entities to the
11 extent that the Administrator determines that suffi-
12 cient and equally or more reliable verified and timely
13 data are available to the Administrator and the pub-
14 lic on the Internet under other mandatory statutory
15 requirements.

16 “(4) ALTERNATIVE THRESHOLD.—The Admin-
17 istrator may, by rule, establish applicability thresh-
18 olds for reporting under this section using alter-
19 native metrics and levels, provided that such metrics
20 and levels are easier to administer and cover the
21 same size and type of sources as the threshold de-
22 fined in this section.

23 “(c) INTERRELATIONSHIP WITH OTHER SYSTEMS.—
24 In developing the regulations issued under subsection (b),
25 the Administrator shall take into account the work done

1 by the Climate Registry and other mandatory State or
2 multistate programs. Such regulations shall include an ex-
3 planation of any major differences in approach between
4 the system established under the regulations and such reg-
5 istries and programs.

6 **“PART C—PROGRAM RULES**

7 **“SEC. 721. EMISSION ALLOWANCES.**

8 “(a) IN GENERAL.—The Administrator shall estab-
9 lish a separate quantity of emission allowances for each
10 calendar year starting in 2012, in the amounts prescribed
11 under subsection (e).

12 “(b) IDENTIFICATION NUMBERS.—The Adminis-
13 trator shall assign to each emission allowance established
14 under subsection (a) a unique identification number that
15 includes the vintage year for that emission allowance.

16 “(c) LEGAL STATUS OF EMISSION ALLOWANCES.—

17 “(1) IN GENERAL.—An allowance established
18 by the Administrator under this title does not con-
19 stitute a property right, nor does any offset credit
20 or other instrument established or issued under the
21 American Clean Energy and Security Act of 2009,
22 and the amendments made thereby, for the purpose
23 of demonstrating compliance with this title.

24 “(2) TERMINATION OR LIMITATION.—Nothing
25 in this Act or any other provision of law shall be

1 construed to limit or alter the authority of the
2 United States, including the Administrator acting
3 pursuant to statutory authority, to terminate or
4 limit allowances, offset credits, or term offset cred-
5 its.

6 “(3) OTHER PROVISIONS UNAFFECTED.—Ex-
7 cept as otherwise specified in this Act, nothing in
8 this Act relating to allowances, offset credits, or
9 term offset credits established or issued under this
10 title shall affect the application of any other provi-
11 sion of law to a covered entity, or the responsibility
12 for a covered entity to comply with any such provi-
13 sion of law.

14 “(d) SAVINGS PROVISION.—Nothing in this part shall
15 be construed as requiring a change of any kind in any
16 State law regulating electric utility rates and charges, or
17 as affecting any State law regarding such State regula-
18 tion, or as limiting State regulation (including any
19 prudence review) under such a State law. Nothing in this
20 part shall be construed as modifying the Federal Power
21 Act or as affecting the authority of the Federal Energy
22 Regulatory Commission under that Act. Nothing in this
23 part shall be construed to interfere with or impair any pro-
24 gram for competitive bidding for power supply in a State
25 in which such program is established.

1 “(e) ALLOWANCES FOR EACH CALENDAR YEAR.—
 2 “(1) IN GENERAL.—Except as provided in para-
 3 graph (2), the number of emission allowances estab-
 4 lished by the Administrator under subsection (a) for
 5 each calendar year shall be as provided in the fol-
 6 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
2029	3,685
2030	3,533
2031	3,408

“Calendar year	Emission allowances (in mil- lions)
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-
5 lished pursuant to paragraph (1) if, after notice
6 and an opportunity for public comment, the Ad-
7 ministrator determines that—

1 “(i) United States greenhouse gas
2 emissions in 2005 were other than 7,206
3 million metric tons carbon dioxide equiva-
4 lent;

5 “(ii) if the requirements of this title
6 for 2012 had been in effect in 2005, sec-
7 tion 722 would have required emission al-
8 lowances to be held for other than 66.2
9 percent of United States greenhouse gas
10 emissions in 2005;

11 “(iii) if the requirements of this title
12 for 2014 had been in effect in 2005, sec-
13 tion 722 would have required emission al-
14 lowances to be held for other than 75.7
15 percent of United States greenhouse gas
16 emissions in 2005; or

17 “(iv) if the requirements of this title
18 for 2016 had been in effect in 2005, sec-
19 tion 722 would have required emission al-
20 lowances to be held for other than 84.5
21 percent United States greenhouse gas
22 emissions in 2005.

23 “(B) ADJUSTMENT FORMULA.—

24 “(i) IN GENERAL.—If the Adminis-
25 trator adjusts under this paragraph the

1 number of emission allowances established
2 pursuant to paragraph (1), the number of
3 emission allowances the Administrator es-
4 tablishes for any given calendar year shall
5 equal the product of—

6 “(I) United States greenhouse
7 gas emissions in 2005, expressed in
8 tons of carbon dioxide equivalent;

9 “(II) the percent of United
10 States greenhouse gas emissions in
11 2005, expressed in tons of carbon di-
12 oxide equivalent, that would have been
13 subject to section 722 if the require-
14 ments of this title for the given cal-
15 endar year had been in effect in 2005;
16 and

17 “(III) the percentage set forth
18 for that calendar year in section
19 703(a), or determined under clause
20 (ii) of this subparagraph.

21 “(ii) TARGETS.—In applying the por-
22 tion of the formula in clause (i)(III) of this
23 subparagraph, for calendar years for which
24 a percentage is not listed in section 703(a),
25 the Administrator shall use a uniform an-

1 nual decline in the amount of emissions be-
2 tween the years that are specified.

3 “(iii) CARBON DIOXIDE EQUIVALENT
4 VALUE.—If the Administrator adjusts
5 under this paragraph the number of emis-
6 sion allowances established pursuant to
7 paragraph (1), the Administrator shall use
8 the carbon dioxide equivalent values estab-
9 lished pursuant to section 712.

10 “(iv) LIMITATION ON ADJUSTMENT
11 TIMING.—Once a calendar year has start-
12 ed, the Administrator may not adjust the
13 number of emission allowances to be estab-
14 lished for that calendar year.

15 “(C) LIMITATION ON ADJUSTMENT AU-
16 THORITY.—The Administrator may adjust
17 under this paragraph the number of emission
18 allowances to be established pursuant to para-
19 graph (1) only once.

20 “(f) COMPENSATORY ALLOWANCE.—

21 “(1) IN GENERAL.—The regulations promul-
22 gated under subsection (h) shall provide for the es-
23 tablishment and distribution of compensatory allow-
24 ances for—

1 “(A) the destruction, in 2012 or later, of
2 fluorinated gases that are greenhouse gases if—

3 “(i) allowances or offset credits were
4 retired for their production or importation;
5 and

6 “(ii) such gases are not required to be
7 destroyed under any other provision of law;

8 “(B) the nonemissive use, in 2012 or later,
9 of petroleum-based or coal-based liquid or gas-
10 eous fuel, petroleum coke, natural gas liquid, or
11 natural gas as a feedstock, if allowances or off-
12 set credits were retired for the greenhouse
13 gases that would have been emitted from their
14 combustion; and

15 “(C) the conversionary use, in 2012 or
16 later, of fluorinated gases in a manufacturing
17 process, including semiconductor research or
18 manufacturing, if allowances or offset credits
19 were retired for the production or importation
20 of such gas.

21 “(2) ESTABLISHMENT AND DISTRIBUTION.—

22 “(A) IN GENERAL.—Not later than 90
23 days after the end of each calendar year, the
24 Administrator shall establish and distribute to
25 the entity taking the actions described in sub-

1 paragraph (A), (B), or (C) of paragraph (1) a
2 quantity of compensatory allowances equivalent
3 to the number of tons of carbon dioxide equiva-
4 lent of avoided emissions achieved through such
5 actions. In establishing the quantity of compen-
6 satory allowances, the Administrator shall take
7 into account the carbon dioxide equivalent value
8 of any greenhouse gas resulting from such ac-
9 tion.

10 “(B) SOURCE OF ALLOWANCES.—Compen-
11 satory allowances established under this sub-
12 section shall not be emission allowances estab-
13 lished under subsection (a).

14 “(C) IDENTIFICATION NUMBERS.—The
15 Administrator shall assign to each compen-
16 satory allowance established under subpara-
17 graph (A) a unique identification number.

18 “(3) DEFINITIONS.—For purposes of this sub-
19 section—

20 “(A) the term ‘destruction’ means the con-
21 version of a greenhouse gas by thermal, chem-
22 ical, or other means to another gas or set of
23 gases with little or no carbon dioxide equivalent
24 value;

1 “(B) the term ‘nonemissive use’ means the
2 use of fossil fuel as a feedstock in an industrial
3 or manufacturing process to the extent that
4 greenhouse gases are not emitted from such
5 process, and to the extent that the products of
6 such process are not intended for use as, or to
7 be contained in, a fuel; and

8 “(C) the term ‘conversionary use’ means
9 the conversion during research or manufac-
10 turing of a fluorinated gas into another green-
11 house gas or set of gases with a lower carbon
12 dioxide equivalent value.

13 “(4) FEEDSTOCK EMISSIONS STUDY.—

14 “(A) The Administrator may conduct a
15 study to determine the extent to which petro-
16 leum-based or coal-based liquid or gaseous fuel,
17 petroleum coke, natural gas liquid, or natural
18 gas are used as feedstocks in manufacturing
19 processes to produce products and the green-
20 house gas emissions resulting from such uses.

21 “(B) If as a result of such a study, the Ad-
22 ministrator determines that the use of such
23 products by noncovered sources results in sub-
24 stantial emissions of greenhouse gases and that
25 such emissions have not been adequately ad-

1 dressed under other requirements of this Act,
2 the Administrator may, after notice and com-
3 ment rulemaking, promulgate a regulation re-
4 ducing compensatory allowances commensurately if doing so will not result in shifting
5 such emissions to noncovered sources.
6

7 “(g) FLUORINATED GASES ASSESSMENT.—No later
8 than March 31, 2014, the Administrator shall complete
9 an assessment of the regulation of non-HFC fluorinated
10 gases under this title to determine whether the most ap-
11 propriate point of regulation is at the gas manufacturer
12 or importer level, or at the source of emissions down-
13 stream. If the Administrator determines, based on consid-
14 eration of environmental effectiveness, cost effectiveness,
15 administrative feasibility, extent of coverage of emissions,
16 competitiveness and other relevant considerations con-
17 sistent with the purposes of this title, that emissions of
18 non-HFC fluorinated gases can best be regulated by desig-
19 nating downstream emission sources as covered entities
20 with compliance obligations under section 722, the Admin-
21 istrator shall, after notice and comment rulemaking,
22 change the definition of covered entity and the compliance
23 obligations under section 722 with respect to non-HFC
24 fluorinated gases accordingly, consistent with the purposes
25 of this title, and establish such other requirements as are

1 necessary to ensure compliance for such entities with the
2 requirements of this title.

3 “(h) REGULATIONS.—Not later than 24 months after
4 the date of enactment of this title, the Administrator shall
5 promulgate regulations to carry out the provisions of this
6 title.

7 **“SEC. 722. PROHIBITION OF EXCESS EMISSIONS.**

8 “(a) PROHIBITION.—Except as provided in sub-
9 section (c), effective January 1, 2012, each covered entity
10 is prohibited from emitting greenhouse gases and having
11 attributable greenhouse gas emissions, in combination, in
12 excess of its allowable emissions level. A covered entity’s
13 allowable emissions level for each calendar year is the
14 number of emission allowances (or offset credits or other
15 allowances as provided in subsection (d)) it holds as of
16 12:01 a.m. on April 1 (or a later date established by the
17 Administrator under subsection (j)) of the following cal-
18 endar year.

19 “(b) METHODS OF DEMONSTRATING COMPLIANCE.—
20 Except as otherwise provided in this section, the owner
21 or operator of a covered entity shall not be considered to
22 be in compliance with the prohibition in subsection (a) un-
23 less, as of 12:01 a.m. on April 1 (or a later date estab-
24 lished by the Administrator under subsection (j)) of each
25 calendar year starting in 2013, the owner or operator

1 holds a quantity of emission allowances (or offset credits
2 or other allowances as provided in subsection (d)) at least
3 as great as the quantity calculated as follows:

4 “(1) ELECTRICITY SOURCES.—For a covered
5 entity described in section 700(13)(A), 1 emission
6 allowance for each ton of carbon dioxide equivalent
7 of greenhouse gas that such covered entity emitted
8 in the previous calendar year, excluding emissions
9 resulting from the combustion of—

10 “(A) petroleum-based or coal-based liquid
11 fuel;

12 “(B) natural gas liquid;

13 “(C) renewable biomass or gas derived
14 from renewable biomass; or

15 “(D) petroleum coke or gas derived from
16 petroleum coke.

17 “(2) FUEL PRODUCERS AND IMPORTERS.—For
18 a covered entity described in section 700(13)(B), 1
19 emission allowance for each ton of carbon dioxide
20 equivalent of greenhouse gas that would be emitted
21 from the combustion of any petroleum-based or coal-
22 based liquid fuel, petroleum coke, or natural gas liq-
23 uid, produced or imported by such covered entity
24 during the previous calendar year for sale or dis-
25 tribution in interstate commerce, assuming no cap-

1 ture and sequestration of any greenhouse gas emis-
2 sions.

3 “(3) INDUSTRIAL GAS PRODUCERS AND IM-
4 PORTERS.—For a covered entity described in section
5 700(13)(C), 1 emission allowance for each ton of
6 carbon dioxide equivalent of fossil fuel-based carbon
7 dioxide, nitrous oxide, or any other fluorinated gas
8 that is a greenhouse gas (except for nitrogen
9 trifluoride), or any combination thereof, produced or
10 imported by such covered entity during the previous
11 calendar year for sale or distribution in interstate
12 commerce.

13 “(4) NITROGEN TRIFLUORIDE SOURCES.—For
14 a covered entity described in section 700(13)(D), 1
15 emission allowance for each ton of carbon dioxide
16 equivalent of nitrogen trifluoride that such covered
17 entity emitted in the previous calendar year.

18 “(5) GEOLOGICAL SEQUESTRATION SITES.—For
19 a covered entity described in section 700(13)(E), 1
20 emission allowance for each ton of carbon dioxide
21 equivalent of greenhouse gas that such covered enti-
22 ty emitted in the previous calendar year.

23 “(6) INDUSTRIAL STATIONARY SOURCES.—For
24 a covered entity described in section 700(13)(F),
25 (G), or (H), 1 emission allowance for each ton of

1 carbon dioxide equivalent of greenhouse gas that
2 such covered entity emitted in the previous calendar
3 year, excluding emissions resulting from—

4 “(A) the combustion of petroleum-based or
5 coal-based liquid fuel;

6 “(B) the combustion of natural gas liquid;

7 “(C) the combustion of renewable biomass
8 or gas derived from renewable biomass;

9 “(D) the combustion of petroleum coke or
10 gas derived from petroleum coke; or

11 “(E) the use of any fluorinated gas that is
12 a greenhouse gas purchased for use at that cov-
13 ered entity, except for nitrogen trifluoride.

14 “(7) INDUSTRIAL FOSSIL FUEL-FIRED COMBUS-
15 TION DEVICES.—For a covered entity described in
16 section 700(13)(I), 1 emission allowance for each
17 ton of carbon dioxide equivalent of greenhouse gas
18 that the devices emitted in the previous calendar
19 year, excluding emissions resulting from the combus-
20 tion of—

21 “(A) petroleum-based or coal-based liquid
22 fuel;

23 “(B) natural gas liquid;

24 “(C) renewable biomass or gas derived
25 from renewable biomass; or

1 “(D) petroleum coke or gas derived from
2 petroleum coke.

3 “(8) NATURAL GAS LOCAL DISTRIBUTION COM-
4 PANIES.—For a covered entity described in section
5 700(13)(J), 1 emission allowance for each ton of
6 carbon dioxide equivalent of greenhouse gas that
7 would be emitted from the combustion of the natural
8 gas, and any other gas meeting the specifications for
9 commingling with natural gas for purposes of deliv-
10 ery, that such entity delivered during the previous
11 calendar year to customers that are not covered enti-
12 ties, assuming no capture and sequestration of that
13 greenhouse gas.

14 “(9) ALGAE-BASED FUELS.—Where carbon di-
15 oxide (or another greenhouse gas) generated by a
16 covered entity is used as an input in the production
17 of algae-based fuels, the Administrator shall ensure
18 that emission allowances are required to be held ei-
19 ther for the carbon dioxide generated by a covered
20 entity that is used to grow the algae or for the por-
21 tion of the carbon dioxide emitted from combustion
22 of the fuel produced from such algae that is attrib-
23 utable to carbon dioxide generated by a covered enti-
24 ty, but not for both.

1 “(10) FUGITIVE EMISSIONS.—The greenhouse
2 gas emissions to which paragraphs (1), (4), (6), and
3 (7) apply shall not include fugitive emissions of
4 greenhouse gas, except to the extent the Adminis-
5 trator determines that data on the carbon dioxide
6 equivalent value of greenhouse gas in the fugitive
7 emissions can be provided with sufficient precision,
8 reliability, accessibility, and timeliness to ensure the
9 integrity of emission allowances, the allowance track-
10 ing system, and the cap on emissions.

11 “(11) EXPORT EXEMPTION.—This section shall
12 not apply to any petroleum-based or coal-based liq-
13 uid fuel, petroleum coke, natural gas liquid, fossil
14 fuel-based carbon dioxide, nitrous oxide, or
15 fluorinated gas that is exported for sale or use.

16 “(12) NATURAL GAS LIQUIDS.—For natural gas
17 liquids, the covered entity subject to the requirement
18 stated in paragraph (2) shall be the owner of the
19 natural gas liquids at the point the natural gas liq-
20 uids are separated into merchantable products.

21 “(13) APPLICATION OF MULTIPLE PARA-
22 GRAPHS.—For a covered entity to which more than
23 1 of paragraphs (1) through (8) apply, all applicable
24 paragraphs shall apply, except that not more than 1

1 emission allowance shall be required for the same
2 emission.

3 “(14) APPLICATION TO FRACTIONS OF TONS.—

4 In applying paragraphs (1) through (8), any amount
5 less than 1 ton of carbon dioxide equivalent of emis-
6 sions or attributable greenhouse gas emissions shall
7 be treated as 1 ton of such carbon dioxide equiva-
8 lent.

9 “(c) PHASE-IN OF PROHIBITION.—

10 “(1) INDUSTRIAL STATIONARY SOURCES.—The
11 prohibition under subsection (a) shall first apply to
12 a covered entity described in section 700(13)(D),
13 (F), (G), (H), or (I), with respect to emissions oc-
14 ccurring during calendar year 2014.

15 “(2) NATURAL GAS LOCAL DISTRIBUTION COM-
16 PANIES.—The prohibition under subsection (a) shall
17 first apply to a covered entity described in section
18 700(13)(J) with respect to deliveries occurring dur-
19 ing calendar year 2016.

20 “(d) ADDITIONAL METHODS.—In addition to using
21 the method of compliance described in subsection (b), a
22 covered entity may do the following:

23 “(1) OFFSET CREDITS.—

24 “(A) IN GENERAL.—Covered entities col-
25 lectively may, in accordance with this para-

1 graph, use offset credits to demonstrate compli-
2 ance for up to a maximum of 2 billion tons of
3 greenhouse gas emissions annually. The ability
4 to demonstrate compliance with offset credits
5 shall be divided pro rata among covered entities
6 by allowing each covered entity to satisfy a per-
7 centage of the number of allowances required to
8 be held under subsection (b) to demonstrate
9 compliance by holding 1 domestic offset credit
10 or 1.25 international offset credits in lieu of an
11 emission allowance, except as provided in sub-
12 paragraph (D).

13 “(B) APPLICABLE PERCENTAGE.—The
14 percentage referred to in subparagraph (A) for
15 a given calendar year shall be determined by di-
16 viding 2 billion by the sum of 2 billion plus the
17 number of emission allowances established
18 under section 721(a) for the previous year, and
19 multiplying that number by 100. Not more than
20 one half of the applicable percentage under this
21 paragraph may be used by holding domestic off-
22 set credits, and not more than one half of the
23 applicable percentage under this paragraph may
24 be used by holding international offset credits,
25 except as provided in subparagraph (C).

1 “(C) MODIFIED PERCENTAGES.—If the
2 Administrator determines that domestic offset
3 credits available for use in demonstrating com-
4 pliance in any calendar year at domestic offset
5 prices generally equal to or less than emission
6 allowance prices, are likely to offset less than
7 0.9 billion tons of greenhouse gas emissions
8 (measured in tons of carbon dioxide equiva-
9 lents), for purposes of compliance demonstra-
10 tion in that year the Administrator shall—

11 “(i) increase the percentage of emis-
12 sions that can be offset through the use of
13 international offset credits to reflect the
14 amount that 1.0 billion exceeds the number
15 of domestic offset credits the Adminis-
16 trator determines is available, at prices
17 generally equal to or less than emission al-
18 lowance prices, for that year, up to a max-
19 imum of 0.5 billion tons of greenhouse gas
20 emissions; and

21 “(ii) decrease the percentage of emis-
22 sions that can be offset through the use of
23 domestic offset credits by the same
24 amount.

1 “(D) INTERNATIONAL OFFSET CREDITS.—
2 Notwithstanding subparagraph (A), to dem-
3 onstrate compliance prior to calendar year
4 2018, a covered entity may use 1 international
5 offset credit in lieu of an emission allowance up
6 to the amount permitted under this paragraph.

7 “(E) PRESIDENT’S RECOMMENDATION.—
8 The President may make a recommendation to
9 Congress as to whether the number 2 billion
10 specified in subparagraphs (A) and (B) should
11 be increased or decreased.

12 “(2) TERM OFFSET CREDITS.—

13 “(A) IN GENERAL.—Covered entities may,
14 in accordance with this paragraph, use non-ex-
15 pired term offset credits instead of domestic
16 offset credits for purposes of temporarily dem-
17 onstrating compliance with this section.

18 “(B) AMOUNT.—The combined quantity of
19 term offset credits and domestic offset credits
20 used by a covered entity to demonstrate compli-
21 ance for its emissions or attributable green-
22 house gas emissions in any given year shall not
23 exceed the quantity of domestic offset credits
24 that a covered entity is entitled to use for that

1 year to demonstrate compliance in accordance
2 with paragraph (1).

3 “(C) EXPIRATION.—A term offset credit
4 shall expire in the year after its term ends. The
5 term of a term offset credit shall be calculated
6 by adding to the year of issuance the number
7 of years equal to the length of the crediting pe-
8 riod for the practice or project for which the
9 term offset credit was issued, but in no case
10 shall be later than the date 5 years from the
11 date of issuance.

12 “(D) DEMONSTRATING COMPLIANCE UPON
13 EXPIRATION OF TERM OFFSET CREDIT.—With
14 respect to the emissions for which a covered en-
15 tity is using term offset credits to demonstrate
16 compliance temporarily with this section, the
17 owner or operator of a covered entity shall not
18 be considered to be in compliance with the pro-
19 hibition in subsection (a) unless, as of 12:01
20 a.m. on April 1 (or a later date established by
21 the Administrator under subsection (j)) of the
22 calendar year in which a term offset credit ex-
23 pires, the owner or operator holds—

1 “(i) for purposes of finally dem-
2 onstrating compliance, an allowance or a
3 domestic offset credit; or

4 “(ii) for purposes of temporarily dem-
5 onstrating compliance, a non-expired term
6 offset credit.

7 Domestic offset credits used for purposes of fi-
8 nally demonstrating compliance under this sub-
9 paragraph shall not be subject to the percent-
10 age limitations in subparagraph (B).

11 “(E) FINANCIAL ASSURANCE.—A covered
12 entity may not use a term offset credit to dem-
13 onstrate compliance temporarily unless it simul-
14 taneously provides to the Administrator finan-
15 cial assurance that, at the end of the term off-
16 set credit’s crediting term, the covered entity
17 will have sufficient resources to obtain the
18 quantity of allowances or credits necessary to
19 demonstrate final compliance. The Adminis-
20 trator shall issue regulations establishing re-
21 quirements for such financial assurance, which
22 shall take into account the increased risk asso-
23 ciated with longer crediting terms. These regu-
24 lations shall take into account the total number
25 of tons of carbon dioxide equivalent of green-

1 house gas emissions for which a covered entity
2 is demonstrating compliance temporarily, and
3 may set a limit on this amount. In the event
4 that a covered entity that used term offset cred-
5 its to demonstrate compliance temporarily fails
6 to meet the requirements of subparagraph (D)
7 at the end of the term offset credits' crediting
8 term, if the financial assurance mechanism fails
9 to provide to the Administrator the number of
10 allowances or offset credits for which the cred-
11 iting term has expired, then the Administrator
12 shall retire that number of allowances with the
13 vintage year 2 years after the year in which the
14 term offset credit expires in the same amount.
15 Allowances so retired shall not be counted as
16 emission allowances established for that cal-
17 endar year under section 721(a).

18 “(3) INTERNATIONAL EMISSION ALLOW-
19 ANCES.—To demonstrate compliance, a covered enti-
20 ty may hold an international emission allowance in
21 lieu of an emission allowance, except as modified
22 under section 728(d).

23 “(4) COMPENSATORY ALLOWANCES.—To dem-
24 onstrate compliance, a covered entity may hold a

1 compensatory allowance obtained under section
2 721(f) in lieu of an emission allowance.

3 “(e) RETIREMENT OF ALLOWANCES AND CREDITS.—

4 As soon as practicable after a deadline established for cov-
5 ered entities to demonstrate compliance with this title, the
6 Administrator shall retire the quantity of allowances or
7 credits required to be held under this title.

8 “(f) ALTERNATIVE METRICS.—For categories of cov-

9 ered entities described in subparagraph (B), (C), (D), (G),
10 (H), or (I) of section 700(13), the Administrator may, by
11 rule, establish an applicability threshold for inclusion
12 under those subparagraphs using an alternative metric
13 and level, provided that such metric and level are easier
14 to administer and cover the same size and type of sources
15 as the threshold defined in such subparagraphs.

16 “(g) THRESHOLD REVIEW.—For each category of

17 covered entities described in subparagraph (B), (C), (D),
18 (G), (H), or (I) of section 700(13), the Administrator
19 shall, in 2020 and once every 8 years thereafter, review
20 the carbon dioxide equivalent emission threshold that is
21 used to define covered entities in such category. After con-
22 sideration of—

23 “(1) emissions from covered entities in such
24 category, and from other entities of the same type
25 that emit less than the threshold amount for the cat-

1 egory (including emission sources that commence op-
2 eration after the date of enactment of this title that
3 are not covered entities); and

4 “(2) whether greater greenhouse gas emission
5 reductions can be cost-effectively achieved by low-
6 ering the applicable threshold,

7 the Administrator may by rule lower such threshold to not
8 less than 10,000 tons of carbon dioxide equivalent emis-
9 sions. In determining the cost effectiveness of potential re-
10 ductions from lowering the threshold for covered entities,
11 the Administrator shall consider alternative regulatory
12 greenhouse gas programs, including setting standards
13 under other titles of this Act.

14 “(h) DESIGNATED REPRESENTATIVES.—The regula-
15 tions promulgated under section 721(h) shall require that
16 each covered entity, and each entity holding allowances or
17 offset credits or receiving allowances or offset credits from
18 the Administrator under this title, submit to the Adminis-
19 trator a certificate of representation designating a des-
20 ignated representative.

21 “(i) EDUCATION AND OUTREACH.—

22 “(1) IN GENERAL.—The Administrator shall es-
23 tablish and carry out a program of education and
24 outreach to assist covered entities, especially entities
25 having little experience with environmental regu-

1 latory requirements similar or comparable to those
2 under this title, in preparing to meet the compliance
3 obligations of this title. Such program shall include
4 education with respect to using markets to effec-
5 tively achieve such compliance.

6 “(2) FAILURE TO RECEIVE INFORMATION.—A
7 failure to receive information or assistance under
8 this subsection may not be used as a defense against
9 an allegation of any violation of this title.

10 “(j) ADJUSTMENT OF DEADLINE.—The Adminis-
11 trator may, by rule, establish a deadline for demonstrating
12 compliance, for a calendar year, later than the date pro-
13 vided in subsection (a), as necessary to ensure the avail-
14 ability of emissions data, but in no event shall the deadline
15 be later than June 1.

16 “(k) NOTICE REQUIREMENT FOR COVERED ENTI-
17 TIES RECEIVING NATURAL GAS FROM NATURAL GAS
18 LOCAL DISTRIBUTION COMPANIES.—The owner or oper-
19 ator of a covered entity that takes delivery of natural gas
20 from a natural gas local distribution company shall, not
21 later than September 1 of each calendar year, notify such
22 natural gas local distribution company in writing that
23 such entity will qualify as a covered entity under this title
24 for that calendar year.

1 “(1) COMPLIANCE OBLIGATION.—For purposes of
2 this title, the year of a compliance obligation is the year
3 in which compliance is determined, not the year in which
4 the greenhouse gas emissions occur or the covered entity
5 has attributable greenhouse gas emissions.

6 **“SEC. 723. PENALTY FOR NONCOMPLIANCE.**

7 “(a) ENFORCEMENT.—A violation of any prohibition
8 of, requirement of, or regulation promulgated pursuant to
9 this title shall be a violation of this Act. It shall be a viola-
10 tion of this Act for a covered entity to emit greenhouse
11 gases and have attributable greenhouse gas emissions, in
12 combination, in excess of its allowable emissions level as
13 provided in section 722(a). Each ton of carbon dioxide
14 equivalent for which a covered entity fails to demonstrate
15 compliance under section 722 shall be a separate violation.
16 In the event that a covered entity fails to demonstrate
17 compliance at the expiration of a term offset credit’s cred-
18 iting term as required by section 722(d)(2)(D), the year
19 of the violation shall be the year in which the term offset
20 credit expires.

21 “(b) EXCESS EMISSIONS PENALTY.—

22 “(1) IN GENERAL.—The owner or operator of
23 any covered entity that fails for any year to comply,
24 on the deadline described in section 722(a), (d)(2),
25 or (j), shall be liable for payment to the Adminis-

1 trator of an excess emissions penalty in the amount
2 described in paragraph (2).

3 “(2) AMOUNT.—The amount of an excess emis-
4 sions penalty required to be paid under paragraph
5 (1) shall be equal to the product obtained by multi-
6 plying—

7 “(A) the tons of carbon dioxide equivalent
8 of greenhouse gas emissions or attributable
9 greenhouse gas emissions for which the owner
10 or operator of a covered entity failed to dem-
11 onstrate compliance under section 722 on the
12 deadline; by

13 “(B) twice the auction clearing price for
14 the earliest vintage year emission allowances in
15 the last auction carried out pursuant to section
16 791 before such deadline.

17 “(3) TIMING.—An excess emissions penalty re-
18 quired under this subsection shall be immediately
19 due and payable to the Administrator, without de-
20 mand, in accordance with regulations promulgated
21 by the Administrator, which shall be issued not later
22 than 2 years after the date of enactment of this
23 title.

24 “(4) NO EFFECT ON LIABILITY.—An excess
25 emissions penalty due and payable by the owners or

1 operators of a covered entity under this subsection
2 shall not diminish the liability of the owners or oper-
3 ators for any fine, penalty, or assessment against
4 the owners or operators for the same violation under
5 any other provision of this Act or any other law.

6 “(c) EXCESS EMISSIONS ALLOWANCES.—The owner
7 or operator of a covered entity that fails for any year to
8 comply on the deadline described in section 722(a), (d)(2),
9 or (j) shall be liable to offset the covered entity’s excess
10 combination of greenhouse gases emitted and attributable
11 greenhouse gas emissions by an equal quantity of emission
12 allowances during the following calendar year, or such
13 longer period as the Administrator may prescribe. During
14 the year in which the covered entity failed to comply, or
15 any year thereafter, the Administrator may deduct the
16 emission allowances required under this subsection to off-
17 set the covered entity’s excess greenhouse gas emissions
18 or attributable greenhouse gas emissions.

19 **“SEC. 724. TRADING.**

20 “(a) PERMITTED TRANSACTIONS.—Except as other-
21 wise provided in this title, the lawful holder of an emission
22 allowance, compensatory allowance, or offset credit may,
23 without restriction, sell, exchange, transfer, hold for com-
24 pliance in accordance with section 722, or request that the

1 Administrator retire the emission allowance, compensatory
2 allowance, or offset credit.

3 “(b) NO RESTRICTION ON TRANSACTIONS.—The
4 privilege of purchasing, holding, selling, exchanging,
5 transferring, and requesting retirement of emission allow-
6 ances, compensatory allowances, or offset credits shall not
7 be restricted to the owners and operators of covered enti-
8 ties, except as otherwise provided in this title.

9 “(c) EFFECTIVENESS OF ALLOWANCE TRANS-
10 FERS.—No transfer of an allowance, offset credit, or term
11 offset credit shall be effective for purposes of this title
12 until a certification of the transfer, signed by the des-
13 igned representative of the transferor, is received and
14 recorded by the Administrator in accordance with regula-
15 tions promulgated under section 721(h).

16 “(d) ALLOWANCE TRACKING SYSTEM.—The regula-
17 tions promulgated under section 721(h) shall include a
18 system for issuing, recording, holding, and tracking allow-
19 ances, offset credits, and term offset credits that shall
20 specify all necessary procedures and requirements for an
21 orderly and competitive functioning of the allowance and
22 offset credit markets. Such regulations shall provide for
23 appropriate publication of the information in the system
24 on the Internet.

1 **“SEC. 725. BANKING AND BORROWING.**

2 “(a) **BANKING.**—An emission allowance may be used
3 to comply with section 722 or section 723 for emissions
4 in—

5 “(1) the vintage year for the allowance; or

6 “(2) any calendar year subsequent to the vin-
7 tage year for the allowance.

8 **“(b) EXPIRATION.**—

9 “(1) **REGULATIONS.**—The Administrator may
10 establish by regulation criteria and procedures for
11 determining whether, and for implementing a deter-
12 mination that, the expiration of an allowance, offset
13 credit, or term offset credit, established or issued
14 under the American Clean Energy and Security Act
15 of 2009 or the amendments made thereby, or expira-
16 tion of the ability to use an international emission
17 allowance to comply with section 722, is necessary to
18 ensure the authenticity and integrity of allowances,
19 offset credits, or term offset credits or the allowance
20 tracking system.

21 “(2) **GENERAL RULE.**—An allowance, offset
22 credit, or term offset credit, established or issued
23 under the American Clean Energy and Security Act
24 of 2009 or the amendments made thereby, shall not
25 expire unless—

1 “(A) it is retired by the Administrator pur-
2 suant to this title; or

3 “(B) it is determined to expire or to have
4 expired by a specific date by the Administrator
5 in accordance with regulations promulgated
6 under paragraph (1).

7 “(3) INTERNATIONAL EMISSION ALLOW-
8 ANCES.—The ability to use an international emission
9 allowance to comply with section 722 shall not ex-
10 pire unless—

11 “(A) the allowance is retired by the Ad-
12 ministrator pursuant to this title; or

13 “(B) the ability to use such allowance to
14 meet such compliance obligation requirements is
15 determined to expire or to have expired by a
16 specific date by the Administrator in accord-
17 ance with regulations promulgated under para-
18 graph (1).

19 “(c) BORROWING FUTURE VINTAGE YEAR ALLOW-
20 ANCES.—

21 “(1) BORROWING WITHOUT INTEREST.—In ad-
22 dition to the uses described in subsection (a), an
23 emission allowance may be used to demonstrate com-
24 pliance under section 722 or comply with section
25 723 for emissions, production, importation, manu-

1 facture, or deliveries in the calendar year imme-
2 diately preceding the vintage year for the allowance.

3 “(2) BORROWING WITH INTEREST.—

4 “(A) IN GENERAL.—A covered entity may
5 demonstrate compliance under section 722 in a
6 specific calendar year for up to 15 percent of
7 its emissions by holding emission allowances
8 with a vintage year 1 to 5 years later than that
9 calendar year.

10 “(B) LIMITATIONS.—An emission allow-
11 ance borrowed pursuant to this paragraph shall
12 be an emission allowance that is established by
13 the Administrator for a specific future calendar
14 year under section 721(a) and that is held by
15 the borrower.

16 “(C) PREPAYMENT OF INTEREST.—For
17 each emission allowance that an owner or oper-
18 ator of a covered entity borrows pursuant to
19 this paragraph, such owner or operator shall, at
20 the time it borrows the allowance, hold for re-
21 tirement by the Administrator, and the Admin-
22 istrator shall retire, a quantity of emission al-
23 lowances that is equal to the product obtained
24 by multiplying—

25 “(i) 0.08; by

1 “(ii) the number of years between the
2 calendar year in which the allowance is
3 being used to satisfy a compliance obliga-
4 tion and the vintage year of the allowance.

5 **“SEC. 726. STRATEGIC RESERVE.**

6 “(a) STRATEGIC RESERVE AUCTIONS.—

7 “(1) IN GENERAL.—Once each quarter of each
8 calendar year for which allowances are established
9 under section 721(a), the Administrator shall auc-
10 tion strategic reserve allowances.

11 “(2) RESTRICTION TO COVERED ENTITIES.—In
12 each auction conducted under paragraph (1), only
13 covered entities that the Administrator expects will
14 be required to comply with section 722 in the fol-
15 lowing calendar year shall be eligible to make pur-
16 chases.

17 “(b) POOL OF EMISSION ALLOWANCES FOR STRA-
18 TEGIC RESERVE AUCTIONS.—

19 “(1) FILLING THE STRATEGIC RESERVE INI-
20 TIALY.—

21 “(A) IN GENERAL.—The Administrator
22 shall, not later than 2 years after the date of
23 enactment of this title, establish a strategic re-
24 serve account, and shall place in that account
25 an amount of emission allowances established

1 under section 721(a) for each calendar year
2 from 2012 through 2050 in the amounts speci-
3 fied in subparagraph (B) of this paragraph.

4 “(B) AMOUNT.—The amount referred to in
5 subparagraph (A) shall be—

6 “(i) for each of calendar years 2012
7 through 2019, 1 percent of the quantity of
8 emission allowances established for that
9 year pursuant to section 721(e)(1);

10 “(ii) for each of calendar years 2020
11 through 2029, 2 percent of the quantity of
12 emission allowances established for that
13 year pursuant to section 721(e)(1); and

14 “(iii) for each of calendar years 2030
15 through 2050, 3 percent of the quantity of
16 emission allowances established for that
17 year pursuant to section 721(e)(1).

18 “(C) EFFECT ON OTHER PROVISIONS.—
19 Any provision in this title (except for subpara-
20 graph (B) of this paragraph) that refers to a
21 quantity or percentage of the emission allow-
22 ances established for a calendar year under sec-
23 tion 721(a) shall be considered to refer to the
24 amount of emission allowances as determined
25 pursuant to section 721(e), less any emission

1 allowances established for that year that are
2 placed in the strategic reserve account under
3 this paragraph.

4 “(2) SUPPLEMENTING THE STRATEGIC RE-
5 SERVE.—The Administrator shall also—

6 “(A) at the end of each calendar year,
7 transfer to the strategic reserve account each
8 emission allowance that was offered for sale but
9 not sold at any auction conducted under section
10 791; and

11 “(B) deposit emission allowances estab-
12 lished under subsection (g) from auction pro-
13 ceeds into the strategic reserve, to the extent
14 necessary to maintain the reserve at its original
15 size.

16 “(c) MINIMUM STRATEGIC RESERVE AUCTION
17 PRICE.—

18 “(1) IN GENERAL.—At each strategic reserve
19 auction, the Administrator shall offer emission al-
20 lowances for sale beginning at a minimum price per
21 emission allowance, which shall be known as the
22 ‘minimum strategic reserve auction price’.

23 “(2) INITIAL MINIMUM STRATEGIC RESERVE
24 AUCTION PRICES.—The minimum strategic reserve
25 auction price shall be \$28 (in constant 2009 dollars)

1 for the strategic reserve auctions held in 2012. For
2 the strategic reserve auctions held in 2013 and
3 2014, the minimum strategic reserve auction price
4 shall be the strategic reserve auction price for the
5 previous year increased by 5 percent plus the rate of
6 inflation (as measured by the Consumer Price Index
7 for All Urban Consumers).

8 “(3) MINIMUM STRATEGIC RESERVE AUCTION
9 PRICE IN SUBSEQUENT YEARS.—For each strategic
10 reserve auction held in 2015 and each year there-
11 after, the minimum strategic reserve auction price
12 shall be 60 percent above a rolling 36-month average
13 of the daily closing price for that year’s emission al-
14 lowance vintage as reported on registered carbon
15 trading facilities, calculated using constant dollars.

16 “(d) QUANTITY OF EMISSION ALLOWANCES RE-
17 LEASED FROM THE STRATEGIC RESERVE.—

18 “(1) INITIAL LIMITS.—For each of calendar
19 years 2012 through 2016, the annual limit on the
20 number of emission allowances from the strategic re-
21 serve account that may be auctioned is an amount
22 equal to 5 percent of the emission allowances estab-
23 lished for that calendar year under section 721(a).
24 This limit does not apply to international offset

1 credits sold on consignment pursuant to subsection
2 (h).

3 “(2) LIMITS IN SUBSEQUENT YEARS.—For cal-
4 endar year 2017 and each year thereafter, the an-
5 nual limit on the number of emission allowances
6 from the strategic reserve account that may be auc-
7 tioned is an amount equal to 10 percent of the emis-
8 sion allowances established for that calendar year
9 under section 721(a). This limit does not apply to
10 international offset credits sold on consignment pur-
11 suant to subsection (h).

12 “(3) ALLOCATION OF LIMITATION.—One-fourth
13 of each year’s annual strategic reserve auction limit
14 under this subsection shall be made available for
15 auction in each quarter. Any allowances from the
16 strategic reserve account that are made available for
17 sale in a quarterly auction and not sold shall be
18 rolled over and added to the quantity available for
19 sale in the following quarter, except that allowances
20 not sold at auction in the fourth quarter of a year
21 shall not be rolled over to the following calendar
22 year’s auctions, but shall be returned to the stra-
23 tegic reserve account.

24 “(e) PURCHASE LIMIT.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2) or (3), the annual number of emission al-
3 lowances that a covered entity may purchase at the
4 strategic reserve auctions in each calendar year shall
5 not exceed 20 percent of the covered entity’s com-
6 bined greenhouse gas emissions and attributable
7 greenhouse gas emissions during the most recent
8 year for which allowances or offset credits were re-
9 tired under section 722.

10 “(2) 2012 LIMIT.—For calendar year 2012, the
11 maximum aggregate number of emission allowances
12 that a covered entity may purchase from that year’s
13 strategic reserve auctions shall be 20 percent of the
14 covered entity’s combined greenhouse gas emissions
15 and attributable greenhouse gas emissions that the
16 covered entity reported to the registry established
17 under section 713 for 2011 and that would be sub-
18 ject to section 722(a) if occurring in later calendar
19 years.

20 “(3) NEW ENTRANTS.—The Administrator
21 shall, by regulation, establish a separate purchase
22 limit applicable to entities that expect to become a
23 covered entity in the year of the auction, permitting
24 them to purchase emission allowances at the stra-
25 tegic reserve auctions in their first calendar year of

1 operation in an amount of at least 20 percent of
2 their expected combined greenhouse gas emissions
3 and attributable greenhouse gas emissions for that
4 year.

5 “(f) DELEGATION OR CONTRACT.—Pursuant to regu-
6 lations under this section, the Administrator may, by dele-
7 gation or contract, provide for the conduct of strategic re-
8 serve auctions under the Administrator’s supervision by
9 other departments or agencies of the Federal Government
10 or by nongovernmental agencies, groups, or organizations.

11 “(g) USE OF AUCTION PROCEEDS.—

12 “(1) DEPOSIT IN STRATEGIC RESERVE FUND.—
13 The proceeds from strategic reserve auctions shall be
14 placed in the Strategic Reserve Fund established
15 under section 793(1), and shall be available without
16 further appropriation or fiscal year limitation for the
17 purposes described in this subsection.

18 “(2) INTERNATIONAL OFFSET CREDITS FOR RE-
19 DUCED DEFORESTATION.—The Administrator shall
20 use the proceeds from each strategic reserve auction
21 to purchase international offset credits issued for re-
22 duced deforestation activities pursuant to section
23 743(e). The Administrator shall retire those inter-
24 national offset credits and establish a number of
25 emission allowances equal to 80 percent of the num-

1 ber of international offset credits so retired. Emission
2 allowances established under this paragraph
3 shall be in addition to those established under section
4 721(a).

5 “(3) EMISSION ALLOWANCES.—The Administrator
6 shall deposit emission allowances established
7 under paragraph (2) in the strategic reserve, except
8 that, with respect to any such emission allowances in
9 excess of the amount necessary to fill the strategic
10 reserve to its original size, the Administrator shall—

11 “(A) except as provided in subparagraph
12 (B), assign a vintage year to the emission allowance,
13 which shall be no earlier than the year in which the
14 allowance is established under paragraph (2), and shall
15 treat such allowances as ones that are not designated
16 for distribution or auction for purposes of section
17 782(q) and (r); and

18 “(B) to the extent any such allowances
19 cannot be assigned a vintage year because of the
20 limitation in paragraph (4), retire the allowances.
21 ances.

22 “(4) LIMITATION.—In no case may the Administrator
23 assign under paragraph (3)(A) more emission allowances
24 to a vintage year than the number
25

1 of emission allowances from that vintage year that
2 were placed in the strategic reserve account under
3 subsection (b)(1).

4 “(h) AVAILABILITY OF INTERNATIONAL OFFSET
5 CREDITS FOR AUCTION.—

6 “(1) IN GENERAL.—The regulations promul-
7 gated under section 721(h) shall allow any entity
8 holding international offset credits from reduced de-
9 forestation issued under section 743(e) to request
10 that the Administrator include such offset credits in
11 an upcoming strategic reserve auction. The regula-
12 tions shall provide that—

13 “(A) such international offset credits will
14 be used to fill bid orders only after the supply
15 of strategic reserve allowances available for sale
16 at that auction has been depleted;

17 “(B) international offset credits may be
18 sold at a strategic reserve auction under this
19 subsection only if the Administrator determines
20 that it is highly likely that covered entities will,
21 to cover emissions occurring in the year the
22 auction is held, use offset credits to dem-
23 onstrate compliance under section 722 for emis-
24 sions equal to or greater than 80 percent of 2
25 billion tons of carbon dioxide equivalent;

1 “(C) upon sale of such international offset
2 credits, the Administrator shall retire those
3 international offset credits, and establish and
4 provide to the purchasers a number of emission
5 allowances equal to 80 percent of the number of
6 international offset credits so retired, which al-
7 lowances shall be in addition to those estab-
8 lished under section 721(a); and

9 “(D) for international offset credits sold
10 pursuant to this subsection, the proceeds for
11 the entity that offered the international offset
12 credits for sale shall be the lesser of—

13 “(i) the average daily closing price for
14 international offset credits sold on reg-
15 istered exchanges (or if such price is un-
16 available, the average price as determined
17 by the Administrator) during the six
18 months prior to the strategic reserve auc-
19 tion at which they were auctioned, with the
20 remaining funds collected upon the sale of
21 the international offset credits deposited in
22 the Treasury; and

23 “(ii) the amount received for the
24 international offset credits at the auction.

1 “(2) PROCEEDS.—For international offset cred-
2 its sold pursuant to this subsection, notwithstanding
3 section 3302 of title 31, United States Code, or any
4 other provision of law, within 90 days of receipt, the
5 United States shall transfer the proceeds from the
6 auction, as defined in paragraph (1)(D), to the enti-
7 ty that offered the international offset credits for
8 sale. No funds transferred from a purchaser to a
9 seller of international offset credits under this para-
10 graph shall be held by any officer or employee of the
11 United States or treated for any purpose as public
12 monies.

13 “(3) PRICING.—When the Administrator acts
14 under this subsection as the agent of an entity in
15 possession of international offset credits, the Admin-
16 istrator is not obligated to obtain the highest price
17 possible for the international offset credits, and in-
18 stead shall auction such international offset credits
19 in the same manner and pursuant to the same rules
20 (except as modified in paragraph (1)) as set forth
21 for auctioning strategic reserve allowances. Entities
22 requesting that such international offset credits be
23 offered for sale at a strategic reserve auction may
24 not set a minimum reserve price for their inter-
25 national offset credits that is different than the min-

1 imum strategic reserve auction price set pursuant to
2 subsection (c).

3 “(i) INITIAL REGULATIONS.—Not later than 24
4 months after the date of enactment of this title, the Ad-
5 ministrator shall promulgate regulations, in consultation
6 with other appropriate agencies, governing the auction of
7 allowances under this section. Such regulations shall in-
8 clude the following requirements:

9 “(1) FREQUENCY; FIRST AUCTION.—Auctions
10 shall be held four times per year at regular intervals,
11 with the first auction to be held no later than March
12 31, 2012.

13 “(2) AUCTION FORMAT.—Auctions shall follow
14 a single-round, sealed-bid, uniform price format.

15 “(3) PARTICIPATION; FINANCIAL ASSURANCE.—
16 Auctions shall be open to any covered entity eligible
17 to purchase emission allowances at the auction
18 under subsection (a)(2), except that the Adminis-
19 trator may establish financial assurance require-
20 ments to ensure that auction participants can and
21 will perform on their bids.

22 “(4) DISCLOSURE OF BENEFICIAL OWNER-
23 SHIP.—Each bidder in an auction shall be required
24 to disclose the person or entity sponsoring or bene-
25 fitting from the bidder’s participation in the auction

1 if such person or entity is, in whole or in part, other
2 than the bidder.

3 “(5) PURCHASE LIMITS.—No person may, di-
4 rectly or in concert with another participant, pur-
5 chase more than 20 percent of the allowances of-
6 fered for sale at any quarterly auction.

7 “(6) PUBLICATION OF INFORMATION.—After
8 the auction, the Administrator shall, in a timely
9 fashion, publish the identities of winning bidders,
10 the quantity of allowances obtained by each winning
11 bidder, and the auction clearing price.

12 “(7) OTHER REQUIREMENTS.—The Adminis-
13 trator may include in the regulations such other re-
14 quirements or provisions as the Administrator, in
15 consultation with other agencies as appropriate, con-
16 siders appropriate to promote effective, efficient,
17 transparent, and fair administration of auctions
18 under this section.

19 “(j) REVISION OF REGULATIONS.—The Adminis-
20 trator may, at any time, in consultation with other agen-
21 cies as appropriate, revise the initial regulations promul-
22 gated under subsection (i) by promulgating new regula-
23 tions. Such revised regulations need not meet the require-
24 ments identified in subsection (i) if the Administrator de-
25 termines that an alternative auction design would be more

1 effective, taking into account factors including costs of ad-
2 ministration, transparency, fairness, and risks of collusion
3 or manipulation. In determining whether and how to re-
4 vise the initial regulations under this subsection, the Ad-
5 ministrator shall not consider maximization of revenues to
6 the Federal Government.

7 **“SEC. 727. PERMITS.**

8 “(a) PERMIT PROGRAM.—For stationary sources
9 subject to title V of this Act that are covered entities, the
10 provisions of this title shall be implemented by permits
11 issued to such covered entities (and enforced) in accord-
12 ance with the provisions of title V, as modified by this
13 title. Any such permit issued by the Administrator, or by
14 a State or Indian tribe with an approved permit program,
15 shall require the owner or operator of a covered entity to
16 hold allowances or offset credits at least equal to the total
17 annual amount of carbon dioxide equivalents for its com-
18 bined emissions and attributable greenhouse gas emissions
19 to which section 722 applies. No such permit shall be
20 issued that is inconsistent with the requirements of this
21 title, and title V as applicable. Nothing in this section re-
22 garding compliance plans or in title V shall be construed
23 as affecting allowances or offset credits. Submission of a
24 statement by the owner or operator, or the designated rep-
25 resentative of the owners and operators, of a covered enti-

1 ty that the owners and operators will hold allowances or
2 offset credits for the entity's combined emissions and at-
3 tributable greenhouse gas emissions to which section 722
4 applies shall be deemed to meet the proposed and ap-
5 proved planning requirements of title V. Recordation by
6 the Administrator of transfers of allowances and offset
7 credits shall amend automatically all applicable proposed
8 or approved permit applications, compliance plans, and
9 permits.

10 “(b) MULTIPLE OWNERS.—No permit shall be issued
11 under this section and no allowances or offset credits shall
12 be disbursed under this title to a covered entity or any
13 other person until the designated representative of the
14 owners or operators has filed a certificate of representa-
15 tion with regard to matters under this title, including the
16 holding and distribution of emission allowances and the
17 proceeds of transactions involving emission allowances.
18 Where there are multiple holders of a legal or equitable
19 title to, or a leasehold interest in, such a covered entity
20 or other entity or where a utility or industrial customer
21 purchases power under a long-term power purchase con-
22 tract from an independent power production facility that
23 is a covered entity, the certificate shall state—

24 “(1) that emission allowances and the proceeds
25 of transactions involving emission allowances will be

1 deemed to be held or distributed in proportion to
2 each holder's legal, equitable, leasehold, or contrac-
3 tual reservation or entitlement; or

4 “(2) if such multiple holders have expressly pro-
5 vided for a different distribution of emission allow-
6 ances by contract, that emission allowances and the
7 proceeds of transactions involving emission allow-
8 ances will be deemed to be held or distributed in ac-
9 cordance with the contract.

10 A passive lessor, or a person who has an equitable interest
11 through such lessor, whose rental payments are not based,
12 either directly or indirectly, upon the revenues or income
13 from the covered entity or other entity shall not be deemed
14 to be a holder of a legal, equitable, leasehold, or contrac-
15 tual interest for the purpose of holding or distributing
16 emission allowances as provided in this subsection, during
17 either the term of such leasehold or thereafter, unless ex-
18 pressly provided for in the leasehold agreement. Except
19 as otherwise provided in this subsection, where all legal
20 or equitable title to or interest in a covered entity, or other
21 entity, is held by a single person, the certificate shall state
22 that all emission allowances received by the entity are
23 deemed to be held for that person.

24 “(c) PROHIBITION.—It shall be unlawful for any per-
25 son to operate any stationary source subject to the re-

1 requirements of this section except in compliance with the
2 terms and requirements of a permit issued by the Admin-
3 istrator or a State or Indian tribe with an approved permit
4 program in accordance with this section. For purposes of
5 this subsection, compliance, as provided in section 504(f),
6 with a permit issued under title V which complies with
7 this title for covered entities shall be deemed compliance
8 with this subsection as well as section 502(a).

9 “(d) RELIABILITY.—Nothing in this section or title
10 V shall be construed as requiring termination of oper-
11 ations of a stationary source that is a covered entity for
12 failure to have an approved permit, or compliance plan,
13 that is consistent with the requirements in the second and
14 fifth sentences of subsection (a) concerning the holding
15 of allowances or offset credits, except that any such cov-
16 ered entity may be subject to the applicable enforcement
17 provision of section 113.

18 “(e) REGULATIONS.—Not later than 2 years after the
19 date of enactment of this title, the Administrator shall
20 promulgate regulations to implement this section. To pro-
21 vide for permits required under this section, each State
22 in which one or more stationary sources that are covered
23 entities are located shall submit, in accordance with this
24 section and title V, revised permit programs for approval.

1 **“SEC. 728. INTERNATIONAL EMISSION ALLOWANCES.**

2 “(a) **QUALIFYING PROGRAMS.**—The Administrator,
3 in consultation with the Secretary of State, may by rule
4 designate an international climate change program as a
5 qualifying international program if—

6 “(1) the program is run by a national or supra-
7 national foreign government, and imposes a manda-
8 tory absolute tonnage limit on greenhouse gas emis-
9 sions from 1 or more foreign countries, or from 1 or
10 more economic sectors in such a country or coun-
11 tries; and

12 “(2) the program is at least as stringent as the
13 program established by this title, including provi-
14 sions to ensure at least comparable monitoring, com-
15 pliance, enforcement, quality of offsets, and restric-
16 tions on the use of offsets.

17 “(b) **DISQUALIFIED ALLOWANCES.**—An international
18 emission allowance may not be held under section
19 722(d)(2) if it is in the nature of an offset instrument
20 or allowance awarded based on the achievement of green-
21 house gas emission reductions or avoidance, or greenhouse
22 gas sequestration, that are not subject to the mandatory
23 absolute tonnage limits referred to in subsection (a)(1).

24 “(c) **RETIREMENT.**—

25 “(1) **ENTITY CERTIFICATION.**—The owner or
26 operator of an entity that holds an international

1 emission allowance under section 722(d)(2) shall
2 certify to the Administrator that such international
3 emission allowance has not previously been used to
4 comply with any foreign, international, or domestic
5 greenhouse gas regulatory program.

6 “(2) RETIREMENT.—

7 “(A) FOREIGN AND INTERNATIONAL REG-
8 ULATORY ENTITIES.—The Administrator, in
9 consultation with the Secretary of State, shall
10 seek, by whatever means appropriate, including
11 agreements and technical cooperation on allow-
12 ance tracking, to ensure that any relevant for-
13 eign, international, and domestic regulatory en-
14 tities—

15 “(i) are notified of the use, for pur-
16 poses of compliance with this title, of any
17 international emission allowance; and

18 “(ii) provide for the disqualification of
19 such international emission allowance for
20 any subsequent use under the relevant for-
21 eign, international, or domestic greenhouse
22 gas regulatory program, regardless of
23 whether such use is a sale, exchange, or
24 submission to satisfy a compliance obliga-
25 tion.

1 “(b) MEMBERSHIP.—The Advisory Board shall be
2 comprised of at least nine members. Each member shall
3 be qualified by education, training, and experience to
4 evaluate scientific and technical information on matters
5 referred to the Board under this section. The Adminis-
6 trator shall appoint Advisory Board members, including
7 a chair and vice-chair of the Advisory Board. Terms shall
8 be 3 years in length, except for initial terms, which may
9 be up to 5 years in length to allow staggering. Members
10 may be reappointed only once for an additional 3-year
11 term, and such second term may follow directly after a
12 first term.

13 “(c) ACTIVITIES.—The Advisory Board established
14 pursuant to subsection (a) shall—

15 “(1) provide recommendations, not later than
16 90 days after the Advisory Board’s establishment
17 and periodically thereafter, to the Administrator re-
18 garding offset project types that should be consid-
19 ered for eligibility under section 733, taking into
20 consideration relevant scientific and other issues, in-
21 cluding—

22 “(A) the availability of a representative
23 data set for use in developing the activity base-
24 line;

1 “(B) the potential for accurate quantifica-
2 tion of greenhouse gas reduction, avoidance, or
3 sequestration for an offset project type;

4 “(C) the potential level of scientific and
5 measurement uncertainty associated with an
6 offset project type; and

7 “(D) any beneficial or adverse environ-
8 mental, public health, welfare, social, economic,
9 or energy effects associated with an offset
10 project type;

11 “(2) make available to the Administrator its ad-
12 vice and comments on offset methodologies that
13 should be considered under regulations promulgated
14 with respect to section 734, including methodologies
15 to address the issues of additionality, activity base-
16 lines, quantification methods, leakage, uncertainty,
17 permanence, and environmental integrity;

18 “(3) make available to the Administrator, and
19 other relevant Federal agencies, its advice and com-
20 ments regarding scientific, technical, and methodo-
21 logical issues specific to the issuance of international
22 offset credits under section 743;

23 “(4) make available to the Administrator, and
24 other relevant Federal agencies, its advice and com-
25 ments regarding scientific, technical, and methodo-

1 logical issues associated with the implementation of
2 part E;

3 “(5) make available to the Administrator its ad-
4 vice and comments on areas in which further knowl-
5 edge is required to appraise the adequacy of exist-
6 ing, revised, or proposed methodologies for use
7 under this part and part E, and describe the re-
8 search efforts necessary to provide the required in-
9 formation; and

10 “(6) make available to the Administrator its ad-
11 vice and comments on other ways to improve or
12 safeguard the environmental integrity of programs
13 established under this part and part E.

14 “(d) SCIENTIFIC REVIEW OF OFFSET AND DEFOR-
15 ESTATION REDUCTION PROGRAMS.—Not later than Janu-
16 ary 1, 2017, and at 5-year intervals thereafter, the Advi-
17 sory Board shall submit to the Administrator and make
18 available to the public an analysis of relevant scientific and
19 technical information related to this part and part E. The
20 Advisory Board shall review approved and potential meth-
21 odologies, scientific studies, offset project monitoring, off-
22 set project verification reports, and audits related to this
23 part and part E, and evaluate the net emissions effects
24 of implemented offset projects. The Advisory Board shall
25 recommend changes to offset methodologies, protocols, or

1 project types, or to the overall offset program under this
2 part, to ensure that offset credits issued by the Adminis-
3 trator do not compromise the integrity of the annual emis-
4 sion reductions established under section 703, and to
5 avoid or minimize adverse effects to human health or the
6 environment.

7 **“SEC. 732. ESTABLISHMENT OF OFFSETS PROGRAM.**

8 “(a) REGULATIONS.—Not later than 2 years after
9 the date of enactment of this title, the Administrator, in
10 consultation with appropriate Federal agencies and taking
11 into consideration the recommendations of the Advisory
12 Board, shall promulgate regulations establishing a pro-
13 gram for the issuance of offset credits in accordance with
14 the requirements of this part. The Administrator shall pe-
15 riodically revise these regulations as necessary to meet the
16 requirements of this part.

17 “(b) REQUIREMENTS.—The regulations described in
18 subsection (a) shall—

19 “(1) authorize the issuance of offset credits
20 with respect to qualifying offset projects that result
21 in reductions or avoidance of greenhouse gas emis-
22 sions, or sequestration of greenhouse gases;

23 “(2) ensure that such offset credits represent
24 verifiable and additional greenhouse gas emission re-
25 ductions or avoidance, or increases in sequestration;

1 “(3) ensure that offset credits issued for se-
2 questration offset projects are only issued for green-
3 house gas reductions that are permanent;

4 “(4) provide for the implementation of the re-
5 quirements of this part; and

6 “(5) include as reductions in greenhouse gases
7 reductions achieved through the destruction of meth-
8 ane and its conversion to carbon dioxide, and reduc-
9 tions achieved through destruction of
10 chlorofluorocarbons or other ozone depleting sub-
11 stances, if permitted by the Administrator under
12 section 619(b)(9) and subject to the conditions spec-
13 ified in section 619(b)(9), based on the carbon diox-
14 ide equivalent value of the substance destroyed.

15 “(c) COORDINATION TO MINIMIZE NEGATIVE EF-
16 FECTS.—In promulgating and implementing regulations
17 under this part, the Administrator shall act (including by
18 rejecting projects, if necessary) to avoid or minimize, to
19 the maximum extent practicable, adverse effects on human
20 health or the environment resulting from the implementa-
21 tion of offset projects under this part.

22 “(d) OFFSET REGISTRY.—The Administrator shall
23 establish within the allowance tracking system established
24 under section 724(d) an Offset Registry for qualifying off-

1 set projects and offset credits issued with respect thereto
2 under this part.

3 “(e) LEGAL STATUS OF OFFSET CREDIT.—An offset
4 credit does not constitute a property right.

5 “(f) FEES.—The Administrator shall assess fees pay-
6 able by offset project developers in an amount necessary
7 to cover the administrative costs to the Environmental
8 Protection Agency of carrying out the activities under this
9 part. Amounts collected for such fees shall be available
10 to the Administrator for carrying out the activities under
11 this part to the extent provided in advance in appropria-
12 tions Acts.

13 **“SEC. 733. ELIGIBLE PROJECT TYPES.**

14 “(a) LIST OF ELIGIBLE PROJECT TYPES.—

15 “(1) IN GENERAL.—As part of the regulations
16 promulgated under section 732(a), the Adminis-
17 trator shall establish, and may periodically revise, a
18 list of types of projects eligible to generate offset
19 credits, including international offset credits, under
20 this part.

21 “(2) ADVISORY BOARD RECOMMENDATIONS.—

22 In determining the eligibility of project types, the
23 Administrator shall take into consideration the rec-
24 ommendations of the Advisory Board. If a list estab-
25 lished under this section differs from the rec-

1 ommendations of the Advisory Board, the regula-
2 tions promulgated under section 732(a) shall include
3 a justification for the discrepancy.

4 “(3) INITIAL DETERMINATION.—The Adminis-
5 trator shall establish the initial eligibility list under
6 paragraph (1) not later than 1 year after the date
7 of enactment of this title. The Administrator shall
8 add additional project types to the list not later than
9 2 years after the date of enactment of this title. In
10 determining the initial list, the Administrator shall
11 give priority to consideration of offset project types
12 that are recommended by the Advisory Board and
13 for which there are well developed methodologies
14 that the Administrator determines would meet the
15 criteria of section 734, with such modifications as
16 the Administrator deems appropriate. In establishing
17 methodologies pursuant to section 734, the Adminis-
18 trator shall give priority to methodologies for offset
19 project types included on the initial eligibility list.

20 “(b) MODIFICATION OF LIST.—The Administrator—

21 “(1) may at any time, by rule, add a project
22 type to the list established under subsection (a) if
23 the Administrator, in consultation with appropriate
24 Federal agencies and taking into consideration the
25 recommendations of the Advisory Board, determines

1 that the project type can generate additional reduc-
2 tions or avoidance of greenhouse gas emissions, or
3 sequestration of greenhouse gases, subject to the re-
4 quirements of this part;

5 “(2) may at any time, by rule, determine that
6 a project type on the list does not meet the require-
7 ments of this part, and remove the project type from
8 the list established under subsection (a), in consulta-
9 tion with appropriate Federal agencies and taking
10 into consideration any recommendations of the Advi-
11 sory Board; and

12 “(3) shall consider adding to or removing from
13 the list established under subsection (a), at a min-
14 imum, project types proposed to the Adminis-
15 trator—

16 “(A) by petition pursuant to subsection
17 (c); or

18 “(B) by the Advisory Board.

19 “(c) PETITION PROCESS.—Any person may petition
20 the Administrator to modify the list established under sub-
21 section (a) by adding or removing a project type pursuant
22 to subsection (b). Any such petition shall include a show-
23 ing by the petitioner that there is adequate data to estab-
24 lish that the project type does or does not meet the re-
25 quirements of this part. Not later than 12 months after

1 receipt of such a petition, the Administrator shall either
2 grant or deny the petition and publish a written expla-
3 nation of the reasons for the Administrator’s decision. The
4 Administrator may not deny a petition under this sub-
5 section on the basis of inadequate Environmental Protec-
6 tion Agency resources or time for review.

7 **“SEC. 734. REQUIREMENTS FOR OFFSET PROJECTS.**

8 “(a) **METHODOLOGIES.**—As part of the regulations
9 promulgated under section 732(a), the Administrator shall
10 establish, for each type of offset project listed as eligible
11 under section 733, the following:

12 “(1) **ADDITIONALITY.**—A standardized method-
13 ology for determining the additionality of greenhouse
14 gas emission reductions or avoidance, or greenhouse
15 gas sequestration, achieved by an offset project of
16 that type. Such methodology shall ensure, at a min-
17 imum, that any greenhouse gas emission reduction
18 or avoidance, or any greenhouse gas sequestration, is
19 considered additional only to the extent that it re-
20 sults from activities that—

21 “(A) are not required by or undertaken to
22 comply with any law, including any regulation
23 or consent order;

24 “(B) were not commenced prior to Janu-
25 ary 1, 2009, except in the case of—

1 “(i) offset project activities that com-
2 menced after January 1, 2001, and were
3 registered as of the date of enactment of
4 this title under an offset program with re-
5 spect to which the Administrator has made
6 an affirmative determination under section
7 740(a)(2); or

8 “(ii) activities that are readily revers-
9 ible, with respect to which the Adminis-
10 trator may set an alternative earlier date
11 under this subparagraph that is not earlier
12 than January 1, 2001, where the Adminis-
13 trator determines that setting such an al-
14 ternative date may produce an environ-
15 mental benefit by removing an incentive to
16 cease and then reinstate activities that
17 began prior to January 1, 2009; and

18 “(C) exceed the activity baseline estab-
19 lished under paragraph (2).

20 “(2) ACTIVITY BASELINES.—A standardized
21 methodology for establishing activity baselines for
22 offset projects of that type. The Administrator shall
23 set activity baselines to reflect a conservative esti-
24 mate of business-as-usual performance or practices
25 for the relevant type of activity such that the base-

1 line provides an adequate margin of safety to ensure
2 the environmental integrity of offsets calculated in
3 reference to such baseline.

4 “(3) QUANTIFICATION METHODS.—A standard-
5 ized methodology for determining the extent to
6 which greenhouse gas emission reductions or avoid-
7 ance, or greenhouse gas sequestration, achieved by
8 an offset project of that type exceed a relevant activ-
9 ity baseline, including protocols for monitoring and
10 accounting for uncertainty.

11 “(4) LEAKAGE.—A standardized methodology
12 for accounting for and mitigating potential leakage,
13 if any, from an offset project of that type, taking
14 uncertainty into account.

15 “(b) ACCOUNTING FOR REVERSALS.—

16 “(1) IN GENERAL.—For each type of sequestra-
17 tion project listed under section 733, the Adminis-
18 trator shall establish requirements to account for
19 and address reversals, including—

20 “(A) a requirement to report any reversal
21 with respect to an offset project for which offset
22 credits have been issued under this part;

23 “(B) provisions to require emission allow-
24 ances to be held in amounts to fully compensate
25 for greenhouse gas emissions attributable to re-

1 versals, and to assign responsibility for holding
2 such emission allowances; and

3 “(C) any other provisions the Adminis-
4 trator determines necessary to account for and
5 address reversals.

6 “(2) MECHANISMS.—The Administrator shall
7 prescribe mechanisms to ensure that any sequestra-
8 tion with respect to which an offset credit is issued
9 under this part results in a permanent net increase
10 in sequestration, and that full account is taken of
11 any actual or potential reversal of such sequestra-
12 tion, with an adequate margin of safety. The Admin-
13 istrator shall prescribe at least one of the following
14 mechanisms to meet the requirements of this para-
15 graph:

16 “(A) An offsets reserve, pursuant to para-
17 graph (3).

18 “(B) Insurance that provides for purchase
19 and provision to the Administrator for retire-
20 ment of an amount of offset credits or emission
21 allowances equal in number to the tons of car-
22 bon dioxide equivalents of greenhouse gas emis-
23 sions released due to reversal.

1 “(C) Another mechanism that the Admin-
2 istrator determines satisfies the requirements of
3 this part.

4 “(3) OFFSETS RESERVE.—

5 “(A) IN GENERAL.—An offsets reserve re-
6 ferred to in paragraph (2)(A) is a program
7 under which, before issuance of offset credits
8 under this part, the Administrator shall sub-
9 tract and reserve from the quantity to be issued
10 a quantity of offset credits based on the risk of
11 reversal. The Administrator shall—

12 “(i) hold these reserved offset credits
13 in the offsets reserve; and

14 “(ii) register the holding of the re-
15 served offset credits in the Offset Registry
16 established under section 732(d).

17 “(B) PROJECT REVERSAL.—

18 “(i) IN GENERAL.—If a reversal has
19 occurred with respect to an offset project
20 for which offset credits are reserved under
21 this paragraph, the Administrator shall re-
22 tire offset credits or emission allowances
23 from the offsets reserve to fully account
24 for the tons of carbon dioxide equivalent
25 that are no longer sequestered.

1 “(ii) INTENTIONAL REVERSALS.—If
2 the Administrator determines that a rever-
3 sal was intentional, the offset project devel-
4 oper for the relevant offset project shall
5 place into the offsets reserve a quantity of
6 offset credits, or combination of offset
7 credits and emission allowances, equal in
8 number to the number of reserve offset
9 credits that were canceled due to the rever-
10 sal pursuant to clause (i).

11 “(iii) UNINTENTIONAL REVERSALS.—
12 If the Administrator determines that a re-
13 versal was unintentional, the offset project
14 developer for the relevant offset project
15 shall place into the offsets reserve a quan-
16 tity of offset credits, or combination of off-
17 set credits and emission allowances, equal
18 in number to half the number of offset
19 credits that were reserved for that offset
20 project, or half the number of reserve off-
21 set credits that were canceled due to the
22 reversal pursuant to clause (i), whichever
23 is less.

24 “(C) USE OF RESERVED OFFSET CRED-
25 ITS.—Offset credits placed into the offsets re-

1 serve under this paragraph may not be used to
2 comply with section 722.

3 “(c) CREDITING PERIODS.—

4 “(1) IN GENERAL.—For each offset project
5 type, the Administrator shall specify a crediting pe-
6 riod, and establish provisions for petitions for new
7 crediting periods, in accordance with this subsection.

8 “(2) DURATION.—The crediting period shall be
9 no less than 5 and no greater than 10 years for any
10 project type other than those involving sequestra-
11 tion.

12 “(3) ELIGIBILITY.—An offset project shall be
13 eligible to generate offset credits under this part
14 only during the project’s crediting period. During
15 such crediting period, the project shall remain eligi-
16 ble to generate offset credits, subject to the meth-
17 odologies and project type eligibility list that applied
18 as of the date of project approval under section 735,
19 except as provided in paragraph (4) of this sub-
20 section.

21 “(4) PETITION FOR NEW CREDITING PERIOD.—
22 An offset project developer may petition for a new
23 crediting period to commence after termination of a
24 crediting period, subject to the methodologies and
25 project type eligibility list in effect at the time when

1 such petition is submitted. A petition may not be
2 submitted under this paragraph more than 18
3 months before the end of the pending crediting pe-
4 riod. The Administrator may limit the number of
5 new crediting periods available for projects of par-
6 ticular project types.

7 “(d) ENVIRONMENTAL INTEGRITY.—In establishing
8 the requirements under this section, the Administrator
9 shall apply conservative assumptions or methods to maxi-
10 mize the certainty that the environmental integrity of the
11 cap established under section 703 is not compromised.

12 “(e) PRE-EXISTING METHODOLOGIES.—In promul-
13 gating requirements under this section, the Administrator
14 shall give due consideration to methodologies for offset
15 projects existing as of the date of enactment of this title.

16 “(f) ADDED PROJECT TYPES.—The Administrator
17 shall establish methodologies described in subsection (a),
18 and, as applicable, requirements and mechanisms for re-
19 versals as described in subsection (b), for any project type
20 that is added to the list pursuant to section 733.

21 **“SEC. 735. APPROVAL OF OFFSET PROJECTS.**

22 “(a) APPROVAL PETITION.—An offset project devel-
23 oper shall submit an offset project approval petition pro-
24 viding such information as the Administrator requires to
25 determine whether the offset project is eligible for issuance

1 of offset credits under rules promulgated pursuant to this
2 part.

3 “(b) TIMING.—An approval petition shall be sub-
4 mitted to the Administrator under subsection (a) no later
5 than the time at which an offset project’s first verification
6 report is submitted under section 736.

7 “(c) APPROVAL PETITION REQUIREMENTS.—As part
8 of the regulations promulgated under section 732, the Ad-
9 ministrator shall include provisions for, and shall specify,
10 the required components of an offset project approval peti-
11 tion required under subsection (a), which shall include—

12 “(1) designation of an offset project developer;
13 and

14 “(2) any other information that the Adminis-
15 trator considers to be necessary to achieve the pur-
16 poses of this part.

17 “(d) APPROVAL AND NOTIFICATION.—Not later than
18 90 days after receiving a complete approval petition under
19 subsection (a), the Administrator shall make the approval
20 petition publicly available, approve or deny the petition in
21 writing and if the petition is denied, provide the reasons
22 for denial, and make the Administrator’s written decision
23 publicly available. After an offset project is approved, the
24 offset project developer shall not be required to resubmit

1 an approval petition during the offset project’s crediting
2 period, except as provided in section 734(e)(4).

3 “(e) APPEAL.—The Administrator shall establish
4 procedures for appeal and review of determinations made
5 under subsection (d).

6 “(f) VOLUNTARY PREAPPROVAL REVIEW.—The Ad-
7 ministrator may establish a voluntary preapproval review
8 procedure, to allow an offset project developer to request
9 the Administrator to conduct a preliminary eligibility re-
10 view for an offset project. Findings of such reviews shall
11 not be binding upon the Administrator. The voluntary
12 preapproval review procedure—

13 “(1) shall require the offset project developer to
14 submit such basic project information as the Admin-
15 istrator requires to provide a meaningful review; and

16 “(2) shall require a response from the Adminis-
17 trator not later than 6 weeks after receiving a re-
18 quest for review under this subsection.

19 **“SEC. 736. VERIFICATION OF OFFSET PROJECTS.**

20 “(a) IN GENERAL.—As part of the regulations pro-
21 mulgated under section 732(a), the Administrator shall es-
22 tablish requirements, including protocols, for verification
23 of the quantity of greenhouse gas emission reductions or
24 avoidance, or sequestration of greenhouse gases, resulting
25 from an offset project. The regulations shall require that

1 an offset project developer shall submit a report, prepared
2 by a third-party verifier accredited under subsection (d),
3 providing such information as the Administrator requires
4 to determine the quantity of greenhouse gas emission re-
5 ductions or avoidance, or sequestration of greenhouse
6 gases, resulting from the offset project.

7 “(b) SCHEDULE.—The Administrator shall prescribe
8 a schedule for the submission of verification reports under
9 subsection (a).

10 “(c) VERIFICATION REPORT REQUIREMENTS.—The
11 Administrator shall specify the required components of a
12 verification report required under subsection (a), which
13 shall include—

14 “(1) the name and contact information for a
15 designated representative for the offset project devel-
16 oper;

17 “(2) the quantity of greenhouse gases reduced,
18 avoided, or sequestered;

19 “(3) the methodologies applicable to the project
20 pursuant to section 734;

21 “(4) a certification that the project meets the
22 applicable requirements;

23 “(5) a certification establishing that the conflict
24 of interest requirements in the regulations promul-

1 gated under subsection (d)(1) have been complied
2 with; and

3 “(6) any other information that the Adminis-
4 trator considers to be necessary to achieve the pur-
5 poses of this part.

6 “(d) VERIFIER ACCREDITATION.—

7 “(1) IN GENERAL.—As part of the regulations
8 promulgated under section 732(a), the Adminis-
9 trator shall establish a process and requirements for
10 periodic accreditation of third-party verifiers to en-
11 sure that such verifiers are professionally qualified
12 and have no conflicts of interest.

13 “(2) STANDARDS.—

14 “(A) AMERICAN NATIONAL STANDARDS IN-
15 STITUTE ACCREDITATION.—The Administrator
16 may accredit, or accept for purposes of accredi-
17 tation under this subsection, verifiers accredited
18 under the American National Standards Insti-
19 tute (ANSI) accreditation program in accord-
20 ance with ISO 14065. The Administrator shall
21 accredit, or accept for accreditation, verifiers
22 under this subparagraph only if the Adminis-
23 trator finds that the American National Stand-
24 ards Institute accreditation program provides

1 sufficient assurance that the requirements of
2 this part will be met.

3 “(B) EPA ACCREDITATION.—As part of
4 the regulations promulgated under section
5 732(a), the Administrator may establish accred-
6 itation standards for verifiers under this sub-
7 section, and may establish related training and
8 testing programs and requirements.

9 “(3) PUBLIC ACCESSIBILITY.—Each verifier
10 meeting the requirements for accreditation in ac-
11 cordance with this subsection shall be listed in a
12 publicly accessible database, which shall be main-
13 tained and updated by the Administrator.

14 **“SEC. 737. ISSUANCE OF OFFSET CREDITS.**

15 “(a) DETERMINATION AND NOTIFICATION.—Not
16 later than 90 days after receiving a complete verification
17 report under section 736, the Administrator shall—

18 “(1) make the report publicly available;

19 “(2) make a determination of the quantity of
20 greenhouse gas emissions that have been reduced or
21 avoided, or greenhouse gases that have been seques-
22 tered, by the offset project; and

23 “(3) notify the offset project developer in writ-
24 ing of such determination and make such determina-
25 tion publicly available.

1 “(b) ISSUANCE OF OFFSET CREDITS.—The Adminis-
2 trator shall issue one offset credit to an offset project de-
3 veloper for each ton of carbon dioxide equivalent that the
4 Administrator has determined has been reduced, avoided,
5 or sequestered during the period covered by a verification
6 report submitted in accordance with section 736, only if—

7 “(1) the Administrator has approved the offset
8 project pursuant to section 735; and

9 “(2) the relevant emissions reduction, avoid-
10 ance, or sequestration has—

11 “(A) already occurred, during the offset
12 project’s crediting period; and

13 “(B) occurred after January 1, 2009.

14 “(c) APPEAL.—The Administrator shall establish
15 procedures for appeal and review of determinations made
16 under subsection (a).

17 “(d) TIMING.—Offset credits meeting the criteria es-
18 tablished in subsection (b) shall be issued not later than
19 2 weeks following the verification determination made by
20 the Administrator under subsection (a).

21 “(e) REGISTRATION.—The Administrator shall as-
22 sign a unique serial number to and register each offset
23 credit to be issued in the Offset Registry established under
24 section 732(d).

1 **“SEC. 738. AUDITS.**

2 “(a) IN GENERAL.—The Administrator shall, on an
3 ongoing basis, conduct random audits of offset projects,
4 offset credits, and practices of third-party verifiers. In
5 each year, the Administrator shall conduct audits, at min-
6 imum, for a representative sample of project types and
7 geographic areas.

8 “(b) DELEGATION.—The Administrator may delegate
9 to a State or tribal government the responsibility for con-
10 ducting audits under this section if the Administrator
11 finds that the program proposed by the State or tribal
12 government provides assurances equivalent to those pro-
13 vided by the auditing program of the Administrator, and
14 that the integrity of the offset program under this part
15 will be maintained. Nothing in this subsection shall pre-
16 vent the Administrator from conducting any audit the Ad-
17 ministrator considers necessary and appropriate.

18 **“SEC. 739. PROGRAM REVIEW AND REVISION.**

19 “‘At least once every 5 years, the Administrator shall
20 review and, based on new or updated information and tak-
21 ing into consideration the recommendations of the Advi-
22 sory Board, update and revise—

23 “(1) the list of eligible project types established
24 under section 733;

25 “(2) the methodologies established, including
26 specific activity baselines, under section 734(a);

1 “(3) the reversal requirements and mechanisms
2 established or prescribed under section 734(b);

3 “(4) measures to improve the accountability of
4 the offsets program; and

5 “(5) any other requirements established under
6 this part to ensure the environmental integrity and
7 effective operation of this part.

8 **“SEC. 740. EARLY OFFSET SUPPLY.**

9 “(a) PROJECTS REGISTERED UNDER OTHER GOV-
10 ERNMENT-RECOGNIZED PROGRAMS.—Except as provided
11 in subsection (b) or (c), the Administrator shall issue one
12 offset credit for each ton of carbon dioxide equivalent
13 emissions reduced, avoided, or sequestered—

14 “(1) under an offset project that was started
15 after January 1, 2001;

16 “(2) for which a credit was issued under any
17 regulatory or voluntary greenhouse gas emission off-
18 set program that the Administrator determines—

19 “(A) was established under State or tribal
20 law or regulation prior to January 1, 2009, or
21 has been approved by the Administrator pursu-
22 ant to subsection (e);

23 “(B) has developed offset project type
24 standards, methodologies, and protocols

1 through a public consultation process or a peer
2 review process;

3 “(C) has made available to the public
4 standards, methodologies, and protocols that re-
5 quire that credited emission reductions, avoid-
6 ance, or sequestration are permanent, addi-
7 tional, verifiable, and enforceable;

8 “(D) requires that all emission reductions,
9 avoidance, or sequestration be verified by a
10 State or tribal regulatory agency or an accred-
11 ited third-party independent verification body;

12 “(E) requires that all credits issued are
13 registered in a publicly accessible registry, with
14 individual serial numbers assigned for each ton
15 of carbon dioxide equivalent emission reduc-
16 tions, avoidance, or sequestration; and

17 “(F) ensures that no credits are issued for
18 an activity if the entity administering the pro-
19 gram, or a program administrator or represent-
20 ative, has funded, solicited, or served as a fund
21 administrator for the development of the activ-
22 ity; and

23 “(3) for which the credit described in para-
24 graph (2) is transferred to the Administrator.

1 “(b) INELIGIBLE CREDITS.—Subsection (a) shall not
2 apply to offset credits that have expired or have been re-
3 tired, canceled, or used for compliance under a program
4 established under State or tribal law or regulation.

5 “(c) LIMITATION.—Notwithstanding subsection
6 (a)(1), offset credits shall be issued under this section—

7 “(1) only for reductions or avoidance of green-
8 house gas emissions, sequestration of greenhouse
9 gases, or destruction of chlorofluorocarbons (subject
10 to the conditions specified in section 619(b)(9) and
11 based on the carbon dioxide equivalent value of the
12 substance destroyed), that occur after January 1,
13 2009; and

14 “(2) only until the date that is 3 years after the
15 date of enactment of this title, or the date that regu-
16 lations promulgated under section 732(a) take ef-
17 fect, whichever occurs sooner.

18 “(d) RETIREMENT OF CREDITS.—The Administrator
19 shall seek to ensure that offset credits described in sub-
20 section (a)(2) are retired for purposes of use under a pro-
21 gram described in subsection (b).

22 “(e) OTHER PROGRAMS.—(1) Offset programs that
23 either—

24 “(A) were not established under State or tribal
25 law or regulation; or

1 “(B) were not established prior to January 1,
2 2009,
3 but that otherwise meet all of the criteria of subsection
4 (a)(2) may apply to the Administrator to be approved
5 under this subsection as an eligible program for early off-
6 set credits under this section.

7 “(2) The Administrator shall approve any such pro-
8 gram that the Administrator determines has criteria and
9 methodologies of at least equal stringency to the criteria
10 and methodologies of the programs established under
11 State or tribal law or regulation that the Administrator
12 determines meet the criteria of subsection (a)(2). The Ad-
13 ministrator may approve types of offsets under any such
14 program that are subject to criteria and methodologies of
15 at least equal stringency to the criteria and methodologies
16 for such types of offsets applied under the programs estab-
17 lished under State or tribal law or regulation that the Ad-
18 ministrator determines meet the criteria of subsection
19 (a)(2). The Administrator shall make a determination on
20 any application received under this section by no later
21 than 180 days from the date of receipt of the application.

22 **“SEC. 741. ENVIRONMENTAL CONSIDERATIONS.**

23 “If the Administrator lists forestry or other relevant
24 land management-related offset projects as eligible offset
25 project types under section 733, the Administrator, in con-

1 sultation with appropriate Federal agencies, shall promul-
2 gate regulations for the selection and use of species in
3 such offset projects—

4 “(1) to ensure that native species are given pri-
5 mary consideration in such projects;

6 “(2) to enhance biological diversity in such
7 projects;

8 “(3) to prohibit the use of federally designated
9 or State-designated noxious weeds;

10 “(4) to prohibit the use of a species listed by
11 a regional or State invasive plant authority within
12 the applicable region or State; and

13 “(5) in the case of forestry offset projects, in
14 accordance with widely accepted, environmentally
15 sustainable forestry practices.

16 **“SEC. 742. TRADING.**

17 “Section 724 shall apply to the trading of offset cred-
18 its.

19 **“SEC. 743. INTERNATIONAL OFFSET CREDITS.**

20 “(a) IN GENERAL.—The Administrator, in consulta-
21 tion with the Secretary of State and the Administrator
22 of the United States Agency for International Develop-
23 ment, may issue, in accordance with this section, inter-
24 national offset credits based on activities that reduce or
25 avoid greenhouse gas emissions, or increase sequestration

1 of greenhouse gases, in a developing country. Such credits
2 may be issued for projects eligible under section 733 or
3 as provided in subsection (c), (d), or (e) of this section.

4 “(b) ISSUANCE.—

5 “(1) REGULATIONS.—Not later than 2 years
6 after the date of enactment of this title, the Admin-
7 istrator, in consultation with the Secretary of State,
8 the Administrator of the United States Agency for
9 International Development, and any other appro-
10 priate Federal agency, and taking into consideration
11 the recommendations of the Advisory Board, shall
12 promulgate regulations for implementing this sec-
13 tion. Except as otherwise provided in this section,
14 the issuance of international offset credits under this
15 section shall be subject to the requirements of this
16 part.

17 “(2) REQUIREMENTS FOR INTERNATIONAL
18 OFFSET CREDITS.—The Administrator may issue
19 international offset credits only if—

20 “(A) the United States is a party to a bi-
21 lateral or multilateral agreement or arrange-
22 ment that includes the country in which the
23 project or measure achieving the relevant green-
24 house gas emission reduction or avoidance, or
25 greenhouse gas sequestration, has occurred;

1 “(B) such country is a developing country;

2 and

3 “(C) such agreement or arrangement—

4 “(i) ensures that the requirements of
5 this part apply to the issuance of inter-
6 national offset credits under this section;

7 and

8 “(ii) provides for the appropriate dis-
9 tribution of international offset credits
10 issued.

11 “(c) SECTOR-BASED CREDITS.—

12 “(1) IN GENERAL.—In order to minimize the
13 potential for leakage and to encourage countries to
14 take nationally appropriate mitigation actions to re-
15 duce or avoid greenhouse gas emissions, or sequester
16 greenhouse gases, the Administrator, in consultation
17 with the Secretary of State and the Administrator of
18 the United States Agency for International Develop-
19 ment, shall—

20 “(A) identify sectors of specific countries
21 with respect to which the issuance of inter-
22 national offset credits on a sectoral basis is ap-
23 propriate; and

24 “(B) issue international offset credits for
25 such sectors only on a sectoral basis.

1 “(2) IDENTIFICATION OF SECTORS.—

2 “(A) GENERAL RULE.—For purposes of
3 paragraph (1)(A), a sectoral basis shall be ap-
4 propriate for activities—

5 “(i) in countries that have compara-
6 tively high greenhouse gas emissions, or
7 comparatively greater levels of economic
8 development; and

9 “(ii) that, if located in the United
10 States, would be within a sector subject to
11 the compliance obligation under section
12 722.

13 “(B) FACTORS.—In determining the sec-
14 tors and countries for which international offset
15 credits should be awarded only on a sectoral
16 basis, the Administrator, in consultation with
17 the Secretary of State and the Administrator of
18 the United States Agency for International De-
19 velopment, shall consider the following factors:

20 “(i) The country’s gross domestic
21 product.

22 “(ii) The country’s total greenhouse
23 gas emissions.

24 “(iii) Whether the comparable sector
25 of the United States economy is covered by

1 the compliance obligation under section
2 722.

3 “(iv) The heterogeneity or homo-
4 geneity of sources within the relevant sec-
5 tor.

6 “(v) Whether the relevant sector pro-
7 vides products or services that are sold in
8 internationally competitive markets.

9 “(vi) The risk of leakage if inter-
10 national offset credits were issued on a
11 project-level basis, instead of on a sectoral
12 basis, for activities within the relevant sec-
13 tor.

14 “(vii) The capability of accurately
15 measuring, monitoring, reporting, and
16 verifying the performance of sources across
17 the relevant sector.

18 “(viii) Such other factors as the Ad-
19 ministrator, in consultation with the Sec-
20 retary of State and the Administrator of
21 the United States Agency for International
22 Development, determines are appropriate
23 to—

24 “(I) ensure the integrity of the
25 United States greenhouse gas emis-

1 sions cap established under section
2 703; and

3 “(II) encourage countries to take
4 nationally appropriate mitigation ac-
5 tions to reduce or avoid greenhouse
6 gas emissions, or sequester green-
7 house gases.

8 “(3) SECTORAL BASIS.—

9 “(A) DEFINITION.—In this subsection, the
10 term ‘sectoral basis’ means the issuance of
11 international offset credits only for the quantity
12 of sector-wide reductions or avoidance of green-
13 house gas emissions, or sector-wide increases in
14 sequestration of greenhouse gases, achieved
15 across the relevant sector of the economy rel-
16 ative to a domestically enforceable baseline level
17 of absolute emissions established in an agree-
18 ment or arrangement described in subsection
19 (b)(2)(A) for the sector.

20 “(B) BASELINE.—The baseline for a sec-
21 tor shall be established on an absolute basis
22 and at levels of greenhouse gas emissions con-
23 sistent with the thresholds identified in section
24 705(e)(2) and lower than would occur under a
25 business-as-usual scenario taking into account

1 relevant domestic or international policies or in-
2 centives to reduce greenhouse gas emissions,
3 among other factors, and additionality and per-
4 formance shall be determined on the basis of
5 such baseline.

6 “(d) CREDITS ISSUED BY AN INTERNATIONAL
7 BODY.—

8 “(1) IN GENERAL.—The Administrator, in con-
9 sultation with the Secretary of State, may issue
10 international offset credits in exchange for instru-
11 ments in the nature of offset credits that are issued
12 by an international body established pursuant to the
13 United Nations Framework Convention on Climate
14 Change, to a protocol to such Convention, or to a
15 treaty that succeeds such Convention. The Adminis-
16 trator may issue international offset credits under
17 this subsection only if, in addition to the require-
18 ments of subsection (b), the Administrator has de-
19 termined that the international body that issued the
20 instruments has implemented substantive and proce-
21 dural requirements for the relevant project type that
22 provide equal or greater assurance of the integrity of
23 such instruments as is provided by the requirements
24 of this part. Starting January 1, 2016, the Adminis-
25 trator shall issue no offset credit pursuant to this

1 subsection if the activity generating the greenhouse
2 gas emissions reductions or avoidance, or greenhouse
3 gas sequestration, occurs in a country and sector
4 identified by the Administrator under subsection (c).

5 “(2) RETIREMENT.—The Administrator, in
6 consultation with the Secretary of State, shall seek,
7 by whatever means appropriate, including agree-
8 ments, arrangements, or technical cooperation with
9 the international issuing body described in para-
10 graph (1), to ensure that such body—

11 “(A) is notified of the Administrator’s
12 issuance, under this subsection, of an inter-
13 national offset credit in exchange for an instru-
14 ment issued by such international body; and

15 “(B) provides, to the extent feasible, for
16 the disqualification of the instrument issued by
17 such international body for subsequent use
18 under any relevant foreign or international
19 greenhouse gas regulatory program, regardless
20 of whether such use is a sale, exchange, or sub-
21 mission to satisfy a compliance obligation.

22 “(e) OFFSETS FROM REDUCED DEFORESTATION.—

23 “(1) REQUIREMENTS.—The Administrator, in
24 accordance with the regulations promulgated under
25 subsection (b)(1) and an agreement or arrangement

1 described in subsection (b)(2)(A), shall issue inter-
2 national offset credits for greenhouse gas emission
3 reductions achieved through activities to reduce de-
4 forestation only if, in addition to the requirements of
5 subsection (b)—

6 “(A) the activity occurs in—

7 “(i) a country listed by the Adminis-
8 trator pursuant to paragraph (2);

9 “(ii) a state or province listed by the
10 Administrator pursuant to paragraph (5);

11 or

12 “(iii) a country listed by the Adminis-
13 trator pursuant to paragraph (6);

14 “(B) except as provided in paragraph (5)
15 or (6), the quantity of the international offset
16 credits is determined by comparing the national
17 emissions from deforestation relative to a na-
18 tional deforestation baseline for that country es-
19 tablished, in accordance with an agreement or
20 arrangement described in subsection (b)(2)(A),
21 pursuant to paragraph (4);

22 “(C) the reduction in emissions from de-
23 forestation has occurred before the issuance of
24 the international offset credit and, taking into
25 consideration relevant international standards,

1 has been demonstrated using ground-based in-
2 ventories, remote sensing technology, and other
3 methodologies to ensure that all relevant carbon
4 stocks are accounted;

5 “(D) the Administrator has made appro-
6 priate adjustments, such as discounting for any
7 additional uncertainty, to account for cir-
8 cumstances specific to the country, including its
9 technical capacity described in paragraph
10 (2)(A);

11 “(E) the activity is designed, carried out,
12 and managed—

13 “(i) in accordance with widely accept-
14 ed, environmentally sustainable forest
15 management practices;

16 “(ii) to promote or restore native for-
17 est species and ecosystems where prac-
18 ticable, and to avoid the introduction of
19 invasive nonnative species;

20 “(iii) in a manner that gives due re-
21 gard to the rights and interests of local
22 communities, indigenous peoples, forest-de-
23 pendent communities, and vulnerable social
24 groups;

1 “(iv) with consultations with, and full
2 participation of, local communities, indige-
3 nous peoples, and forest-dependent com-
4 munities, in affected areas, as partners
5 and primary stakeholders, prior to and
6 during the design, planning, implementa-
7 tion, and monitoring and evaluation of ac-
8 tivities; and

9 “(v) with equitable sharing of profits
10 and benefits derived from offset credits
11 with local communities, indigenous peoples,
12 and forest-dependent communities; and

13 “(F) the reduction otherwise satisfies and
14 is consistent with any relevant requirements es-
15 tablished by an agreement reached under the
16 auspices of the United Nations Framework
17 Convention on Climate Change.

18 “(2) ELIGIBLE COUNTRIES.—The Adminis-
19 trator, in consultation with the Secretary of State
20 and the Administrator of the United States Agency
21 for International Development, and in accordance
22 with an agreement or arrangement described in sub-
23 section (b)(2)(A), shall establish, and periodically re-
24 view and update, a list of the developing countries

1 that have the capacity to participate in deforestation
2 reduction activities at a national level, including—

3 “(A) the technical capacity to monitor,
4 measure, report, and verify forest carbon fluxes
5 for all significant sources of greenhouse gas
6 emissions from deforestation with an acceptable
7 level of uncertainty, as determined taking into
8 account relevant internationally accepted meth-
9 odologies, such as those established by the
10 Intergovernmental Panel on Climate Change;

11 “(B) the institutional capacity to reduce
12 emissions from deforestation, including strong
13 forest governance and mechanisms to equitably
14 distribute deforestation resources for local ac-
15 tions; and

16 “(C) a land use or forest sector strategic
17 plan that—

18 “(i) assesses national and local drivers
19 of deforestation and forest degradation and
20 identifies reforms to national policies need-
21 ed to address them;

22 “(ii) estimates the country’s emissions
23 from deforestation and forest degradation;

24 “(iii) identifies improvements in data
25 collection, monitoring, and institutional ca-

1 capacity necessary to implement a national
2 deforestation reduction program; and

3 “(iv) establishes a timeline for imple-
4 menting the program and transitioning to
5 low-emissions development with respect to
6 emissions from forest and land use activi-
7 ties.

8 “(3) PROTECTION OF INTERESTS.—With re-
9 spect to an agreement or arrangement described in
10 subsection (b)(2)(A) that addresses international off-
11 set credits under this subsection, the Administrator,
12 in consultation with the Secretary of State and the
13 Administrator of the United States Agency for
14 International Development, shall seek to ensure the
15 establishment and enforcement by such country of
16 legal regimes, processes, standards, and safeguards
17 that—

18 “(A) give due regard to the rights and in-
19 terests of local communities, indigenous peoples,
20 forest-dependent communities, and vulnerable
21 social groups;

22 “(B) promote consultations with, and full
23 participation of, forest-dependent communities
24 and indigenous peoples in affected areas, as
25 partners and primary stakeholders, prior to and

1 during the design, planning, implementation,
2 and monitoring and evaluation of activities; and

3 “(C) encourage equitable sharing of profits
4 and benefits derived from international offset
5 credits with local communities, indigenous peo-
6 ples, and forest-dependent communities.

7 “(4) NATIONAL DEFORESTATION BASELINE.—A
8 national deforestation baseline established under this
9 subsection shall—

10 “(A) be national in scope;

11 “(B) be consistent with nationally appro-
12 priate mitigation commitments or actions with
13 respect to deforestation, taking into consider-
14 ation the average annual historical deforestation
15 rates of the country during a period of at least
16 5 years, the applicable drivers of deforestation,
17 and other factors to ensure additionality;

18 “(C) establish a trajectory that would re-
19 sult in zero net deforestation by not later than
20 20 years after the national deforestation base-
21 line has been established;

22 “(D) be adjusted over time to take account
23 of changing national circumstances;

1 “(E) be designed to account for all signifi-
2 cant sources of greenhouse gas emissions from
3 deforestation in the country; and

4 “(F) be consistent with the national defor-
5 estation baseline, if any, established for such
6 country under section 754(d)(1) and (2).

7 “(5) STATE-LEVEL OR PROVINCE-LEVEL AC-
8 TIVITIES.—

9 “(A) ELIGIBLE STATES OR PROVINCES.—

10 The Administrator, in consultation with the
11 Secretary of State and the Administrator of the
12 United States Agency for International Devel-
13 opment, shall establish within 2 years after the
14 date of enactment of this title, and periodically
15 review and update, a list of states or provinces
16 in developing countries where—

17 “(i) the developing country is not in-
18 cluded on the list of countries established
19 pursuant to paragraph (6)(A);

20 “(ii) the state or province by itself is
21 a major emitter of greenhouse gases from
22 tropical deforestation on a scale commen-
23 surate to the emissions of other countries;
24 and

1 “(iii) the state or province meets the
2 eligibility criteria in paragraphs (2) and
3 (3) for the geographic area under its juris-
4 diction.

5 “(B) ACTIVITIES.—The Administrator may
6 issue international offset credits for greenhouse
7 gas emission reductions achieved through activi-
8 ties to reduce deforestation at a state or provin-
9 cial level that meet the requirements of this sec-
10 tion. Such credits shall be determined by com-
11 paring the emissions from deforestation within
12 that state or province relative to the state or
13 province deforestation baseline for that state or
14 province established, in accordance with an
15 agreement or arrangement described in sub-
16 section (b)(2)(A), pursuant to subparagraph
17 (C) of this paragraph.

18 “(C) STATE OR PROVINCE DEFOREST-
19 ATION BASELINE.—A state or province deforest-
20 ation baseline shall—

21 “(i) be consistent with any existing
22 nationally appropriate mitigation commit-
23 ments or actions for the country in which
24 the activity is occurring, taking into con-
25 sideration the average annual historical de-

1 forestation rates of the state or province
2 during a period of at least 5 years, rel-
3 evant drivers of deforestation, and other
4 factors to ensure additionality;

5 “(ii) establish a trajectory that would
6 result in zero net deforestation by not later
7 than 20 years after the state or province
8 deforestation baseline has been established;
9 and

10 “(iii) be designed to account for all
11 significant sources of greenhouse gas emis-
12 sions from deforestation in the state or
13 province and adjusted to fully account for
14 emissions leakage outside the state or
15 province.

16 “(D) PHASE OUT.—Beginning 5 years
17 after the first calendar year for which a covered
18 entity must demonstrate compliance with sec-
19 tion 722(a), the Administrator shall issue no
20 further international offset credits for eligible
21 state-level or province-level activities to reduce
22 deforestation pursuant to this paragraph.

23 “(6) PROJECTS AND PROGRAMS TO REDUCE
24 DEFORESTATION.—

1 “(A) ELIGIBLE COUNTRIES.—The Admin-
2 istrator, in consultation with the Secretary of
3 State and the Administrator of the United
4 States Agency for International Development,
5 shall establish within 2 years after the date of
6 enactment of this title, and periodically review
7 and update, a list of developing countries each
8 of which—

9 “(i) the Administrator determines,
10 based on recent, credible, and reliable
11 emissions data, accounts for less than 1
12 percent of global greenhouse gas emissions
13 and less than 3 percent of global forest-
14 sector and land use change greenhouse gas
15 emissions; and

16 “(ii) has, or in the determination of
17 the Administrator is making a good faith
18 effort to develop, a land use or forest sec-
19 tor strategic plan that meets the criteria
20 described in paragraph (2)(C).

21 “(B) ACTIVITIES.—The Administrator may
22 issue international offset credits for greenhouse
23 gas emission reductions achieved through
24 project or program level activities to reduce de-
25 forestation in countries listed under subpara-

1 graph (A) that meet the requirements of this
2 section. The quantity of international offset
3 credits shall be determined by comparing the
4 project-level or program-level emissions from
5 deforestation to a deforestation baseline for
6 such project or program established pursuant to
7 subparagraph (C).

8 “(C) PROJECT-LEVEL OR PROGRAM-LEVEL
9 BASELINE.—A project-level or program-level de-
10 forestation baseline shall—

11 “(i) be consistent with any existing
12 nationally appropriate mitigation commit-
13 ments or actions for the country in which
14 the project or program is occurring, taking
15 into consideration the average annual his-
16 torical deforestation rates relevant to the
17 specific project or program during a period
18 of at least 5 years, applicable drivers of de-
19 forestation, and other factors to ensure
20 additionality;

21 “(ii) be designed to account for all
22 significant sources of greenhouse gas emis-
23 sions from deforestation in the project or
24 program boundary; and

1 “(iii) be adjusted to fully account for
2 emissions leakage outside the project or
3 program boundary.

4 “(D) PHASE OUT.—(i) Beginning 5 years
5 after the first calendar year for which a covered
6 entity must demonstrate compliance with sec-
7 tion 722(a), the Administrator shall issue no
8 further international offset credits for project-
9 level or program-level activities pursuant to this
10 paragraph, except as provided in clause (ii).

11 “(ii) The Administrator may extend the
12 phase out deadline for the issuance of inter-
13 national offset credits under this paragraph by
14 up to 8 years with respect to eligible activities
15 taking place in a least developed country, which
16 for purposes of this paragraph is defined as a
17 foreign country that the United Nations has
18 identified as among the least developed of devel-
19 oping countries at the time that the Adminis-
20 trator determines to provide an extension, if the
21 Administrator, in consultation with the Sec-
22 retary of State and the Administrator of the
23 United States Agency for International Devel-
24 opment, determines the country—

1 “(I) lacks sufficient capacity to adopt
2 and implement effective programs to
3 achieve reductions in deforestation meas-
4 ured against national baselines;

5 “(II) is receiving support under part
6 E to develop such capacity; and

7 “(III) has developed and is working to
8 implement a credible national strategy or
9 plan to reduce deforestation.

10 “(7) DEFORESTATION.—In implementing this
11 subsection, the Administrator, taking into consider-
12 ation the recommendations of the Advisory Board,
13 may include forest degradation, or soil carbon losses
14 associated with forested wetlands or peatlands, with-
15 in the meaning of deforestation.

16 “(8) CONSULTATION.—In implementing this
17 subsection, the Administrator shall consult with the
18 Secretary of Agriculture on relevant matters within
19 such Secretary’s area of expertise.

20 “(f) MODIFICATION OF REQUIREMENTS.—In promul-
21 gating regulations under subsection (b)(1) with respect to
22 the issuance of international offset credits under sub-
23 section (c), (d), or (e), the Administrator, in consultation
24 with the Secretary of State and the Administrator of the
25 United States Agency for International Development, may

1 modify or omit a requirement of this part (excluding the
2 requirements of this section) if the Administrator deter-
3 mines that the application of that requirement to such
4 subsection is not feasible. In modifying or omitting such
5 a requirement on the basis of infeasibility, the Adminis-
6 trator, in consultation with the Secretary of State and the
7 Administrator of the United States Agency for Inter-
8 national Development, shall ensure, with an adequate
9 margin of safety, the integrity of international offset cred-
10 its issued under this section and of the greenhouse gas
11 emissions cap established pursuant to section 703.

12 “(g) AVOIDING DOUBLE COUNTING.—The Adminis-
13 trator, in consultation with the Secretary of State, shall
14 seek, by whatever means appropriate, including agree-
15 ments, arrangements, or technical cooperation, to ensure
16 that activities on the basis of which international offset
17 credits are issued under this section are not used for com-
18 pliance with an obligation to reduce or avoid greenhouse
19 gas emissions, or increase greenhouse gas sequestration,
20 under a foreign or international regulatory system. In ad-
21 dition, no international offset credits shall be issued for
22 emission reductions from activities with respect to which
23 emission allowances were allocated under section 781 for
24 distribution under part E.

1 “(h) LIMITATION.—The Administrator shall not issue
2 international offset credits generated by projects based on
3 the destruction of hydrofluorocarbons.

4 **“PART E—SUPPLEMENTAL EMISSIONS**
5 **REDUCTIONS FROM REDUCED DEFORESTATION**

6 **“SEC. 751. DEFINITIONS.**

7 “In this part:

8 “(1) LEAKAGE PREVENTION ACTIVITIES.—The
9 term ‘leakage prevention activities’ means activities
10 in developing countries that are directed at pre-
11 serving existing forest carbon stocks, including for-
12 ested wetlands and peatlands, that might, absent
13 such activities, be lost through leakage.

14 “(2) NATIONAL DEFORESTATION REDUCTION
15 ACTIVITIES.—The term ‘national deforestation re-
16 duction activities’ means activities in developing
17 countries that reduce a quantity of greenhouse gas
18 emissions from deforestation that is calculated by
19 measuring actual emissions against a national defor-
20 estation baseline established pursuant to section
21 754(d)(1) and (2).

22 “(3) SUBNATIONAL DEFORESTATION REDUC-
23 TION ACTIVITIES.—The term ‘subnational deforest-
24 ation reduction activities’ means activities in devel-
25 oping countries that reduce a quantity of greenhouse

1 gas emissions from deforestation that are calculated
2 by measuring actual emissions using an appropriate
3 baseline established by the Administrator that is less
4 than national in scope.

5 “(4) SUPPLEMENTAL EMISSIONS REDUC-
6 TIONS.—The term ‘supplemental emissions reduc-
7 tions’ means greenhouse gas emissions reductions
8 achieved from reduced or avoided deforestation
9 under this part.

10 “(5) USAID.—The term ‘USAID’ means the
11 United States Agency for International Develop-
12 ment.

13 **“SEC. 752. FINDINGS.**

14 “Congress finds that—

15 “(1) as part of a global effort to mitigate cli-
16 mate change, it is in the national interest of the
17 United States to assist developing countries to re-
18 duce and ultimately halt emissions from deforest-
19 ation;

20 “(2) deforestation is one of the largest sources
21 of greenhouse gas emissions in developing countries,
22 amounting to roughly 20 percent of overall emissions
23 globally;

24 “(3) recent scientific analysis shows that it will
25 be substantially more difficult to limit the increase

1 in global temperatures to less than 2 degrees centi-
2 grade above preindustrial levels without reducing
3 and ultimately halting net emissions from deforest-
4 ation;

5 “(4) reducing emissions from deforestation is
6 highly cost-effective, compared to many other
7 sources of emissions reductions;

8 “(5) in addition to contributing significantly to
9 worldwide efforts to address global warming, assist-
10 ance under this part will generate significant envi-
11 ronmental and social cobenefits, including protection
12 of biodiversity, ecosystem services, and forest-related
13 livelihoods; and

14 “(6) 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 **“SEC. 753. SUPPLEMENTAL EMISSIONS REDUCTIONS**
2 **THROUGH REDUCED DEFORESTATION.**

3 “(a) REGULATIONS.—Not later than 2 years after
4 the date of enactment of this title, the Administrator, in
5 consultation with the Administrator of USAID and any
6 other appropriate agencies, shall promulgate regulations
7 establishing a program to use emission allowances set
8 aside for this purpose under section 781 to reduce green-
9 house gas emissions from deforestation in developing
10 countries in accordance with the requirements of this part.

11 “(b) OBJECTIVES.—The objectives of the program es-
12 tablished under this section shall be to—

13 “(1) achieve supplemental emissions reductions
14 of at least 720,000,000 tons of carbon dioxide equiv-
15 alent in 2020, a cumulative amount of at least
16 6,000,000,000 tons of carbon dioxide equivalent by
17 December 31, 2025, and additional supplemental
18 emissions reductions in subsequent years;

19 “(2) build capacity to reduce deforestation in
20 developing countries experiencing deforestation, in-
21 cluding preparing developing countries to participate
22 in international markets for international offset
23 credits for reduced emissions from deforestation; and

24 “(3) preserve existing forest carbon stocks in
25 countries where such forest carbon may be vulner-

1 able to international leakage, particularly in devel-
2 oping countries with largely intact native forests.

3 **“SEC. 754. REQUIREMENTS FOR INTERNATIONAL DEFOR-**
4 **ESTATION REDUCTION PROGRAM.**

5 “(a) ELIGIBLE COUNTRIES.—The Administrator
6 may support activities under this part only with respect
7 to a developing country that—

8 “(1) the Administrator, in consultation with the
9 Administrator of USAID, determines is experiencing
10 deforestation or forest degradation or has standing
11 forest carbon stocks that may be at risk of deforest-
12 ation or degradation; and

13 “(2) has entered into a bilateral or multilateral
14 agreement or arrangement with the United States
15 establishing the conditions of its participation in the
16 program established under this part, which shall in-
17 clude an agreement to meet the standards estab-
18 lished under subsection (d) for the activities to
19 which those standards apply.

20 “(b) ACTIVITIES.—

21 “(1) AUTHORIZED ACTIVITIES.—Subject to the
22 requirements of this part, the Administrator, in con-
23 sultation with the Administrator of USAID, may
24 support activities to achieve the objectives identified
25 in section 753(b), including—

1 “(A) national deforestation reduction ac-
2 tivities;

3 “(B) subnational deforestation reduction
4 activities, including pilot activities that reduce
5 greenhouse gas emissions but are subject to sig-
6 nificant uncertainty;

7 “(C) activities to measure, monitor, and
8 verify deforestation, avoided deforestation, and
9 deforestation rates;

10 “(D) leakage prevention activities;

11 “(E) development of measurement, moni-
12 toring, and verification capacities to enable a
13 country to quantify supplemental emissions re-
14 ductions and to generate for sale offset credits
15 from reduced or avoided deforestation;

16 “(F) development of governance structures
17 to reduce deforestation and illegal logging;

18 “(G) enforcement of requirements for re-
19 duced deforestation or forest conservation;

20 “(H) efforts to combat illegal logging and
21 increase enforcement cooperation;

22 “(I) providing incentives for policy reforms
23 to achieve the objectives identified in section
24 753(b); and

1 “(J) monitoring and evaluation of the re-
2 sults of the activities conducted under this sec-
3 tion.

4 “(2) ACTIVITIES SELECTED BY USAID.—

5 “(A) The Administrator of USAID, in con-
6 sultation with the Administrator, may select for
7 support and implementation pursuant to sub-
8 section (c) any of the activities described in
9 paragraph (1), consistent with this part and the
10 regulations promulgated under subsection (d),
11 and subject to the requirement to achieve the
12 objectives listed in section 753(b)(1).

13 “(B) With respect to the activities listed in
14 subparagraphs (D) through (J) of paragraph
15 (1), the Administrator of USAID, in consulta-
16 tion with the Administrator, shall have primary
17 but not exclusive responsibility for selecting the
18 activities to be supported and implemented.

19 “(3) INTERAGENCY COORDINATION.—The Ad-
20 ministrator and the Administrator of USAID shall
21 jointly develop and biennially update a strategic plan
22 for meeting the objectives listed in section 753(b)
23 and shall execute a memorandum of understanding
24 delineating the agencies’ respective roles in imple-
25 menting this part.

1 “(c) MECHANISMS.—

2 “(1) IN GENERAL.—The Administrator may
3 support activities to achieve the objectives identified
4 in section 753(b) by—

5 “(A) developing and implementing pro-
6 grams and projects that achieve such objectives;
7 and

8 “(B) distributing emission allowances to a
9 country that is eligible under subsection (a), to
10 a private or public group (including inter-
11 national organizations), or to an international
12 fund established by an international agreement
13 to which the United States is a party, to carry
14 out activities to achieve such objectives.

15 “(2) USAID ACTIVITIES.—With respect to ac-
16 tivities selected and implemented by the Adminis-
17 trator of USAID pursuant to subsection (b)(2), the
18 Administrator shall distribute emission allowances as
19 provided in paragraph (1) of this subsection based
20 upon the direction of the Administrator of USAID,
21 subject to the availability of allowances for such ac-
22 tivities.

23 “(3) IMPLEMENTATION THROUGH INTER-
24 NATIONAL ORGANIZATIONS.—If support is distrib-
25 uted through an international organization, the

1 agency responsible for selecting activities in accord-
2 ance with subsection (b)(1) or (2), in consultation
3 with the Secretary of State, shall ensure the estab-
4 lishment and implementation of adequate mecha-
5 nisms to apply and enforce the eligibility require-
6 ments and other requirements of this section.

7 “(4) ROLE OF THE SECRETARY OF STATE.—
8 The Administrator may not distribute emission al-
9 lowances under this part to the government of an-
10 other country or to an international organization or
11 international fund unless the Secretary of State has
12 concurred with such distribution.

13 “(d) STANDARDS.—The Administrator, in consulta-
14 tion with the Administrator of USAID, shall promulgate
15 regulations establishing standards to ensure that supple-
16 mental emissions reductions achieved through supported
17 activities are additional, measurable, verifiable, perma-
18 nent, and monitored, and account for leakage and uncer-
19 tainty. In addition, such standards shall—

20 “(1) require the establishment of a national de-
21 forestation baseline for each country with national
22 deforestation reduction activities that is used to ac-
23 count for reductions achieved from such activities;

24 “(2) provide that a national deforestation base-
25 line established under paragraph (1) shall—

1 “(A) be national in scope;

2 “(B) be consistent with nationally appro-
3 priate mitigation commitments or actions with
4 respect to deforestation, taking into consider-
5 ation the average annual historical deforestation
6 rates of the country during a period of at least
7 5 years, the applicable drivers of deforestation,
8 and other factors to ensure additionality;

9 “(C) establish a trajectory that would re-
10 sult in zero net deforestation by not later than
11 20 years from the date the baseline is estab-
12 lished;

13 “(D) be adjusted over time to take account
14 of changing national circumstances;

15 “(E) be designed to account for all signifi-
16 cant sources of greenhouse gas emissions from
17 deforestation in the country; and

18 “(F) be consistent with the national defor-
19 estation baseline, if any, established for such
20 country under section 743(e)(4);

21 “(3) with respect to support provided pursuant
22 to subsection (b)(1)(A) or (B), require supplemental
23 emissions reductions to be achieved and verified
24 prior to compensation through the distribution of
25 emission allowances under this part;

1 “(4) with respect to accounting for subnational
2 deforestation reduction activities that lack the stand-
3 ardized or precise measurement and monitoring
4 techniques needed for a full accounting of changes
5 in emissions or baselines, or are subject to other
6 sources of uncertainty, apply a conservative discount
7 factor to reflect the uncertainty regarding the levels
8 of reductions achieved;

9 “(5) ensure that activities under this part shall
10 be designed, carried out, and managed—

11 “(A) in accordance with widely accepted,
12 environmentally sustainable forest management
13 practices;

14 “(B) to promote or restore native forest
15 species and ecosystems where practicable, and
16 to avoid the introduction of invasive nonnative
17 species;

18 “(C) in a manner that gives due regard to
19 the rights and interests of local communities,
20 indigenous peoples, forest-dependent commu-
21 nities, and vulnerable social groups;

22 “(D) with consultations with, and full par-
23 ticipation of, local communities, indigenous peo-
24 ples, and forest-dependent communities in af-
25 fected areas, as partners and primary stake-

1 holders, prior to and during the design, plan-
2 ning, implementation, and monitoring and eval-
3 uation of activities; and

4 “(E) with equitable sharing of profits and
5 benefits derived from the activities with local
6 communities, indigenous peoples, and forest-de-
7 pendent communities; and

8 “(6) with respect to support for all activities
9 under this part, seek to ensure the establishment
10 and enforcement, by the country in which the activi-
11 ties occur, of legal regimes, standards, processes,
12 and safeguards that—

13 “(A) give due regard to the rights and in-
14 terests of local communities, indigenous peoples,
15 forest-dependent communities, and vulnerable
16 social groups;

17 “(B) promote consultations with local com-
18 munities and indigenous peoples and forest-de-
19 pendent communities in affected areas, as part-
20 ners and primary stakeholders, prior to and
21 during the design, planning, implementation,
22 monitoring, and evaluation of activities under
23 this part; and

24 “(C) encourage equitable sharing of profits
25 and benefits from incentives for emissions re-

1 ductions or leakage prevention with local com-
2 munities, indigenous peoples, and forest-de-
3 pendent communities.

4 “(e) SCOPE.—(1) The Administrator shall include
5 within the scope of activities under this part reduced emis-
6 sions from forest degradation.

7 “(2) The Administrator, in consultation with the Ad-
8 ministrators of USAID, may decide, taking into account
9 any advice from the Advisory Board, to expand, where ap-
10 propriate, the scope of activities under this part to include
11 reduced soil carbon-derived emissions associated with de-
12 forestation and degradation of forested wetlands and
13 peatlands.

14 “(f) ACCOUNTING.—The Administrator shall estab-
15 lish a publicly accessible registry of the supplemental emis-
16 sions reductions achieved through support provided under
17 this part each year, after appropriately discounting for un-
18 certainty and other relevant factors as required by the
19 standards established under subsection (d).

20 “(g) TRANSITION TO NATIONAL REDUCTIONS.—Be-
21 ginning 5 years after the date that a country entered into
22 the agreement or arrangement required under subsection
23 (a)(2), the Administrator shall provide no further com-
24 pensation through emission allowances to that country
25 under this part for any subnational deforestation reduc-

1 tion activities, except that the Administrator may extend
2 this period by an additional 5 years if the Administrator,
3 in consultation with the Administrator of USAID, deter-
4 mines that—

5 “(1) the country is making substantial progress
6 towards adopting and implementing a program to
7 achieve reductions in deforestation measured against
8 a national baseline;

9 “(2) the greenhouse gas emissions reductions
10 achieved are not resulting in significant leakage; and

11 “(3) the greenhouse gas emissions reductions
12 achieved are being appropriately discounted to ac-
13 count for any leakage that is occurring.

14 The limitation under this subsection shall not apply to
15 support for activities to further the objectives listed in sec-
16 tion 753(b)(2) or (3).

17 “(h) COORDINATION WITH U.S. FOREIGN ASSIST-
18 ANCE.—Subject to the direction of the President, the Ad-
19 ministrator and the Administrator of USAID shall, to the
20 extent practicable and consistent with the objectives of
21 this program, seek to align activities under this section
22 with broader development, poverty alleviation, or natural
23 resource management objectives and initiatives in the re-
24 cipient country.

1 “(i) SUPPORT AS SUPPLEMENT.—The provision of
2 support for activities under this part shall be used to sup-
3 plement, and not to supplant, any other Federal, State,
4 or local support available to carry out such qualifying ac-
5 tivities under this part.

6 “(j) NOT ELIGIBLE FOR OFFSET CREDIT.—Activities
7 that receive support under this part shall not be issued
8 offset credits for the greenhouse gas emissions reductions
9 or avoidance, or greenhouse gas sequestration, produced
10 by such activities.

11 **“SEC. 755. REPORTS AND REVIEWS.**

12 “(a) REPORTS.—Not later than January 1, 2014,
13 and annually thereafter, the Administrator and the Ad-
14 ministrator of USAID shall submit to the Committee on
15 Energy and Commerce and the Committee on Foreign Af-
16 fairs of the House of Representatives, and the Committee
17 on Environment and Public Works and the Committee on
18 Foreign Relations of the Senate, and make available to
19 the public, a report on the support provided under this
20 part during the prior fiscal year. The report shall in-
21 clude—

22 “(1) a statement of the quantity of supple-
23 mental emissions reductions for which compensation
24 in the form of emission allowances was provided
25 under this part during the prior fiscal year, as reg-

1 istered by the Administrator under section 754(f);
2 and

3 “(2) a description of the national and sub-
4 national deforestation reduction activities, capacity-
5 building activities, and leakage prevention activities
6 supported under this part, including a statement of
7 the quantity of emission allowances distributed to
8 each recipient for each activity during the prior fis-
9 cal year, and a description of what was accomplished
10 through each of the activities.

11 “(b) REVIEWS.—Not later than 4 years after the date
12 of enactment of this title and every 5 years thereafter,
13 the Administrator and the Administrator of USAID, tak-
14 ing into consideration any evaluation by or recommenda-
15 tions from the Advisory Board established under section
16 731, shall conduct a review of the activities undertaken
17 pursuant to this part and make any appropriate changes
18 in the program established under this part, consistent with
19 the requirements of this part, based on the findings of the
20 review. The review shall include the effects of the activities
21 on—

22 “(1) total documented carbon stocks of each
23 country that directly or indirectly received support
24 under this part compared with such country’s na-

1 tional deforestation baseline established under sec-
2 tion 754(d)(1) and (2);

3 “(2) the number of countries with the capacity
4 to generate for sale instruments in the nature of off-
5 set credits from forest-related activities, and the
6 amount of such activities;

7 “(3) forest governance in each country that di-
8 rectly or indirectly received support under this part;

9 “(4) indigenous peoples and forest-dependent
10 communities residing in areas affected by such ac-
11 tivities;

12 “(5) biodiversity and ecosystem services within
13 forested areas associated with the activities;

14 “(6) subnational and international leakage; and

15 “(7) any program or mechanism established
16 under the United Nations Framework Convention on
17 Climate Change related to greenhouse gas emissions
18 from deforestation.

19 **“SEC. 756. LEGAL EFFECT OF PART.**

20 “(1) IN GENERAL.—Nothing in this part super-
21 sedes, limits, or otherwise affects any restriction im-
22 posed by Federal law (including regulations) on any
23 interaction between an entity located in the United
24 States and an entity located in a foreign country.

1 “(2) ROLE OF THE SECRETARY OF STATE.—
2 Nothing in this part shall be construed as affecting
3 the role of the Secretary of State or the responsibil-
4 ities of the Secretary under section 622(c) of the
5 Foreign Assistance Act of 1961.”.

6 **SEC. 312. DEFINITIONS.**

7 Title VII of the Clean Air Act, as added by section
8 311 of this Act, is amended by inserting before part A
9 the following new section:

10 **“SEC. 700. DEFINITIONS.**

11 “In this title:

12 “(1) ADDITIONAL.—The term ‘additional’,
13 when used with respect to reductions or avoidance of
14 greenhouse gas emissions, or to sequestration of
15 greenhouse gases, means reductions, avoidance, or
16 sequestration that result in a lower level of net
17 greenhouse gas emissions or atmospheric concentra-
18 tions than would occur in the absence of an offset
19 project.

20 “(2) ADDITIONALITY.—The term ‘additionality’
21 means the extent to which reductions or avoidance
22 of greenhouse gas emissions, or sequestration of
23 greenhouse gases, are additional.

1 “(3) ADVISORY BOARD.—The term ‘Advisory
2 Board’ means the Offsets Integrity Advisory Board
3 established under section 731.

4 “(4) AFFILIATED.—The term ‘affiliated’—

5 “(A) when used in relation to an entity
6 means owned or controlled by, or under com-
7 mon ownership or control with, another entity,
8 as determined by the Administrator; and

9 “(B) when used in relation to a natural
10 gas local distribution company, means owned or
11 controlled by, or under common ownership or
12 control with, another natural gas local distribu-
13 tion company, as determined by the Adminis-
14 trator.

15 “(5) ALLOWANCE.—The term ‘allowance’
16 means a limited authorization to emit, or have at-
17 tributable greenhouse gas emissions in an amount
18 of, 1 ton of carbon dioxide equivalent of a green-
19 house gas in accordance with this title. Such term
20 includes an emission allowance, a compensatory al-
21 lowance, and an international emission allowance,
22 but does not include an international reserve allow-
23 ance established under section 766.

1 “(6) ATTRIBUTABLE GREENHOUSE GAS EMIS-
2 SIONS.—The term ‘attributable greenhouse gas emis-
3 sions’, for a given calendar year, means—

4 “(A) for a covered entity that is a fuel pro-
5 ducer or importer described in paragraph
6 (13)(B), greenhouse gases that would be emit-
7 ted from the combustion of any petroleum-
8 based or coal-based liquid fuel, petroleum coke,
9 or natural gas liquid, produced or imported by
10 that covered entity during that calendar year
11 for sale or distribution in interstate commerce,
12 assuming no capture and sequestration of any
13 greenhouse gas emissions;

14 “(B) for a covered entity that is an indus-
15 trial gas producer or importer described in
16 paragraph (13)(C), the tons of carbon dioxide
17 equivalent of any gas described in clauses (i)
18 through (vi) of paragraph (13)(C)—

19 “(i) produced or imported by such
20 covered entity during that calendar year
21 for sale or distribution in interstate com-
22 merce; or

23 “(ii) released as fugitive emissions in
24 the production of fluorinated gas; and

1 “(C) for a natural gas local distribution
2 company described in paragraph (13)(J), green-
3 house gases that would be emitted from the
4 combustion of the natural gas, and any other
5 gas meeting the specifications for commingling
6 with natural gas for purposes of delivery, that
7 such entity delivered during that calendar year
8 to customers that are not covered entities, as-
9 suming no capture and sequestration of that
10 greenhouse gas.

11 “(7) BIOLOGICAL SEQUESTRATION; BIO-
12 LOGICALLY SEQUESTERED.—The terms ‘biological
13 sequestration’ and ‘biologically sequestered’ mean
14 the removal of greenhouse gases from the atmos-
15 phere by terrestrial biological means, such as by
16 growing plants, and the storage of those greenhouse
17 gases in plants or soils.

18 “(8) CAPPED EMISSIONS.—The term ‘capped
19 emissions’ means greenhouse gas emissions to which
20 section 722 applies, including emissions from the
21 combustion of natural gas, petroleum-based or coal-
22 based liquid fuel, petroleum coke, or natural gas liq-
23 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, offset
19 credits, or term offset credits under this title, an in-
20 dividual authorized, through a certificate of rep-
21 resentation submitted to the Administrator by the
22 owners and operators or similar entity official, to
23 represent the owners and operators or similar entity
24 official in all matters pertaining to this title (includ-
25 ing the holding, transfer, or disposition of allowances

1 or offset credits), and to make all submissions to the
2 Administrator under 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.—For pur-
10 poses of part D, the term ‘domestic offset credit’
11 means an offset credit issued under part D, other
12 than an international offset credit. For purposes of
13 part C, the term means any offset credit issued
14 under the American Clean Energy and Security Act
15 of 2009, or the amendments made thereby. The
16 term does not include a term offset credit.

17 “(18) ELECTRICITY SOURCE.—The term ‘elec-
18 tricity source’ means a stationary source that in-
19 cludes one or more utility units.

20 “(19) EMISSION.—The term ‘emission’ means
21 the release of a greenhouse gas into the ambient air.
22 Such term does not include gases that are captured
23 and geologically sequestered, except to the extent
24 that they are later released into the atmosphere, in

1 which case compliance must be demonstrated pursu-
2 ant to section 722(b)(5).

3 “(20) EMISSION ALLOWANCE.—The term ‘emis-
4 sion allowance’ means an allowance established
5 under section 721(a) or section 726(g)(2) or
6 (h)(1)(C).

7 “(21) FAIR MARKET VALUE.—The term ‘fair
8 market value’ means the average daily closing price
9 on registered exchanges or, if such a price is un-
10 available, the average price as determined by the Ad-
11 ministrator, during a specified time period, of an
12 emission allowance.

13 “(22) FEDERAL LAND.—The term ‘Federal
14 land’ means land that is owned by the United
15 States, other than land held in trust for an Indian
16 or Indian tribe.

17 “(23) FOSSIL FUEL.—The term ‘fossil fuel’
18 means natural gas, petroleum, or coal, or any form
19 of solid, liquid, or gaseous fuel derived from such
20 material, including consumer products that are de-
21 rived from such materials and are combusted.

22 “(24) FOSSIL FUEL-FIRED.—The term ‘fossil
23 fuel-fired’ means powered by combustion of fossil
24 fuel, alone or in combination with any other fuel, re-
25 gardless of the percentage of fossil fuel consumed.

1 “(25) FUGITIVE EMISSIONS.—The term ‘fugi-
2 tive emissions’ means emissions from leaks, valves,
3 joints, or other small openings in pipes, ducts, or
4 other equipment, or from vents.

5 “(26) GEOLOGIC SEQUESTRATION; GEOLOGI-
6 CALLY SEQUESTERED.—The terms ‘geologic seques-
7 tration’ and ‘geologically sequestered’ mean the se-
8 questration of greenhouse gases in subsurface geo-
9 logic formations for purposes of permanent storage.

10 “(27) GEOLOGIC SEQUESTRATION SITE.—The
11 term ‘geologic sequestration site’ means a site where
12 carbon dioxide is geologically sequestered.

13 “(28) GREENHOUSE GAS.—The term ‘green-
14 house gas’ means any gas described in section
15 711(a) or designated under section 711, except to
16 the extent that it is regulated under title VI.

17 “(29) HOLD.—The term ‘hold’ means, with re-
18 spect to an allowance, offset credit, or term offset
19 credit, to have in the appropriate account in the al-
20 lowance tracking system established under section
21 724(d), or submit to the Administrator for recording
22 in such account.

23 “(30) INDUSTRIAL SOURCE.—The term ‘indus-
24 trial source’ means any stationary source that—

25 “(A) is not an electricity source; and

1 “(B) is in—

2 “(i) the manufacturing sector (as de-
3 fined in North American Industrial Classi-
4 fication System codes 31, 32, and 33); or

5 “(ii) the natural gas processing or
6 natural gas pipeline transportation sector
7 (as defined in North American Industrial
8 Classification System codes 211112 and
9 486210).

10 “(31) INTERNATIONAL EMISSION ALLOW-
11 ANCE.—The term ‘international emission allowance’
12 means a tradable authorization to emit 1 ton of car-
13 bon dioxide equivalent of greenhouse gas that is
14 issued by a national or supranational foreign govern-
15 ment pursuant to a qualifying international program
16 designated by the Administrator pursuant to section
17 728(a).

18 “(32) INTERNATIONAL OFFSET CREDIT.—The
19 term ‘international offset credit’ means an offset
20 credit issued by the Administrator under section
21 743.

22 “(33) LEAKAGE.—Except as provided in part
23 F, the term ‘leakage’ means a significant increase in
24 greenhouse gas emissions, or significant decrease in
25 sequestration, which is caused by an offset project or

1 activities under part E and occurs outside the
2 boundaries of the offset project or the relevant pro-
3 gram or project under part E.

4 “(34) MINERAL SEQUESTRATION.—The term
5 ‘mineral sequestration’ means sequestration of car-
6 bon dioxide from the atmosphere by capturing car-
7 bon dioxide into a permanent mineral, such as the
8 aqueous precipitation of carbonate minerals that re-
9 sults in the storage of carbon dioxide in a mineral
10 form.

11 “(35) NATURAL GAS LIQUID.—The term ‘nat-
12 ural gas liquid’ means ethane, butane, isobutane,
13 natural gasoline, and propane.

14 “(36) NATURAL GAS LOCAL DISTRIBUTION
15 COMPANY.—The term ‘natural gas local distribution
16 company’ has the meaning given the term ‘local dis-
17 tribution company’ in section 2(17) of the Natural
18 Gas Policy Act of 1978 (15 U.S.C. 3301(17)).

19 “(37) OFFSET CREDIT.—For purposes of this
20 section and part D, the term ‘offset credit’ means an
21 offset credit issued under part D. For purposes of
22 part C, the term means any offset credit issued
23 under the American Clean Energy and Security Act
24 of 2009, or the amendments made thereby. The
25 term does not include a term offset credit.

1 “(38) OFFSET PROJECT.—The term ‘offset
2 project’ means a project or activity that reduces or
3 avoids greenhouse gas emissions, or sequesters
4 greenhouse gases, and for which offset credits are or
5 may be issued under part D.

6 “(39) OFFSET PROJECT DEVELOPER.—The
7 term ‘offset project developer’ means the individual
8 or entity designated as the offset project developer
9 in an offset project approval petition under section
10 735(c)(1).

11 “(40) PETROLEUM.—The term ‘petroleum’ in-
12 cludes crude oil, tar sands, oil shale, and heavy oils.

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

15 “(A) Materials, pre-commercial thinnings,
16 or removed invasive species from National For-
17 est System land and public lands (as defined in
18 section 103 of the Federal Land Policy and
19 Management Act of 1976 (43 U.S.C. 1702)),
20 including those that are byproducts of preven-
21 tive treatments (such as trees, wood, brush,
22 thinnings, chips, and slash), that are removed
23 as part of a federally recognized timber sale, or
24 that are removed to reduce hazardous fuels, to

1 reduce or contain disease or insect infestation,
2 or to restore ecosystem health, and that are—

3 “(i) not from components of the Na-
4 tional Wilderness Preservation System,
5 Wilderness Study Areas, Inventoried
6 Roadless Areas, old growth stands, late-
7 successional stands (except for dead, se-
8 verely damaged, or badly infested trees),
9 components of the National Landscape
10 Conservation System, National Monu-
11 ments, National Conservation Areas, Des-
12 ignated Primitive Areas, or Wild and Sce-
13 nic Rivers corridors;

14 “(ii) harvested in environmentally sus-
15 tainable quantities, as determined by the
16 appropriate Federal land manager; and

17 “(iii) harvested in accordance with
18 Federal and State law, and applicable land
19 management plans.

20 “(B) Any organic matter that is available
21 on a renewable or recurring basis from non-
22 Federal land or land belonging to an Indian or
23 Indian tribe that is held in trust by the United
24 States or subject to a restriction against alien-
25 ation imposed by the United States, including—

1 “(i) renewable plant material, includ-
2 ing—

3 “(I) feed grains;

4 “(II) other agricultural commod-
5 ities;

6 “(III) other plants and trees; and

7 “(IV) algae; and

8 “(ii) waste material, including—

9 “(I) crop residue;

10 “(II) other vegetative waste ma-
11 terial (including wood waste and wood
12 residues);

13 “(III) animal waste and byprod-
14 ucts (including fats, oils, greases, and
15 manure);

16 “(IV) construction waste; and

17 “(V) food waste and yard waste.

18 “(C) Residues and byproducts from wood,
19 pulp, or paper products facilities.

20 “(42) RETIRE.—The term ‘retire’, with respect
21 to an allowance, offset credit, or term offset credit,
22 established or issued under the American Clean En-
23 ergy and Security Act of 2009 or the amendments
24 made thereby, means to disqualify such allowance or
25 offset credit for any subsequent use under this title,

1 regardless of whether the use is a sale, exchange, or
2 submission of the allowance, offset credit, or term
3 offset credit to satisfy a compliance obligation.

4 “(43) REVERSAL.—The term ‘reversal’ means
5 an intentional or unintentional loss of sequestered
6 greenhouse gases to the atmosphere.

7 “(44) SEQUESTERED AND SEQUESTRATION.—
8 The terms ‘sequestered’ and ‘sequestration’ mean
9 the separation, isolation, or removal of greenhouse
10 gases from the atmosphere, as determined by the
11 Administrator. The terms include biological, geo-
12 logic, and mineral sequestration, but do not include
13 ocean fertilization techniques.

14 “(45) STATIONARY SOURCE.—The term ‘sta-
15 tionary source’ means any integrated operation com-
16 prising any plant, building, structure, or stationary
17 equipment, including support buildings and equip-
18 ment, that is located within one or more contiguous
19 or adjacent properties, is under common control of
20 the same person or persons, and emits or may emit
21 a greenhouse gas.

22 “(46) STRATEGIC RESERVE ALLOWANCE.—The
23 term ‘strategic reserve allowance’ means an emission
24 allowance reserved for, transferred to, or deposited
25 in the strategic reserve under section 726.

1 “(47) TON.—The term ‘ton’ means metric ton.

2 “(48) UNCAPPED EMISSIONS.—The term ‘un-
3 capped emissions’ means emissions of greenhouse
4 gases emitted after December 31, 2011, that are not
5 capped emissions.

6 “(49) UNITED STATES GREENHOUSE GAS EMIS-
7 SIONS.—The term ‘United States greenhouse gas
8 emissions’ means the total quantity of annual green-
9 house gas emissions from the United States, as cal-
10 culated by the Administrator and reported to the
11 United Nations Framework Convention on Climate
12 Change Secretariat.

13 “(50) UTILITY UNIT.—The term ‘utility unit’
14 means a combustion device that, on January 1,
15 2009, or any date thereafter, is fossil fuel-fired and
16 serves a generator that produces electricity for sale,
17 unless such combustion device, during the 12-month
18 period starting the later of January 1, 2009, or the
19 commencement of commercial operation and each
20 calendar year starting after such later date—

21 “(A) is part of an integrated cycle system
22 that cogenerates steam and electricity during
23 normal operation and that supplies one-third or
24 less of its potential electric output capacity and
25 25 MW or less of electrical output for sale; or

1 “(B) combusts materials of which more
2 than 95 percent is municipal solid waste on a
3 heat input basis.

4 “(51) VINTAGE YEAR.—The term ‘vintage year’
5 means the calendar year for which an emission al-
6 lowance is established under section 721(a) or which
7 is assigned to an emission allowance under section
8 726(g)(3)(A), except that the vintage year for a
9 strategic reserve allowance shall be the year in which
10 such allowance is purchased at auction.”.

11 **Subtitle B—Disposition of**
12 **Allowances**

13 **SEC. 321. DISPOSITION OF ALLOWANCES FOR GLOBAL**
14 **WARMING POLLUTION REDUCTION PRO-**
15 **GRAM.**

16 Title VII of the Clean Air Act, as added by section
17 311 of this Act, is amended by adding at the end the fol-
18 lowing part:

19 **“PART H—DISPOSITION OF ALLOWANCES**

20 **“SEC. 781. ALLOCATION OF ALLOWANCES FOR SUPPLE-**
21 **MENTAL REDUCTIONS.**

22 “(a) IN GENERAL.—The Administrator shall allocate
23 for each vintage year the following percentage of the emis-
24 sion allowances established under section 721(a), for dis-
25 tribution in accordance with part E:

1 “(1) For vintage years 2012 through 2025, 5
2 percent.

3 “(2) For vintage years 2026 through 2030, 3
4 percent.

5 “(3) For vintage years 2031 through 2050, 2
6 percent.

7 “(b) ADJUSTMENT.—The Administrator shall modify
8 the percentages set forth in subsection (a) as necessary
9 to ensure the achievement of the annual supplemental
10 emission reduction objective for 2020, and the cumulative
11 reduction objective through 2025, set forth in section
12 753(b)(1).

13 “(c) CARRYOVER.—If the Administrator has not dis-
14 tributed all of the allowances allocated pursuant to this
15 section for a given vintage year by the end of that year,
16 all such undistributed emission allowances shall, in accord-
17 ance with section 782(s), be exchanged for allowances
18 from the following vintage year and treated as part of the
19 allocation for supplemental reductions under this section
20 for that later vintage year.

21 **“SEC. 782. ALLOCATION OF EMISSION ALLOWANCES.**

22 “(a) ELECTRICITY CONSUMERS.—(1) The Adminis-
23 trator shall allocate emission allowances for the benefit of
24 electricity consumers, to be distributed in accordance with
25 section 783(b), (c), and (d) in the following amounts:

1 “(A) For vintage years 2012 and 2013: 43.75
2 percent of the emission allowances established for
3 each year under section 721(a).

4 “(B) For vintage years 2014 and 2015: 38.89
5 percent of the emission allowances established for
6 each year under section 721(a).

7 “(C) For vintage years 2016 through 2025:
8 35.00 percent of the emission allowances established
9 for each year under section 721(a).

10 “(D) For vintage year 2026: 28 percent of the
11 emission allowances established for that year under
12 section 721(a).

13 “(E) For vintage year 2027: 21 percent of the
14 emission allowances established for that year under
15 section 721(a).

16 “(F) For vintage year 2028: 14 percent of the
17 emission allowances established for that year under
18 section 721(a).

19 “(G) For vintage year 2029: 7 percent of the
20 emission allowances established for that year under
21 section 721(a).

22 “(2) The Administrator shall allocate emission allow-
23 ances for energy efficiency, renewable electricity, and low
24 income ratepayer assistance programs administered by
25 small electricity local distribution companies, to be distrib-

1 uted in accordance with section 783(e) in the following
2 amounts:

3 “(A) For vintage years 2012 through 2025: 0.5
4 percent of the emission allowances established each
5 year under section 721(a).

6 “(B) For vintage year 2026: 0.4 percent of the
7 emission allowances established for that year under
8 section 721(a).

9 “(C) For vintage year 2027: 0.3 percent of the
10 emission allowances established for that year under
11 section 721(a).

12 “(D) For vintage year 2028: 0.2 percent of the
13 emission allowances established for that year under
14 section 721(a).

15 “(E) For vintage year 2029: 0.1 percent of the
16 emission allowances established for that year under
17 section 721(a).

18 “(3) For vintage year 2012, the Administrator shall
19 allocate 0.35 percent of emission allowances established
20 for such year under section 721(a) to avoid disincentives
21 to the continued use of existing energy-efficient cogenera-
22 tion facilities at industrial parks, to be distributed in ac-
23 cordance with section 783(f).

24 “(b) NATURAL GAS CONSUMERS.—The Adminis-
25 trator shall allocate emission allowances for the benefit of

1 natural gas consumers to be distributed in accordance
2 with section 784 in the following amounts:

3 “(1) For vintage years 2016 through 2025, 9
4 percent of the emission allowances established for
5 each year under section 721(a).

6 “(2) For vintage year 2026, 7.2 percent of the
7 emission allowances established for that year under
8 section 721(a).

9 “(3) For vintage year 2027, 5.4 percent of the
10 emission allowances established for that year under
11 section 721(a).

12 “(4) For vintage year 2028, 3.6 percent of the
13 emission allowances established for that year under
14 section 721(a).

15 “(5) For vintage year 2029, 1.8 percent of the
16 emission allowances established for that year under
17 section 721(a).

18 “(c) HOME HEATING OIL AND PROPANE CON-
19 SUMERS.—The Administrator shall allocate emission al-
20 lowances for the benefit of home heating oil and propane
21 consumers to be distributed in accordance with section
22 785 in the following amounts:

23 “(1) For vintage years 2012 and 2013, 1.875
24 percent of the emission allowances established for
25 each year under section 721(a).

1 “(2) For vintage years 2014 and 2015, 1.67
2 percent of the emission allowances established for
3 each year under section 721(a).

4 “(3) For vintage years 2016 through 2025, 1.5
5 percent of the emission allowances established for
6 each year under section 721(a).

7 “(4) For vintage year 2026, 1.2 percent of the
8 emission allowances established for that year under
9 section 721(a).

10 “(5) For vintage year 2027, 0.9 percent of the
11 emission allowances established for that year under
12 section 721(a).

13 “(6) For vintage year 2028, 0.6 percent of the
14 emission allowances established for that year under
15 section 721(a).

16 “(7) For vintage year 2029, 0.3 percent of the
17 emission allowances established for that year under
18 section 721(a).

19 “(d) **LOW INCOME CONSUMERS.**—For each vintage
20 year starting in 2012, the Administrator shall auction,
21 pursuant to section 791, 15 percent of the emission allow-
22 ances established for each year under section 721(a), with
23 the proceeds used for the benefit of low income consumers
24 to fund the program set forth in subtitle C of title IV of

1 American Clean Energy and Security Act of 2009 and the
2 amendments made thereby.

3 “(e) TRADE-VULNERABLE INDUSTRIES.—

4 “(1) IN GENERAL.—The Administrator shall al-
5 locate emission allowances to energy-intensive, trade-
6 exposed entities, to be distributed in accordance with
7 section 765, in the following amounts:

8 “(A) For vintage years 2012 and 2013, up
9 to 2.0 percent of the emission allowances estab-
10 lished for each year under section 721(a).

11 “(B) For vintage year 2014, up to 15 per-
12 cent of the emission allowances established for
13 that year under section 721(a).

14 “(C) For vintage year 2015, up to the
15 product of—

16 “(i) the amount specified in para-
17 graph (2); multiplied by

18 “(ii) the quantity of emission allow-
19 ances established for 2015 under section
20 721(a) divided by the quantity of emission
21 allowances established for 2014 under sec-
22 tion 721(a).

23 “(D) For vintage year 2016, up to the
24 product of—

1 “(i) the amount specified in para-
2 graph (3); multiplied by

3 “(ii) the quantity of emission allow-
4 ances established for 2015 under section
5 721(a) divided by the quantity of emission
6 allowances established for 2014 under sec-
7 tion 721(a).

8 “(E) For vintage years 2017 through
9 2025, up to the product of—

10 “(i) the amount specified in para-
11 graph (4); multiplied by

12 “(ii) the quantity of emission allow-
13 ances established for that year under sec-
14 tion 721(a) divided by the quantity of
15 emission allowances established for 2016
16 under section 721(a).

17 “(F) For vintage years 2026 through
18 2050, up to the product of the amount specified
19 in paragraph (4)—

20 “(i) multiplied by the quantity of
21 emission allowances established for the ap-
22 plicable year during 2026 through 2050
23 under section 721(a) divided by the quan-
24 tity of emission allowances established for
25 2016 under section 721(a); and

1 “(ii) multiplied by a factor that shall
2 equal 90 percent for 2026 and decline 10
3 percent for each year thereafter until
4 reaching zero, except that, if the President
5 modifies a percentage for a year under
6 subparagraph (A) of section 767(c)(3), the
7 highest percentage the President applies
8 for any sector under that subparagraph for
9 that year (not exceeding 100 percent) shall
10 be used for that year instead of the factor
11 otherwise specified in this clause.

12 “(2) CARRYOVER.—After the Administrator dis-
13 tributes emission allowances pursuant to section 765
14 for any given vintage year, any emission allowances
15 allocated to energy-intensive, trade-exposed entities
16 pursuant to this subsection that have not been so
17 distributed shall, in accordance with subsection (s),
18 be exchanged for allowances from the following vin-
19 tage year and treated as part of the allocation to
20 such entities for that later vintage year.

21 “(f) DEPLOYMENT OF CARBON CAPTURE AND SE-
22 QUESTRATION TECHNOLOGY.—

23 “(1) ANNUAL ALLOCATION.—The Adminis-
24 trator shall allocate emission allowances for the de-
25 ployment of carbon capture and sequestration tech-

1 nology to be distributed in accordance with section
2 786 in the following amounts:

3 “(A) For vintage years 2014 through
4 2017, 1.75 percent of the emission allowances
5 established for each year under section 721(a).

6 “(B) For vintage years 2018 and 2019,
7 4.75 percent of the emission allowances estab-
8 lished for each year under section 721(a).

9 “(C) For vintage years 2020 through
10 2050, 5 percent of the emission allowances es-
11 tablished for each year under section 721(a).

12 “(2) CARRYOVER.—If the Administrator has
13 not distributed all of the allowances allocated pursu-
14 ant to this subsection for a given vintage year by the
15 end of that year, all such undistributed emission al-
16 lowances shall, in accordance with subsection (s), be
17 exchanged for allowances from the following vintage
18 year and treated as part of the allocation for the de-
19 ployment of carbon capture and sequestration tech-
20 nology under this subsection for that later vintage
21 year.

22 “(g) INVESTMENT IN ENERGY EFFICIENCY AND RE-
23 NEWABLE ENERGY.—The Administrator shall allocate
24 emission allowances to invest in energy efficiency and re-
25 newable energy as follows:

1 “(1) To be distributed in accordance with sec-
2 tion 132 of the American Clean Energy and Security
3 Act of 2009 in the following amounts:

4 “(A) For vintage years 2012 through
5 2015, 9.5 percent of the emission allowances es-
6 tablished for each year under section 721(a).

7 “(B) For vintage years 2016 through
8 2017, 6.5 percent of the emission allowances es-
9 tablished for each year under section 721(a).

10 “(C) For vintage years 2018 through
11 2021, 5.5 percent of the emission allowances es-
12 tablished for each year under section 721(a).

13 “(D) For vintage years 2022 through
14 2025, 1.0 percent of the emission allowances es-
15 tablished for each year under section 721(a).

16 “(E) For vintage years 2026 through
17 2050, 4.5 percent of the emission allowances es-
18 tablished for each year under section 721(a).

19 “(F) At the same time allowances are dis-
20 tributed under subparagraph (D) for each of
21 the vintage years 2022 through 2025, 3.55 per-
22 cent of emission allowances established under
23 section 721(a) for the vintage year 4 years after
24 that vintage year shall also be distributed

1 (which shall be in addition to the emission al-
2 lowances distributed under subparagraph (E)).

3 “(2) To be distributed in accordance with sec-
4 tion 304 of the Energy Conservation and Production
5 Act, as amended by section 201 of the American
6 Clean Energy and Security Act of 2009, for each
7 vintage year from 2012 through 2050, 0.5 percent
8 of emission allowances established for that year
9 under section 721(a).

10 “(3) To be distributed among the States in ac-
11 cordance with the formula in section 132(b) of the
12 American Clean Energy and Security Act of 2009
13 and to be used exclusively for the purposes of section
14 202 of the American Clean Energy and Security Act
15 of 2009 in the following amounts:

16 “(A) For vintage years 2012 through
17 2017, 0.05 percent of the emission allowances
18 established for each year under section 721(a).

19 “(B) For vintage years 2018 through
20 2050, 0.03 percent of the emission allowances
21 established for each year under section 721(a).

22 “(h) ENERGY RESEARCH AND DEVELOPMENT.—

23 “(1) ENERGY INNOVATION HUBS.—For vintage
24 years 2012 through 2050, the Administrator shall
25 allocate 0.45 percent of the emission allowances es-

1 tablished under section 721(a) to be distributed to
2 Energy Innovation Hubs in accordance with section
3 171 of the American Clean Energy and Security Act
4 of 2009.

5 “(2) ADVANCED ENERGY RESEARCH.—For vin-
6 tage years 2012 through 2050, the Administrator
7 shall allocate 1.05 percent of the emission allowances
8 established under section 721(a) for the Advanced
9 Research Project Agency-Energy to be distributed in
10 accordance with section 172 of the American Clean
11 Energy and Security Act of 2009.

12 “(i) INVESTMENT IN CLEAN VEHICLE TECH-
13 NOLOGY.—The Administrator shall allocate emission al-
14 lowances to invest in the development and deployment of
15 clean vehicles, to be distributed in accordance with section
16 124 of the American Clean Energy and Security Act of
17 2009 in the following amounts:

18 “(1) For vintage years 2012 through 2017, 3
19 percent of the emission allowances established for
20 each year under section 721(a).

21 “(2) For vintage years 2018 through 2025, 1
22 percent of the emission allowances established for
23 each year under section 721(a).

1 “(j) DOMESTIC FUEL PRODUCTION.—For vintage
2 years 2014 through 2026, the Administrator shall allocate
3 and distribute according to section 787—

4 “(1) 2 percent of the emission allowances estab-
5 lished for each year under section 721(a) to domes-
6 tic petroleum refineries that are covered entities pur-
7 suant to section 700(13)(F)(viii), including small
8 business refiners; and

9 “(2) an additional 0.25 percent of the emissions
10 allowances established for each year under section
11 721(a) to small business refiners that are covered
12 entities pursuant to section 700(13)(F)(viii).

13 “(k) INVESTMENT IN WORKERS.—(1) The Adminis-
14 trator shall auction pursuant to section 791 emission al-
15 lowances for the benefit of workers pursuant to part 2 of
16 subtitle B of the American Clean Energy and Security Act
17 of 2009 in the following amounts, and shall deposit into
18 the Climate Change Worker Adjustment Assistance Fund
19 established pursuant to section 793, and report to the Sec-
20 retary of Labor on, the proceeds from the sale of these
21 allowances:

22 “(A) For vintage years 2012 through 2021, 0.5 per-
23 cent of the emission allowances established for each year
24 under section 721(a).

1 “(B) For vintage years 2022 through 2050, 1.0 per-
2 cent of the emission allowances established for each year
3 under section 721(a).

4 All amounts deposited into the fund shall be available to
5 the Secretary of Labor until expended to carry out part
6 2 of subtitle B of title IV of the American Clean Energy
7 and Security Act of 2009. Of the amounts deposited, not
8 more than \$10,000,000 shall be available to the Secretary
9 of Labor for Federal administration costs of such part 2
10 each fiscal year.

11 “(2) The Administrator shall auction, pursuant to
12 section 791, 0.75 percent of the emission allowances estab-
13 lished for each of vintage years 2012 and 2013 under sec-
14 tion 721(a), and shall deposit the proceeds in the Energy
15 Efficiency and Renewable Energy Worker Training Fund
16 established by section 422 of the American Clean Energy
17 and Security Act of 2009.

18 “(1) DOMESTIC ADAPTATION.—The Administrator
19 shall allocate emission allowances for domestic adaptation
20 as follows:

21 “(1) To be distributed in accordance with sec-
22 tion 453 of the American Clean Energy and Security
23 Act of 2009 in the following amounts:

1 “(A) For vintage years 2012 through
2 2021, 0.9 percent of the emission allowances es-
3 tablished for each year under section 721(a).

4 “(B) For vintage years 2022 through
5 2026, 1.9 percent of the emission allowances es-
6 tablished for each year under section 721(a).

7 “(C) For vintage years 2027 through
8 2050, 3.9 percent of the emission allowances es-
9 tablished for each year under section 721(a).

10 “(2) For vintage year 2012 and thereafter, the
11 Administrator shall auction, pursuant to section
12 791, 0.1 percent of the emission allowances estab-
13 lished for each year under section 721(a), and shall
14 deposit the proceeds in the Climate Change Health
15 Protection and Promotion Fund established by sec-
16 tion 467 of the American Clean Energy and Security
17 Act of 2009.

18 “(m) WILDLIFE AND NATURAL RESOURCE ADAPTA-
19 TION.—The Administrator shall allocate emission allow-
20 ances for wildlife and natural resource adaptation as fol-
21 lows:

22 “(1) To be distributed to State agencies in ac-
23 cordance with section 480(a) of the American Clean
24 Energy and Security Act of 2009 in the following
25 amounts:

1 “(A) For vintage years 2012 through
2 2021, 0.385 percent of the emission allowances
3 established for each year under section 721(a).

4 “(B) For vintage years 2022 through
5 2026, 0.77 percent of the emission allowances
6 established for each year under section 721(a).

7 “(C) For vintage years 2027 through
8 2050, 1.54 percent of the emission allowances
9 established for each year under section 721(a).

10 “(2) To be auctioned pursuant to section 791,
11 with the proceeds to be deposited in the Natural Re-
12 sources Climate Change Adaptation Fund estab-
13 lished pursuant to section 480(b), in the following
14 amounts:

15 “(A) For vintage years 2012 through
16 2021, 0.615 percent of the emission allowances
17 established for each year under section 721(a).

18 “(B) For vintage years 2022 through
19 2026, 1.23 percent of the emission allowances
20 established for each year under section 721(a).

21 “(C) For vintage years 2027 through
22 2050, 2.46 percent of the emission allowances
23 established for each year under section 721(a).

24 “(n) INTERNATIONAL ADAPTATION.—The Adminis-
25 trator shall allocate emission allowances for international

1 adaptation to be distributed in accordance with part 2 of
2 subtitle E of title IV of the American Clean Energy and
3 Security Act of 2009 in the following amounts:

4 “(1) For vintage years 2012 through 2021, 1.0
5 percent of the emission allowances established for
6 each year under section 721(a).

7 “(2) For vintage years 2022 through 2026, 2.0
8 percent of the emission allowances established for
9 each year under section 721(a).

10 “(3) For vintage years 2027 through 2050, 4.0
11 percent of the emission allowances established for
12 each year under section 721(a).

13 “(o) INTERNATIONAL CLEAN TECHNOLOGY DEPLOY-
14 MENT.—The Administrator shall allocate emission allow-
15 ances for international clean technology deployment for
16 distribution in accordance with subtitle D of title IV of
17 the American Clean Energy and Security Act of 2009 in
18 the following amounts:

19 “(1) For vintage years 2012 through 2021, 1.0
20 percent of the emission allowances established for
21 each year under section 721(a).

22 “(2) For vintage years 2022 through 2026, 2.0
23 percent of the emission allowances established for
24 each year under section 721(a).

1 “(3) For vintage years 2027 through 2050, 4.0
2 percent of the emission allowances established for
3 each year under section 721(a).

4 “(p) RELEASE OF FUTURE ALLOWANCES.—The Ad-
5 ministrators shall make future year allowances available by
6 auctioning allowances, pursuant to section 791, in the fol-
7 lowing amounts:

8 “(1) In each of calendar years 2014 through
9 2019, a string of 0.70 billion allowances with vintage
10 years 12 to 17 years after the year of the auction,
11 with an equal number of allowances from each vin-
12 tage year in the string.

13 “(2) In each of calendar years 2020 through
14 2025, a string of 0.50 billion allowances with vintage
15 years 12 to 17 years after the year of the auction,
16 with an equal number of allowances from each vin-
17 tage year in the string.

18 “(3) In each of calendar years 2026 through
19 2030, a string of 0.3 billion allowances with vintage
20 years 12 to 17 years after the year of the auction,
21 with an equal number of allowances from each vin-
22 tage year in the string.

23 “(q) DEFICIT REDUCTION.—

24 “(1) For each of vintage years 2012 through
25 2025, any allowances not allocated for distribution

1 or auction pursuant to section 781 or subsections
2 (a) through (o) and subsections (s) and (t) of this
3 section, or disbursed pursuant to section 790, shall
4 be auctioned by the Administrator pursuant to sec-
5 tion 791 and the proceeds shall be deposited into the
6 Treasury.

7 “(2) Unless otherwise specified, any allowances
8 allocated pursuant to subsections (a) through (o)
9 and subsections (s) and (t) and not distributed by
10 March 31 of the calendar year following the allow-
11 ance’s vintage year, shall be auctioned by the Ad-
12 ministrator and the proceeds shall be deposited into
13 the Treasury.

14 “(3) For auctions conducted through calendar
15 year 2020 pursuant to subsection (p), the auction
16 proceeds shall be deposited into the Treasury.

17 “(r) CLIMATE CHANGE CONSUMER REFUND.—

18 “(1) For each of vintage years 2026 through
19 2050, the Administrator shall auction the following
20 allowances established under section 721(a) and de-
21 posit the proceeds into the Climate Change Con-
22 sumer Refund Account:

23 “(A) Any allowances not allocated for dis-
24 tribution or auction pursuant to section 781 or

1 subsections (a) through (p) of this section, or
2 disbursed pursuant to section 790.

3 “(B) Unless otherwise specified, any allow-
4 ances allocated pursuant to subsections (a)
5 through (o) and not distributed by March 31 of
6 the calendar year following the allowance’s vin-
7 tage year.

8 “(2) For auctions conducted pursuant to sub-
9 section (p) in calendar years 2021 and thereafter,
10 the Administrator shall place the proceeds from the
11 sales of the these allowances into the Climate
12 Change Consumer Refund Account.

13 “(3) Funds deposited into the Climate Change
14 Consumer Refund Account shall be used as specified
15 in section 789 and shall be available for expenditure,
16 without further appropriation or fiscal year limita-
17 tion.

18 “(s) TREATMENT OF CARRYOVER ALLOWANCES.—

19 “(1) IN GENERAL.—If there are undistributed
20 allowances from a vintage year for supplemental re-
21 ductions pursuant to section 781(e), energy-inten-
22 sive, trade-exposed industries pursuant to subsection
23 (e)(2) of this section, deployment of carbon capture
24 and sequestration technology pursuant to subsection
25 (f)(2) of this section, or supplemental agriculture

1 and renewable energy pursuant to subsection (u)(2)
2 of this section, the Administrator shall—

3 “(A) use the undistributed allowances to
4 increase for the same vintage year—

5 “(i) the allocation of allowances to be
6 auctioned for deficit reduction pursuant to
7 subsection (q) or for consumer refunds
8 pursuant to subsection (r);

9 “(ii) the allocation of allowances to be
10 auctioned for low income consumers pursu-
11 ant to subsection (d); or

12 “(iii) a combination of both; and

13 “(B) except as provided in paragraph
14 (2)—

15 “(i) decrease by the same amount for
16 the following vintage year the allocation for
17 the purpose for which the allocation was
18 increased pursuant to subparagraph (A);
19 and

20 “(ii) increase by the same amount for
21 the following vintage year the allocation for
22 the purpose for which the undistributed al-
23 lowances were originally allocated.

24 “(2) EXCESS UNDISTRIBUTED ALLOWANCES.—

25 (A) For each vintage year for which this subsection

1 applies, the Administrator shall determine wheth-
2 er—

3 “(i) the total quantity of undistributed al-
4 lowances for that vintage year that were allo-
5 cated pursuant to section 781(c), and sub-
6 sections (e)(2), (f)(2), and (u)(2) of this sec-
7 tion, exceeds

8 “(ii) the total quantity of allowances allo-
9 cated pursuant to subsection (d), (q) and (r)
10 for the following vintage year, decreased by the
11 quantity of allowances for that following vintage
12 year set aside for the reserve established by sec-
13 tion 791(f).

14 “(B) If the Administrator determines under
15 subparagraph (A) that the quantity described in
16 subparagraph (A)(i) exceeds the quantity described
17 in subparagraph (A)(ii), paragraph (1)(B)(ii) of this
18 subsection shall not apply. Instead, for each purpose
19 described in section 781(c), or subsections (e)(2),
20 (f)(2), and (u)(2) of this section for which undistrib-
21 uted allowances for a given vintage year were allo-
22 cated, the Administrator shall increase the allocation
23 for the following vintage year by the amount that is
24 the product of—

1 “(i) the number of undistributed allow-
2 ances for that purpose, times

3 “(ii) the quantity described in subpara-
4 graph (A)(ii) divided by the quantity described
5 in subparagraph (A)(i).

6 “(t) COMPENSATION FOR EARLY ACTORS.—For vin-
7 tage year 2012, the Administrator shall allocate for com-
8 pensation for early actors 1 percent of emission allowances
9 established under section 721(a), to be distributed in ac-
10 cordance with section 795 of the American Clean Energy
11 and Security Act of 2009.

12 “(u) SUPPLEMENTAL AGRICULTURE AND RENEW-
13 ABLE ENERGY.—

14 “(1) IN GENERAL.—For vintage years 2012
15 through 2016, the Administrator shall allocate 0.28
16 percent of emission allowances established under sec-
17 tion 721(a), to be distributed in accordance with sec-
18 tion 788 of the American Clean Energy and Security
19 Act of 2009.

20 “(2) CARRYOVER.—After the Administrator dis-
21 tributes emission allowances pursuant to section 788
22 for any given vintage year, any emission allowances
23 allocated to supplemental agriculture and renewable
24 energy pursuant to this subsection that have not
25 been so distributed shall, in accordance with sub-

1 section (s), be exchanged for allowances from the
2 following vintage year and treated as part of the al-
3 location to such entities for that later vintage year.

4 **“SEC. 783. ELECTRICITY CONSUMERS.**

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

6 “(1) COAL-FUELED UNIT.—The term ‘coal-
7 fueled unit’ means a utility unit that derives at least
8 85 percent of its heat input from coal, petroleum
9 coke, or any combination of these 2 fuels.

10 “(2) ELECTRICITY LOCAL DISTRIBUTION COM-
11 PANY.—The term ‘electricity local distribution com-
12 pany’ means an electric utility—

13 “(A) that has a legal, regulatory, or con-
14 tractual obligation to deliver electricity directly
15 to retail consumers in the United States, re-
16 gardless of whether that entity or another enti-
17 ty sells the electricity as a commodity to those
18 retail consumers; and

19 “(B) the retail rates of which, except in
20 the case of an electric cooperative, are regulated
21 or set by—

22 “(i) a State regulatory authority;

23 “(ii) a State or political subdivision
24 thereof (or an agency or instrumentality

1 of, or corporation wholly owned by, either
2 of the foregoing); or

3 “(iii) an Indian tribe pursuant to trib-
4 al law.

5 “(3) ELECTRICITY SAVINGS; RENEWABLE EN-
6 ERGY RESOURCE.—The terms ‘electricity savings’
7 and ‘renewable energy resource’ shall have the
8 meaning given those terms in section 610 of the
9 Public Utility Regulatory Policies Act of 1978 (as
10 added by section 101 of the American Clean Energy
11 and Security Act of 2009).

12 “(4) INDEPENDENT POWER PRODUCTION FA-
13 CILITY.—The term ‘independent power production
14 facility’ means a facility—

15 “(A) that is used for the generation of
16 electric energy, at least 80 percent of which is
17 sold at wholesale; and

18 “(B) the sales of the output of which are
19 not subject to retail rate regulation or setting
20 of retail rates by—

21 “(i) a State regulatory authority;

22 “(ii) a State or political subdivision
23 thereof (or an agency or instrumentality
24 of, or corporation wholly owned by, either
25 of the foregoing);

1 “(iii) an electric cooperative; or

2 “(iv) an Indian tribe pursuant to trib-
3 al law.

4 “(5) LONG-TERM CONTRACT GENERATOR.—The
5 term ‘long-term contract generator’ means a quali-
6 fying small power production facility, a qualifying
7 cogeneration facility), an independent power pro-
8 duction facility, or a facility for the production of
9 electric energy for sale to others that is owned and
10 operated by an electric cooperative that is—

11 “(A) a covered entity; and

12 “(B) as of the date of enactment of this
13 title—

14 “(i) a facility with 1 or more sales or
15 tolling agreements executed before March
16 1, 2007, that govern the facility’s elec-
17 tricity sales and provide for sales at a price
18 (whether a fixed price or a price formula)
19 for electricity that does not allow for recov-
20 ery of the costs of compliance with the lim-
21 itation on greenhouse gas emissions under
22 this title, provided that such agreements
23 are not between entities that are affiliates
24 of one another; or

1 “(ii) a facility consisting of 1 or more
2 cogeneration units that makes useful ther-
3 mal energy available to an industrial or
4 commercial process with 1 or more sales
5 agreements executed before March 1,
6 2007, that govern the facility’s useful ther-
7 mal energy sales and provide for sales at
8 a price (whether a fixed price or price for-
9 mula) for useful thermal energy that does
10 not allow for recovery of the costs of com-
11 pliance with the limitation on greenhouse
12 gas emissions under this title, provided
13 that such agreements are not between enti-
14 ties that are affiliates of one another.

15 “(6) MERCHANT COAL UNIT.—The term ‘mer-
16 chant coal unit’ means a coal-fueled unit that—

17 “(A) is or is part of a covered entity;

18 “(B) is not owned by a Federal, State, or
19 regional agency or power authority; and

20 “(C) generates electricity solely for sale to
21 others, provided that all or a portion of such
22 sales are made by a separate legal entity that—

23 “(i) has a full or partial ownership or
24 leasehold interest in the unit, as certified

1 in accordance with such requirements as
2 the Administrator shall prescribe; and

3 “(ii) is not subject to retail rate regu-
4 lation or setting of retail rates by—

5 “(I) a State regulatory authority;

6 “(II) a State or political subdivi-
7 sion thereof (or an agency or instru-
8 mentality of, or corporation wholly
9 owned by, either of the foregoing);

10 “(III) an electric cooperative; or

11 “(IV) an Indian tribe pursuant
12 to tribal law.

13 “(7) MERCHANT COAL UNIT SALES.—The term
14 ‘merchant coal unit sales’ means sales to others of
15 electricity generated by a merchant coal unit that
16 are made by the owner or leaseholder described in
17 paragraph (6)(C).

18 “(8) NEW COAL-FUELED UNIT.—The term ‘new
19 coal-fueled unit’ means a coal-fueled unit that com-
20 menced operation on or after January 1, 2009 and
21 before January 1, 2013.

22 “(9) NEW MERCHANT COAL UNIT.—The term
23 ‘new merchant coal unit’ means a merchant coal
24 unit—

1 “(A) that commenced operation on or after
2 January 1, 2009 and before January 1, 2013;
3 and

4 “(B) the actual, on-site construction of
5 which commenced prior to January 1, 2009.

6 “(10) QUALIFYING SMALL POWER PRODUCTION
7 FACILITY; QUALIFYING COGENERATION FACILITY.—
8 The terms ‘qualifying small power production facil-
9 ity’ and ‘qualifying cogeneration facility’ have the
10 meanings given those terms in section 3(17)(C) and
11 3(18)(B) of the Federal Power Act (16 U.S.C.
12 796(17)(C) and 796(18)(B)).

13 “(11) SMALL LDC.—The term ‘small LDC’
14 means, for any given year, an electricity local dis-
15 tribution company that delivered less than 4,000,000
16 megawatt hours of electric energy directly to retail
17 consumers in the preceding year.

18 “(12) STATE REGULATORY AUTHORITY.—The
19 term ‘State regulatory authority’ has the meaning
20 given that term in section 3(17) of the Public Utility
21 Regulatory Policies Act of 1978 (16 U.S.C.
22 2602(17)).

23 “(13) USEFUL THERMAL ENERGY.—The term
24 ‘useful thermal energy’ has the meaning given that

1 term in section 371(7) of the Energy Policy and
2 Conservation Act (42 U.S.C. 6341(7)).

3 “(b) ELECTRICITY LOCAL DISTRIBUTION COMPA-
4 NIES.—

5 “(1) DISTRIBUTION OF ALLOWANCES.—Not
6 later than September 30, 2011, and each calendar
7 year thereafter through 2028, the Administrator
8 shall distribute to electricity local distribution com-
9 panies for the benefit of retail ratepayers the quan-
10 tity of emission allowances allocated for the fol-
11 lowing vintage year pursuant to section 782(a)(1).
12 Notwithstanding the preceding sentence, the Admin-
13 istrator shall withhold from distribution under this
14 subsection a quantity of emission allowances equal to
15 the lesser of 14.3 percent of the quantity of emission
16 allowances allocated under section 782(a)(1) for the
17 relevant vintage year, or 105 percent of the emission
18 allowances for the relevant vintage year that the Ad-
19 ministrator anticipates will be distributed to mer-
20 chant coal units and to long-term contract genera-
21 tors, respectively, under subsections (c) and (d). If
22 not required by subsections (c) and (d) to distribute
23 all of these reserved allowances, the Administrator
24 shall distribute any remaining emission allowances

1 to electricity local distribution companies in accord-
2 ance with this subsection.

3 “(2) DISTRIBUTION BASED ON EMISSIONS.—

4 “(A) IN GENERAL.—For each vintage year,
5 50 percent of the emission allowances available
6 for distribution under paragraph (1), after re-
7 serving allowances for distribution under sub-
8 sections (c) and (d), shall be distributed by the
9 Administrator among individual electricity local
10 distribution companies ratably based on the an-
11 nual average carbon dioxide emissions attrib-
12 utable to generation of electricity delivered at
13 retail by each such company during the base
14 period determined under subparagraph (B).

15 “(B) BASE PERIOD.—

16 “(i) VINTAGE YEARS 2012 AND 2013.—

17 For vintage years 2012 and 2013, an elec-
18 tricity local distribution company’s base
19 period shall be—

20 “(I) calendar years 2006 through

21 2008; or

22 “(II) any 3 consecutive calendar

23 years between 1999 and 2008, inclu-
24 sive, that such company selects, pro-

1 vided that the company timely informs
2 the Administrator of such selection.

3 “(ii) VINTAGE YEARS 2014 AND
4 THEREAFTER.—For vintage years 2014
5 and thereafter, the base period shall be—

6 “(I) the base period selected
7 under clause (i); or

8 “(II) calendar year 2012, in the
9 case of an electricity local distribution
10 company that owns, co-owns, or pur-
11 chases through a power purchase
12 agreement (whether directly or
13 through a cooperative arrangement) a
14 substantial portion of the electricity
15 generated by a new coal-fueled unit,
16 provided that such company timely in-
17 forms the Administrator of its election
18 to use 2012 as its base period.

19 “(C) DETERMINATION OF EMISSIONS.—

20 “(i) DETERMINATION FOR 1999–
21 2008.—As part of the regulations promul-
22 gated pursuant to subsection (g), the Ad-
23 ministrator, after consultation with the
24 Energy Information Administration, shall
25 determine the average amount of carbon

1 dioxide emissions attributable to genera-
2 tion of electricity delivered at retail by
3 each electricity local distribution company
4 for each of the years 1999 through 2008,
5 taking into account entities' electricity gen-
6 eration, electricity purchases, and elec-
7 tricity sales. In the case of any electricity
8 local distribution company that owns, co-
9 owns, or purchases through a power pur-
10 chase agreement (whether directly or
11 through a cooperative arrangement) a sub-
12 stantial portion of the electricity generated
13 by, a coal-fueled unit that commenced op-
14 eration after January 1, 2006, and before
15 December 31, 2008, the Administrator
16 shall adjust the emissions attributable to
17 such company's retail deliveries in calendar
18 years 2006 through 2008 to reflect the
19 emissions that would have occurred if the
20 relevant unit were in operation during the
21 entirety of such 3-year period.

22 “(ii) ADJUSTMENTS FOR NEW COAL-
23 FUELED UNITS.—

24 “(I) VINTAGE YEARS 2012 AND
25 2013.—For purposes of emission al-

1 lowance distributions for vintage years
2 2012 and 2013, in the case of any
3 electricity local distribution company
4 that owns, co-owns, or purchases
5 through a power purchase agreement
6 (whether directly or through a cooper-
7 ative arrangement) a substantial por-
8 tion of the electricity generated by, a
9 new coal-fueled unit, the Adminis-
10 trator shall adjust the emissions at-
11 tributable to such company's retail de-
12 liveries in the applicable base period
13 to reflect the emissions that would
14 have occurred if the new coal-fueled
15 unit were in operation during such pe-
16 riod.

17 “(II) VINTAGE YEAR 2014 AND
18 THEREAFTER.—Not later than nec-
19 essary for use in making emission al-
20 lowance distributions under this sub-
21 section for vintage year 2014, the Ad-
22 ministrator shall, for any electricity
23 local distribution company that owns,
24 co-owns, or purchases through a
25 power purchase agreement (whether

1 directly or through a cooperative ar-
2 rangement) a substantial portion of
3 the electricity generated by a new
4 coal-fueled unit and has selected cal-
5 endar year 2012 as its base period
6 pursuant to subparagraph (B)(ii)(II),
7 determine the amount of carbon diox-
8 ide emissions attributable to genera-
9 tion of electricity delivered at retail by
10 such company in calendar year 2012.
11 If the relevant new coal-fueled unit
12 was not yet operational by January 1,
13 2012, the Administrator shall adjust
14 such determination to reflect the
15 emissions that would have occurred if
16 such unit were in operation for all of
17 calendar year 2012.

18 “(iii) REQUIREMENTS.—Determina-
19 tions under this paragraph shall be as pre-
20 cise as practicable, taking into account the
21 nature of data currently available and the
22 nature of markets and regulation in effect
23 in various regions of the country. The fol-
24 lowing requirements shall apply to such de-
25 terminations:

1 “(I) The Administrator shall de-
2 termine the amount of fossil fuel-
3 based electricity delivered at retail by
4 each electricity local distribution com-
5 pany, and shall use appropriate emis-
6 sion factors to calculate carbon diox-
7 ide emissions associated with the gen-
8 eration of such electricity.

9 “(II) Where it is not practical to
10 determine the precise fuel mix for the
11 electricity delivered at retail by an in-
12 dividual electricity local distribution
13 company, the Administrator may use
14 the best available data, including aver-
15 age data on a regional basis with ref-
16 erence to Regional Transmission Or-
17 ganizations or regional entities (as
18 that term is defined in section
19 215(a)(7) of the Federal Power Act
20 (16 U.S.C. 824o(a)(7)), to estimate
21 fuel mix and emissions. Different
22 methodologies may be applied in dif-
23 ferent regions if appropriate to obtain
24 the most accurate estimate.

25 “(3) DISTRIBUTION BASED ON DELIVERIES.—

1 “(A) INITIAL FORMULA.—Except as pro-
2 vided in subparagraph (B), for each vintage
3 year, the Administrator shall distribute 50 per-
4 cent of the emission allowances available for
5 distribution under paragraph (1), after reserv-
6 ing allowances for distribution under sub-
7 sections (c) and (d), among individual elec-
8 tricity local distribution companies ratably
9 based on each electricity local distribution com-
10 pany’s annual average retail electricity deliv-
11 eries for calendar years 2006 through 2008, un-
12 less the owner or operator of the company se-
13 lects 3 other consecutive years between 1999
14 and 2008, inclusive, and timely notifies the Ad-
15 ministrator of its selection.

16 “(B) UPDATING.—Prior to distributing
17 2015 vintage year emission allowances under
18 this paragraph and at 3-year intervals there-
19 after, the Administrator shall update the dis-
20 tribution formula under this paragraph to re-
21 flect changes in each electricity local distribu-
22 tion company’s service territory since the most
23 recent formula was established. For each suc-
24 cessive 3-year period, the Administrator shall
25 distribute allowances ratably among individual

1 electricity local distribution companies based on
2 the product of—

3 “(i) each electricity local distribution
4 company’s average annual deliveries per
5 customer during calendar years 2006
6 through 2008, or during the 3 alternative
7 consecutive years selected by such company
8 under subparagraph (A); and

9 “(ii) the number of customers of such
10 electricity local distribution company in the
11 most recent year in which the formula is
12 updated under this subparagraph.

13 “(4) PROHIBITION AGAINST EXCESS DISTRIBUTIONS.—The regulations promulgated under sub-
14 section (g) shall ensure that, notwithstanding para-
15 graphs (2) and (3), no electricity local distribution
16 company shall receive a greater quantity of allow-
17 ances under this subsection than is necessary to off-
18 set any increased electricity costs to such company’s
19 retail ratepayers, including increased costs attrib-
20 utable to purchased power costs, due to enactment
21 of this title. Any emission allowances withheld from
22 distribution to an electricity local distribution com-
23 pany pursuant to this paragraph shall be distributed
24 among all remaining electricity local distribution
25

1 companies ratably based on emissions pursuant to
2 paragraph (2).

3 “(5) USE OF ALLOWANCES.—

4 “(A) RATEPAYER BENEFIT.—Emission al-
5 lowances distributed to an electricity local dis-
6 tribution company under this subsection shall
7 be used exclusively for the benefit of retail rate-
8 payers of such electricity local distribution com-
9 pany and may not be used to support electricity
10 sales or deliveries to entities or persons other
11 than such ratepayers.

12 “(B) RATEPAYER CLASSES.—In using
13 emission allowances distributed under this sub-
14 section for the benefit of ratepayers, an elec-
15 tricity local distribution company shall ensure
16 that ratepayer benefits are distributed—

17 “(i) among ratepayer classes ratably
18 based on electricity deliveries to each class;
19 and

20 “(ii) equitably among individual rate-
21 payers within each ratepayer class, includ-
22 ing entities that receive emission allow-
23 ances pursuant to part F.

24 “(C) LIMITATION.—In general, an elec-
25 tricity local distribution company shall not use

1 the value of emission allowances distributed
2 under this subsection to provide to any rate-
3 payer a rebate that is based solely on the quan-
4 tity of electricity delivered to such ratepayer.
5 To the extent an electricity local distribution
6 company uses the value of emission allowances
7 distributed under this subsection to provide re-
8 bates, it shall, to the maximum extent prac-
9 ticable, provide such rebates with regard to the
10 fixed portion of ratepayers' bills or as a fixed
11 credit or rebate on electricity bills.

12 “(D) INDUSTRIAL RATEPAYERS.—Notwith-
13 standing subparagraph (C), if compliance with
14 the requirements of this title results (or would
15 otherwise result) in an increase in electricity
16 costs for industrial retail ratepayers of any
17 given electricity local distribution company (in-
18 cluding entities that receive emission allowances
19 pursuant to part F), such electricity local dis-
20 tribution company—

21 “(i) shall pass through to industrial
22 retail ratepayers their ratable share (based
23 on deliveries to each ratepayer class) of the
24 value of the emission allowances distrib-
25 uted to such company under this sub-

1 section, to reduce electricity cost impacts
2 on such ratepayers; and

3 “(ii) may do so based on the quantity
4 of electricity delivered to individual indus-
5 trial retail ratepayers.

6 “(E) GUIDELINES.—As part of the regula-
7 tions promulgated under subsection (g), the Ad-
8 ministrator shall, after consultation with State
9 regulatory authorities, prescribe guidelines for
10 the implementation of the requirements of this
11 paragraph. Such guidelines shall include re-
12 quirements to ensure that industrial retail rate-
13 payers (including entities that receive emission
14 allowances under part F) receive their ratable
15 share of the value of the allowances distributed
16 to each electricity local distribution company
17 pursuant to this subsection.

18 “(6) REGULATORY PROCEEDINGS.—

19 “(A) REQUIREMENT.—No electricity local
20 distribution company shall be eligible to receive
21 emission allowances under this subsection or
22 subsection (e) unless the State regulatory au-
23 thority with authority over such company’s re-
24 tail rates, or the entity with authority to regu-
25 late or set retail electricity rates of an elec-

1 tricity local distribution company not regulated
2 by a State regulatory authority, has—

3 “(i) after public notice and an oppor-
4 tunity for comment, promulgated a regula-
5 tion or completed a rate proceeding (or the
6 equivalent, in the case of a ratemaking en-
7 tity other than a State regulatory author-
8 ity) that provides for the full implementa-
9 tion of the requirements of paragraph (5)
10 of this subsection and the requirements of
11 subsection (e); and

12 “(ii) made available to the Adminis-
13 trator and the public a report describing,
14 in adequate detail, the manner in which
15 the requirements of paragraph (5) and the
16 requirements of subsection (e) will be im-
17 plemented.

18 “(B) UPDATING.—The Administrator shall
19 require, as a condition of continued receipt of
20 emission allowances under this subsection by an
21 electricity local distribution company, that a
22 new regulation be promulgated or rate pro-
23 ceeding be completed , after public notice and
24 an opportunity for comment, and a new report
25 be made available to the Administrator and the

1 public, pursuant to subparagraph (A), not less
2 frequently than every 5 years.

3 “(7) PLANS AND REPORTING.—

4 “(A) REGULATIONS.—As part of the regu-
5 lations promulgated under subsection (g), the
6 Administrator shall prescribe requirements gov-
7 erning plans and reports to be submitted in ac-
8 cordance with this paragraph.

9 “(B) PLANS.—Not later than April 30 of
10 2011 and every 5 years thereafter through
11 2026, each electricity local distribution com-
12 pany shall submit to the Administrator a plan,
13 approved by the State regulatory authority or
14 other entity charged with regulating tor setting
15 the retail rates of such company, describing
16 such company’s plans for the disposition of the
17 value of emission allowances to be received pur-
18 suant to this subsection and subsection (e), in
19 accordance with the requirements of this sub-
20 section and subsection (e). Such plan shall in-
21 clude a description of the manner in which the
22 company will provide to industrial retail rate-
23 payers (including entities that receive emission
24 allowances under part F) their ratable share of
25 the value of such allowances.

1 “(C) REPORTS.—Not later than June 30,
2 2013, and each calendar year thereafter
3 through 2031, each electricity local distribution
4 company shall submit a report to the Adminis-
5 trator, and to the relevant State regulatory au-
6 thority or other entity charged with regulating
7 or setting the retail electricity rates of such
8 company, describing the disposition of the value
9 of any emission allowances received by such
10 company in the prior calendar year pursuant to
11 this subsection and subsection (e), including—

12 “(i) a description of sales, transfer,
13 exchange, or use by the company for com-
14 pliance with obligations under this title, of
15 any such emission allowances;

16 “(ii) the monetary value received by
17 the company, whether in money or in some
18 other form, from the sale, transfer, or ex-
19 change of any such emission allowances;

20 “(iii) the manner in which the com-
21 pany’s disposition of any such emission al-
22 lowances complies with the requirements of
23 this subsection and of subsection (e), in-
24 cluding each of the requirements of para-
25 graph (5) of this subsection, including the

1 requirement that industrial retail rate-
2 payers (including entities that receive
3 emission allowances under part F) receive
4 their ratable share of the value of such al-
5 lowances; and

6 “(iv) such other information as the
7 Administrator may require pursuant to
8 subparagraph (A).

9 “(D) PUBLICATION.—The Administrator
10 shall make available to the public all plans and
11 reports submitted under this subsection, includ-
12 ing by publishing such plans and reports on the
13 Internet.

14 “(8) AUDITS.—Each year, the Administrator
15 shall audit a representative sample of electricity local
16 distribution companies to ensure that emission al-
17 lowances distributed under this subsection have been
18 used exclusively for the benefit of retail ratepayers
19 and that such companies are complying with the re-
20 quirements of this subsection and of subsection (e),
21 including the requirement that industrial retail rate-
22 payers (including entities that receive emission al-
23 lowances under part F) receive their ratable share of
24 the value of such allowances. In selecting companies
25 for audit, the Administrator shall take into account

1 any credible evidence of noncompliance with such re-
2 quirements. The Administrator shall make available
3 to the public a report describing the results of each
4 such audit, including by publishing such report on
5 the Internet.

6 “(9) ENFORCEMENT.—A violation of any re-
7 quirement of this subsection or of subsection (e)
8 shall be a violation of this Act. Each emission allow-
9 ance the value of which is used in violation of the
10 requirements of this subsection or of subsection (e)
11 shall be a separate violation.

12 “(c) MERCHANT COAL UNITS.—

13 “(1) QUALIFYING EMISSIONS.—The qualifying
14 emissions for a merchant coal unit for a given cal-
15 endar year shall be the product of the number of
16 megawatt hours of merchant coal unit sales gen-
17 erated by such unit in such calendar year and the
18 average carbon dioxide emissions per megawatt hour
19 generated by such unit during the base period under
20 paragraph (2), provided that the number of mega-
21 watt hours in a given calendar year for purposes of
22 such calculation shall be reduced in proportion to
23 the portion of such unit’s carbon dioxide emissions
24 that are either—

1 “(A) captured and sequestered in such cal-
2 endar year; or

3 “(B) attributable to the combustion or gas-
4 ification of biomass, to the extent that the
5 owner or operator of the unit is not required to
6 hold emission allowances for such emissions.

7 “(2) BASE PERIOD.—For purposes of this sub-
8 section, the base period for a merchant coal unit
9 shall be—

10 “(A) calendar years 2006 through 2008; or

11 “(B) in the case of a new merchant coal
12 unit—

13 “(i) the first full calendar year of op-
14 eration of such unit, if such unit com-
15 mences operation before January 1, 2012;

16 “(ii) calendar year 2012, if such unit
17 commences operation on or after January
18 1, 2012, and before October 1, 2012; or

19 “(iii) calendar year 2013, if such unit
20 commences operation on or after October
21 1, 2012, and before January 1, 2013.

22 “(3) PHASE-DOWN SCHEDULE.—The Adminis-
23 trator shall identify an annual phase-down factor,
24 applicable to distributions to merchant coal units for
25 each of vintage years 2012 through 2029, that cor-

1 responds to the overall decline in the amount of
2 emission allowances allocated to the electricity sector
3 in such years pursuant to section 782(a)(1). Such
4 factor shall—

5 “(A) for vintage year 2012, be equal to

6 1.0;

7 “(B) for each of vintage years 2013

8 through 2029, correspond to the quotient of—

9 “(i) the quantity of emission allow-

10 ances allocated under section 782(a)(1) for

11 such vintage year; divided by

12 “(ii) the quantity of emission allow-

13 ances allocated under section 782(a)(1) for

14 vintage year 2012.

15 “(4) DISTRIBUTION OF EMISSION ALLOW-

16 ANCES.—Not later than March 1 of 2013 and each

17 calendar year through 2030, the Administrator shall

18 distribute emission allowances of the preceding vin-

19 tage year to the owner or operator of each merchant

20 coal unit described in subsection (a)(6)(C) in an

21 amount equal to the product of—

22 “(A) 0.5;

23 “(B) the qualifying emissions for such

24 merchant coal unit for the preceding year, as

25 determined under paragraph (1); and

1 “(C) the phase-down factor for the pre-
2 ceding calendar year, as identified under para-
3 graph (3).

4 “(5) ADJUSTMENT.—

5 “(A) STUDY.—Not later than July 1,
6 2014, the Administrator, in consultation with
7 the Federal Energy Regulatory Commission,
8 shall complete a study to determine whether the
9 allocation formula under paragraph (3) is re-
10 sulting in, or is likely to result in, windfall prof-
11 its to merchant coal generators or substantially
12 disparate treatment of merchant coal genera-
13 tors operating in different markets or regions.

14 “(B) REGULATION.—If the Administrator,
15 in consultation with the Federal Energy Regu-
16 latory Commission, makes an affirmative find-
17 ing of windfall profits or disparate treatment
18 under subparagraph (A), the Administrator
19 shall, not later than 18 months after the com-
20 pletion of the study described in subparagraph
21 (A), promulgate regulations providing for the
22 adjustment of the allocation formula under
23 paragraph (3) to mitigate, to the extent prac-
24 ticable, such windfall profits, if any, and such
25 disparate treatment, if any.

1 “(6) LIMITATION ON ALLOWANCES.—Notwith-
2 standing paragraph (4) or (5), for each vintage year
3 the Administrator shall distribute under this sub-
4 section no more than 10 percent of the total quan-
5 tity of emission allowances available for such vintage
6 year for distribution to the electricity sector under
7 section 782(a)(1). If the quantity of emission allow-
8 ances that would otherwise be distributed pursuant
9 to paragraph (4) or (5) for any vintage year would
10 exceed such limit, the Administrator shall distribute
11 10 percent of the total emission allowances available
12 for distribution under section 782(a)(1) for such vin-
13 tage year ratably among merchant coal generators
14 based on the applicable formula under paragraph (4)
15 or (5).

16 “(7) ELIGIBILITY.—The owner or operator of a
17 merchant coal unit shall not be eligible to receive
18 emission allowances under this subsection for any
19 vintage year for which such owner or operator has
20 elected to receive emission allowances for the same
21 unit under subsection (d).

22 “(d) LONG-TERM CONTRACT GENERATORS.—

23 “(1) DISTRIBUTION.—Not later than March 1,
24 2013, and each calendar year through 2030, the Ad-
25 ministrator shall distribute to the owner or operator

1 of each long-term contract generator a quantity of
2 emission allowances of the preceding vintage year
3 that is equal to the sum of—

4 “(A) the number of tons of carbon dioxide
5 emitted as a result of a qualifying electricity
6 sales agreement referred to in subsection
7 (a)(5)(B)(i); and

8 “(B) the incremental number of tons of
9 carbon dioxide emitted solely as a result of a
10 qualifying thermal sales agreement referred to
11 in subsection (a)(5)(B)(ii), provided that in no
12 event shall the Administrator distribute more
13 than 1 emission allowance for the same ton of
14 emissions.

15 “(2) LIMITATION ON ALLOWANCES.—Notwith-
16 standing paragraph (1), for each vintage year the
17 Administrator shall distribute under this subsection
18 no more than 4.3 percent of the total quantity of
19 emission allowances available for such vintage year
20 for distribution to the electricity sector under section
21 782(a)(1). If the quantity of emission allowances
22 that would otherwise be distributed pursuant to
23 paragraph (1) for any vintage year would exceed
24 such limit, the Administrator shall distribute 4.3
25 percent of the total emission allowances available for

1 distribution under section 782(a)(1) for such vintage
2 year ratably among long-term contract generators
3 based on paragraph (1).

4 “(3) ELIGIBILITY.—

5 “(A) FACILITY ELIGIBILITY.—The owner
6 or operator of a facility shall cease to be eligible
7 to receive emission allowances under this sub-
8 section upon the earliest date on which the fa-
9 cility no longer meets each and every element of
10 the definition of a long-term contract generator
11 under subsection (a)(5).

12 “(B) CONTRACT ELIGIBILITY.—The owner
13 or operator of a facility shall cease to be eligible
14 to receive emission allowances under this sub-
15 section based on an electricity or thermal sales
16 agreement referred to in subsection (a)(5)(B)
17 upon the earliest date that such agreement—

18 “(i) expires;

19 “(ii) is terminated; or

20 “(iii) is amended in any way that
21 changes the location of the facility, the
22 price (whether a fixed price or price for-
23 mula) for electricity or thermal energy sold
24 under such agreement, the quantity of
25 electricity or thermal energy sold under the

1 agreement, or the expiration or termi-
2 nation date of the agreement.

3 “(4) DEMONSTRATION OF ELIGIBILITY.—To be
4 eligible to receive allowance distributions under this
5 subsection, the owner or operator of a long-term
6 contract generator shall submit each of the following
7 in writing to the Administrator within 180 days
8 after the date of enactment of this title, and not
9 later than September 30 of each vintage year for
10 which such generator wishes to receive emission al-
11 lowances:

12 “(A) A certificate of representation de-
13 scribed in section 700(15).

14 “(B) An identification of each owner and
15 each operator of the facility.

16 “(C) An identification of the units at the
17 facility and the location of the facility.

18 “(D) A written certification by the des-
19 ignated representative that the facility meets all
20 the requirements of the definition of a long-
21 term contract generator.

22 “(E) The expiration date of each quali-
23 fying electricity or thermal sales agreement re-
24 ferred to in subsection (a)(5)(B).

1 “(F) A copy of each qualifying electricity
2 or thermal sales agreement referred to in sub-
3 section (a)(5)(B).

4 “(5) NOTIFICATION.—Not later than 30 days
5 after, in accordance with paragraph (3), a facility or
6 an agreement ceases to meet the eligibility require-
7 ments for distribution of emission allowances pursu-
8 ant to this subsection, the designated representative
9 of such facility shall notify the Administrator in
10 writing when, and on what basis, such facility or
11 agreement ceased to meet such requirements.

12 “(e) SMALL LDCs.—

13 “(1) DISTRIBUTION.—Not later than Sep-
14 tember 30 of each calendar year from 2011 through
15 2028, the Administrator shall, in accordance with
16 this subsection, distribute emission allowances allo-
17 cated pursuant to section 782(a)(2) for the following
18 vintage year. Such allowances shall be distributed
19 ratably among small LDCs based on historic emis-
20 sions in accordance with the same measure of such
21 emissions applied to each such small LDC for the
22 relevant vintage year under subsection (b)(2) of this
23 section.

1 “(2) USES.—A small LDC receiving allowances
2 under this section shall use such allowances exclu-
3 sively for the following purposes:

4 “(A) Cost-effective programs to achieve
5 electricity savings, provided that such savings
6 shall not be transferred or used for compliance
7 with section 610 of the Public Utility Regu-
8 latory Policies Act of 1978.

9 “(B) Deployment of technologies to gen-
10 erate electricity from renewable energy re-
11 sources, provided that any Federal renewable
12 electricity credits issued based on generation
13 supported under this section shall be submitted
14 to the Federal Energy Regulatory Commission
15 for voluntary retirement and shall not be used
16 for compliance with section 610 of the Public
17 Utility Regulatory Policies Act of 1978.

18 “(C) Assistance programs to reduce elec-
19 tricity costs for low-income residential rate-
20 payers of such small LDC, provided that such
21 assistance is made available equitably to all res-
22 idential ratepayers below a certain income level,
23 which shall not be higher than 200 percent of
24 the poverty line (as that term is defined in sec-

1 tion 673(2) of the Community Services Block
2 Grant Act (42 U.S.C. 9902(2)).

3 “(3) REQUIREMENTS.—As part of the regula-
4 tions promulgated under subsection (g), the Admin-
5 istrator shall prescribe—

6 “(A) after consultation with the Federal
7 Energy Regulatory Commission, requirements
8 to ensure that programs and projects under
9 paragraph (2)(A) and (B) are consistent with
10 the standards established by, and effectively
11 supplement electricity savings and generation of
12 electricity from renewable energy resources
13 achieved by, the Combined Efficiency and Re-
14 newable Electricity Standard established under
15 section 610 of the Public Utility Regulatory
16 Policies Act of 1978;

17 “(B) eligibility criteria and guidelines for
18 consumer assistance programs for low-income
19 residential ratepayers under paragraph (2)(C);
20 and

21 “(C) such other requirements as the Ad-
22 ministrator determines appropriate to ensure
23 compliance with the requirements of this sub-
24 section.

1 “(4) REPORTING.—Reports submitted under
2 subsection (b)(7) shall include, in accordance with
3 such requirements as the Administrator may pre-
4 scribe—

5 “(A) a description of any facilities de-
6 ployed under paragraph (2)(A), the quantity of
7 resulting electricity generation from renewable
8 energy resources;

9 “(B) an assessment demonstrating the
10 cost-effectiveness of, and electricity savings
11 achieved by, programs supported under para-
12 graph (2)(B); and

13 “(C) a description of assistance provided to
14 low-income retail ratepayers under paragraph
15 (2)(C).

16 “(f) CERTAIN COGENERATION FACILITIES.—

17 “(1) ELIGIBLE COGENERATION FACILITIES.—
18 For purposes of this subsection, an ‘eligible cogen-
19 eration facility’ is a facility that—

20 “(A) is a qualifying co-generation facility
21 (as that term is defined in section 3(18)(B) of
22 the Federal Power Act (16 U.S.C. 796(18)(B));

23 “(B) derives 80 percent or more of its heat
24 input from coal, petroleum coke, or any com-
25 bination of these 2 fuels;

1 “(C) has a nameplate capacity of 100
2 megawatts or greater;

3 “(D) was in operation as of January 1,
4 2009, and remains in operation as of the date
5 of any distribution of emission allowances under
6 this subsection;

7 “(E) in calendar years 2006 through 2008
8 sold, and as of the date of any distribution of
9 emission allowances under this section sells,
10 steam or electricity directly and solely to mul-
11 tiple, separately-owned industrial or commercial
12 facilities co-located at the same site with the co-
13 generation facility; and

14 “(F) is not eligible to receive allowances
15 under any other subsection of this section or
16 under part F of this title.

17 “(2) DISTRIBUTION.—The Administrator shall
18 distribute the emission allowances allocated pursuant
19 to section 782(a)(3) to owners or operators of eligi-
20 ble cogeneration facilities ratably based on the car-
21 bon dioxide emissions of each such facility in cal-
22 endar years 2006 through 2008. The Adminis-
23 trator—

24 “(A) shall not, in any year, distribute
25 emission allowances under this subsection to the

1 owner or operator of any eligible cogeneration
2 facility in excess of the amount necessary to
3 offset such facility's cost of compliance with the
4 requirements of this title in that year; and

5 “(B) may distribute such allowances over a
6 period of years if annual distributions under
7 this subsection would otherwise exceed the limi-
8 tation in subparagraph (A), provided that in no
9 event shall distributions be made under this
10 subsection after calendar year 2025.

11 “(3) REQUIREMENTS.—The Administrator
12 shall, by regulation, establish requirements to ensure
13 that the value of any emission allowances distributed
14 pursuant to this subsection are passed through, on
15 an equitable basis, to the facilities to which the rel-
16 evant cogeneration facility provides electricity or
17 steam deliveries, including any facility owned or op-
18 erated by the owner or operator of the cogeneration
19 facility.

20 “(g) REGULATIONS.—Not later than 2 years after
21 the date of enactment of this title, the Administrator, in
22 consultation 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, 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, 2017,
23 and each calendar year thereafter through 2031,
24 each natural gas local distribution company shall
25 submit a report to the Administrator, approved by

1 the relevant State regulatory authority or other enti-
2 ty charged with regulating or setting the retail nat-
3 ural gas rates of such company, describing the dis-
4 position of the value of any emission allowances re-
5 ceived 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. SUPPLEMENTAL AGRICULTURE AND RENEW-**
17 **ABLE ENERGY INCENTIVES PROGRAMS.**

18 “(a) IN GENERAL.—Emission allowances allocated
19 pursuant to section 782(u) shall be distributed by the Ad-
20 ministrator at the direction of the Secretary of Energy
21 and the Secretary of Agriculture in accordance with this
22 section. Not less than 50 percent of the allowances shall
23 be available for the program established pursuant to sub-
24 section (b).

25 “(b) AGRICULTURE INCENTIVES PROGRAM.—

1 “(1) ESTABLISHMENT.—The Secretary of Agri-
2 culture shall establish by rule a program to provide
3 incentives in the form of emission allowances for ac-
4 tivities undertaken in the agriculture sector that re-
5 duce greenhouse gas emissions or sequester carbon.
6 Under this program, the Secretary of Agriculture
7 shall provide incentives for projects and activities
8 that—

9 “(A) reduce or avoid greenhouse gas emis-
10 sions, or sequester greenhouse gases, but do not
11 meet the criteria for offset credits established
12 under the American Clean Energy and Security
13 Act of 2009;

14 “(B) support actions to adapt to climate
15 change; or

16 “(C) prevent conversion of land that would
17 increase greenhouse gas emissions (including
18 projects and activities that complement or sup-
19 plement conservation programs administered by
20 the Secretary).

21 “(2) CONSIDERATIONS.—In designing this pro-
22 gram, the Secretary shall ensure that it provides
23 support for—

24 “(A) development and demonstration of
25 practices to reduce greenhouse gas emissions or

1 sequester carbon in agricultural operations
2 where there are limited recognized opportunities
3 to achieve such emissions reductions or seques-
4 tration; and

5 “(B) projects that reduce greenhouse gas
6 emissions or increase sequestration of green-
7 house gases and also achieve other significant
8 environmental benefits, such as the improve-
9 ment of water or air quality.

10 “(3) RESEARCH.—The Secretary shall establish
11 by rule a program to conduct research to develop ad-
12 ditional projects and activities for crops to find addi-
13 tional techniques and methods to reduce greenhouse
14 gas emissions or sequester greenhouse gases that
15 may or may not meet the criteria for offset credits
16 established under the American Clean Energy and
17 Security Act of 2009.

18 “(4) USE OF INFORMATION.—Information and
19 data generated by this program should, where rel-
20 evant, be used to inform the development of addi-
21 tional offset practices and methodologies.

22 “(c) RENEWABLE ENERGY INCENTIVES PROGRAM.—
23 The Secretary of Energy and the Administrator shall es-
24 tablish by rule a program to provide allowances to State

1 and local governments to support the deployment of re-
2 newable energy infrastructure.

3 **“SEC. 789. CLIMATE CHANGE CONSUMER REFUNDS.**

4 “(a) REFUND.—In each year after deposits are made
5 to the Climate Change Consumer Refund Account, the
6 Secretary of the Treasury shall provide tax refunds on a
7 per capita basis to each household in the United States
8 that shall collectively equal the amount deposited into the
9 Climate Change Consumer Refund Account.

10 “(b) LIMITATIONS.—The Secretary of the Treasury
11 shall establish procedures to ensure that individuals who
12 are not—

13 “(1) citizens or nationals of the United States;

14 or

15 “(2) immigrants lawfully residing in the United
16 States,

17 are excluded for the purpose of calculating and distrib-
18 uting refunds under this section.

19 **“SEC. 790. EXCHANGE FOR STATE-ISSUED ALLOWANCES.**

20 “(a) IN GENERAL.—Not later than 1 year after the
21 date of enactment of this title, the Administrator shall
22 issue regulations allowing any person in the United States
23 to exchange greenhouse gas emission allowances issued be-
24 fore December 31, 2011, by the State of California or for
25 the Regional Greenhouse Gas Initiative, or the Western

1 Climate Initiative (in this section referred to as ‘State al-
2 lowances’) for emission allowances established by the Ad-
3 ministrator under section 721(a).

4 “(b) REGULATIONS.—Regulations issued under sub-
5 section (a) shall—

6 “(1) provide that a person exchanging State al-
7 lowances under this section receive emission allow-
8 ances established under section 721(a) in the
9 amount that is sufficient to compensate for the cost
10 of obtaining and holding such State allowances;

11 “(2) establish a deadline by which persons must
12 exchange the State allowances;

13 “(3) provide that the Federal emission allow-
14 ances disbursed pursuant to this section shall be de-
15 ducted from the allowances to be auctioned pursuant
16 to section 782(d); and

17 “(4) require that, once exchanged, the credit or
18 other instrument be retired for purposes of use
19 under the program by or for which it was originally
20 issued.

21 “(c) COST OF OBTAINING STATE ALLOWANCE.—For
22 purposes of this section, the cost of obtaining a State al-
23 lowance shall be the average auction price, for emission
24 allowances issued in the year in which the State allowance

1 was issued, under the program under which the State al-
2 lowance was issued.

3 **“SEC. 791. AUCTION PROCEDURES.**

4 “(a) IN GENERAL.—To the extent that auctions of
5 emission allowances by the Administrator are authorized
6 by this part, such auctions shall be carried out pursuant
7 to this section and the regulations established hereunder.

8 “(b) INITIAL REGULATIONS.—Not later than 12
9 months after the date of enactment of this title, the Ad-
10 ministrator, in consultation with other agencies, as appro-
11 priate, shall promulgate regulations governing the auction
12 of allowances under this section. Such regulations shall in-
13 clude the following requirements:

14 “(1) FREQUENCY; FIRST AUCTION.—Auctions
15 shall be held four times per year at regular intervals,
16 with the first auction to be held no later than March
17 31, 2011.

18 “(2) AUCTION SCHEDULE; CURRENT AND FU-
19 TURE VINTAGES.—The Administrator shall, at each
20 quarterly auction under this section, offer for sale
21 both a portion of the allowances with the same vin-
22 tage year as the year in which the auction is being
23 conducted and a portion of the allowances with vin-
24 tage years from future years. The preceding sen-
25 tence shall not apply to auctions held before 2012,

1 during which period, by necessity, the Administrator
2 shall auction only allowances with a vintage year
3 that is later than the year in which the auction is
4 held. Beginning with the first auction and at each
5 quarterly auction held thereafter, the Administrator
6 may offer for sale allowances with vintage years of
7 up to 4 years after the year in which the auction is
8 being conducted, except as provided in section
9 782(p).

10 “(3) AUCTION FORMAT.—Auctions shall follow
11 a single-round, sealed-bid, uniform price format.

12 “(4) PARTICIPATION; FINANCIAL ASSURANCE.—
13 Auctions shall be open to any person, except that
14 the Administrator may establish financial assurance
15 requirements to ensure that auction participants can
16 and will perform on their bids.

17 “(5) DISCLOSURE OF BENEFICIAL OWNER-
18 SHIP.—Each bidder in the auction shall be required
19 to disclose the person or entity sponsoring or bene-
20 fitting from the bidder’s participation in the auction
21 if such person or entity is, in whole or in part, other
22 than the bidder.

23 “(6) PURCHASE LIMITS.—No person may, di-
24 rectly or in concert with another participant, pur-

1 chase more than 5 percent of the allowances offered
2 for sale at any quarterly auction.

3 “(7) PUBLICATION OF INFORMATION.—After
4 the auction, the Administrator shall, in a timely
5 fashion, publish the identities of winning bidders,
6 the quantity of allowances obtained by each winning
7 bidder, and the auction clearing price.

8 “(8) OTHER REQUIREMENTS.—The Adminis-
9 trator may include in the regulations such other re-
10 quirements or provisions as the Administrator, in
11 consultation with other agencies, as appropriate,
12 considers appropriate to promote effective, efficient,
13 transparent, and fair administration of auctions
14 under this section.

15 “(c) REVISION OF REGULATIONS.—The Adminis-
16 trator may, in consultation with other agencies, as appro-
17 priate, at any time, revise the initial regulations promul-
18 gated under subsection (b) by promulgating new regula-
19 tions. Such revised regulations need not meet the require-
20 ments identified in subsection (b) if the Administrator de-
21 termines that an alternative auction design would be more
22 effective, taking into account factors including costs of ad-
23 ministration, transparency, fairness, and risks of collusion
24 or manipulation. In determining whether and how to re-
25 vise the initial regulations under this subsection, the Ad-

1 administrator shall not consider maximization of revenues to
2 the Federal Government.

3 “(d) RESERVE AUCTION PRICE.—The minimum re-
4 serve auction price shall be \$10 (in constant 2009 dollars)
5 for auctions occurring in 2012. The minimum reserve
6 price for auctions occurring in years after 2012 shall be
7 the minimum reserve auction price for the previous year
8 increased by 5 percent plus the rate of inflation (as meas-
9 ured by the Consumer Price Index for all urban con-
10 sumers).

11 “(e) DELEGATION OR CONTRACT.—Pursuant to reg-
12 ulations under this section, the Administrator may by del-
13 egation or contract provide for the conduct of auctions
14 under the Administrator’s supervision by other depart-
15 ments or agencies of the Federal Government or by non-
16 governmental agencies, groups, or organizations.

17 “(f) SMALL BUSINESS REFINER RESERVE.—The Ad-
18 ministrator shall, in accordance with this subsection, issue
19 regulations setting aside a specified number of allowances
20 that small business refiners may purchase at the average
21 auction price and may use to demonstrate compliance pur-
22 suant to section 722. These regulations shall provide the
23 following:

24 “(1) AMOUNT.—The Administrator shall place
25 in the small business refiner reserve account allow-

1 ances that are to be sold at auction pursuant to the
2 allocations in section 782 in an amount equal to—

3 “(A) 6.2 percent of the emission allow-
4 ances established under section 721(a) for each
5 vintage year from 2012 through 2013;

6 “(B) 5.4 percent of the emission allow-
7 ances established under section 721(a) for each
8 vintage year from 2014 through 2015; and

9 “(C) 4.9 percent of the emission allow-
10 ances established under section 721(a) for each
11 vintage year from 2016 through 2024.

12 “(2) ALLOWED PURCHASES.—From January 1
13 of the calendar year that matches the vintage year
14 for which allowances have been placed in the reserve,
15 through January 14 of the following year, small
16 business refiners (as defined in section 787(b)) may
17 purchase allowances from this reserve at the price
18 determined pursuant to paragraph (3).

19 “(3) PRICE.—The price for allowances pur-
20 chased from this reserve shall be the average auction
21 price for allowances of the same vintage year pur-
22 chased at auctions conducted pursuant to this sec-
23 tion during the 12 months preceding the purchase of
24 the allowances.

1 “(4) USE OF ALLOWANCES.—Allowances pur-
2 chased from this reserve shall only be used by the
3 purchaser to demonstrate compliance pursuant to
4 section 722 for attributable greenhouse gas emis-
5 sions in the calendar year that matches the vintage
6 year of the purchased allowance. Allowances pur-
7 chased from this reserve may not be banked, traded
8 or borrowed.

9 “(5) LIMITATIONS ON PURCHASE AMOUNT.—
10 The Administrator, by regulation adopted after pub-
11 lic notice and an opportunity for comment, shall es-
12 tablish procedures to distribute the ability to pur-
13 chase allowances from the reserve fairly among all
14 small business refiners interested in purchasing al-
15 lowances from this reserve so as to address the po-
16 tential that requests to purchase allowances exceed
17 the number of allowances available in the reserve.
18 This regulation may place limits on the number of
19 allowances a small business refiner may purchase
20 from the reserve.

21 “(6) UNSOLD ALLOWANCES.—Vintage year al-
22 lowances not sold from the reserve on or before Jan-
23 uary 15 of the calendar year following the vintage
24 year shall be sold at an auction conducted pursuant
25 to this section no later than March 31 of the cal-

1 “(c) PROCEEDS.—For emission allowances and com-
2 pensatory allowances auctioned pursuant to this section,
3 notwithstanding section 3302 of title 31, United States
4 Code, or any other provision of law, within 90 days of re-
5 ceipt, the United States shall transfer the proceeds from
6 the auction to the entity which held the allowances auc-
7 tioned. No funds transferred from a purchaser to a seller
8 of emission allowances or compensatory allowances under
9 this subsection shall be held by any officer or employee
10 of the United States or treated for any purpose as public
11 monies.

12 “(d) UNSOLD ALLOWANCES.—Allowances offered for
13 sale under this section that are not sold shall be returned
14 to the entity in possession of the allowance, notwith-
15 standing section 726(b)(2)(A).

16 “(e) REGULATIONS.—The Administrator shall issue
17 regulations within 24 months after the date of enactment
18 of this title to implement this section.

19 **“SEC. 793. ESTABLISHMENT OF FUNDS.**

20 “There is hereby established in the Treasury of the
21 United States the following separate accounts:

22 “(1) The Strategic Reserve Fund.

23 “(2) The Climate Change Consumer Refund
24 Account.

1 “(3) The Climate Change Worker Adjustment
2 Assistance Fund.

3 **“SEC. 794. OVERSIGHT OF ALLOCATIONS.**

4 “(a) IN GENERAL.—Not later than January 1, 2014,
5 and every 2 years thereafter, the Comptroller General of
6 the United States shall carry out and report to Congress
7 on the results of a review of programs administered by
8 the Federal Government that distribute emission allow-
9 ances or funds from any Federal auction of allowances.

10 “(b) CONTENTS.—Each such report shall include a
11 comprehensive evaluation of the administration and effec-
12 tiveness of each program, including—

13 “(1) the efficiency, transparency, and sound-
14 ness of the administration of each program;

15 “(2) the performance of activities receiving as-
16 sistance under each program;

17 “(3) the cost-effectiveness of each program in
18 achieving the stated purposes of the program; and

19 “(4) recommendations, if any, for legislative,
20 regulatory, or administrative changes to each pro-
21 gram to improve its effectiveness.

22 “(c) FOCUS.—In evaluating program performance,
23 each review under this section review shall address the ef-
24 fectiveness of such programs in—

25 “(1) creating and preserving jobs;

1 “(2) ensuring a manageable transition for
2 working families and workers;

3 “(3) reducing the emissions, or enhancing se-
4 questration, of greenhouse gases;

5 “(4) developing clean technologies; and

6 “(5) building resilience to the impacts of cli-
7 mate change.

8 **“SEC. 795. EXCHANGE FOR EARLY ACTION OFFSET CRED-**
9 **ITS.**

10 “(a) IN GENERAL.—Emission allowances allocated
11 pursuant to section 782(t) shall be distributed by the Ad-
12 ministrator in accordance with this section. Not later than
13 1 year after the date of enactment of this title, the Admin-
14 istrator shall issue regulations allowing—

15 “(1) any person in the United States to ex-
16 change instruments in the nature of offset credits
17 issued before January 1, 2009, by a State or vol-
18 untary offset program with respect to which the Ad-
19 ministrator has made an affirmative determination
20 under section 740(a)(2), for emissions allowances es-
21 tablished by the Administrator under section 721(a);
22 and

23 “(2) the Administrator to provide compensation
24 in the form of emission allowances to entities that
25 do not meet the criteria of paragraph (1) and meet

1 the criteria of this paragraph for documented early
2 reductions or avoidance of greenhouse gas emissions
3 or greenhouse gases sequestered before January 1,
4 2009, from projects begun before January 1, 2009,
5 where—

6 “(A) the entity publicly stated greenhouse
7 gas reduction goals and publicly reported
8 against those goals;

9 “(B) the entity demonstrated entity-wide
10 net greenhouse gas reductions; and

11 “(C) the entity demonstrates the actual
12 projects undertaken to make reductions and
13 documents the reductions (e.g., through docu-
14 mentation of engineering projects).

15 “(b) REGULATIONS.—Regulations issued under sub-
16 section (a) shall—

17 “(1) provide that a person exchanging credits
18 under subsection (a)(1) receive emission allowances
19 established under section 721(a) in an amount for
20 which the monetary value is equivalent to the aver-
21 age monetary value of the credits during the period
22 from January 1, 2006, to January 1, 2009, as ad-
23 justed for inflation to reflect current dollar values at
24 the time of the exchange;

1 “(2) provide that a person receiving compensa-
2 tion for documented early action under subsection
3 (a)(2) shall receive emission allowances established
4 under section 721(a) in an amount that is approxi-
5 mately equivalent in value to the carbon dioxide
6 equivalent per ton value received by entities in ex-
7 change for credits under paragraph (1) (as adjusted
8 for inflation to reflect current dollar values at the
9 time of the exchange), as determined by the Admin-
10 istrator;

11 “(3) provide that only reductions or avoidance
12 of greenhouse gas emissions, or sequestration of
13 greenhouse gases, achieved by activities in the
14 United States between January 1, 2001, and Janu-
15 ary 1, 2009, may be compensated under this section,
16 and only credits issued for such activities may be ex-
17 changed under this section;

18 “(4) provide that only credits that have not
19 been retired or otherwise used to meet a voluntary
20 or mandatory commitment, and have not expired,
21 may be exchanged under subsection (a)(1);

22 “(5) require that, once exchanged, the credit be
23 retired for purposes of use under the program by or
24 for which it was originally issued; and

1 “(6) establish a deadline by which persons must
2 exchange the credits or request compensation for
3 early action under this section.

4 “(c) PARTICIPATION.—Participation in an exchange
5 of credits for allowances or compensation for early action
6 authorized by this section shall not preclude any person
7 from participation in an offset credit program established
8 under the American Clean Energy and Security Act of
9 2009.

10 “(d) DISTRIBUTION.—Of the emission allowances
11 distributed under this section, a quantity equal to 0.75
12 percent of vintage year 2012 emission allowances estab-
13 lished under section 721(a) shall be distributed pursuant
14 to subsection (a)(1), and a quantity equal to 0.25 percent
15 of vintage year 2012 emission allowances established
16 under section 721(a) shall be distributed pursuant to sub-
17 section (a)(2).”.

18 **Subtitle C—Additional Greenhouse** 19 **Gas Standards**

20 **SEC. 331. GREENHOUSE GAS STANDARDS.**

21 The Clean Air Act (42 U.S.C. 7401 and following),
22 as amended by subtitles A and B of this title, is further
23 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 arduous 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 3 years after the
 14 date of the initial auction and from time to
 15 time thereafter, the Administrator shall de-
 16 termine through rulemaking whether any

1 persons who did not produce or import a
2 class II substance during calendar year
3 2004, 2005, or 2006 will be permitted to
4 participate in future auctions. The Admin-
5 istrator shall base this determination on
6 the duration, consistency, and scale of such
7 person's purchases of consumption allow-
8 ances in the secondary pool under subpara-
9 graph (D)(ii)(III), as well as economic or
10 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 year 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 year 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 year 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 year 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 year 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 year
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 1 year after the date of enactment of this sec-
11 tion, 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 2 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 1 year after the
11 date of enactment of this section, the Administrator,
12 in coordination with the Secretary of State and
13 other appropriate Federal agencies, shall transmit a
14 report to Congress on the amount, type, and direc-
15 tion of all present United States financial, technical,
16 and related assistance to foreign countries to reduce,
17 mitigate, and otherwise abate black carbon emis-
18 sions.

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 1 year, whichever is less, unless the court on
21 motion determines that a shorter or longer period is
22 necessary, appropriate, and consistent with the pur-
23 poses of this Act. The court of appeals shall have ju-
24 risdiction to enforce a deadline for action on remand
25 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 serting “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 **SEC. 340. REDUCING ACID RAIN AND MERCURY POLLU-**
10 **TION.**

11 Not later than 18 months after the date of enactment
12 of this Act, the Administrator shall submit to Congress
13 a report that analyzes the effects of different carbon diox-
14 ide reduction strategies and technologies on the emissions
15 of mercury, sulfur dioxide, and nitrogen oxide, which
16 cause acid rain, particulate matter, ground level ozone,
17 mercury contamination, and other environmental prob-
18 lems. The report shall assess a variety of carbon reduction
19 technologies, including the application of various carbon
20 capture and sequestration technologies for both new and
21 existing power plants. The report shall assess the current
22 scientific and technical understanding of the interplay be-
23 tween the various technologies and emissions of air pollut-
24 ants, identify hurdles to strategies that could cost-effec-

1 tively reduce emissions of multiple pollutants, and make
2 appropriate recommendations.

3 **Subtitle D—Carbon Market** 4 **Assurance**

5 **SEC. 341. CARBON MARKET ASSURANCE.**

6 (a) AMENDMENT.—The Federal Power Act (16
7 U.S.C. 791a and following) is amended by adding at the
8 end the following:

9 **“PART IV—CARBON MARKET ASSURANCE**

10 **“SEC. 401. OVERSIGHT AND ASSURANCE OF CARBON MAR-** 11 **KETS.**

12 “(a) DEFINITIONS.—In this section:

13 “(1) COVERED ENTITY.—The term ‘covered en-
14 tity’ shall have the meaning given in section 700 of
15 the Clean Air Act.

16 “(2) REGULATED ALLOWANCE.—The term ‘reg-
17 ulated allowance’ means any emission allowance,
18 compensatory allowance, offset credit, or Federal re-
19 newable electricity credit established or issued under
20 the American Clean Energy and Security Act of
21 2009.

22 “(3) REGULATED INSTRUMENT.—The term
23 ‘regulated instrument’ means a regulated allowance
24 or a regulated allowance derivative.

25 “(b) REGULATED ALLOWANCE MARKET.—

1 “(1) AUTHORITY.—The Commission shall pro-
2 mulgate regulations for the establishment, operation,
3 and oversight of markets for regulated allowances
4 not later than 18 months after the date of the enact-
5 ment of this section, and from time to time there-
6 after as may be appropriate.

7 “(2) REGULATIONS.—The regulations promul-
8 gated pursuant to paragraph (1) shall—

9 “(A) provide for effective and comprehen-
10 sive market oversight;

11 “(B) prohibit fraud, market manipulation,
12 and excess speculation, and provide measures to
13 limit unreasonable fluctuation in the prices of
14 regulated allowances;

15 “(C) facilitate compliance with title VII of
16 the Clean Air Act by covered entities;

17 “(D) ensure market transparency and rec-
18 ordkeeping deemed necessary and appropriate
19 by the Commission to provide for efficient price
20 discovery; prevention of fraud, market manipu-
21 lation, and excess speculation; and compliance
22 with title VII of the Clean Air Act and section
23 610 of the Public Utility Regulatory Policies
24 Act of 1978;

1 “(E) as necessary, ensure that position
2 limitations for individual market participants
3 are established with respect to each class of
4 regulated allowances;

5 “(F) as necessary, ensure that margin re-
6 quirements are established for each class of reg-
7 ulated allowances;

8 “(G) provide for the formation and oper-
9 ation of a fair, orderly and liquid national mar-
10 ket system that allows for the best execution in
11 the trading of regulated allowances;

12 “(H) limit or eliminate counterparty risks,
13 market power concentration risks, and other
14 risks associated with trading regulated allow-
15 ances outside of trading facilities; and

16 “(I) establish standards for qualification
17 as, and operation of, trading facilities for regu-
18 lated allowances;

19 “(J) establish standards for qualification
20 as, and operation of, clearing organizations for
21 trading facilities for regulated allowances; and

22 “(K) include such other requirements as
23 necessary to preserve market integrity and fa-
24 cilitate compliance with title VII of the Clean
25 Air Act and section 610 of the Public Utility

1 Regulatory Policies Act of 1978 and the regula-
2 tions promulgated under such title and such
3 section.

4 “(3) ENFORCEMENT.—

5 “(A) IN GENERAL.—If the Commission de-
6 termines, after notice and an opportunity for a
7 hearing on the record, that any entity has vio-
8 lated any rule or order issued by the Commis-
9 sion under this subsection, the Commission may
10 issue an order—

11 “(i) prohibiting the entity from trad-
12 ing on a trading facility for regulated al-
13 lowances registered with the Commission,
14 and requiring all such facilities to refuse
15 the entity all privileges for such period as
16 may be specified in the order;

17 “(ii) if the entity is registered with
18 the Commission in any capacity, sus-
19 pending for a period of not more than 6
20 months, or revoking, the registration of the
21 entity;

22 “(iii) assessing the entity a civil pen-
23 alty of not more than \$1,000,000 per day
24 per violation for as long as the violation
25 continues (and in determining the amount

1 of a civil penalty, the Commission shall
2 take into account the nature and serious-
3 ness of the violation and the efforts to
4 remedy the violation); and

5 “(iv) requiring disgorgement of unjust
6 profits, restitution to entities harmed by
7 the violation as determined by the Com-
8 mission, or both.

9 “(B) AUTHORITY TO SUSPEND OR REVOKE
10 REGISTRATION.—The Commission may suspend
11 for a period of not more than 6 months, or re-
12 voke, the registration of a trading facility for
13 regulated allowances or of a clearing organiza-
14 tion registered by the Commission if, after no-
15 tice and opportunity for a hearing on the
16 record, the Commission finds that—

17 “(i) the entity violated any rule or
18 order issued by the Commission under this
19 subsection; or

20 “(ii) a director, officer, employee, or
21 agent of the entity has violated any rule or
22 order issued by the Commission under this
23 subsection.

24 “(C) CEASE AND DESIST PROCEEDINGS.—

1 “(i) IN GENERAL.—If the Commission
2 determines that any entity may be vio-
3 lating, may have violated, or may be about
4 to violate any provision of this part, or any
5 regulation promulgated by, or any restric-
6 tion, condition, or order made or imposed
7 by, the Commission under this Act, and if
8 the Commission finds that the alleged vio-
9 lation or threatened violation, or the con-
10 tinuation of the violation, is likely to result
11 in significant harm to covered entities or
12 market participants, or significant harm to
13 the public interest, the Commission may
14 issue a temporary order requiring the enti-
15 ty—

16 “(I) to cease and desist from the
17 violation or threatened violation;

18 “(II) to take such action as is
19 necessary to prevent the violation or
20 threatened violation; and

21 “(III) to prevent, as the Commis-
22 sion determines to be appropriate—

23 “(aa) significant harm to
24 covered entities or market par-
25 ticipants;

1 “(bb) significant harm to
2 the public interest; and

3 “(cc) frustration of the abil-
4 ity of the Commission to conduct
5 the proceedings or to redress the
6 violation at the conclusion of the
7 proceedings.

8 “(ii) TIMING OF ENTRY.—An order
9 issued under clause (i) shall be entered
10 only after notice and opportunity for a
11 hearing, unless the Commission determines
12 that notice and hearing before entry would
13 be impracticable or contrary to the public
14 interest.

15 “(iii) EFFECTIVE DATE.—A tem-
16 porary order issued under clause (i)
17 shall—

18 “(I) become effective upon serv-
19 ice upon the entity; and

20 “(II) unless set aside, limited, or
21 suspended by the Commission or a
22 court of competent jurisdiction, re-
23 main effective and enforceable pend-
24 ing the completion of the proceedings.

1 “(D) PROCEEDINGS REGARDING DISSIPATION OR CONVERSION OF ASSETS.—

2
3 “(i) IN GENERAL.—In a proceeding
4 involving an alleged violation of a regulation or order promulgated or issued by the
5 Commission, if the Commission determines
6 that the alleged violation or related circumstances are likely to result in significant
7 dissipation or conversion of assets,
8 the Commission may issue a temporary
9 order requiring the respondent to take
10 such action as is necessary to prevent the
11 dissipation or conversion of assets.
12

13
14 “(ii) TIMING OF ENTRY.—An order
15 issued under clause (i) shall be entered
16 only after notice and opportunity for a
17 hearing, unless the Commission determines
18 that notice and hearing before entry would
19 be impracticable or contrary to the public
20 interest.

21 “(iii) EFFECTIVE DATE.—A temporary order issued under clause (i)
22 shall—
23

24 “(I) become effective upon service upon the respondent; and
25

1 “(II) unless set aside, limited, or
2 suspended by the Commission or a
3 court of competent jurisdiction, re-
4 main effective and enforceable pend-
5 ing the completion of the proceedings.

6 “(E) REVIEW OF TEMPORARY ORDERS.—

7 “(i) APPLICATION FOR REVIEW.—At
8 any time after a respondent has been
9 served with a temporary cease-and-desist
10 order pursuant to subparagraph (C) or
11 order regarding the dissipation or conver-
12 sion of assets pursuant to subparagraph
13 (D), the respondent may apply to the Com-
14 mission to have the order set aside, lim-
15 ited, or suspended.

16 “(ii) NO PRIOR HEARING.—If a re-
17 spondent has been served with a temporary
18 order entered without a prior hearing of
19 the Commission—

20 “(I) the respondent may, not
21 later than 10 days after the date on
22 which the order was served, request a
23 hearing on the application; and

24 “(II) the Commission shall hold a
25 hearing and render a decision on the

1 application at the earliest practicable
2 time.

3 “(iii) JUDICIAL REVIEW.—

4 “(I) IN GENERAL.—An entity
5 shall not be required to submit a re-
6 quest for rehearing of a temporary
7 order before seeking judicial review in
8 accordance with this subparagraph.

9 “(II) TIMING OF REVIEW.—Not
10 later than 10 days after the date on
11 which a respondent is served with a
12 temporary cease-and-desist order en-
13 tered with a prior hearing of the Com-
14 mission, or 10 days after the date on
15 which the Commission renders a deci-
16 sion on an application and hearing
17 under clause (i) with respect to any
18 temporary order entered without such
19 a prior hearing—

20 “(aa) the respondent may
21 obtain a review of the order in a
22 United States circuit court hav-
23 ing jurisdiction over the circuit in
24 which the respondent resides or
25 has a principal place of business,

1 or in the United States Court of
2 Appeals for the District of Co-
3 lumbia Circuit, for an order set-
4 ting aside, limiting, or sus-
5 pending the effectiveness or en-
6 forcement of the order; and

7 “(bb) the court shall have
8 jurisdiction to enter such an
9 order.

10 “(III) NO PRIOR HEARING.—A
11 respondent served with a temporary
12 order entered without a prior hearing
13 of the Commission may not apply to
14 the applicable court described in sub-
15 clause (II) except after a hearing and
16 decision by the Commission on the ap-
17 plication of the respondent under
18 clauses (i) and (ii).

19 “(iv) PROCEDURES.—Section 222 and
20 Part III shall apply to—

21 “(I) an application for review of
22 an order under clause (i); and

23 “(II) an order subject to review
24 under clause (iii).

1 “(v) NO AUTOMATIC STAY OF TEM-
2 PORARY ORDER.—The commencement of
3 proceedings under clause (iii) shall not, un-
4 less specifically ordered by the court, oper-
5 ate as a stay of the order of the Commis-
6 sion.

7 “(F) ACTIONS TO COLLECT CIVIL PEN-
8 ALTIES.—If any person fails to pay a civil pen-
9 alty assessed under this subsection after an
10 order assessing the penalty has become final
11 and unappealable, the Commission shall bring
12 an action to recover the amount of the penalty
13 in any appropriate United States district court.

14 “(4) TRANSACTION FEES.—

15 “(A) IN GENERAL.—The Commission
16 shall, in accordance with this paragraph, estab-
17 lish and collect transaction fees designed to re-
18 cover the costs to the Federal Government of
19 the supervision and regulation of regulated al-
20 lowance markets and market participants, in-
21 cluding related costs for enforcement activities,
22 policy and rulemaking activities, administration,
23 legal services, and international regulatory ac-
24 tivities.

1 “(B) INITIAL FEE RATE.—Each trading
2 facility on or through which regulated allow-
3 ances are transacted shall pay to the Commis-
4 sion a fee at a rate of not more than \$15 per
5 \$1,000,000 of the aggregate dollar amount of
6 sales of regulated allowances transacted
7 through the facility.

8 “(C) ANNUAL ADJUSTMENT OF FEE
9 RATE.—The Commission shall, on an annual
10 basis—

11 “(i) assess the rate at which fees are
12 to be collected as necessary to meet the
13 cost recovery requirement in subparagraph
14 (A); and

15 “(ii) consistent with subparagraph
16 (B), adjust the rate as necessary in order
17 to meet the requirement.

18 “(D) REPORT ON ADEQUACY OF FEES IN
19 RECOVERING COSTS.—The Commission, shall,
20 on an annual basis, report to the Committee on
21 Energy and Commerce of the House of Rep-
22 resentatives and the Committee on Energy and
23 Natural Resources of the Senate on the ade-
24 quacy of the transaction fees in providing fund-

1 ing for the Commission to regulate the regu-
2 lated allowance markets.

3 “(5) JUDICIAL REVIEW.—Judicial review of ac-
4 tions taken by the Commission under this subsection
5 shall be pursuant to part III.

6 “(6) 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) WORKING GROUP.—

21 “(1) ESTABLISHMENT.—Not later than 30 days
22 after the date of the enactment of this section, the
23 President shall establish an interagency working
24 group on carbon market oversight, which shall in-
25 clude the Administrator of the Environmental Pro-

1 tection Agency and representatives of other relevant
2 agencies, to make recommendations to the Com-
3 modity Futures Trading Commission regarding pro-
4 posed regulations for the establishment, operation,
5 and oversight of markets for regulated allowance de-
6 rivatives.

7 “(2) REPORT.—Not later than 180 days after
8 the date of the enactment of this section, and bienni-
9 ally thereafter, the interagency working group shall
10 submit a written report to the President and Con-
11 gress that includes its recommendations to the Com-
12 modity Futures Trading Commission regarding pro-
13 posed regulations for the establishment, operation,
14 and oversight of markets for regulated allowance de-
15 rivatives and any recommendations to Congress for
16 statutory changes needed to ensure the establish-
17 ment, operation, and oversight of transparent, fair,
18 stable, and efficient markets for regulated allowance
19 derivatives.

20 “(d) PENALTY FOR FRAUD AND FALSE OR MIS-
21 LEADING STATEMENTS.—A person convicted under sec-
22 tion 1041 of title 18, United States Code, may be prohib-
23 ited from holding or trading regulated allowances for a
24 period of not more than 5 years pursuant to the regula-
25 tions promulgated under this section, except that, if the

1 person is a covered entity, the person shall be allowed to
2 hold sufficient regulated allowances to meet its compliance
3 obligations.

4 “(e) RELATION TO STATE LAW.—Nothing in this
5 section shall preclude, diminish or qualify any authority
6 of a State or political subdivision thereof to adopt or en-
7 force any unfair competition, antitrust, consumer protec-
8 tion, securities, commodities or any other law or regula-
9 tion, except that no such State law or regulation may re-
10 lieve any person of any requirement otherwise applicable
11 under this section.

12 “(f) MARKET REPORTS.—

13 “(1) COLLECTION AND ANALYSIS OF INFORMA-
14 TION.—The Commission, in conjunction with the
15 Commodity Futures Trading Commission, shall, on
16 a continuous basis, analyze the following information
17 on the functioning of the markets for regulated in-
18 struments established under this part:

19 “(A) The status of, and trends in, the
20 markets, including prices, trading volumes,
21 transaction types, and trading channels and
22 mechanisms.

23 “(B) Spikes, collapses, and volatility in
24 prices of regulated instruments, and the causes
25 therefor.

1 “(C) The relationship between the market
2 for regulated allowances and allowance deriva-
3 tives, and the spot and futures markets for en-
4 ergy commodities, including electricity.

5 “(D) The economic effects of the markets,
6 including to macro- and micro-economic effects
7 of unexpected significant increases and de-
8 creases in the price of regulated instruments.

9 “(E) Any changes in the roles, activities,
10 or strategies of various market participants.

11 “(F) Regional, industrial, and consumer
12 responses to the markets, and energy invest-
13 ment responses to the markets.

14 “(G) Any other issue related to the mar-
15 kets that the Commission, and the Commodity
16 Futures Trading Commission deem appropriate.

17 “(2) ANNUAL REPORTS TO THE CONGRESS.—

18 Not later than 1 month after the end of each cal-
19 endar year, the Commission, in conjunction with the
20 Commodity Futures Trading Commission, shall sub-
21 mit to the President, the Committee on Agriculture
22 and Committee on Energy and Commerce of the
23 House of Representatives, and the Committee on
24 Agriculture, Nutrition, and Forestry and Committee
25 on Energy and Natural Resources of the Senate,

1 and make available to the public, a report on the
2 matters described in paragraph (1) with respect to
3 the year, including recommendations for any admin-
4 istrative or statutory measures the Commission and
5 the Commodity Futures Trading Commission con-
6 sider necessary to address any threats to the trans-
7 parency, fairness, or integrity of the markets in reg-
8 ulated 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) SECTION 315.—In applying section 315(a) to
13 this part, the words ‘person or entity’ shall be substituted
14 for the words ‘licensee or public utility’. In applying sec-
15 tion 315(b) to this part, the words ‘an entity’ shall be sub-
16 stituted for the words ‘a licensee or public utility’ and the
17 words ‘such entity’ shall be substituted for the words ‘such
18 licensee or public utility’.

19 “(c) SECTION 316.—Section 316(a) shall not apply
20 to section 401(d).”.

21 (b) CRIMINAL PROHIBITION AGAINST FRAUD AND
22 FALSE OR MISLEADING STATEMENTS.—

23 (1) Chapter 47 of title 18, United States Code,
24 is amended by adding at the end the following:

1 **“§ 1041. Fraud and false statements in connection**
2 **with regulated allowances**

3 “Whoever in connection with a transaction involving
4 a regulated allowance (as defined in section 401(a) of the
5 Federal Power Act, as added by section 341 of the Amer-
6 ican Clean Energy and Security Act of 2009), know-
7 ingly—

8 “(1) makes or uses a materially false or mis-
9 leading statement, writing, representation, scheme,
10 or device; or

11 “(2) falsifies, conceals, or covers up by any
12 trick, scheme, or device any material fact,
13 shall be fined not more than \$5,000,000 (or \$25,000,000
14 in the case of an organization) or imprisoned not more
15 than 20 years, or both.”.

16 (2) The table of sections at the beginning of
17 chapter 47 of title 18, United States Code, is
18 amended by adding at the end the following new
19 item:

“1041. Fraud and false statements in connection with regulated allowances.”.

20 **SEC. 342. CARBON DERIVATIVE MARKETS.**

21 (a) Section 1a(14) of the Commodity Exchange Act
22 (7 U.S.C. 1a(14)) is amended by striking “or an agricul-
23 tural commodity” and inserting “, an agricultural com-
24 modity, or any emission allowance, compensatory allow-
25 ance, offset credit, or Federal renewable electricity credit

1 established or issued under the American Clean Energy
2 and Security Act of 2009”.

3 (b) Section 4(c) of such Act (7 U.S.C. 6(c)) is amend-
4 ed by adding at the end the following:

5 “(6) This subsection does not apply to any
6 agreement, contract, or transaction for any emission
7 allowance, compensatory allowance, offset credit, or
8 Federal renewable electricity credit established or
9 issued under the American Clean Energy and Secu-
10 rity Act of 2009.”.

11 **Subtitle E—Additional Market**
12 **Assurance**

13 **SEC. 351. REGULATION OF CERTAIN TRANSACTIONS IN DE-**
14 **RIVATIVES INVOLVING ENERGY COMMOD-**
15 **ITIES.**

16 (a) ENERGY COMMODITY DEFINED.—Section 1a of
17 the Commodity Exchange Act (7 U.S.C. 1a) is amended—

18 (1) in paragraph (14), by inserting “, an energy
19 commodity,” after “excluded commodity”;

20 (2) by redesignating paragraphs (13) through
21 (21) and paragraphs (22) through (34) as para-
22 graphs (14) through (22) and paragraphs (24)
23 through (36), respectively;

24 (3) by inserting after paragraph (12) the fol-
25 lowing:

1 “(13) ENERGY COMMODITY.—The term ‘energy
2 commodity’ means—

3 “(A) coal;

4 “(B) crude oil, gasoline, diesel fuel, jet
5 fuel, heating oil, and propane;

6 “(C) electricity (excluding financial trans-
7 mission rights which are subject to regulation
8 and oversight by the Federal Energy Regu-
9 latory Commission);

10 “(D) natural gas; and

11 “(E) any other substance (other than an
12 excluded commodity, a metal, or an agricultural
13 commodity) that is used as a source of energy,
14 as the Commission, in its discretion, deems ap-
15 propriate.”; and

16 (4) by inserting after paragraph (22) (as so re-
17 designated by paragraph (2) of this subsection) the
18 following:

19 “(23) INCLUDED ENERGY TRANSACTION.—The
20 term ‘included energy transaction’ means a contract,
21 agreement, or transaction in an energy commodity
22 for future delivery that provides for a delivery point
23 of the energy commodity in the United States or a
24 territory or possession of the United States, or that

1 is offered or transacted on or through a computer
2 terminal located in the United States.”.

3 (b) EXTENSION OF REGULATORY AUTHORITY TO
4 SWAPS INVOLVING ENERGY TRANSACTIONS.—Section
5 2(g) of such Act (7 U.S.C. 2(g)) is amended by inserting
6 “or an energy commodity” after “agricultural com-
7 modity”.

8 (c) ELIMINATION OF EXEMPTION FOR OVER-THE-
9 COUNTER SWAPS INVOLVING ENERGY COMMODITIES.—
10 Section 2(h)(1) of such Act (7 U.S.C. 2(h)(1)) is amended
11 by inserting “(other than an energy commodity)” after
12 “exempt commodity”.

13 (d) EXTENSION OF REGULATORY AUTHORITY TO IN-
14 CLUDED ENERGY TRANSACTIONS ON FOREIGN BOARDS
15 OF TRADE.—Section 4 of such Act (7 U.S.C. 6) is amend-
16 ed—

17 (1) in subsection (a), by inserting “, and which
18 is not an included energy transaction” after “terri-
19 tories or possessions” the 2nd place it appears; and

20 (2) in subsection (b), by adding at the end the
21 following: “The preceding sentence shall not apply
22 with respect to included energy transactions.”.

23 (e) LIMITATION OF GENERAL EXEMPTIVE AUTHOR-
24 ITY OF THE CFTC WITH RESPECT TO INCLUDED EN-
25 ERGY TRANSACTIONS.—

1 (1) IN GENERAL.—Section 4(c) of such Act (7
2 U.S.C. 6(c)) is amended by adding at the end the
3 following:

4 “(6) The Commission may not exempt any included
5 energy transaction from the requirements of subsection
6 (a), unless the Commission provides 60 days advance no-
7 tice to the Congress and the Position Limit Energy Advi-
8 sory Group and solicits public comment about the exemp-
9 tion request and any proposed Commission action.”.

10 (2) NULLIFICATION OF NO-ACTION LETTER EX-
11 EMPTIONS TO CERTAIN REQUIREMENTS APPLICABLE
12 TO INCLUDED ENERGY TRANSACTIONS.—Beginning
13 180 days after the date of the enactment of this Act,
14 any exemption provided by the Commodity Futures
15 Trading Commission that has allowed included en-
16 ergy transactions (as defined in section 1a(13) of
17 the Commodity Exchange Act) to be conducted with-
18 out regard to the requirements of section 4(a) of
19 such Act shall be null and void.

20 (f) REQUIREMENT TO ESTABLISH UNIFORM SPECU-
21 LATIVE POSITION LIMITS FOR ENERGY TRANSACTIONS.—

22 (1) IN GENERAL.—Section 4a(a) of such Act (7
23 U.S.C. 6a(a)) is amended—

24 (A) by inserting “(1)” after “(a)”;

1 (B) by inserting after the 2nd sentence the
2 following: “With respect to energy transactions,
3 the Commission shall fix limits on the aggregate
4 number of positions which may be held by
5 any person for each month across all markets
6 subject to the jurisdiction of the Commission.”;

7 (C) in the 4th sentence by inserting “, consistent
8 with the 3rd sentence,” after “Commission”;
9 and

10 (D) by adding after and below the end the
11 following:

12 “(2)(A) Not later than 60 days after the date of the
13 enactment of this paragraph, the Commission shall convene
14 a Position Limit Energy Advisory Group consisting
15 of representatives from—

16 “(i) 7 predominantly commercial short hedgers
17 of the actual energy commodity for future delivery;

18 “(ii) 7 predominantly commercial long hedgers
19 of the actual energy commodity for future delivery;

20 “(iii) 4 non-commercial participants in markets
21 for energy commodities for future delivery; and

22 “(iv) each designated contract market or derivatives
23 transaction execution facility upon which a
24 contract in the energy commodity for future delivery
25 is traded, and each electronic trading facility that

1 has a significant price discovery contract in the en-
2 ergy commodity.

3 “(B) Not later than 60 days after the date on which
4 the advisory group is convened under subparagraph (A),
5 and annually thereafter, the advisory group shall submit
6 to the Commission advisory recommendations regarding
7 the position limits to be established in paragraph (1).

8 “(C) The Commission shall have exclusive authority
9 to grant exemptions for bona fide hedging transactions
10 and positions from position limits imposed under this Act
11 on energy transactions.”.

12 (2) CONFORMING AMENDMENTS.—

13 (A) SIGNIFICANT PRICE DISCOVERY CON-
14 TRACTS.—Section 2(h)(7) of such Act (7 U.S.C.
15 2(h)(7)) is amended—

16 (i) in subparagraph (A)—

17 (I) by inserting “of this para-
18 graph and section 4a(a)” after “(B)
19 through (D)”;

20 (II) by inserting “of this para-
21 graph” before the period; and

22 (ii) in subparagraph (C)(ii)(IV)—

23 (I) in the heading, by striking
24 “LIMITATIONS OR”; and

1 (II) by striking “position limita-
2 tions or”.

3 (B) CONTRACTS TRADED ON OR THROUGH
4 DESIGNATED CONTRACT MARKETS.—Section
5 5(d)(5) of such Act (7 U.S.C. 7(d)(5)) is
6 amended—

7 (i) in the heading by striking “LIMI-
8 TATIONS OR”; and

9 (ii) by striking “position limitations
10 or”.

11 (C) CONTRACTS TRADED ON OR THROUGH
12 DERIVATIVES TRANSACTION EXECUTION FACILI-
13 TIES.—Section 5a(d)(4) of such Act (7 U.S.C.
14 7a(d)(4)) is amended—

15 (i) in the heading by striking “LIMI-
16 TATIONS OR”; and

17 (ii) by striking “position limits or”.

18 (g) ELIMINATION OF THE SWAPS LOOPHOLE.—Sec-
19 tion 4a(c) of such Act (7 U.S.C. 6a(c)) is amended—

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

21 (2) by adding after and below the end the fol-
22 lowing:

23 “(2) For the purposes of contracts of sale for future
24 delivery and options on such contracts or commodities, the
25 Commission shall define what constitutes a bona fide

1 hedging transaction or position as a transaction or posi-
2 tion that—

3 “(A)(i) represents a substitute for transactions
4 made or to be made or positions taken or to be
5 taken at a later time in a physical marketing chan-
6 nel;

7 “(ii) is economically appropriate to the reduc-
8 tion of risks in the conduct and management of a
9 commercial enterprise; and

10 “(iii) arises from the potential change in the
11 value of—

12 “(I) assets that a person owns, produces,
13 manufactures, processes, or merchandises or
14 anticipates owning, producing, manufacturing,
15 processing, or merchandising;

16 “(II) liabilities that a person owns or an-
17 ticipates incurring; or

18 “(III) services that a person provides, pur-
19 chases, or anticipates providing or purchasing;
20 or

21 “(B) reduces risks attendant to a position re-
22 sulting from a transaction that—

23 “(i) was executed pursuant to subsection
24 (d), (g), (h)(1), or (h)(2) of section 2, or an ex-

1 emption issued by the Commission by rule, reg-
2 ulation or order; and

3 “(ii) was executed opposite a counterparty
4 for which the transaction would qualify as a
5 bona fide hedging transaction pursuant to para-
6 graph (2)(A) of this subsection.”.

7 (h) DETAILED REPORTING AND DISAGGREGATION OF
8 MARKET DATA.—Section 4 of such Act (7 U.S.C. 6) is
9 amended by adding at the end the following:

10 “(e) DETAILED REPORTING AND DISAGGREGATION
11 OF MARKET DATA.—

12 “(1) INDEX TRADERS AND SWAP DEALERS RE-
13 PORTING.—The Commission shall issue a proposed
14 rule defining and classifying index traders and swap
15 dealers (as those terms are defined by the Commis-
16 sion) for purposes of data reporting requirements
17 and setting routine detailed reporting requirements
18 for any positions of such entities in contracts traded
19 on designated contract markets, over-the-counter
20 markets, derivatives transaction execution facilities,
21 foreign boards of trade subject to section 4(f), and
22 electronic trading facilities with respect to signifi-
23 cant price discovery contracts not later than 120
24 days after the date of the enactment of this sub-

1 section, and issue a final rule within 180 days after
2 such date of enactment.

3 “(2) DISAGGREGATION OF INDEX FUNDS AND
4 OTHER DATA IN MARKETS.—Subject to section 8
5 and beginning within 60 days of the issuance of the
6 final rule required by paragraph (1), the Commis-
7 sion shall disaggregate and make public weekly—

8 “(A) the number of positions and total no-
9 tional value of index funds and other passive,
10 long-only and short-only positions (as defined
11 by the Commission) in all markets to the extent
12 such information is available; and

13 “(B) data on speculative positions relative
14 to bona fide physical hedgers in those markets
15 to the extent such information is available.

16 “(3) DISCLOSURE OF IDENTITY OF HOLDERS
17 OF POSITIONS IN INDEXES IN EXCESS OF POSITION
18 LIMITS.—The Commission shall include in its weekly
19 Commitment of Trader reports the identity of each
20 person who holds a position in an index in excess of
21 a limit imposed under section 4i.”.

22 (i) AUTHORITY TO SET LIMITS TO PREVENT EXCES-
23 SIVE SPECULATION IN INDEXES.—

1 (1) IN GENERAL.—Section 4a of such Act (7
2 U.S.C. 6a) is amended by adding at the end the fol-
3 lowing:

4 “(f) The provisions of this section shall apply to the
5 amounts of trading which may be done or positions which
6 may be held by any person under contracts of sale of an
7 index for future delivery on or subject to the rules of any
8 contract market, derivatives transaction execution facility,
9 or over-the-counter market, or on an electronic trading fa-
10 cility with respect to a significant price discovery contract,
11 in the same manner in which this section applies to con-
12 tracts of sale of a commodity for future delivery.”.

13 (2) REGULATIONS.—The Commodity Futures
14 Trading Commission shall issue regulations under
15 section 4a(f) of the Commodity Exchange Act within
16 180 days after the date of the enactment of this Act.

17 **SEC. 352. NO EFFECT ON AUTHORITY OF THE FEDERAL EN-**
18 **ERGY REGULATORY COMMISSION.**

19 Section 2 of the Commodity Exchange Act (7 U.S.C.
20 2) is amended by adding at the end the following:

21 “(j) This Act shall not be interpreted to affect the
22 jurisdiction of the Federal Energy Regulatory Commission
23 with respect to the authority of the Federal Energy Regu-
24 latory Commission under the Federal Power Act (16
25 U.S.C. 791a et seq.), the Natural Gas Act (15 U.S.C. 717

1 et seq.), or other law to obtain information, carry out en-
2 forcement actions, or otherwise carry out the responsibil-
3 ities of the Federal Energy Regulatory Commission.”.

4 **SEC. 353. INSPECTOR GENERAL OF THE COMMODITY FU-**
5 **TURES TRADING COMMISSION.**

6 (a) ELEVATION OF OFFICE.—

7 (1) INCLUSION OF CFTC IN DEFINITION OF ES-
8 TABLISHMENT.—

9 (A) Section 12(1) of the Inspector General
10 Act of 1978 (5 U.S.C. App.) is amended by
11 striking “or the Federal Cochairpersons of the
12 Commissions established under section 15301
13 of title 40, United States Code;” and inserting
14 “the Federal Cochairpersons of the Commis-
15 sions established under section 15301 of title
16 40, United States Code; or the Chairman of the
17 Commodity Futures Trading Commission;”.

18 (B) Section 12(2) of the Inspector General
19 Act of 1978 (5 U.S.C. App.) is amended by
20 striking “or the Commissions established under
21 section 15301 of title 40, United States Code,”
22 and inserting “the Commissions established
23 under section 15301 of title 40, United States
24 Code, or the Commodity Futures Trading Com-
25 mission,”.

1 (2) EXCLUSION OF CFTC FROM DEFINITION OF
2 DESIGNATED FEDERAL ENTITY.—Section 8G(a)(2)
3 of the Inspector General Act of 1978 (5 U.S.C.
4 App.) is amended by striking “the Commodity Fu-
5 tures Trading Commission,”.

6 (b) PROVISIONS RELATING TO PAY AND PERSONNEL
7 AUTHORITY.—

8 (1) PROVISION RELATING TO THE POSITION OF
9 INSPECTOR GENERAL OF THE CFTC.—In the case of
10 the Inspector General of the Commodities Futures
11 Trading Commission, subsections (b) and (c) of sec-
12 tion 4 of the Inspector General Reform Act of 2008
13 (Public Law 110–409) shall apply in the same man-
14 ner as if the Commission was a designated Federal
15 entity under section 8G. The Inspector General of
16 the Commodities Futures Trading Commission shall
17 not be subject to section 3(e) of such Act.

18 (2) PROVISION RELATING TO OTHER PER-
19 SONNEL.—Notwithstanding paragraphs (7) and (8)
20 of section 6(a) of the Inspector General Act of 1978
21 (5 U.S.C. App.), the Inspector General of the Com-
22 modities Futures Trading Commission may select,
23 appoint, and employ such officers and employees as
24 may be necessary for carrying out the functions,
25 powers, and duties of the Office of Inspector General

1 and to obtain the temporary or intermittent services
2 of experts or consultants or an organization of ex-
3 perts or consultants, subject to the applicable laws
4 and regulations that govern such selections, appoint-
5 ments, and employment, and the obtaining of such
6 services, within the Commodities Futures Trading
7 Commission.

8 (c) EFFECTIVE DATE; TRANSITION RULE.—

9 (1) EFFECTIVE DATE.—The amendments made
10 by this section shall take effect 30 days after the
11 date of the enactment of this Act.

12 (2) TRANSITION RULE.—An individual serving
13 as Inspector General of the Commodity Futures
14 Trading Commission on the effective date of this
15 section pursuant to an appointment made under sec-
16 tion 8G of the Inspector General Act of 1978 (5
17 U.S.C. App.)—

18 (A) may continue so serving until the
19 President makes an appointment under section
20 3(a) of such Act consistent with the amend-
21 ments made by this section; and

22 (B) shall, while serving under subpara-
23 graph (A), remain subject to the provisions of
24 section 8G of such Act which apply with respect

1 to the Commodity Futures Trading Commis-
2 sion.

3 **SEC. 354. SETTLEMENT AND CLEARING THROUGH REG-**
4 **ISTERED DERIVATIVES CLEARING ORGANIZA-**
5 **TIONS.**

6 (a) IN GENERAL.—

7 (1) APPLICATION TO EXCLUDED DERIVATIVE
8 TRANSACTIONS.—

9 (A) Section 2(d)(1) of the Commodity Ex-
10 change Act (7 U.S.C. 2(d)(1)) is amended—

11 (i) by striking “and” at the end of
12 subparagraph (A);

13 (ii) by striking the period at the end
14 of subparagraph (B) and inserting “;
15 and”; and

16 (iii) by adding at the end the fol-
17 lowing:

18 “(C) except as provided in section 4(f), the
19 agreement, contract, or transaction is settled
20 and cleared through a derivatives clearing orga-
21 nization registered with the Commission.”.

22 (B) Section 2(d)(2) of such Act (7 U.S.C.
23 2(d)(2)) is amended—

24 (i) by striking “and” at the end of
25 subparagraph (B);

1 (ii) by striking the period at the end
2 of subparagraph (C) and inserting “; and”;
3 and

4 (iii) by adding at the end the fol-
5 lowing:

6 “(D) except as provided in section 4(f), the
7 agreement, contract, or transaction is settled
8 and cleared through a derivatives clearing orga-
9 nization registered with the Commission.”.

10 (2) APPLICATION TO CERTAIN SWAP TRANS-
11 ACTIONS.—Section 2(g) of such Act (7 U.S.C. 2(g))
12 is amended—

13 (A) by striking “and” at the end of para-
14 graph (2);

15 (B) by striking the period at the end of
16 paragraph (3) and inserting “; and”; and

17 (C) by adding at the end the following:

18 “(4) except as provided in section 4(f), settled
19 and cleared through a derivatives clearing organiza-
20 tion registered with the Commission.”.

21 (3) APPLICATION TO CERTAIN TRANSACTIONS
22 IN EXEMPT COMMODITIES.—

23 (A) Section 2(h)(1) of such Act (7 U.S.C.
24 2(h)(1)) is amended—

1 (i) by striking “and” at the end of
2 subparagraph (A);

3 (ii) by striking the period at the end
4 of subparagraph (B) and inserting “;
5 and”; and

6 (iii) by adding at the end the fol-
7 lowing:

8 “(C) except as provided in section 4(f), is
9 settled and cleared through a derivatives clear-
10 ing organization registered with the Commis-
11 sion.”.

12 (B) Section 2(h)(3) of such Act (7 U.S.C.
13 2(h)(3)) is amended—

14 (i) by striking “and” at the end of
15 subparagraph (A);

16 (ii) by striking the period at the end
17 of subparagraph (B) and inserting “;
18 and”; and

19 (iii) by adding at the end the fol-
20 lowing:

21 “(C) except as provided in section 4(f), set-
22 tled and cleared through a derivatives clearing
23 organization registered with the Commission.”.

24 (4) GENERAL EXEMPTIVE AUTHORITY.—Sec-
25 tion 4(c)(1) of such Act (7 U.S.C. 6(c)(1)) is

1 amended by inserting “the agreement, contract, or
2 transaction, except as provided in section 4(h), will
3 be settled and cleared through a derivatives clearing
4 organization registered with the Commission and”
5 before “the Commission determines”.

6 (5) CONFORMING AMENDMENT RELATING TO
7 SIGNIFICANT PRICE DISCOVERY CONTRACTS.—Sec-
8 tion 2(h)(7)(D) of such Act (7 U.S.C. 2(h)(7)(D)) is
9 amended by striking the designation and heading for
10 the subparagraph and all that follows through “As
11 part of” and inserting the following:

12 “(D) REVIEW OF IMPLEMENTATION.—As
13 part of”.

14 (b) ALTERNATIVES TO CLEARING THROUGH DES-
15 IGNATED CLEARING ORGANIZATIONS.—Section 4 of such
16 Act (7 U.S.C. 6), as amended by section 351(h) of this
17 Act, is amended by adding at the end the following:

18 “(f) ALTERNATIVES TO CLEARING THROUGH DES-
19 IGNATED CLEARING ORGANIZATIONS.—

20 “(1) SETTLEMENT AND CLEARING THROUGH
21 CERTAIN OTHER REGULATED ENTITIES.—An agree-
22 ment, contract, or transaction, or class thereof, re-
23 lating to an excluded commodity, that would other-
24 wise be required to be settled and cleared by section
25 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), or

1 2(h)(3)(C) of this Act, or subsection (c)(1) of this
2 section may be settled and cleared through an entity
3 listed in subsections (a) or (b) of section 409 of the
4 Federal Deposit Insurance Corporation Improvement
5 Act of 1991.

6 “(2) WAIVER OF CLEARING REQUIREMENT.—

7 “(A) The Commission, in its discretion,
8 may exempt an agreement, contract, or trans-
9 action, or class thereof, that would otherwise be
10 required by section 2(d)(1)(C), 2(d)(2)(D),
11 2(g)(4), 2(h)(1)(C), or 2(h)(3)(C) of this Act,
12 or subsection (c)(1) of this section to be settled
13 and cleared through a derivatives clearing orga-
14 nization registered with the Commission from
15 such requirement.

16 “(B) In granting exemptions pursuant to
17 subparagraph (A), the Commission shall consult
18 with the Securities and Exchange Commission
19 and the Board of Governors of the Federal Re-
20 serve System regarding exemptions that relate
21 to excluded commodities or entities for which
22 the Securities Exchange Commission or the
23 Board of Governors of the Federal Reserve Sys-
24 tem serve as the primary regulator.

1 “(C) Before granting an exemption pursu-
2 ant to subparagraph (A), the Commission shall
3 find that the agreement, contract, or trans-
4 action, or class thereof—

5 “(i) is highly customized as to its ma-
6 terial terms and conditions;

7 “(ii) is transacted infrequently;

8 “(iii) does not serve a significant
9 price-discovery function in the market-
10 place; and

11 “(iv) is being entered into by parties
12 who can demonstrate the financial integ-
13 rity of the agreement, contract, or trans-
14 action and their own financial integrity, as
15 such terms and standards are determined
16 by the Commission. The standards may in-
17 clude, with respect to any federally regu-
18 lated financial entity for which net capital
19 requirements are imposed, a net capital re-
20 quirement associated with any agreement,
21 contract, or transaction subject to an ex-
22 emption from the clearing requirement
23 that is higher than the net capital require-
24 ment that would be associated with such a
25 transaction were it cleared.

1 “(D) Any agreement, contract, or trans-
2 action, or class thereof, which is exempted pur-
3 suant to subparagraph (A) shall be reported to
4 the Commission in a manner designated by the
5 Commission, or to such other entity the Com-
6 mission deems appropriate.

7 “(E) The Commission, the Securities and
8 Exchange Commission and the Board of Gov-
9 ernors of the Federal Reserve System shall
10 enter into a memorandum of understanding by
11 which the information reported to the Commis-
12 sion pursuant to subparagraph (D) with regard
13 to excluded commodities or entities for which
14 the Securities Exchange Commission or the
15 Board of Governors of the Federal Reserve Sys-
16 tem serve as the primary regulator may be pro-
17 vided to the other agencies.

18 “(g) SPOT AND FORWARD EXCLUSION.—The settle-
19 ment and clearing requirements of section 2(d)(1)(C),
20 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), or 4(e)(1)
21 shall not apply to an agreement, contract, or transaction
22 of any cash commodity for immediate or deferred ship-
23 ment or delivery, as defined by the Commission.”.

24 (c) ADDITIONAL REQUIREMENTS APPLICABLE TO
25 APPLICANTS FOR REGISTRATION AS A DERIVATIVE

1 CLEARING ORGANIZATION.—Section 5b(e)(2) of such Act
2 (7 U.S.C. 7a–1(c)(2)) is amended by adding at the end
3 the following:

4 “(O) DISCLOSURE OF GENERAL INFORMA-
5 TION.—The applicant shall disclose publicly and
6 to the Commission information concerning—

7 “(i) the terms and conditions of con-
8 tracts, agreements, and transactions
9 cleared and settled by the applicant;

10 “(ii) the conventions, mechanisms,
11 and practices applicable to the contracts,
12 agreements, and transactions;

13 “(iii) the margin-setting methodology
14 and the size and composition of the finan-
15 cial resource package of the applicant; and

16 “(iv) other information relevant to
17 participation in the settlement and clearing
18 activities of the applicant.

19 “(P) DAILY PUBLICATION OF TRADING IN-
20 FORMATION.—The applicant shall make public
21 daily information on settlement prices, volume,
22 and open interest for contracts settled or
23 cleared pursuant to the requirements of section
24 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C),
25 2(h)(3)(C) or 4(c)(1) of this Act by the appli-

1 cant if the Commission determines that the
2 contracts perform a significant price discovery
3 function for transactions in the cash market for
4 the commodity underlying the contracts.

5 “(Q) FITNESS STANDARDS.—The applicant
6 shall establish and enforce appropriate fitness
7 standards for directors, members of any dis-
8 ciplinary committee, and members of the appli-
9 cant, and any other persons with direct access
10 to the settlement or clearing activities of the
11 applicant, including any parties affiliated with
12 any of the persons described in this subpara-
13 graph.”.

14 (d) AMENDMENTS.—

15 (1) Section 409 of the Federal Deposit Insur-
16 ance Corporation Improvement Act of 1991 (12
17 U.S.C. 4422) is amended by adding at the end the
18 following:

19 “(c) CLEARING REQUIREMENT.—A multilateral
20 clearing organization described in subsections (a) or (b)
21 of this section shall comply with requirements similar to
22 the requirements of sections 5b and 5c of the Commodity
23 Exchange Act.”.

24 (2) Section 407 of the Legal Certainty for
25 Bank Products Act of 2000 (7 U.S.C. 27e) is

1 amended by inserting “and the settlement and clear-
2 ing requirements of sections 2(d)(1)(C), 2(d)(2)(D),
3 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), and 4(c)(1) of such
4 Act” after “the clearing of covered swap agree-
5 ments”.

6 (e) EFFECTIVE DATE.—The amendments made by
7 this section shall take effect 150 days after the date of
8 the enactment of this Act.

9 (f) TRANSITION RULE.—Any agreement, contract, or
10 transaction entered into before the date of the enactment
11 of this Act or within 150 days after such date of enact-
12 ment, in reliance on subsection (d), (g), (h)(1), or (h)(3)
13 of section 2 of the Commodity Exchange Act or any other
14 exemption issued by the Commission Futures Trading
15 Commission by rule, regulation, or order shall, within 90
16 days after such date of enactment, unless settled and
17 cleared through an entity registered with the Commission
18 as a derivatives clearing organization or another clearing
19 entity pursuant to section 4(f) of such Act, be reported
20 to the Commission in a manner designated by the Com-
21 mission, or to such other entity as the Commission deems
22 appropriate.

1 **SEC. 355. LIMITATION ON ELIGIBILITY TO PURCHASE A**
2 **CREDIT DEFAULT SWAP.**

3 (a) IN GENERAL.—Section 4c of the Commodity Ex-
4 change Act (7 U.S.C. 6c) is amended by adding at the
5 end the following:

6 “(h) LIMITATION ON ELIGIBILITY TO PURCHASE A
7 CREDIT DEFAULT SWAP.—It shall be unlawful for any
8 person to enter into a credit default swap unless the per-
9 son—

10 “(1) owns a credit instrument which is insured
11 by the credit default swap;

12 “(2) would experience financial loss if an event
13 that is the subject of the credit default swap occurs
14 with respect to the credit instrument; and

15 “(3) meets such minimum capital adequacy
16 standards as may be established by the Commission,
17 in consultation with the Board of Governors of the
18 Federal Reserve System, or such more stringent
19 minimum capital adequacy standards as may be es-
20 tablished by or under the law of any State in which
21 the swap is originated or entered into, or in which
22 possession of the contract involved takes place.”.

23 (b) ELIMINATION OF PREEMPTION OF STATE
24 BUCKETING LAWS REGARDING NAKED CREDIT DEFAULT
25 SWAPS.—Section 12(e)(2)(B) of such Act (7 U.S.C.
26 16(e)(2)(B)) is amended by inserting “(other than a credit

1 default swap in which the purchaser of the swap would
2 not experience financial loss if an event that is the subject
3 of the swap occurred)” before “that is excluded”.

4 (c) DEFINITION OF CREDIT DEFAULT SWAP.—Sec-
5 tion 1a of such Act (7 U.S.C. 1a), as amended by section
6 351(a) of this Act, is amended by adding at the end the
7 following:

8 “(37) CREDIT DEFAULT SWAP.—The term
9 ‘credit default swap’ means a contract which insures
10 a party to the contract against the risk that an enti-
11 ty may experience a loss of value as a result of an
12 event specified in the contract, such as a default or
13 credit downgrade. A credit default swap that is trad-
14 ed on or cleared by a registered entity shall be ex-
15 cluded from the definition of a security as defined in
16 this Act and in section 2(a)(1) of the Securities Act
17 of 1933 or section 3(a)(10) of the Securities Ex-
18 change Act of 1934, except it shall be deemed a se-
19 curity solely for purpose of enforcing prohibitions
20 against insider trading in sections 10 and 16 of the
21 Securities Exchange Act of 1934.”.

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall be effective for credit default swaps (as
24 defined in section 1a(37) of the Commodity Exchange Act)

1 entered into after 60 days after the date of the enactment
2 of this section.

3 **SEC. 356. TRANSACTION FEES.**

4 (a) IN GENERAL.—Section 12 of the Commodity Ex-
5 change Act (7 U.S.C. 16) is amended by redesignating
6 subsections (e), (f), and (g) as subsections (f), (g), and
7 (h), respectively, and inserting after subsection (d) the fol-
8 lowing:

9 “(e) CLEARING FEES.—

10 “(1) IN GENERAL.—The Commission shall, in
11 accordance with this subsection, charge and collect
12 from each registered clearing organization, and each
13 such organization shall pay to the Commission,
14 transaction fees at a rate calculated to recover the
15 costs to the Federal Government of the supervision
16 and regulation of futures markets, except those di-
17 rectly related to enforcement.

18 “(2) FEES ASSESSED PER SIDE OF CLEARED
19 CONTRACTS.—

20 “(A) IN GENERAL.—The Commission shall
21 determine the fee rate referred to in paragraph
22 (1), and shall apply the fee rate per side of any
23 transaction cleared.

24 “(B) AUTHORITY TO DELEGATE.—The
25 Commission may determine the procedures by

1 which the fee rate is to be applied on the trans-
2 actions subject to the fee, or delegate the au-
3 thority to make the determination to any appro-
4 priate derivatives clearing organization.

5 “(3) EXEMPTIONS.—The Commission may not
6 impose a fee under paragraph (1) on—

7 “(A) a class of contracts or transactions if
8 the Commission finds that it is in the public in-
9 terest to exempt the class from the fee; or

10 “(B) a contract or transaction cleared by
11 a registered derivatives clearing organization
12 that is—

13 “(i) subject to fees under section 31
14 of the Securities Exchange Act of 1934; or

15 “(ii) a security as defined in the Secu-
16 rities Act of 1933 or the Securities Ex-
17 change Act of 1934.

18 “(4) DATES FOR PAYMENT OF FEES.—The fees
19 imposed under paragraph (1) shall be paid on or be-
20 fore—

21 “(A) March 15 of each year, with respect
22 to transactions occurring on or after the pre-
23 ceding September 1 and on or before the pre-
24 ceding December 31; and

1 “(B) September 15 of each year, with re-
2 spect to transactions occurring on or after the
3 preceding January 1 and on or before the pre-
4 ceding August 31.

5 “(5) ANNUAL ADJUSTMENT OF FEE RATES.—

6 “(A) IN GENERAL.—Not later than April
7 30 of each fiscal year , the Commission shall,
8 by order, adjust each fee rate determined under
9 paragraph (2) for the fiscal year to a uniform
10 adjusted rate that, when applied to the esti-
11 mated aggregate number of cleared sides of
12 transactions for the fiscal year, is reasonably
13 likely to produce aggregate fee receipts under
14 this subsection for the fiscal year equal to the
15 target offsetting receipt amount for the fiscal
16 year.

17 “(B) DEFINITIONS.—In subparagraph (A):

18 “(i) ESTIMATED AGGREGATE NUMBER
19 OF CLEARED SIDES OF TRANSACTIONS.—

20 The term ‘estimated aggregate number of
21 cleared sides of transactions’ means, with
22 respect to a fiscal year, the aggregate
23 number of cleared sides of transactions to
24 be cleared by registered derivatives clear-
25 ing organizations during the fiscal year, as

1 estimated by the Commission, after con-
2 sultation with the Office of Management
3 and Budget, using the methodology re-
4 quired for making projections pursuant to
5 section 257 of the Balanced Budget and
6 Emergency Deficit Control Act of 1985.

7 “(ii) TARGET OFFSETTING RECEIPT
8 AMOUNT.—The term ‘target offsetting re-
9 ceipt amount’ means, with respect to a fis-
10 cal year, the total level of Commission
11 budget authority for all non-enforcement
12 activities of the Commission, as contained
13 in the regular appropriations Acts for the
14 fiscal year.

15 “(C) NO JUDICIAL REVIEW.—An adjusted
16 fee rate prescribed under subparagraph (A)
17 shall not be subject to judicial review.

18 “(6) PUBLICATION.—Not later than April 30 of
19 each fiscal year, the Commission shall cause to be
20 published in the Federal Register notices of the fee
21 rates applicable under this subsection for the suc-
22 ceeding fiscal year, and any estimate or projection
23 on which the fee rates are based.

24 “(7) ESTABLISHMENT OF FUTURES AND OP-
25 TIONS TRANSACTION FEE ACCOUNT; DEPOSIT OF

1 FEES.—There is established in the Treasury of the
2 United States an account which shall be known as
3 the ‘Futures and Options Transaction Fee Account’.
4 All fees collected under this subsection for a fiscal
5 year shall be deposited in the account. Amounts in
6 the account are authorized to be appropriated to
7 fund the expenditures of the Commission.”.

8 (b) EFFECTIVE DATE.—The amendments made by
9 subsection (a) shall apply to fiscal years beginning 30 or
10 more days after the date of the enactment of this Act.

11 (c) TRANSITION RULE.—If this section becomes law
12 after March 31 and before September 1 of a fiscal year,
13 then paragraphs (5)(A) and (6) of section 12(e) of the
14 Commodity Exchange Act shall be applied, in the case of
15 the 1st fiscal year beginning after the date of the enact-
16 ment of this Act, by substituting “August 31” for “April
17 30”.

18 **SEC. 357. NO EFFECT ON ANTITRUST LAW OR AUTHORITY**
19 **OF THE FEDERAL TRADE COMMISSION.**

20 (a) Nothing in this subtitle shall be construed to mod-
21 ify, impair, or supersede the operation of any of the anti-
22 trust laws. For purposes of this subsection, the term
23 “antitrust laws” has the meaning given it in subsection
24 (a) of the 1st section of the Clayton Act (15 U.S.C. 12(a)),
25 except that such term includes section 5 of the Federal

1 Trade Commission Act (15 U.S.C. 45) to the extent that
2 such term applies to unfair methods of competition.

3 (b) Nothing in this subtitle shall be construed to af-
4 fect or diminish the jurisdiction or authority of the Fed-
5 eral Trade Commission with respect to its authorities
6 under the Federal Trade Commission Act (15 U.S.C. 41
7 et seq.) or the Energy Independence and Security Act of
8 2007 (Public Law 110–140) to obtain information, to
9 carry out enforcement activities, or otherwise to carry out
10 the responsibilities of the Federal Trade Commission.

11 **SEC. 358. EFFECT OF DERIVATIVES REGULATORY REFORM**

12 **LEGISLATION.**

13 (a) STATUTES.—Upon the passage of legislation that
14 includes derivatives regulatory reform, sections 351, 352,
15 354, 355, 356, and 357 shall be repealed.

16 (b) REGULATIONS.—Upon the passage of legislation
17 that includes derivatives regulatory reform, any regula-
18 tions promulgated under section 351, 352, 354, 355, 356,
19 or 357 shall be considered null and void.

20 **SEC. 359. CEASE-AND-DESIST AUTHORITY.**

21 (a) NATURAL GAS ACT.—Section 20 of the Natural
22 Gas Act (15 U.S.C. 717s) is amended by adding the fol-
23 lowing at the end:

24 “(e) CEASE-AND-DESIST PROCEEDINGS; TEMPORARY
25 ORDERS; AUTHORITY OF THE COMMISSION.—

1 “(1) IN GENERAL.—If the Commission finds,
2 after notice and opportunity for hearing, that any
3 entity may be violating, may have violated, or may
4 be about to violate any provision of this Act, or any
5 rule, regulation, restriction, condition, or order made
6 or imposed by the Commission under the authority
7 of this Act, the Commission may publish its findings
8 and issue an order requiring such entity, and any
9 other entity that is, was, or would be a cause of the
10 violation, due to an act or omission the entity knew
11 or should have known would contribute to such vio-
12 lation, to cease and desist from committing or caus-
13 ing such violation and any future violation of the
14 same provision, rule, or regulation. Such order may,
15 in addition to requiring an entity to cease and desist
16 from committing or causing a violation, require such
17 entity to comply, to provide an accounting and
18 disgorgement, or to take steps to effect compliance,
19 with such provision, rule, or regulation, upon such
20 terms and conditions and within such time as the
21 Commission may specify in such order. Any such
22 order may, as the Commission deems appropriate,
23 require future compliance or steps to effect future
24 compliance, either permanently or for such period of
25 time as the Commission may specify.

1 “(2) TIMING OF ENTRY.—An order issued
2 under this subsection shall be entered only after no-
3 tice and opportunity for a hearing, unless the Com-
4 mission determines that notice and hearing prior to
5 entry would be impracticable or contrary to the pub-
6 lic interest.

7 “(f) HEARING.—The notice instituting proceedings
8 pursuant to subsection (e) shall fix a hearing date not ear-
9 lier than 30 days nor later than 60 days after service of
10 the notice unless an earlier or a later date is set by the
11 Commission with the consent of any respondent so served.

12 “(g) TEMPORARY ORDER.—Whenever the Commis-
13 sion determines that—

14 “(1) a respondent may take actions to dissipate
15 or convert assets prior to the completion of the pro-
16 ceedings referred to in subsection (e), and such as-
17 sets would be necessary to comply with or otherwise
18 satisfy a final enforcement order of the Commission
19 pursuant to alleged violations or threatened viola-
20 tions specified in the notice instituting proceedings;
21 or

22 “(2) a respondent is engaged in actual or
23 threatened violations of this Act or a Commission
24 rule, regulation, restriction or order referred to in
25 subsection (e),

1 the Commission may issue a temporary order requiring
2 the respondent to take such action to prevent dissipation
3 or conversion of assets, significant harm to energy con-
4 sumers, or substantial harm to the public interest, frustra-
5 tion of the Commission’s ability to conduct the pro-
6 ceedings, or frustration of the Commission’s ability to re-
7 dress said violation at the conclusion of the proceedings,
8 as the Commission deems appropriate pending completion
9 of such proceedings.

10 “(h) REVIEW OF TEMPORARY ORDERS.—

11 “(1) COMMISSION REVIEW.—At any time after
12 the respondent has been served with a temporary
13 cease-and-desist order pursuant to subsection (g),
14 the respondent may apply to the Commission to have
15 the order set aside, limited, or suspended. If the re-
16 spondent has been served with a temporary cease-
17 and-desist order entered without a prior Commission
18 hearing, the respondent may, within 10 days after
19 the date on which the order was served, request a
20 hearing on such application and the Commission
21 shall hold a hearing and render a decision on such
22 application at the earliest possible time.

23 “(2) JUDICIAL REVIEW.—Within—

24 “(A) 10 days after the date the respondent
25 was served with a temporary cease-and-desist

1 order entered with a prior Commission hearing;
2 or

3 “(B) 10 days after the Commission ren-
4 ders a decision on an application and hearing
5 under paragraph (1),

6 with respect to any temporary cease-and-desist order
7 entered without a prior Commission hearing, the re-
8 spondent may apply to the United States circuit
9 court having jurisdiction over the circuit in which
10 the respondent resides or has its principal place of
11 business, or to the United States Court of Appeals
12 for the District of Columbia Circuit, for an order
13 setting aside, limiting, or suspending the effective-
14 ness or enforcement of the order, and the court shall
15 have jurisdiction to enter such an order. A respon-
16 dent served with a temporary cease-and-desist order
17 entered without a prior Commission hearing may not
18 apply to the court except after hearing and decision
19 by the Commission on the respondent’s application
20 under paragraph (1) of this subsection.

21 “(3) NO AUTOMATIC STAY OF TEMPORARY
22 ORDER.—The commencement of proceedings under
23 paragraph (2) of this subsection shall not, unless
24 specifically ordered by the court, operate as a stay
25 of the Commission’s order.

1 “(4) EXCLUSIVE REVIEW.—Sections 19(d) and
2 24 shall not apply to a temporary order entered pur-
3 suant to this section.

4 “(i) IMPLEMENTATION.—The Commission is author-
5 ized to adopt rules, regulations, and orders as it deems
6 appropriate to implement this section.”.

7 (c) NATURAL GAS POLICY ACT OF 1978.—Section
8 504 of the Natural Gas Policy Act of 1978 (15 U.S.C.
9 3414) is amended by adding the following at the end:

10 “(d) CEASE-AND-DESIST PROCEEDINGS; TEMPORARY
11 ORDERS; AUTHORITY OF THE COMMISSION.—

12 “(1) IN GENERAL.—If the Commission finds,
13 after notice and opportunity for hearing, that any
14 entity may be violating, may have violated, or may
15 be about to violate any provision of this Act, or any
16 rule, regulation, restriction, condition, or order made
17 or imposed by the Commission under the authority
18 of this Act, the Commission may publish its findings
19 and issue an order requiring such entity, and any
20 other entity that is, was, or would be a cause of the
21 violation, due to an act or omission the entity knew
22 or should have known would contribute to such vio-
23 lation, to cease and desist from committing or caus-
24 ing such violation and any future violation of the
25 same provision, rule, or regulation. Such order may,

1 in addition to requiring an entity to cease and desist
2 from committing or causing a violation, require such
3 entity to comply, to provide an accounting and
4 disgorgement, or to take steps to effect compliance,
5 with such provision, rule, or regulation, upon such
6 terms and conditions and within such time as the
7 Commission may specify in such order. Any such
8 order may, as the Commission deems appropriate,
9 require future compliance or steps to effect future
10 compliance, either permanently or for such period of
11 time as the Commission may specify.

12 “(2) TIMING OF ENTRY.—An order issued
13 under this subsection shall be entered only after no-
14 tice and opportunity for a hearing, unless the Com-
15 mission determines that notice and hearing prior to
16 entry would be impracticable or contrary to the pub-
17 lic interest.

18 “(3) HEARING.—The notice instituting pro-
19 ceedings pursuant to paragraph (1) shall fix a hear-
20 ing date not earlier than 30 days nor later than 60
21 days after service of the notice unless an earlier or
22 a later date is set by the Commission with the con-
23 sent of any respondent so served.

24 “(4) TEMPORARY ORDER.—Whenever the Com-
25 mission determines that—

1 “(A) a respondent may take actions to dis-
2 sipate or convert assets prior to the completion
3 of the proceedings referred to in paragraph (1)
4 and such assets would be necessary to comply
5 with or otherwise satisfy a final enforcement
6 order of the Commission pursuant to alleged
7 violations or threatened violations specified in
8 the notice instituting proceedings; or

9 “(B) a respondent is engaged in actual or
10 threatened violations of this Act or a Commis-
11 sion rule, regulation, restriction or order re-
12 ferred to in paragraph (1),

13 the Commission may issue a temporary order requir-
14 ing the respondent to take such action to prevent
15 dissipation or conversion of assets, significant harm
16 to energy consumers, or substantial harm to the
17 public interest, frustration of the Commission’s abil-
18 ity to conduct the proceedings, or frustration of the
19 Commission’s ability to redress said violation at the
20 conclusion of the proceedings, as the Commission
21 deems appropriate pending completion of such pro-
22 ceedings.

23 “(5) REVIEW OF TEMPORARY ORDERS.—

24 “(A) COMMISSION REVIEW.—At any time
25 after the respondent has been served with a

1 temporary cease-and-desist order pursuant to
2 paragraph (4), the respondent may apply to the
3 Commission to have the order set aside, limited,
4 or suspended. If the respondent has been served
5 with a temporary cease-and-desist order entered
6 without a prior Commission hearing, the re-
7 spondent may, within 10 days after the date on
8 which the order was served, request a hearing
9 on such application and the Commission shall
10 hold a hearing and render a decision on such
11 application at the earliest possible time.

12 “(B) JUDICIAL REVIEW.—Within—

13 “(i) 10 days after the date the re-
14 spondent was served with a temporary
15 cease-and-desist order entered with a prior
16 Commission hearing; or

17 “(ii) 10 days after the Commission
18 renders a decision on an application and
19 hearing under subparagraph (A), with re-
20 spect to any temporary cease-and-desist
21 order entered without a prior Commission
22 hearing, the respondent may apply to the
23 United States circuit court having jurisdic-
24 tion over the circuit in which the respond-
25 ent resides or has its principal place of

1 business, or to the United States Court of
2 Appeals for the District of Columbia Cir-
3 cuit, for an order setting aside, limiting, or
4 suspending the effectiveness or enforce-
5 ment of the order, and the court shall have
6 jurisdiction to enter such an order. A re-
7 spondent served with a temporary cease-
8 and-desist order entered without a prior
9 Commission hearing may not apply to the
10 court except after hearing and decision by
11 the Commission on the respondent's appli-
12 cation under paragraph (1) of this sub-
13 section.

14 “(C) NO AUTOMATIC STAY OF TEMPORARY
15 ORDER.—The commencement of proceedings
16 under subparagraph (B) of this paragraph shall
17 not, unless specifically ordered by the court, op-
18 erate as a stay of the Commission's order.

19 “(6) IMPLEMENTATION.—The Commission is
20 authorized to adopt rules, regulations, and orders as
21 it deems appropriate to implement this subsection.”.

22 **SEC. 360. PRESIDENTIAL REVIEW OF REGULATIONS.**

23 Not later than 24 months after the date of enactment
24 of this Act, the President shall review the offset regula-
25 tions and derivatives regulations promulgated pursuant to

1 the American Clean Energy and Security Act of 2009. The
2 President shall determine whether such regulations ade-
3 quately protect the United States financial system from
4 systemic risk.

5 **TITLE IV—TRANSITIONING TO A**
6 **CLEAN ENERGY ECONOMY**
7 **Subtitle A—Ensuring Real**
8 **Reductions in Industrial Emissions**

9 **SEC. 401. ENSURING REAL REDUCTIONS IN INDUSTRIAL**
10 **EMISSIONS.**

11 Title VII of the Clean Air Act is amended by insert-
12 ing after part E the following new part:

13 **“PART F—ENSURING REAL REDUCTIONS IN**
14 **INDUSTRIAL EMISSIONS**

15 **“SEC. 761. PURPOSES.**

16 “(a) PURPOSES OF PART.—The purposes of this part
17 are—

18 “(1) to promote a strong global effort to signifi-
19 cantly reduce greenhouse gas emissions, and,
20 through this global effort, stabilize greenhouse gas
21 concentrations in the atmosphere at a level that will
22 prevent dangerous anthropogenic interference with
23 the climate system; and

24 “(2) to prevent an increase in greenhouse gas
25 emissions in countries other than the United States

1 as a result of direct and indirect compliance costs in-
2 curred under this title.

3 “(b) PURPOSES OF SUBPART 1.—The purposes of
4 subpart 1 are additionally—

5 “(1) to provide a rebate to the owners and op-
6 erators of entities in domestic eligible industrial sec-
7 tors for their greenhouse gas emission costs incurred
8 under this title, but not for costs associated with
9 other related or unrelated market dynamics;

10 “(2) to design such rebates in a way that will
11 prevent carbon leakage while also rewarding innova-
12 tion and facility-level investments in energy effi-
13 ciency performance improvements; and

14 “(3) to eliminate or reduce distribution of emis-
15 sion allowances under subpart 1 when such distribu-
16 tion is no longer necessary to prevent carbon leakage
17 from eligible industrial sectors.

18 “(c) PURPOSES OF SUBPART 2.—The purposes of
19 subpart 2 are additionally—

20 “(1) to induce foreign countries, and, in par-
21 ticular, fast-growing developing countries, to take
22 substantial action with respect to their greenhouse
23 gas emissions consistent with the Bali Action Plan
24 developed under the United Nations Framework
25 Convention on Climate Change; and

1 “(2) to ensure that the measures described in
2 subpart 2 are designed and implemented in a man-
3 ner consistent with applicable international agree-
4 ments to which the United States is a party.

5 **“SEC. 762. DEFINITIONS.**

6 “In this part:

7 “(1) CARBON LEAKAGE.—The term ‘carbon
8 leakage’ means any substantial increase (as deter-
9 mined by the Administrator) in greenhouse gas
10 emissions by industrial entities located in other
11 countries if such increase is caused by an incre-
12 mental cost of production increase in the United
13 States resulting from the implementation of this
14 title.

15 “(2) COVERED GOOD.—The term ‘covered good’
16 means a good that, as identified by the Adminis-
17 trator by regulation, is either—

18 “(A) entered under a heading or sub-
19 heading of the Harmonized Tariff Schedule of
20 the United States that corresponds to the
21 NAICS code for an eligible industrial sector, as
22 established in the concordance between NAICS
23 codes and the Harmonized Tariff Schedule of
24 the United States prepared by the United
25 States Census Bureau; or

1 “(B) a manufactured item for consump-
2 tion.

3 “(3) ELIGIBLE INDUSTRIAL SECTOR.—The
4 term ‘eligible industrial sector’ means an industrial
5 sector determined by the Administrator under sec-
6 tion 763(b) to be eligible to receive emission allow-
7 ance rebates under subpart 1.

8 “(4) INDUSTRIAL SECTOR.—The term ‘indus-
9 trial sector’ means any sector that is in the manu-
10 facturing sector (as defined in NAICS codes 31, 32,
11 and 33) or that beneficiates or otherwise processes
12 (including agglomeration) metal ores, including iron
13 and copper ores, soda ash, or phosphate. The extrac-
14 tion of metal ores, soda ash, or phosphate shall not
15 be considered to be an industrial sector.

16 “(5) MANUFACTURED ITEM FOR CONSUMP-
17 TION.—

18 “(A) IN GENERAL.—The term ‘manufac-
19 tured item for consumption’ means any good—

20 “(i) that includes in substantial
21 amounts one or more goods like the goods
22 produced by an eligible industrial sector;

23 “(ii) with respect to which an inter-
24 national reserve allowance program pursu-
25 ant to subpart 2 is in effect with regard to

1 the eligible industrial sector and the quan-
2 tity of international reserve allowances is
3 not zero pursuant to section 768(b);

4 “(iii) with respect to which the trade
5 intensity of the industrial sector that pro-
6 duces the good, as measured consistent
7 with section 763(b)(2)(A)(iii), is at least
8 15 percent; and

9 “(iv) for which the domestic producers
10 of the good have demonstrated, and the
11 Administrator has determined, that the ap-
12 plication of the international reserve allow-
13 ance program pursuant to subpart 2 is
14 technically and administratively feasible
15 and appropriate to achieve the purposes of
16 this part, taking into account the energy
17 and greenhouse gas intensity of the indus-
18 trial sector that produces the good, as
19 measured consistent with section
20 763(b)(2)(A)(ii), and the ability of such
21 producers to pass on cost increases and
22 other appropriate factors.

23 “(B) RULE OF CONSTRUCTION.—A deter-
24 mination of the Administrator under subpara-
25 graph (A)(iv) shall not be considered to be a de-

1 termination of the President under section
2 767(b).

3 “(6) NAICS.—The term ‘NAICS’ means the
4 North American Industrial Classification System of
5 2002.

6 “(7) OUTPUT.—The term ‘output’ means the
7 total tonnage or other standard unit of production
8 (as determined by the Administrator) produced by
9 an entity in an industrial sector. The output of the
10 cement sector is hydraulic cement, and not clinker.

11 **“Subpart 1—Emission Allowance Rebate Program**

12 **“SEC. 763. ELIGIBLE INDUSTRIAL SECTORS.**

13 “(a) LIST.—

14 “(1) INITIAL LIST.—Not later than June 30,
15 2011, the Administrator shall publish in the Federal
16 Register a list of eligible industrial sectors pursuant
17 to subsection (b). Such list shall include the amount
18 of the emission allowance rebate per unit of produc-
19 tion that shall be provided to entities in each eligible
20 industrial sector in the following two calendar years
21 pursuant to section 764.

22 “(2) SUBSEQUENT LISTS.—Not later than Feb-
23 ruary 1, 2013, and every 4 years thereafter, the Ad-
24 ministrator shall publish in the Federal Register an

1 updated version of the list published under para-
2 graph (1).

3 “(b) ELIGIBLE INDUSTRIAL SECTORS.—

4 “(1) IN GENERAL.—Not later than June 30,
5 2011, the Administrator shall promulgate a rule des-
6 ignating, based on the criteria under paragraph (2),
7 the industrial sectors eligible for emission allowance
8 rebates under this subpart.

9 “(2) PRESUMPTIVELY ELIGIBLE INDUSTRIAL
10 SECTORS.—

11 “(A) ELIGIBILITY CRITERIA.—

12 “(i) IN GENERAL.—An owner or oper-
13 ator of an entity shall be eligible to receive
14 emission allowance rebates under this sub-
15 part if such entity is in an industrial sector
16 that is included in a six-digit classification
17 of the NAICS that meets the criteria in
18 both clauses (ii) and (iii), or the criteria in
19 clause (iv).

20 “(ii) ENERGY OR GREENHOUSE GAS
21 INTENSITY.—As determined by the Admin-
22 istrator, the industrial sector had—

23 “(I) an energy intensity of at
24 least 5 percent, calculated by dividing
25 the cost of purchased electricity and

1 fuel costs of the sector by the value of
2 the shipments of the sector, based on
3 data described in subparagraph (D);
4 or

5 “(II) a greenhouse gas intensity
6 of at least 5 percent, calculated by di-
7 viding—

8 “(aa) the number 20 multi-
9 plied by the number of tons of
10 carbon dioxide equivalent green-
11 house gas emissions (including
12 direct emissions from fuel com-
13 bustion, process emissions, and
14 indirect emissions from the gen-
15 eration of electricity used to
16 produce the output of the sector)
17 of the sector based on data de-
18 scribed in subparagraph (D); by

19 “(bb) the value of the ship-
20 ments of the sector, based on
21 data described in subparagraph
22 (D).

23 “(iii) TRADE INTENSITY.—As deter-
24 mined by the Administrator, the industrial
25 sector had a trade intensity of at least 15

1 percent, calculated by dividing the value of
2 the total imports and exports of such sec-
3 tor by the value of the shipments plus the
4 value of imports of such sector, based on
5 data described in subparagraph (D).

6 “(iv) VERY HIGH ENERGY OR GREEN-
7 HOUSE GAS INTENSITY.—As determined by
8 the Administrator, the industrial sector
9 had an energy or greenhouse gas intensity,
10 as calculated under clause (ii)(I) or (II), of
11 at least 20 percent.

12 “(B) METAL AND PHOSPHATE PRODUC-
13 TION CLASSIFIED UNDER MORE THAN ONE
14 NAICS CODE.—For purposes of this section, the
15 Administrator shall—

16 “(i) aggregate data for the
17 beneficiation or other processing (including
18 agglomeration) of metal ores, including
19 iron and copper ores, soda ash, or phos-
20 phate with subsequent steps in the process
21 of metal and phosphate manufacturing, re-
22 gardless of the NAICS code under which
23 such activity is classified; and

24 “(ii) aggregate data for the manufac-
25 turing of steel with the manufacturing of

1 steel pipe and tube made from purchased
2 steel in a nonintegrated process.

3 “(C) EXCLUSION.—The petroleum refining
4 sector shall not be an eligible industrial sector.

5 “(D) DATA SOURCES.—

6 “(i) ELECTRICITY AND FUEL COSTS,
7 VALUE OF SHIPMENTS.—The Adminis-
8 trator shall determine electricity and fuel
9 costs and the value of shipments under
10 this subsection from data from the United
11 States Census Annual Survey of Manufac-
12 turers. The Administrator shall take the
13 average of data from as many of the years
14 of 2004, 2005, and 2006 for which such
15 data are available. If such data are un-
16 available, the Administrator shall make a
17 determination based upon 2002 or 2006
18 data from the most detailed industrial clas-
19 sification level of Energy Information
20 Agency’s Manufacturing Energy Consump-
21 tion Survey (using 2006 data if it is avail-
22 able) and the 2002 or 2007 Economic Cen-
23 sus of the United States (using 2007 data
24 if it is available). If data from the Manu-
25 facturing Energy Consumption Survey or

1 Economic Census are unavailable for any
2 sector at the six-digit classification level in
3 the NAICS, then the Administrator may
4 extrapolate the information necessary to
5 determine the eligibility of a sector under
6 this paragraph from available Manufac-
7 turing Energy Consumption Survey or
8 Economic Census data pertaining to a
9 broader industrial category classified in the
10 NAICS. If data relating to the
11 beneficiation or other processing (including
12 agglomeration) of metal ores, including
13 iron and copper ores, soda ash, or phos-
14 phate are not available from the specified
15 data sources, the Administrator shall use
16 the best available Federal or State govern-
17 ment data and may use, to the extent nec-
18 essary, representative data submitted by
19 entities that perform such beneficiation or
20 other processing (including agglomeration),
21 in making a determination. Fuel cost data
22 shall not include the cost of fuel used as
23 feedstock by an industrial sector.

24 “(ii) IMPORTS AND EXPORTS.—The
25 Administrator shall base the value of im-

1 ports and exports under this subsection on
2 United States International Trade Com-
3 mission data. The Administrator shall take
4 the average of data from as many of the
5 years of 2004, 2005, and 2006 for which
6 such data are available. If data from the
7 United States International Trade Com-
8 mission are unavailable for any sector at
9 the six-digit classification level in the
10 NAICS, then the Administrator may ex-
11 trapolate the information necessary to de-
12 termine the eligibility of a sector under
13 this paragraph from available United
14 States International Trade Commission
15 data pertaining to a broader industrial cat-
16 egory classified in the NAICS.

17 “(iii) PERCENTAGES.—The Adminis-
18 trator shall round the energy intensity,
19 greenhouse gas intensity, and trade inten-
20 sity percentages under subparagraph (A)
21 to the nearest whole number.

22 “(iv) GREENHOUSE GAS EMISSION
23 CALCULATIONS.—When calculating the
24 tons of carbon dioxide equivalent green-
25 house gas emissions for each sector under

1 subparagraph (A)(ii)(II)(aa), the Adminis-
2 trator—

3 “(I) shall use the best available
4 data from as many of the years 2004,
5 2005, and 2006 for which such data
6 is available; and

7 “(II) may, to the extent nec-
8 essary with respect to a sector, use
9 economic and engineering models and
10 the best available information on tech-
11 nology performance levels for such
12 sector.

13 “(3) ADMINISTRATIVE DETERMINATION OF AD-
14 DITIONAL ELIGIBLE INDUSTRIAL SECTORS.—

15 “(A) UPDATED TRADE INTENSITY DATA.—

16 The Administrator shall designate as eligible to
17 receive emission allowance rebates under this
18 subpart an industrial sector that—

19 “(i) met the energy or greenhouse gas
20 intensity criteria in paragraph (2)(A)(ii) as
21 of the date of promulgation of the rule
22 under paragraph (1); and

23 “(ii) meets the trade intensity criteria
24 in paragraph (2)(A)(iii), using data from
25 any year after 2006.

1 “(B) INDIVIDUAL SHOWING PETITION.—

2 “(i) PETITION.—In addition to des-
3 ignation under paragraph (2) or subpara-
4 graph (A) of this paragraph, the owner or
5 operator of an entity in an industrial sec-
6 tor may petition the Administrator to des-
7 ignate as eligible industrial sectors under
8 this subpart an entity or a group of enti-
9 ties that—

10 “(I) represent a subsector of a
11 six-digit section of the NAICS code;
12 and

13 “(II) meet the eligibility criteria
14 in both clauses (ii) and (iii) of para-
15 graph (2)(A), or the eligibility criteria
16 in clause (iv) of paragraph (2)(A).

17 “(ii) DATA.—In making a determina-
18 tion under this subparagraph, the Admin-
19 istrator shall consider data submitted by
20 the petitioner that is specific to the entity,
21 data solicited by the Administrator from
22 other entities in the subsector, if such
23 other entities exist, and data specified in
24 paragraph (2)(D).

1 “(iii) BASIS OF SUBSECTOR DETER-
2 MINATION.—The Administrator shall de-
3 termine an entity or group of entities to be
4 a subsector of a six-digit section of the
5 NAICS code based only upon the products
6 manufactured and not the industrial pro-
7 cess by which the products are manufac-
8 tured, except that the Administrator may
9 determine an entity or group of entities
10 that manufacture a product from primarily
11 virgin material to be a separate subsector
12 from another entity or group of entities
13 that manufacture the same product pri-
14 marily from recycled material.

15 “(iv) USE OF MOST RECENT DATA.—
16 In determining whether to designate a sec-
17 tor or subsector as an eligible industrial
18 sector under this subparagraph, the Ad-
19 ministrator shall use the most recent data
20 available from the sources described in
21 paragraph (2)(D), rather than the data
22 from the years specified in paragraph
23 (2)(D), to determine the trade intensity of
24 such sector or subsector, but only for de-
25 termining such trade intensity.

1 “(v) FINAL ACTION.—The Adminis-
2 trator shall take final action on such peti-
3 tion no later than 6 months after the peti-
4 tion is received by the Administrator.

5 **“SEC. 764. DISTRIBUTION OF EMISSION ALLOWANCE RE-**
6 **BATES.**

7 “(a) DISTRIBUTION SCHEDULE.—

8 “(1) IN GENERAL.—For each vintage year, the
9 Administrator shall distribute pursuant to this sec-
10 tion emission allowances made available under sec-
11 tion 782(e), no later than October 31 of the pre-
12 ceding calendar year. The Administrator shall make
13 such annual distributions to the owners and opera-
14 tors of each entity in an eligible industrial sector in
15 the amount of emission allowances calculated under
16 subsection (b), except that—

17 “(A) for vintage years 2012 and 2013, the
18 distribution for a covered entity shall be pursu-
19 ant to the entity’s indirect carbon factor as cal-
20 culated under subsection (b)(3);

21 “(B) for vintage year 2026 and thereafter,
22 the distribution shall be pursuant to the
23 amount calculated under subsection (b) multi-
24 plied by, except as modified by the President
25 pursuant to section 767(d)(1)(C) for a sector—

1 “(i) 90 percent for vintage year 2026;

2 “(ii) 80 percent for vintage year
3 2027;

4 “(iii) 70 percent for vintage year
5 2028;

6 “(iv) 60 percent for vintage year
7 2029;

8 “(v) 50 percent for vintage year 2030;

9 “(vi) 40 percent for vintage year
10 2031;

11 “(vii) 30 percent for vintage year
12 2032;

13 “(viii) 20 percent for vintage year
14 2033;

15 “(ix) 10 percent for vintage year
16 2034; and

17 “(x) 0 percent for vintage year 2035
18 and thereafter.

19 “(2) RESUMPTION OF REDUCTION.—If the
20 President has modified the percentage stated in
21 paragraph (1)(B) under section 767(d)(1)(C), and
22 the President subsequently makes a determination
23 under section 767(c) for an eligible industrial sector
24 that more than 85 percent of United States imports
25 for that sector are produced or manufactured in

1 countries that have met at least one of the criteria
2 in that section, then the 10-year reduction schedule
3 set forth in paragraph (1)(B) of this subsection shall
4 begin in the next vintage year, with the percentage
5 reduction based on the amount of the distribution of
6 emission allowances under this section in the pre-
7 vious year.

8 “(3) NEWLY ELIGIBLE SECTORS.—In addition
9 to receiving a distribution of emission allowances
10 under this section in the first distribution occurring
11 after an industrial sector is designated as eligible
12 under section 763(b)(3), the owner or operator of an
13 entity in that eligible industrial sector may receive a
14 prorated share of any emission allowances made
15 available for distribution under this section that
16 were not distributed for the year in which the peti-
17 tion for eligibility was granted under section
18 763(b)(3)(A).

19 “(4) CESSATION OF QUALIFYING ACTIVITIES.—
20 If, as determined by the Administrator, a facility is
21 no longer in an eligible industrial sector designated
22 under section 763—

23 “(A) the Administrator shall not distribute
24 emission allowances to the owner or operator of
25 such facility under this section; and

1 “(B) the owner or operator of such facility
2 shall return to the Administrator all allowances
3 that have been distributed to it for future vin-
4 tage years and a pro-rated amount of allow-
5 ances distributed to the facility under this sec-
6 tion for the vintage year in which the facility
7 ceases to be in an eligible industrial sector des-
8 ignated under section 763.

9 “(b) CALCULATION OF DIRECT AND INDIRECT CAR-
10 BON FACTORS.—

11 “(1) IN GENERAL.—

12 “(A) COVERED ENTITIES.—Except as pro-
13 vided in subsection (a), for covered entities that
14 are in eligible industrial sectors, the amount of
15 emission allowance rebates shall be based on
16 the sum of the covered entity’s direct and indi-
17 rect carbon factors.

18 “(B) OTHER ELIGIBLE ENTITIES.—For
19 entities that are in eligible industrial sectors
20 but are not covered entities, the amount of
21 emission allowance rebates shall be based on
22 the entity’s indirect carbon factor.

23 “(C) NEW ENTITIES.—Not later than 2
24 years after the date of enactment of this title,
25 the Administrator shall issue regulations gov-

1 erning the distribution of emission allowance re-
2 bates for the first and second years of operation
3 of a new entity in an eligible industrial sector.

4 These regulations shall provide for—

5 “(i) the distribution of emission allow-
6 ance rebates to such entities based on com-
7 parable entities in the same sector; and

8 “(ii) an adjustment in the third and
9 fourth years of operation to reconcile the
10 total amount of emission allowance rebates
11 received during the first and second years
12 of operation to the amount the entity
13 would have received during the first and
14 second years of operation had the appro-
15 priate data been available.

16 “(2) DIRECT CARBON FACTOR.—The direct car-
17 bon factor for a covered entity for a vintage year is
18 the product of—

19 “(A) the average annual output of the cov-
20 ered entity for the 2 years preceding the year
21 of the distribution; and

22 “(B) the most recent calculation of the av-
23 erage direct greenhouse gas emissions (ex-
24 pressed in tons of carbon dioxide equivalent)
25 per unit of output for all covered entities in the

1 sector, as determined by the Administrator
2 under paragraph (4).

3 “(3) INDIRECT CARBON FACTOR.—

4 “(A) IN GENERAL.—The indirect carbon
5 factor for an entity for a vintage year is the
6 product obtained by multiplying the average an-
7 nual output of the entity for the 2 years pre-
8 ceeding the year of the distribution by both the
9 electricity emissions intensity factor determined
10 pursuant to subparagraph (B) and the elec-
11 tricity efficiency factor determined pursuant to
12 subparagraph (C) for the year concerned.

13 “(B) ELECTRICITY EMISSIONS INTENSITY
14 FACTOR.—

15 “(i) IN GENERAL.—Each person sell-
16 ing electricity to the owner or operator of
17 an entity in any sector designated as an el-
18 igible industrial sector under section
19 763(b) shall provide the owner or operator
20 of the entity and the Administrator, on an
21 annual basis, the electricity emissions in-
22 tensity factor for the entity. The electricity
23 emissions intensity factor for the entity,
24 expressed in tons of carbon dioxide equiva-

1 lents per kilowatt hour, is determined by
2 dividing—

3 “(I) the annual sum of the hour-
4 ly product of—

5 “(aa) the electricity pur-
6 chased by the entity from that
7 person in each hour (expressed in
8 kilowatt hours); multiplied by

9 “(bb) the marginal or
10 weighted average tons of carbon
11 dioxide equivalent per kilowatt
12 hour that are reflected in the
13 electricity charges to the entity,
14 as determined by the entity’s re-
15 tail rate arrangements; by

16 “(II) the total kilowatt hours of
17 electricity purchased by the entity
18 from that person during that year.

19 “(ii) USE OF OTHER DATA TO DETER-
20 MINE FACTOR.—Where it is not possible to
21 determine the precise electricity emissions
22 intensity factor for an entity using the
23 methodology in clause (i), the person sell-
24 ing electricity shall use the monthly aver-
25 age data reported by the Energy Informa-

1 tion Administration or collected and re-
2 ported by the Administrator for the utility
3 serving the entity to determine the elec-
4 tricity emissions intensity factor.

5 “(C) ELECTRICITY EFFICIENCY FACTOR.—

6 The electricity efficiency factor is the average
7 amount of electricity (in kilowatt hours) used
8 per unit of output for all entities in the relevant
9 sector, as determined by the Administrator
10 based on the best available data, including data
11 provided under paragraph (6).

12 “(D) INDIRECT CARBON FACTOR REDUC-

13 TION.—If an electricity provider received a free
14 allocation of emission allowances pursuant to
15 section 782(a), the Administrator shall adjust
16 the indirect carbon factor to avoid rebates to
17 the eligible entity for costs that the Adminis-
18 trator determines were not incurred by the eli-
19 gible entity because the allowances were freely
20 allocated to the eligible entity’s electricity pro-
21 vider and used for the benefit of industrial con-
22 sumers.

23 “(4) GREENHOUSE GAS INTENSITY CALCULA-

24 TIONS.—The Administrator shall calculate the aver-
25 age direct greenhouse gas emissions (expressed in

1 tons of carbon dioxide equivalent) per unit of output
2 and the electricity efficiency factor for all covered
3 entities in each eligible industrial sector every 4
4 years, using an average of the four most recent
5 years of the best available data. For purposes of the
6 lists required to be published no later than February
7 1, 2013, the Administrator shall use the best avail-
8 able data for the maximum number of years, up to
9 4 years, for which data are available.

10 “(5) ENSURING EFFICIENCY IMPROVEMENTS.—

11 When making greenhouse gas calculations, the Ad-
12 ministrator shall—

13 “(A) limit the average direct greenhouse
14 gas emissions per unit of output, calculated
15 under paragraph (4), for any eligible industrial
16 sector to an amount that is not greater than it
17 was in any previous calculation under this sub-
18 section;

19 “(B) limit the electricity emissions inten-
20 sity factor, calculated under paragraph (3)(B)
21 and resulting from a change in electricity sup-
22 ply, for any entity to an amount that is not
23 greater than it was during any previous year;
24 and

1 “(C) limit the electricity efficiency factor,
2 calculated under paragraph (3)(C), for any eli-
3 gible industrial sector to an amount that is not
4 greater than it was in any previous calculation
5 under this subsection.

6 “(6) DATA SOURCES.—For the purposes of this
7 subsection—

8 “(A) the Administrator shall use data from
9 the greenhouse gas registry established under
10 section 713, where it is available; and

11 “(B) each owner or operator of an entity
12 in an eligible industrial sector and each depart-
13 ment, agency, and instrumentality of the
14 United States shall provide the Administrator
15 with such information as the Administrator
16 finds necessary to determine the direct carbon
17 factor and the indirect carbon factor for each
18 entity subject to this section.

19 “(c) TOTAL MAXIMUM DISTRIBUTION.—Notwith-
20 standing subsections (a) and (b), the Administrator shall
21 not distribute more allowances for any vintage year pursu-
22 ant to this section than are allocated for use under this
23 subpart pursuant to section 782(e) for that vintage year.
24 For any vintage year for which the total emission allow-
25 ance rebates calculated pursuant to this section exceed the

1 number of allowances allocated pursuant to section 782(e),
2 the Administrator shall reduce each entity's distribution
3 on a pro rata basis so that the total distribution under
4 this section equals the number of allowances allocated
5 under section 782(e).

6 “(d) IRON AND STEEL SECTOR.—For purposes of
7 this section, the Administrator shall consider as in dif-
8 ferent industrial sectors—

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 “(e) METAL, SODA ASH, OR PHOSPHATE PRODUC-
15 TION CLASSIFIED UNDER MORE THAN ONE NAICS
16 CODE.—For purposes of this section, the Administrator
17 shall not aggregate data for the beneficiation or other
18 processing (including agglomeration) of metal ores, soda
19 ash, or phosphate with subsequent steps in the process
20 of metal, soda ash, or phosphate manufacturing. The Ad-
21 ministrator shall consider the beneficiation or other proc-
22 essing (including agglomeration) of metal ores, soda ash,
23 or phosphate to be in separate industrial sectors from the
24 metal, soda ash, or phosphate manufacturing sectors. In-
25 dustrial sectors that beneficiate or otherwise process (in-

1 cluding agglomeration) metal ores, soda ash, or phosphate
2 shall not receive emission allowance rebates under this sec-
3 tion related to the activity of extracting metal ores, soda
4 ash, or phosphate.

5 “(f) COMBINED HEAT AND POWER.—For purposes
6 of this section, and to achieve the purpose set forth in
7 section 761(b)(2), the Administrator may consider entities
8 to be in different industrial sectors or otherwise take into
9 account the differences among entities in the same indus-
10 trial sector, based upon the extent to which such entities
11 use combined heat and power technologies.

12 **“Subpart 2—Promoting International Reductions in**
13 **Industrial Emissions**

14 **“SEC. 765. INTERNATIONAL NEGOTIATIONS.**

15 “(a) FINDING.—Congress finds that the purposes of
16 this subpart, as set forth in section 761(c), can be most
17 effectively addressed and achieved through agreements ne-
18 gotiated between the United States and foreign countries.

19 “(b) STATEMENT OF POLICY.—It is the policy of the
20 United States to work proactively under the United Na-
21 tions Framework Convention on Climate Change, and in
22 other appropriate fora, to establish binding agreements,
23 including sectoral agreements, committing all major
24 greenhouse gas-emitting nations to contribute equitably to
25 the reduction of global greenhouse gas emissions.

1 “(c) NOTIFICATION OF FOREIGN COUNTRIES.—

2 “(1) IN GENERAL.—As soon as practicable
3 after the date of the enactment of this title, the
4 President shall provide a notification on climate
5 change described in paragraph (2) to each foreign
6 country the products of which are not exempted
7 under section 768(a)(1)(E).

8 “(2) NOTIFICATION DESCRIBED.—A notifica-
9 tion described in this paragraph is a notification
10 that consists of—

11 “(A) a statement of the policy of the
12 United States described in subsection (b); and

13 “(B) a declaration—

14 “(i) requesting the foreign country to
15 take appropriate measures to limit the
16 greenhouse gas emissions of the foreign
17 country; and

18 “(ii) indicating that, beginning on
19 January 1, 2020, the international reserve
20 requirements of this subpart may apply to
21 a covered good.

1 **“SEC. 766. UNITED STATES NEGOTIATING OBJECTIVES**
2 **WITH RESPECT TO MULTILATERAL ENVIRON-**
3 **MENTAL NEGOTIATIONS.**

4 “(a) IN GENERAL.—The negotiating objectives of the
5 United States with respect to multilateral environmental
6 negotiations described in this subpart are—

7 “(1) to reach an internationally binding agree-
8 ment in which all major greenhouse gas-emitting
9 countries contribute equitably to the reduction of
10 global greenhouse gas emissions;

11 “(2)(A) to include in such international agree-
12 ment provisions that recognize and address the com-
13 petitive imbalances that lead to carbon leakage and
14 may be created between parties and non-parties to
15 the agreement in domestic and export markets; and

16 “(B) not to prevent parties to such agreement
17 from addressing the competitive imbalances that
18 lead to carbon leakage and may be created by the
19 agreement among parties to the agreement in do-
20 mestic and export markets ; and

21 “(3) to include in such international agreement
22 agreed remedies for any party to the agreement that
23 fails to meet its greenhouse gas reduction obligations
24 in the agreement.

1 national reserve allowance program for the eligible
2 industrial sector under section 768;

3 “(3) to the extent the President determines that
4 an international reserve allowance program would
5 not be useful for the eligible industrial sector be-
6 cause its exposure to carbon leakage is the result of
7 competition in export markets with goods produced
8 in countries not implementing similar greenhouse
9 gas emission reduction policies, an identification of,
10 and to the extent appropriate a description of how
11 the President will implement, alternative actions or
12 programs consistent with the purposes of this sub-
13 part (and, in such case, the President may deter-
14 mine not to apply an international reserve allowance
15 program to the eligible industrial sector under sub-
16 section (b)); and

17 “(4) an assessment of the amount and duration
18 of assistance, including distribution of free allow-
19 ances, being provided to industrial sectors in other
20 developed countries to mitigate costs of compliance
21 with domestic greenhouse gas reduction programs in
22 such countries.

23 “(b) PRESIDENTIAL DETERMINATION.—

24 “(1) IN GENERAL.—If, by January 1, 2018, a
25 multilateral agreement consistent with the negoti-

1 ating objectives set forth in section 766 has not en-
2 tered into force with respect to the United States,
3 the President shall establish an international reserve
4 allowance program for each eligible industrial sector
5 to the extent provided under section 768 unless—

6 “(A) the President determines and certifies
7 to the Congress with respect to such eligible in-
8 dustrial sector that such program would not be
9 in the national economic interest or environ-
10 mental interest of the United States; and

11 “(B) not later than 90 days after the
12 President transmits the certification described
13 in subparagraph (A), a joint resolution is en-
14 acted into law that approves the determination
15 of the President described in subparagraph (A).

16 “(2) CONTENTS OF JOINT RESOLUTION.—For
17 purposes of this subsection, the term ‘joint resolu-
18 tion’ means only a joint resolution of the two Houses
19 of Congress, the matter after the resolving clause of
20 which is as follows: ‘That the Congress approves the
21 determination of the President under section
22 768(b)(1)(A) of the Clean Air Act transmitted to the
23 Congress on _____.’, the blank space being
24 filled with the appropriate date.

1 “(3) CONGRESSIONAL PROCEDURES.—Sub-
2 sections (c), (d), (e), and (f) of section 152 of the
3 Trade Act of 1974 (19 U.S.C. 2192 (c), (d), (e),
4 and (f)) shall apply to a joint resolution under this
5 subsection to the same extent as such subsections
6 apply to a joint resolution under section 152 of such
7 Act.

8 “(4) RULE OF CONSTRUCTION.—For purposes
9 of this section and section 768, if the President
10 transmits a multilateral agreement to Congress (re-
11 gardless of whether it is transmitted as a treaty for
12 ratification by the Senate or another international
13 agreement for implementation by law enacted by the
14 Congress) indicating that the agreement is con-
15 sistent with the negotiating objectives set forth in
16 section 766, such agreement will be considered to be
17 consistent with such negotiating objectives as of the
18 date on which the Senate ratifies the treaty, or legis-
19 lation is enacted implementing such other agree-
20 ment, unless the Senate (in the case of ratification)
21 or the implementing legislation expressly provides
22 that the multilateral agreement shall not be treated
23 as consistent with such negotiating objectives for
24 purposes of this section and section 768.

1 “(c) DETERMINATIONS WITH RESPECT TO ELIGIBLE
2 INDUSTRIAL SECTORS.—If the President establishes an
3 international reserve allowance program pursuant to sub-
4 section (b), then not later than June 30, 2018, and every
5 4 years thereafter, the President, in consultation with the
6 Administrator and other appropriate agencies, shall deter-
7 mine, for each eligible industrial sector, whether or not
8 more than 85 percent of United States imports of covered
9 goods with respect to that sector are produced or manu-
10 factured in countries that have met at least one of the
11 following criteria:

12 “(1) The country is a party to an international
13 agreement to which the United States is a party
14 that includes a nationally enforceable and economy-
15 wide greenhouse gas emissions reduction commit-
16 ment for that country that is at least as stringent
17 as that of the United States.

18 “(2) The country is a party to a multilateral or
19 bilateral emission reduction agreement for that sec-
20 tor to the which the United States is a party.

21 “(3) The country has an annual energy or
22 greenhouse gas intensity, as described in section
23 763(b)(2)(A)(ii), for the sector that is equal to or
24 less than the energy or greenhouse gas intensity for
25 such industrial sector in the United States in the

1 most recent calendar year for which data are avail-
2 able.

3 “(d) EFFECT OF PRESIDENTIAL DETERMINATION.—

4 “(1) REQUIRED ACTIONS.—If the President
5 makes a determination under subsection (c) with re-
6 spect to an eligible industrial sector that 85 percent
7 or less of United States imports of covered goods
8 with respect to the sector are produced or manufac-
9 tured in countries that have met one or more of the
10 criteria in subsection (c), then the President shall,
11 not later than June 30, 2018, and every 4 years
12 thereafter—

13 “(A) assess the extent to which the emis-
14 sion allowance rebates provided pursuant to
15 subpart 1 and the benefit received by that in-
16 dustrial sector from the provision of free allow-
17 ances to electricity providers pursuant to sec-
18 tion 782(a) have mitigated or addressed, or
19 could mitigate or address, carbon leakage in
20 that sector;

21 “(B) assess the extent to which an inter-
22 national reserve allowance program has miti-
23 gated or addressed, or could mitigate or ad-
24 dress, carbon leakage in that sector; and

25 “(C) with respect to that sector—

1 “(i) modify the percentage by which
2 direct and indirect carbon factors will be
3 multiplied under section 764(a)(1)(B); and

4 “(ii) apply or continue to apply an
5 international reserve allowance program
6 under section 768 with respect to imports
7 of covered goods with respect to that sec-
8 tor.

9 “(2) PROHIBITED ACTIONS.—If the President
10 makes a determination under subsection (c) with re-
11 spect to an eligible industrial sector that more than
12 85 percent of United States imports of covered
13 goods with respect to the sector are produced or
14 manufactured in countries that have met one or
15 more of the criteria in subsection (c), then the Presi-
16 dent may not apply or continue to apply an inter-
17 national reserve allowance program under section
18 768 with respect to imports of covered goods with
19 respect to that sector.

20 “(e) REPORT TO CONGRESS.—Not later than June
21 30, 2018, and every 4 years thereafter, the President shall
22 transmit to the Congress a report providing notice of any
23 determination made under subsection (c), explaining the
24 reasons for such determination, and identifying the ac-
25 tions taken by the President under subsection (d).

1 **“SEC. 768. INTERNATIONAL RESERVE ALLOWANCE PRO-**
2 **GRAM.**

3 “(a) ESTABLISHMENT.—

4 “(1) IN GENERAL.—The Administrator, with
5 the concurrence of Commissioner responsible for
6 U.S. Customs and Border Protection, shall issue
7 regulations—

8 “(A) establishing an international reserve
9 allowance program for the sale, exchange, pur-
10 chase, transfer, and banking of international re-
11 serve allowances for covered goods with respect
12 to the eligible industrial sector;

13 “(B) ensuring that the price for pur-
14 chasing the international reserve allowances
15 from the United States on a particular day is
16 equivalent to the auction clearing price for
17 emission allowances under section 722 for the
18 most recent emission allowance auction;

19 “(C) establishing a general methodology
20 for calculating the quantity of international re-
21 serve allowances that a United States importer
22 of any covered good must submit;

23 “(D) requiring the submission of appro-
24 priate amounts of such allowances for covered
25 goods with respect to the eligible industrial sec-

1 tor that enter the customs territory of the
2 United States;

3 “(E) exempting from the requirements of
4 subparagraph (D) such products that are the
5 origin of—

6 “(i) any country determined to meet
7 any of the standards provided in section
8 767(e);

9 “(ii) any foreign country that the
10 United Nations has identified as among
11 the least developed of developing countries;
12 or

13 “(iii) any foreign country that the
14 President has determined to be responsible
15 for less than 0.5 percent of total global
16 greenhouse gas emissions and less than 5
17 percent of United States imports of cov-
18 ered goods with respect to the eligible in-
19 dustrial sector;

20 “(F) specifying the procedures that U.S.
21 Customs and Border Protection will apply for
22 the declaration and entry of covered goods with
23 respect to the eligible industrial sector into the
24 customs territory of the United States; and

1 “(G) establishing procedures that prevent
2 circumvention of the international reserve allow-
3 ance requirement for covered goods with respect
4 to the eligible industrial sector that are manu-
5 factured or processed in more than one foreign
6 country.

7 “(2) PURPOSE OF PROGRAM.—The Adminis-
8 trator shall establish the program under paragraph
9 (1) consistent with international agreements to
10 which the United States is a party, in a manner that
11 minimizes the likelihood of carbon leakage as a re-
12 sult of differences between—

13 “(A) the direct and indirect costs of com-
14 plying with section 722; and

15 “(B) the direct and indirect costs, if any,
16 of complying in other countries with greenhouse
17 gas regulatory programs, requirements, export
18 tariffs, or other measures adopted or imposed
19 to reduce greenhouse gas emissions.

20 “(b) EMISSION ALLOWANCE REBATES.—In estab-
21 lishing a general methodology for purposes of subsection
22 (a)(1)(C), the Administrator shall include an adjustment
23 to the quantity of international reserve allowances based
24 on the value of emission allowance rebates distributed
25 under subpart 1 and the benefit received by the eligible

1 industrial sector concerned from the provision of free al-
2 lowances to electricity providers pursuant to section
3 782(a) and may, if appropriate, determine that the quan-
4 tity of international reserve allowances should be reduced
5 as low as to zero.

6 “(c) EFFECTIVE DATE.—The international reserve
7 allowance program may not apply to imports of covered
8 goods entering the customs territory of the United States
9 before January 1, 2020.

10 “(d) COVERED ENTITIES.—International reserve al-
11 lowances may not be used by covered entities to comply
12 with section 722.

13 **“SEC. 769. IRON AND STEEL SECTOR.**

14 “For purposes of this subpart, the Administrator
15 shall consider to be in the same eligible industrial sector—

16 “(1) entities using integrated iron and
17 steelmaking technologies (including coke ovens, blast
18 furnaces, and other iron-making technologies); and

19 “(2) entities using electric arc furnace tech-
20 nologies.”.

1 **Subtitle B—Green Jobs and**
2 **Worker Transition**

3 **PART 1—GREEN JOBS**

4 **SEC. 421. CLEAN ENERGY CURRICULUM DEVELOPMENT**
5 **GRANTS.**

6 (a) **AUTHORIZATION.**—The Secretary of Education is
7 authorized to award grants, on a competitive basis, to eli-
8 gible partnerships to develop programs of study (con-
9 taining the information described in section 122(c)(1)(A)
10 of the Carl D. Perkins Career and Technical Education
11 Act of 2006 (20 U.S.C. 2342)), that are focused on emerg-
12 ing careers and jobs in the fields of clean energy, renew-
13 able energy, energy efficiency, climate change mitigation,
14 and climate change adaptation. The Secretary of Edu-
15 cation shall consult with the Secretary of Labor and the
16 Secretary of Energy prior to the issuance of a solicitation
17 for grant applications.

18 (b) **ELIGIBLE PARTNERSHIPS.**—For purposes of this
19 section, an eligible partnership shall include—

20 (1) at least 1 local educational agency eligible
21 for funding under section 131 of the Carl D. Per-
22 kins Career and Technical Education Act of 2006
23 (20 U.S.C. 2351) or an area career and technical
24 education school or education service agency de-
25 scribed in such section;

1 (2) at least 1 postsecondary institution eligible
2 for funding under section 132 of such Act (20
3 U.S.C. 2352); and

4 (3) representatives of the community including
5 business, labor organizations, and industry that have
6 experience in fields as described in subsection (a).

7 (c) APPLICATION.—An eligible partnership seeking a
8 grant under this section shall submit an application to the
9 Secretary at such time and in such manner as the Sec-
10 retary may require. Applications shall include—

11 (1) a description of the eligible partners and
12 partnership, the roles and responsibilities of each
13 partner, and a demonstration of each partner's ca-
14 pacity to support the program;

15 (2) a description of the career area or areas
16 within the fields as described in subsection (a) to be
17 developed, the reason for the choice, and evidence of
18 the labor market need to prepare students in that
19 area;

20 (3) a description of the new or existing program
21 of study and both secondary and postsecondary com-
22 ponents;

23 (4) a description of the students to be served by
24 the new program of study;

1 (5) a description of how the program of study
2 funded by the grant will be replicable and dissemi-
3 nated to schools outside of the partnership, including
4 urban and rural areas;

5 (6) a description of applied learning that will be
6 incorporated into the program of study and how it
7 will incorporate or reinforce academic learning;

8 (7) a description of how the program of study
9 will be delivered;

10 (8) a description of how the program will pro-
11 vide accessibility to students, especially economically
12 disadvantaged, low performing, and urban and rural
13 students;

14 (9) a description of how the program will ad-
15 dress placement of students in nontraditional fields
16 as described in section 3(20) of the Carl D. Perkins
17 Career and Technical Education Act of 2006 (20
18 U.S.C. 2302(20)); and

19 (10) a description of how the applicant proposes
20 to consult or has consulted with a labor organiza-
21 tion, labor management partnership, apprenticeship
22 program, or joint apprenticeship and training pro-
23 gram that provides education and training in the
24 field of study for which the applicant proposes to de-
25 velop a curriculum.

1 (d) PRIORITY.—The Secretary shall give priority to
2 applications that—

3 (1) use online learning or other innovative
4 means to deliver the program of study to students,
5 educators, and instructors outside of the partner-
6 ship; and

7 (2) focus on low performing students and spe-
8 cial populations as defined in section 3(29) of the
9 Carl D. Perkins Career and Technical Education
10 Act of 2006 (20 U.S.C. 2302(29)).

11 (e) PEER REVIEW.—The Secretary shall convene a
12 peer review process to review applications for grants under
13 this section and to make recommendations regarding the
14 selection of grantees. Members of the peer review com-
15 mittee shall include—

16 (1) educators who have experience imple-
17 menting curricula with comparable purposes; and

18 (2) business and industry experts in fields as
19 described in subsection (a).

20 (f) USES OF FUNDS.—Grants awarded under this
21 section shall be used for the development, implementation,
22 and dissemination of programs of study (as described in
23 section 122(c)(1)(A) of the Carl D. Perkins Career and
24 Technical Education Act (20 U.S.C. 2342(c)(1)(A))) in
25 career areas related to clean energy, renewable energy, en-

1 ergy efficiency, climate change mitigation, and climate
2 change adaptation.

3 **SEC. 422. INCREASED FUNDING FOR ENERGY WORKER**
4 **TRAINING PROGRAM.**

5 (a) AUTHORIZATION.—Section 171(e)(8) of the
6 Workforce Investment Act of 1998 (29 U.S.C. 2916(e)(8))
7 is amended by striking “\$125,000,000” and inserting
8 “\$150,000,000”.

9 (b) ESTABLISHMENT OF FUND.—There is hereby es-
10 tablished in the Treasury a separate account that shall
11 be known as the Energy Efficiency and Renewable Energy
12 Worker Training Fund.

13 (c) AVAILABILITY OF AMOUNTS.—Subject to subtitle
14 F of title IV, all amounts deposited into the Energy Effi-
15 ciency and Renewable Energy Worker Training Fund shall
16 be available to the Secretary to carry out section 171(e)(8)
17 of the Workforce Investment Act of 1998 (29 U.S.C.
18 2916(e)(8)) subject to further appropriation.

19 **SEC. 423. DEVELOPMENT OF INFORMATION AND RE-**
20 **SOURCES CLEARINGHOUSE FOR VOCA-**
21 **TIONAL EDUCATION AND JOB TRAINING IN**
22 **RENEWABLE ENERGY SECTORS.**

23 (a) DEVELOPMENT OF CLEARINGHOUSE.—Not later
24 than 18 months after the date of enactment of this Act,
25 the Secretary of Labor, in collaboration with the Secretary

1 of Energy and the Secretary of Education, shall develop
2 an internet based information and resources clearinghouse
3 to aid career and technical education and job training pro-
4 grams for the renewable energy sectors. In establishing
5 the clearinghouse, the Secretary shall—

6 (1) collect and provide information that ad-
7 dresses the consequences of rapid changes in tech-
8 nology and regional disparities for renewable energy
9 training programs and provides best practices for
10 training and education in light of such changes and
11 disparities;

12 (2) place an emphasis on facilitating collabora-
13 tion between the renewable energy industry and job
14 training programs and on identifying industry and
15 technological trends and best practices, to better
16 help job training programs maintain quality and rel-
17 evance; and

18 (3) place an emphasis on assisting programs
19 that cater to high-demand middle-skill, trades, man-
20 ufacturing, contracting, and consulting careers.

21 (b) SOLICITATION AND CONSULTATION.—In devel-
22 oping the clearinghouse pursuant to subsection (a), the
23 Secretary shall solicit information and expertise from busi-
24 nesses and organizations in the renewable energy sector
25 and from institutions of higher education, career and tech-

1 nical schools, and community colleges that provide train-
2 ing in the renewable energy sectors. The Secretary shall
3 solicit a comprehensive peer review of the clearinghouse
4 by such entities not less than once every 2 years. Nothing
5 in this subsection should be interpreted to require the di-
6 vulgence of proprietary or competitive information.

7 (c) CONTENTS OF CLEARINGHOUSE.—

8 (1) SEPARATE SECTION FOR EACH RENEWABLE
9 ENERGY SECTOR.—The clearinghouse shall contain
10 separate sections developed for each of the following
11 renewable energy sectors:

12 (A) Solar energy systems.

13 (B) Wind energy systems.

14 (C) Energy transmission systems.

15 (D) Geothermal systems of energy and
16 heating.

17 (E) Energy efficiency technical training.

18 (2) ADDITIONAL REQUIREMENTS.—In addition
19 to the information required in subsection (a), each
20 section of the clearinghouse shall include information
21 on basic environmental science and processes needed
22 to understand renewable energy systems, Federal
23 government and industry resources, and points of
24 contact to aid institutions in the development of
25 placement programs for apprenticeships and post

1 graduation opportunities, and information and tips
2 about a green workplace, energy efficiency, and rel-
3 evant environmental topics and information on avail-
4 able industry recognized certifications in each area.

5 (d) DISSEMINATION.—The clearinghouse shall be
6 made available via the Internet to the general public. No-
7 tice of the completed clearinghouse and any major revi-
8 sions thereto shall also be provided—

9 (1) to each Member of Congress; and

10 (2) on the websites of the Departments of Edu-
11 cation, Energy, and Labor.

12 (e) REVISION.—The Secretary of Labor shall revise
13 and update the clearinghouse on a regular basis to ensure
14 its relevance.

15 **SEC. 424. MONITORING PROGRAM EFFECTIVENESS.**

16 The Secretary of Labor shall monitor the potential
17 growth of affected and displaced workers to ensure that
18 the necessary funding continues to support the number of
19 workers affected.

20 **SEC. 424A. GREEN CONSTRUCTION CAREERS DEMONSTRATION PROJECT.**

21
22 (a) ESTABLISHMENT AND AUTHORITY.—The Sec-
23 retary of Labor, in consultation with the Secretary of En-
24 ergy, shall, not later than 180 days after the enactment
25 of this Act, establish a Green Construction Careers dem-

1 onstration project by rules, regulations, and guidance in
2 accordance with the provisions of this section. The purpose
3 of the demonstration project shall be to promote middle
4 class careers and quality employment practices in the
5 green construction sector among targeted workers and to
6 advance efficiency and performance on construction
7 projects related to this Act. In order to advance these pur-
8 poses, the Secretary shall identify projects, including resi-
9 dential retrofitting projects, funded directly by or assisted
10 in whole or in part by or through the Federal Government
11 pursuant to this Act or by any other entity established
12 in accordance with this Act, to which all of the following
13 shall apply.

14 (b) REQUIREMENTS.—The Secretaries may establish
15 such terms and conditions for the demonstration projects
16 as the Secretaries determine are necessary to meet the
17 purposes of subsection (a), including establishing min-
18 imum proportions of hours to be worked by targeted work-
19 ers on such projects. The Secretaries may require the con-
20 tractors and subcontractors performing construction serv-
21 ices on the project to comply with the terms and conditions
22 as a condition of receiving funding or assistance from the
23 Federal Government under this Act.

24 (c) EVALUATION.—The Secretaries shall evaluate the
25 demonstration projects against the purposes of this section

1 at the end of 3 years from initiation of the demonstration
2 project. If the Secretaries determine that the demonstra-
3 tion projects have been successful, the Secretaries may
4 identify further projects to which of the provisions of this
5 section shall apply.

6 (d) GAO REPORT.—The Comptroller General shall
7 prepare and submit a report to the Committee on Health,
8 Education, Labor and Pensions and the Committee on
9 Energy and Natural Resources of the Senate and the
10 Committee on Education and Labor and the Committee
11 on Energy and Commerce of the House of Representatives
12 not later than 5 years after the date of enactment of this
13 Act, which shall advise the committees of the results of
14 the demonstration projects and make appropriate rec-
15 ommendations.

16 (e) DEFINITION AND DESIGNATION OF TARGETED
17 WORKERS.—As used in this section, the term “targeted
18 worker” means an individual who resides in the same
19 labor market area (as defined in section 101(18) of the
20 Workforce Investment Act of 1998 (29 U.S.C. 2801(18)))
21 as the project and who—

22 (1) is a member of a targeted group, within the
23 meaning of section 51 of the Internal Revenue Code
24 of 1986, other than an individual described in sub-
25 section (d)(1)(C) of such section;

1 (2)(A) resides in a census tract in which not
2 less than 20 percent of the households have incomes
3 below the Federal poverty guidelines; or

4 (B) is a member of a family that received
5 a total family income that, during the 2-year
6 period prior to employment on the project or
7 admission to the pre-apprenticeship program,
8 did not exceed 200 percent of the Federal pov-
9 erty guidelines (exclusive of unemployment com-
10 pensation, child support payments, payments
11 described in section 101(25)(A) of the Work-
12 force Investment Act (29 U.S.C. 2801(25)(A)),
13 and old-age and survivors insurance benefits re-
14 ceived under section 202 of the Social Security
15 Act (42 U.S.C. 402); or

16 (3) is a displaced homemaker, as such term is
17 defined in section 3(10) of the Carl D. Perkins Ca-
18 reer and Technical Education Act of 2006 (20
19 U.S.C. 2302(10)).

20 (f) **QUALIFIED PRE-APPRENTICESHIP PROGRAM.**—A
21 qualified pre-apprenticeship program is a pre-apprentice-
22 ship program that has demonstrated an ability to recruit,
23 train, and prepare for admission to apprenticeship pro-
24 grams individuals who are targeted workers.

1 (g) QUALIFIED APPRENTICESHIP AND OTHER
2 TRAINING PROGRAMS.—

3 (1) PARTICIPATION BY EACH CONTRACTOR RE-
4 QUIRED.—Each contractor and subcontractor that
5 seeks to provide construction services on projects
6 identified by the Secretaries pursuant to subsection
7 (a) shall submit adequate assurances with its bid or
8 proposal that it participates in a qualified appren-
9 ticeship or other training program, with a written
10 arrangement with a qualified pre-apprenticeship pro-
11 gram, for each craft or trade classification of worker
12 that it intends to employ to perform work on the
13 project.

14 (2) DEFINITION OF QUALIFIED APPRENTICE
15 SHIP OR OTHER TRAINING PROGRAM.—

16 (A) IN GENERAL.—For purposes of this
17 section, the term “qualified apprenticeship or
18 other training program” means an apprentice-
19 ship or other training program that qualifies as
20 an employee welfare benefit plan, as defined in
21 section 3(1) of the Employee Retirement In-
22 come Security Act of 1974 (29 U.S.C.
23 1002(1)).

24 (B) CERTIFICATION OF OTHER PROGRAMS
25 IN CERTAIN LOCALITIES.—In the event that the

1 Secretary of Labor certifies that a qualified ap-
2 prenticeship or other training program (as de-
3 fined in subparagraph (A)) for a craft or trade
4 classification of workers that a prospective con-
5 tractor or subcontractor intends to employ, is
6 not operated in the locality where the project
7 will be performed, an apprenticeship or other
8 training program that is not an employee wel-
9 fare benefit plan (as defined in such section)
10 may be certified by the Secretary as a qualified
11 apprenticeship or other training program pro-
12 vided it is registered with the Office of Appren-
13 ticeship of the Department of Labor, or a State
14 apprenticeship agency recognized by the Office
15 of Apprenticeship for Federal purposes.

16 (h) FACILITATING COMPLIANCE.—The Secretary
17 may require Federal contracting agencies, recipients of
18 Federal assistance, and any other entity established in ac-
19 cordance with this Act to require contractors to enter into
20 an agreement in a manner comparable with the standards
21 set forth in sections 3 and 4 of Executive Order 13502
22 in order to achieve the purposes of this section, including
23 any requirements established by subsection (b).

24 (i) LIMITATION.—The requirements of this section
25 shall not apply to any project funded under this Act in

1 American Samoa, Guam, the Commonwealth of the North-
2 ern Mariana Islands, the Commonwealth of Puerto Rico,
3 or the United States Virgin Islands, unless participation
4 is requested by the governor of such territories within 1
5 year of the promulgation of rules under this Act.

6 **PART 2—CLIMATE CHANGE WORKER**

7 **ADJUSTMENT ASSISTANCE**

8 **SEC. 425. PETITIONS, ELIGIBILITY REQUIREMENTS, AND**
9 **DETERMINATIONS.**

10 (a) PETITIONS.—

11 (1) FILING.—A petition for certification of eli-
12 gibility to apply for adjustment assistance for a
13 group of workers under this part may be filed by
14 any of the following:

15 (A) The group of workers.

16 (B) The certified or recognized union or
17 other duly authorized representative of such
18 workers.

19 (C) Employers of such workers, one-stop
20 operators or one-stop partners (as defined in
21 section 101 of the Workforce Investment Act of
22 1998 (29 U.S.C. 2801)), including State em-
23 ployment security agencies, or the State dis-
24 located worker unit established under title I of
25 such Act, on behalf of such workers.

1 The petition shall be filed simultaneously with the
2 Secretary of Labor and with the Governor of the
3 State in which such workers' employment site is lo-
4 cated.

5 (2) ACTION BY GOVERNORS.—Upon receipt of a
6 petition filed under paragraph (1), the Governor
7 shall—

8 (A) ensure that rapid response activities
9 and appropriate core and intensive services (as
10 described in section 134 of the Workforce In-
11 vestment Act of 1998 (29 U.S.C. 2864)) au-
12 thorized under other Federal laws are made
13 available to the workers covered by the petition
14 to the extent authorized under such laws; and

15 (B) assist the Secretary in the review of
16 the petition by verifying such information and
17 providing such other assistance as the Secretary
18 may request.

19 (3) ACTION BY THE SECRETARY.—Upon receipt
20 of the petition, the Secretary shall promptly publish
21 notice in the Federal Register and on the website of
22 the Department of Labor that the Secretary has re-
23 ceived the petition and initiated an investigation.

24 (4) HEARINGS.—If the petitioner, or any other
25 person found by the Secretary to have a substantial

1 interest in the proceedings, submits not later than
2 10 days after the date of the Secretary's publication
3 under paragraph (3) a request for a hearing, the
4 Secretary shall provide for a public hearing and af-
5 ford such interested persons an opportunity to be
6 present, to produce evidence, and to be heard.

7 (b) ELIGIBILITY.—

8 (1) IN GENERAL.—A group of workers shall be
9 certified by the Secretary as eligible to apply for ad-
10 justment assistance under this part pursuant to a
11 petition filed under subsection (a) if—

12 (A) the group of workers is employed in—

13 (i) energy producing and transforming
14 industries;

15 (ii) industries dependent upon energy
16 industries;

17 (iii) energy-intensive manufacturing
18 industries;

19 (iv) consumer goods manufacturing;

20 or

21 (v) other industries whose employment
22 the Secretary determines has been ad-
23 versely affected by any requirement of title
24 VII of the Clean Air Act;

1 (B) the Secretary determines that a sig-
2 nificant number or proportion of the workers in
3 such workers' employment site have become to-
4 tally or partially separated, or are threatened to
5 become totally or partially separated from em-
6 ployment; and

7 (C) the sales, production, or delivery of
8 goods or services have decreased as a result of
9 any requirement of title VII of the Clean Air
10 Act, including—

11 (i) the shift from reliance upon fossil
12 fuels to other sources of energy, including
13 renewable energy, that results in the clos-
14 ing of a facility or layoff of employees at
15 a facility that mines, produces, processes,
16 or utilizes fossil fuels to generate elec-
17 tricity;

18 (ii) a substantial increase in the cost
19 of energy required for a manufacturing fa-
20 cility to produce items whose prices are
21 competitive in the marketplace, to the ex-
22 tent the cost is not offset by allowance al-
23 location to the facility pursuant to title VII
24 of the Clean Air Act; or

1 (iii) other documented occurrences
2 that the Secretary determines are indica-
3 tors of an adverse impact on an industry
4 described in subparagraph (A) as a result
5 of any requirement of title VII of the
6 Clean Air Act.

7 (2) WORKERS IN PUBLIC AGENCIES.—A group
8 of workers in a public agency shall be certified by
9 the Secretary as eligible to apply for climate change
10 adjustment assistance pursuant to a petition filed if
11 the Secretary determines that a significant number
12 or proportion of the workers in the public agency
13 have become totally or partially separated from em-
14 ployment, or are threatened to become totally or
15 partially separated as a result of any requirement of
16 title VII of the Clean Air Act.

17 (3) ADVERSELY AFFECTED SERVICE WORK-
18 ERS.—A group of workers shall be certified as eligi-
19 ble to apply for climate change adjustment assist-
20 ance pursuant to a petition filed if the Secretary de-
21 termines that—

22 (A) a significant number or proportion of
23 the service workers at an employment site
24 where a group of workers has been certified by
25 the Secretary as eligible to apply for adjustment

1 assistance under this part pursuant to para-
2 graph (1) have become totally or partially sepa-
3 rated from employment, or are threatened to
4 become totally or partially separated; and

5 (B) a loss of business in the firm providing
6 service workers to an employment site is di-
7 rectly attributable to one or more of the docu-
8 mented occurrences listed in paragraph (1)(C).

9 (c) AUTHORITY TO INVESTIGATE AND COLLECT IN-
10 FORMATION.—

11 (1) IN GENERAL.—The Secretary shall, in de-
12 termining whether to certify a group of workers
13 under subsection (d), obtain information the Sec-
14 retary determines to be necessary to make the cer-
15 tification, through questionnaires and in such other
16 manner as the Secretary determines appropriate
17 from—

18 (A) the workers' employer;

19 (B) officials of certified or recognized
20 unions or other duly authorized representatives
21 of the group of workers; or

22 (C) one-stop operators or one-stop partners
23 (as defined in section 101 of the Workforce In-
24 vestment Act of 1998 (29 U.S.C. 2801)); or

1 (2) VERIFICATION OF INFORMATION.—The Sec-
2 retary shall require an employer, union, or one-stop
3 operator or partner to certify all information ob-
4 tained under paragraph (1) from the employer,
5 union, or one-stop operator or partner (as the case
6 may be) on which the Secretary relies in making a
7 determination under subsection (d), unless the Sec-
8 retary has a reasonable basis for determining that
9 such information is accurate and complete without
10 being certified.

11 (3) PROTECTION OF CONFIDENTIAL INFORMA-
12 TION.—The Secretary may not release information
13 obtained under paragraph (1) that the Secretary
14 considers to be confidential business information un-
15 less the employer submitting the confidential busi-
16 ness information had notice, at the time of submis-
17 sion, that the information would be released by the
18 Secretary, or the employer subsequently consents to
19 the release of the information. Nothing in this para-
20 graph shall be construed to prohibit the Secretary
21 from providing such confidential business informa-
22 tion to a court in camera or to another party under
23 a protective order issued by a court.

24 (d) DETERMINATION BY THE SECRETARY OF
25 LABOR.—

1 (1) IN GENERAL.—As soon as possible after the
2 date on which a petition is filed under subsection
3 (a), but in any event not later than 40 days after
4 that date, the Secretary, in consultation with the
5 Secretary of Energy and the Administrator, as nec-
6 essary, shall determine whether the petitioning
7 group meets the requirements of subsection (b) and
8 shall issue a certification of eligibility to apply for
9 assistance under this part covering workers in any
10 group which meets such requirements. Each certifi-
11 cation shall specify the date on which the total or
12 partial separation began or threatened to begin.
13 Upon reaching a determination on a petition, the
14 Secretary shall promptly publish a summary of the
15 determination in the Federal Register and on the
16 website of the Department of Labor, together with
17 the Secretary’s reasons for making such determina-
18 tion.

19 (2) ONE YEAR LIMITATION.—A certification
20 under this section shall not apply to any worker
21 whose last total or partial separation from the em-
22 ployment site before the worker’s application under
23 section 426(a) occurred more than 1 year before the
24 date of the petition on which such certification was
25 granted.

1 (3) REVOCATION OF CERTIFICATION.—When-
2 ever the Secretary determines, with respect to any
3 certification of eligibility of the workers of an em-
4 ployment site, that total or partial separations from
5 such site are no longer a result of the factors speci-
6 fied in subsection (b)(1), the Secretary shall termi-
7 nate such certification and promptly have notice of
8 such termination published in the Federal Register
9 and on the website of the Department of Labor, to-
10 gether with the Secretary's reasons for making such
11 determination. Such termination shall apply only
12 with respect to total or partial separations occurring
13 after the termination date specified by the Secretary.

14 (e) INDUSTRY NOTIFICATION OF ASSISTANCE.—
15 Upon receiving a notification of a determination under
16 subsection (d) with respect to a domestic industry the Sec-
17 retary of Labor shall notify the representatives of the do-
18 mestic industry affected by the determination, employers
19 publicly identified by name during the course of the pro-
20 ceeding relating to the determination, and any certified
21 or recognized union or, to the extent practicable, other
22 duly authorized representative of workers employed by
23 such representatives of the domestic industry, of—

24 (1) the adjustment allowances, training, and
25 other benefits available under this part;

1 (2) the manner in which to file a petition and
2 apply for such benefits; and

3 (3) the availability of assistance in filing such
4 petitions;

5 (4) notify the Governor of each State in which
6 one or more employers in such industry are located
7 of the Secretary's determination and the identity of
8 the employers; and

9 (5) upon request, provide any assistance that is
10 necessary to file a petition under subsection (a).

11 (f) BENEFIT INFORMATION TO WORKERS, PRO-
12 VIDERS OF TRAINING.—

13 (1) IN GENERAL.—The Secretary shall provide
14 full information to workers about the adjustment al-
15 lowances, training, and other benefits available
16 under this part and about the petition and applica-
17 tion procedures, and the appropriate filing dates, for
18 such allowances, training and services. The Sec-
19 retary shall provide whatever assistance is necessary
20 to enable groups of workers to prepare petitions or
21 applications for program benefits. The Secretary
22 shall make every effort to insure that cooperating
23 State agencies fully comply with the agreements en-
24 tered into under section 426(a) and shall periodically
25 review such compliance. The Secretary shall inform

1 the State Board for Vocational Education or equiva-
2 lent agency, the one-stop operators or one-stop part-
3 ners (as defined in section 101 of the Workforce In-
4 vestment Act of 1998 (29 U.S.C. 2801), and other
5 public or private agencies, institutions, and employ-
6 ers, as appropriate, of each certification issued
7 under subsection (d) and of projections, if available,
8 of the needs for training under as a result of such
9 certification.

10 (2) NOTICE BY MAIL.—The Secretary shall pro-
11 vide written notice through the mail of the benefits
12 available under this part to each worker whom the
13 Secretary has reason to believe is covered by a cer-
14 tification made under subsection (d)—

15 (A) at the time such certification is made,
16 if the worker was partially or totally separated
17 from the adversely affected employment before
18 such certification, or—

19 (B) at the time of the total or partial sepa-
20 ration of the worker from the adversely affected
21 employment, if subparagraph (A) does not
22 apply.

23 (3) NEWSPAPERS; WEBSITE.—The Secretary
24 shall publish notice of the benefits available under
25 this part to workers covered by each certification

1 made under subsection (d) in newspapers of general
2 circulation in the areas in which such workers reside
3 and shall make such information available on the
4 website of the Department of Labor.

5 **SEC. 426. PROGRAM BENEFITS.**

6 (a) CLIMATE CHANGE ADJUSTMENT ALLOWANCE.—

7 (1) ELIGIBILITY.—Payment of a climate change
8 adjustment allowance shall be made to an adversely
9 affected worker covered by a certification under sec-
10 tion 425(b) who files an application for such allow-
11 ance for any week of unemployment which begins on
12 or after the date of such certification, if the fol-
13 lowing conditions are met:

14 (A) Such worker's total or partial separa-
15 tion before the worker's application under this
16 part occurred—

17 (i) on or after the date, as specified in
18 the certification under which the worker is
19 covered, on which total or partial separa-
20 tion began or threatened to begin in the
21 adversely affected employment;

22 (ii) before the expiration of the 2-year
23 period beginning on the date on which the
24 determination under section 425(d) was
25 made; and

1 (iii) before the termination date, if
2 any, determined pursuant to section
3 425(d)(3).

4 (B) Such worker had, in the 52-week pe-
5 riod ending with the week in which such total
6 or partial separation occurred, at least 26
7 weeks of full-time employment or 1,040 hours
8 of part time employment in adversely affected
9 employment, or, if data with respect to weeks of
10 employment are not available, equivalent
11 amounts of employment computed under regu-
12 lations prescribed by the Secretary. For the
13 purposes of this paragraph, any week in which
14 such worker—

15 (i) is on employer-authorized leave for
16 purposes of vacation, sickness, injury, ma-
17 ternity, or inactive duty or active duty
18 military service for training;

19 (ii) does not work because of a dis-
20 ability that is compensable under a work-
21 men's compensation law or plan of a State
22 or the United States;

23 (iii) had his employment interrupted
24 in order to serve as a full-time representa-
25 tive of a labor organization in such firm; or

1 (iv) is on call-up for purposes of active
2 duty in a reserve status in the Armed
3 Forces of the United States, provided such
4 active duty is “Federal service” as defined
5 in section 8521(a)(1) of title 5, United
6 States Code,

7 shall be treated as a week of employment.

8 (C) Such worker is enrolled in a training
9 program approved by the Secretary under sub-
10 section (b)(2).

11 (2) INELIGIBILITY FOR CERTAIN OTHER BENE-
12 FITS.—An adversely affected worker receiving a pay-
13 ment under this section shall be ineligible to receive
14 any other form of unemployment insurance for the
15 period in which such worker is receiving a climate
16 change adjustment allowance under this section.

17 (3) REVOCATION.—If—

18 (A) the Secretary determines that—

19 (i) the adversely affected worker—

20 (I) has failed to begin participa-
21 tion in the training program the en-
22 rollment in which meets the require-
23 ment of paragraph (1)(C); or

1 (II) has ceased to participate in
2 such training program before com-
3 pleting such training program; and

4 (ii) there is no justifiable cause for
5 such failure or cessation; or

6 (B) the certification made with respect to
7 such worker under section 425(d) is revoked
8 under paragraph (3) of such section,
9 no adjustment allowance may be paid to the ad-
10 versely affected worker under this part for the week
11 in which such failure, cessation, or revocation oc-
12 curred, or any succeeding week, until the adversely
13 affected worker begins or resumes participation in a
14 training program approved by the Secretary under
15 section (b)(2).

16 (4) WAIVERS OF TRAINING REQUIREMENTS.—
17 The Secretary may issue a written statement to an
18 adversely affected worker waiving the requirement to
19 be enrolled in training described in subsection (b)(2)
20 if the Secretary determines that it is not feasible or
21 appropriate for the worker, because of 1 or more of
22 the following reasons:

23 (A) RECALL.—The worker has been noti-
24 fied that the worker will be recalled by the em-
25 ployer from which the separation occurred.

1 (B) MARKETABLE SKILLS.—

2 (i) IN GENERAL.—The worker pos-
3 sses marketable skills for suitable em-
4 ployment (as determined pursuant to an
5 assessment of the worker, which may in-
6 clude the profiling system under section
7 303(j) of the Social Security Act (42
8 U.S.C. 503(j)), carried out in accordance
9 with guidelines issued by the Secretary)
10 and there is a reasonable expectation of
11 employment at equivalent wages in the
12 foreseeable future.

13 (ii) MARKETABLE SKILLS DEFINED.—
14 For purposes of clause (i), the term “mar-
15 ketable skills” may include the possession
16 of a postgraduate degree from an institu-
17 tion of higher education (as defined in sec-
18 tion 102 of the Higher Education Act of
19 1965 (20 U.S.C. 1002)) or an equivalent
20 institution, or the possession of an equiva-
21 lent postgraduate certification in a special-
22 ized field.

23 (C) RETIREMENT.—The worker is within 2
24 years of meeting all requirements for entitle-
25 ment to either—

1 (i) old-age insurance benefits under
2 title II of the Social Security Act (42
3 U.S.C. 401 et seq.) (except for application
4 therefor); or

5 (ii) a private pension sponsored by an
6 employer or labor organization.

7 (D) HEALTH.—The worker is unable to
8 participate in training due to the health of the
9 worker, except that a waiver under this sub-
10 paragraph shall not be construed to exempt a
11 worker from requirements relating to the avail-
12 ability for work, active search for work, or re-
13 fusal to accept work under Federal or State un-
14 employment compensation laws.

15 (E) ENROLLMENT UNAVAILABLE.—The
16 first available enrollment date for the training
17 of the worker is within 60 days after the date
18 of the determination made under this para-
19 graph, or, if later, there are extenuating cir-
20 cumstances for the delay in enrollment, as de-
21 termined pursuant to guidelines issued by the
22 Secretary.

23 (F) TRAINING NOT AVAILABLE.—Training
24 described in subsection (b)(2) is not reasonably
25 available to the worker from either govern-

1 mental agencies or private sources (which may
2 include area career and technical education
3 schools, as defined in section 3 of the Carl D.
4 Perkins Career and Technical Education Act of
5 2006 (20 U.S.C. 2302), and employers), no
6 training that is suitable for the worker is avail-
7 able at a reasonable cost, or no training funds
8 are available.

9 (5) WEEKLY AMOUNTS.—The climate change
10 adjustment allowance payable to an adversely af-
11 fected worker for a week of unemployment shall be
12 an amount equal to 70 percent of the average weekly
13 wage of such worker, but in no case shall such
14 amount exceed the average weekly wage for all work-
15 ers in the State where the adversely affected worker
16 resides.

17 (6) MAXIMUM DURATION OF BENEFITS.—An el-
18 igible worker may receive a climate change adjust-
19 ment allowance under this subsection for a period of
20 not longer than 156 weeks.

21 (b) EMPLOYMENT SERVICES AND TRAINING.—

22 (1) INFORMATION AND EMPLOYMENT SERV-
23 ICES.—The Secretary shall make available, directly
24 or through agreements with the States under section
25 427(a) to adversely affected workers covered by a

1 certification under section 425(a) the following in-
2 formation and employment services:

3 (A) Comprehensive and specialized assess-
4 ment of skill levels and service needs, including
5 through—

6 (i) diagnostic testing and use of other
7 assessment tools; and

8 (ii) in-depth interviewing and evalua-
9 tion to identify employment barriers and
10 appropriate employment goals.

11 (B) Development of an individual employ-
12 ment plan to identify employment goals and ob-
13 jectives, and appropriate training to achieve
14 those goals and objectives.

15 (C) Information on training available in
16 local and regional areas, information on indi-
17 vidual counseling to determine which training is
18 suitable training, and information on how to
19 apply for such training.

20 (D) Information on training programs and
21 other services provided by a State pursuant to
22 title I of the Workforce Investment Act of 1998
23 and available in local and regional areas, infor-
24 mation on individual counseling to determine

1 which training is suitable training, and informa-
2 tion on how to apply for such training.

3 (E) Information on how to apply for finan-
4 cial aid, including referring workers to edu-
5 cational opportunity centers described in section
6 402F of the Higher Education Act of 1965 (20
7 U.S.C. 1070a–16), where applicable, and noti-
8 fying workers that the workers may request fi-
9 nancial aid administrators at institutions of
10 higher education (as defined in section 102 of
11 such Act (20 U.S.C. 1002)) to use the adminis-
12 trators' discretion under section 479A of such
13 Act (20 U.S.C. 1087tt) to use current year in-
14 come data, rather than preceding year income
15 data, for determining the amount of need of the
16 workers for Federal financial assistance under
17 title IV of such Act (20 U.S.C. 1070 et seq.).

18 (F) Short-term prevocational services, in-
19 cluding development of learning skills, commu-
20 nications skills, interviewing skills, punctuality,
21 personal maintenance skills, and professional
22 conduct to prepare individuals for employment
23 or training.

24 (G) Individual career counseling, including
25 job search and placement counseling, during the

1 period in which the individual is receiving a cli-
2 mate change adjustment allowance or training
3 under this part, and after receiving such train-
4 ing for purposes of job placement.

5 (H) Provision of employment statistics in-
6 formation, including the provision of accurate
7 information relating to local, regional, and na-
8 tional labor market areas, including—

9 (i) job vacancy listings in such labor
10 market areas;

11 (ii) information on jobs skills nec-
12 essary to obtain jobs identified in job va-
13 cancy listings described in subparagraph
14 (A);

15 (iii) information relating to local occu-
16 pations that are in demand and earnings
17 potential of such occupations; and

18 (iv) skills requirements for local occu-
19 pations described in subparagraph (C).

20 (I) Information relating to the availability
21 of supportive services, including services relat-
22 ing to child care, transportation, dependent
23 care, housing assistance, and need-related pay-
24 ments that are necessary to enable an indi-
25 vidual to participate in training.

1 (2) TRAINING.—

2 (A) APPROVAL OF AND PAYMENT FOR
3 TRAINING.—If the Secretary determines, with
4 respect to an adversely affected worker that—

5 (i) there is no suitable employment
6 (which may include technical and profes-
7 sional employment) available for an ad-
8 versely affected worker;

9 (ii) the worker would benefit from ap-
10 propriate training;

11 (iii) there is a reasonable expectation
12 of employment following completion of
13 such training;

14 (iv) training approved by the Sec-
15 retary is reasonably available to the worker
16 from either governmental agencies or pri-
17 vate sources (including area career and
18 technical education schools, as defined in
19 section 3 of the Carl D. Perkins Career
20 and Technical Education Act of 2006, and
21 employers);

22 (v) the worker is qualified to under-
23 take and complete such training; and

24 (vi) such training is suitable for the
25 worker and available at a reasonable cost,

1 the Secretary shall approve such training for
2 the worker. Upon such approval, the worker
3 shall be entitled to have payment of the costs
4 of such training (subject to the limitations im-
5 posed by this section) paid on the worker's be-
6 half by the Secretary directly or through a
7 voucher system.

8 (B) DISTRIBUTION.—The Secretary shall
9 establish procedures for the distribution of the
10 funds to States to carry out the training pro-
11 grams approved under this paragraph, and shall
12 make an initial distribution of the funds made
13 available as soon as practicable after the begin-
14 ning of each fiscal year.

15 (C) ADDITIONAL RULES REGARDING AP-
16 PROVAL OF AND PAYMENT FOR TRAINING.—

17 (i) For purposes of applying subpara-
18 graph (A)(iii), a reasonable expectation of
19 employment does not require that employ-
20 ment opportunities for a worker be avail-
21 able, or offered, immediately upon the
22 completion of training approved under
23 such subparagraph.

24 (ii) If the costs of training an ad-
25 versely affected worker are paid by the

1 Secretary under subparagraph (A), no
2 other payment for such costs may be made
3 under any other provision of Federal law.
4 No payment may be made under subpara-
5 graph (A) of the costs of training an ad-
6 versely affected worker or an adversely af-
7 fected incumbent worker if such costs—

8 (I) have already been paid under
9 any other provision of Federal law; or

10 (II) are reimbursable under any
11 other provision of Federal law and a
12 portion of such costs have already
13 been paid under such other provision
14 of Federal law.

15 The provisions of this clause shall not
16 apply to, or take into account, any funds
17 provided under any other provision of Fed-
18 eral law which are used for any purpose
19 other than the direct payment of the costs
20 incurred in training a particular adversely
21 affected worker, even if such use has the
22 effect of indirectly paying or reducing any
23 portion of the costs involved in training the
24 adversely affected worker.

1 (D) TRAINING PROGRAMS.—The training
2 programs that may be approved under subpara-
3 graph (A) include—

4 (i) employer-based training, includ-
5 ing—

6 (I) on-the-job training if ap-
7 proved by the Secretary under sub-
8 section (c); and

9 (II) joint labor-management ap-
10 prenticeship programs;

11 (ii) any training program provided by
12 a State pursuant to title I of the Work-
13 force Investment Act of 1998;

14 (iii) any training program approved
15 by a private industry council established
16 under section 102 of such Act;

17 (iv) any programs in career and tech-
18 nical education described in section 3(5) of
19 the Carl D. Perkins Career and Technical
20 Education Act of 2006;

21 (v) any program of remedial edu-
22 cation;

23 (vi) any program of prerequisite edu-
24 cation or coursework required to enroll in

1 training that may be approved under this
2 paragraph;

3 (vii) any training program for which
4 all, or any portion, of the costs of training
5 the worker are paid—

6 (I) under any Federal or State
7 program other than this part; or

8 (II) from any source other than
9 this part;

10 (viii) any training program or
11 coursework at an accredited institution of
12 higher education (described in section 102
13 of the Higher Education Act of 1965 (20
14 U.S.C. 1002)), including a training pro-
15 gram or coursework for the purpose of—

16 (I) obtaining a degree or certifi-
17 cation; or

18 (II) completing a degree or cer-
19 tification that the worker had pre-
20 viously begun at an accredited institu-
21 tion of higher education; and

22 (ix) any other training program ap-
23 proved by the Secretary.

24 (3) SUPPLEMENTAL ASSISTANCE.—The Secretary
25 may, as appropriate, authorize supplemental assistance

1 that is necessary to defray reasonable transportation and
2 subsistence expenses for separate maintenance in a case
3 in which training for a worker is provided in a facility that
4 is not within commuting distance of the regular place of
5 residence of the worker.

6 (c) ON-THE-JOB TRAINING REQUIREMENTS.—

7 (1) IN GENERAL.—The Secretary may approve
8 on-the-job training for any adversely affected worker
9 if—

10 (A) the Secretary determines that on-the-
11 job training—

12 (i) can reasonably be expected to lead
13 to suitable employment with the employer
14 offering the on-the-job training;

15 (ii) is compatible with the skills of the
16 worker;

17 (iii) includes a curriculum through
18 which the worker will gain the knowledge
19 or skills to become proficient in the job for
20 which the worker is being trained; and

21 (iv) can be measured by benchmarks
22 that indicate that the worker is gaining
23 such knowledge or skills; and

1 (B) the State determines that the on-the-
2 job training program meets the requirements of
3 clauses (iii) and (iv) of subparagraph (A).

4 (2) MONTHLY PAYMENTS.—The Secretary shall
5 pay the costs of on-the-job training approved under
6 paragraph (1) in monthly installments.

7 (3) CONTRACTS FOR ON-THE-JOB TRAINING.—

8 (A) IN GENERAL.—The Secretary shall en-
9 sure, in entering into a contract with an em-
10 ployer to provide on-the-job training to a work-
11 er under this subsection, that the skill require-
12 ments of the job for which the worker is being
13 trained, the academic and occupational skill
14 level of the worker, and the work experience of
15 the worker are taken into consideration.

16 (B) TERM OF CONTRACT.—Training under
17 any such contract shall be limited to the period
18 of time required for the worker receiving on-
19 the-job training to become proficient in the job
20 for which the worker is being trained, but may
21 not exceed 156 weeks in any case.

22 (4) EXCLUSION OF CERTAIN EMPLOYERS.—The
23 Secretary shall not enter into a contract for on-the-
24 job training with an employer that exhibits a pattern

1 of failing to provide workers receiving on-the-job
2 training from the employer with—

3 (A) continued, long-term employment as
4 regular employees; and

5 (B) wages, benefits, and working condi-
6 tions that are equivalent to the wages, benefits,
7 and working conditions provided to regular em-
8 ployees who have worked a similar period of
9 time and are doing the same type of work as
10 workers receiving on-the-job training from the
11 employer.

12 (d) ADMINISTRATIVE AND EMPLOYMENT SERVICES
13 FUNDING.—

14 (1) ADMINISTRATIVE FUNDING.—In addition to
15 any funds made available to a State to carry out this
16 section for a fiscal year, the State shall receive for
17 the fiscal year a payment in an amount that is equal
18 to 15 percent of the amount of such funds and
19 shall—

20 (A) use not more than $\frac{2}{3}$ of such payment
21 for the administration of the climate change ad-
22 justment assistance for workers program under
23 this part, including for—

24 (i) processing waivers of training re-
25 quirements under subsection (a)(4);

1 (ii) collecting, validating, and report-
2 ing data required under this part; and

3 (iii) administering the Climate Change
4 Adjustment Assistance Allowance pay-
5 ments; and

6 (B) use not less than $\frac{1}{3}$ of such payment
7 for information and employment services under
8 subsection (b)(1).

9 (2) EMPLOYMENT SERVICES FUNDING.—

10 (A) IN GENERAL.—In addition to any
11 funds made available to a State to carry out
12 subsection (b)(2) and the payment under para-
13 graph (1) for a fiscal year, the Secretary shall
14 provide to the State for the fiscal year a reason-
15 able payment for the purpose of providing em-
16 ployment and services under subsection (b)(1).

17 (B) VOLUNTARY RETURN OF FUNDS.—A
18 State that receives a payment under subpara-
19 graph (A) may decline or otherwise return such
20 payment to the Secretary.

21 (e) JOB SEARCH ALLOWANCES.—The Secretary of
22 Labor may provide adversely affected workers a one-time
23 job search allowance in accordance with regulations pre-
24 scribed by the Secretary. Any job search allowance pro-

1 vided shall be available only under the following cir-
2 cumstances and conditions:

3 (1) The worker is no longer eligible for the cli-
4 mate change adjustment allowance under subsection
5 (a) and has completed the training program required
6 by subsection (a)(1)(E).

7 (2) The Secretary determines that the worker
8 cannot reasonably be expected to secure suitable em-
9 ployment in the commuting area in which the worker
10 resides.

11 (3) An allowance granted shall provide reim-
12 bursement to the worker of all necessary job search
13 expenses as prescribed by the Secretary in regula-
14 tions. Such reimbursement under this subsection
15 may not exceed \$1,500 for any worker.

16 (f) RELOCATION ALLOWANCE AUTHORIZED.—

17 (1) IN GENERAL.—Any adversely affected work-
18 er covered by a certification issued under section
19 425 may file an application for a relocation allow-
20 ance with the Secretary, and the Secretary may
21 grant the relocation allowance, subject to the terms
22 and conditions of this subsection.

23 (2) CONDITIONS FOR GRANTING ALLOWANCE.—

24 A relocation allowance may be granted if all of the
25 following terms and conditions are met:

1 (A) ASSIST AN ADVERSELY AFFECTED
2 WORKER.—The relocation allowance will assist
3 an adversely affected worker in relocating with-
4 in the United States.

5 (B) LOCAL EMPLOYMENT NOT AVAIL-
6 ABLE.—The Secretary determines that the
7 worker cannot reasonably be expected to secure
8 suitable employment in the commuting area in
9 which the worker resides.

10 (C) TOTAL SEPARATION.—The worker is
11 totally separated from employment at the time
12 relocation commences.

13 (D) SUITABLE EMPLOYMENT OBTAINED.—
14 The worker—

15 (i) has obtained suitable employment
16 affording a reasonable expectation of long-
17 term duration in the area in which the
18 worker wishes to relocate; or

19 (ii) has obtained a bona fide offer of
20 such employment.

21 (E) APPLICATION.—The worker filed an
22 application with the Secretary at such time and
23 in such manner as the Secretary shall specify
24 by regulation.

1 (3) AMOUNT OF ALLOWANCE.—The relocation
2 allowance granted to a worker under paragraph (1)
3 includes—

4 (A) all reasonable and necessary expenses
5 (including, subsistence and transportation ex-
6 penses at levels not exceeding amounts pre-
7 scribed by the Secretary in regulations) in-
8 curred in transporting the worker, the worker's
9 family, and household effects; and

10 (B) a lump sum equivalent to 3 times the
11 worker's average weekly wage, up to a max-
12 imum payment of \$1,500.

13 (4) LIMITATIONS.—A relocation allowance may
14 not be granted to a worker unless—

15 (A) the relocation occurs within 182 days
16 after the filing of the application for relocation
17 assistance; or

18 (B) the relocation occurs within 182 days
19 after the conclusion of training, if the worker
20 entered a training program approved by the
21 Secretary under subsection (b)(2).

22 (g) HEALTH INSURANCE CONTINUATION.—Not later
23 than 1 year after the date of enactment of this part, the
24 Secretary of Labor shall prescribe regulations to provide,
25 for the period in which an adversely affected worker is

1 participating in a training program described in sub-
2 section (b)(2), 80 percent of the monthly premium of any
3 health insurance coverage that an adversely affected work-
4 er was receiving from such worker's employer prior to the
5 separation from employment described in section 425(b),
6 to be paid to any health care insurance plan designated
7 by the adversely affected worker receiving an allowance
8 under this section.

9 **SEC. 427. GENERAL PROVISIONS.**

10 (a) AGREEMENTS WITH STATES.—

11 (1) IN GENERAL.—The Secretary is authorized
12 on behalf of the United States to enter into an
13 agreement with any State, or with any State agency
14 (referred to in this section as “cooperating States”
15 and “cooperating States agencies” respectively).
16 Under such an agreement, the cooperating State
17 agency—

18 (A) as agent of the United States, shall re-
19 ceive applications for, and shall provide, pay-
20 ments on the basis provided in this part;

21 (B) in accordance with paragraph (6),
22 shall make available to adversely affected work-
23 ers covered by a certification under section
24 425(d) the employment services described in
25 section 426(b)(1);

1 (C) shall make any certifications required
2 under section 425(d);

3 (D) shall otherwise cooperate with the Sec-
4 retary and with other State and Federal agen-
5 cies in providing payments and services under
6 this part.

7 Each agreement under this section shall provide the
8 terms and conditions upon which the agreement may
9 be amended, suspended, or terminated.

10 (2) FORM AND MANNER OF DATA.—Each
11 agreement under this section shall—

12 (A) provide the Secretary with the author-
13 ity to collect any data the Secretary determines
14 necessary to meet the requirements of this part;
15 and

16 (B) specify the form and manner in which
17 any such data requested by the Secretary shall
18 be reported.

19 (3) RELATIONSHIP TO UNEMPLOYMENT INSUR-
20 ANCE.—Each agreement under this section shall
21 provide that an adversely affected worker receiving
22 a climate change adjustment allowance under this
23 part shall not be eligible for unemployment insur-
24 ance otherwise payable to such worker under the
25 laws of the State.

1 (4) REVIEW.—A determination by a cooper-
2 ating State agency with respect to entitlement to
3 program benefits under an agreement is subject to
4 review in the same manner and to the same extent
5 as determinations under the applicable State law
6 and only in that manner and to that extent.

7 (5) COORDINATION.—Any agreement entered
8 into under this section shall provide for the coordi-
9 nation of the administration of the provisions for
10 employment services, training, and supplemental as-
11 sistance under section 426 and under title I of the
12 Workforce Investment Act of 1998 upon such terms
13 and conditions as are established by the Secretary in
14 consultation with the States and set forth in such
15 agreement. Any agency of the State jointly admin-
16 istering such provisions under such agreement shall
17 be considered to be a cooperating State agency for
18 purposes of this part.

19 (6) RESPONSIBILITIES OF COOPERATING AGEN-
20 CIES.—Each cooperating State agency shall, in car-
21 rying out paragraph (1)(B)—

22 (A) advise each worker who applies for un-
23 employment insurance of the benefits under this
24 part and the procedures and deadlines for ap-
25 plying for such benefits;

1 (B) facilitate the early filing of petitions
2 under section 425(a) for any workers that the
3 agency considers are likely to be eligible for
4 benefits under this part;

5 (C) advise each adversely affected worker
6 to apply for training under section 426(b) be-
7 fore, or at the same time, the worker applies for
8 climate change adjustment allowances under
9 section 426(a);

10 (D) perform outreach to, intake of, and
11 orientation for adversely affected workers and
12 adversely affected incumbent workers covered
13 by a certification under section 426(a) with re-
14 spect to assistance and benefits available under
15 this part;

16 (E) make employment services described in
17 section 426(b)(1) available to adversely affected
18 workers and adversely affected incumbent work-
19 ers covered by a certification under section
20 425(d) and, if funds provided to carry out this
21 part are insufficient to make such services
22 available, make arrangements to make such
23 services available through other Federal pro-
24 grams; and

1 (F) provide the benefits and reemployment
2 services under this part in a manner that is
3 necessary for the proper and efficient adminis-
4 tration of this part, including the use of state
5 agency personnel employed in accordance with a
6 merit system of personnel administration stand-
7 ards, including—

8 (i) making determinations of eligibility
9 for, and payment of, climate change read-
10 justment allowances and health care ben-
11 efit replacement amounts;

12 (ii) developing recommendations re-
13 garding payments as a bridge to retire-
14 ment and lump sum payments to pension
15 plans in accordance with this subsection;
16 and

17 (iii) the provision of reemployment
18 services to eligible workers, including refer-
19 ral to training services.

20 (7) In order to promote the coordination of
21 workforce investment activities in each State with
22 activities carried out under this part, any agreement
23 entered into under this section shall provide that the
24 State shall submit to the Secretary, in such form as
25 the Secretary may require, the description and infor-

1 mation described in paragraphs (8) and (14) of sec-
2 tion 112(b) of the Workforce Investment Act of
3 1998 (29 U.S.C. 2822(b)) and a description of the
4 State’s rapid response activities under section
5 221(a)(2)(A).

6 (8) CONTROL MEASURES.—

7 (A) IN GENERAL.—The Secretary shall re-
8 quire each cooperating State and cooperating
9 State agency to implement effective control
10 measures and to effectively oversee the oper-
11 ation and administration of the climate change
12 adjustment assistance program under this part,
13 including by means of monitoring the operation
14 of control measures to improve the accuracy
15 and timeliness of the data being collected and
16 reported.

17 (B) DEFINITION.—For purposes of sub-
18 paragraph (A), the term “control measures”
19 means measures that—

20 (i) are internal to a system used by a
21 State to collect data; and

22 (ii) are designed to ensure the accu-
23 racy and verifiability of such data.

24 (9) DATA REPORTING.—

1 (A) IN GENERAL.—Any agreement entered
2 into under this section shall require the cooper-
3 ating State or cooperating State agency to re-
4 port to the Secretary on a quarterly basis com-
5 prehensive performance accountability data, to
6 consist of—

7 (i) the core indicators of performance
8 described in subparagraph (B)(i);

9 (ii) the additional indicators of per-
10 formance described in subparagraph
11 (B)(ii), if any; and

12 (iii) a description of efforts made to
13 improve outcomes for workers under the
14 climate change adjustment assistance pro-
15 gram.

16 (B) CORE INDICATORS DESCRIBED.—

17 (i) IN GENERAL.—The core indicators
18 of performance described in this subpara-
19 graph are—

20 (I) the percentage of workers re-
21 ceiving benefits under this part who
22 are employed during the second cal-
23 endar quarter following the calendar
24 quarter in which the workers cease re-
25 ceiving such benefits;

1 (II) the percentage of such work-
2 ers who are employed in each of the
3 third and fourth calendar quarters fol-
4 lowing the calendar quarter in which
5 the workers cease receiving such bene-
6 fits; and

7 (III) the earnings of such work-
8 ers in each of the third and fourth
9 calendar quarters following the cal-
10 endar quarter in which the workers
11 cease receiving such benefits.

12 (ii) ADDITIONAL INDICATORS.—The
13 Secretary and a cooperating State or co-
14 operating State agency may agree upon
15 additional indicators of performance for
16 the climate change adjustment assistance
17 program under this part, as appropriate.

18 (C) STANDARDS WITH RESPECT TO RELI-
19 ABILITY OF DATA.—In preparing the quarterly
20 report required by subparagraph (A), each co-
21 operating State or cooperating State agency
22 shall establish procedures that are consistent
23 with guidelines to be issued by the Secretary to
24 ensure that the data reported are valid and reli-
25 able.

1 (10) VERIFICATION OF ELIGIBILITY FOR PRO-
2 GRAM BENEFITS.—

3 (A) IN GENERAL.—An agreement under
4 this section shall provide that the State shall
5 periodically redetermine that a worker receiving
6 benefits under this part who is not a citizen or
7 national of the United States remains in a sat-
8 isfactory immigration status. Once satisfactory
9 immigration status has been initially verified
10 through the immigration status verification sys-
11 tem described in section 1137(d) of the Social
12 Security Act (42 U.S.C. 1320b–7(d)) for pur-
13 poses of establishing a worker’s eligibility for
14 unemployment compensation, the State shall
15 reverify the worker’s immigration status if the
16 documentation provided during initial
17 verification will expire during the period in
18 which that worker is potentially eligible to re-
19 ceive benefits under this part. The State shall
20 conduct such redetermination in a timely man-
21 ner, utilizing the immigration status verification
22 system described in section 1137(d) of the So-
23 cial Security Act (42 U.S.C. 1320b–7(d)).

24 (B) PROCEDURES.—The Secretary shall
25 establish procedures to ensure the uniform ap-

1 plication by the States of the requirements of
2 this paragraph.

3 (b) ADMINISTRATION ABSENT STATE AGREE-
4 MENT.—

5 (1) In any State where there is no agreement
6 in force between a State or its agency under sub-
7 section (a), the Secretary shall promulgate regula-
8 tions for the performance of all necessary functions
9 under section 426, including provision for a fair
10 hearing for any worker whose application for pay-
11 ments is denied.

12 (2) A final determination under paragraph (1)
13 with respect to entitlement to program benefits
14 under section 426 is subject to review by the courts
15 in the same manner and to the same extent as is
16 provided by section 205(g) of the Social Security Act
17 (42 U.S.C. 405(g)).

18 (c) PROHIBITION ON CONTRACTING WITH PRIVATE
19 ENTITIES.—Neither the Secretary nor a State may con-
20 tract with any private for-profit or nonprofit entity for the
21 administration of the climate change adjustment assist-
22 ance program under this part.

23 (d) PAYMENT TO THE STATES.—

24 (1) IN GENERAL.—The Secretary shall from
25 time to time certify to the Secretary of the Treasury

1 for payment to each cooperating State the sums nec-
2 essary to enable such State as agent of the United
3 States to make payments provided for by this part.

4 (2) RESTRICTION.—All money paid a State
5 under this subsection shall be used solely for the
6 purposes for which it is paid; and money so paid
7 which is not used for such purposes shall be re-
8 turned, at the time specified in the agreement under
9 this section, to the Secretary of the Treasury.

10 (3) BONDS.—Any agreement under this section
11 may require any officer or employee of the State cer-
12 tifying payments or disbursing funds under the
13 agreement or otherwise participating in the perform-
14 ance of the agreement, to give a surety bond to the
15 United States in such amount as the Secretary may
16 deem necessary, and may provide for the payment of
17 the cost of such bond from funds for carrying out
18 the purposes of this part.

19 (e) LABOR STANDARDS.—

20 (1) PROHIBITION ON DISPLACEMENT.—An indi-
21 vidual in an apprenticeship program or on-the-job
22 training program under this part shall not displace
23 (including a partial displacement, such as a reduc-
24 tion in the hours of non-overtime work, wages, or
25 employment benefits) any employed employee.

1 (2) PROHIBITION ON IMPAIRMENT OF CON-
2 TRACTS.—An apprenticeship program or on-the-job
3 raining program under this Act shall not impair an
4 existing contract for services or collective bargaining
5 agreement, and no such activity that would be incon-
6 sistent with the terms of a collective bargaining
7 agreement shall be undertaken without the written
8 concurrence of the labor organization and employer
9 concerned.

10 (3) ADDITIONAL STANDARDS.—The Secretary,
11 or a State acting under an agreement described in
12 subsection (a) may pay the costs of on-the-job train-
13 ing, notwithstanding any other provision of this sec-
14 tion, only if—

15 (A) in the case of training which would be
16 inconsistent with the terms of a collective bar-
17 gaining agreement, the written concurrence of
18 the labor organization concerned has been ob-
19 tained;

20 (B) the job for which such adversely af-
21 fected worker is being trained is not being cre-
22 ated in a promotional line that will infringe in
23 any way upon the promotional opportunities of
24 currently employed individuals;

1 (C) such training is not for the same occu-
2 pation from which the worker was separated
3 and with respect to which such worker's group
4 was certified pursuant to section 425(d);

5 (D) the employer is provided reimburse-
6 ment of not more than 50 percent of the wage
7 rate of the participant, for the cost of providing
8 the training and additional supervision related
9 to the training; and

10 (E) the employer has not received payment
11 under with respect to any other on-the-job
12 training provided by such employer which failed
13 to meet the requirements of subparagraphs (A)
14 through (D).

15 (f) DEFINITIONS.—As used in this part the following
16 definitions apply:

17 (1) The term “adversely affected employment”
18 means employment at an employment site, if work-
19 ers at such site are eligible to apply for adjustment
20 assistance under this part.

21 (2) The term “adversely affected worker”
22 means an individual who has been totally or partially
23 separated from employment and is eligible to apply
24 for adjustment assistance under this part.

1 (3) The term “average weekly wage” means $\frac{1}{13}$
2 of the total wages paid to an individual in the quar-
3 ter in which the individual’s total wages were highest
4 among the first 4 of the last 5 completed calendar
5 quarters immediately before the quarter in which oc-
6 curs the week with respect to which the computation
7 is made. Such week shall be the week in which total
8 separation occurred, or, in cases where partial sepa-
9 ration is claimed, an appropriate week, as defined in
10 regulations prescribed by the Secretary.

11 (4) The term “average weekly hours” means
12 the average hours worked by the individual (exclud-
13 ing overtime) in the employment from which he has
14 been or claims to have been separated in the 52
15 weeks (excluding weeks during which the individual
16 was sick or on vacation) preceding the week speci-
17 fied in the last sentence of paragraph (4).

18 (5) The term “benefit period” means, with re-
19 spect to an individual—

20 (A) the benefit year and any ensuing pe-
21 riod, as determined under applicable State law,
22 during which the individual is eligible for reg-
23 ular compensation, additional compensation, or
24 extended compensation; or

1 (B) the equivalent to such a benefit year
2 or ensuing period provided for under the appli-
3 cable Federal unemployment insurance law.

4 (6) The term “consumer goods manufacturing”
5 means the electrical equipment, appliance, and com-
6 ponent manufacturing industry and transportation
7 equipment manufacturing.

8 (7) The term “employment site” means a single
9 facility or site of employment.

10 (8) The term “energy-intensive manufacturing
11 industries” means all industrial sectors, entities, or
12 groups of entities that meet the energy or green-
13 house gas intensity criteria in section
14 765(b)(2)(A)(i) of the Clean Air Act based on the
15 most recent data available.

16 (9) The term “energy producing and trans-
17 forming industries” means the coal mining industry,
18 oil and gas extraction, electricity power generation,
19 transmission and distribution, and natural gas dis-
20 tribution.

21 (10) The term “industries dependent on energy
22 industries” means rail transportation and pipeline
23 transportation.

1 (11) The term “on-the-job training” means
2 training provided by an employer to an individual
3 who is employed by the employer.

4 (12) The terms “partial separation” and “par-
5 tially separated” refer, with respect to an individual
6 who has not been totally separated, that such indi-
7 vidual has had—

8 (A) his or her hours of work reduced to 80
9 percent or less of his average weekly hours in
10 adversely affected employment; and

11 (B) his or her wages reduced to 80 percent
12 or less of his average weekly wage in such ad-
13 versely affected employment.

14 (13) The term “public agency” means a depart-
15 ment or agency of a State or political subdivision of
16 a State or of the Federal Government.

17 (14) The term “Secretary” means the Secretary
18 of Labor.

19 (15) The term “service workers” means work-
20 ers supplying support or auxiliary services to an em-
21 ployment site.

22 (16) The term “State agency” means the agen-
23 cy of the State which administers the State law.

24 (17) The term “State law” means the unem-
25 ployment insurance law of the State approved by the

1 Secretary of Labor under section 3304 of the Inter-
2 nal Revenue Code of 1954.

3 (18) The terms “total separation” and “totally
4 separated” refer to the layoff or severance of an in-
5 dividual from employment with an employer in which
6 adversely affected employment exists.

7 (19) The term “unemployment insurance”
8 means the unemployment compensation payable to
9 an individual under any State law or Federal unem-
10 ployment compensation law, including chapter 85 of
11 title 5, United States Code, and the Railroad Unem-
12 ployment Insurance Act. The terms “regular com-
13 pensation”, “additional compensation”, and “ex-
14 tended compensation” have the same respective
15 meanings that are given them in section 205(2), (3),
16 and (4) of the Federal-State Extended Unemploy-
17 ment Compensation Act of 1970 (26 U.S.C. 3304
18 note).

19 (20) The term “week” means a week as defined
20 in the applicable State law.

21 (21) The term “week of unemployment” means
22 a week of total, part-total, or partial unemployment
23 as determined under the applicable State law or
24 Federal unemployment insurance law.

1 (g) SPECIAL RULE WITH RESPECT TO MILITARY
2 SERVICE.—

3 (1) IN GENERAL.—Notwithstanding any other
4 provision of this part, the Secretary may waive any
5 requirement of this part that the Secretary deter-
6 mines is necessary to ensure that an adversely af-
7 fected worker who is a member of a reserve compo-
8 nent of the Armed Forces and serves a period of
9 duty described in paragraph (2) is eligible to receive
10 a climate change adjustment allowance, training,
11 and other benefits under this part in the same man-
12 ner and to the same extent as if the worker had not
13 served the period of duty.

14 (2) PERIOD OF DUTY DESCRIBED.—An ad-
15 versely affected worker serves a period of duty de-
16 scribed in this paragraph if, before completing train-
17 ing under this part, the worker—

18 (A) serves on active duty for a period of
19 more than 30 days under a call or order to ac-
20 tive duty of more than 30 days; or

21 (B) in the case of a member of the Army
22 National Guard of the United States or Air Na-
23 tional Guard of the United States, performs
24 full-time National Guard duty under section
25 502(f) of title 32, United States Code, for 30

1 consecutive days or more when authorized by
2 the President or the Secretary of Defense for
3 the purpose of responding to a national emer-
4 gency declared by the President and supported
5 by Federal funds.

6 (h) FRAUD AND RECOVERY OF OVERPAYMENTS.—

7 (1) RECOVERY OF PAYMENTS TO WHICH AN IN-
8 DIVIDUAL WAS NOT ENTITLED.—If the Secretary or
9 a court of competent jurisdiction determines that
10 any person has received any payment under this
11 part to which the individual was not entitled, such
12 individual shall be liable to repay such amount to
13 the Secretary, as the case may be, except that the
14 Secretary shall waive such repayment if such agency
15 or the Secretary determines that—

16 (A) the payment was made without fault
17 on the part of such individual; and

18 (B) requiring such repayment would cause
19 a financial hardship for the individual (or the
20 individual's household, if applicable) when tak-
21 ing into consideration the income and resources
22 reasonably available to the individual (or house-
23 hold) and other ordinary living expenses of the
24 individual (or household).

1 (2) MEANS OF RECOVERY.—Unless an overpay-
2 ment is otherwise recovered, or waived under para-
3 graph (1), the Secretary shall recover the overpay-
4 ment by deductions from any sums payable to such
5 person under this part, under any Federal unem-
6 ployment compensation law or other Federal law ad-
7 ministered by the Secretary which provides for the
8 payment of assistance or an allowance with respect
9 to unemployment. Any amount recovered under this
10 section shall be returned to the Treasury of the
11 United States.

12 (i) REGULATIONS.—The Secretary shall prescribe
13 such regulations as may be necessary to carry out the pro-
14 visions of this part.

15 (j) STUDY ON OLDER WORKERS.—The Secretary
16 shall conduct a study examine the circumstances of older
17 adversely affected workers and the ability of such workers
18 to access their retirement benefits. The Secretary shall
19 transmit a report to Congress not later than 2 years after
20 the date of enactment of this part on the findings of the
21 study and the Secretary's recommendations on how to en-
22 sure that adversely affected workers within 2 years of re-
23 tirement are able to access their retirement benefits.

24 (k) SPENDING LIMIT.—For each fiscal year, the total
25 amount of funds disbursed for the purposes described in

1 section 426 shall not exceed the amount deposited in that
2 fiscal year into the Climate Change Worker Assistance
3 Fund established under section 782(j) of the Clean Air
4 Act. The annual spending limit for any succeeding year
5 shall be increased by the difference, if any, between the
6 amount of the prior year's disbursements and the spend-
7 ing limitation for that year. The Secretary shall promul-
8 gate rules to ensure that this spending limit is not exceed-
9 ed. Such rules shall provide that workers who receive any
10 of the benefits described in section 426 receive full bene-
11 fits, and shall include the establishment of a waiting list
12 for workers in the event that the requests for assistance
13 exceed the spending limit.

14 **Subtitle C—Consumer Assistance**

15 **SEC. 431. ENERGY REFUND PROGRAM.**

16 The Social Security Act (42 U.S.C. 201 et seq.) is
17 amended by adding at the end the following:

18 **“TITLE XXII—ENERGY REFUND** 19 **PROGRAM**

20 **“SEC. 2201. ENERGY REFUND PROGRAM.**

21 “(a) IN GENERAL.—The Secretary shall formulate
22 and administer the program provided for in this section,
23 which shall be known as the ‘Energy Refund Program’,
24 and under which eligible low-income households are pro-
25 vided cash payments to reimburse the households for the

1 estimated loss in their purchasing power resulting from
2 the American Clean Energy and Security Act of 2009.

3 “(b) ENTITLEMENT OF ELIGIBLE HOUSEHOLDS TO
4 CASH PAYMENTS.—At the request of the State agency of
5 a State, each eligible low-income household in the State
6 shall be entitled to receive monthly cash payments under
7 this section in an amount equal to the monthly energy re-
8 fund amount determined under subsection (d).

9 “(c) ELIGIBILITY.—

10 “(1) ELIGIBLE HOUSEHOLDS.—A household
11 shall be considered to be an eligible low-income
12 household for purposes of this section if—

13 “(A) the gross income of the household
14 does not exceed the greater of—

15 “(i) 150 percent of the poverty line;

16 or

17 “(ii) the greatest amount of household
18 gross income in respect of which a benefit
19 could be payable under subsection
20 (d)(2)(B);

21 “(B) the State agency of the State in
22 which the household is located determines that
23 the household is participating in—

24 “(i) the Supplemental Nutrition As-
25 sistance Program authorized by the Food

1 and Nutrition Act of 2008 (7 U.S.C. 2011
2 et seq.);

3 “(ii) the Food Distribution Program
4 on Indian Reservations authorized by sec-
5 tion 4(b) of such Act (7 U.S.C. 2013(b));
6 or

7 “(iii) the program for nutrition assist-
8 ance in Puerto Rico or American Samoa
9 under section 19 of such Act (7 U.S.C.
10 2028);

11 “(C) the household consists of a single in-
12 dividual or a married couple, and—

13 “(i) receives the subsidy described in
14 section 1860D–14 of this Act (42 U.S.C.
15 1395w–114); or

16 “(ii)(I) participates in the program
17 under title XVIII of this Act; and

18 “(II) meets the income requirements
19 described in section 1860D–14(a)(1) or
20 (a)(2) of this Act (42 U.S.C. 1395w–
21 114(a)(1) or (a)(2)); or

22 “(D) the household consists of a single in-
23 dividual or a married couple, and receives bene-
24 fits under the supplemental security income

1 program under title XVI of this Act (42 U.S.C.
2 1381–1383f).

3 “(2) STREAMLINED PARTICIPATION FOR CER-
4 TAIN BENEFICIARIES.—The Secretary shall—

5 “(A) periodically estimate the number of
6 eligible beneficiaries and households, and the
7 number of participating beneficiaries and
8 households, for the Energy Refund Program;
9 and

10 “(B) develop procedures, in consultation
11 with the Commissioner of Social Security, the
12 Railroad Retirement Board, the Secretary of
13 Veterans Affairs, and the State agencies, to en-
14 sure that low-income beneficiaries of the benefit
15 programs administered by such entities receive
16 the energy refund for which the beneficiaries
17 are eligible under the Energy Refund Program.

18 “(3) LIMITATION.—Notwithstanding any other
19 provision of law, the Secretary shall provide refunds
20 to United States citizens, United States nationals,
21 and individuals lawfully residing in the United
22 States who qualify for a refund under paragraph
23 (1)(A), and shall establish procedures to ensure that
24 other individuals do not receive refunds.

1 “(4) NATIONAL STANDARDS.—The Secretary
2 shall consult with the Secretary of Agriculture and
3 establish uniform national standards of eligibility en-
4 suring that States may seamlessly co-administer the
5 energy refund program with the Supplemental Nu-
6 trition Assistance Program in accordance with the
7 provisions of this section. No State agency shall im-
8 pose any other standard or requirement as a condi-
9 tion of eligibility or refund receipt under the pro-
10 gram. Assistance in the Energy Refund Program
11 shall be furnished promptly to all eligible households
12 who make application for such participation or are
13 already enrolled in any program referred to in para-
14 graph (1).

15 “(d) MONTHLY ENERGY REFUND AMOUNT.—

16 “(1) ESTIMATED ANNUAL TOTAL LOSS IN PUR-
17 CHASING POWER.—Not later than August 31 of each
18 fiscal year, the Energy Information Administration
19 shall estimate the annual total loss in purchasing
20 power that will result from American Clean Energy
21 and Security Act of 2009 in the next fiscal year for
22 households of each size with gross income equal to
23 150 percent of the poverty line, based on the pro-
24 jected total market value of all compliance costs (in-
25 cluding, but not limited to, the emissions allowances

1 used to demonstrate compliance with title VII of the
2 Clean Air Act in the next fiscal year, and excluding
3 costs that are not projected to be incurred by house-
4 holds as a result of allowances freely allocated and
5 intended for residential consumer assistance pursu-
6 ant to sections 783 through 785 of the Clean Air
7 Act), in a way generally recognized as suitable by
8 experts.

9 “(2) MONTHLY ENERGY REFUND.—The month-
10 ly energy refund amount for an eligible household
11 under this section shall be—

12 “(A) if the gross income of the household
13 does not exceed 150 percent of the poverty line
14 applicable to the household—

15 “(i) if the household has 1, 2, 3, or 4
16 members, $\frac{1}{12}$ of the amount estimated
17 under paragraph (1) for a household of the
18 same size, rounded to the nearest whole
19 dollar amount; or

20 “(ii) if the household has 5 or more
21 members, $\frac{1}{12}$ of the arithmetic mean value
22 of the amounts estimated under paragraph
23 (1) for households with 5 or more mem-
24 bers, rounded to the nearest whole dollar
25 amount; or

1 “(B) if the gross income of the household
2 exceeds 150 percent of the poverty line applica-
3 ble to the household, $\frac{1}{12}$ of the amount (if any)
4 by which—

5 “(i) the amount estimated under
6 paragraph (1) for a household of the same
7 size; exceeds

8 “(ii) 20 percent of the amount by
9 which the gross income of the household
10 exceeds 150 percent of the poverty line.

11 “(e) DELIVERY MECHANISM.—

12 “(1) Subject to standards and an implementa-
13 tion schedule set by the Secretary, the energy refund
14 shall be provided in monthly installments via—

15 “(A) direct deposit into the eligible house-
16 hold’s designated bank account;

17 “(B) the State’s electronic benefit transfer
18 system; or

19 “(C) another Federal or State mechanism,
20 if such a mechanism is approved by the Sec-
21 retary.

22 “(2) Such standards shall include—

23 “(A)(i) defining the required level of recipi-
24 ent protection regarding privacy;

1 “(ii) guidance on how recipients are of-
2 ferred choices, when relevant, about the delivery
3 mechanism;

4 “(iii) guidance on ease of use and access to
5 the refund, including the prohibition of fees
6 charged to recipients for withdrawals or other
7 services; and

8 “(iv) cost-effective protections against im-
9 proper accessing of the energy refund;

10 “(B) operating standards that provide for
11 interoperability between States and law enforce-
12 ment monitoring; and

13 “(C) other standards, as determined by the
14 Secretary or the Secretary’s designee.

15 “(f) ADMINISTRATION.—

16 “(1) IN GENERAL.—The State agency of each
17 participating State shall assume responsibility for
18 the certification of applicant households and for the
19 issuance of refunds and the control and account-
20 ability thereof.

21 “(2) PROCEDURES.—Under standards estab-
22 lished by the Secretary, the State agency shall estab-
23 lish procedures governing the administration of the
24 Energy Refund Program that the State agency de-
25 termines best serve households in the State, includ-

1 ing households with special needs, such as house-
2 holds with elderly or disabled members, households
3 in rural areas, homeless individuals, and households
4 residing on reservations as defined in the Indian
5 Child Welfare Act of 1978 and the Indian Financing
6 Act of 1974. In carrying out this paragraph, a State
7 agency—

8 “(A) shall provide timely, accurate, and
9 fair service to applicants for, and participants
10 in, the Energy Refund Program;

11 “(B) shall permit an applicant household
12 to apply to participate in the program at the
13 time that the household first contacts the State
14 agency, and shall consider an application that
15 contains the name, address, and signature of
16 the applicant to be sufficient to constitute an
17 application for participation;

18 “(C) shall screen any applicant household
19 for the Supplemental Nutrition Assistance Pro-
20 gram, the State’s medical assistance program
21 under section XIX of this Act, State Childrens
22 Health Insurance Program under section XXI
23 of this Act, and a State program that provides
24 basic assistance under a State program funded
25 under title IV of this Act or with qualified

1 State expenditures as defined in section
2 409(a)(7) of this Act for eligibility for the En-
3 ergy Refund Program and, if eligible, shall en-
4 roll such applicant household in the Energy Re-
5 fund Program;

6 “(D) shall complete certification of and
7 provide a refund to any eligible household not
8 later than 30 days following its filing of an ap-
9 plication;

10 “(E) shall use appropriate bilingual per-
11 sonnel and materials in the administration of
12 the program in those portions of the State in
13 which a substantial number of members of low-
14 income households speak a language other than
15 English; and

16 “(F) shall utilize State agency personnel
17 who are employed in accordance with the cur-
18 rent standards for a Merit System of Personnel
19 Administration or any standards later pre-
20 scribed by the Office of Personnel Management
21 pursuant to section 208 of the Intergovern-
22 mental Personnel Act of 1970 (42 U.S.C. 4728)
23 modifying or superseding such standards relat-
24 ing to the establishment and maintenance of
25 personnel standards on a merit basis to make

1 all tentative and final determinations of eligi-
2 bility and ineligibility.

3 “(3) REGULATIONS.—

4 “(A) Except as provided in subparagraph
5 (B), the Secretary shall issue such regulations
6 consistent with this section as the Secretary
7 deems necessary or appropriate for the effective
8 and efficient administration of the Energy Re-
9 fund Program, and shall promulgate all such
10 regulations in accordance with the procedures
11 set forth in section 553 of title 5, United States
12 Code.

13 “(B) Without regard to section 553 of title
14 5 of such Code, the Administrator may by rule
15 promulgate as final, to be effective until no
16 later than 2 years after the date of the enact-
17 ment of the American Clean Energy and Secu-
18 rity Act of 2009, any procedures that are sub-
19 stantially the same as the procedures governing
20 the Supplemental Nutrition Assistance Program
21 in section 273.2, 273.12, or 273.15 of title 7,
22 Code of Federal Regulations.

23 “(C) Notwithstanding subsection (i)(4),
24 the Secretary may promulgate regulations al-
25 lowing for streamlined eligibility determinations

1 for some or all households which include indi-
2 viduals receiving assistance under a State plan
3 approved under title XIX or XXI of this Act.
4 The regulations may institute procedures
5 whereby the income and family size information
6 used for determining eligibility under such title
7 XIX or XXI may be the basis for determining
8 eligibility for the Energy Refund Program.

9 “(D) Notwithstanding any other provision
10 of this section, the Secretary may authorize
11 States to provide benefits under this section on
12 a quarterly basis if the Secretary determines
13 that the amount of the benefits that would be
14 provided on a monthly basis to households is in-
15 sufficient to be efficiently paid on a monthly
16 basis in light of the administrative expenses of
17 the Energy Refund Program.

18 “(g) TREATMENT.—The value of the refund provided
19 under this section shall not be considered income or re-
20 sources for any purpose under any Federal, State, or local
21 laws, including, but not limited to, laws relating to an in-
22 come tax, or public assistance programs (including, but
23 not limited to, health care, cash aid, child care, nutrition
24 programs, and housing assistance) and no participating
25 State or political subdivision thereof shall decrease any as-

1 sistance otherwise provided an individual or individuals be-
2 cause of the receipt of a refund under this section.

3 “(h) PROGRAM INTEGRITY.—For purposes of ensur-
4 ing program integrity and complying with the require-
5 ments of the Improper Payment Information Act of 2002,
6 the Secretary shall, to the maximum extent possible, rely
7 on and coordinate with the quality control sample and re-
8 view procedures of paragraphs (2), (3), (4), and (5) of
9 section 16(c) of the Food and Nutrition Act of 2008 (7
10 U.S.C. 2025(c)).

11 “(i) DEFINITIONS.—

12 “(1) SECRETARY.—The term ‘Secretary’ means
13 the Secretary of Health and Human Services or the
14 head of another agency designated by the Secretary
15 of Health and Human Services.

16 “(2) ELECTRONIC BENEFIT TRANSFER SYS-
17 TEM.—The term ‘electronic benefit transfer system’
18 means a system by which household benefits or re-
19 funds defined under subsection (e) are issued from
20 and stored in a central databank via electronic ben-
21 efit transfer cards.

22 “(3) GROSS INCOME.—The term ‘gross income’
23 means the gross income of a household that is deter-
24 mined in accordance with standards and procedures
25 established under section 5 of the Food and Nutri-

1 tion Act of 2008 (7 U.S.C. 2014) and its imple-
2 menting regulations.

3 “(4) HOUSEHOLD.—

4 “(A) The term ‘household’ means—

5 “(i) in subparagraphs (A) and (B) of
6 subsection (c)(1) of this section, except as
7 provided in subparagraph (C) of this para-
8 graph, an individual or a group of individ-
9 uals who are a household under section
10 3(n) of the Food and Nutrition Act of
11 2008 (7 U.S.C. 2012(n));

12 “(ii) in subsection (c)(1)(C) of this
13 section, a single individual or married cou-
14 ple that receives benefits under section
15 1860D–14 of this Act (42 U.S.C. 1395w–
16 114); and

17 “(iii) in subsection (c)(1)(D) of this
18 section, a single individual or married cou-
19 ple that receives benefits under the supple-
20 mental security income program under title
21 XVI of this Act (42 U.S.C. 1381–1383f).

22 “(B) The Secretary shall establish rules
23 for providing the energy refund in an equitable
24 and administratively simple manner to house-
25 holds where the group of individuals who live

1 together includes members not all of whom are
2 described in a single clause of subparagraph
3 (A), or includes additional members not de-
4 scribed in any such clause.

5 “(C) The Secretary shall establish rules re-
6 garding the eligibility and delivery of the energy
7 refund to groups of individuals described in sec-
8 tion 3(n)(4) or (5) of the Food and Nutrition
9 Act of 2008 (7 U.S.C. 2012(n)).

10 “(5) POVERTY LINE.—The term ‘poverty line’
11 has the meaning given the term in section 673(2) of
12 the Community Services Block Grant Act (42 U.S.C.
13 9902(2)), including any revision required by that
14 section.

15 “(6) STATE.—The term ‘State’ means the 50
16 States, the District of Columbia, the Commonwealth
17 of Puerto Rico, American Samoa, the United States
18 Virgin Islands, Guam, and the Commonwealth of the
19 Northern Mariana Islands.

20 “(7) STATE AGENCY.—The term ‘State agency’
21 means an agency of State government, including the
22 local offices thereof, that has responsibility for ad-
23 ministration of the 1 or more federally aided public
24 assistance programs within the State, and in those
25 States where such assistance programs are operated

1 on a decentralized basis, the term shall include the
2 counterpart local agencies administering such pro-
3 grams.

4 “(8) OTHER TERMS.—Other terms not defined
5 in this title shall have the same meaning applied in
6 the Supplemental Nutrition Assistance Program au-
7 thorized by the Food and Nutrition Act of 2008 (7
8 U.S.C. 2011 et seq.) unless the Secretary finds for
9 good cause that application of a particular definition
10 would be detrimental to the purposes of the Energy
11 Refund Program.”.

12 **SEC. 432. MODIFICATION OF EARNED INCOME CREDIT**
13 **AMOUNT FOR INDIVIDUALS WITH NO QUALI-**
14 **FYING CHILDREN.**

15 (a) IN GENERAL.—Subsection (b) of section 32 of the
16 Internal Revenue Code of 1986 is amended by adding at
17 the end the following new paragraph:

18 “(4) SPECIAL RULE FOR INDIVIDUALS WITH NO
19 QUALIFYING CHILDREN WHO ARE AFFECTED BY THE
20 AMERICAN CLEAN ENERGY AND SECURITY ACT OF
21 2009.—

22 “(A) IN GENERAL.—In the case of any
23 household which the Secretary determines expe-
24 rienced a reduction in purchasing power as a
25 result of the provisions of, or amendments

1 made by, the American Clean Energy and Secu-
2 rity Act of 2009 (determined without regard to
3 this paragraph and section 2201 of the Social
4 Security Act)—

5 “(i) INCREASE IN CREDIT PERCENT-
6 AGE AND PHASEOUT PERCENTAGE.—The
7 table contained in paragraph (1)(A) shall
8 be applied by substituting ‘15.3’ for ‘7.65’.

9 “(ii) INCREASE IN BEGINNING PHASE-
10 OUT AMOUNT.—The table contained in
11 paragraph (2)(A) shall be applied by sub-
12 stituting ‘\$11,640’ for ‘\$5,280’.

13 “(B) INFLATION ADJUSTMENT.—

14 “(i) IN GENERAL.—In the case of any
15 taxable year beginning after 2012, the
16 \$11,640 amount in subparagraph (A)(ii)
17 shall be increased by an amount equal to—

18 “(I) such dollar amount, multi-
19 plied by

20 “(II) the cost of living adjust-
21 ment determined under section 1(f)(3)
22 for the calendar year in which the tax-
23 able year begins determined by sub-
24 stituting ‘calendar year 2011’ for ‘cal-

1 endar year 1992’ in subparagraph (B)
2 thereof.

3 “(ii) ROUNDING.—Subparagraph (A)
4 of subsection (j)(2) shall apply after taking
5 into account any increase under clause (i)
6 in the same manner as if such increase
7 were under paragraph (1) of subsection (j).

8 “(iii) COORDINATION WITH OTHER IN-
9 FLATION ADJUSTMENTS.—Paragraph (1)
10 of subsection (j) shall not apply to the dol-
11 lar amount substituted under subpara-
12 graph (A)(ii).”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to taxable years beginning after
15 December 31, 2011.

16 **SEC. 433. PROTECTION OF SOCIAL SECURITY AND MEDI-**
17 **CARE TRUST FUNDS.**

18 (a) OASDI TRUST FUNDS.—Section 201 of the So-
19 cial Security Act (42 U.S.C. 401) is amended by adding
20 at the end the following new subsection:

21 “(o) The Secretary of the Treasury shall transfer
22 from time to time to the Federal Old-Age and Survivors
23 Insurance Trust Fund and the Federal Disability Insur-
24 ance Trust Fund, from amounts in the general fund of
25 the Treasury that are not otherwise appropriated, such

1 sums as the Chief Actuary of the Social Security Adminis-
2 tration calculates as necessary (and so certifies to such
3 Secretary) for any fiscal year, on account of changes in
4 benefit costs and changes in tax revenue attributable to
5 the provisions of the American Clean Energy and Security
6 Act of 2009 and the amendments made thereby, in order
7 to place each of such Trust Funds in the same position
8 at the end of such fiscal year as the position in which such
9 Trust Fund would have been if such changes had not oc-
10 curred.”.

11 (b) HI TRUST FUND.—Section 1817 of such Act (42
12 U.S.C. 1395i) is amended by adding at the end the fol-
13 lowing new subsection:

14 “(1) TRANSFERS TO ACCOUNT FOR CHANGES IN
15 BENEFIT COSTS AND CHANGES IN TAX REVENUE AT-
16 TRIBUTABLE TO THE AMERICAN CLEAN ENERGY AND SE-
17 CURITY ACT OF 2009.—The Secretary of the Treasury
18 shall transfer from time to time to the Trust Fund, from
19 amounts in the general fund of the Treasury that are not
20 otherwise appropriated, such sums as the Chief Actuary
21 of the Centers for Medicare & Medicaid Services calculates
22 as necessary (and so certifies to such Secretary) for any
23 fiscal year, on account of changes in benefit costs and
24 changes in tax revenue attributable to the provisions of
25 the American Clean Energy and Security Act of 2009 and

1 the amendments made thereby, in order to place the Trust
2 Fund in the same position at the end of such fiscal year
3 as the position in which it would have been if such changes
4 had not occurred.”.

5 **Subtitle D—Exporting Clean**
6 **Technology**

7 **SEC. 441. FINDINGS AND PURPOSES.**

8 (a) FINDINGS.—Congress finds the following:

9 (1) Protecting Americans from the impacts of
10 climate change requires global reductions in green-
11 house gas emissions.

12 (2) Although developing countries are histori-
13 cally least responsible for the cumulative greenhouse
14 gas emissions that are causing climate change and
15 continue to have very low per capita greenhouse gas
16 emissions, their overall greenhouse gas emissions are
17 increasing as they seek to grow their economies and
18 reduce energy poverty for their populations.

19 (3) Many developing countries lack the financial
20 and technical resources to adopt clean energy tech-
21 nologies and absent assistance their greenhouse gas
22 emissions will continue to increase.

23 (4) Investments in clean energy technology co-
24 operation can substantially reduce global greenhouse
25 gas emissions while providing developing countries

1 with incentives to adopt policies that will address
2 competitiveness concerns related to regulation of
3 United States greenhouse gas emissions.

4 (5) Investments in clean technology in devel-
5 oping countries will increase demand for clean en-
6 ergy products, open up new markets for United
7 States companies, spur innovation, and lower costs.

8 (6) Under Article 4 of the United Nations
9 Framework Convention on Climate Change, devel-
10 oped country parties, including the United States,
11 committed to “take all practicable steps to promote,
12 facilitate, and finance, as appropriate, the transfer
13 of, or access to, environmentally sound technologies
14 and know-how to other parties, particularly devel-
15 oping country parties, to enable them to implement
16 the provisions of the Convention”.

17 (7) Under the Bali Action Plan, developed
18 country parties to the United Nations Framework
19 Convention on Climate Change, including the United
20 States, committed to “enhanced action on the provi-
21 sion of financial resources and investment to support
22 action on mitigation and adaptation and technology
23 cooperation,” including, inter alia, consideration of
24 “improved access to adequate, predictable, and sus-
25 tainable financial resources and financial and tech-

1 nical support, and the provision of new and addi-
2 tional resources, including official and concessional
3 funding for developing country parties”.

4 (8) Intellectual property rights are a key driver
5 of investment and research and development in, and
6 the global deployment of, clean technologies.

7 (9) Innovative clean technologies, including
8 U.S. and multilateral financing mechanisms for their
9 deployment, are critical to mitigating global warming
10 pollution, preventing catastrophic changes to the cli-
11 mate, and developing robust economies around the
12 world.

13 (10) Any weakening of intellectual property
14 rights protection poses a substantial competitive risk
15 to U.S. companies and the creation of high-quality
16 U.S. jobs, inhibiting the creation of new “green”
17 employment and the transformational shift to the
18 “Green Economy” of the 21st Century.

19 (11) Any U.S. funding directed toward assist-
20 ing developing countries with regard to exporting
21 clean technology should promote the robust compli-
22 ance with and enforcement of existing international
23 legal requirements for the protection of intellectual
24 property rights as formulated in the Agreement on
25 Trade-Related Aspects of Intellectual Property

1 Rights, referred to in section 101(d)(15) of the Uru-
2 guay Round Agreements Act (19 U.S.C.3511(d)(15)
3 and in applicable intellectual property provisions of
4 bilateral trade agreements.

5 (b) PURPOSES.—The purposes of this subtitle are—

6 (1) to provide United States assistance and le-
7 verage private resources to encourage widespread
8 implementation, in developing countries, of activities
9 that reduce, sequester, or avoid greenhouse gas
10 emissions; and

11 (2) to provide such assistance in a manner
12 that—

13 (A) encourages such countries to adopt
14 policies and measures, including sector-based
15 and cross-sector policies and measures, that
16 substantially reduce, sequester, or avoid green-
17 house gas emissions;

18 (B) promotes the successful negotiation of
19 a global agreement to reduce greenhouse gas
20 emissions under the United Nations Framework
21 Convention on Climate Change; and

22 (C) promotes robust compliance with and
23 enforcement of existing international legal re-
24 quirements for the protection of intellectual
25 property rights, as formulated in the Agreement

1 on Trade-Related Aspects of Intellectual Prop-
2 erty Rights referred to in section 101(d)(15) of
3 the Uruguay Round Agreements Act (19 U.S.C.
4 3511(d)(15)) and in applicable intellectual
5 property provisions of bilateral trade agree-
6 ments.

7 **SEC. 442. DEFINITIONS.**

8 In this subtitle:

9 (1) ALLOWANCE.—The term “allowance”
10 means an emission allowance established under sec-
11 tion 721 of the Clean Air Act.

12 (2) APPROPRIATE CONGRESSIONAL COMMIT-
13 TEES.—The term “appropriate congressional com-
14 mittees” means—

15 (A) the Committees on Energy and Com-
16 merce, Foreign Affairs, and Financial Services
17 of the House of Representatives; and

18 (B) the Committees on Environment and
19 Public Works, Energy and Natural Resources,
20 and Foreign Relations of the Senate.

21 (3) CONVENTION.—The term “Convention”
22 means the United Nations Framework Convention
23 on Climate Change, done at New York on May 9,
24 1992, and entered into force on March 21, 1994.

1 (4) DEVELOPING COUNTRY.—The term “devel-
2 oping country” means a country eligible to receive
3 official development assistance according to the in-
4 come guidelines of the Development Assistance Com-
5 mittee of the Organization for Economic Coopera-
6 tion and Development.

7 (5) ELIGIBLE COUNTRY.—The term “eligible
8 country” means a developing country that is deter-
9 mined by the interagency group under section 444
10 to be eligible to receive assistance under this sub-
11 title.

12 (6) INTERAGENCY GROUP.—The term “inter-
13 agency group” means the group established by the
14 President under section 443 to administer the pro-
15 gram established under this subtitle.

16 (7) LEAST DEVELOPED COUNTRY.—The term
17 “least developed country” means a foreign country
18 the United Nations has identified as among the least
19 developed of developing countries.

20 (8) QUALIFYING ACTIVITY.—The term “quali-
21 fying activity” means an activity that meets the cri-
22 teria in section 445.

23 (9) QUALIFYING ENTITY.—The term “quali-
24 fying entity” means a national, regional, or local
25 government in, or a nongovernmental organization

1 or private entity located or operating in, an eligible
2 country.

3 **SEC. 443. GOVERNANCE.**

4 (a) OVERSIGHT.—The Secretary of State, or such
5 other Federal agency head as the President may des-
6 ignate, in consultation with the interagency group estab-
7 lished under subsection (b), shall oversee distributions of
8 allowances allocated under section 782(o) of the Clean Air
9 Act (as added by section 321 of this Act) for distribution
10 pursuant to this subtitle.

11 (b) INTERAGENCY GROUP.—The President shall es-
12 tablish an interagency group to administer the program
13 established under this subtitle. The Members of the inter-
14 agency group shall include—

- 15 (1) the Secretary of State;
- 16 (2) the Administrator of the Environmental
17 Protection Agency;
- 18 (3) the Secretary of Energy;
- 19 (4) the Secretary of the Treasury;
- 20 (5) the Secretary of Commerce;
- 21 (6) the Administrator of the United States
22 Agency for International Development; and
- 23 (7) any other head of a Federal agency or exec-
24 utive branch appointee that the President may des-
25 ignate.

1 (c) CHAIRPERSON.—The Secretary of State shall
2 serve as the chairperson of the interagency group.

3 (d) SUPPLEMENT NOT SUPPLANT.—Allowances dis-
4 tributed pursuant to this subtitle shall be used to supple-
5 ment, and not to supplant, any other Federal, State, or
6 local resources available to carry out activities that are
7 qualifying activities under this subtitle.

8 **SEC. 444. DETERMINATION OF ELIGIBLE COUNTRIES.**

9 (a) IN GENERAL.—The interagency group shall de-
10 termine a country to be an eligible country for the pur-
11 poses of this subtitle if a country meets the following cri-
12 teria:

13 (1) The country is a developing country that—

14 (A) has entered into an international
15 agreement to which the United States is a
16 party, under which such country agrees to take
17 actions to produce measurable, reportable, and
18 verifiable greenhouse gas emissions mitigation;
19 or

20 (B) is determined by the interagency group
21 to have in force national policies and measures
22 that are capable of producing measurable, re-
23 reportable, and verifiable greenhouse gas emis-
24 sions mitigation.

1 (2) The country has developed a nationally ap-
2 propriate mitigation strategy that seeks to achieve
3 substantial reductions, sequestration, or avoidance of
4 greenhouse gas emissions, relative to business-as-
5 usual levels.

6 (3) Subject to subsection (b)(1), such other cri-
7 teria as the President determines will serve the pur-
8 poses of this subtitle or other United States national
9 security, foreign policy, environmental, or economic
10 objectives including robust compliance with and en-
11 forcement of existing international legal require-
12 ments for the protection of intellectual property
13 rights for clean technology, as formulated in the
14 Agreement on Trade-Related Aspects of Intellectual
15 Property Rights, referred to in section 101(d)(15) of
16 the Uruguay Round Agreements Act (19 U.S.C.
17 3511(d)(15)) and in applicable intellectual property
18 provisions of bilateral trade agreements.

19 (b) EXCEPTIONS.—

20 (1) Subsection (a)(3) applies only to bilateral
21 assistance under section 446(c)(4).

22 (2) The eligibility criteria in this section do not
23 apply in the case of least developed countries receiv-
24 ing assistance under section 445(7) for the purpose
25 of building capacity to meet such eligibility criteria.

1 **SEC. 445. QUALIFYING ACTIVITIES.**

2 Assistance under this subtitle may be provided only
3 to qualifying entities for clean technology activities (in-
4 cluding building relevant technical and institutional capac-
5 ity) that contribute to substantial, measurable, reportable,
6 and verifiable reductions, sequestration, or avoidance of
7 greenhouse gas emissions including—

8 (1) deployment of technologies to capture and
9 sequester carbon dioxide emissions from electric gen-
10 erating units or large industrial sources (except that
11 assistance under this subtitle for such deployment
12 shall be limited to the cost of retrofitting existing fa-
13 cilities with such technologies or the incremental
14 cost of purchasing and installing such technologies
15 at new facilities);

16 (2) deployment of renewable electricity genera-
17 tion from wind, solar, sustainably produced biomass,
18 geothermal, marine, or hydrokinetic sources;

19 (3) substantial increases in the efficiency of
20 electricity transmission, distribution, and consump-
21 tion;

22 (4) deployment of low- or zero emissions tech-
23 nologies that are facing financial or other barriers to
24 their widespread deployment which could be ad-
25 dressed through support under this subtitle in order
26 to reduce, sequester, or avoid emission;

1 (5) reduction in transportation sector emissions
2 through increased transportation system and vehicle
3 efficiency or use of transportation fuels that have
4 lifecycle greenhouse gas emissions that are substan-
5 tially lower than those attributable to fossil fuel-
6 based alternatives;

7 (6) reduction in black carbon emissions; or

8 (7) capacity building activities, including—

9 (A) developing and implementing meth-
10 odologies and programs for measuring and
11 quantifying greenhouse gas emissions and
12 verifying emissions mitigation;

13 (B) assessing, developing, and imple-
14 menting technology and policy options for
15 greenhouse gas emissions mitigation and avoid-
16 ance of future emissions, including sector and
17 cross-sector mitigation strategies; and

18 (C) providing other forms of technical as-
19 sistance to facilitate the qualification for, and
20 receipt of, assistance under this Act.

21 **SEC. 446. ASSISTANCE.**

22 (a) IN GENERAL.—The Secretary of State, or such
23 other Federal agency head as the President may des-
24 ignate, is authorized to provide assistance, through the
25 distribution of allowances allocated for such purpose under

1 section 782(o) of the Clean Air Act (as added by section
2 321 of this Act) for qualifying activities that take place
3 in eligible countries, in accordance with the requirements
4 of this subtitle.

5 (b) DEFINITION.—For the purposes of this section
6 the term “clean technology” means any technology or
7 service related to the qualifying activities identified in sec-
8 tion 445.

9 (c) DISTRIBUTION OF ALLOWANCES.—

10 (1) IN GENERAL.—The Secretary of State, or
11 such other Federal agency head as the President
12 may designate, after consultation with the inter-
13 agency group, shall distribute allowances under this
14 subtitle—

15 (A) in the form of bilateral assistance in
16 accordance with paragraph (4);

17 (B) to multilateral funds or institutions
18 pursuant to the Convention or an agreement
19 negotiated under the Convention; or

20 (C) through some combination of the
21 mechanisms identified in subparagraphs (A)
22 and (B).

23 (2) GLOBAL ENVIRONMENT FACILITY.—For any
24 allowances provided to the Global Environment Fa-
25 cility pursuant to paragraph (1)(B), the President

1 shall designate the Secretary of the Treasury to dis-
2 tribute those allowances to the Global Environment
3 Facility.

4 (3) DISTRIBUTION THROUGH INTERNATIONAL
5 FUND OR INSTITUTION.—If allowances are distrib-
6 uted to a multilateral fund or institution, as author-
7 ized in paragraph (1), the Secretary of State, or
8 such other Federal agency head as the President
9 may designate, shall seek to ensure the establish-
10 ment and implementation of adequate mechanisms
11 to—

12 (A) apply and enforce the criteria for de-
13 termination of eligible countries and qualifying
14 activities under sections 444 and 445, respec-
15 tively;

16 (B) require public reporting describing the
17 process and methodology for selecting the ulti-
18 mate recipients of assistance and a description
19 of each activity that received assistance, includ-
20 ing the amount of obligations and expenditures
21 for assistance; and

22 (C) require that no funds be expended for
23 the benefit of any qualifying activity where that
24 activity or any activity relating to a qualifying
25 activity under section 445 undermines the ro-

1 bust compliance with and enforcement of exist-
2 ing legal requirements for the protection of in-
3 tellectual property rights for clean technology,
4 as formulated in the Agreement on Trade-Related
5 Aspects of Intellectual Property Rights,
6 referred to in section 101(d)(15) of the Uru-
7 guay Round Agreements Act (19 U.S.C.
8 3511(d)(15)).

9 (4) BILATERAL ASSISTANCE.—

10 (A) IN GENERAL.—Bilateral assistance
11 under paragraph (1) shall be carried out by the
12 Administrator of the United States Agency for
13 International Development, in consultation with
14 the interagency group.

15 (B) LIMITATIONS.—Not more than 15 per-
16 cent of allowances made available to carry out
17 bilateral assistance under this subtitle in any
18 year shall be distributed to support activities in
19 any single country.

20 (C) SELECTION CRITERIA.—Not later than
21 2 years after the date of enactment of this sub-
22 title, the Administrator of the United States
23 Agency for International Development, after
24 consultation with the interagency group, shall
25 develop and publish a set of criteria to be used

1 in evaluating activities within eligible countries
2 for bilateral assistance under this subtitle.

3 (D) CRITERIA REQUIREMENTS.—The cri-
4 teria under subparagraph (C) shall require
5 that—

6 (i) the activity is a qualifying activity;

7 (ii) the activity will be conducted as
8 part of an eligible country's nationally ap-
9 propriate mitigation strategy or as part of
10 an eligible country's actions towards pro-
11 viding a nationally appropriate mitigation
12 strategy to reduce, sequester, or avoid
13 emissions being implemented by the eligi-
14 ble country;

15 (iii) the activity will not have adverse
16 effects on human health, safety, or welfare,
17 the environment, or natural resources;

18 (iv) any technologies deployed through
19 bilateral assistance under this subtitle will
20 be properly implemented and maintained;

21 (v) the activity will not cause any net
22 loss of United States jobs or displacement
23 of United States production;

24 (vi) costs of the activity will be shared
25 by the host country government, private

1 sector parties, or a multinational develop-
2 ment bank, except that this clause does not
3 apply to least developed countries;

4 (vii) the activity would not undermine
5 the protection of intellectual property
6 rights for clean technology, as formulated
7 in the Agreement on Trade-Related As-
8 pects of Intellectual Property Rights, re-
9 ferred to in section 101(d)(15) of the Uru-
10 guay Round Agreements Act (19 U.S.C.
11 3511(d)(15)) and applicable intellectual
12 property provisions of bilateral trade
13 agreements; and

14 (viii) the activity meets such other re-
15 quirements as the interagency group deter-
16 mines appropriate to further the purposes
17 of this subtitle.

18 (E) CRITERIA PREFERENCES.—The cri-
19 teria under subparagraph (C) shall give pref-
20 erence to activities that—

21 (i) promise to achieve large-scale
22 greenhouse gas reductions, sequestration,
23 or avoidance at a national, sectoral or
24 cross-sectoral level;

1 (ii) have the potential to catalyze a
2 shift within the host country towards wide-
3 spread deployment of low- or zero-carbon
4 energy technologies;

5 (iii) build technical and institutional
6 capacity and other activities that are un-
7 likely to be attractive to private sector
8 funding; or

9 (iv) maximize opportunities to lever-
10 age other sources of assistance and cata-
11 lyze private-sector investment.

12 (d) MONITORING, EVALUATION, AND ENFORCE-
13 MENT.—The Secretary of State, or such other Federal
14 agency head as the President may designate, in consulta-
15 tion with the interagency group, shall establish and imple-
16 ment a system to monitor and evaluate the performance
17 of activities receiving assistance under this subtitle. The
18 Secretary of State, or such other Federal agency head as
19 the President may designate, shall have the authority to
20 suspend or terminate assistance in whole or in part for
21 an activity if it is determined that the activity is not oper-
22 ating in compliance with the approved proposal.

23 (e) COORDINATION WITH U.S. FOREIGN ASSIST-
24 ANCE.—Subject to the direction of the President, the Sec-
25 retary of State shall, to the extent practicable, seek to

1 align activities under this section with broader develop-
2 ment, poverty alleviation, or natural resource management
3 objectives and initiatives in the recipient country.

4 (f) ANNUAL REPORTS.—Not later than March 1,
5 2012, and annually thereafter, the President shall submit
6 to the appropriate congressional committees a report on
7 the assistance provided under this subtitle during the prior
8 fiscal year. Such report shall include—

9 (1) a description of the amount and value of al-
10 lowances distributed during the prior fiscal year;

11 (2) a description of each activity that received
12 assistance during the prior fiscal year, and a de-
13 scription of the anticipated and actual outcomes;

14 (3) an assessment of any adverse effects to
15 human health, safety, or welfare, the environment,
16 or natural resources as a result of activities sup-
17 ported under this subtitle;

18 (4) an assessment of the success of the assist-
19 ance provided under this subtitle to improving the
20 technical and institutional capacity to implement
21 substantial emissions reductions;

22 (5) an estimate of the greenhouse gas emissions
23 reductions, sequestration, or avoidance achieved by
24 assistance provided under this subtitle during the
25 prior fiscal year; and

1 (6) an assessment whether any funds expended
2 for the benefit of any qualifying activity undermined
3 the protection of intellectual property rights for
4 clean technology, as formulated in the Agreement on
5 Trade-Related Aspects of Intellectual Property
6 Rights, referred to in section 101(d)(15) of the Uru-
7 guay Round Agreements Act (19 U.S.C.
8 3511(d)(15)) and applicable intellectual property
9 provisions of bilateral trade agreements.

10 (g) NOT ELIGIBLE FOR OFFSET CREDIT.—Activities
11 that receive support under this subtitle shall not be issued
12 offset credits for the greenhouse gas emissions reductions
13 or avoidance, or greenhouse gas sequestration, produced
14 by such activities.

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 1 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 5 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 Oce-
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 Oce-
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 (5) RESEARCH ON HURRICANES.—The author-
13 ized uses of allowances under this section shall in-
14 clude establishment of projects or programs to con-
15 duct research and monitoring on the effect of ongo-
16 ing climate change on the frequency and intensity of
17 hurricanes.

18 (f) STATE AND TRIBAL CLIMATE ADAPTATION
19 PLANS.—

20 (1) IN GENERAL.—The regulations promulgated
21 pursuant to subsection (b) shall include require-
22 ments for submission and approval of State or tribal
23 climate adaptation plans under this section. Begin-
24 ning with vintage year 2015, distribution of allow-
25 ances to a State pursuant to this section shall be

1 contingent on approval of a State climate adaptation
2 plan for such State that meets the requirements of
3 such regulations. Requirements for tribal climate ad-
4 aptation plans may vary from those of State adapta-
5 tion plans to the extent necessary to account for the
6 special circumstances of Indian tribes.

7 (2) REQUIREMENTS.—Regulations promulgated
8 under this section shall require, at minimum, that
9 State and tribal climate adaptation plans—

10 (A) assess and prioritize the State’s or In-
11 dian tribe’s vulnerability to a broad range of
12 impacts of climate change, based on the best
13 available science;

14 (B) include an assessment of potential for
15 carbon reduction through changes to land man-
16 agement policies (including enhancement or
17 protection of forest carbon sinks);

18 (C) identify and prioritize specific cost-ef-
19 fective projects, programs, and measures to
20 build resilience to current and predicted im-
21 pacts of climate change;

22 (D) ensure that the State or Indian tribe
23 fully considers and undertakes, to the maximum
24 extent practicable, initiatives that—

1 (i) protect or enhance natural eco-
2 system functions, including protection,
3 maintenance, or restoration of natural in-
4 frastructure such as wetlands, reefs, and
5 barrier islands to buffer communities from
6 floodwaters or storms, watershed protec-
7 tion to maintain water quality and ground-
8 water recharge, or floodplain restoration to
9 improve natural flood control capacity; or

10 (ii) use non-structural approaches in-
11 cluding practices that utilize, enhance, or
12 mimic the natural hydrologic cycle proc-
13 esses of infiltration, evapotranspiration,
14 and reuse;

15 (E) be revised and resubmitted for ap-
16 proval not less frequently than every 5 years;
17 and

18 (F) be consistent with Federal conserva-
19 tion and environmental laws and, to the max-
20 imum extent practicable, avoid environmental
21 degradation.

22 (3) COORDINATION WITH PRIOR PLANNING EF-
23 FORTS.—In implementing this subsection, the Ad-
24 ministrator, or such Federal agency head or heads
25 as the President may designate, shall—

1 (A) draw upon lessons learned and best
2 practices from preexisting State and tribal cli-
3 mate adaptation planning efforts;

4 (B) seek to avoid duplication of such ef-
5 forts; and

6 (C) ensure that the plans developed under
7 this section reflect and are fully consistent with
8 State natural resources adaptation plans devel-
9 oped under section 479 of this Act.

10 (g) REPORTING.—Each State or Indian tribe receiv-
11 ing allowances under this section shall submit to the Ad-
12 ministrator, or such Federal agency head or heads as the
13 President may designate, within 12 months after each re-
14 ceipt of such allowances and once every 2 years thereafter
15 until the value of any allowances received under this sec-
16 tion has been fully expended, a report that—

17 (1) provides a full accounting for the State's or
18 Indian tribe's use of allowances distributed under
19 this section, including a description of the projects,
20 programs, or measures supported using such allow-
21 ances;

22 (2) includes a report prepared by an inde-
23 pendent third party, in accordance with such regula-
24 tions as are promulgated by the Administrator or
25 such other Federal agency head or heads as the

1 President may designate, evaluating the performance
2 of the projects, programs, or measures supported
3 under this section; and

4 (3) identifies any use by the State or Indian
5 tribe of allowances distributed under this section for
6 the reduction of flood and storm damage and the ef-
7 fects of climate change on water and flood protection
8 infrastructure.

9 (h) ENFORCEMENT.—If the Administrator, or such
10 Federal agency head or heads as the President may des-
11 ignate, determines that a State or Indian tribe is not in
12 compliance with this section, the Administrator or such
13 other agency head may withhold a quantity of the allow-
14 ances equal to up to twice the quantity of allowances that
15 the State or Indian tribe failed to use in accordance with
16 the requirements of this section, that such State or Indian
17 tribe would otherwise be eligible to receive under this sec-
18 tion in 1 or more later years. Allowances withheld pursu-
19 ant to this subsection shall be distributed among the re-
20 maining States or Indian tribes ratably in accordance with
21 the formula in subsection (c) in the case of allowances
22 withheld from a State, or in accordance with subsection
23 (d) in the case of allowances withheld from an Indian
24 tribe.

1 **Subpart B—Public Health and Climate Change**

2 **SEC. 461. SENSE OF CONGRESS ON PUBLIC HEALTH AND**
3 **CLIMATE CHANGE.**

4 It is the sense of the Congress that the Federal Gov-
5 ernment, in cooperation with international, State, tribal,
6 and local governments, concerned public and private orga-
7 nizations, and citizens, should use all practicable means
8 and measures—

9 (1) to assist the efforts of public health and
10 health care professionals, first responders, States,
11 tribes, municipalities, and local communities to in-
12 corporate measures to prepare health systems to re-
13 spond to the impacts of climate change;

14 (2) to ensure—

15 (A) that the Nation’s health professionals
16 have sufficient information to prepare for and
17 respond to the adverse health impacts of cli-
18 mate change;

19 (B) the utility and value of scientific re-
20 search in advancing understanding of—

21 (i) the health impacts of climate
22 change; and

23 (ii) strategies to prepare for and re-
24 spond to the health impacts of climate
25 change;

1 (C) the identification of communities vul-
2 nerable to the health effects of climate change
3 and the development of strategic response plans
4 to be carried out by health professionals for
5 those communities;

6 (D) the improvement of health status and
7 health equity through efforts to prepare for and
8 respond to climate change; and

9 (E) the inclusion of health policy in the de-
10 velopment of climate change responses;

11 (3) to encourage further research, interdiscipli-
12 nary partnership, and collaboration among stake-
13 holders in order to—

14 (A) understand and monitor the health im-
15 pacts of climate change; and

16 (B) improve public health knowledge and
17 response strategies to climate change;

18 (4) to enhance preparedness activities, and pub-
19 lic health infrastructure, relating to climate change
20 and health;

21 (5) to encourage each and every American to
22 learn about the impacts of climate change on health;
23 and

1 (6) to assist the efforts of developing nations to
2 incorporate measures to prepare health systems to
3 respond to the impacts of climate change.

4 **SEC. 462. RELATIONSHIP TO OTHER LAWS.**

5 Nothing in this subpart in any manner limits the au-
6 thority provided to or responsibility conferred on any Fed-
7 eral department or agency by any provision of any law
8 (including regulations) or authorizes any violation of any
9 provision of any law (including regulations), including any
10 health, energy, environmental, transportation, or any
11 other law or regulation.

12 **SEC. 463. NATIONAL STRATEGIC ACTION PLAN.**

13 (a) REQUIREMENT.—

14 (1) IN GENERAL.—The Secretary of Health and
15 Human Services, within 2 years after the date of the
16 enactment of this Act, on the basis of the best avail-
17 able science, and in consultation pursuant to para-
18 graph (2), shall publish a strategic action plan to as-
19 sist health professionals in preparing for and re-
20 sponding to the impacts of climate change on public
21 health in the United States and other nations, par-
22 ticularly developing nations.

23 (2) CONSULTATION.—In developing or making
24 any revision to the national strategic action plan, the
25 Secretary shall—

1 (A) consult with the Director of the Cen-
2 ters for Disease Control and Prevention, the
3 Administrator of the Environmental Protection
4 Agency, the Director of the National Institutes
5 of Health, the Secretary of Energy, other ap-
6 propriate Federal agencies, Indian tribes, State
7 and local governments, public health organiza-
8 tions, scientists, and other interested stake-
9 holders; and

10 (B) provide opportunity for public input.

11 (b) CONTENTS.—

12 (1) IN GENERAL.—The Secretary, acting
13 through the Director of the Centers for Disease
14 Control and Prevention and other appropriate Fed-
15 eral agencies, shall assist health professionals in pre-
16 paring for and responding effectively and efficiently
17 to the health effects of climate change through
18 measures including—

19 (A) developing, improving, integrating, and
20 maintaining domestic and international disease
21 surveillance systems and monitoring capacity to
22 respond to health-related effects of climate
23 change, including on topics addressing—

24 (i) water, food, and vector borne infec-
25 tious diseases and climate change;

- 1 (ii) pulmonary effects, including re-
2 sponses to aeroallergens;
- 3 (iii) cardiovascular effects, including
4 impacts of temperature extremes;
- 5 (iv) air pollution health effects, includ-
6 ing heightened sensitivity to air pollution;
- 7 (v) hazardous algal blooms;
- 8 (vi) mental and behavioral health im-
9 pacts of climate change;
- 10 (vii) the health of refugees, displaced
11 persons, and vulnerable communities;
- 12 (viii) the implications for communities
13 vulnerable to health effects of climate
14 change, as well as strategies for responding
15 to climate change within these commu-
16 nities; and
- 17 (ix) local and community-based health
18 interventions for climate-related health im-
19 pacts;
- 20 (B) creating tools for predicting and moni-
21 toring the public health effects of climate
22 change on the international, national, regional,
23 State, and local levels, and providing technical
24 support to assist in their implementation;

1 (C) developing public health communica-
2 tions strategies and interventions for extreme
3 weather events and disaster response situations;

4 (D) identifying and prioritizing commu-
5 nities and populations vulnerable to the health
6 effects of climate change, and determining ac-
7 tions and communication strategies that should
8 be taken to inform and protect these commu-
9 nities and populations from the health effects of
10 climate change;

11 (E) developing health communication, pub-
12 lic education, and outreach programs aimed at
13 public health and health care professionals, as
14 well as the general public, to promote prepared-
15 ness and response strategies relating to climate
16 change and public health, including the identi-
17 fication of greenhouse gas reduction behaviors
18 that are health-promoting; and

19 (F) developing academic and regional cen-
20 ters of excellence devoted to—

21 (i) researching relationships between
22 climate change and health;

23 (ii) expanding and training the public
24 health workforce to strengthen the capacity
25 of such workforce to respond to and pre-

1 pare for the health effects of climate
2 change;

3 (iii) creating and supporting academic
4 fellowships focusing on the health effects
5 of climate change; and

6 (iv) training senior health ministry of-
7 ficials from developing nations to strength-
8 en the capacity of such nations to—

9 (I) prepare for and respond to
10 the health effects of climate change;
11 and

12 (II) build an international net-
13 work of public health professionals
14 with the necessary climate change
15 knowledge base;

16 (G) using techniques, including health im-
17 pact assessments, to assess various climate
18 change public health preparedness and response
19 strategies on international, national, State, re-
20 gional, tribal, and local levels, and make rec-
21 ommendations as to those strategies that best
22 protect the public health;

23 (H)(i) assisting in the development, imple-
24 mentation, and support of State, regional, trib-
25 al, and local preparedness, communication, and

1 response plans (including with respect to the
2 health departments of such entities) to antici-
3 pate and reduce the health threats of climate
4 change; and

5 (ii) pursuing collaborative efforts to de-
6 velop, integrate, and implement such plans;

7 (I) creating a program to advance research
8 as it relates to the effects of climate change on
9 public health across Federal agencies, including
10 research to—

11 (i) identify and assess climate change
12 health effects preparedness and response
13 strategies;

14 (ii) prioritize critical public health in-
15 frastructure projects related to potential
16 climate change impacts that affect public
17 health; and

18 (iii) coordinate preparedness for cli-
19 mate change health impacts, including the
20 development of modeling and forecasting
21 tools;

22 (J) providing technical assistance for the
23 development, implementation, and support of
24 preparedness and response plans to anticipate

1 and reduce the health threats of climate change
2 in developing nations; and

3 (K) carrying out other activities deter-
4 mined appropriate by the Secretary to plan for
5 and respond to the impacts of climate change
6 on public health.

7 (c) REVISION.—The Secretary shall revise the na-
8 tional strategic action plan not later than July 1, 2014,
9 and every 4 years thereafter, to reflect new information
10 collected pursuant to implementation of the national stra-
11 tegic action plan and otherwise, including information
12 on—

13 (1) the status of critical environmental health
14 parameters and related human health impacts;

15 (2) the impacts of climate change on public
16 health; and

17 (3) advances in the development of strategies
18 for preparing for and responding to the impacts of
19 climate change on public health.

20 (d) IMPLEMENTATION.—

21 (1) IMPLEMENTATION THROUGH HHS.—The
22 Secretary shall exercise the Secretary’s authority
23 under this subpart and other provisions of Federal
24 law to achieve the goals and measures of the na-
25 tional strategic action plan.

1 (2) OTHER PUBLIC HEALTH PROGRAMS AND
2 INITIATIVES.—The Secretary and Federal officials of
3 other relevant Federal agencies shall administer
4 public health programs and initiatives authorized by
5 provisions of law other than this subpart, subject to
6 the requirements of such statutes, in a manner de-
7 signed to achieve the goals of the national strategic
8 action plan.

9 (3) CDC.—In furtherance of the national stra-
10 tegic action plan, the Secretary, acting through the
11 Director of the Centers for Disease Control and Pre-
12 vention and the head of any other appropriate Fed-
13 eral agency, shall—

14 (A) conduct scientific research to assist
15 health professionals in preparing for and re-
16 sponding to the impacts of climate change on
17 public health; and

18 (B) provide funding for—

19 (i) research on the health effects of
20 climate change; and

21 (ii) preparedness planning on the
22 international, national, State, tribal, re-
23 gional, and local levels to respond to or re-
24 duce the burden of health effects of climate
25 change; and

1 (C) carry out other activities determined
2 appropriate by the Director or the head of such
3 agency to prepare for and respond to the im-
4 pacts of climate change on public health.

5 **SEC. 464. ADVISORY BOARD.**

6 (a) ESTABLISHMENT.—The Secretary shall establish
7 a permanent science advisory board comprised of not less
8 than 10 and not more than 20 members.

9 (b) APPOINTMENT OF MEMBERS.—The Secretary
10 shall appoint the members of the science advisory board
11 from among individuals—

12 (1) who have expertise in public health and
13 human services, climate change, and other relevant
14 disciplines; and

15 (2) at least ½ of whom are recommended by
16 the President of the National Academy of Sciences.

17 (c) FUNCTIONS.—The science advisory board shall—

18 (1) provide scientific and technical advice and
19 recommendations to the Secretary on the domestic
20 and international impacts of climate change on pub-
21 lic health, populations and regions particularly vul-
22 nerable to the effects of climate change, and strate-
23 gies and mechanisms to prepare for and respond to
24 the impacts of climate change on public health; and

1 (2) advise the Secretary regarding the best
2 science available for purposes of issuing the national
3 strategic action plan.

4 **SEC. 465. REPORTS.**

5 (a) **NEEDS ASSESSMENT.**—

6 (1) **IN GENERAL.**—The Secretary shall seek to
7 enter into, by not later than 6 months after the date
8 of the enactment of this Act, an agreement with the
9 National Research Council and the Institute of Med-
10 icine to complete a report that—

11 (A) assesses the needs for health profes-
12 sionals to prepare for and respond to climate
13 change impacts on public health; and

14 (B) recommends programs to meet those
15 needs.

16 (2) **SUBMISSION.**—The agreement under para-
17 graph (1) shall require the completed report to be
18 submitted to the Congress and the Secretary and
19 made publicly available not later than 1 year after
20 the date of the agreement.

21 (b) **CLIMATE CHANGE HEALTH PROTECTION AND**
22 **PROMOTION REPORTS.**—

23 (1) **IN GENERAL.**—The Secretary, in consulta-
24 tion with the advisory board established under sec-
25 tion 464, shall ensure the issuance of reports to aid

1 health professionals in preparing for and responding
2 to the adverse health effects of climate change
3 that—

4 (A) review scientific developments on
5 health impacts of climate change; and

6 (B) recommend changes to the national
7 strategic action plan.

8 (2) SUBMISSION.—The Secretary shall submit
9 the reports required by paragraph (1) to the Con-
10 gress and make such reports publicly available not
11 later than July 1, 2013, and every 4 years there-
12 after.

13 **SEC. 466. DEFINITIONS.**

14 In this subpart:

15 (1) HEALTH IMPACT ASSESSMENT.—The term
16 “health impact assessment” means a combination of
17 procedures, methods, and tools by which a policy,
18 program, or project may be judged as to its potential
19 effects on the health of a population, and the dis-
20 tribution of those effects within the population.

21 (2) NATIONAL STRATEGIC ACTION PLAN.—The
22 term “national strategic action plan” means the
23 plan issued and revised under section 463.

1 (3) SECRETARY.—Unless otherwise specified,
2 the term “Secretary” means the Secretary of Health
3 and Human Services.

4 **SEC. 467. CLIMATE CHANGE HEALTH PROTECTION AND**
5 **PROMOTION FUND.**

6 (a) ESTABLISHMENT OF FUND.—Subject to subtitle
7 F of title IV, there is hereby established in the Treasury
8 a separate account that shall be known as the Climate
9 Change Health Protection and Promotion Fund.

10 (b) AVAILABILITY OF AMOUNTS.—Subject to subtitle
11 F of title IV, all amounts deposited into the Climate
12 Change Health Protection and Promotion Fund shall be
13 available to the Secretary to carry out this subpart subject
14 to further appropriation.

15 (c) DISTRIBUTION OF FUNDS BY HHS.—In carrying
16 out this subpart, the Secretary may make funds deposited
17 in the Climate Change Health Protection and Promotion
18 Fund available to—

19 (1) other departments, agencies, and offices of
20 the Federal Government;

21 (2) foreign, State, tribal, and local govern-
22 ments; and

23 (3) such other entities as the Secretary deter-
24 mines appropriate.

1 (d) SUPPLEMENT, NOT REPLACE.—It is the intent
2 of Congress that funds made available to carry out this
3 subpart should be used to supplement, and not replace,
4 existing sources of funding for public health.

5 **Subpart C—Natural Resource Adaptation**

6 **SEC. 471. PURPOSES.**

7 The purposes of this subpart are to—

8 (1) establish an integrated Federal program to
9 protect, restore, and conserve the Nation’s natural
10 resources in response to the threats of climate
11 change and ocean acidification; and

12 (2) provide financial support and incentives for
13 programs, strategies, and activities that protect, re-
14 store, and conserve the Nation’s natural resources in
15 response to the threats of climate change and ocean
16 acidification.

17 **SEC. 472. NATURAL RESOURCES CLIMATE CHANGE ADAP-**
18 **TATION POLICY.**

19 It is the policy of the Federal Government, in co-
20 operation with State and local governments, Indian tribes,
21 and other interested stakeholders to use all practicable
22 means and measures to protect, restore, and conserve nat-
23 ural resources to enable them to become more resilient,
24 adapt to, and withstand the impacts of climate change and
25 ocean acidification.

1 **SEC. 473. DEFINITIONS.**

2 In this subpart:

3 (1) **COASTAL STATE.**—The term “coastal
4 State” has the meaning given the term in section
5 304 of the Coastal Zone Management Act of 1972
6 (16 U.S.C. 1453).

7 (2) **CORRIDORS.**—The term “corridors” means
8 areas that provide connectivity, over different time
9 scales (including seasonal or longer), of habitat or
10 potential habitat and that facilitate the ability of ter-
11 restrial, marine, estuarine, and freshwater fish, wild-
12 life, or plants to move within a landscape as needed
13 for migration, gene flow, or dispersal, or in response
14 to the impacts of climate change and ocean acidifica-
15 tion or other impacts.

16 (3) **ECOLOGICAL PROCESSES.**—The term “eco-
17 logical processes” means biological, chemical, or
18 physical interaction between the biotic and abiotic
19 components of an ecosystem and includes—

- 20 (A) nutrient cycling;
21 (B) pollination;
22 (C) predator-prey relationships;
23 (D) soil formation;
24 (E) gene flow;
25 (F) disease epizootiology;
26 (G) larval dispersal and settlement;

- 1 (H) hydrological cycling;
2 (I) decomposition; and
3 (J) disturbance regimes such as fire and
4 flooding.

5 (4) HABITAT.—The term “habitat” means the
6 physical, chemical, and biological properties that are
7 used by fish, wildlife, or plants for growth, reproduc-
8 tion, survival, food, water, and cover, on a tract of
9 land, in a body of water, or in an area or region.

10 (5) INDIAN TRIBE.—The term “Indian tribe”
11 has the meaning given the term in section 4 of the
12 Indian Self-Determination and Education Assistance
13 Act (25 U.S.C. 450b).

14 (6) NATURAL RESOURCES.—The term “natural
15 resources” means the terrestrial, freshwater, estua-
16 rine, and marine fish, wildlife, plants, land, water,
17 habitats, and ecosystems of the United States.

18 (7) NATURAL RESOURCES ADAPTATION.—The
19 term “natural resources adaptation” means the pro-
20 tection, restoration, and conservation of natural re-
21 sources to enable them to become more resilient,
22 adapt to, and withstand the impacts of climate
23 change and ocean acidification.

24 (8) RESILIENCE.—Each of the terms “resil-
25 ience” and “resilient” means the ability to resist or

1 recover from disturbance and preserve diversity, pro-
2 ductivity, and sustainability.

3 (9) STATE.—The term “State” means—

4 (A) a State of the United States;

5 (B) the District of Columbia; and

6 (C) the Commonwealth of Puerto Rico,
7 Guam, the United States Virgin Islands, the
8 Northern Mariana Islands, and American
9 Samoa.

10 **SEC. 474. COUNCIL ON ENVIRONMENTAL QUALITY.**

11 The Chair of the Council on Environmental Quality
12 shall—

13 (1) advise the President on implementation and
14 development of—

15 (A) a Natural Resources Climate Change
16 Adaptation Strategy required under section
17 476; and

18 (B) Federal natural resource agency adap-
19 tation plans required under section 478;

20 (2) serve as the Chair of the Natural Resources
21 Climate Change Adaptation Panel established under
22 section 475; and

23 (3) coordinate Federal agency strategies, plans,
24 programs, and activities related to protecting, restor-
25 ing, and maintaining natural resources to become

1 more resilient, adapt to, and withstand the impacts
2 of climate change and ocean acidification.

3 **SEC. 475. NATURAL RESOURCES CLIMATE CHANGE ADAP-**
4 **TATION PANEL.**

5 (a) ESTABLISHMENT.—Not later than 90 days after
6 the date of the enactment of this subpart, the President
7 shall establish a Natural Resources Climate Change Adap-
8 tation Panel, consisting of—

9 (1) the head, or their designee, of each of—

10 (A) the National Oceanic and Atmospheric
11 Administration;

12 (B) the Forest Service;

13 (C) the National Park Service;

14 (D) the United States Fish and Wildlife
15 Service;

16 (E) the Bureau of Land Management;

17 (F) the United States Geological Survey;

18 (G) the Bureau of Reclamation;

19 (H) the Bureau of Indian Affairs;

20 (I) the Environmental Protection Agency;

21 and

22 (J) the Army Corps of Engineers;

23 (2) the Chair of the Council on Environmental
24 Quality; and

1 (1) base the strategy on the best available
2 science;

3 (2) develop the strategy in close cooperation
4 with States and Indian tribes;

5 (3) coordinate with other Federal agencies as
6 appropriate;

7 (4) consult with local governments, conservation
8 organizations, scientists, and other interested stake-
9 holders;

10 (5) provide public notice and opportunity for
11 comment; and

12 (6) review and revise the Strategy every 5 years
13 to incorporate new information regarding the im-
14 pacts of climate change and ocean acidification on
15 natural resources and advances in the development
16 of strategies for becoming more resilient and adapt-
17 ing to those impacts.

18 (c) CONTENTS.—The National Resources Adaptation
19 Strategy shall include—

20 (1) an assessment of the vulnerability of nat-
21 ural resources to climate change and ocean acidifica-
22 tion, including the short-term, medium-term, long-
23 term, cumulative, and synergistic impacts;

24 (2) a description of current research, observa-
25 tion, and monitoring activities at the Federal, State,

1 tribal, and local level related to the impacts of cli-
2 mate change and ocean acidification on natural re-
3 sources, as well as identification of research and
4 data needs and priorities;

5 (3) identification of natural resources that are
6 likely to have the greatest need for protection, res-
7 toration, and conservation because of the adverse ef-
8 fects of climate change and ocean acidification;

9 (4) specific protocols for integrating climate
10 change and ocean acidification adaptation strategies
11 and activities into the conservation and management
12 of natural resources by Federal departments and
13 agencies to ensure consistency across agency juris-
14 dictions and resources;

15 (5) specific actions that Federal departments
16 and agencies shall take to protect, conserve, and re-
17 store natural resources to become more resilient,
18 adapt to, and withstand the impacts of climate
19 change and ocean acidification, including a timeline
20 to implement those actions;

21 (6) specific mechanisms for ensuring commu-
22 nication and coordination among Federal depart-
23 ments and agencies, and between Federal depart-
24 ments and agencies and State natural resource agen-
25 cies, United States territories, Indian tribes, private

1 landowners, conservation organizations, and other
2 nations that share jurisdiction over natural resources
3 with the United States;

4 (7) specific actions to develop and implement
5 consistent natural resources inventory and moni-
6 toring protocols through interagency coordination
7 and collaboration; and

8 (8) a process for guiding the development of de-
9 tailed agency- and department-specific adaptation
10 plans required under section 478 to address the im-
11 pacts of climate change and ocean acidification on
12 the natural resources in the jurisdiction of each
13 agency.

14 (d) IMPLEMENTATION.—Consistent with its authori-
15 ties under other laws and with Federal trust responsibil-
16 ities with respect to Indian lands, each Federal depart-
17 ment or agency with representation on the National Re-
18 sources Climate Change Adaptation Panel shall consider
19 the impacts of climate change and ocean acidification and
20 integrate the elements of the strategy into agency plans,
21 environmental reviews, programs, and activities related to
22 the conservation, restoration, and management of natural
23 resources.

1 **SEC. 477. NATURAL RESOURCES ADAPTATION SCIENCE**
2 **AND INFORMATION.**

3 (a) COORDINATION.—Not later than 90 days after
4 the date of the enactment of this subpart, the Secretary
5 of Commerce, acting through the Administrator of the Na-
6 tional Oceanic and Atmospheric Administration, and the
7 Secretary of the Interior, acting through the Director of
8 the United States Geological Survey, shall establish a co-
9 ordinated process for developing and providing science and
10 information needed to assess and address the impacts of
11 climate change and ocean acidification on natural re-
12 sources. The process shall be led by the National Climate
13 Change and Wildlife Science Center established within the
14 United States Geological Survey under subsection (d) and
15 the National Climate Service of the National Oceanic and
16 Atmospheric Administration.

17 (b) FUNCTIONS.—The Secretaries shall ensure that
18 such process avoids duplication and that the National Oce-
19 anic and Atmospheric Administration and the United
20 States Geological Survey shall—

21 (1) provide technical assistance to Federal de-
22 partments and agencies, State and local govern-
23 ments, Indian tribes, and interested private land-
24 owners in their efforts to assess and address the im-
25 pacts of climate change and ocean acidification on
26 natural resources;

1 (2) conduct and sponsor research and provide
2 Federal departments and agencies, State and local
3 governments, Indian tribes, and interested private
4 landowners with research products, decision and
5 monitoring tools and information, to develop strate-
6 gies for assisting natural resources to become more
7 resilient, adapt to, and withstand the impacts of cli-
8 mate change and ocean acidification; and

9 (3) assist Federal departments and agencies in
10 the development of the adaptation plans required
11 under section 478.

12 (c) SURVEY.—Not later than 1 year after the date
13 of enactment of this subpart and every 5 years thereafter,
14 the Secretary of Commerce and the Secretary of the Inte-
15 rior shall undertake a climate change and ocean acidifica-
16 tion impact survey that—

17 (1) identifies natural resources considered likely
18 to be adversely affected by climate change and ocean
19 acidification;

20 (2) includes baseline monitoring and ongoing
21 trend analysis;

22 (3) uses a stakeholder process to identify and
23 prioritize needed monitoring and research that is of
24 greatest relevance to the ongoing needs of natural

1 resource managers to address the impacts of climate
2 change and ocean acidification; and

3 (4) identifies decision tools necessary to develop
4 strategies for assisting natural resources to become
5 more resilient and adapt to and withstand the im-
6 pacts of climate change and ocean acidification.

7 (d) NATIONAL CLIMATE CHANGE AND WILDLIFE
8 SCIENCE CENTER.—

9 (1) ESTABLISHMENT.—The Secretary of the In-
10 terior shall establish the National Climate Change
11 and Wildlife Science Center within the United States
12 Geological Survey.

13 (2) FUNCTIONS.—The Center shall, in collabo-
14 ration with Federal and State natural resources
15 agencies and departments, Indian tribes, univer-
16 sities, and other partner organizations—

17 (A) assess and synthesize current physical
18 and biological knowledge and prioritize sci-
19 entific gaps in such knowledge in order to fore-
20 cast the ecological impacts of climate change on
21 fish and wildlife at the ecosystem, habitat, com-
22 munity, population, and species levels;

23 (B) develop and improve tools to identify,
24 evaluate, and, where appropriate, link scientific
25 approaches and models for forecasting the im-

1 pacts of climate change and adaptation on fish,
2 wildlife, plants, and their habitats, including
3 monitoring, predictive models, vulnerability
4 analyses, risk assessments, and decision support
5 systems to help managers make informed deci-
6 sions;

7 (C) develop and evaluate tools to adapt-
8 ively manage and monitor the effects of climate
9 change on fish and wildlife at national, regional,
10 and local scales; and

11 (D) develop capacities for sharing stand-
12 ardized data and the synthesis of such data.

13 (e) SCIENCE ADVISORY BOARD.—

14 (1) ESTABLISHMENT.—Not later than 180 days
15 after the date of enactment of this subpart, the Sec-
16 retary of Commerce and the Secretary of the Inte-
17 rior shall establish and appoint the members of a
18 Science Advisory Board, to be comprised of not
19 fewer than 10 and not more than 20 members—

20 (A) who have expertise in fish, wildlife,
21 plant, aquatic, and coastal and marine biology,
22 ecology, climate change, ocean acidification, and
23 other relevant scientific disciplines;

24 (B) who represent a balanced membership
25 among Federal, State, Indian tribes, and local

1 representatives, universities, and conservation
2 organizations; and

3 (C) at least $\frac{1}{2}$ of whom are recommended
4 by the President of the National Academy of
5 Sciences.

6 (2) DUTIES.—The Science Advisory Board
7 shall—

8 (A) advise the Secretaries on the state-of-
9 the-science regarding the impacts of climate
10 change and ocean acidification on natural re-
11 sources and scientific strategies and mecha-
12 nisms for protecting, restoring, and conserving
13 natural resources to enable them to become
14 more resilient, adapt to, and withstand the im-
15 pacts of climate change and ocean acidification;
16 and

17 (B) identify and recommend priorities for
18 ongoing research needs on such issues.

19 (3) COLLABORATION.—The Science Advisory
20 Board shall collaborate with other climate change
21 and ecosystem research entities in other Federal
22 agencies and departments.

23 (4) AVAILABILITY TO THE PUBLIC.—The advice
24 and recommendations of the Science Advisory Board
25 shall be made available to the public.

1 **SEC. 478. FEDERAL NATURAL RESOURCE AGENCY ADAPTA-**
2 **TION PLANS.**

3 (a) DEVELOPMENT.—Not later than 1 year after the
4 date of the development of a Natural Resources Climate
5 Change Adaptation Strategy under section 476, each de-
6 partment or agency that has a representative on the Nat-
7 ural Resources Climate Change Adaptation Panel estab-
8 lished under section 475 shall—

9 (1) complete an adaptation plan for that de-
10 partment or agency, respectively, implementing the
11 Natural Resources Climate Change Adaptation
12 Strategy under section 476 and consistent with the
13 Natural Resources Climate Change Adaptation Pol-
14 icy under section 472, detailing the department's or
15 agency's current and projected efforts to address the
16 potential impacts of climate change and ocean acidi-
17 fication on natural resources within the depart-
18 ment's or agency's jurisdiction and necessary addi-
19 tional actions, including a timeline for implementa-
20 tion of those actions;

21 (2) provide opportunities for review and com-
22 ment on that adaptation plan by the public, includ-
23 ing in the case of a plan by the Bureau of Indian
24 Affairs, review by Indian tribes; and

25 (3) submit such plan to the President for ap-
26 proval.

1 (b) REVIEW BY PRESIDENT AND SUBMISSION TO
2 CONGRESS.—

3 (1) REVIEW BY PRESIDENT.—The President
4 shall—

5 (A) approve an adaptation plan submitted
6 under subsection (a)(3) if the plan meets the
7 requirements of subsection (c) and is consistent
8 with the strategy developed under section 476;

9 (B) decide whether to approve the plan
10 within 60 days after submission; and

11 (C) if the President disapproves a plan, di-
12 rect the department or agency to submit a re-
13 vised plan to the President under subsection
14 (a)(3) within 60 days after such disapproval.

15 (2) SUBMISSION TO CONGRESS.—Not later than
16 30 days after the date of approval of such adapta-
17 tion plan by the President, the department or agen-
18 cy shall submit the approved plan to the Committee
19 on Natural Resources of the House of Representa-
20 tives, the Committee on Energy and Natural Re-
21 sources of the Senate, and the committees of the
22 House of Representatives and the Senate with prin-
23 cipal jurisdiction over the department or agency.

24 (c) REQUIREMENTS.—Each adaptation plan shall—

1 (1) establish programs for assessing the current
2 and future impacts of climate change and ocean
3 acidification on natural resources within the depart-
4 ment's or agency's, respectively, jurisdiction, includ-
5 ing cumulative and synergistic effects, and for iden-
6 tifying and monitoring those natural resources that
7 are likely to be adversely affected and that have
8 need for conservation;

9 (2) identify and prioritize the department's or
10 agency's strategies and specific conservation actions
11 to address the current and future impacts of climate
12 change and ocean acidification on natural resources
13 within the scope of the department's or agency's ju-
14 risdiction and to develop and implement strategies to
15 protect, restore, and conserve such resources to be-
16 come more resilient, adapt to, and better withstand
17 those impacts, including—

18 (A) the protection, restoration, and con-
19 servation of terrestrial, marine, estuarine, and
20 freshwater habitats and ecosystems;

21 (B) the establishment of terrestrial, ma-
22 rine, estuarine, and freshwater habitat linkages
23 and corridors;

24 (C) the restoration and conservation of ec-
25 ological processes;

1 (D) the protection of a broad diversity of
2 native species of fish, wildlife, and plant popu-
3 lations across their range; and

4 (E) the protection of fish, wildlife, and
5 plant health, recognizing that climate can alter
6 the distribution and ecology of parasites, patho-
7 gens, and vectors;

8 (3) describe how the department or agency will
9 integrate such strategies and conservation activities
10 into plans, programs, activities, and actions of the
11 department or agency, related to the conservation
12 and management of natural resources and establish
13 new plans, programs, activities, and actions as nec-
14 essary;

15 (4) establish methods for assessing the effec-
16 tiveness of strategies and conservation actions taken
17 to protect, restore, and conserve natural resources to
18 enable them to become more resilient, adapt to, and
19 withstand the impacts of climate change and ocean
20 acidification, and for updating those strategies and
21 actions to respond to new information and changing
22 conditions;

23 (5) include a description of current and pro-
24 posed mechanisms to enhance cooperation and co-
25 ordination of natural resources adaptation efforts

1 with other Federal agencies, State and local govern-
2 ments, Indian tribes, and nongovernmental stake-
3 holders;

4 (6) include specific written guidance to resource
5 managers to—

6 (A) explain how managers are expected to
7 address the effects of climate change and ocean
8 acidification;

9 (B) identify how managers are to obtain
10 any site-specific information that may be nec-
11 essary; and

12 (C) reflect best practices shared among rel-
13 evant agencies, while also recognizing the
14 unique missions, objectives, and responsibilities
15 of each agency; and

16 (7) identify and assess data and information
17 gaps necessary to develop natural resources adapta-
18 tion plans and strategies.

19 (d) IMPLEMENTATION.—

20 (1) IN GENERAL.—Upon approval by the Presi-
21 dent, each department or agency that serves on the
22 Natural Resources Climate Change Adaptation
23 Panel shall implement its adaptation plan through
24 existing and new plans, policies, programs, activities,

1 and actions to the extent not inconsistent with exist-
2 ing authority.

3 (2) CONSIDERATION OF IMPACTS.—

4 (A) IN GENERAL.—To the maximum ex-
5 tent practicable and consistent with applicable
6 law, every natural resource management deci-
7 sion made by the department or agency shall
8 consider the impacts of climate change and
9 ocean acidification on those natural resources.

10 (B) GUIDANCE.—The Council on Environ-
11 mental Quality shall issue guidance for Federal
12 departments and agencies for considering those
13 impacts.

14 (e) REVISION AND REVIEW.—Not less than every 5
15 years, each adaptation plan under this section shall be re-
16 viewed and revised to incorporate the best available science
17 and other information regarding the impacts of climate
18 change and ocean acidification on natural resources.

19 **SEC. 479. STATE NATURAL RESOURCES ADAPTATION**
20 **PLANS.**

21 (a) REQUIREMENT.—In order to be eligible for funds
22 under section 480, not later than 1 year after the develop-
23 ment of a Natural Resources Climate Change Adaptation
24 Strategy required under section 476 each State shall pre-
25 pare a State natural resources adaptation plan detailing

1 the State's current and projected efforts to address the
2 potential impacts of climate change and ocean acidifica-
3 tion on natural resources and coastal areas within the
4 State's jurisdiction.

5 (b) REVIEW OR APPROVAL.—

6 (1) IN GENERAL.—Each State adaptation plan
7 shall be reviewed and approved or disapproved by
8 the Secretary of the Interior and, as applicable, the
9 Secretary of Commerce. Such approval shall be
10 granted if the plan meets the requirements of sub-
11 section (c) and is consistent with the Natural Re-
12 sources Climate Change Adaptation Strategy re-
13 quired under section 476.

14 (2) APPROVAL OR DISAPPROVAL.—Within 180
15 days after transmittal of such a plan, or a revision
16 to such a plan, the Secretary of the Interior and, as
17 applicable, the Secretary of Commerce shall approve
18 or disapprove the plan by written notice.

19 (3) RESUBMITTAL.—Within 90 days after
20 transmittal of a resubmitted adaptation plan as a re-
21 sult of disapproval under paragraph (3), the Sec-
22 retary of the Interior and, as applicable, the Sec-
23 retary of Commerce, shall approve or disapprove the
24 plan by written notice.

1 (c) CONTENTS.—A State natural resources adapta-
2 tion plan shall—

3 (1) include a strategy for addressing the im-
4 pacts of climate change and ocean acidification on
5 terrestrial, marine, estuarine, and freshwater fish,
6 wildlife, plants, habitats, ecosystems, wildlife health,
7 and ecological processes, that—

8 (A) describes the impacts of climate
9 change and ocean acidification on the diversity
10 and health of the fish, wildlife and plant popu-
11 lations, habitats, ecosystems, and associated ee-
12 cological processes;

13 (B) establishes programs for monitoring
14 the impacts of climate change and ocean acidifi-
15 cation on fish, wildlife, and plant populations,
16 habitats, ecosystems, and associated ecological
17 processes;

18 (C) describes and prioritizes proposed con-
19 servation actions to assist fish, wildlife, plant
20 populations, habitats, ecosystems, and associ-
21 ated ecological processes in becoming more re-
22 siliant, adapting to, and better withstanding
23 those impacts;

24 (D) includes strategies, specific conserva-
25 tion actions, and a time frame for implementing

1 conservation actions for fish, wildlife, and plant
2 populations, habitats, ecosystems, and associ-
3 ated ecological processes;

4 (E) establishes methods for assessing the
5 effectiveness of strategies and conservation ac-
6 tions taken to assist fish, wildlife, and plant
7 populations, habitats, ecosystems, and associ-
8 ated ecological processes in becoming more re-
9 siliant, adapt to, and better withstand the im-
10 pacts of climate changes and ocean acidification
11 and for updating those strategies and actions to
12 respond appropriately to new information or
13 changing conditions;

14 (F) is incorporated into a revision of the
15 State wildlife action plan (also known as the
16 State comprehensive wildlife strategy)—

17 (i) that has been submitted to the
18 United States Fish and Wildlife Service;
19 and

20 (ii) that has been approved by the
21 Service or on which a decision on approval
22 is pending; and

23 (G) is developed—

24 (i) with the participation of the State
25 fish and wildlife agency, the State coastal

1 agency, the State agency responsible for
2 administration of Land and Water Con-
3 servation Fund grants, the State Forest
4 Legacy program coordinator, and other
5 State agencies considered appropriate by
6 the Governor of such State; and

7 (ii) in coordination with the Secretary
8 of the Interior, and where applicable, the
9 Secretary of Commerce and other States
10 that share jurisdiction over natural re-
11 sources with the State; and

12 (2) include, in the case of a coastal State, a
13 strategy for addressing the impacts of climate
14 change and ocean acidification on the coastal zone
15 that—

16 (A) identifies natural resources that are
17 likely to be impacted by climate change and
18 ocean acidification and describes those impacts;

19 (B) identifies and prioritizes continuing re-
20 search and data collection needed to address
21 those impacts including—

22 (i) acquisition of high resolution
23 coastal elevation and nearshore bathymetry
24 data;

- 1 (ii) historic shoreline position maps,
2 erosion rates, and inventories of shoreline
3 features and structures;
- 4 (iii) measures and models of relative
5 rates of sea level rise or lake level changes,
6 including effects on flooding, storm surge,
7 inundation, and coastal geological pro-
8 cesses;
- 9 (iv) habitat loss, including projected
10 losses of coastal wetlands and potentials
11 for inland migration of natural shoreline
12 habitats;
- 13 (v) ocean and coastal species and eco-
14 system migrations, and changes in species
15 population dynamics;
- 16 (vi) changes in storm frequency, in-
17 tensity, or rainfall patterns;
- 18 (vii) saltwater intrusion into coastal
19 rivers and aquifers;
- 20 (viii) changes in chemical or physical
21 characteristics of marine and estuarine
22 systems;
- 23 (ix) increased harmful algal blooms;
24 and
- 25 (x) spread of invasive species;

1 (C) identifies and prioritizes adaptation
2 strategies to protect, restore, and conserve nat-
3 ural resources to enable them to become more
4 resilient, adapt to, and withstand the impacts of
5 climate change and ocean acidification, includ-
6 ing—

7 (i) protection, maintenance, and res-
8 toration of ecologically important coastal
9 lands, coastal and ocean ecosystems, and
10 species biodiversity and the establishment
11 of habitat buffer zones, migration cor-
12 ridors, and climate refugia; and

13 (ii) improved planning, siting policies,
14 and hazard mitigation strategies;

15 (D) establishes programs for the long-term
16 monitoring of the impacts of climate change
17 and ocean acidification on the ocean and coastal
18 zone and to assess and adjust, when necessary,
19 such adaptive management strategies;

20 (E) establishes performance measures for
21 assessing the effectiveness of adaptation strate-
22 gies intended to improve resilience and the abil-
23 ity of natural resources in the coastal zone to
24 adapt to and withstand the impacts of climate
25 change and ocean acidification and of adapta-

1 tion strategies intended to minimize those im-
2 pacts on the coastal zone and to update those
3 strategies to respond to new information or
4 changing conditions; and

5 (F) is developed with the participation of
6 the State coastal agency and other appropriate
7 State agencies and in coordination with the
8 Secretary of Commerce and other appropriate
9 Federal agencies.

10 (d) PUBLIC INPUT.—States shall provide for sollicita-
11 tion and consideration of public and independent scientific
12 input in the development of their plans.

13 (e) COORDINATION WITH OTHER PLANS.—The State
14 plan shall take into consideration research and informa-
15 tion contained in, and coordinate with and integrate the
16 goals and measures identified in, as appropriate, other
17 natural resources conservation strategies, including—

18 (1) the national fish habitat action plan;

19 (2) plans under the North American Wetlands
20 Conservation Act (16 U.S.C. 4401 et seq.);

21 (3) the Federal, State, and local partnership
22 known as “Partners in Flight”;

23 (4) federally approved coastal zone management
24 plans under the Coastal Zone Management Act of
25 1972 (16 U.S.C. 1451 et seq.);

1 (5) federally approved regional fishery manage-
2 ment plants and habitat conservation activities
3 under the Magnuson-Stevens Fishery Conservation
4 and Management Act (16 U.S.C. 1801 et seq.);

5 (6) the national coral reef action plan;

6 (7) recovery plans for threatened species and
7 endangered species under section 4(f) of the Endan-
8 gered Species Act of 1973 (16 U.S.C. 1533(f));

9 (8) habitat conservation plans under section 10
10 of that Act (16 U.S.C. 1539);

11 (9) other Federal, State, and tribal plans for
12 imperiled species;

13 (10) State or tribal hazard mitigation plans;

14 (11) State or tribal water management plans;

15 and

16 (12) other State-based strategies that com-
17 prehensively implement adaptation activities to re-
18 mediate the effects of climate change and ocean
19 acidification on terrestrial, marine, and freshwater
20 fish, wildlife, plants, and other natural resources.

21 (f) UPDATING.—Each State plan shall be updated
22 not less than every 5 years.

23 (g) FUNDING.—

24 (1) IN GENERAL.—Funds allocated to States
25 under section 480 shall be used only for activities

1 that are consistent with a State natural resources
2 adaptation plan that has been approved by the Sec-
3 retaries of Interior and Commerce.

4 (2) FUNDING PRIOR TO THE APPROVAL OF A
5 STATE PLAN.—Until the earlier of the date that is
6 3 years after the date of the enactment of this sub-
7 part or the date on which a State receives approval
8 for the State strategy, a State shall be eligible to re-
9 ceive funding under section 480 for adaptation ac-
10 tivities that are—

11 (A) consistent with the comprehensive
12 wildlife strategy of the State and, where appro-
13 priate, other natural resources conservation
14 strategies; and

15 (B) in accordance with a workplan devel-
16 oped in coordination with—

17 (i) the Secretary of the Interior; and

18 (ii) the Secretary of Commerce, for
19 any coastal State subject to the condition
20 that coordination with the Secretary of
21 Commerce shall be required only for those
22 portions of the strategy relating to activi-
23 ties affecting the coastal zone.

24 (3) PENDING APPROVAL.—During the period
25 for which approval by the applicable Secretary of a

1 State plan is pending, the State may continue receiv-
2 ing funds under section 480 pursuant to the
3 workplan described in paragraph (2)(B).

4 **SEC. 480. NATURAL RESOURCES CLIMATE CHANGE ADAP-**
5 **TATION FUND.**

6 (a) ALLOCATIONS TO STATES.—100 percent of the
7 emission allowances made available for each year to carry
8 out this subpart shall be provided to States to carry out
9 natural resources adaptation activities in accordance with
10 State natural resources adaptation plans approved under
11 section 479. Specifically—

12 (1) 84.4 percent shall be available to State
13 wildlife agencies in accordance with the apporportion-
14 ment formula established under the second sub-
15 section (c) of section 4 of the Pittman-Robertson
16 Wildlife Restoration Act (16 U.S.C. 669c), as added
17 by section 902(e) of H.R. 5548 as introduced in the
18 106th Congress and enacted into law by section
19 1(a)(2) of Public Law 106–553 (114 Stat. 2762A–
20 119); and

21 (2) 15.6 percent shall be available to State
22 coastal agencies pursuant to the formula established
23 by the Secretary of Commerce under section 306(c)
24 of the Coastal Management Act of 1972 (16 U.S.C.
25 1455(e)).

1 (b) ESTABLISHMENT OF FUND.—

2 (1) ESTABLISHMENT.—Subject to subtitle F of
3 title IV, there is hereby established in the Treasury
4 a separate account that shall be known as the Nat-
5 ural Resources Climate Change Adaptation Fund.

6 (2) AUTHORIZATION OF APPROPRIATIONS.—

7 Subject to subtitle F of title IV, there are authorized
8 to be appropriated for subsection (c) such sums as
9 are deposited in the Natural Resources Climate
10 Change Fund, and the amounts appropriated for
11 subsection (c) shall be no less than the total esti-
12 mated annual deposits in the Natural Resources Cli-
13 mate Change Adaptation Fund.

14 (c) ALLOCATIONS TO FEDERAL AGENCIES.—

15 (1) DEPARTMENT OF THE INTERIOR.—Of the
16 amounts made available for each fiscal year to carry
17 out this subpart—

18 (A) 27.6 percent shall be allocated to the
19 Secretary of the Interior for use in funding—

20 (i) natural resources adaptation activi-
21 ties carried out—

22 (I) under endangered species, mi-
23 gratory species, and other fish and
24 wildlife programs administered by the
25 National Park Service, the United

1 States Fish and Wildlife Service, the
2 Bureau of Indian Affairs, and the Bu-
3 reau of Land Management;

4 (II) on wildlife refuges, National
5 Park Service land, and other public
6 land under the jurisdiction of the
7 United States Fish and Wildlife Serv-
8 ice, the Bureau of Land Management,
9 the Bureau of Indian Affairs, or the
10 National Park Service; or

11 (III) within Federal water man-
12 aged by the Bureau of Reclamation
13 and the National Park Service; and

14 (ii) for the implementation of the Na-
15 tional Fish and Wildlife Habitat and Cor-
16 ridors Identification Program pursuant to
17 section 481;

18 (B) 8.1 percent shall be allocated to the
19 Secretary of the Interior for natural resources
20 adaptation activities carried out under coopera-
21 tive grant programs, including—

22 (i) the cooperative endangered species
23 conservation fund authorized under section
24 6 of the Endangered Species Act of 1973
25 (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 and in accord-
3 ance with the Indian Self-Determination and
4 Educational Assistance Act (25 U.S.C. 450(f)).

5 (2) LAND AND WATER CONSERVATION FUND.—

6 (A) DEPOSITS.—

7 (i) IN GENERAL.—Of the amounts
8 made available for each fiscal year to carry
9 out this subpart, 19.5 percent shall be de-
10 posited into the Land and Water Conserva-
11 tion Fund established under section 2 of
12 the Land and Water Conservation Fund
13 Act of 1965 (16 U.S.C. 460l–5).

14 (ii) USE OF DEPOSITS.— (I) Deposits
15 into the Land and Water Conservation
16 Fund under this paragraph shall be sup-
17 plemental to authorizations provided under
18 section 3 of the Land and Water Conserva-
19 tion Fund Act of 1965 (16 U.S.C. 460l–6),
20 which shall remain available for non-
21 adaptation needs.

22 (II) There are authorized to be appro-
23 priated for activities in this subpart such
24 sums as are deposited in the Land and
25 Water Conservation Fund pursuant to sec-

1 tion 480(c)(3)(A)(ii), and the amounts ap-
2 propriated for this paragraph shall be no
3 less than the total estimated annual depos-
4 its in the Land and Water Conservation
5 Fund.

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 and for natural resource adaptation
3 activities on State and private forest lands carried
4 out under the Cooperative Forestry Assistance Act
5 of 1978.

6 (4) DEPARTMENT OF COMMERCE.—Of the
7 amounts made available for each fiscal year to carry
8 out this subpart, 11.5 percent shall be allocated to
9 the Secretary of Commerce for use in funding nat-
10 ural resources adaptation activities to protect, main-
11 tain, and restore coastal, estuarine, and marine re-
12 sources, habitats, and ecosystems, including such ac-
13 tivities carried out under—

14 (A) the coastal and estuarine land con-
15 servation program;

16 (B) the community-based restoration pro-
17 gram;

18 (C) the Coastal Zone Management Act of
19 1972 (16 U.S.C. 1451 et seq.), that are specifi-
20 cally designed to strengthen the ability of coast-
21 al, estuarine, and marine resources, habitats,
22 and ecosystems to adapt to and withstand the
23 impacts of climate change and ocean acidifica-
24 tion;

25 (D) the Open Rivers Initiative;

1 (E) the Magnuson-Stevens Fishery Con-
2 servation and Management Act (16 U.S.C.
3 1801 et seq.);

4 (F) the Marine Mammal Protection Act of
5 1972 (16 U.S.C. 1361 et seq.);

6 (G) the Endangered Species Act of 1973
7 (16 U.S.C. 1531 et seq.);

8 (H) the Marine Protection, Research, and
9 Sanctuaries Act of 1972 (33 U.S.C. 1401 et
10 seq.);

11 (I) the Coral Reef Conservation Act of
12 2000 (16 U.S.C. 6401 et seq.); and

13 (J) the Estuary Restoration Act of 2000
14 (33 U.S.C. 2901 et seq.).

15 (5) ENVIRONMENTAL PROTECTION AGENCY.—
16 Of the amounts made available each fiscal year to
17 carry out this section, 12.2 percent shall be allocated
18 to the Administrator for use in natural resources ad-
19 aptation activities restoring and protecting—

20 (A) large-scale freshwater aquatic eco-
21 systems, such as the Everglades, the Great
22 Lakes, Flathead Lake, the Missouri River, the
23 Mississippi River, the Colorado River, the Sac-
24 ramento-San Joaquin Rivers, the Ohio River,
25 the Columbia-Snake River System, the Apa-

1 lachicola, Chattahoochee, and Flint River Sys-
2 tem, the Connecticut River, and the Yellowstone
3 River;

4 (B) large-scale estuarine ecosystems, such
5 as Chesapeake Bay, Long Island Sound, Puget
6 Sound, the Mississippi River Delta, the San
7 Francisco Bay Delta, Narragansett Bay, and
8 Albemarle-Pamlico Sound; and

9 (C) freshwater and estuarine ecosystems,
10 watersheds, and basins identified as priorities
11 by the Administrator, working in cooperation
12 with other Federal agencies, States, Indian
13 tribes, local governments, scientists, and other
14 conservation partners.

15 (6) CORPS OF ENGINEERS.—Of the amounts
16 made available each fiscal year to carry out this sec-
17 tion, 8.1 percent shall be available to the Secretary
18 of the Army for use by the Corps of Engineers to
19 carry out natural resources adaptation activities re-
20 storing—

21 (A) large-scale freshwater aquatic eco-
22 systems, such as the ecosystems described in
23 paragraph (5)(A);

1 (B) large-scale estuarine ecosystems, such
2 as the ecosystems described in paragraph
3 (5)(B);

4 (C) freshwater and estuarine ecosystems,
5 watersheds, and basins identified as priorities
6 by the Corps of Engineers, working in coopera-
7 tion with other Federal agencies, States, Indian
8 tribes, local governments, scientists, and other
9 conservation partners; and

10 (D) habitats and ecosystems through the
11 implementation of estuary habitat restoration
12 projects authorized by the Estuary Restoration
13 Act of 2000 (33 U.S.C. 2901 et seq.), project
14 modifications for improvement of the environ-
15 ment, aquatic restoration and protection
16 projects authorized by section 206 of the Water
17 Resources Development Act of 1996 (33 U.S.C.
18 2330), and other appropriate programs and ac-
19 tivities.

20 (d) USE OF FUNDS BY FEDERAL DEPARTMENTS AND
21 AGENCIES.—Funds allocated to Federal departments and
22 agencies under this section shall only be used for natural
23 resources adaptation activities that are consistent with an
24 adaptation plan developed and approved by the President
25 under section 478.

1 (e) STATE COST SHARING.—Notwithstanding any
2 other provision of law, a State that receives a grant with
3 amounts allocated under this section shall use funds from
4 non-Federal sources to pay at least 10 percent of the costs
5 of each activity carried out using amounts provided under
6 the grant.

7 **SEC. 481. NATIONAL WILDLIFE HABITAT AND CORRIDORS**
8 **INFORMATION PROGRAM.**

9 (a) ESTABLISHMENT.—Within 6 months of the date
10 of enactment of this subpart, the Secretary of the Interior,
11 in cooperation with the States and Indian tribes, shall es-
12 tablish a National Fish and Wildlife Habitat and Cor-
13 ridors Information Program in accordance with the re-
14 quirements of this section.

15 (b) PURPOSE.—The purpose of this program is to—

16 (1) support States and Indian tribes in the de-
17 velopment of a geographic information system data-
18 base of fish and wildlife habitat and corridors that
19 would inform planning and development decisions
20 within each State and Indian tribe, enable each
21 State and Indian tribe to model climate impacts and
22 adaptation, and provide geographically specific en-
23 hancements of State and tribal wildlife action plans;

24 (2) ensure the collaborative development, with
25 the States and Indian tribes, of a comprehensive,

1 national geographic information system database of
2 maps, models, data, surveys, informational products,
3 and other geospatial information regarding fish and
4 wildlife habitat and corridors, that—

5 (A) is based on consistent protocols for
6 sampling and mapping across landscapes that
7 take into account regional differences; and

8 (B) that utilizes—

9 (i) existing and planned State- and
10 tribal-based geographic information system
11 databases; and

12 (ii) existing databases, analytical
13 tools, metadata activities, and other infor-
14 mation products available through the Na-
15 tional Biological Information Infrastruc-
16 ture maintained by the Secretary and non-
17 governmental organizations; and

18 (3) facilitate the use of such databases by Fed-
19 eral, State, local, and tribal decisionmakers to incor-
20 porate qualitative information on fish and wildlife
21 habitat and corridors at the earliest possible stage
22 to—

23 (A) prioritize and target natural resources
24 adaptation strategies and activities;

1 (B) avoid, minimize, and mitigate the im-
2 pacts on fish and wildlife habitat and corridors
3 in siting energy development, water, trans-
4 mission, transportation, and other land use
5 projects;

6 (C) assess the impacts of existing develop-
7 ment on habitats and corridors; and

8 (D) develop management strategies to en-
9 hance the ability of fish, wildlife, and plant spe-
10 cies to migrate or respond to shifting habitats
11 within existing habitats and corridors.

12 (c) HABITAT AND CORRIDORS INFORMATION SYS-
13 TEM.—

14 (1) IN GENERAL.—The Secretary, in coopera-
15 tion with the States and Indian tribes, shall develop
16 a Habitat and Corridors Information System.

17 (2) CONTENTS.—The System shall—

18 (A) include maps, data, and descriptions of
19 fish and wildlife habitat and corridors, that—

20 (i) have been developed by Federal
21 agencies, State wildlife agencies and nat-
22 ural heritage programs, Indian tribes, local
23 governments, nongovernmental organiza-
24 tions, and industry;

1 (ii) meet accepted Geospatial Inter-
2 operability Framework data and metadata
3 protocols and standards;

4 (B) include maps and descriptions of pro-
5 jected shifts in habitats and corridors of fish
6 and wildlife species in response to climate
7 change;

8 (C) assure data quality and make the data,
9 models, and analyses included in the System
10 available at scales useful to decisionmakers—

11 (i) to prioritize and target natural re-
12 sources adaptation strategies and activi-
13 ties;

14 (ii) to assess the impacts of proposed
15 energy development, water, transmission,
16 transportation, and other land use projects
17 and avoid, minimize, and mitigate those
18 impacts on habitats and corridors;

19 (iii) to assess the impacts of existing
20 development on habitats and corridors; and

21 (iv) to develop management strategies
22 to enhance the ability of fish, wildlife, and
23 plant species to migrate or respond to
24 shifting habitats within existing habitats
25 and corridors;

1 (D) establish a process for updating maps
2 and other information as landscapes, habitats,
3 corridors, and wildlife populations change or as
4 other information becomes available;

5 (E) encourage the development of collabo-
6 rative plans by Federal and State agencies and
7 Indian tribes to monitor and evaluate the effi-
8 cacy of the System to meet the needs of deci-
9 sionmakers;

10 (F) identify gaps in habitat and corridor
11 information, mapping, and research that should
12 be addressed to fully understand and assess
13 current data and metadata, and to prioritize re-
14 search and future data collection activities for
15 use in updating the System and provide support
16 for those activities;

17 (G) include mechanisms to support collabo-
18 rative research, mapping, and planning of habi-
19 tats and corridors by Federal and State agen-
20 cies, Indian tribes, and other interested stake-
21 holders;

22 (H) incorporate biological and geospatial
23 data on species and corridors found in energy
24 development and transmission plans, including

1 renewable energy initiatives, transportation, and
2 other land use plans;

3 (I) be based on the best scientific informa-
4 tion available; and

5 (J) identify, prioritize, and describe key
6 parcels of non-Federal land located within the
7 boundaries of units of the National Park Sys-
8 tem, National Wildlife Refuge System, National
9 Forest System, or National Grassland System
10 that are critical to maintenance of wildlife habi-
11 tat and migration corridors.

12 (d) FINANCIAL AND OTHER SUPPORT.—The Sec-
13 retary may provide support to the States and Indian
14 tribes, including financial and technical assistance, for ac-
15 tivities that support the development and implementation
16 of the System.

17 (e) COORDINATION.—The Secretary, in cooperation
18 with the States and Indian tribes, shall make rec-
19 ommendations on how the information developed in the
20 System may be incorporated into existing relevant State
21 and Federal plans affecting fish and wildlife, including
22 land management plans, the State Comprehensive Wildlife
23 Conservation Strategies, and appropriate tribal conserva-
24 tion plans, to ensure that they—

1 (1) prevent unnecessary habitat fragmentation
2 and disruption of corridors;

3 (2) promote the landscape connectivity nec-
4 essary to allow wildlife to move as necessary to meet
5 biological needs, adjust to shifts in habitat, and
6 adapt to climate change; and

7 (3) minimize the impacts of energy, develop-
8 ment, water, transportation, and transmission
9 projects and other activities expected to impact habi-
10 tat and corridors.

11 (f) DEFINITIONS.—In this section:

12 (1) GEOSPATIAL INTEROPERABILITY FRAME-
13 WORK.—The term “Geospatial Interoperability
14 Framework” means the strategy utilized by the Na-
15 tional Biological Information Infrastructure that is
16 based upon accepted standards, specifications, and
17 protocols adopted through the International Stand-
18 ards Organization, the Open Geospatial Consortium,
19 and the Federal Geographic Data Committee, to
20 manage, archive, integrate, analyze, and make acces-
21 sible geospatial and biological data and metadata.

22 (2) SECRETARY.—The term “Secretary” means
23 the Secretary of the Interior.

1 **SEC. 482. ADDITIONAL PROVISIONS REGARDING INDIAN**
2 **TRIBES.**

3 (a) **FEDERAL TRUST RESPONSIBILITY.**—Nothing in
4 this subpart is intended to amend, alter, or give priority
5 over the Federal trust responsibility to Indian tribes.

6 (b) **EXEMPTION FROM FOIA.**—Information received
7 by a Federal agency pursuant to this Act relating to the
8 location, character, or ownership of human remains of a
9 person of Indian ancestry; or resources, cultural items,
10 uses, or activities identified by an Indian tribe as tradi-
11 tional or cultural because of the long-established signifi-
12 cance or ceremonial nature to the Indian tribe; shall not
13 be subject to disclosure under section 552 of title 5,
14 United States Code, if the head of the agency, in consulta-
15 tion with the Secretary of the Interior and an affected In-
16 dian tribe, determines that disclosure may—

- 17 (1) cause a significant invasion of privacy;
- 18 (2) risk harm to the human remains or re-
19 sources, cultural items, uses, or activities; or
- 20 (3) impede the use of a traditional religious site
21 by practitioners.

22 (c) **APPLICATION OF OTHER LAW.**—The Secretary of
23 the Interior may apply the provisions of Public Law 93-
24 638 where appropriate in the implementation of this sub-
25 part.

1 **PART 2—INTERNATIONAL CLIMATE CHANGE**

2 **ADAPTATION PROGRAM**

3 **SEC. 491. FINDINGS AND PURPOSES.**

4 (a) FINDINGS.—Congress finds the following:

5 (1) Global climate change is a potentially sig-
6 nificant national and global security threat multi-
7 plier and is likely to exacerbate competition and con-
8 flict over agricultural, vegetative, marine, and water
9 resources and to result in increased displacement of
10 people, poverty, and hunger within developing coun-
11 tries.

12 (2) The strategic, social, political, economic,
13 cultural, and environmental consequences of global
14 climate change are likely to have disproportionate
15 adverse impacts on developing countries, which have
16 less economic capacity to respond to such impacts.

17 (3) The countries most vulnerable to climate
18 change, due both to greater exposure to harmful im-
19 pacts and to lower capacity to adapt, are developing
20 countries with very low industrial greenhouse gas
21 emissions that have contributed less to climate
22 change than more affluent countries.

23 (4) To a much greater degree than developed
24 countries, developing countries rely on the natural
25 and environmental systems likely to be affected by

1 climate change for sustenance, livelihoods, and eco-
2 nomic growth and stability.

3 (5) Within developing countries there may be
4 varying climate change adaptation and resilience
5 needs among different communities and populations,
6 including impoverished communities, children,
7 women, and indigenous peoples.

8 (6) The consequences of global climate change,
9 including increases in poverty and destabilization of
10 economies and societies, are likely to pose long-term
11 challenges to the national security, foreign policy,
12 and economic interests of the United States.

13 (7) It is in the national security, foreign policy,
14 and economic interests of the United States to rec-
15 ognize, plan for, and mitigate the international stra-
16 tegic, social, political, cultural, environmental,
17 health, and economic effects of climate change and
18 to assist developing countries to increase their resil-
19 ience to those effects.

20 (8) Under Article 4 of the United Nations
21 Framework Convention on Climate Change, devel-
22 oped country parties, including the United States,
23 committed to “assist the developing country parties
24 that are particularly vulnerable to the adverse effects

1 of climate change in meeting costs of adaptation to
2 those adverse effects”.

3 (9) Under the Bali Action Plan, developed
4 country parties to the United Nations Framework
5 Convention on Climate Change, including the United
6 States, committed to “enhanced action on the provi-
7 sion of financial resources and investment to support
8 action on mitigation and adaptation and technology
9 cooperation,” including, inter alia, consideration of
10 “improved access to adequate, predictable, and sus-
11 tainable financial resources and financial and tech-
12 nical support, and the provision of new and addi-
13 tional resources, including official and concessional
14 funding for developing country parties”.

15 (b) PURPOSES.—The purposes of this part are—

16 (1) to provide new and additional assistance
17 from the United States to the most vulnerable devel-
18 oping countries, including the most vulnerable com-
19 munities and populations therein, in order to sup-
20 port the development and implementation of climate
21 change adaptation programs and activities that re-
22 duce the vulnerability and increase the resilience of
23 communities to climate change impacts, including
24 impacts on water availability, agricultural produc-
25 tivity, flood risk, coastal resources, timing of sea-

1 sons, biodiversity, economic livelihoods, health and
2 diseases, and human migration; and

3 (2) to provide such assistance in a manner that
4 protects and promotes the national security, foreign
5 policy, environmental, and economic interests of the
6 United States to the extent such interests may be
7 advanced by minimizing, averting, or increasing re-
8 silience to climate change impacts.

9 **SEC. 492. DEFINITIONS.**

10 In this part:

11 (1) ALLOWANCE.—The term “allowance”
12 means an emission allowance established under sec-
13 tion 721 of the Clean Air Act.

14 (2) APPROPRIATE CONGRESSIONAL COMMIT-
15 TEES.—The term “appropriate congressional com-
16 mittees” means—

17 (A) the Committees on Energy and Com-
18 merce, Financial Services, and Foreign Affairs
19 of the House of Representatives; and

20 (B) the Committees on Environment and
21 Public Works and Foreign Relations of the Sen-
22 ate.

23 (3) 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 (4) MOST VULNERABLE DEVELOPING COUN-
5 TRIES.—The term “most vulnerable developing
6 countries” means, as determined by the Adminis-
7 trator of USAID, developing countries that are at
8 risk of substantial adverse impacts of climate change
9 and have limited capacity to respond to such im-
10 pacts, considering the approaches included in any
11 international treaties and agreements.

12 (5) MOST VULNERABLE COMMUNITIES AND
13 POPULATIONS.—The term “most vulnerable commu-
14 nities and populations” means communities and pop-
15 ulations that are at risk of substantial adverse im-
16 pacts of climate change and have limited capacity to
17 respond to such impacts, including impoverished
18 communities, children, women, and indigenous peo-
19 ples.

20 (6) PROGRAM.—The term “Program” means
21 the International Climate Change Adaptation Pro-
22 gram established under section 493.

23 (7) USAID.—The term “USAID” means the
24 United States Agency for International Develop-
25 ment.

1 **SEC. 494. DISTRIBUTION OF ALLOWANCES.**

2 (a) IN GENERAL.—The Secretary of State, or such
3 other Federal agency head as the President may des-
4 ignate, after consultation with the Secretary of the Treas-
5 ury, the Administrator of USAID, and the Administrator
6 of the Environmental Protection Agency, shall direct the
7 distribution of allowances to carry out the Program—

8 (1) in the form of bilateral assistance pursuant
9 to the requirements under section 495;

10 (2) to multilateral funds or international insti-
11 tutions pursuant to the Convention or an agreement
12 negotiated under the Convention; or

13 (3) through a combination of the mechanisms
14 identified under paragraphs (1) and (2).

15 (b) LIMITATION.—

16 (1) CONDITIONAL DISTRIBUTION TO MULTILAT-
17 ERAL FUNDS OR INTERNATIONAL INSTITUTIONS.—

18 In any fiscal year, the Secretary of State, or such
19 other Federal agency head as the President may
20 designate, in consultation with the Administrator of
21 USAID, the Secretary of the Treasury, and the Ad-
22 ministrator of the Environmental Protection Agency,
23 shall distribute at least 40 percent and up to 60 per-
24 cent of the allowances available to carry out the Pro-
25 gram to one or more multilateral funds or inter-
26 national institutions that meet the requirements of

1 paragraph (2), if any such fund or institution exists,
2 and shall annually certify in a report to the appro-
3 priate congressional committees that any multilat-
4 eral fund or international institution receiving allow-
5 ances under this section meets the requirements of
6 paragraph (2) or that no multilateral fund or inter-
7 national institution that meets the requirements of
8 paragraph (2) exists, as the case may be. The Sec-
9 retary of State shall notify the appropriate congress-
10 sional committees not less than 15 days prior to any
11 transfer of allowances to a multilateral fund or
12 international institution pursuant to this section.

13 (2) MULTILATERAL FUND OR INTERNATIONAL
14 INSTITUTION ELIGIBILITY.—A multilateral fund or
15 international institution is eligible to receive allow-
16 ances available to carry out the Program—

17 (A) if—

18 (i) such fund or institution is estab-
19 lished pursuant to—

20 (I) the Convention; or

21 (II) an agreement negotiated
22 under the Convention; or

23 (ii) the allowances are directed to one
24 or more multilateral development banks or
25 international development institutions, pur-

1 suant to an agreement negotiated under
2 such Convention; and

3 (B) if such fund or institution—

4 (i) specifies the terms and conditions
5 under which the United States is to pro-
6 vide allowances to the fund or institution,
7 and under which the fund or institution is
8 to provide assistance to recipient countries;

9 (ii) ensures that assistance from the
10 United States to the fund or institution
11 and the principal and income of the fund
12 or institution are disbursed only for pur-
13 poses that are consistent with those de-
14 scribed in section 491(b)(1);

15 (iii) requires a regular meeting of a
16 governing body of the fund or institution
17 that includes representation from countries
18 among the most vulnerable developing
19 countries and provides public access;

20 (iv) requires that local communities
21 and indigenous peoples in areas where any
22 activities or programs are planned are en-
23 gaged through adequate disclosure of in-
24 formation, public participation, and con-
25 sultation; and

1 (v) prepares and makes public an an-
2 nual report that—

3 (I) describes the process and
4 methodology for selecting the recipi-
5 ents of assistance from the fund or in-
6 stitution, including assessments of
7 vulnerability;

8 (II) describes specific programs
9 and activities supported by the fund
10 or institution and the extent to which
11 the assistance is addressing the adap-
12 tation needs of the most vulnerable
13 developing countries, and the most
14 vulnerable communities and popu-
15 lations therein;

16 (III) describes the performance
17 goals for assistance authorized under
18 the fund or institution and expresses
19 such goals in an objective and quan-
20 tifiable form, to the extent practicable;

21 (IV) describes the performance
22 indicators to be used in measuring or
23 assessing the achievement of the per-
24 formance goals described in subclause
25 (III);

1 (V) provides a basis for rec-
2 ommendations for adjustments to as-
3 sistance authorized under this part to
4 enhance the impact of such assist-
5 ance; and

6 (VI) describes the participation
7 of other nations and international or-
8 ganizations in supporting and gov-
9 erning the fund or institution.

10 (c) OVERSIGHT.—

11 (1) DISTRIBUTION TO MULTILATERAL FUNDS
12 OR INTERNATIONAL INSTITUTIONS.—The Secretary
13 of State, or such other Federal agency head as the
14 President may designate, in consultation with the
15 Administrator of USAID, shall oversee the distribu-
16 tion of allowances available to carry out the Pro-
17 gram to a multilateral fund or international institu-
18 tion under subsection (b).

19 (2) BILATERAL ASSISTANCE.—The Adminis-
20 trator of USAID, in consultation with the Secretary
21 of State, shall oversee the distribution of allowances
22 available to carry out the Program for bilateral as-
23 sistance under section 495.

24 **SEC. 495. BILATERAL ASSISTANCE.**

25 (a) ACTIVITIES AND FOREIGN AID.—

1 (1) IN GENERAL.—In order to achieve the pur-
2 poses of this part, the Administrator of USAID may
3 carry out programs and activities and distribute al-
4 lowances to any private or public group (including
5 international organizations and faith-based organiza-
6 tions), association, or other entity engaged in peace-
7 ful activities to—

8 (A) provide assistance to the most vulner-
9 able developing countries for—

10 (i) the development of national or re-
11 gional climate change adaptation plans, in-
12 cluding a systematic assessment of socio-
13 economic vulnerabilities in order to identify
14 the most vulnerable communities and pop-
15 ulations;

16 (ii) associated national policies; and

17 (iii) planning, financing, and execu-
18 tion of adaptation programs and activities;

19 (B) support investments, capacity-building
20 activities, and other assistance, to reduce vul-
21 nerability and promote community-level resil-
22 ience related to climate change and its impacts
23 in the most vulnerable developing countries, in-
24 cluding impacts on water availability, agricul-
25 tural productivity, flood risk, coastal resources,

1 timing of seasons, biodiversity, economic liveli-
2 hoods, health, human migration, or other social,
3 economic, political, cultural, or environmental
4 matters;

5 (C) support climate change adaptation re-
6 search in or for the most vulnerable developing
7 countries;

8 (D) reduce vulnerability and provide in-
9 creased resilience to climate change for local
10 communities and livelihoods in the most vulner-
11 able developing countries by encouraging—

12 (i) the protection and rehabilitation of
13 natural systems;

14 (ii) the enhancement and diversifica-
15 tion of agricultural, fishery, and other live-
16 lihoods; and

17 (iii) the reduction of disaster risks;

18 (E) support the deployment of technologies
19 to help the most vulnerable developing countries
20 respond to the destabilizing impacts of climate
21 change and encourage the identification and
22 adoption of appropriate renewable and efficient
23 energy technologies that are beneficial in in-
24 creasing community-level resilience to the im-

1 pacts of global climate change in those coun-
2 tries; and

3 (F) encourage the engagement of local
4 communities through disclosure of information,
5 consultation, and the communities' informed
6 participation relating to the development of
7 plans, programs, and activities to increase com-
8 munity-level resilience to climate change im-
9 pacts.

10 (2) LIMITATIONS.—Not more than 10 percent
11 of the allowances made available to carry out bilat-
12 eral assistance under this part in any year shall be
13 distributed to support activities in any single coun-
14 try.

15 (3) PRIORITIZING ASSISTANCE.—In providing
16 assistance under this section, the Administrator of
17 USAID shall give priority to countries, including the
18 most vulnerable communities and populations there-
19 in, that are most vulnerable to the adverse impacts
20 of climate change, determined by the likelihood and
21 severity of such impacts and the country's capacity
22 to adapt to such impacts.

23 (b) COMMUNITY ENGAGEMENT.—

24 (1) IN GENERAL.—The Administrator of
25 USAID shall ensure that local communities, includ-

1 ing the most vulnerable communities and popu-
2 lations therein, in areas where any programs or ac-
3 tivities are carried out pursuant to this section are
4 engaged in, through disclosure of information, public
5 participation, and consultation, the design, imple-
6 mentation, monitoring, and evaluation of such pro-
7 grams and activities.

8 (2) CONSULTATION AND DISCLOSURE.—For
9 each country receiving assistance under this section,
10 the Administrator of USAID shall establish a proc-
11 ess for consultation with, and disclosure of informa-
12 tion to, local, national, and international stake-
13 holders regarding any programs and activities car-
14 ried out pursuant to this section.

15 (c) COORDINATION.—

16 (1) ALIGNMENT OF ACTIVITIES.—Subject to the
17 direction of the President and the Secretary of
18 State, the Administrator of USAID shall, to the ex-
19 tent practicable, seek to align activities under this
20 section with broader development, poverty allevi-
21 ation, or natural resource management objectives
22 and initiatives in the recipient country.

23 (2) COORDINATION OF ACTIVITIES.—The Ad-
24 ministrator of USAID shall ensure that there is co-
25 ordination among the activities under this section,

1 subtitle D of this title, and part E of title VII of the
2 Clean Air Act, in order to maximize the effectiveness
3 of United States assistance to developing countries.

4 (d) REPORTING.—

5 (1) INITIAL REPORT.—Not later than 180 days
6 after the date of enactment of this part, the Admin-
7 istrator of USAID, in consultation with the Sec-
8 retary of State, shall submit to the President and
9 the appropriate congressional committees an initial
10 report that—

11 (A) based on the most recent information
12 available from reliable public sources or knowl-
13 edge obtained by USAID on a reliable basis, as
14 determined by the Administrator of USAID,
15 identifies the developing countries, including the
16 most vulnerable communities and populations
17 therein, that are most vulnerable to climate
18 change impacts and in which assistance may
19 have the greatest and most sustainable benefit
20 in reducing vulnerability to climate change; and

21 (B) describes the process and methodology
22 for selecting the recipients of assistance under
23 subsection (a)(1).

24 (2) ANNUAL REPORTS.—Not later than 18
25 months after the date on which the initial report is

1 submitted pursuant to paragraph (1), and annually
2 thereafter, the Administrator of USAID, in consulta-
3 tion with the Secretary of State, shall submit to the
4 President and the appropriate congressional commit-
5 tees a report that—

6 (A) describes the extent to which global cli-
7 mate change, through its potential negative im-
8 pacts on sensitive populations and natural re-
9 sources in the most vulnerable developing coun-
10 tries, may threaten, cause, or exacerbate polit-
11 ical, economic, environmental, cultural, or social
12 instability or international conflict in those re-
13 gions;

14 (B) describes the ramifications of any po-
15 tentially destabilizing impacts climate change
16 may have on the national security, foreign pol-
17 icy, and economic interests of the United
18 States, including—

19 (i) the creation of environmental mi-
20 grants and internally displaced peoples;

21 (ii) international or internal armed
22 conflicts over water, food, land, or other
23 resources;

24 (iii) loss of agricultural and other live-
25 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.

7 **Subtitle F—Deficit Neutral** 8 **Budgetary Treatment**

9 **SEC. 496. DEFICIT NEUTRALITY.**

10 (a) FUNDS ESTABLISHED.—Funds established under
11 sections 422, 467, and 480 of this Act are to be treated
12 as separate accounts in the Treasury and shall be known
13 as “the Funds”.

14 (b) AVAILABILITY.—Funds appropriated or made
15 available pursuant to sections 422(b), 467(b), and
16 480(b)(2) are only available for the purposes set forth
17 under this Act. Receipts in the Funds and appropriations
18 therefrom shall not be available and are precluded from
19 obligation for any other purpose.

20 (c) ESTIMATION OF BUDGETARY IMPACT.—For the
21 purposes of estimating the revenue and spending effects
22 of this Act;

23 (1) the revenue assumed to be deposited into
24 the Funds established under sections 422, 467, and
25 480, shall be attributed to this Act; and

1 (2) the authorization or availability of appro-
2 priations from the Funds shall be treated as new di-
3 rect spending and attributed to this Act.

4 (d) BUDGETARY TREATMENT.—For the purposes of
5 section 257 of the Balanced Budget and Emergency Def-
6 icit Control Act of 1985, the Funds, and amounts subse-
7 quently appropriated or made available for the purposes
8 for which such Funds were established, shall be deemed
9 to be included on the list of appropriations referenced
10 under section 250(c)(17) of that Act. Such appropriations
11 from each Fund shall not be in excess of the amounts de-
12 posited into the respective Fund in the previous year.

13 **TITLE V—AGRICULTURAL AND**
14 **FORESTRY RELATED OFFSETS**
15 **Subtitle A—Offset Credit Program**
16 **From Domestic Agricultural and**
17 **Forestry Sources**

18 **SEC. 501. DEFINITIONS.**

19 (a) IN GENERAL.—In this title:

20 (1) ADDITIONAL.—The term “additional”,
21 when used with respect to reductions or avoidance of
22 greenhouse gas emissions, or to sequestration of
23 greenhouse gases, means reductions, avoidance, or
24 sequestration that result in a lower level of net
25 greenhouse gas emissions or atmospheric concentra-

1 tions than would occur in the absence of an offset
2 project.

3 (2) ADDITIONALITY.—The term “additionality”
4 means the extent to which reductions or avoidance
5 of greenhouse gas emissions, or sequestration of
6 greenhouse gases, are additional.

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

10 (4) ADVISORY COMMITTEE.—The term “Advi-
11 sory Committee” means the USDA Greenhouse Gas
12 Emission Reduction and Sequestration Advisory
13 Committee established under section 1245(f) of the
14 Food Security Act of 1985 (16 U.S.C. 3845).

15 (5) GREENHOUSE GAS.—The term “greenhouse
16 gas” means any of the following:

17 (A) Carbon dioxide.

18 (B) Methane.

19 (C) Nitrous oxide.

20 (D) Sulfur hexafluoride.

21 (E) Hydrofluorocarbons from a chemical
22 manufacturing process at an industrial sta-
23 tionary source.

24 (F) Any perfluorocarbon.

25 (G) Nitrogen trifluoride.

1 (H) Any other anthropogenic gas des-
2 igned as a greenhouse gas by the Adminis-
3 trator.

4 (6) LEAKAGE.—The term “leakage” means a
5 significant and quantifiable increase in greenhouse
6 gas emissions, or a significant and quantifiable de-
7 crease in sequestration, which is caused by an offset
8 practice and occurs outside the boundaries of the
9 offset practice.

10 (7) OFFSET CREDIT.—The term “offset credit”
11 means a tradeable compliance instrument that—

12 (A) represents the reduction, avoidance, or
13 sequestration of 1 ton of carbon dioxide equiva-
14 lent; and

15 (B) is issued pursuant to this title.

16 (8) OFFSET PRACTICE.—The term “offset prac-
17 tice” means an activity that reduces, avoids, or se-
18 questers greenhouse gas emissions, and for which
19 offset credits may be issued pursuant to this title.

20 (9) OFFSET PRODUCER.—The term “offset pro-
21 ducer” means an owner, operator, landlord, tenant,
22 or sharecropper who has or shares responsibility for
23 ensuring that an offset practice is established and
24 maintained during the crediting period for purposes
25 of an offset credit.

1 (10) OFFSET PROJECT.—The term “offset
2 project” means a practice or set of practices that re-
3 duce or avoid greenhouse gas emissions, or sequester
4 greenhouse gases as implemented by an offset pro-
5 ducer.

6 (11) OFFSET PROJECT DEVELOPER.—The term
7 “offset project developer” means the offset producer
8 or designee of the offset producer.

9 (12) PRACTICE TYPE.—The term “practice
10 type” means a discrete category of offset practices
11 for which the Secretary develops a standardized
12 methodology to accurately estimate the amount of
13 greenhouse gas emissions reduced or avoided or
14 greenhouse gases sequestered.

15 (13) REVERSAL.—The term “reversal” means
16 an intentional or unintentional loss of sequestered
17 greenhouse gases to the atmosphere.

18 (14) SECRETARY.—The term “Secretary”
19 means the Secretary of Agriculture.

20 (15) SEQUESTRATION AND SEQUESTERED.—
21 The terms “sequestered” and “sequestration” mean
22 the separation, isolation, or removal of greenhouse
23 gases from the atmosphere, as determined by the
24 Secretary. The terms include biological sequestra-

1 tion, but do not include ocean fertilization tech-
2 niques.

3 (16) **TERM OFFSET CREDIT.**—The term “term
4 offset credit” means a compliance instrument au-
5 thorized under section 504(d).

6 (b) **AGRICULTURAL AND FORESTRY EXCEPTION TO**
7 **DEFINITION OF CAPPED SECTOR.**—For purposes of this
8 title and title III of this Act, and amendments made by
9 such titles, the term “capped sector” means a sector of
10 economic activity that directly emits capped emissions, in-
11 cluding the industrial sector, the electricity generation sec-
12 tor, the transportation sector, and the residential and
13 commercial sectors (to the extent they burn oil or natural
14 gas), but not including the agricultural or forestry sectors.

15 **SEC. 502. ESTABLISHMENT OF OFFSET CREDIT PROGRAM**
16 **FROM DOMESTIC AGRICULTURAL AND FOR-**
17 **ESTRY SOURCES.**

18 (a) **ESTABLISHMENT.**—Not later than 1 year after
19 the date of enactment of this title, the Secretary shall es-
20 tablish a program governing the generation of offset cred-
21 its from domestic agricultural and forestry sources.

22 (b) **REQUIREMENTS.**—The program described in sub-
23 section (a) shall—

24 (1) ensure that offset credits represent
25 verifiable and additional greenhouse gas emission re-

1 ductions or avoidance, or increases in sequestration;
2 and

3 (2) ensure that offset credits issued for seques-
4 tration offset projects are only issued for greenhouse
5 gas reductions that result in a permanent net reduc-
6 tion in atmospheric greenhouse gases.

7 (c) DUTIES OF SECRETARY.—In addition to the du-
8 ties described in subsection (a) and section 1245 of the
9 Food Security Act of 1985 (16 U.S.C. 3845), the Sec-
10 retary shall, with respect to practices relating to offset
11 credits from agricultural and forestry sources—

12 (1) establish by rule methodologies by practice
13 types for quantifying greenhouse gas benefits;

14 (2) establish by rule methodologies for each
15 practice type for establishing activity baselines and
16 determining additionality;

17 (3) establish by rule methodologies by practice
18 types for accounting for and mitigating potential
19 leakage;

20 (4) establish rules to account for and address
21 reversals;

22 (5) establish rules to require third-party
23 verification;

1 (6) provide technical assistance to offset project
2 developers using funds appropriated to the Con-
3 servation Operations account;

4 (7) establish rules for approval of offset project
5 plans;

6 (8) establish rules for certification of implemen-
7 tation of offset project plans;

8 (9) establish by rule requirements for reporting
9 and record keeping; and

10 (10) conduct audits.

11 **SEC. 503. LIST OF ELIGIBLE DOMESTIC AGRICULTURAL**
12 **AND FORESTRY OFFSET PRACTICE TYPES.**

13 (a) LIST REQUIRED.—

14 (1) PREPARATION AND PUBLICATION.—Not
15 later than 1 year after the date of enactment of this
16 title, the Secretary shall prepare and publish in the
17 Federal Register a list of domestic agricultural and
18 forestry practice types that are eligible to generate
19 offset credits under this title because the practices
20 avoid or reduce greenhouse gas emissions or seques-
21 ter greenhouse gases.

22 (2) RECOMMENDATIONS.—In preparing the list
23 under paragraph (1), the Secretary shall take into
24 consideration the recommendations of the Advisory
25 Committee.

1 (b) INITIAL LIST.—At a minimum, the list prepared
2 under this section shall include those practices that avoid
3 or reduce greenhouse gas emissions or sequester green-
4 house gases, such as—

5 (1) agricultural, grassland, and rangeland se-
6 questration and management practices, including—

7 (A) altered tillage practices;

8 (B) winter cover cropping, continuous
9 cropping, and other means to increase biomass
10 returned to soil in lieu of planting followed by
11 fallowing;

12 (C) reduction of nitrogen fertilizer use or
13 increase in nitrogen use efficiency;

14 (D) reduction in the frequency and dura-
15 tion of flooding of rice paddies;

16 (E) reduction in carbon emissions from or-
17 ganic soils;

18 (F) reduction in greenhouse gas emissions
19 from manure and effluent; and

20 (G) reduction in greenhouse gas emissions
21 due to changes in animal management prac-
22 tices, including dietary modifications;

23 (2) changes in carbon stocks attributed to land
24 use change and forestry activities, including—

1 (A) afforestation or reforestation of acre-
2 age that is not forested;

3 (B) forest management resulting in an in-
4 crease in forest carbon stores including but not
5 limited to harvested wood products;

6 (C) management of peatland or wetland;

7 (D) conservation of grassland and forested
8 land;

9 (E) improved forest management, includ-
10 ing accounting for carbon stored in wood prod-
11 ucts;

12 (F) reduced deforestation or avoided forest
13 conversion;

14 (G) urban tree-planting and maintenance;

15 (H) agroforestry; and

16 (I) adaptation of plant traits or new tech-
17 nologies that increase sequestration by forests;
18 and

19 (3) manure management and disposal, includ-
20 ing—

21 (A) waste aeration;

22 (B) biogas capture and combustion; and

23 (C) application to fields as a substitute for
24 commercial fertilizer.

25 (c) ADDITIONS AND REVISIONS TO LIST.—

1 (1) PERIODIC REVISION.—Not later than 2
2 years after the date of enactment of this title, and
3 every 2 years thereafter, the Secretary, after public
4 notice and opportunity for comment, shall add to
5 and revise the types of offset practices to the list es-
6 tablished under subsection (a) if those types of prac-
7 tices meet the standards for environmental integrity
8 that are consistent with the purposes of this title.

9 (2) CONSIDERATION OF PETITIONS.—The Sec-
10 retary shall—

11 (A) consider petitions to add types of off-
12 set practices to the list established under sub-
13 section (a); and

14 (B) add those types of offset practices to
15 the list if the types of offset practices meet
16 standards for environmental integrity consistent
17 with the purposes of this title.

18 (3) TIME FOR CONSIDERATION OF PETI-
19 TIONS.—Not later than 1 year after the receipt of
20 a petition under paragraph (2), the Secretary shall
21 make a decision to either grant or deny the petition
22 and publish a written explanation of the reasons for
23 the Secretary's decision. The Secretary may not
24 deny a petition under this subsection on the basis of

1 inadequate Department of Agriculture resources at
2 the time of the review.

3 **SEC. 504. REQUIREMENTS FOR DOMESTIC AGRICULTURAL**
4 **AND FORESTRY PRACTICES.**

5 (a) **METHODOLOGIES.**—

6 (1) **IN GENERAL; CONDITION.**—In promulgating
7 regulations under section 502, the Secretary shall
8 establish methodologies for domestic agricultural
9 and forestry practices listed under section 503, if
10 the Secretary determines that methodologies can be
11 established for such practices that meet each of the
12 requirements of this section. The Secretary shall
13 only issue offset credits under this title pursuant to
14 promulgated methodologies applicable to the offset
15 practice that avoided or reduced greenhouse gas
16 emissions or sequestered greenhouse gases.

17 (2) **SPECIFIED METHODOLOGIES.**—The Sec-
18 retary shall establish the following methodologies
19 under this section:

20 (A) **ACTIVITY BASELINES.**—A standardized
21 methodology for establishing activity baselines
22 for an offset practice of that type. The Sec-
23 retary shall set activity baselines to reflect a
24 conservative estimate of performance or activi-
25 ties for the relevant type of practice (excluding

1 changes in performance or activities due to the
2 availability of offset credits) such that the base-
3 line provides an adequate margin of safety to
4 ensure the environmental integrity of offset
5 credits calculated in reference to such baseline.

6 (B) ADDITIONALITY.—A standardized
7 methodology for determining the additionality
8 of greenhouse gas emissions reduction or avoid-
9 ance, or greenhouse gas sequestration, achieved
10 by an offset practice of that type. Such method-
11 ology shall ensure, at a minimum, that any
12 greenhouse gas emission reduction or avoidance,
13 or any greenhouse gas sequestration, is consid-
14 ered additional only to the extent that it results
15 from activities that—

16 (i) are not required by existing gov-
17 ernment regulations, as determined by the
18 Secretary;

19 (ii) were not commenced prior to Jan-
20 uary 1, 2009, except in the case of—

21 (I) offset project activities that
22 commenced after January 1, 2001,
23 and were registered as of the date of
24 enactment of this title under an offset
25 program with respect to which an af-

1 firmative determination has been
2 made under section 740 of the Clean
3 Air Act; or

4 (II) activities that are readily re-
5 versible, with respect to which the
6 Secretary may set an alternative ear-
7 lier date under this subparagraph that
8 is not earlier than January 1, 2001,
9 where the Secretary determines that
10 setting such an alternative date may
11 produce an environmental benefit by
12 removing an incentive to cease and
13 then reinitiate activities that began
14 prior to January 1, 2009; and

15 (iii) exceed the applicable activity
16 baseline established under paragraph (2).

17 (C) QUANTIFICATION METHODS.—A stand-
18 ardized methodology for determining the extent
19 to which greenhouse gas emission reductions or
20 avoidance, or greenhouse gas sequestration,
21 achieved by an offset practice of that type ex-
22 ceeded a relevant activity baseline, including
23 methods for monitoring and accounting for un-
24 certainty.

1 (D) LEAKAGE.—A standardized method-
2 ology for accounting for and mitigating poten-
3 tial leakage, if any, from an offset practice of
4 that type, taking uncertainty into account, ex-
5 cluding international indirect land use changes
6 unless a positive determination is made under
7 section 211(o)(13)(C)(iii) of the Clean Air Act.

8 (b) SPECIAL CONSIDERATIONS.—

9 (1) EXISTING OFFSET PRACTICES.—In estab-
10 lishing the methodologies under subsection (a), the
11 Secretary shall give due consideration to methodolo-
12 gies for offset practices existing as of the date of the
13 enactment of this title.

14 (2) CERTAIN FACTORS.—As part of the meth-
15 odologies established under subsection (a), the Sec-
16 retary shall establish a formula that takes into ac-
17 count the components of the practice, the character-
18 istics of the land on which the practice is applied,
19 the crop produced, and such other factors as deter-
20 mined appropriate by the Secretary.

21 (c) ACCOUNTING FOR REVERSALS.—

22 (1) IN GENERAL.—Except as provided in sub-
23 section (d) with respect to issuance of a term offset
24 credit, for each type of practice listed under section

1 503, the Secretary shall establish requirements to
2 account for and address reversals, including—

3 (A) a requirement to report any reversal
4 with respect to an offset practice for which off-
5 set credits have been issued under this title;

6 (B) provisions to require emission allow-
7 ances or offset credits to be held in amounts to
8 fully compensate for greenhouse gas emissions
9 attributable to reversals, and to assign responsi-
10 bility for holding such emission allowances; and

11 (C) any other provisions that the Secretary
12 determines to be necessary to account for and
13 address reversals.

14 (2) MECHANISMS.—

15 (A) IN GENERAL.—The Secretary shall
16 prescribe mechanisms to ensure that any se-
17 questration of greenhouse gases, with respect to
18 which an offset credit is issued under this title,
19 results in a permanent net increase in seques-
20 tration of greenhouse gases, and that full ac-
21 count is taken of any actual or potential rever-
22 sal of such sequestration, with an adequate
23 margin of safety.

24 (B) SPECIFIC MECHANISMS.—The Sec-
25 retary shall make available one or more of the

1 following mechanisms to meet the requirements
2 of this paragraph:

3 (i) An offsets reserve, pursuant to
4 paragraph (3).

5 (ii) Insurance that provides for pur-
6 chase and provision to the Secretary for
7 retirement of a quantity of offset credits or
8 emission allowances equal in number to the
9 tons of carbon dioxide equivalents of green-
10 house gas emissions released due to rever-
11 sal.

12 (iii) Another mechanism if the Sec-
13 retary determines it is necessary to satisfy
14 the requirements of this title, taking into
15 account whether the reversal was inten-
16 tional or unintentional.

17 (3) OFFSETS RESERVE.—

18 (A) IN GENERAL.—An offsets reserve re-
19 ferred to in paragraph (2)(B)(i) is a program
20 under which, before issuance of offset credits
21 under this title, the Secretary shall—

22 (i) subtract and reserve from the
23 quantity to be issued a quantity of offset
24 credits based on the risk of reversal;

1 (ii) hold those reserved offset credits
2 in the offsets reserve; and

3 (iii) register the holding of the re-
4 served offset credits in an offset registry.

5 (B) PRACTICE REVERSAL.—

6 (i) IN GENERAL.—If a reversal has
7 occurred with respect to an offset practice
8 within an offset project, for which offset
9 credits are reserved under this paragraph,
10 the Secretary shall retire offset credits
11 from the offsets reserve to fully account
12 for the tons of carbon dioxide equivalent
13 that are no longer sequestered.

14 (ii) INTENTIONAL REVERSALS.—If the
15 Secretary determines that a reversal was
16 intentional, the offset practice developer
17 for the relevant offset practice shall place
18 into the offsets reserve a quantity of offset
19 credits, or combination of offset credits
20 and emission allowances, equal in number
21 to the number of reserve offset credits that
22 were retired pursuant to clause (i).

23 (iii) UNINTENTIONAL REVERSALS.—If
24 the Secretary determines that a reversal
25 was unintentional, the offset project devel-

1 oper for the relevant offset project shall
2 place into the offsets reserve a quantity of
3 offset credits, or combination of offset
4 credits and emission allowances, equal in
5 number to half the number of offset credits
6 that were reserved for that offset project,
7 or half the number of reserve offset credits
8 that were canceled due to the reversal pur-
9 suant to clause (i), whichever is less, ex-
10 cept that the Secretary may lower this
11 amount based on undue hardship in the
12 event of a catastrophic occurrence.

13 (C) USE OF RESERVED OFFSET CRED-
14 ITS.—Offset credits placed into the offsets re-
15 serve under this paragraph may not be used to
16 comply with section 722 of the Clean Air Act.

17 (d) TERM OFFSET CREDITS.—

18 (1) APPLICABILITY.—With respect to a practice
19 listed under section 503 that sequesters greenhouse
20 gases and has a crediting period of no more than 5
21 years, the Secretary may address reversals pursuant
22 to this subsection in lieu of permanently accounting
23 for reversals pursuant to subsection (c).

24 (2) ACCOUNTING FOR REVERSALS.—For such
25 practices or projects implementing such practices,

1 the Secretary shall require only reversals that occur
2 during the crediting period to be accounted for and
3 addressed pursuant to subsection (c).

4 (3) CREDITS ISSUED.—For practices or projects
5 regulated pursuant to paragraph (2), the Secretary
6 shall issue under section 507 a term offset credit, in
7 lieu of an offset credit, for each ton of carbon diox-
8 ide equivalent that has been sequestered.

9 (e) CREDITING PERIODS.—

10 (1) IN GENERAL.—For each offset practice type
11 within an offset project, the Secretary shall specify
12 a crediting period, and establish provisions for re-
13 enrollment for a subsequent crediting period, in ac-
14 cordance with this subsection.

15 (2) DURATION.—The crediting period shall
16 have a term of up to—

17 (A) 5 years for agricultural sequestration
18 practices;

19 (B) 20 years for forestry sequestration
20 practices; and

21 (C) 10 years for other practice types that
22 reduce or avoid greenhouse gas emissions or se-
23 quester greenhouse gases.

24 (3) ELIGIBILITY.—An offset practice, within an
25 offset project, shall—

1 (A) be eligible to generate offset credits
2 under this title only during the crediting period
3 of the offset practice; and

4 (B) remain eligible to generate offset cred-
5 its, only during the crediting period, subject to
6 the methodologies and practice type eligibility
7 list that applied as of the date of the project
8 approval.

9 (4) REENROLLMENT FOR SUBSEQUENT CRED-
10 ITING PERIOD.—

11 (A) REENROLLMENT AUTHORIZED; TIME
12 FOR REENROLLMENT.—An offset project devel-
13 oper may reenroll for a subsequent crediting pe-
14 riod, to commence after termination of the cur-
15 rent crediting period, subject to the methodolo-
16 gies and practice type eligibility list in effect at
17 the time of reenrollment. Reenrollment may not
18 occur more than 18 months before the end of
19 the crediting period then in effect.

20 (B) LIMITATION.—The Secretary may
21 limit the number of subsequent crediting peri-
22 ods available for a particular practice type.

23 (f) ENVIRONMENTAL INTEGRITY.—In establishing
24 the requirements under this section, the Secretary shall
25 apply conservative assumptions or methods to ensure the

1 environmental integrity of the cap established under sec-
2 tion 703 of the Clean Air Act is not compromised.

3 **SEC. 505. PROJECT PLAN SUBMISSION AND APPROVAL.**

4 (a) **PROJECT PLAN REQUIRED.**—An offset project
5 developer shall submit to the Secretary an offset project
6 plan for approval.

7 (b) **REQUIREMENTS.**—As part of the regulations pro-
8 mulgated under this title, the Secretary shall include pro-
9 visions for, and shall specify, the required components of
10 an offset project plan, including—

11 (1) designation of an offset project developer;

12 (2) a list and schedule of the practices to be im-
13 plemented;

14 (3) any other information that the Secretary
15 considers to be necessary—

16 (A) to determine whether the offset prac-
17 tice, within the offset project, is eligible for
18 issuance of offset credits under regulations pro-
19 mulgated under this title; and

20 (B) to achieve the purposes of this title.

21 (c) **TIME FOR CONSIDERATION; NOTIFICATION.**—Not
22 later than 90 days after receiving a complete offset project
23 plan under subsection (a), the Secretary shall—

24 (1) approve the plan in writing and include an
25 estimate of the offset project credits that will be

1 earned if the plan is implemented, subject to
2 verification of all project-specific variables; or

3 (2) if the plan is denied, provide the reasons for
4 denial in writing.

5 (d) APPEAL.—The Secretary shall establish proce-
6 dures for appeal and review of determinations made under
7 this section.

8 (e) RESUBMISSION.—After an offset project plan is
9 approved, the offset project developer shall not be required
10 to resubmit a project plan during the crediting period.

11 **SEC. 506. VERIFICATION OF OFFSET PRACTICES.**

12 (a) IN GENERAL.—As part of the regulations promul-
13 gated under this title, the Secretary shall establish re-
14 quirements to verify—

15 (1) that offset practices in an approved offset
16 project plan have been implemented; and

17 (2) the quantity of greenhouse gas emission re-
18 ductions or avoidance, or sequestration of green-
19 house gases, resulting from an offset practice and
20 project.

21 (b) VERIFICATION REPORTS.—

22 (1) IN GENERAL.—The regulations described in
23 subsection (a) shall require an offset project devel-
24 oper to submit a report, prepared by a third-party
25 verifier accredited under subsection (c).

1 (2) REQUIREMENTS.—The Secretary shall
2 specify the components of a verification report re-
3 quired under paragraph (1), including—

4 (A) the name and contact information for
5 the offset project developer;

6 (B) a certification that the project plan
7 has been implemented;

8 (C) the quantity of greenhouse gases re-
9 duced, avoided, or sequestered;

10 (D) a certification establishing that the
11 conflict of interest requirements in the regula-
12 tions promulgated under this title have been
13 complied with;

14 (E) any other information that the Sec-
15 retary requires to determine the quantity of
16 greenhouse gas emission reduction or avoidance,
17 or sequestration of greenhouse gases, resulting
18 from the offset practice and project; and

19 (F) any other information that the Sec-
20 retary considers to be necessary to achieve the
21 purposes of this title.

22 (c) VERIFIER ACCREDITATION.—

23 (1) IN GENERAL.—As part of the regulations
24 promulgated under this title, the Secretary shall es-
25 tablish a process and requirements for periodic ac-

1 creditation of third-party verifiers for offset credits
2 under this program to ensure that those verifiers are
3 professionally qualified and have no conflicts of in-
4 terest.

5 (2) PUBLIC ACCESSIBILITY.—Each verifier
6 meeting the requirements for accreditation in ac-
7 cordance with this subsection shall be listed in a
8 publicly accessible database, which shall be main-
9 tained and updated by the Secretary.

10 **SEC. 507. CERTIFICATION OF OFFSET CREDITS.**

11 (a) DETERMINATION AND NOTIFICATION.—Not later
12 than 90 days after receiving a complete verification report,
13 the Secretary shall—

14 (1) make a determination of the quantity of
15 greenhouse gas emissions that have been reduced or
16 avoided, or greenhouse gases that have been seques-
17 tered, by the offset practice in an approved and
18 verified offset project plan; and

19 (2) notify the offset project developer in writing
20 of the determination.

21 (b) ISSUANCE OF OFFSET CREDITS.—The Secretary
22 shall issue 1 offset credit to an offset project developer
23 for each ton of carbon dioxide equivalent that the Sec-
24 retary determines has been reduced, avoided, or seques-
25 tered during the crediting period. Offset credits may be

1 issued only for greenhouse gas emissions reduced, avoided,
2 or sequestered after January 1, 2009.

3 (c) APPEAL.—The Secretary shall establish proce-
4 dures for appeal and review of determinations made under
5 subsection (a).

6 (d) TIMING.—Offset credits meeting the criteria de-
7 scribed in subsection (b) shall be issued by the Secretary
8 not later than 14 days after the date on which the Sec-
9 retary makes a determination under subsection (a).

10 (e) REGISTRATION.—The Secretary shall obtain from
11 the Administrator a unique serial number to allow for the
12 registration of each offset credit to be issued under this
13 title.

14 **SEC. 508. OWNERSHIP AND TRANSFER OF OFFSET CREDITS.**

15 (a) OWNERSHIP.—Initial ownership of an offset cred-
16 it shall lie with the offset project developer, unless other-
17 wise specified in a legally binding contract or agreement.

18 (b) TRANSFERABILITY.—An offset credit issued
19 under this title may be sold, traded, or transferred, unless
20 the offset credit has expired or been retired.

21 **SEC. 509. PROGRAM REVIEW AND REVISION.**

22 At least once every 5 years, the Secretary shall review
23 and, based on new or updated information and taking into
24 consideration the recommendations of the Advisory Board,
25 update and revise—

1 (1) the list of eligible practice types established
2 under section 503;

3 (2) the methodologies established, including
4 specific activity baselines, under section 504(a);

5 (3) the reversal requirements and mechanisms
6 established or prescribed under subsections (c) and
7 (d) of section 504;

8 (4) measures to improve the accountability of
9 the offsets program; and

10 (5) any other requirements established under
11 this title to ensure the environmental integrity and
12 effective operation of this title.

13 **SEC. 510. ENVIRONMENTAL CONSIDERATIONS.**

14 If the Secretary lists forestry practices as eligible off-
15 set practice types under section 503, the Secretary, in con-
16 sultation with appropriate Federal agencies, shall promul-
17 gate regulations for the selection and use of species in for-
18 estry and other relevant land management-related offset
19 practices—

20 (1) to ensure that native species are given pri-
21 mary consideration in such practices;

22 (2) to encourage the conservation of biological
23 diversity in such practices;

24 (3) to prohibit the use of federally designated
25 or State-designated noxious weeds;

1 (4) to prohibit the use of a species listed by a
2 regional or State invasive plant authority within the
3 applicable region or State; and

4 (5) in accordance with widely accepted, environ-
5 mentally sustainable forestry practices.

6 **SEC. 511. AUDITS.**

7 (a) **AUDITS REQUIRED.**—The Secretary shall con-
8 duct, on an annual basis, random audits of offset projects,
9 offset credits, and the practices of third-party verifiers. At
10 a minimum, the Secretary shall conduct audits each year
11 for a representative sample of practice types and geo-
12 graphical areas.

13 (b) **ADDITIONAL AUTHORITY.**—Nothing in this sec-
14 tion prevents the Secretary from conducting any audit the
15 Secretary considers to be necessary.

16 **Subtitle B—USDA Greenhouse Gas**
17 **Emission Reduction and Seques-**
18 **tration Advisory Committee**

19 **SEC. 531. ESTABLISHMENT OF USDA GREENHOUSE GAS**
20 **EMISSION REDUCTION AND SEQUESTRATION**
21 **ADVISORY COMMITTEE.**

22 Section 1245 of the Food Security Act of 1985 (16
23 U.S.C. 3854), as added by section 2709 of the Food, Con-
24 servation, and Energy Act of 2008 (Public Law 110–246;

1 122 Stat. 1809), is amended by adding at the end the
2 following new subsection:

3 “(f) USDA GREENHOUSE GAS EMISSION REDUC-
4 TION AND SEQUESTRATION ADVISORY COMMITTEE.—

5 “(1) ESTABLISHMENT.—Not later than 30 days
6 after the date of the enactment of the American
7 Clean Energy and Security Act of 2009, the Sec-
8 retary shall establish an independent advisory com-
9 mittee, to be known as the ‘USDA Greenhouse Gas
10 Emission Reduction and Sequestration Advisory
11 Committee’, to provide scientific and technical advice
12 on establishing, implementing, and ensuring the
13 overall environmental integrity of an offset program
14 for domestic agricultural and forestry practices that
15 reduce or avoid greenhouse gas emissions, or seques-
16 ter greenhouse gases.

17 “(2) MEMBERSHIP.—The Advisory Committee
18 shall be comprised of nine members, including a
19 chairperson and vice-chairperson, appointed by the
20 Secretary. Each member shall be qualified by edu-
21 cation, training, and experience to evaluate scientific
22 and technical information for domestic agricultural
23 and forestry offset practices that reduce or avoid
24 greenhouse gas emissions or sequester greenhouse
25 gases.

1 “(3) TERMS.—Terms shall be 3 years in length,
2 except for the initial terms, which may be up to 5
3 years in length to allow staggered terms. Members
4 may be reappointed only once for an additional 3-
5 year term, and such term may follow directly after
6 a first term.

7 “(4) DUTIES.—The Advisory Committee
8 shall—

9 “(A) provide options and recommenda-
10 tions, not later than 180 days after the date of
11 the enactment of the American Clean Energy
12 and Security Act of 2009, to the Secretary re-
13 garding the establishment of methodologies as
14 described in section 504 of such Act, taking
15 into account relevant scientific information, in-
16 cluding—

17 “(i) the availability of representative
18 data for use in developing an activity base-
19 line for a land area, forest, soil, industry
20 sector, and facility type;

21 “(ii) the potential for accurate
22 quantification of greenhouse gas reduc-
23 tion, or sequestration for an offset practice
24 type;

1 “(iii) the potential level of scientific
2 and measurement uncertainty associated
3 with an offset practice type; and

4 “(iv) the use of practice methodologies
5 that account for common practice or other
6 direct comparisons within a relevant land
7 area, industry sector, forest, soil, or facility
8 type;

9 “(B) make available to the Secretary op-
10 tions and recommendations for the program as
11 a whole and on offset methodologies for each
12 practice type that should be considered under
13 regulations promulgated pursuant to section
14 504 of the American Clean Energy and Secu-
15 rity Act of 2009, including methodologies to ad-
16 dress the issues of additionality, activity base-
17 lines, measurement, leakage, including the ap-
18 plication of sector specific leakage factors, un-
19 certainty, permanence, and environmental in-
20 tegrity;

21 “(C) make available to the Secretary ad-
22 vice and comment on areas where further
23 knowledge is required to appraise the adequacy
24 of existing, revised, or proposed methodologies

1 and describe the research efforts necessary to
2 provide the required information;

3 “(D) make available to the Secretary ad-
4 vice and comments on other ways to improve or
5 safeguard the environmental integrity of the
6 offset practice types listed under section 503 of
7 the American Clean Energy and Security Act of
8 2009; and

9 “(E) provide options and recommendations
10 regarding new practice types.

11 “(5) SCIENTIFIC REVIEW OF OFFSET PRO-
12 GRAM.—Not later than January 1, 2017, and at 5-
13 year intervals thereafter, the Advisory Committee
14 shall—

15 “(A) submit to the Secretary and make
16 available to the public an analysis of relevant
17 scientific and technical information regarding
18 agricultural and forestry offset practices that
19 reduce or avoid greenhouse gas emissions or se-
20 quester greenhouse gases;

21 “(B) review approved and potential prac-
22 tice types, methodologies, scientific studies, off-
23 set project monitoring, offset project
24 verification reports, reporting of reversals, au-
25 dits related to the offset program, and other

1 relevant information needed to evaluate the off-
2 set program;

3 “(C) evaluate the net emission effects of
4 implemented offset projects; and

5 “(D) recommend changes to offset meth-
6 odologies, procedures, practice types, or the
7 overall program to ensure that—

8 “(i) the offset practices result in re-
9 duced or avoided greenhouse gas emissions
10 or sequestration of greenhouse gases;

11 “(ii) the offset credits issued by the
12 Secretary do not compromise the integrity
13 of the annual emissions reductions estab-
14 lished under section 703 of the Clean Air
15 Act; and

16 “(iii) the offset program avoids or
17 minimizes adverse affects to human health
18 and the environment.

19 “(6) COORDINATION.—To avoid duplication, the
20 Advisory Committee shall coordinate its activities
21 with those of any other Federal advisory committees
22 working in related areas, and shall to the maximum
23 extent possible use research data and services of the
24 research, education, extension agencies of the De-
25 partment of Agriculture.

1 “(7) CONSULTATION.—On a periodic basis, the
2 Advisory Committee shall consult with, and be in-
3 formed by the views of, the Offsets Integrity Advi-
4 sory Board established under section 731 of the
5 Clean Air Act.

6 “(8) MEETING.—The Advisory Committee shall
7 meet on at least a quarterly basis each year.

8 “(9) ADMINISTRATIVE SUPPORT AND FUND-
9 ING.—The Secretary may provide such administra-
10 tive and funding support as necessary to enable the
11 Advisory Committee to carry out its duties under
12 this section.

13 “(10) REPORT.—For each fiscal year, the Sec-
14 retary shall submit to Congress a report on—

15 “(A) the status and progress on the offset
16 practices;

17 “(B) the general status of cooperation and
18 research and development; and

19 “(C) the plans for addressing future issues
20 and concerns.”.

21 **Subtitle C—Miscellaneous**

22 **SEC. 551. INTERNATIONAL INDIRECT LAND USE CHANGES.**

23 Section 211(o) of the Clean Air Act (42 U.S.C.
24 7545(o)) is amended by adding at the end the following

1 “(13) INTERNATIONAL INDIRECT LAND USE
2 CHANGES.—

3 “(A) EXCLUSION FROM REGULATORY RE-
4 QUIREMENTS REGARDING LIFECYCLE GREEN-
5 HOUSE GAS EMISSIONS.—Notwithstanding the
6 definition of ‘lifecycle greenhouse gas emissions’
7 in paragraph (1)(H), for purposes of deter-
8 mining whether the fuel meets a definition in
9 paragraph (1) or complies with paragraph
10 (2)(A)(i), the Administrator shall exclude emis-
11 sions from indirect land use changes outside the
12 renewable fuel’s feedstock’s country of origin.

13 “(B) NATIONAL ACADEMIES OF SCIENCE
14 REPORT.—(i) Not later than 6 months after the
15 date of enactment of this paragraph, the Ad-
16 ministrator and the Secretary of Agriculture
17 shall jointly arrange for the National Academies
18 of Science to review and report on specified
19 issues related to indirect greenhouse gas emis-
20 sions related to transportation fuels.

21 “(ii) The report shall evaluate and report
22 on whether there are economic and environ-
23 mental models and methodologies that individ-
24 ually, or as a system, can project with reli-
25 ability, predictability, and confidence—

1 “(I) for purposes of determining
2 whether the fuel meets a definition in
3 paragraph (1) or complies with paragraph
4 (2)(A)(i), indirect land use changes that
5 are related to the production of renewable
6 fuels and that may occur outside the coun-
7 try in which the feedstocks are grown, and
8 the impacts of these changes on green-
9 house gas emissions; and

10 “(II) indirect effects, both domestic
11 and international, related to the production
12 and importation of non-renewable trans-
13 portation fuels that have significant green-
14 house gas emissions, and the impact of
15 these effects on greenhouse gas emissions.

16 “(iii) The report shall include a review and
17 assessment of all pertinent scientific studies,
18 methodologies and data, shall evaluate potential
19 methodologies for calculating such emissions
20 (including an evaluation of methods for
21 annualizing emissions associated with forest
22 degradation or land conversion), and shall make
23 appropriate recommendations. The rec-
24 ommendations shall address indirect effects,
25 both domestic and international, related to the

1 production and importation of non-renewable
2 transportation fuels that have significant green-
3 house gas emissions. The report shall use ap-
4 propriate validation procedures, including sensi-
5 tivity analyses, of how results change as as-
6 sumptions change. The evaluation shall include
7 for a model, a methodology, or a system of
8 models—

9 “(I) an assessment of how reliably the
10 models, methodologies, or systems track
11 actual outcomes over historical periods
12 using available historical data; and

13 “(II) an assessment of how reliably
14 the models, methodologies or systems will
15 project future outcomes.

16 “(iv) The report shall be publicly available
17 and shall include sufficient information and
18 data such that economists and other scientists
19 with relevant expertise that are not on the Na-
20 tional Academies of Science panel can fully
21 evaluate the conclusions of the report.

22 “(v) The report shall be completed within
23 3 years of the date of enactment of this para-
24 graph.

1 “(C) DETERMINATION.—(i) The Adminis-
2 trator and the Secretary of Agriculture shall,
3 after notice and an opportunity for public com-
4 ment, determine whether, for purposes of deter-
5 mining compliance with the percent reductions
6 in lifecycle greenhouse gas emissions specified
7 in paragraph (1) for various renewable fuels,
8 scientifically valid models and methodologies
9 exist to project indirect land use changes that
10 are related to the production of renewable fuels
11 and that occur outside the country in which the
12 feedstocks are grown, and the impact of these
13 changes on greenhouse gas emissions.

14 “(ii) The determination shall take into ac-
15 count the findings and recommendations of the
16 report required under subparagraph (B), as
17 well as other available scientific, economic, and
18 other relevant information. The Administrator
19 and the Secretary may also consider methods
20 used by the Environmental Protection Agency,
21 the Department of Agriculture, and other Fed-
22 eral agencies to assess or guide their related
23 policies.

24 “(iii) The Administrator and the Secretary
25 of Agriculture shall publish a proposed deter-

1 mination not later than 4 years after date of
2 enactment of this paragraph, and shall publish
3 a final determination not later than 5 years
4 after date of enactment of this paragraph. An
5 explanation and justification of the determina-
6 tion shall be included in the proposed and final
7 actions, together with a response to comments
8 received.

9 “(D) RESPONSE TO DETERMINATION.—(i)

10 In the event of a positive determination under
11 subparagraph (C), the Administrator and the
12 Secretary of Agriculture shall, after notice and
13 an opportunity for public comment, by the same
14 date jointly establish a methodology (or meth-
15 odologies) to calculate greenhouse gas emissions
16 from indirect land use changes that are attrib-
17 utable to the production of renewable fuels and
18 that occur outside the country in which feed-
19 stocks are grown for purposes of calculating a
20 renewable fuel’s lifecycle greenhouse gas emis-
21 sions to determine whether the fuel meets a def-
22 inition in paragraph (1) or complies with para-
23 graph (2)(A)(i). The exclusion in subparagraph
24 (A) shall end, and the Administrator shall issue
25 a regulation by the same date that shall include

1 emissions from indirect land use changes out-
2 side the renewable fuel's feedstock's country of
3 origin for purposes of calculating a renewable
4 fuel's lifecycle greenhouse gas emissions to de-
5 termine whether the fuel meets a definition in
6 paragraph (1) or complies with paragraph
7 (2)(A)(i) for renewable fuels sold in the cal-
8 endar year following the year of the positive de-
9 termination. The effective date of the regulation
10 shall be 6 years after the date of enactment of
11 this paragraph.

12 “(ii) A negative determination under sub-
13 paragraph (C) shall include a statement of the
14 basis for the determination.

15 “(E) ACCOUNTABILITY.—The joint duties
16 and actions of the Administrator and the Sec-
17 retary of Agriculture shall be subject to sections
18 304 and 307 of this Act as if they were the du-
19 ties and actions of the Administrator alone.”.

20 **SEC. 552. BIOMASS-BASED DIESEL.**

21 Section 211(o)(2)(A) of the Clean Air Act (42 U.S.C.
22 7545(o)(2)(A)) is amended by adding at the end the fol-
23 lowing new clause:

24 “(v) GRANDFATHERING BIOMASS-
25 BASED DIESEL.—The Administrator shall

1 promulgate regulations exempting from the
2 lifecycle greenhouse gas requirements in
3 subparagraphs (B) and (D) of paragraph
4 (1) up to the greater of 1 billion gallons or
5 the volume mandate adopted pursuant to
6 subparagraph (B)(ii) of biomass-based die-
7 sel annually from facilities that commenced
8 construction before the date of enactment
9 of the Energy Independence and Security
10 Act of 2007.”.

11 **SEC. 553. MODIFICATION OF DEFINITION OF RENEWABLE**
12 **BIOMASS.**

13 (a) NATIONAL ACADEMY OF SCIENCES REPORT.—
14 Not later than 1 year after the date of enactment of this
15 Act, the Administrator of the Environmental Protection
16 Agency, the Secretary of Agriculture, and the Federal En-
17 ergy Regulatory Commission shall jointly arrange for the
18 National Academy of Sciences to evaluate how sources of
19 renewable biomass contribute to the goals of increasing
20 America’s energy independence, protecting the environ-
21 ment, and reducing global warming pollution.

22 (b) MODIFICATION.—

23 (1) EPA MODIFICATION AUTHORITY.—After re-
24 viewing the report required by subsection (a), the
25 Administrator of the Environmental Protection

1 Agency, in concurrence with the Secretary of Agri-
2 culture, may, by regulation and after public notice
3 and comment, modify the non-Federal lands portion
4 of the definition of “renewable biomass” in sections
5 211(o)(1)(I) and 700 of the Clean Air Act in order
6 to advance the goals of increasing America’s energy
7 independence, protecting the environment, and re-
8 ducing global warming pollution.

9 (2) FERC MODIFICATION AUTHORITY.—After
10 reviewing the report required by subsection (a), the
11 Federal Energy Regulatory Commission, in concu-
12 rence with the Secretary of Agriculture, may, by reg-
13 ulation and after public notice and comment, modify
14 the non-Federal lands portion of the definition of
15 “renewable biomass” in section 610 of the Public
16 Utility Regulatory Policies Act of 1978 in order to
17 advance the goals of increasing America’s energy
18 independence, protecting the environment, and re-
19 ducing global warming pollution.

20 (c) FEDERAL LANDS.—

21 (1) SCIENTIFIC REVIEW.—The Secretary of the
22 Interior, the Secretary of Agriculture, and the Ad-
23 ministrator of the Environmental Protection Agency
24 shall conduct a joint scientific review, within 1 year
25 after the date of enactment of this Act, to evaluate

Calendar No. 97

111TH CONGRESS
1ST Session

H. R. 2454

AN ACT

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

JULY 7, 2009

Read the second time and placed on the calendar